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THE CHARTERED ACCOUNTANT JOURNAL

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



“Chartered accountants should account for and work for ensuring transparency and good accounting practices in whatever capacity they work. They can be instrumental in ‘sustained growth story’ of India...ICAI, as the premier accounting body, will help in the smooth transition to the new tax regime in the coming years ...(and)... strive to constantly adhere to the higher standards of credibility, reliability and accountability.”

Shri Pranab Mukherjee
Union Finance Minister

(during International Conference in Chennai organised by ICAI on 6th January, 2012)

Budget 2012-13 to Boost Recovering India

The Union Budget 2012-13 was presented against the backdrop of Indian economy being on the cusp of recovery and being among the frontrunners despite some formidable challenges like slowdown in growth, widening fiscal deficit, continuing inflationary pressure and global economic turbulence. Economy is expected to grow at 6.9% in 2011-12 and the growth for next year has been realistically pegged at 7.6%. In this scenario, the Finance Minister Mr. Pranab Mukherjee has done a good balancing act, particularly when he was facing the daunting task of speeding up and stimulating the Indian economic development, keeping the inflationary pressure under check and at the same time boosting public finances and reform process. Overall, the Budget appears to be pragmatic and realistic, aimed at faster, sustainable, equitable and more inclusive growth with stability. This Budget has made commitment for next generation of reforms, brought in investment-friendly measures and made a determined effort to regain fiscal consolidation besides addressing the formidable challenge of sustaining the economic growth, particularly by being fair and equitable to sectors affected by low growth. The good news on the taxation reforms has been: GST likely to be operational by August 2012 and negative list for service tax. However, the implementation of Direct Tax Code is also required to be taken up at the earliest.

It is welcome that the Finance Minister has been truly farsighted in identifying five objectives to be addressed effectively in the ensuing fiscal year. They include focus on domestic demand driven growth recovery; create conditions for rapid revival of high growth in private investment; address supply bottlenecks in agriculture, energy and transport sectors particularly in coal, power, national highways, railways and civil aviation; intervene decisively to address the problem of malnutrition especially in the 200 high-burden districts and expedite coordinated implementation of decisions being taken to improve delivery systems, governance, and transparency; and address the problem of black money and corruption in public life. Particularly, a renewed thrust on controlling black money and tax evasion is welcome from the point of view of long term prospects of the country. From compulsory filing of returns for foreign assets to expediting prosecution proceedings, this budget has commendably set the ball of disincentives to black money rolling.

The continued thrust on infrastructure along with agriculture and education sectors is expected to provide significant impetus to economic growth in the medium-term. With a ₹50,00,000 crore investment ambition (half of it from private sector), during 12th Plan, including financial incentives like tax-free bonds and external commercial borrowings for capital expenditure in roads, airlines, low-cost affordable housing project, this budget bodes well for infrastructure. Along with financial sector reforms, these measures would be hugely growth inducing.

This budget has also done good to boost capital markets too with measures like reduction in security transaction tax and incentives for small investors to invest in equities, particularly the Rajiv Gandhi Equity Savings scheme. Other financial sector reforms will enable insurance and pension sectors to also invest in capital markets. The initiative of

massive recapitalisation of banks and rural financial institution will benefit both industry and agriculture credit flow.

It is good that Government has adopted quite a reformist approach to service tax with negative list, which simplifies the manner of levy and collection of service tax on lines of GST regimes in the West. This will reduce dispute over what can and cannot be taxed. Given the difficult circumstances, it was encouraging to see that the Budget has actually reduced overall individual income tax by widening the tax slabs, increasing exemption limits and exempting interest from savings bank account, which is likely to keep consumer spending robust.

This budget also reiterates Government's commitment to inclusive growth with increased allocation to social sectors with health, education, nutrition and skill development getting considerable raise.

However, it will be worthwhile to watch how the Budget helps counter some formidable challenges to Indian economy. Containing the fiscal deficit, current account deficit and limiting the subsidy bill remain big challenges. But the target set for trimming a ballooning fiscal deficit from existing 5.9% to 5.1% appears to be only modest. At the same time, the raise in excise and service tax rates by 2%, back to their earlier levels, and bold measures such as disinvestment of PSUs and FDI in multi-brand retail and aviation will definitely give some extra fiscal space to the government to reduce its fiscal deficit. But a clear roadmap on increasing foreign direct investment was missing. Subsidies have indeed hit fiscal consolidation and the target of keeping the subsidies under 2% of GDP in 2012-13 and 1.75% of GDP over the next three years is the need of hour, particularly when the revised estimates for subsidies in FY12 have increased by 51% over the Budget estimates. Thus, the measures to decrease subsidies need emphasis. Another concern has been the current account deficit which is likely to be 3.6%. The volatility of inflows, when combined with a high current account deficit, makes India vulnerable to currency fluctuations in any event of capital flight.

From the accountancy profession's perspective, general debate about the Budget is almost over. And now it is time for the accountants to sit up and take stock of the consequent new changes and challenges pertaining to their area of activity in detail and move on with professional panache for which they are known.

Overall, the Budget 2012-13 has aimed at giving a sustainable shape to a recovering India. It balances the need of providing a growth environment and the need for fiscal restraint. It is hoped that the Budget helps Government steer the economy out of one of the most turbulent times in world's economic history, and unleashes long-term growth potential of India.

In this issue of the journal, we have included specially invited authoritative articles on various important aspects of the Union Budget 2012-13, to help our readers conceptualise a composite picture of the Budget and understand its technical utility and its nuances in various segments of taxation.

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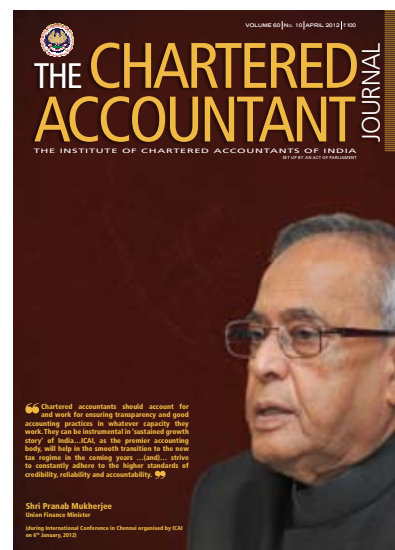
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CA. Jaydeep Narendra Shah, President, ICAI

Dear friends,

Coming together is a beginning. Keeping together is progress. Working together is success, so said American industrialist Henry Ford, and this holds good for our profession as well. Together, each one of us can make a big difference. Think, if each drop of water were to say that one drop does not make an ocean, there would be no sea. Yes, you and I do make a big difference, more so when it comes to financial discipline of our economy. Let's come closer to make a bigger difference, particularly in the backdrop of current global economic scenario and Union Budget 2012-13. I am happy to note that this year's budget is quite progressive and pragmatic, and, together with greater stability and supportive government policies, it will spur investment-led, sustainable and more inclusive growth. We have also played a role in shaping this Budget through Pre-Budget Memorandum submitted by us to the Government. Now, general debate about the Budget is almost over. And thus, it is time for us to sit up and take stock of the consequent new changes and challenges pertaining to our area of activity in detail, and move on with professional panache for which we are known for. Let us update ourselves with the latest and continue with our professional journey confidently, ethically and altruistically.

Chartered accountants symbolise fiscal prudence and discipline, and with their multi-dimensional capabilities, they can act as catalyst for economic development. As envisaged and attempted by Union Finance Minister Shri Pranab Mukherjee, we can take up a proactive role not only to get the nation back to its pre-crisis growth trajectory but even surpass it to

reach double-digit figures. In our various capacities as 'total business solution provider' including as advisors, consultants and auditors, we can be crucial in achieving the broader Budget objective of inclusive growth combined with stronger and more effective public institutions, delivery mechanisms, governance and reforms. Resultant forthcoming changes will pose new challenges to us testing our skills, confidence and caliber. Let's prepare ourselves for that. We are indeed good at our work, but when *Better is possible, Good is not enough*. Here, let's recall the words of wisdom of our economist Prime Minister Dr. Manmohan Singh during our Diamond Jubilee celebrations in 2008 who expressed : *Your institute has served our country with great distinction. I sincerely believe that we cannot be satisfied with the status quo and I sincerely hope that the best is yet to come and that the next 60 years will be still more productive, innovative in the service of the people of our great country...It would be most appropriate for Indian Chartered Accountants to reaffirm their commitment to the cause of excellence, independence, ethical conduct and highest standards of professional integrity.*

Now, let me update you on some of the major developments and initiatives pertaining to our profession in particular and nation in general over the last month:

An Update on Branch Audit of Public Sector Banks for the Year 2011-12

As you all are aware that based on the recommendation of a Working Group set up by RBI, it was proposed to carry out changes in allotment of bank branch audits of the public sector banks by raising the minimum threshold (advances) limit of branches which will not be subject to audit by statutory auditors. It was mainly proposed that all branches having outstanding advances of ₹20 crore and above as on March 31, 2012, need to be audited for the year 2011-12. And of the remaining (branches having outstanding less than ₹20 crore), one fifth branches were proposed to be selected at random in such a way that all the remaining branches are audited at least once in five years. The proposals were based on the perception that there was no need of extensive branch audit in view of implementation of CBS in all public sector banks. In this regard, I am extremely happy to inform you that following our hectic and sustained drive of representations to authorities concerned and meetings with all top quarters of Indian polity and policy makers, we have been finally able to make them see merit in our stand and viewpoint on the move to reduce extensive audits of branches of Public Sector Bank. **As such, the Ministry of Finance has now decided that all branches having outstanding advances of ₹6 crore and above as on March 31, 2012, need to be audited for the year 2011-12. And of the remaining (branches having outstanding less than ₹6 crore), one-third branches are to be selected at random in such a way that all the remaining branches are audited at least once in three years.**

On behalf of the profession, I humbly thank the Government for arriving at this farsighted decision, which will ultimately strengthen the cause of corporate governance and public interest in the banking industry. I am also grateful for the understanding and support of all those whom we approached at various levels of Indian polity, particularly our Rajya Sabha Deputy Chairman CA. K. Rahman Khan, Union Finance Minister Shri Pranab Mukherjee, Union Corporate Affairs Dr. M. Veerappa Moily, Chairman of Parliamentary Standing Committee on Finance Shri Yashwant Sinha, Member of Parliament CA. Piyush Goyal, Secretary, Department of Financial Services, Shri D. K. Mittal and Reserve Bank of India Executive Director Shri Vijaya Bhaskar.

The earlier move was not at all in the long-term interest of the banks and the nation. In case, the said proposal would have been approved, the public sector banks would have got exposed to a higher risk by not covering majority number of branches and advances, thereby leaving scope for undetected material misstatements, including frauds, whereas the saving in cost would have been negligible in the hands of the banks. Further, ICAI as a regulator of the auditing profession, firmly believes that such proposal if implemented would have undermined the fair reporting on the state of affairs in public sector banks.

This favourable decision of the Ministry of Finance is an opportunity for us to prove our worth once again and show the value addition we make through the branch audit to the financial statement of Banks. Let me also inform you that we are also pursuing both the Government and the RBI to see the merit in allowing CAs to carry out branch audits of private sector banks as well. A more detailed update on this whole issue of branch audit has been published immediately after my message.

Triumph of Democracy

Yet another national event that gave me great satisfaction was the festival of our democracy, right from its commencement to its culmination, with high turnout and serpentine queues in Uttar Pradesh, Uttarakhand, Goa, Punjab and Manipur elections. Irrespective of who won, the ultimate winner has been our thriving democracy. In the end, it has been the triumph of the people of India, the *aam aadmi* who first and foremost voted for democracy.

Our International Initiatives

Visit to New York: As part of our sustained efforts to strengthen brand Indian CA globally, I, along with the ICAI Vice President CA. Subodh Kumar Agrawal, recently visited the New York (US) Chapter of ICAI and interacted with its office bearers. During the visit, we also had a meeting with Ms. Arleen Thomas, Senior Vice President, AICPA, to explore the possibility of developing minimum common exchange programme and organising joint seminars on international taxation and other emerging issues. We also had meeting with Mr. Russell Guthrie, Executive Director, IFAC, to explore the possibility of organising exchange programmes between ICAI and IFAC.

Visit to Mexico: I, along with Vice President CA. Subodh Kumar Agrawal, recently attended the International Accounting Education Standards Board (IAESB) meeting in Mexico. The participants in the meeting discussed the revision of International Education Standards 2, 3, 4, 6 & 8. The strategy and work programme of IAESB were also discussed. The meeting focused on establishing a series of high quality standards and other publications reflecting good practice in the education, development, and assessment of professional accountants.

Visit to Dubai: Recently, I and ICAI Vice President CA. Subodh Kumar Agrawal also visited ICAI Knowledge Village, Dubai, to review the various activities of Dubai Chapter of ICAI. We also interacted with the IPCC students there with regard to the IT training and other classes.

MOSAIC Inaugural Steering Committee Meeting in Jaipur: I am glad to inform you that we recently organised the MOSAIC (Memorandum of Understanding to Strengthen Accountancy and Improve Collaboration) inaugural Steering Committee Meeting in Jaipur, which witnessed a distinguished gathering of more than 35 delegates from organisations across the world. Mr. Anthony Martin Hegarty, Chief Financial Management Officer—World Bank, Mr. Dannies Chisenda and Mr. Kennedy Musonda, Ministry of Finance, Zambia, and Mr. Deborah J. Williams, Chair—IFAC PAO Development Committee, were some of the dignitaries present on the occasion. I, on behalf of ICAI, highlighted the significance of such an MoU between the IFAC and the international donor community that provides foundations for increasing the capacity of professional accountancy organisations and improve the quality of financial management systems in emerging economies. We have proposed to the IFAC, Chair PAODC and the august audience that we could host the permanent secretariat for the MOSAIC MoU Steering Committee. The meeting included a comprehensive discussion on the goals and objectives of the MOSAIC MoU cooperation and establishment of MOSAIC Steering Committee and MOSAIC secretariat for the purpose of monitoring and evaluation of the donor community.

SAFA Meetings in Delhi: ICAI Vice President CA. Subodh Kumar Agrawal recently attended the 20th meeting of SAFA Board held in New Delhi. The meeting was attended by representatives of accountancy bodies from SAARC countries namely India, Pakistan, Bangladesh, Sri Lanka, Nepal and Maldives. Extensive discussions were held for the development of accounting profession in the region. A new taskforce to address the risk and challenges to the accountancy profession in SAARC region in the context of various developments taking place has also been constituted.

India-Netherlands Joint Working Group Meeting in Delhi: I am happy to inform our stakeholders that we recently participated in the meeting of the India-Netherlands Joint Working Group on Corporate Governance and Corporate Social Responsibility in New Delhi.

Our Initiatives for Members

Meeting with Shri Yashwant Sinha: I would like to share that I, along with the ICAI Vice-President CA. Subodh Kumar Agrawal, recently met the Chairman of Parliamentary Standing Committee on Finance Shri Yashwant Sinha, in connection with our concerns regarding the Companies Bill, 2011 and submitted a memorandum.

Initiative for Service Tax Practice: The major shift in taxing services based on the "negative list" would lead to at least 25 per cent more assesseees being covered under the levy of service tax in the coming year. The simplification of the returns would lead to the onus of the compliance being shifted to the tax payer. This would require that professionals are equipped to advise and assist the service providers as well as the service receivers [under reverse charge] to register, pay and file returns. The challenges for a person liable to pay the tax would be to examine the applicability of the threshold limit, coverage under exclusion/inclusion, coverage under exemption, availing of appropriate credit, choosing of abatement [partial exemption of value], resolution of disputes, recommending of disclosures as the onus of compliance would be with the person liable to pay and general compliance with the rules. This would also require the members of the profession to update themselves on the changes and their effect on the clients.

To this objective, we have planned to have a special a two-day course on "Enabling Service Tax Practice" for Chartered Accountants in practice at all branches for those who wish to start in this value additive area of practice. For those who have already started in any of the areas of indirect tax, mainly in VAT or service tax, a Certificate Course [6 weekend - 12 days] is planned in different Tier 1 and Tier 2 cities in all regions. Further, a post-budget memorandum would be placed before CBEC incorporating the clarifications/amendments needed on scores of issues.

New Group Formed: In response to a communication from the MCA regarding the European Union's request and our reiteration on the possible roadmap for liberalisation in the accountancy sector, we have decided to send an interim reply to the Ministry. Keeping in view the sensitivity of the matter, we have decided to constitute a 'Group to establish ICAI's view on the EU Request List and possible liberalisation roadmap' under the convenorship of our Central Council colleague CA. Manoj Fadnis to complete the task by 31st March, 2012, and establish our view on the EU Request List and the possible liberalisation roadmap. Please be assured that we are not going to compromise on the interests of Indian accountancy profession.

Residential Programme on Masters in Business Finance: I am happy to share the information that we launched the second batch (2011-12) of the one-week residential programme of Certificate Course on Masters in Business Finance and successfully concluded the same at the Centre of Excellence in Hyderabad in two groups in February-March 2012.

Capacity Building: Due to changes in the economic environment which has thrown open more challenges and opportunities for professionals, it is imperative to build capacities of small and medium firms in order to enable them to face and take advantage of this competitive environment. Towards this end, we will soon organise a series of workshops and conferences to educate the members, create awareness among them and address the apprehensions in their mind regarding capacity-building measures like LLPs, networking, mergers and management consultancy services in corporate form. We will also identify the disadvantages and challenges being faced by members while resorting to such consolidation processes and take remedial measures. Also, many initiatives will be taken to explore other areas of capacity building like venture capital and tie-ups with banks for availability of funds at cheaper rates.

ICAI-MCA Investor Awareness Programmes: It is heartening to share with our stakeholders that we have conducted altogether 78 MCA-ICAI investor awareness programmes within a short span of two weeks in February 2012 through resource persons encompassing almost all states of our nation.

Campus Placement Programme: I am happy to inform you that we are presently conducting a campus placement programme for newly-qualified chartered accountants for a period of February-March 2012 at 17 centres across the nation. Details of this programme are available at www.cmii.icai.org. We are getting very encouraging response from a good number of organisations. Further, we have recently organised Orientation Programme for Newly Qualified Chartered Accountants at 11 cities across the nation while similar programmes were held in March 2012.

WIRC Members' Meet & Orientation Programme: Recently, I had the opportunity to attend, along with the ICAI Vice-President CA. Subodh Kumar Agrawal, the Orientation Programme of WIRC members, successfully organised by the WIRC of ICAI. All 27 branches of WIRC participated in the programme. Representatives of the branches made some valuable comments and suggestions. I sincerely hope to include these in our work plan for the profession. A Members' Meet was also organised by the WIRC which was attended by its members in large. We did our best to address their queries and concerns as far as possible. We also used that occasion to interact with all the new office bearers of the WIRC.

Bhoomi Pujan at Surat Branch of ICAI: Keeping up with the agenda of strengthening the infrastructure of accountancy profession, I recently attended the *bhoomi pujan* ceremony at the Surat Branch of ICAI and laid the foundation stone of its building. The occasion was marked by the presence of our Central Council Members CA. Mahesh Sarda, CA. Dhinal Shah, CA. Rajkumar S. Adukia, CA. Sanjeev Maheshwari, WIRC Chairman CA. Durgesh Kabra, the then Branch Chairman CA. H. Tosniwal and the members and office bearers of the Branch.

Educational Materials on Ind AS 1, 2 & 37: Let me inform all our stakeholders that we have recently issued the educational material on Ind AS 1, 'Presentation of Financial Statements', Ind AS 2, 'Inventories' and Ind AS 37, 'Provisions, Contingent Liabilities and Contingent Assets'. So far about our 3,950 members have been successfully trained in the 100-hour intensive training programme of the IFRS Certificate Course held across the nation. Currently IFRS Certificate Course batches are being conducted at Bangaluru and Dubai.

Boosting the CA Benevolent Fund: "Charity begins at home but should not end there," is the saying which is worth taking note of by us today— particularly when we have scores of families of deceased professional brethren and those suffering from terminal/serious ailments in our fraternity who are in dire need of financial assistance. It is our duty to support and stand by them in times of distress. And the Chartered Accountant Benevolent Fund offers an excellent opportunity to do so in an organised and systematic manner. The CABF is an initiative by the CAs for the CAs, which has aided 971 needy families in the last five years (2007-08 to 2011-12). However, presently the corpus of the fund is not enough to cater to the needs of all the families in distress. Therefore, it becomes an urgent requirement to boost and bolster this fund, which is not possible without your generosity and support. I call upon all of you to join this benevolent initiative and make CABF an integral part of your socio-professional duty. More than 1,07,540 members have already joined as life members of CABF, but what is needed is that all of us not only become life members but also contribute more than the minimum stipulated amount and continue to contribute in future as well. Life subscription of the fund is for ₹2,500 and ordinary subscription is for ₹500 per annum payable in favour of 'Chartered Accountant Benevolent Fund'. Remember that charity, howsoever trifle to us, can be utterly precious to our brethren in need. Let's make CABF a thriving movement for CAs' welfare, nationally as well as internationally. Remember that *a candle loses nothing by lighting another candle*.

Partner in Nation Building

Revival of Group for In-house Development of Taxonomies: I have revived the Group for In-House Development of Taxonomies under the conensorship of our Council colleague CA. Atul C. Bheda. The Group will develop a draft taxonomy for the Commercial and Industrial Companies (C&I) as per the revised Schedule VI to the Companies Act, 1956 and relevant law besides developing a taxonomy guide explaining the taxonomy for the convenience of the users. The taxonomy, in addition to presentation/calculation/label link bases, shall also comprise the definition, reference and formula link bases. The Group will also document the taxonomy and provide a taxonomy viewer so that the same can be viewed in tree hierarchy format.

Removing Hardships with Regard to TDS Return: We have been making suitable representations to the CBDT and other appropriate bodies on various issues. Recently, it has been brought to our notice that

demand notices are being served on the deductors on account of various possible reasons. The said matter was placed by us before the Central Direct Taxes Advisory Committee in its meeting, which was chaired by the Union Finance Minister Shri Pranab Mukherjee. Considering the fact that there may be other difficulties which are being faced owing to rectification of TDS returns, we have been requested to compile all such difficulties being faced by the assesseees and discuss the same with appropriate authorities. We also raised the issues like our submissions on Tax Accounting Standards, guidelines for empanelment of auditors for special audit under section 142(2A), etc., at the meeting, which was also attended by Shri S. S. Palanimanickam, Minister of State, Ministry of Finance, Shri Laxman Das, CBDT Chairman, other senior officials of CBDT, and non-official members from FICCI, ASSOCHAM, Federation of Association of Small Industries of India. Our Central Council colleague CA. Sanjay Kumar Agarwal was nominated from ICAI for the meeting.

Training Programme for ITAT Officers: We are organising a training programme for ITAT officers in Bhopal. I am sure that this initiative will help in bettering the governance in general and sharpening the skills of ITAT officers in particular. More such programmes are in the offing.

Accounting Standards in Government Educational Institutions: The working group comprising the members of ICAI and the Ministry of HRD on Implementation of Accounting Standards in Educational Institutions of Department of Higher Education has recommended that all educational institutions, which generally follow diverse accounting practices and different basis of accounting, should be mandated to apply accrual basis of accounting and Accounting Standards issued by the ICAI. We have also recommended fund-based accounting for earmarked/designated funds. We have stressed that all educational institutions should follow a common format for presentation of its general purpose financial statements to ensure proper accountability, financial discipline, end-use of funds and to meet the needs of stakeholders. We have also proposed that the Ministry of Human Resource Development, in coordination with ICAI, organises capacity building programme to train the staff of educational institutions.

Reserve Bank of India Meeting on CDR: A meeting of Working Group to Review the Existing Prudential Guidelines on Restructuring of Advances by Banks/ Financial Institutions was recently held in Mumbai. In the meeting, comprehensive discussions were held in the area of corporate debt restructuring (CDR), bringing clarity to the existing guidelines on restructuring of advances and sharing of experiences regarding cases of restructuring undertaken and success ratio thereof. In the meeting, the ICAI Vice President CA. Subodh Kumar Agrawal presented the views of ICAI.

Union Budget Interactive Session: The ICAI Vice-President CA. Subodh Kumar Agrawal was invited as Chief Guest in 'Union Budget Interactive Session' organised by the Swadeshi Research Institute, Kolkata.

Chairman of Parliamentary Standing Committee on Finance Shri Yashwant Sinha was the main speaker in the programme. Key aspects of the Budget 2012-13 were discussed threadbare in the programme. On the occasion, the Vice President also raised the views of ICAI on the proposal of RBI for raising the minimum threshold (advances) limit of the branches which will not be subject to statutory audit, issues in the new Company Bill and on the definition of the word 'Accountant' in the Report of Standing Committee on Finance on Direct Taxes Code Bill, 2010 (DTC).

Initiatives for Students

Preparing Students for CA Examination: As you are aware, we had embarked on organising mock tests for the students through the Regional Councils and Branches since last year. Continuing the practice, the tests papers for the mock tests for the May 2012 Examination have been sent to all Regional Councils and Branches asking them to organise the tests twice i.e. in March and April. A rigorous follow-up is also being done to ensure that maximum number of students can benefit from this initiative. Further, we have revised our booklet titled *How to face CA Examination* and hosted it on our website.

Four-Week Residential Programme: As part of our focused efforts to make our students become a cut above the rest, we are organising a four-week residential programme on professional skills development focusing particularly on communication and leadership skills, and personal traits for effective functioning in business organisation at our Centre of Excellence in Hyderabad. Two batches of 40 participants each will be trained in April, and then, in May-June 2012. With such programmes, I look forward to taking the professional skills of our students to the next level, in sync with the present and the future.

Drawing Students to Accounting Stream: As part of our efforts to attract brightest of students to accounting stream, we have decided to participate in education fairs at various cities, including Education Boutique 2012 in Ahmedabad, Bengaluru, Chennai, Chandigarh, Hyderabad, Thane and Patna. We will also participate in educational exhibitions called *Horizon* organised in eight cities of Kerala where ICAI has its branches.

Review of CA Syllabus: As informed to you in my last message, CA students are very high on my priority list. As also included in my action plan for this year, I have resolved to align Indian accountancy education with the emerging imperatives in line with global best practices. An all-encompassing and experience-rich education for students is one of my main goals. In this regard, I am happy to inform you that we are having a comprehensive review of our syllabus for CA course.

Joint Seminars on FDI and IFRSs: It is satisfying to note that we are constantly organising seminars and workshops jointly with various universities in our nation on contemporary issues of accountancy and commerce. Recently, one such seminar was held

jointly with the Bharati Vidyapeeth Deemed University, Pune, on *Foreign Direct Investment in Retail Sector*, which was attended by faculty engaged in teaching of accountancy and finance, research scholars, and postgraduate students of accountancy and commerce. Another such seminar was organised jointly with the Shivaji University, Kolhapur, on *International Financial Reporting Standards*.

Code of Conduct for CA Students Soon: It is my earnest endeavour to inculcate an added sense of discipline and responsibility in respect of academic matters, personal conduct and ethical value-based learning habits among our students, which is very essential for impeccable future of our profession. As such, we are in advance stages of finalising a *Code of Conduct* for CA students during the period of practical training and, also while pursuing PCC/IPCC, prior to registration for practical training. The Code will also apply to the students who have completed practical training but not yet passed Final examinations. I am sure this move will go a long way in shaping the future of our students and the profession.

I am sure these developments and initiatives will go a long way in boosting our profession.

Before I conclude, let us remind ourselves that knowing is not enough; we must simplify the knowledge and apply it to the fullest satisfaction of our clients and other stakeholders. Knowledge is a process of piling up facts; wisdom lies in their simplification with creativity. Technical skill is the mastery of complexity, while creativity is the mastery of simplicity.

Let's always keep in mind that with the hard work, dedication and intricate knowledge we can reach pinnacle of your chosen area of professional activity. Remember: *man at the top is usually someone who has been in the habit of going to the bottom of things*. Knowing 'how to...' is important to execute a job but knowing 'why' and 'what's to be done' is all the more important, for this is the trait of a visionary. If you do little things well, you'll do big ones better. "*We are what we repeatedly do. Excellence, then, is not an act, but a habit*," rightly says the ancient Greek philosopher Aristotle, and this saying aptly fits our profession. It is widely believed that a honey bee visits two million flowers to collect 500 mg of honey. So, our workload is nothing as compared to them. Let's draw inspiration from words of wisdom by American businessman Donald McIntosh Kendall: *The only place where success comes before work is in the dictionary*. Therefore, keep working. I extend all of you my best wishes for an all-round success.



CA. Jaydeep Narendra Shah
President, ICAI
New Delhi, March 24, 2012

Branch Audit of Public Sector Banks for the Year 2011-12: An Update

The Reserve Bank of India had set up 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". On the basis of the recommendation of the Group, it was proposed to carry out changes in allotment of bank branch audits of the public sector banks as under:

- i. All branches having outstanding advances of ₹20 crore and above as on March 31, 2012 need to be audited for the year 2011-2012.
- ii. Of the remaining (branches having outstanding less than ₹20 crore) 1/5 (one fifth), branches are to be selected at random in such a way that all the remaining branches are audited at least once in five years.
- iii. Banks have to cover 90% of the total advances outstanding as on March 31, 2012, through branch audit.
- iv. Any other branch/es that may be required to be taken up for audit for any special reason/s like fraud, embezzlement of funds, etc., or where transactions of suspicious nature have been noticed.

The plea behind the proposal was that there was no need of extensive branch audit in view of implementation of CBS in all public sector banks.

ICAI's Viewpoint

In all the four meetings of the Working Group, the ICAI stressed that it was not agreeable to the proposal, and examination of materiality aspect to certify the accounts in view of unaudited advances needs to be done by them. In this regard, timely representations were submitted to Shri Vijaya Bhaskar, Executive Director, Reserve Bank of India. ICAI representative also gave a presentation on 'Relevance of bank branch audit post CBS' in the one of meetings of the Working Group which focused on the need for extensive branch audit and why branch audit should not be done away with even in CBS environment.

The branch auditor as per the existing norms are required to report on various functions including advances, deposits, housekeeping, inter branch adjustments, income and expenditure audit, etc. It is observed that, during the audit, there is a significant improvement in housekeeping. The audit at branch level acts as a catalyst to strengthen and maintain a better control environment. Since PSBs have their branches

in every nook and corner of the country, branch audit is necessary to ensure authenticity of data flowing from branches to head office. Understanding the current banking scenario where CBS is yet to fully stabilise, auditors are required to carry out audit function most diligently and effectively.

In case, the said proposal would have been approved, the public sector banks would have got exposed to a higher risk by not covering majority number of branches and advances, thereby leaving a scope for undetected material misstatements including frauds, whereas the saving in cost would have been negligible in the hands of the banks. Further, ICAI as a regulator of the auditing profession, firmly believes that such proposal, if implemented, would have undermined the fair reporting on the state of affairs in Public Sector Banks.

Further, the President and the Council of the Institute remained fully seized of the matter. Proactive steps were taken to engage the Government and appropriate authorities in a dialogue. Representations were submitted to Dr. M. Veerappa Moily, Hon'ble Minister of Corporate Affairs, Shri Yashwant Sinha, Chairman, Parliamentary Standing Committee on Finance, CA. K. Rahman Khan, Hon'ble Deputy Chairman of Rajya Sabha, CA. Piyush Goyal, Hon'ble Member of Parliament, Shri D. K. Mittal, Secretary, Department of Financial Services, Ministry of Finance, Government of India and others explaining the need of extensive branch audit even in CBS. A delegation also met Shri Pranab Mukherjee, Hon'ble Union Minister of Finance, Government of India, to emphasise on the need of extensive branch audit in public sector banks.

Considering the merit in the case made out by ICAI, it has been finally decided that:

1. All branches having outstanding advances of ₹6 crore and above as on March 31, 2012 need to be audited for the year 2011-2012.
2. Of the remaining (branches having outstanding less than ₹6 crore), 1/3 (one third) branches are to be selected at random in such a way that all the remaining branches are audited at least once in three years.

This is an opportunity for us to prove our worth once again and show the value addition we make through the branch audit to the financial statement of Banks. ■



Meeting Rajya Sabha Deputy Chairman

ICAI President and Vice-President, CA. Jaydeep Narendra Shah and CA. Subodh Kumar Agrawal, meet and discuss various issues of professional concern with Hon'ble Rajya Sabha Deputy Chairman Shri K. Rahman Khan in New Delhi. (March 22, 2012)



Meeting with Finance Minister in Presence of Corporate Affairs Minister

Hon'ble Corporate Affairs Minister Dr. M. Veerappa Moily, along with ICAI President CA. Jaydeep Narendra Shah, ICAI Vice-President CA. Subodh Kumar Agrawal and Central Council member CA. Charanjot S. Nanda, in a meeting with the Hon'ble Finance Minister Shri Pranab Mukherjee in the presence of Shri D.K. Mittal, Secretary, Department of Financial Services, Government of India, in New Delhi. (February 24, 2012)



Meeting with Finance Minister

ICAI President CA. Jaydeep Narendra Shah meets and hands over a bouquet to Hon'ble Finance Minister Shri Pranab Mukherjee along with ICAI Vice-President CA. Subodh Kumar Agrawal and Central Council member CA. Charanjot S. Nanda. (February 24, 2012)



Orientation for GMCS Scholars

Hon'ble Corporate Affairs Minister Dr. M. Veerappa Moily lighting the lamp to inaugurate the Orientation for GMCS Scholars as ICAI President CA. Jaydeep Narendra Shah, along with Central Council members CA. Sanjay Agarwal, CA. Pankaj Tyagee and the then Chairman of NIRC CA. Rajesh Sharma among others applaud the occasion. (February 17, 2012)



Meeting with Shri Yashwant Sinha

ICAI President CA. Jaydeep Narendra Shah greets and presents a bouquet to Shri Yashwant Sinha, Chairman of Parliamentary Standing Committee on Finance while ICAI Vice-President CA. Subodh Kumar Agrawal and Central Council member CA. S. Santhanakrishnan look on in New Delhi. (March 15, 2012)



Meeting with ITAT President

ICAI President CA. Jaydeep Narendra Shah greets Income Tax Appellate Tribunal President CA. G.E. Veerbhadrapa in the presence of Central Council Member CA. Pankaj I. Jain and WIRC Chairman CA. Durgesh Kabra, during a meeting in Mumbai. (March 2, 2012)



Orientation Programme for Newly-Qualified CAs

Rajya Sabha MP CA. Piyush Goyal lights the lamp to inaugurate the programme in the presence of ICAI President CA. Jaydeep Narendra Shah, Central Council Members CA. Rajkumar S. Adukia and CA. Charanjot Singh Nanda, NIRC Chairman CA. (Dr.) Durga Das Agrawal, and NIRC past Chairman CA. Atul Kumar Gupta and other dignitaries in New Delhi. (March 17, 2012)



Visit to Dubai Chapter of the ICAI

ICAI President CA. Jaydeep Narendra Shah and Vice-President CA. Subodh Kumar Agrawal with ICAI's Dubai Branch Chairman CA. S. Venkatesh and other branch Executive Committee members. (March 11, 2012)



Interactive Session on Union Budget

ICAI Vice-President CA. Subodh Kumar Agrawal with Shri Yashwant Sinha, Chairman of Parliamentary Standing Committee on Finance during an Interactive Session on Union Budget 2012-13 at Swadeshi Research Institute, Kolkata. (March 17, 2012)



Visit to IFAC Headquarters

ICAI President CA. Jaydeep Narendra Shah presents a memento to Executive Director of IFAC Mr. Russell Guthrie in the presence of ICAI Vice-President CA. Subodh Kumar Agrawal during their visit to IFAC Headquarters, New York.



IAESB Meeting in Mexico

ICAI President CA. Jaydeep Narendra Shah presents a memento to Mr. Peter Wolnizer, Chairman, International Accounting Education Standards Board in the presence of ICAI Vice-President CA. Subodh Kumar Agrawal during their meeting in Mexico. (March 7-9, 2012)



Orientation Programme at WIRC

ICAI President CA. Jaydeep Narendra Shah lights the lamp and inaugurates the programme in Mumbai. ICAI Vice-President CA. Subodh Kumar Agrawal, Central Council members CA. Rajkumar S. Adukia, CA. Nilesh S. Vikamsey, CA. Sanjeev Maheshwari, CA. Vijay Kumar Garg and WIRC Chairman CA. Durgesh Kabra were among those present on the dais. (March 3&4, 2012)



WIRC Members' Meet

ICAI President CA. Jaydeep Narendra Shah and ICAI Vice-President CA. Subodh Kumar Agrawal being honoured during the WIRC members' meet in Mumbai. WIRC Chairman CA. Durgesh Kabra presented the mementos on the occasion. (March 3, 2012)



Orientation Programme in Guwahati

ICAI Vice-President CA. Subodh Kumar Agrawal addresses the Orientation Programme on Accounts and Audit, jointly organised with Department of Public Enterprises, Govt. of Assam. Shri Pradyut Bordoloi, Hon'ble Minister, Government of Assam, Shri J. S. L. Vasva, Commissioner, Public Enterprises, Govt. of Assam, CA. Naveen Garg, Guwahati Branch Chairman were among others present on the occasion. (February 29, 2012)



Visit to Siliguri Branch of EIRC

ICAI Vice-President CA. Subodh Kumar Agrawal with office bearers of Siliguri Branch of EIRC and other dignitaries during a visit to Siliguri Branch of EIRC. (February 29, 2012)



Bhoomi Puja for Surat Branch Building

ICAI President CA. Jaydeep Narendra Shah, along with spouse Smt. Harsha Jaydeep Shah, performs bhoomi puja for building of Surat Branch. Central Council members CA. Rajkumar S. Adukia, CA. Mahesh P. Sarda and CA. Sanjeev Maheshwari, WIRC Chairman CA. Durgesh Kabra and the then Chairman Surat Branch CA. Hari Sankar Tosniwal along with spouse were among others present on the occasion. (February 28, 2012)

Salient Features of the Finance Bill, 2012: Direct Taxes



The Finance Minister presented the budget for the year 2012-2013 this time away from the tradition on a day different than the last day of February i.e. 16th March, 2012. This budget has been presented in the backdrop of the political uncertainties arising post Uttar Pradesh elections. Accordingly, this budget has been presented in the mists of woes across political, economic and monetary environments. Economic woes are in plenty both from domestic and external sectors. The overshoot in fiscal deficit and resultant funding of the gap from the market is a major cause for the liquidity squeeze and high cost of liquidity. The political woe is the absence of support both from inside and outside the coalition. The Finance Minister had a difficult task to arrest further slippages in fiscal deficit and to maintain it around 5%; effect pass through of subsidy to consumers to control cost; pull domestic and foreign investment to core sectors to spur growth momentum and to boost exports to address trade deficit. The fiscal deficit of 5.9% as against 4.6% budgeted in the last budget and the projection of 5.1% for the next year does not seem to be a very positive signal. Read on...



CA. Ved Jain

(The author is a past-President of The Institute of Chartered Accountants of India. He can be reached at jainved@gmail.com)

The growth in the tax revenue has also been sluggish. The total of tax collected for the year 2011-12 was ₹9,01,663 crore as against ₹9,32,439 crore budgeted in the budget mainly because of lower collections of income tax from Corporate of ₹3,27,680 crore as against ₹3,59,990 crore budgeted.

The Finance Minister in the last budget has promised to introduce Direct Tax Code from 1st April, 2012. However, in view of the non-receipt of the report from the Parliamentary Committee, the implementation of the Direct Tax Code stands postponed to next year. One interesting feature of this Finance Bill, 2012 is that despite Direct Tax Code being before the Parliament and the Finance Minister promising to implement the same at the earliest, still in this Bill there are 113 clauses to amend the provisions of the existing Income-tax Act and the Wealth Tax Act. This raises a serious issue for consideration, i.e., need for Direct Tax Code. What is so different in the Direct Tax Code which is not in the existing Income-tax Act. The Direct Tax Code is being projected to be a next generation reform, a big financial

reform. The Direct Tax Code is not much different than the existing Income-tax Act except having some anti tax avoidance measures. There is nothing much in the Direct Tax Code to make it a tax payer friendly law. In fact the Finance Bill, 2012 proposes to introduce many such anti tax avoidance provisions of the Direct Tax Code in the existing Income-tax Act, strengthening the argument that there is no need to bring Direct Tax Code and the time tested existing Income-tax Act, 1961 is good enough and if need be can be amended suitably to introduce some left over provisions of the Direct Tax Code. Various amendments proposed in the Finance Bill, 2012 are analysed below unless otherwise stated all these amendments are to be effected from 1st April, 2013 i.e. assessment year 2013-2014 relevant to the income earned in the financial year 2012-2013.

A. TAX RATES

1. Increase in threshold limit:

The Finance Bill, 2012 proposes to increase the threshold limit for every Individual, Hindu Undivided Family, Association of persons, Body of Individual and every Artificial Juridical Persons from ₹1,80,000 to ₹2,00,000. Further the income slab of 20% from ₹5,00,000 to ₹8,00,000 has been increased from ₹5,00,000 to ₹10,00,000. Thus a tax payer having income upto ₹8,00,000 will get a benefit of ₹2,060 whereas a tax payer having income of ₹10,00,000 or more will get a benefit of ₹22,660.

The new slab rates proposed are as under:-

Income	Tax Rate
Upto ₹2,00,000	Nil
₹2,00,001 - ₹5,00,000	10%
₹5,00,001 to ₹10,00,000	20%
Above ₹10,00,000	30%

There is no special threshold for women as it was earlier of ₹1,90,000/- as against ₹1,80,000/- to others. With the result that increases in threshold limit for women tax payer is just ₹10,000/- as against ₹20,000/- for tax payer other than women. Thus a women tax payer shall get a benefit of ₹1,030/- only on account of increase in threshold limit.

Further in the case of senior citizens above the age of 60 years but less than 80 years the threshold limit shall continue to be ₹2,50,000/- whereas in the case of very senior citizens of the age of 80 years or more the threshold limit shall continue to be ₹5,00,000/-. This means that there is no benefit of increase in threshold limit to senior citizens as well as very senior citizens.

2. No change in tax rate on corporates

The Finance Bill, 2012 has proposed no change in the tax rate applicable to a firm including LLP and a company. The applicable tax rates for a firm, and domestic company continues to be flat rate of 30%. However, a domestic company is liable to pay surcharge at the rate of 5% of the tax in case its total

Finance Bill, 2012 proposes to introduce many such anti tax avoidance provisions of the Direct Tax Code in the existing Income-tax Act, strengthening the argument that there is no need to bring Direct Tax Code and the time tested existing Income-tax Act, 1961 is good enough and if need be can be amended suitably to introduce some left over provisions of the Direct Tax Code. ”

income exceeds ₹1 crore. The tax rate applicable to a foreign company i.e. other than a domestic company continues to be 40% with surcharge at the rate of 2% in case its income exceeds ₹1 crore.

3. Security transaction tax reduced

The Finance Bill, 2012 proposes to reduce the rate of Securities Transaction Tax (STT) in cash delivery segment from existing 0.125% to 0.1%. The new rate will apply to any transaction made on or after 1st day of July, 2012. However, the rate of STT in respect of other transactions shall continue to be same.

4. Alternate minimum tax being made applicable to all

The Finance Act, 2011 has introduced alternate minimum tax (AMT) on limited liability partnership on the line of minimum alternate tax (MAT) applicable to a company. The scope of AMT is being widened to make it applicable to all persons other than companies. The implication of this will be that all persons including individual, HUF, Partnership Firm shall be required to ascertain its liability, if any, for payment of AMT. As per the provisions of the AMT, tax at the rate of 18.5% is payable on the 'adjusted total income' which is different than the concept of book profit applicable for MAT on a company. The adjusted total income means total taxable income as increased by deductions claimed under Chapter VI-A – Part-C 'deduction in respect of certain incomes' i.e. exemption under Section 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID, 80-ID and exemption available under Section 10AA (in respect of SEZ).

Further every person including individual and HUF will be required to obtain a report from the Chartered Accountant and file such report with the return of income. However, the alternate minimum tax provision shall not apply to an individual or an HUF or an AOP or a Body of Individual or an artificial juridical person if the adjusted total income does not exceed ₹20 lakh. This threshold of ₹20 lakh needs to be checked up on year to year basis.

Alternate minimum tax liability to pay shall be same as that of a regular tax. A person liable for AMT needs to pay advance tax as well as self assessment tax before filing the return of income. Amendments are being made to Section 140A, 234A, 234B and 234C of the Act to provide that interest shall be payable in case a person liable to AMT fails to deposit the advance tax at due time or fails to file the return of income in time.

B. DEDUCTIONS**1. Savings interest to be exempt upto ₹10,000**

The Finance Bill, 2012 proposes to introduce a deduction in respect of income by way of interest on deposits in a saving account upto ₹10,000. The deduction shall be available under a new Section 80-TTA in respect of interest in a saving account with a Bank, a Co-operative Bank or a Post Office. The deduction shall not be available in respect of time deposits i.e. fixed deposits, etc. The deduction shall be available to an individual or HUF only. Further, in case, such deposit is held in a saving account on behalf of the firm, AOP or a body of individual no deduction shall be allowed while computing income of any of the partner or any member of the AOP or any body of individual.

2. Scope of Section 80D being widened

The Finance Bill, 2012 proposes to widen the scope of Section 80D regarding deduction of ₹15,000 available in respect of Premium paid towards a Health Insurance Policy for self, spouse and dependent children or any contribution made to Central Government Health Scheme, to include payment made on account of preventive health check-up up to ₹5,000 within the overall deduction of ₹15,000. Similarly the scope of further deduction of ₹15,000 allowed in respect of premium towards a health insurance policy in respect of parents is being widened to include payments made on account of preventive health check-up up to ₹5,000. These payments towards preventive health check up can also be made in cash. However, the payment towards health insurance premium has to be made otherwise than cash only, to be eligible for deduction. Further, for the purposes of higher deduction of ₹20,000, towards health insurance premium in the case of parents who are senior citizens, the condition of age of 65 years of such parents, is being reduced to 60 years.

3. Age limit for deduction of medical treatment for senior citizens being reduced

Presently under Section 80-DC a deduction up to ₹40,000 is allowed to an individual for the medical treatment of specified diseases for himself or a dependent and to an HUF for any member of the HUF. This deduction is ₹60,000, if the expenditure is for a senior citizen who is of the age of 65 years or more. The Finance Bill, 2012 proposes to reduce the eligibility

criteria of higher deduction of ₹60,000 for a senior citizen from 65 years to 60 years.

4. Life insurance premium not to exceed 10% of the sum assured for 80C exemption

The Finance Bill, 2012 proposes to restrict the deductions under Section 80C in respect of Life Insurance Premium paid to an amount, as does not exceed 10% of the capital sum assured under the policy, as against present restriction of 20% of the capital sum assured introduced by the Finance Act, 2003. This provision shall however be applicable only for the new insurance policies issued on or after 1st April, 2012. Accordingly premium paid on existing policies even if such premium exceeds 10% of the capital sum assured shall continue to be eligible for deduction under Section 80C. It is being further clarified that for the purpose of computing 10% of the capital sum assured, the capital sum assured in relation to a policy shall be the minimum amount assured at any time during the term of the policy so as to ensure that the policy is not designed to circumvent this limit of 10% by varying the capital sum assured from year to year.

Further a similar amendment is being made to Section 10(10D) of the Act to exempt the amount received on maturity of the life insurance policy only for such policies where premium payable for any of the year during the term of the policy does not exceed 10% of the capital sum assured as against 20% as on date. This amendment shall also be applicable for life insurance policies issued on or after 1st April, 2012 and in case premium payable for any year exceeds 10% of the capital sum assured, the amount received on maturity of such policy shall not be exempt but will be included in the total income.

5. No extension to deduction of ₹20,000 for infrastructure bond

The Finance Bill, 2012 has not extended the deduction of ₹20,000 available under Section 80CCF in respect of subscription to Long Term Infrastructure Bond. This deduction was allowed for one year by the Finance Act, 2010 and was extended for another one year by the Finance Act, 2011. Thus the deduction will be available only for investments made up to 31st March, 2012.

6. Deduction for investment in Rajiv Gandhi Equity Savings Scheme

The Finance Minister in his Budget speech has stated to allow a deduction of 50% to the new retail investors who invests up to ₹50,000 directly in equities in a new Scheme called Rajiv Gandhi Equity Savings Scheme. The deduction shall be available only to those investors whose annual income is below ₹10 lakh. This Scheme will have a lock-in period of three years. This has been introduced to encourage flow of savings in financial instruments and improve the depth of the domestic capital market. Though the Finance Minister has made this announcement in the speech but there is no amendment proposed in the Finance Bill, 2012 allowing such deductions while computing income under the

The Finance Bill, 2012 proposes to introduce a deduction in respect of income by way of interest on deposits in a saving account upto ₹10,000. The deduction shall

be available under a new Section 80-TTA in respect of interest in a saving account with a Bank, a Co-operative Bank or a Post Office. The deduction shall not be available in respect of time deposits i.e. fixed deposits, etc. ”

The Finance Bill, 2012 proposes to restrict the deductions under Section 80C in respect of Life Insurance Premium paid to an amount, as does not exceed 10% of the capital sum assured under the policy, as against present restriction of 20% of the capital sum assured introduced by the Finance Act, 2003. This provision shall however be applicable only for the new insurance policies issued on or after 1st April, 2012. ”

Income-tax Act. It appears that this deduction was finalised at the fag end with the result corresponding amendment could not be inserted in the Finance Bill, 2012.

7. No exemption of donation above ₹10,000 if paid in cash

The Finance Bill, 2012 proposes to prohibit allowing deduction under Section 80-G in respect of the donations to charitable trust or institutions in case such donation exceeding ₹10,000 is paid in cash. Similarly deduction for any donation for Scientific Research or Rural Development exceeding ₹10,000, and eligible for deduction under Section 80-GGA will not be allowed if the same is paid in cash. The donation of ₹10,000 or less paid in cash, however, shall continue to be eligible for deduction.

The above amendment has been made by inserting following sub-section (5D) below sub-section (5C) of Section 80G -

"No deduction shall be allowed under this Section in respect of donations of any sum exceeding ten thousand rupees unless such sum is paid by any mode other than cash."

Thus in case any donation has been paid in cash exceeding ₹10,000 then the entire donation will not be eligible for deduction.

8. Clarificatory amendment regarding denial of exemption to charitable organisations

The Finance Bill, 2012 proposes to insert a new sub-section (8) in Section 13 to provide that a Charitable Trust or Institution coming under proviso to Section 2(15) shall not be eligible for claiming benefit of exemption under Section 11 or 12 in the year in which it is not considered to be a charitable organisation by application of proviso to Section 2(15) despite such trust or institution is registered and the registration or the approval has not been cancelled or withdrawn. Similar amendment is being made in Section 10(23C) and under Section 143 by inserting a proviso to deny the benefit of exemption under Section 10(23C) in respect of charitable trusts or institutions approved under sub-clause (iv) & (v) despite such approval having not been withdrawn.

This amendment also, by implication, clarifies that a trust or institution which is denied benefit of exemption

in a year since the aggregate value of the receipts from commercial activities exceeded the prescribed limit of ₹25 lakh will not be considered as altering the charitable nature of the trust or institution so as to lead to cancellation of registration or withdrawal of approval and in the subsequent year such trusts or institutions may again be eligible for exemption in case its receipts from commercial activities does not exceed ₹25 lakh.

This amendment is being made retrospectively from 1st April, 2009 i.e. assessment year 2009-10 in view of the fact that the provisions of Section 2(15) defining the charitable purpose were amended from that day so as to exclude advancement of any other object of general public utility from the definition of charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business for a fee or any other consideration.

9. Extension for setting up power generation, transmission or distribution undertakings by one year

The Finance Bill, 2012 proposes to extend the terminal date by another one year for claiming exemption under Section 80-IA(iv) in respect of undertakings for the generation and distribution of the power; or which starts transmission or distribution; or which undertakes substantial renovation and modernisation of existing network of transmission or distribution up to 31st March, 2013. The Finance Act, 2011 had also extended the period by one year. Looking to the need to enhance power generation further extension of one year has been given. Any unit which becomes operational by 31st March, 2013 will be eligible to claim exemption for ten consecutive assessment years out of the fifteen assessment years from the year of operation.

C. SALARIES & INCOME FROM HOUSE PROPERTY

The Finance Bill, 2012 has not proposed any amendment in respect of income from salaries and income from house property.

D. BUSINESS INCOME

1. No disallowance of expenditure on failure to deduct TDS in case the deductee has included the same in the income and filed its return

The Finance Bill, 2012 proposes to address a major issue arising consequent to insertion of Section 40(a) (ia) whereby any expenditure incurred by the assessee on which tax has not been deducted is disallowed leading to assessment of income at an amount highly disproportionate to the actual income. As per the proposed amendment, in case the assessee has not deducted tax at source on any sum but the deductee has filed its return of income under Section 139 and has taken the same into account such sum while computing its income in the return filed and has paid tax due on the income declared as per the return of income then for the purposes of Section 40(a)(ia) it shall be deemed

that the assessee had deducted tax and paid the tax on such income on the date of furnishing of return of income. For this purpose amendment is being made to Section 201 of the Act to provide that in the above circumstances the person responsible for deducting tax shall not be deemed to be an assessee in default. Such person shall be required to furnish a certificate from a Chartered Accountant. This amendment will help in addressing the issue of huge tax liability arising consequent to minor technical default of non-deduction of tax at source. In case the assessee has failed to deduct tax at source, he will have an option to deduct and deposit the same before filing its return of income. In case he becomes aware of the default after the filing of the return of income then he can approach the deductee to give a copy of his return and the accounts so as to get a certificate from a Chartered Accountant, of the deductee having taken into account the sum while computing its income, paying tax as per the return and having filed the return. Further in case the deductee has not filed the return still the deductor can persuade the deductee to file the return within the time prescribed under Section 139. It may be noted that the Section referred to is 139 only and will include late return as well. However, in case there is a loss as per the return of the deductee then such return has to be filed before the due date of filing, belated return being not a valid return within the meaning of Section 139. The amendment may not help a situation where the method of accounting being followed by the deductor and deductee are different. In case the deductor follows accrual method of accounting and fails to deduct tax and the payment has not been made of the sum so accrued, and the deductee follows cash method of accounting, in such a situation the deductee would not have taken into account such sum while computing its income and consequently the deductor will be an assessee in default.

This amendment gives statutory recognition to the judgment of the Supreme Court in the case of *Hindustan Coca Cola Beverage Pvt. Ltd. Vs. CIT* (2007) 293 ITR 226 (SC) whereby it was held that recovery once again cannot be made from the deductor where the deductee included the income on which tax was alleged to have been short deducted in its taxable income and paid taxes thereof. With this amendment there will be no recovery of tax ought to have been deducted from the deductor in case deductee has paid tax and filed return.

Further a proviso is being inserted below sub-section (1A) of Section 201 to provide that in such a situation, the deductor shall be liable to pay interest from the date when the tax was deductible to the date of furnishing of the return of income by deductee. This proviso gives a statutory recognition to the judgment of the Gujarat High Court in the case of *CIT vs. Rishikesh Apartments Co-operative Housing Society Ltd.* (2002) 253 ITR 310 (Guj.) delivered long time back on June 14, 2001.

It may be noted that this amendment is only in respect of payment to resident i.e. when the deductee is a resident.

This amendment to Section 201, not to treat the deductor in default is proposed to be effective from 1st July, 2012 whereas the amendment to Section 40(a) (ia) is proposed with effect from 1st April, 2013 i.e. assessment year 2013-14. It is interesting but not surprising to note that so many amendments favouring Revenue are proposed to be retrospective being clarificatory in nature and the one favouring taxpayer which in real sense is clarificatory is proposed to be effective prospectively. Despite this, considering the fact that a deeming fiction is being created under the proposed amendment it may be interpreted by court to be a clarificatory and hence applicable retrospectively. The Calcutta High Court recently in the case of *CIT vs. Virgin Creations* has held that the amendment made to Section 40(a) (ia) by the Finance Act, 2010 of allowing benefit of the payment made before the due date of filing return under Section 139(1) is clarificatory and have retrospective operation. The Calcutta High Court has referred to the judgment of the Supreme Court in the case of *R. B. Jodha Mal Kuthiala vs. CIT* (1971) 82 ITR 570 (SC), whereby it was held that the provision, which are inserted as a remedy to make the provision workable, requires to be treated with retrospective operation so that reasonable deduction can be given to the section as well.

Similar amendment is being made to provision of tax collection at source by inserting sub-section (6A) in Section 206C to provide that the seller responsible for tax collection at source will not be considered as an assessee in default in case the buyer has accounted for the amount in its return of income, paid tax on the income declared as per the return and filed the return under Section 139.

2. **Payment to relatives – scope of Section 40A(2) being widened, Transfer Pricing regulations to apply to domestic transactions**

Under the existing law, in case of any transaction with a related party the Assessing Officer under Section 40A(2) while computing income from business or profession can disallow the expenditure which in his opinion is

The Finance Bill, 2012 proposes to insert a new sub-section (8) in Section 13 to provide that a Charitable Trust or Institution coming under proviso to Section 2(15) shall not be eligible for claiming benefit of exemption under Section 11 or 12 in the year in which it is not considered to be a charitable organisation by application of proviso to Section 2(15) despite such trust or institution is registered and the registration or the approval has not been cancelled or withdrawn.

excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which expenditure has been incurred. There is no mechanism to re-compute the income received from a related party in case the Assessing Officer is of the opinion that such income is low considering the market value. In order to address this issue, the provisions of Transfer Pricing are being amended to extend the scope to 'specified domestic transactions' by amending Section 92 of the Act. Further specified domestic transactions have been defined in a new Section 92BA as following transactions where the aggregate of such transactions entered into by the assessee in a year exceed ₹5 crore:

- i. Expenditure referred to in Section 40A(2);
- ii. Transaction referred to in Section 80A i.e. transactions for goods or services held for the purposes of the undertaking or the unit or eligible business which are transferred to any other business carried on by the assessee or are transferred to the undertaking or unit claiming exemption under Sections 10A, 10AA, 10B or Section 10BA. For this purpose a new clause is being inserted to provide that in relation to any goods or services sold, supplied or acquired in respect of the unit claiming above exemption, the market value means the arm's length price determined under Section 92F as applicable for specified domestic transactions.
- iii. Transfer of goods or services of eligible business under Section 80IA, 80IAB, 80IC, 80ID, 80IE, 10AA transferred to any other business carried on by the assessee;
- iv. Any business transacted between the assessee and the other persons having close connections where the assessing officer is of the opinion that the business transacted produces more than the ordinary profit as per Section 80IA(10) read with Sections 80IB(13), 80IC(7), 80ID(5), 80IE(6), 10AA(9);
- v. Any other transactions as may be prescribed.

It has been further provided by inserting a new sub-section (2A) in Section 92 that any allowance or any expenditure or interest or allocation of any cost or expense or any income in relation to specified domestic transaction shall be computed having regards to arm's length price, meaning thereby the specified domestic transaction will be tested applying arm's length principle. Accordingly corresponding amendment is being made in the procedural laws of transfer pricing to cover domestic transactions i.e. Section 92C for computation of arm's length price by the method prescribed, Section 92D maintenance and keeping of information and document, Section 92E obtaining report from Chartered Accountant in respect of specified domestic transactions, Section 92CA being reference to the Transfer Pricing Officer, penal provisions of Section 271(1), Explanation 7 regarding concealment, Section 271AA penalty for failure to keep

The Finance Bill, 2012 proposes to explicitly provide that an assessee engaged in the business of generation or generation and distribution of power shall also be eligible for initial depreciation of 20% of the actual cost of the new machinery or plant acquired and installed during the year. This amendment though proposed to be effective from 1st April, 2013 but still there will be dispute regarding on the issue whether this amendment is clarificatory amendment or not. ”

and maintain information and Section 271G penalty for failure to furnish information or document.

Further the scope of the related party is being expanded to cover cases of companies which have the same parent company by providing that any other company carrying on business or profession in which the first mentioned company has substantial interests shall be considered to be a related party.

This proposal is going to have far reaching implications and increase the compliance cost substantially which may be beyond the means of such taxpayer. In international transaction, the country loses tax. However in domestic transactions, the country does not lose tax. A taxable transaction between two related parties even if not at arms length, still there is no tax implications if both such entities are in same tax bracket. Considering this only at the time when Section 40A(2) was inserted the board circular explaining the provisions of the amendment has stated that in case there is no net tax effect, no disallowance on this account need be made. It is a normal practice may be because of regulatory requirement or because of family set up or development and structuring of business over the period one entity related to other may be selling its products or providing services. Despite both such entities falling in same tax brackets and there being no net tax effect still there will be requirement on both these entities of maintaining and complying all complex transfer pricing regulations. The cost of such compliance will be too high as compared to nominal margin of profits. The threshold of ₹5 crore may not also be helpful as in manufacturing or trading of goods this is too little and the total margin earned in such transactions may not be sufficient to meet the cost of compliance.

3. Power sector to be eligible for initial depreciation

Under the existing provisions of Section 32(1)(iia) an additional depreciation at the rate of 20% of the actual cost of new machinery or plant is allowed to an assessee engaged in the business of manufacture or production of an article or thing in the year in which such new machinery or plant is acquired. There have been disputes on the issue whether the generation of power means production of an article or thing so as to

be eligible for this initial depreciation. The Finance Bill, 2012 proposes to explicitly provide that an assessee engaged in the business of generation or generation and distribution of power shall also be eligible for initial depreciation of 20% of the actual cost of the new machinery or plant acquired and installed during the year. This amendment though proposed to be effective from 1st April, 2013 but still there will be dispute regarding on the issue whether this amendment is clarificatory amendment or not.

4. Time period for availing weighted deduction for expenditure on scientific research extended

Under the existing provision of Section 35(2AB) any expenditure incurred on research and development facilities which is approved is eligible for deduction twice the amount of the expenditure incurred. This benefit however, was limited till 31st March, 2012. The Finance Bill, 2012 proposes to extend the period by another five years i.e. expenditure incurred upto 31st March, 2017. It may be noted that this exemption is available only to a company and not to any other person.

5. Income received in India on account of crude oil to be exempt

Under the existing provisions of Section 5(2) of the Income-tax Act applicable to a non-resident, the total income liable for taxation in India includes all income from whatever source derived which is received or deemed to be received in India in such year by or on behalf of such person. A foreign company is considered to be a non-resident and in case any such company receives any payment in India by implication of this Section 5(2) such payment shall be deemed to be income received in India. India is importing crude oil from Iran which is under sanction of United Nations as on date and as such there is no mechanism available to make payment to Iran against import of such crude oil. In order to overcome this difficulty the Government has recently worked out a mechanism whereby the payment of such crude oil shall be made to a bank account in India and Iran can use such account for purchase of goods from India. To avoid taxability of such payment against import of crude being credited in the bank account in India on behalf of Iran, the Finance Bill, 2012 proposes to insert a new clause (48) in Section 10 to exempt such income on account of sale of crude oil with a condition that the receipt of such income by the foreign company is pursuant to an agreement or an arrangement

entered into by the Central Government or approved by the Central Government, and having regard to the national interest such agreement is notified by the Government. The foreign company, however, should not be engaged in any other activity in India.

6. Scope of investment linked deduction being broadened by adding new businesses

The Finance Bill, 2012 proposes to add three new businesses viz. setting and operating an Inland Container Depot/freight station, Bee-keeping and production of honey and beeswax and setting up and operating a warehousing facility for storage of sugar for allowing investment linked deductions under Section 35AD of the Act. The benefit of this deduction shall be available to these three new businesses which commences operations on or after 1st April, 2012. As per the provisions of Section 35AD, the entire expenditure of capital nature incurred for the purpose of these specified businesses other than the expenditure on land, goodwill or financial instruments shall be allowed as deduction during the year in which such expenditure is incurred. Further such business is not eligible for claiming deduction under Chapter VIA nor will such expenditure be eligible for deduction under any other provisions of the Act. Further the loss of this business is also eligible for set off against any other income of the same business. Accordingly the investment linked deduction under Section 35AD is an accelerated depreciation being 100% of the capital expenditure in the year in which it is incurred. Thus this may be good incentive for a person already in the same business so as to set off income of such business against capital expenditure of a new same business. However, for a person who is not in the same business this may act as counter-productive since the entire capital expenditure will be a business loss eligible for carry forward at best for eight years as against depreciation to be claimed over a period with no limitations as to number of years the depreciation to be carried forward.

7. Weighted investment linked deduction under Section 35AD

The Finance Bill, 2012 proposes to introduce the concept of weighted deduction of 150% of the capital expenditure under Section 35AD of the Act. As per the proposal the five existing eligible businesses under Section 35AD viz., setting up and operating a cold chain facility; setting up and operating a warehousing facility for storage of agricultural produce; building and operating a hospital with at least 100 beds; developing and building a housing project under a Scheme for affordable housing and production of fertilisers in India, if commences operations on or after 1st day of April, 2012, then such business shall be eligible to claim 150% of the capital expenditure incurred in the year in which such businesses commence operations. This is a message to the eligible business likely to commence business by 31st March, 2012 to delay commencement beyond 31st March, 2012

The Finance Bill, 2012 proposes to introduce two new weighted deductions of 150% in respect of expenditure incurred on agriculture extension project and skill development on the line of research and development expenditure available under Section 35 of the Act. ”

The provision of Section 44AB prescribing tax audit for business and profession is being amended to increase the threshold limit. As per the proposal tax audit shall be required in case of a person carrying on business if his total sales, turnover or gross receipts exceeds ₹1 crore as against existing threshold of ₹60 lakh and in the case of a person carrying on profession if his gross receipts in profession exceeds ₹25 lakh as against existing threshold of ₹15 lakh.

so as to get weighted deduction of 150% as against 100% if operation commences by 31st March, 2012. Further there is every possibility that similar weighted deduction be allowed to other eligible business under Section 35AD in the Finance Bills of the coming years.

8. Owner of hotel to be eligible for investment linked incentive despite transfer of operation of hotel

Provisions of Section 35AD are being relaxed in respect of specified business of a hotel of two stars or above category. As per the existing provisions the benefit of investment linked incentive under Section 35AD is allowed only when the hotel is owned and operated by the assessee himself. Considering the fact that in the hotel industry it is normal to have a franchisee arrangement whereby hotel is operated through an outside arrangement and not by the owner of the hotel, the condition of operating the hotel is being relaxed. In case the operations are transferred to another person, the assessee shall still be deemed to be carrying on the business of building and operating hotel so as to be eligible for the exemption.

This amendment is being made retrospectively from 1st April, 2011 i.e. assessment year 2011-12 so as to not to deny the benefit to such hotels which have entered franchisee arrangement of operating hotel by an outside agency.

9. Expenditure on agriculture extension project and skill development project to get weighted deduction

The Finance Bill, 2012 proposes to introduce two new weighted deductions of 150% in respect of expenditure incurred on agriculture extension project and skill development on the line of research and development expenditure available under Section 35 of the Act. The agriculture extension projects shall be notified by the Board in accordance with the prescribed guidelines. Similarly skill development project shall be also notified by the Board in accordance with the prescribed guidelines.

10. Threshold limit for presumptive taxation being increased from ₹60 Lakh to ₹1 Crore.

Under the existing provision of Section 44AD presumptive taxation is applicable in the case of a small business having turnover not exceeding ₹60 lakh

whereby 8% of turnover is deemed to be the income of the eligible business. The assessee is not required to maintain any books of account nor required to get the accounts audited. The Finance Bill, 2012 proposes to raise the threshold limit from ₹60 lakh to ₹1 crore. Accordingly in the case of an assessee having turnover upto ₹1 crore, 8% of the turnover shall be deemed to be the income with no hassle of accounts and audit. Under the proposed tax rate on an income of ₹8 lakh after claiming deduction of ₹1 lakh under 80C (LIC/PFF), ₹15,000 under Section 80D (Medi claim/Health checkup) the tax liability on taxable income of ₹6,85,000 will be just ₹69,010/- which is 0.7% of the turnover. In case such assessee has taken housing loan and paying interest thereon of ₹1,50,000, the tax payable will go down to ₹38,110/- only. A big relief for a small business considering that turnover of ₹1 crore per annum means turnover of approx. ₹30,000 per day. This amendment shall be effective from 1st April, 2013, i.e., assessment year 2013-14.

However, the scope of eligible business is being restricted by excluding person earning income in the nature of commission or brokerage and person carrying on any agency business. Further it is being explicitly provided that small business does not include carrying on of profession. This amendment is being made retrospectively with effect from 1st day of April, 2011 i.e. assessment year 2011-12. The benefit of Section is available to an individual, HUF and Partnership firm only. Accordingly company and Limited Liability Partnership are outside the scope of presumptive taxation under Section 44AD of the Act.

11. Threshold limit for tax audit being increased

The provision of Section 44AB prescribing tax audit for business and profession is being amended to increase the threshold limit. As per the proposal tax audit shall be required in case of a person carrying on business if his total sales, turnover or gross receipts exceeds ₹1 crore as against existing threshold of ₹60 lakh and in the case of a person carrying on profession if his gross receipts in profession exceeds ₹25 lakh as against existing threshold of ₹15 lakh. Thus a company or an LLP will be outside the scope of tax audit in case its total turnover is less than ₹1 crore despite its income being less than 8% of the turnover (being not covered by presumptive taxation). On the other hand an Individual, HUF or a Partnership firm in case its profit is less than 8% of its turnover, shall still be required to get its accounts audited as per provisions of Section 44AB in case it wants to opt out of presumptive taxation. This amendment is being made with effect from 1st April, 2013, i.e., assessment year 2013-2014.

12. Specified date for tax audit being linked to due date of filing return

Under the existing provision of Section 44AB an assessee is required to obtain the tax audit report by 30th September. The due date of filing return is prescribed under Section 139(1) as 30th September.

However, sometimes the due date of filing return is extended. For this purpose to avoid default in getting tax audit report a separate notification has to be issued every time under Section 44AB extending period of obtaining tax audit report. In order to address this issue the Finance Bill, 2012 proposes to link the due date of obtaining tax audit report as the due date prescribed under Section 139(1) instead of the existing due date i.e. 30th September. The implication of this amendment will be that as and when the due date of filing return is extended the due date of obtaining tax audit report will stand automatically extended.

E. CAPITAL GAINS

1. No capital gain tax on investment in small and medium enterprises

The Finance Bill, 2012 proposes to introduce a new Section 54GB allowing exemption to an individual or an HUF in respect of the long term capital gain arising from the transfer of a residential property being a house or a plot of land if the person utilises the net consideration received from transfer of such assets for subscribing equity shares of an eligible company before the due date of filing return and such company within a period of one year from date of subscription in equity shares utilises this amount for purchase of new plant and machinery. The eligible company shall be a company which is incorporated in India during the period from the 1st April of the year in which the capital gain arises to the due date of filing return meaning thereby the incorporation has to take place in a period of almost 18 months starting from 1st April to 30th September of next year if due date of filing return is 30th September and in case it is 31st July, then within 16 months. Further the company should engage in the business of manufacturing an article or a thing and such assessee should have more than 50% share capital or more than 50% voting rights after the subscription in the shares by the assessee. Such company should qualify to be a small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006. Further the new plant and machinery shall not include any office appliances, computer, computer software, any vehicle, machinery or plant installed in office premises or any residential accommodation including guest house. Further such machinery should not have been used either within or outside India by any person. It may be noted that the net consideration has to be utilised for the purchase of new plant and machinery and accordingly all other expenditure of the company should be met from other sources in case the amount utilised towards acquisition of new plant and machinery is less than the net consideration then exemption shall be allowed proportionately. In case the company is not able to utilise the amount of subscription of shares for the purchase of new machinery before the due date of filing return by the assessee then the unutilised amount is to be deposited in a separate notified bank account

and the proof of such deposit to accompany the return. On failure to utilise such money deposited in the bank account within the period prescribed i.e. within one year from the date of subscription of equity shares then such amount shall be charged as income of the assessee in the year in which the period of one year from date of subscription of such equity shares expires.

Further there is a restriction not to sell or otherwise transfer the equity shares of the company as well as the new plant and machinery acquired within a period of five years from the date of their acquisition. In case of such transfer the same shall be deemed to be the income of the assessee of the year in which such shares or plant and machinery are transferred.

This provision has been introduced for a period of five years, i.e., transfer of residential property upto 31st March, 2017.

2. Scope of exemption in respect of agricultural land being extended to HUF

The Finance Bill, 2012 proposes to expand the scope of Section 54B of the Act providing exemption to an individual in respect of long term capital gain arising on transfer of land used for agricultural purposes so as to include HUF also. Accordingly in case any land used for agricultural purposes is owned by the HUF there will be no capital gain on transfer of the same if within a period of two years it has purchased any other land for being used for agricultural purposes.

3. Fair market value to be full consideration where consideration is not determinable

The Finance Bill, 2012 proposes to introduce a new Section 50D to provide that in the case of a transfer where consideration for the transfer of a capital asset is not determinable or attributable then for the purpose of computing capital gains, the fair market value of the assets transferred shall be considered to be the full market value of consideration. This amendment is being done to overcome the judgment whereby it has been held that in case consideration of transfer is not determinable then gains arising from the transfer are not taxable.

4. Reference to valuation officer for determination of fair market value as on 1st April, 1981

The provisions of Section 55A are being amended to

The Finance Bill, 2012 proposes to expand the scope of Section 54B of the Act providing exemption to an individual in respect of long term capital gain arising on transfer of land used for agricultural purposes so as to include HUF also. Accordingly in case any land used for agricultural purposes is owned by the HUF there will be no capital gain on transfer of the same if within a period of two years it has purchased any other land for being used for agricultural purposes. ”

enable the Assessing Officer for making a reference to the Valuation Officer where in his opinion the fair market value adopted by the assessee as on 1st April, 1981 for the purpose of computation of capital gain is higher than the fair market value. This amendment is being done to overcome the rulings whereby it was held that a reference to valuation officer can be made only when value declared by the assessee is less than the value in the opinion of the Assessing Officer. This amendment is being proposed from 1st July, 2012 and from that day the Assessing Officer shall be eligible to make a reference.

F. INCOME FROM OTHER SOURCES

1. Gifts received by HUF from its member to be exempt

The Finance Bill, 2012 proposes to extend the meaning of 'relative' so as to include in the case of an HUF, any member of such HUF so as to exclude amount received by HUF from its members from the scope of the provision of Section 56(2)(vii). As per provision of Section 56(2)(vii) any sum of money or any immovable property received by an individual or an HUF without consideration is considered to be income from other sources except when it is received from a relative. The 'relatives' in the case of an individual have been defined in the proviso to this clause but no relative has been defined for an HUF. With the result amount received by HUF from its member without consideration was being considered as income from other sources. This amendment accordingly is being made retrospectively from 1st October, 2009 to remove this anomaly. It may be noted that as per provision of Section 64(2) any separate property of the individual is converted into a property belonging to the HUF then the income derived from such converted property is deemed to arise to the individual and not to the family. Accordingly the gift received by HUF from its member may not be taxable as income from other sources in the hands of HUF, however, income arising from such gift shall be taxable in the hand of such member only who has gifted the amount or the property.

2. Unexplained cash credit and investment to be taxed at the rate of 30%

The Finance Bill, 2012 proposes to introduce a new Section 115BBE of the Act whereby any addition made on account of unexplained credit under Section 68, unexplained investment under Section 69, unexplained money under Section 69A, understatement of investment under Section 69B, unexplained expenditure under Section 69C, amount borrowed or repaid on hundi under Section 69D the same shall be chargeable to tax at the flat rate of 30% irrespective of the threshold exemption or losses, etc. Thus in the case of an assessee if the net income is assessed at loss despite above stated additions it will be required to pay tax on such additions at the rate of 30%. This amendment will make the tax liability more than the liability on the income

The scope of Section 56(2)(vii) is being expanded by inserting a new clause (viiia) to provide that in the case of a company not being a company in which public are substantially interested i.e. a closely held company the consideration received for issue of shares from any person being a resident exceeding the fair market value of the share shall be chargeable as income from other sources in the hands of the company except when such consideration is received by a Venture Capital Undertaking from a Venture Capital Company or a Venture Capital Fund. ”

as determined by the tax authorities itself. The penalty for concealment or furnishing inaccurate particulars is also leviable under the Section 271(1)(c). In case the Government is of the view that the penal provisions are not adequate the better course is to enhance the penalty rather than levying tax in this manner.

3. Share capital, share premium, share application to be considered as deemed income

The Finance Bill, 2012 proposes to make a far reaching amendment to the provisions of Section 68 as well as Section 56(2) to address the issue of share capital, share premium and share application in the case of a company in which public is not substantially interested i.e. closely held company. In this regard a proviso is being inserted in Section 68 to provide that in the case of such company the amount credited as share application money, share capital, share premium shall be deemed to be not satisfactorily explained unless the person, being a resident, in whose name such credit is recorded in the books of the company, also offers an explanation about the nature and source of such sum and such explanation is found to be satisfactory by the assessing officer. The only exception is to a person which is a venture capital fund or a venture capital company. This amendment is proposed to overcome the judgment being delivered by the various courts including the judgment of the Supreme Court in the case of *CIT vs. Lovely Exports Pvt. Ltd.* (2008)216 CTR 195 (SC).

4. Share premium in excess of fair market value to be deemed as income

The scope of Section 56(2)(vii) is being expanded by inserting a new clause (viiia) to provide that in the case of a company not being a company in which public are substantially interested i.e. a closely held company the consideration received for issue of shares from any person being a resident exceeding the fair market value of the share shall be chargeable as income from other sources in the hands of the company except when such consideration is received by a Venture Capital Undertaking from a Venture Capital Company or a Venture Capital Fund. The fair market value of the share

shall be in accordance with the method as may be prescribed. Presently Rule 11U and 11UA prescribes the method for determination of the fair market value. However, considering the fact that such method is based on book value, an option has been given to the company to substantiate the valuation on the date of issue of shares on the basis of the assets including intangible asset being goodwill, know-how, patents, copyrights, trademark, licenses, franchisee or any other business or commercial rights of similar nature. With this amendment it will be practically very difficult for any company to justify the value of the share on the date of issue over and above the book value. This will also lead to a dispute in case of genuine shareholder subscribing from well established sources.

Having shifted the onus regarding the nature and source of money in the hands of the shareholder, taxing the same after passing such test to the satisfaction of the Assessing Officer amounts to double taxation of same income.

G. INTERNATIONAL TAXATION

1. Interest on borrowings in foreign currency to be taxed at 5%

The Finance Bill, 2012 proposes to amend Section 115A of the Income-tax Act to provide that interest paid by certain class of companies to a non-resident in respect of borrowings made in foreign currency from sources outside India during the period between 1st July, 2012 and 1st July, 2015 under an agreement which is approved by the Central Government including the rate of interest payable thereon, shall be taxable at the rate of 5% with applicable surcharge and cess. This concession is being given to augment the long term funds required for infrastructure sector by the company engaged in the business of construction of dam, operation of aircrafts, manufacture of fertilisers, construction of ports including inland ports, construction of road, toll road or bridge, generation, distribution or transaction of power, construction of ships in a shipyard or developing and building an affordable housing project. Amendment to this Section 115A shall be with effect from 1st April, 2013 i.e. assessment year 2013-14.

Corresponding amendment is being made by inserting a new Section 194LC to provide that tax at the rate of 5% shall be deducted at source on such interest. This amendment shall be effective from 1st July, 2012.

2. Income of non-resident sports person and non-resident entertainer to be taxed at the rate of 20% of the gross receipts

The Finance Bill, 2012 proposes to rationalise the tax rate applicable for taxation of non-resident sports person and non-resident entertainer under Section 115BBA of the Act. As per the proposal income arising to a non-citizen/non-resident sports person, sports association, non-resident entertainer shall be taxable at the rate of 20% of the gross receipts. The income shall cover income by way of participation in any game or sport,

advertising, contribution of article in any newspaper, etc. This amendment shall be effective from 1st April, 2013 i.e. assessment year 2013-2014.

Consequential amendment is being made to widen the scope of Section 194E of the Act to include non-resident entertainer as well and to increase the rate of deduction of tax at source from 10% to 20% for income payable to non-resident, non-citizen entertainer, or sportsmen or sports associations or institutions. This amendment shall be effective from 1st July, 2012.

3. Dividend received from foreign company to continue to be taxed at the concessional rate of 15% for one more year

The provisions of Section 115BBD which were introduced last year for a period of one year is being extended for another one year providing taxation of gross dividend received by an Indian company from a foreign company in which it has shareholding of 26% or more at a concessional rate of 15%. Now this benefit will be available for dividend received in financial year 2012-13 i.e. assessment year 2013-14. This provision is being extended for attracting repatriation of income earned by residents from investments made abroad.

4. Assessing officer to file appeal against order of dispute resolution panel (DRP)

As per the present provision the assessing officer in the case of an assessee being a foreign company or a person in whose case a variation is proposed as a consequence to transfer pricing order is required to pass a draft assessment order giving an option to the assessee to file objections against the same before DRP being a collegium comprising of three Commissioners of Income Tax. The DRP after hearing the assessee passes an order giving directions to the assessing officer to modify the order as per its directions. Thereafter the assessing officer passes an order in accordance with the direction of DRP, against such order the assessee has a right to appeal before the Income Tax Appellate Tribunal. The assessing officer does not have any such right. The Finance Bill, 2012 proposes to authorise the Assessing Officer to file appeal against the order of the DRP on the reasoning that the directions of dispute resolution are binding on him. This proposed amendment goes against the basic premise and the nomenclature of the DRP. The proceedings before the DRP are extension of the assessment proceedings and assessing officer in line with that passes an assessment order. Filing an appeal against the assessment order itself shows the lack of confidence in the collegium of three Commissioners. Further there is no resolution of dispute atleast from the Department's side which was the reason for setting up of DRP. If the working of DRP has been found to be not practicable the better course would be to restructure the same or wind up the same rather than making piecemeal amendments. The above amendment is proposed from 1st July, 2012 i.e., in respect of the objections filed by the assessee on or

after 1st July, 2012. For existing objections before the DRP, the AO shall have no right to appeal.

Further an amendment is being proposed to clarify that the DRP shall have a power to enhance the variations proposed by the assessing officer in the draft assessment order. This is being done to overcome the judgment delivered whereby it has been held that the power of the DRP is restricted to the issue raised in the draft assessment order only and it cannot raise a new issue. This amendment is being made retrospectively from 1st April, 2009 i.e. assessment year 2009-10.

5. **Clarificatory amendment in respect of search cases before dispute resolution board (DRB)**

The Finance Bill, 2012 proposes to align the time for completion of assessments in respect of search cases which are referred to DRP with that of the time period provided under Section 144C for a normal assessment. Similarly it is proposed that the final assessment order passed by assessing officer in pursuance of the directions of DRP shall be appealable directly to ITAT. This amendment is also being made retrospectively from 1st October, 2009.

6. **Amendment to overcome Supreme Court judgment in the case of Vodafone**

The Finance Bill, 2012 proposes to make various amendments with retrospective effect to overcome the judgment delivered by the Supreme Court in the case of Vodafone. In this regard an Explanation is being inserted below Section 2(14) defining 'capital asset' to clarify that property includes and shall be deemed to have always included any rights in or in relation to Indian company, including rights of management or control or any other right whatsoever. This is being done as in the case of the Vodafone the Supreme Court has held that the rights of management or control are not independent right but are integral part of the share. Further amendment is being made to Section 9(1)(i) by inserting Explanation 4 after Explanation 3 retrospectively from 1st April, 1962 to clarify that the expression 'through' shall mean and include and shall be deemed to have always meant and included 'by means of', 'in consequence of' or 'by reason of' and Explanation 5 thereafter to clarify that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

To take the above clarification to the logical end definition of transfer under Section 2(47) is also being amended by inserting Explanation 2 after Explanation 1 to clarify that 'transfer' includes and shall be deemed to have always included disposing off or parting with any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (within entered into in India out outside

India) or otherwise, notwithstanding, that such transfer of rights has been characterised as being affected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.

The above Explanations are being inserted to overcome the Supreme Court's interpretation whereby it was held that in Section 9(1)(i) there is a legal fiction embedded. A legal fiction has a limited scope. A legal fiction cannot be expanded by giving purposes interpretation the result of such interpretation is to transform the concept of chargeability which is also under Section 9(1). Accordingly it was held that the scope of Section 9(1)(i) cannot be extended to cover indirect transfers of capital assets/property situated in India. It was further held that by doing so it would amount to changing the content and ambit of Section 9(1)(i). This is because Section 9(1)(i) applies to transfers of capital asset situated in India. The Supreme Court has further referred to the Direct Tax Code Bill, 2010 which proposes to tax income from transfer of shares of a foreign company by a non-resident where at any time during 12 months preceding the transfer, the fair market value of the asset in India, owned directly or indirectly, by the company, represents at least 50% of the fair market value of all assets owned by the company. On the basis of this it was held by the Supreme Court that the existing Section 9(1)(i) does not cover indirect transfer which is expressly stated in Direct Tax Code Bill. The Finance Bill, 2012 in order to hold the buyer i.e. Vodafone responsible for payment of the tax due from the seller has also amended Section 195(1) so as to make a non-resident liable for deduction of tax at source in case it makes any payment to another non-resident which is chargeable to tax in India. This amendment is also being made retrospectively from 1st April, 1962. By amending definition of capital asset the right of management and control of an Indian company is being made a capital asset. By amending Section 2(47) the scope of transfer is being expanded so as to include disposing of any right and by amending Section 9(1) the transfer is being covered within the deemed income arising in India.

7. **Validation of demand and notices**

The Finance Bill, 2012 propose to create a validation clause so as to provide for validation of demand created under the income act as well as any notice send, taxes levied, demanded, assessed, imposed or collected or recovered during any period prior to coming into force of the validating clause. In respect of income accruing through or form the transfer of the asset situate in India in consequent of transfer of share or shares of a company registered outside India or in consequence of an agreement or otherwise outside India. This clause shall come into effect on the date on which finance bill receives the assent of the president.

8. **Section 9(1)(vi) being amended to expand the scope of definition of royalty**

The Finance Bill, 2012 proposes to add Explanation

4 in clause (vi) retrospectively from 1st day of June, 1996 to clarify that the transfer of all and or any right in respect of any right, property or information include and has always included transfer of all or any right for use or right to use a computer software including granting of license irrespective of the medium through which such right is transferred. A further Explanation 5 is being inserted to clarify that the royalty includes and has always included consideration in respect of any right, property or information, whether or not the possession or control of such right, property or information is with the payer or such right, property or information is used directly by the payer, the location of such right, property or information is in India. Further Explanation 6 is being inserted to clarify that the expression 'process' includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology whether or not such process is secret. These amendments are being proposed retrospectively from 1st June, 1976 i.e. assessment year 1977-78.

As a consequence thereof Section 149 is being amended to extend the time limit for issue of notice for reopening of assessment of a person who is treated as agent of a non-resident from the present time limit of two years to six years. It has been further provided in the memorandum that this extension of time limit being procedural in nature shall be applicable for already closed assessment as well.

9. Board being empowered to notify persons to obtain prior approval of assessing officer for determination of liability under Section 195

A new sub-section (7) is being inserted in Section 195 empowering the Board notwithstanding the provision of Section 195(1) and 195(2) to notify persons who will be required to make an application to the assessing officer to determine the appropriate proportion of sum chargeable for determination of tax to be deducted at source irrespective of the fact whether the amount paid is chargeable or not under the provisions of the Income-tax Act. Presently under Section 195 a person is required to deduct tax on payment to a non-resident when such sum is chargeable to tax. With this enabling provision the Board will be entitled to notify certain class of persons who will be required to get the determination done from the assessing officer irrespective of the fact that such sum is not chargeable to tax. This amendment is being made to partially overcome the judgment of the Supreme Court in the case of *GE India Technology Centre (P) Ltd. Vs. CIT* 193 Taxman234

10. Clarificatory amendment regarding meaning to a term under DTAA

The finance bill proposes to amend Section 90 of the Act with effect from 1st, October 2009 and Section 90 A from 1st June, 2006 to provide that any meaning assigned through a notification shall have the effect of

clarifying the term for the date of coming in force of the agreement in which such term is used.

11. Tax residence certificate not sufficient for availing benefits of the DTAA

The Finance Bill, 2012 proposes to make a far reaching amendment in Section 90 and 90A of the Act to clarify that the benefit of the DTAA available to a tax resident of the contracting country shall not be allowed merely on the basis of the tax residence certificate issued by such country. This will over rule the earlier position of the government particularly in the context of Mauritius DTAA whereby it was clarified by way of circular that tax residence certificate issued by Mauritius authorities is sufficient evidence and no further question shall be raised. It was this clarification which has led to the judgment in the case of *Azadi Bachao Aandolan* upholding Government clarification. Consequent to such amendment, issues may arise about exemption to Mauritius routed investment. This amendment however be effective prospectively from 1st April, 2013 i.e. A.Y.2013-14.

12. TPO being empowered to examine international transaction not reported by the assessee

The Finance Bill, 2012 proposes to amend the Section 92CA of the Act retrospectively to empower Transfer Pricing Officer (TPO) to determine Arm's Length Price of an international transaction noticed by him in the course of proceedings before him, even if the said transaction was not referred to him by the Assessing Officer, provided that such international transaction was not reported by the taxpayer as per the requirement cast upon him under Section 92E of the Act. This amendment is being made retrospectively from 1st June, 2002.

It has also been proposed to provide an explanation to effect that due to retrospectivity of the amendment no reopening of any proceeding would be undertaken only on account of such an amendment. This amendment will take effect from 1st July, 2012.

13. Tolerance band of 5% under Section 92C is not a standard deduction

Section 92C of the Act provides for computation of arms lengths price. sub-section (1) of this section provides the set of methods for determination of arms length price and mandates application of the most appropriate method for determination of arms length price (ALP). Sub-section (2) of Section 92C provides that where more than one price is determined by application of most appropriate method, the arms length price shall be taken to be the arithmetic mean of such prices. The proviso to this sub-section was inserted by Finance Act, 2002 with effect from 01-04-2002 to ensure that in case variation of transaction price from the arithmetic mean is within the tolerance range of 5%, no adjustment was required to be made to transaction value. Subsequently, disputes arose regarding the interpretation of the proviso. Whether the tolerance band is a standard deduction or not, in case

variation of ALP and transaction value exceeded the tolerance band. In order to bring clarity and resolving the controversy the proviso was substituted by Finance Act (No.2), 2009 to clarify that the 5% tolerance band is not a standard deduction but also changed the base of determination of the allowable band, linked it to the transaction price instead of the earlier base of Arithmetic mean. The amendment clarified the ambiguity about applicability of 5% tolerance band, not being a standard deduction. However, the position prior to amendment by Finance (No.2) Act, 2009 still remained ambiguous. The Finance Bill, 2012 proposes to clarify with retrospective effect in respect of first proviso to Section 92C(2) as it stood before its substitution by Finance Act (No.2), 2009 so that the tolerance band of 5% is not taken to be a standard deduction while computing Arm's Length Price and to ensure that due to such retrospective amendment already completed assessments or proceedings are not reopened only on this ground. The amendments proposed above shall be effective retrospectively from 1st April, 2002 and shall accordingly apply in relation to the Assessment Year 2002-03 and subsequent Assessment Years.

Further it is being clarified that the second proviso to Section 92C shall also be applicable to all proceedings which were pending as on 01.10.2009 i.e. the date of coming in force of second proviso inserted by Finance (No.2) Act, 2009. This amendment will take effect retrospectively from 1st October, 2009.

14. Due date for filing return of non corporate tax payers being extended

The Finance Bill, 2012 proposes to extend the due date for filing return of income in case of non corporate tax payers, who have undertaken international transactions and are required to obtain and file Transfer Pricing report as per Section 92E of the Act to 30th November of the assessment year. This amendment will take effect retrospectively from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent assessment years.

15. Definition of international transaction

The Finance Bill, 2012 proposes to amend Section 92B of the Act, to clarify meaning of international transaction and to clarify the term intangible property used in the definition of international transaction and to clarify that the 'international transaction' shall include a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets or such enterprises at the time of the transaction or at any future date. This amendment will take effect retrospectively from 1st April, 2002 and will, accordingly, apply from assessment year 2002-03.

16. Scope of penalty under Section 271AA being expanded

The Finance Bill, 2012 proposes to widen the scope of penalty under Section 271AA. As per the amended Section 271AA a penalty at the rate of 2% of the value

of the international transaction shall be leviable if the taxpayer fails to maintain prescribed documents or information or; fails to report any international transaction which is required to be reported, or; maintains or furnishes any incorrect information or documents. This penalty would be in addition to penalties in Section 271BA and 271G. This amendment will take effect from 1st July, 2012.

17. Assessment to be reopened if international transactions are found to be not reported

The Finance Bill, 2012 proposes to amend Section 147 of the Act, to provide that in all cases where it is found that an international transaction has not been reported either by non-filing of report or otherwise by not including such transaction in the report mentioned in Section 92E then such non-reporting would be considered as a case of deemed escapement of income and such a case can be reopened under Section 147 of the Act. This amendment will take effect from 1st July, 2012.

18. Advance Pricing Arrangement (APA)

The Finance Bill, 2012 proposes to introduce the mechanism of APA. APA is an agreement between a taxpayer and a taxing authority on an appropriate transfer pricing methodology for a set of transactions over a fixed period of time in future. The APAs offer better assurance on transfer pricing methods and are conducive in providing certainty and unanimity of approach. It is proposed to insert new Sections 92CC and 92CD in the Act to provide a framework for advance pricing agreement under the Act. The proposed sections provide the following. –

- i. It empowers Board, to enter into an APA with any person undertaking an international transaction.
- ii. Such APAs shall include determination of the arm's length price or specify the manner in which arm's length price shall be determined, in relation to an international transaction which the person undertake.
- iii. The manner of determination of arm's length price in such cases shall be any method including those provided in sub-section (1) of Section 92C, with necessary adjustments or variations.
- iv. The arm's length price of any international transaction, which is covered under such APA, shall be determined in accordance with the APA so entered and the provisions of Section 92C or Section 92CA which normally apply for determination of arm's length price would be modified to this extent and arm's length price shall be determined in accordance with APA.
- v. The APA shall be valid for such previous years as specified in the agreement which in no case shall exceed five consecutive previous years.
- vi. The APA shall be binding only on the person and the Commissioner (including income-tax authorities subordinate to him) in respect of the transaction in relation to which the agreement has been entered into. The APA shall not be binding if there is any

change in law or facts having bearing on such APA.

- vii. The Board is empowered to declare, with the approval of Central Government, any such agreement to be void ab initio, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts. Once an agreement is declared void ab-initio, all the provisions of the Act shall apply to the person as if such APA had never been entered into.
- viii. For the purpose of computing any period of limitation under the Act, the period beginning with the date of such APA and ending on the date of order declaring the agreement void ab-initio shall be excluded. However if after the exclusion of the aforesaid period, the period of limitation referred to in any provision of the Act is less than sixty days, such remaining period shall be extended to sixty days.
- ix. The Board is empowered to prescribe a Scheme providing for the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.
- x. Where an application is made by a person for entering into such an APA, proceedings shall be deemed to be pending in the case of the person for the purposes of the Act like for making enquiries under Section 133(6) of the Act.
- xi. The person entering in to such APA shall necessarily have to furnish a modified return within a period of three month from the end of the month in which the said APA was entered in respect of the return of income already filed for a previous year to which the APA applies. The modified return has to reflect modification to the income only in respect of the issues arising from the APA and in accordance with it.
- xii. Where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the agreement applies are pending on the date of filing of modified return, the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the agreement taking into consideration the modified return so filed and normal period of limitation of completion of proceedings shall be extended by one year.
- xiii. If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies has been completed before the expiry of period allowed for furnishing of modified return, the Assessing Officer shall, in a case where modified return is filed, proceed to assess or reassess or recompute the total income of the relevant assessment year having regard to and in accordance with the APA and to such assessment, all the provisions relating to assessment shall apply as if the modified return is a return furnished under

Section 13 of the Act. The period of limitation for completion of such assessment or reassessment is one year from the end of the financial year in which the modified return is furnished.

- xiv. All the other provisions of this Act shall apply accordingly as if the modified return is a return furnished under Section 139. These amendments will take effect from 1st July, 2012

19. General Anti Avoidance Rule (GAAR)

The Finance Bill, 2012 proposes to introduce General Anti Avoidance Rule (GAAR).

A. The main features of GAAR are

- (i) An arrangement whose main purpose or one of the main purposes is to obtain a tax benefit and which also satisfies at least one of the four tests, can be declared as an "impermissible avoidance arrangements".
- (ii) The four tests referred to in (i) are—
 - (a) The arrangement creates rights and obligations, which are not normally created between parties dealing at arm's length.
 - (b) It results in misuse or abuse of provisions of tax laws.
 - (c) It lacks commercial substance or is deemed to lack commercial substance.
 - (d) Is carried out in a manner, which is normally not employed for bonafide purpose.
- (iii) It shall be presumed that obtaining of tax benefit is the main purpose of an arrangement unless otherwise proved by the taxpayer.
- (iv) An arrangement will be deemed to lack commercial substance if –
 - (a) the substance or effect of the arrangement as a whole, is inconsistent with, or differs significantly from, the form of its individual steps or a part; or
 - (b) it involves or includes -
 - (i) round trip financing;
 - (ii) an accommodating party ;
 - (iii) elements that have effect of offsetting or cancelling each other; or
 - (iv) a transaction which is conducted through one or more persons and disguises the value, location, source, ownership or control of fund which is subject matter of such transaction; or
 - (c) it involves the location of an asset or of a transaction or of the place of residence of any party which would not have been so located for any substantial commercial purpose other than obtaining tax benefit for a party.
- (v) It is also provided that certain circumstances like period of existence of arrangement, taxes arising from arrangement, exit route, shall not be taken into account while determining 'lack of commercial substance' test for an arrangement.

- (vi) Once the arrangement is held to be an impermissible avoidance arrangement then the consequences of the arrangement in relation to tax or benefit under a tax treaty can be determined by keeping in view the circumstances of the case, however, some of the illustrative steps are:-
- (a) disregarding or combining any step of the arrangement.
 - (b) ignoring the arrangement for the purpose of taxation law.
 - (c) disregarding or combining any party to the arrangement.
 - (d) reallocating expenses and income between the parties to the arrangement.
 - (e) relocating place of residence of a party, or location of a transaction or situs of an asset to a place other than provided in the arrangement.
 - (f) considering or looking through the arrangement by disregarding any corporate structure.
 - (g) re-characterising equity into debt, capital into revenue etc.
- (vii) These provisions can be used in addition to or in conjunction with other anti avoidance provisions or provisions for determination of tax liability, which are provided in the taxation law.
- (viii) For effective application in cross border transaction and to prevent treaty abuse a limited treaty override is also provided.
- B. The procedure for invoking GAAR is proposed as under:-
- (i) It is proposed that the Assessing Officer shall make a reference to the Commissioner for invoking GAAR and on receipt of reference the Commissioner shall hear the taxpayer and if he is not satisfied by the reply of taxpayer and is of the opinion that GAAR provisions are to be invoked, he shall refer the matter to an Approving Panel. In case the assessee does not object or reply, the Commissioner shall make determination as to whether the arrangement is an impermissible avoidance arrangement or not.
 - (ii) The Approving Panel has to dispose of the reference within a period of six months from the end of the month in which the reference was received from the Commissioner
 - (iii) The Approving Panel shall either declare an arrangement to be impermissible or declare it not to be so after examining material and getting further inquiry to be made.
 - (iv) The Assessing Officer (AO) will determine consequences of such a positive declaration of arrangement as impermissible avoidance arrangement.

- (v) The final order in case any consequence of GAAR is determined shall be passed by AO only after approval by Commissioner and, thereafter, first appeal against such order shall lie to the Appellate Tribunal.
- (vi) The period taken by the proceedings before Commissioner and Approving Panel shall be excluded from time limitation for completion of assessment.
- (vii) The Approving Panel shall be set up by the Board and would comprise of officers of rank of Commissioner and above. The panel will have a minimum of three members. The procedure and working of Panel shall be administered through subordinate legislation.

In addition to the above, it is provided that the Board shall prescribe a scheme for regulating the condition and manner of application of these provisions. These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14.

H. MINIMUM ALTERNATE TAX

1. Applicability of MAT on insurance, banking and electricity companies

The Finance Bill, 2012 proposes to address the anomaly on the applicability of MAT provisions in respect of insurance, banking and electricity companies since these companies are not required to prepare its Profit and loss account as per provision of Companies Act. It is being proposed that the profit and loss account prepared as per the provisions of the respective Regulatory Act shall be the basis for computing the book profit under Section 115JB of the Act. This amendment is being made with effect from 1st April, 2013 i.e. assessment year 2013-14, meaning thereby these companies are not liable for MAT for assessment year prior to assessment year 2013-14.

2. Amount standing in revaluation reserve in respect of revalued assets retired or disposed off to be added to book profit for MAT

The Finance Bill, 2012 proposes to provide that book profit for the levy of MAT shall be increased by the amount standing in the revaluation reserve in respect of the assets revalued which has been retired or disposed off if the same is not credited to the profit and loss account.

A consequential amendment is being made to delete the reference to Part III of the Schedule VI of the Companies Act consequent to revision of Schedule VI under the Companies Act.

I. TAX DEDUCTION AT SOURCE

1. Tax deduction at source on purchase of property

The Finance Bill, 2012 proposes to extend the scope of tax deduction at source by inserting a new Section 194LAA whereby any person responsible for paying to a resident any sum by way of consideration for transfer

of any immovable property other than agricultural land shall be required to deduct tax at the time of credit or payment at the rate of 1% of such sum where the consideration for the transfer of the immovable property ₹50 lakh or more in the case of a specified area and ₹20 lakh or more in case such immovable property is situated in any area other than the specified area. The consideration for this purpose shall be the value adopted for stamp duty. Further it is important that the seller has Permanent Account Number, as otherwise the tax will be required to be required deducted at the rate of 20% in view of the provision of Section 206AA of the Act.

Further as per this provision the Registering Officer shall not register any document unless the transferee furnishes the proof of deduction of income tax in accordance with the provision of this section in the prescribed form meaning thereby that tax so deducted is required to be deposited before registration of document. This may lead to a practical difficulty whereby the buyer may be required to part with the money even before registration of the document in his favour. Agricultural land which is exempt under Section 2(14) of clause (iii) shall be outside the purview of this withholding tax. Specified area comprises of metropolitan cities of Mumbai, Delhi, Kolkatta, Chennai, Hyderabad, Bengaluru, Ahmedabad, Faridabad, Gurgaon, Gautam Budh Nagar, Ghaziabad, Gandhi Nagar and Secunderabad.

To ease the compliance, it has been proposed that a new single page challan form would be prescribed to make the payment for TDS under the above provisions. The transferee would fill the details of the transferor, transferee, property and the amount of consideration in the challan form itself. The transferor would be able to take credit of the tax deducted on the basis of details submitted in the challan. The transferee would not be required to obtain a Tax Deduction Account Number (TAN) or submit any return for the tax deposited. The above amendment shall be effective from 1st October, 2012.

2. **Directors sitting fee liable for TDS**

Provision of Section 194J are being widened to include payment of any remuneration or fee or commission by whatever name called other than on which tax deductible under Section 192 to a Director of a company for deduction of tax at source at the rate of 10%. This amendment shall be effective from 1st July, 2012.

3. **Threshold for TDS on payment of interest on debenture**

Provisions of Section 193 are being amended to provide a threshold of ₹5,000 in respect of interest on any debenture issued by a company, in which the public are substantially interested, to resident individual or HUF if the payment is made by account payee cheque. This amendment shall be effective from 1st July, 2012.

4. **Enhanced threshold for TDS on compensation for compulsory acquisition**

The provision of Section 194LA is being amended to

increase the threshold for deduction of tax at source in respect of a payment for compulsory acquisition of immovable property other than agricultural land from ₹1 lakh to ₹2 lakh. This amendment shall be effective from 1st July, 2012.

5. **Extension of time limit for passing an order under Section 201(3)**

Provisions of Section 201(3) are being amended to provide an extended period of six years as against four years for passing an order under Section 201(1) for treating a person to be in default for failure to deduct the whole or any part of the tax where statement is not filed as referred to in Section 200. This amendment is also being made retrospectively from 1st April, 2010.

6. **Tax collection at source on cash sale of bullion and jewellery**

The Finance Bill, 2012 proposes to levy tax collection at source at the rate of 1% on sale of bullion and jewellery in cash if the sale consideration exceeds ₹2 lakh. The collection has to be made from all buyers irrespective of its status if sale is made in cash. This amendment will be effective from 1st July, 2012. Similar amendment is being proposed to levy 1% tax collection at source on sale of coal, lignite and iron ore. However, such tax shall not be collected if the same are being purchased by the buyer for personal consumption or the buyer declares to be purchased for the purposes of manufacturing, processing or producing article or thing. This may lead to tax collection from a power company which purchases coal for generation of power and there is a dispute already on whether generation of power is production of an article or thing. This amendment shall be effective from 1st July, 2012.

7. **Fee for delay in furnishing TDS/TCS statement being increased**

The Finance Bill, 2012 proposes to levy a fee of ₹200 per day for late furnishing of TDS/TCS statement from the due date of furnishing of such statement to the date of furnishing of such statement. However, the total amount of fee shall not exceed the total amount of the tax deductible during the period for which TDS statement is delayed. Further in order to discourage incorrect information in TDS/TCS statement it has been proposed to levy a penalty ranging from ₹10,000 to ₹1,00,000 for furnishing incorrect information in the TDS/TCS statement.

Further a new Section 271H is being introduced for levy of penalty in case of failure to deliver the statement under Section 200(3) or under the proviso to Section 206C(3) within the time prescribed or for furnishing incorrect information in such statement. The penalty leviable in such cases shall not be less than ₹10,000 but may extend to ₹1,00,000. However, no penalty shall be leviable for failure to deliver the statement within time if the statement had been delivered after payment of tax deducted within a period of one year from the time prescribed for filing such statement. However, such penalty shall not be leviable if there was a reasonable

cause for such failure. Consequent to this no penalty provision shall be leviable under Section 272A for late filing of TDS/TCS statement on or after 1st July, 2012.

8. Intimation of TDS/TCS processing statement to be appealable

The Finance Bill, 2012 proposes to give a statutory status as order to the intimation of TDS and TCS processing statement so as to make such statement appealable under Section 246A and rectifiable under Section 154 of the Act. Further such intimation shall be deemed to be notice of demand under Section 156 of the Act.

J. MISCELLANEOUS

1. Partial dilution of cascading effect of dividend distribution tax

At present under Section 115 of the Income-tax Act dividend distribution tax is payable at the rate of 15% by a domestic company at the time of distribution of dividend. However, in case dividend is being paid by a holding company which has received dividend from its subsidiary and such subsidiary company has paid dividend distribution tax on such dividend and further the domestic company is not a subsidiary of any other company then such amount is deducted from the dividend distribution tax liability. The implication of this is that in case of multi-tier corporate structure the benefit of this deduction is not available with the result that the dividend paid out of the dividend received is again subjected to dividend distribution tax. The Finance Bill, 2012 proposes to delete the 3rd condition which requires that the domestic company should not be itself a subsidiary company of any other company. With the proposed amendment dividend paid out of the dividend received from a subsidiary company shall not be subjected again to dividend distribution tax. However, this amendment does not address the issue of cascading effect of dividend distribution tax. The multi-tier corporate structure does not mean that there is always a relationship of holding vs. subsidiary company. In the multi-tier corporate structure it is a normal practice to control a company not necessarily through a single holding company but through various group companies. In such a situation the parent company may not be holding more than 50% shares itself. Thus there is a need to amend this provision on the line of Section 115BBD whereby dividend received from a foreign company in which it has a shareholding of 26% or more is eligible for concessional rate of tax of 15%.

2. Person holding assets abroad to file return of income

Provision of Section 139(1) requiring a person to file return of income is being amended so as to include a person being a resident, who otherwise is not required to furnish a return, in case he has any asset including any financial interest in any entity located outside India or signing authority in any account located outside

India before the due date of furnishing the return. This amendment is being made from 1st April, 2012 i.e. assessment year 2012-13 with the result that such person shall be required to file return for the year ended 31st March, 2012.

3. Processing of return not mandatory – an exercise to withhold refund

The Finance Bill, 2012 proposes to make an amendment whereby processing of return consequent to which refunds are to be issued shall not be mandatory where it is proposed to issue notice under Section 143(2) for scrutiny of the return. This is being done to withhold refund which otherwise is required to be issued on processing of the return. Withholding of refund without there being a demand raises an unsupported presumption about income returned not being correct. There is every possibility that all heavy refund cases will be picked up for scrutiny to improve the collections by withholding the refund. This amendment shall be effective from 1st day of July, 2012.

4. Reopening of assessment in relation to any asset located outside India

The time limit for reopening of the assessment in case of income escaping assessment is being extended from the existing 6 years to 16 years where the income in relation to any asset including financial interest in any entity located outside India chargeable to tax as escaped assessment. Further a deeming provision is being made that where a person is found to have any asset, including financial interest in any entity located outside India it shall be deemed to have escaped assessment. This amendment is being made with effect from 1st day July, 2012 with an Explanation 4 inserted to clarify that the provision of this Section as amended shall also be applicable for any assessment year beginning on or before 1st day of April, 2012. In this regard it is to be noted that the assessment which on the date of the enactment under the existing law could be reopened. The period of only such assessments shall get extended to 16 years. The assessments which have become barred by limitation because of the existing law before the date of enactment of this amendment may not get revived back consequent to this amendment. This amendment will become law after 31st March, 2012 and accordingly assessments upto assessment year 2005-06 will stand barred by limitation.

5. Extended time limit for completion of assessment or reassessment where information is sought from tax authorities outside India

The provision of Section 153C and 153B are being amended to provide extended period for completion of assessment or reassessment upto one year where information is sought by making a reference to the foreign tax authorities as against six months of extended period presently available.

6. Assessment and reassessment to be completed by 31st March

Under the existing provisions introduced by the

Finance Act, 2006 all assessments are to be completed by 31st December. The Finance Bill, 2012 proposes to go back to the earlier scheme whereby all assessments and reassessments will be completed by 31st March only. Consequently a regular assessment can be completed within a period of 24 months from the end of the assessment year. Similarly a reassessment under Section 148 can be completed within a period of one year from the end of the financial year in which notice under Section 148 is issued. This amendment is being made with effect from 1st July, 2012 with the result all the pending assessments as on 1st July, 2012 which were getting time barred on 31st December, 2012 will now be extended till 31st March, 2013. It appears that the earlier logic of preponing the assessment to December so as to collect the demand so created by March and to utilise the three months period for recovery has become irrelevant.

7. Notice for reassessment in case of search to be restricted to relevant assessment year

The Finance Bill, 2012 proposes to amend the provision of Section 153A and 153C, whereby all six assessment years preceding the search year gets automatically reopened, to enable the Central Government to notify cases or class of cases in which the assessing officer shall not issue the notice for initiation of proceedings for the preceding six assessment years. This may help to reduce the work load and futile exercise of reopening and completing the assessment even if there is no material for reassessment of the income. This amendment is proposed to be effective from 1st July, 2012.

8. Penalty on undisclosed income of current period found during search

The Finance Act, 2007 has split the provision for levy of penalty in respect of undisclosed income into two parts. The first part was undisclosed income pertaining to the period for which due date of filing return has expired and second part was pertaining to the period for which return is still to be filed. For the first part no option was given to surrender or disclose such income to avoid penalty of concealment under Section 271(1)(c). For the second part it was provided that no penalty shall be levied in case undisclosed income is admitted during the search. However, if such income is not admitted then penalty at the rate of 10% of the income shall be levied under Section 271AAA of the Act. The above amendment was made to deny the benefit of Explanation 5 to Section 271(1)(c) whereby no penalty was leviable for any assessment year in case an assessee is found to be owner of any money, bullion, jewellery, etc. during the course of the search and assessee surrenders such income and pays taxes thereon. The Finance Bill, 2012 proposes to delete the Section 271AAA in respect of searches conducted on or after 1st July, 2012. In place of this a new Section 271AAB is being inserted for levy of penalty in a case where search has been initiated on or after 1st July, 2012. As per this new Section

penalty at the rate of 10% of the undisclosed income shall be levied in case undisclosed income is admitted during the search, and the assessee substantiates the manner in which the undisclosed income was earned and pays taxes before the due date of filing the return under Section 139(1) and under Section 153A of the Act. Penalty at the rate of 20% of the income shall be levied if the undisclosed income is not admitted during the search but such income is disclosed in the return of income filed and pays taxes thereon before the due date of filing the return under Section 139 and Section 153A.

Further penalty at the rate of 30% to 90% shall be leviable in case the undisclosed income is assessed otherwise i.e. when it is not disclosed by the assessee either at the time of search or in the return filed.

The implication of the above amendment will be that the assessee will have three options in case of search. One to admit the undisclosed income at the time of the search then penalty at the rate of 10% of the undisclosed income shall be leviable. The second will be the assessee though not admitting the income in the search but including the same in the return filed post-search then penalty at the rate of 20% shall be leviable. And the third is where the assessee does not admit the undisclosed income nor discloses in the return and assessing officer still assess the undisclosed income then the penalty shall be 30% to 90% of the undisclosed income i.e. equivalent to 100% of the tax to 300% of the tax leviable under Section 271(1)(c). This provision shall be applicable in respect of the search which has been initiated on or after 1st July, 2012.

9. Special courts for trial of income tax offences

The Finance Bill, 2012 proposes to constitute special courts for expeditious trial of offences committed under the Income-tax Act. Further the threshold for lower imprisonment is being increased from ₹1 lakh to ₹25 lakh. The period of lower imprisonment is being reduced from three years to two years so as to enable summary trial of such offences. Accordingly the punishment for tax evasion which does not exceed ₹25 lakh shall be a term which shall not be less than three months but which extent to two years with fine. For higher offences i.e. where tax evasion is ₹25 lakh or more the punishment can be for a term which shall not be less than six months but which extent to seven years with fine. The above amendment shall be effective from 1st day of July, 2012.

10. Senior citizens need not pay advance tax

Finance Bill, 2012 proposes to exempt the senior citizens who are resident of India from the obligation to pay advance tax provided there is no income from business or profession by introducing sub-section (2) in Section 207 of the Act. Further the age for being eligible as senior citizen under this clause shall be 60 years or more at any time during the previous year. This provision is being made effective from 1st April, 2012. In the memorandum explaining the provision in

the Finance Bill, 2012 it has been stated that the senior citizen would not be required to pay advance tax for the financial year 2012-13 whereas in the notes on clauses appended to the Finance Bill it has been stated that the amendment will take effect retrospectively from 1st April, 2012 meaning thereby that it shall be applicable for assessment year 2012-13.

11. Senior citizen age to be 60 years or more for filing declaration of non-deduction of tax

The age for determining the eligibility as senior citizen for submitting declaration in Form 15G and 15H so as to avoid deduction of tax at source under Section 197A is proposed to be reduced from 65 years to 60 years.

12. Liability to pay advance tax in case of deductor does not deduct tax at source

The Finance Bill, 2012 proposes to put an obligation on the tax payer to pay advance tax in respect of the income also which is liable for tax deduction at source but the same has not been actually deducted by the deductor. This amendment is being made to overcome the judicial decisions whereby it has been held that an assessee is not liable to pay interest under Section 234B and 234C in respect of the income which is liable for tax deduction at source. This amendment is being made applicable from 1st April, 2012. In the memorandum explaining the provision of the Finance Bill it has been stated that advance tax shall be payable for the financial year 2012-13 whereas in the notes on clauses it has been stated that this amendment is retrospective meaning thereby applicable for assessment year 2012-13. This amendment will have a practical problem. A person may not be knowing before the close of the year that there is a failure by the deductor to deduct tax at source on the income which is to be credited on 31st March. By the time the due of payment of advance tax would stand expired resulting liability to pay interest under Section 234B and 234C. Further it is a case of double taxation as deductor is liable to pay interest from the date the tax was deductible till the date of filing return by the deductee as per the amendment proposed to Section 201(1A) in this very Finance Bill, 2012 and the deductee is being made liable to pay interest on the same amount under Section 234B and 234C of the Act for the same period.

13. Levy of interest under Section 234D with effect from 1st June, 2003

The Finance Bill, 2012 proposes to insert a retrospective amendment in respect of interest chargeable under Section 234D on the excess refund granted to the assessee on processing of return which is required to be paid back consequent to the demand being created in regular assessment. Section 234D was inserted with effect from 1st June, 2003. The Court in the case of *DIT vs. Jacobs Civil Incorporated* (2010) 330 ITR 578 (Del) has held approving the judgment of the Special Bench of the ITAT Delhi in the case of *ITO vs. Ekta Promoters Pvt. Ltd.* 117 TTJ 289 (Del) (SB) that the provision of Section 234D shall be applicable from assessment



year 2004-05 only. As per the proposed amendment interest under Section 234D shall be leviable in respect of all proceedings completed on or after 1st June, 2003 irrespective of the assessment year to which it pertains.

14. Fee for filing application before authority for advance ruling being increased

The Finance Bill, 2012 proposes to increase the fee for filing application before the authority for advance ruling from ₹2,500 to ₹10,000. Further the Board has been given power to increase this fees in future as may be prescribed by Rules. This amendment shall be effective from 1st July, 2012.

15. Assessment in search cases can be in individual name despite search warrant in joint name

The Finance Bill, 2012 proposes to insert a clarificatory amendment retrospectively from the 1st day of April, 1976 to provide that where a search warrant has been issued mentioning therein the name of more than one person the assessment or reassessment can be made separately in the name of each of the persons mentioned in such search warrant. This amendment is being made to overcome the judgment delivered by the *Allahabad High Court CIT vs. Smt Vandana Verma* (2010) 330 ITR 533 (All) whereby it was held that if search warrant is in the name of more than one person then assessment cannot be made individually in the absence of any search warrant in individual name.

WEALTH TAX

1. Increase of threshold of gross salary from ₹5 Lakh to ₹10 Lakhs

As per this amendment, wealth tax shall not be payable by an employer in respect of residential houses which are allotted to an employee or an officer or a whole time director whose gross salary is less than ₹10 lakh per annum. This amendment shall be effective from 1st April, 2012. ■

Union Budget - An Economic Perspective



Finance Minister Shri Pranab Mukherjee presented the Union Budget for 2012-13 recently with an aim to address effectively domestic-demand driven growth recovery, creation of conditions for revival of high growth in private investment, supply bottlenecks in agriculture, energy and transport sectors, malnutrition, improvement of governance and transparency, and black money and corruption in public life. The Budget required addressing those factors in order to accelerate the growth of India, the largest democracy of the world, and to set the direction and pace of its economy. Despite varied opinions, the budget appears to extend a sincere balance between fiscal consolidations and strengthening macroeconomic fundamentals. The author, in the following article, reports on the economic implications of the Budget. Read on...



CA. T. N. Manoharan

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The Budget presented by the Finance Minister had to address the top priorities for providing the much required impetus for fuelling the growth of India, the largest democracy and one of the fastest growing economies of the world but he could not full justice to the task as he had the constraints of a coalition government in power. The five objectives identified in the Budget are relating to growth recovery, private investment, supply bottlenecks, malnutrition and governance matters which are quite significant for setting the direction and pace of the Indian economy. While the opposition parties comment that the Finance Minister has missed the bus in not using the opportunity to bring about any major reform, the view that he seems to have made a sincere attempt to strike a balance between fiscal

While the revenue projections are modest and credible, there are certain uncertainties associated with the auctioning of spectrum in view of the challenges faced by the players in the telecom sector. Similarly, disinvestment will be done subject to the Government retaining its interest and management control at not less than 51% in the PSUs.

consolidation and strengthening macroeconomic fundamentals appears to be an acceptable one.

GDP-Quo Vadis

Although the gross domestic product (GDP) of India grew at the rate of 8.4% during 2009-10 and 2010-11, there is a setback during the current year 2011-12, which is coming to a closure, as the estimated growth is only 6.9%. The Finance Minister is optimistic to project a growth of GDP at 7.6% during the ensuing year 2012-13 and one has to keep one's fingers crossed till it is translated into reality. The twin factors that affected the GDP growth in the current fiscal are attributable to the aftermath of the global crisis and the slowdown due to deceleration in industrial growth in India. The recovery path of Indian economy was punctuated by the intensification of the debt crises in Euro zone, political turmoil in Middle East, rise in crude oil price and earthquake in Japan. Post 2008 global crisis, economies like Brazil and Russia have recorded a not so impressive growth of 3.9% and 1.3% respectively. China, another fast-growing economy and known for achieving two-digit growth rates in GDP in the recent past, is predicting to grow only at 7.5% in the year 2012-13. This mirrors the not-so-favourable climate prevalent in the global environment and, therefore, it makes a lot of sense when the FM is laying focus on domestic demand driven growth recovery.

Fiscal Deficit

The fiscal deficit was 4.7% for 2010-11 and was budgeted at 4.6% for 2011-12. But as per the revised estimates, it is scaling to 5.9% because of a huge jump in subsidies. The fiscal deficit for the year 2012-13 is set at 5.1% of GDP, which is a less ambitious target that appears achievable. The projected estimation of fiscal deficit is at 4.5% for 2013-14 and 3.9% for 2013-14. The road map for the government in this regard is to mop up more revenue by higher indirect taxes, to garner huge amount by spectrum sale and disinvestment and to curb the growth in expenditure.

On account of increased service tax and excise duty from 10% to 12% and a few other measures such as

widening the service tax net by prescribing negative list, the increase in indirect-taxes collection will be ₹45,940 crore as against reduction in direct taxes to the tune of ₹4,500 crore leading to a net gain of ₹41,440 crore. It is expected that the gross tax revenue is expected to register a growth of 19.5% in 2012-13. This itself would depend on the economy surging ahead to achieve a GDP growth rate of 7.6%. Further, the expectation is that the gross tax revenue as a percentage of GDP will be 10.6% in 2012-13 as against the 10.1% in the current fiscal year. The estimation of funds to be mobilised by auctioning of spectrum is ₹40,000 crore and that from disinvestment will be ₹30,000 crore.

While the revenue projections are modest and credible, there are certain uncertainties associated with the auctioning of spectrum in view of the challenges faced by the players in the telecom sector. Similarly, disinvestment will be done subject to the Government retaining its interest and management control at not less than 51% in the PSUs. If both these result in any slippage in realisation of the estimated funds, there would be a phenomenal challenge to make it up by any other source.

Subsidy- Key Factor

As of September 2011, total public debt of India was at 62.43% of GDP, which is significantly larger among emerging economies. Now, the FM has mentioned that the debt-to-GDP ratio will come down to 45.5% in 2012-13 as compared to the Thirteenth Finance Commission target of 50.5%. This is a welcome endeavour to be encouraged and if it is achieved India can boast of a low risk economy, even lower than China where the ratio is abnormally high. But the cause of concern for India lies in the growth of revenue expenditure, particularly, on subsidies.

Out of the total expenditure budgeted at ₹ 14,90,925 crore, the plan expenditure is only ₹5,21,025 crore whereas non-plan expenditure is ₹9,69,900 crore. The growth in the overall expenditure is projected at 13.1% with planned revenue expenditure going up by 21.5% and non-plan revenue expenditure growing by 6.1% thus giving indications that there will be qualitative improvement in spending. This is backed by the move to cap the subsidies at 2% of the GDP in 2012-13 and bring it down to 1.75% in the next 3 years. On the strength of recommendations of the taskforce headed by Shri Nandan Nilekani, a mobile- based Fertilizer Management System has been designed to provide end to end information on movement of fertilisers and subsidies that is expected to be rolled out in 2012. If by this process the leakages can be curtailed and misuse of fertilisers can be prevented. Even other subsidies and welfare payments delivery is experimented through the



Adhaar platform to the intended beneficiaries in limited pilot projects in select districts and the roll out on pan India basis might take longer than expected.

The fuel subsidy assumption of ₹43,600 crore and fertiliser subsidy assumption of ₹61,000 crore appear too low. As against the revised estimate of ₹2.2 lakh crore, the provision of mere ₹1.9 lakh crore for subsidies appears inadequate. Added to this is the promise of the FM that subsidies related to administering the Food Security Act will be fully provided for and all others will be within the overall cap. While the intention is laudable, if there is any derailment in the plan to contain the subsidy, the projections of the fiscal deficit can go haywire.

Infrastructure Development

The importance of infrastructure development has never been felt before as much as it is understood now which is apparent in the Budget announcements. During the 12th plan period, investment in infrastructure will go up to ₹50 lakh crore out of which 50% is expected from the private sector. Tax free bonds of ₹60,000 crore to be allowed for financing infrastructure projects in 2012-13. More sectors have been added as eligible sectors for viability gap funding under the scheme 'Support to PPP in infrastructure'. Government has also approved guidelines for establishing joint venture companies by defence PSUs in PPP mode.

There are, no doubt, significant measures for power sector such as tax free fuel imports, easier funding and tax holiday benefits. Fuel starved plants can henceforth import coal and LNG duty free. Similarly, with the ability to access foreign funds which are cheaper than domestic borrowings, they can replace part of the rupee debt by foreign currency loans. The target is that from the present power generation capacity of 1,85,496 MW, the capacity would reach 2,60,496 MW by 2020. The

proposed signing of fuel supply agreements between Coal India Limited and power plants having long-term PPAs with DISCOMs and getting commissioned on or before 31st March, 2015 is a welcome measure but how far this will resolve the issue of supply bottlenecks needs to be seen.

Then there are problems associated with shortage of domestic coal and natural gas and the inefficiency in state-run distribution companies resulting in non-payment of huge amounts to power producing companies have not been addressed at all. India has enough reserves of coal but it is helplessly turning out to be huge importer of coal thanks to the licence raj in the system and inefficiency of Coal India. Besides, the power producers are handicapped not to renegotiate contracts if there is increase in the fuel costs. All these issues need to be holistically considered and resolved to achieve self sufficiency in power generation and distribution.

On the development of road infrastructure, as against 71,772 km stretch laid so far, the target is to lay roads to reach the extent of 85,000 km length by 2020. To set this in motion, the target for the ensuing year is to cover a length of 8,800 kilometres under the NHDP. Allocation of the Road Transport and Highways Ministry is enhanced by 14% to ₹25,360 crore. But the ground reality is that the problems associated with land acquisition and timely distribution of compensation devoid of litigation result in delay in the execution of the projects which needs to be sorted out and streamlined.

In terms of facilitating the accessing of the global markets, external commercial borrowings (ECBs) are proposed to be allowed for capital expenditure on the maintenance and operations of toll systems for roads and highways, if they are part of the original project. The ECBs will also be permitted for working capital requirement of airline industry for a period of one year, subject to a total ceiling of \$1 billion. This measure is bound to benefit Kingfisher Airlines, Air India and Jet Airways which are apparently reeling under cash crunch and liquidity crisis. Coupled with this is the proposal to allow the FDI to participate up to 49% in the equity an

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air transport undertaking. Similarly, as part of various steps to promote housing for low income groups in the major cities and towns, ECBs shall be allowed for low-cost housing projects. While these measures are laudable, the pace at which these could be translated into reality will determine the impact of the fruits flowing into the economy.

Agriculture Sector

India which was once considered to be predominantly an agricultural segment dominated nation has now relegated it to the last position after service sector and manufacturing sector in terms of contribution to GDP. Lack of adequate power supply, absence of water resource due to poor irrigation facility and the non-provision of infrastructure to rural areas cumulatively led to the deterioration of the efficiency and productivity of the agricultural sector. Yet another saddening dimension is the fact that more than 25% of the agricultural produce perishes without consumption due to absence of proper transportation, warehousing and cold chain facility across the country. Farmers are deprived of proper funding, a good price fixation mechanism and are not empowered with modern methods of cultivation thanks to the indifference of the Government for a considerable period of time. The compelling dependence on monsoon crops and when the monsoon fails the consequential inability to repay loans have been leading to inevitable tragic alarming rate of suicides among the farming community.

In this budget, there are many measures to promote agriculture and support the farmers which are quite heartening. The plan outlay for the Department of Agriculture and Co-operation is increased by 18% and outlay for *Rashtriya Krishi Vikas Yojana* (RKVY) has been increased to ₹9,217 crore in 2012-13. The target for agricultural credit has been raised by ₹1,00,000 crore to ₹5,75,000 crore in 2012-13. Interest subvention scheme for providing short term crop loans to farmers at 7% interest p.a. will be continued in 2012-13. Further,

additional subvention of 3% will be available for prompt paying farmers. Kisan Credit Card (KCC) scheme will be modified to make KCC a smart card which could be used at ATMs.

Structural changes are being made in Accelerated Irrigation Benefit Program (AIBP) in order to maximise flow of benefit from investments in irrigation projects. The allocation for AIBP for the year 2012-13 has been stepped up by 13% to ₹14,242 crore. Yet another important initiative is the operationalisation of an irrigation and water resource finance company to mobilise large resources to fund irrigation projects. Besides, steps are being taken to create additional food grain storage capacity in the country. A new centrally sponsored scheme titled *National Mission on Food Processing* will be started during the ensuing year in co-operation with the State Governments. Hopefully, all these measures should provide the much required fillip to the agricultural sector and accelerate its growth.

If only the State Governments can also participate in these initiatives and focus on the development of Agricultural Sector within each State it would augur well for the nation. An average Indian farmer is not getting the benefits of large scale farming and modern methods of cultivation. Most of the agricultural lands are turning into real estate land banks and getting converted into non-agricultural lands for commercial purpose and use. This indirectly induces migration of considerable population to urban areas which are already choking in terms of density of habitations, pollution and lack of infrastructure commensurate with expansion in terms of geographical spread and population explosion. If each State Government can ensure consolidation and preservation of agricultural lands, facilitate combined large scale farming with



modern implements and tools, determine proper price fixation that flows to the kitty of the farmers directly without any intermediaries taking a cut out of it, we can pave way for another green revolution and demonstrate to a section of the population that agriculture is after all a viable and vibrant occupation to be associated with. This would also facilitate the realisation of dream of Dr. A. P. J. Abdul Kalam in implementing PURA (Providing Urban Amenities in Rural Areas) and turn it into a feasible reality.

Industrial Development

The National Manufacturing Policy announced with the objective of raising the share of the manufacturing in GDP to 25% and creating of 10 crore jobs within the next decade is commendable and one hopes that the RBI too, in the next policy announcement announces cut in the interest rates to supplement the upcoming investment climate. But, the constraints of carrying on business in the Indian environment certainly requires deeper introspection in view of supply chain bottlenecks inter-se the States or otherwise, deep rooted corruption in the system all around and unemployable youth emerging out of universities and educational institutions. No doubt there are ongoing measures and announcements in this budget to promote education, skill development and a promise on a white paper on black money. But the perils emanating from these social issues remaining unaddressed for quite some time require immediate attention and need to be tackled on a war footing.

Conclusion

If the keenness of the FM to bring in many reforms through legislative changes or otherwise is apparent, the fact that he is not able to succeed in that endeavour so far in the light of the constraints of electoral democracy



and federal considerations is self-evident. This is reflected in the budget speech wherein FM mentions that efforts to arrive at a broad based consensus in consultation with the State Governments in respect of decision to allow FDI in multi-brand retail up to 51%. Even the task of bringing in GST into effect, though long overdue, is kept in abeyance due to lack of such consensus.

The hiking of both the service tax and excise duty would augment revenue in the short run but would certainly lead to inflation in the long run and would also affect both consumption ability and savings capacity of the *aam aadmi*. It might prove to be counterproductive in inducing the domestic demand driven growth. There could be then the difficulty in achieving the targeted GDP growth rate which in turn might make the target of fiscal deficit slip like it happened this year. The evolution of the approach to divestment of Central Public Sector Enterprises by allowing them a level playing field *vis-à-vis* the private sector in respect of practices like buy back of shares and listing at stock exchanges should help the Government to mobilise more than targeted amount if methodically attempted.

Frankly speaking, an average Indian is no longer worried about *fiscal deficit* or *revenue deficit*, and not even the newly coined jargons *Effective Revenue Deficit* and *Medium Term Expenditure Framework*. He is truly concerned about the political deficit that is engulfing the nation preventing it from emerging out as a strong economic power in the comity of nations. We have excellent pool of natural resources, enviable human resources and perfect demographic composition to turn out to be human talent hub for the rest of the world but what we continue to crave for visionary leadership at all levels with absolute patriotism. May be India needs to be liberated from politicians and taken over by statesmen to lead the country. Let us hope that this transformation is in the offing in the not so distant future and the people of India including those in public life would ponder about and act swiftly and deftly in the process of building a credible economy in this incredible India. ■

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Budget 2012-13: Treading a Middle Path



The budget 2012-13 was presented amidst ambitious expectations of achieving fiscal consolidation and providing growth impetus. Indeed, deterioration in fiscal situation and slowdown in growth rate needed tough decisions and budget was supposed to provide enabling signals. The budget, however, seems to have treaded a middle path without presenting over-optimistic estimates and major macro-fiscal decisions are left to be taken in the future. The macroeconomic and fiscal challenges were elaborated unambiguously in the Economic Survey – 2011-12 presented in the Parliament on the eve of budget. The Indian economy is estimated to grow by 6.9 % in 2011-12, after having grown at the rate of 8.4% in each of the two preceding years, primarily due to slowdown in industrial growth. Rising cost of credit and weak domestic business sentiment, added to this decline. The other macroeconomic policy challenge has been the high inflation, as measured by the wholesale price index (WPI), and the effect of monetary policy during the year to control inflation and curb inflationary expectations. India's inflation is largely structural, driven predominantly by agricultural supply constraints and global cost push. The current account deficit, which is 3.6% as a proportion of GDP in 2011-12 along with reduced net capital inflows in the second and third quarters, put pressure on the exchange rate. The weak growth scenario adversely affected the revenue collection of the central government, which has remained below expectations. Weak revenue position along with higher expenditure outgo, mostly on account of higher than budgeted subsidies, has accentuated the fiscal imbalance. Can the budget bring in the required changes? Read on to know more...



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Deteriorating fiscal situation since 2008-09 continued to pose severe challenge to the economy. Rising fiscal deficit and consequent increase in Government borrowing adversely effects the private investment due to crowding out, stokes inflation and dents efficacy of the monetary measures to control inflation. The scrutiny of fiscal data indicates that significant improvement in the fiscal situation at central level in the mid-2000s was mainly revenue driven, particularly due to income tax, riding high on buoyant economy and modernisation of tax administration. The real test of the fiscal discipline came during 2008-09, when the national growth rate slowed down sharply

to 6.8% from an average of 9.4% in the preceding three years, because of the international financial crisis. This has triggered an expansionary fiscal stance by the Central Government through fiscal stimulus packages comprising both tax cuts and expenditure hikes. The sharp upsurge in deficits in 2008-09 was accentuated by spending on pay revision, increased subsidies, expansion in the scope of the National Rural Employment Guarantee Act and introduction of farm loan waiver schemes. Since 2008-09 the fiscal imbalance at Central level has further deteriorated as is evident from the 2011-12 revised numbers of 5.9 of fiscal deficit as against budget estimate of 4.6% relative to GDP, a slippage by 1.3 percentage points. The fiscal deficit of this magnitude is a concern as it is going to vitiate investment climate and growth prospects.

Table1 Trend in Deficits of Central Government

Year	Revenue Deficit	Fiscal Deficit	Primary Deficit
2004-05	2.4	3.9	0
2005-06	2.5	4.0	0
2006-07	1.9	3.3	-0.2
2007-08	1.1	2.5	-1
2008-09	4.5	6.0	2.6
2009-10	5.2	6.5	3.2
2010-11	3.3	4.9	1.8
2011-12(BE)	3.4	4.6	1.6
2011-12 (RE)	4.4	5.9	2.8
2012-13 (BE)	3.4	5.1	1.9

Source: Union Budget Documents

The Government chose to restrain the fiscal deficit at 5.1% in 2012-13 budget, which is even higher than that of the TFC targets of 4.2% of GDP. Although this level of deficit is more than the TFC fiscal path, the budget estimate looks reasonable as against projecting over-optimistic numbers like that in the last budget. The reduction in the level of fiscal deficit was based on the calculation of higher tax yields next year. The revenue growth that has gone into this estimate depends to a large extent on the projected growth of GDP at 7.6% for the next year. The excise and service tax rate was increased from 10% to 12%, a withdrawal of stimulus, and there was expansion of tax base. A negative list for service tax such as primary education, government services, renting of residential building, public transport, has been introduced, which implies all services other than those in the list can be taxed. The rate for corporation tax remained untouched and

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rejoice in the income tax rates and brackets are however, projected not to cost the Government much. While custom duties for some infrastructure-related items were reduced, there were increases in other items like gold and cars. The budgeted excise and services taxes were projected to grow by 30% over the revised numbers. The net tax revenue for the Centre, after accounting for the States' share, is set to grow by 20%, looks achievable if the growth projection of 7.6% holds good. Besides taxes, the other two items that are expected to facilitate fiscal consolidation are disinvestment proceeds of ₹30,000 crore and ₹42,000 crore from spectrum auctions. However, the budget does not elaborate the details about these. The big ticket tax reforms such as introduction of Goods and Services Tax (GST), and Direct Tax Code (DTC) were left for a future date. The budget indicated that the DTC Bill would be enacted at the earliest after expeditious examination of the report of the Parliamentary Standing Committee. On GST, it was said that the model legislation for Centre and State Goods and Services Tax (GST) in concert with States was under progress and the GST network would be set up as a National Information Utility, which would become operational by August 2012.

Expenditure restructuring by controlling some major items like subsidies could have provided much needed relief in the quest to achieve the fiscal consolidation. The aggregate expenditure was raised by 13%, while the capital outlays were raised by more than 30% as against the revised estimates of 2011-12. However, as percentage to GDP the capital outlay at 2% was projected to touch only the 2010-11 level. It is clear that the inability to control subsidies propelled the fiscal deficit to such a high in revised estimates. The revised estimates of subsidies were higher than the budgeted estimates by ₹72,727 crore and it was budgeted to come down by ₹26,281 crore in 2012-13. The Finance Minister was emphatic in his concerns about subsidies and made the announcement that subsidies would be limited to 2% of GDP next year and eventually would be brought down to 1.7% in the next three years. The intents are laudable. But budget for 2012-13 does not

provide a clear action plan as to how this objective could be achieved. Looking at the components of subsidies, food, fertiliser and petroleum, it is not very obvious that the intents would result in outcomes. The relatively small rise in food subsidies, by about ₹2,177 crore looks tiny as compared to purported estimates of Food Subsidy bill that may come well above ₹30,000 crore. Lower assumption of crude oil price in budget estimates of 2011-12 resulted in higher spending by about ₹45,000 crore in revised estimates. The petroleum subsidy budgeted to decline by about ₹25,000 crore does not look very promising given the surge in crude prices and uncertainties in the Middle East. The lower allocation to this head of subsidy only suggests that the Government would undertake massive rise in retail prices of petroleum in the next year. The political environment does not look very conducive for this. The budget proposal to integrate Aadhar in targeting subsidies for fertiliser, kerosene and LPG directly to beneficiaries in at least 50 selected districts is showcased as way forward to contain the subsidies. The small rise in food subsidy, as alluded, and a 17% reduction in the budgetary outlay for NREGA will be of some help. The use of IT system as envisaged in Aadhar programme could be argued to improve service delivery; its impact on reducing aggregate subsidies given the impact of other components is doubtful.

The long-awaited amendments to Fiscal responsibility and Budget Management Act was introduced in the Finance Bill 2012 reflecting the commitment of the Government to achieve the fiscal consolidation. The amendments set the new goal post to achieve the fiscal consolidation at 31st March 2015, as suggested by the TFC in their fiscal restructuring plan. Instead of targeting a zero revenue deficit, the amendments aim to eliminate 'effective revenue deficit', which was estimated to be 1.8 % of GDP in budget estimates for 2012-13, that excludes grants given to the States for creating capital assets. Accordingly the revenue deficit will be reduced to 2% by 2014-15 from the budgeted level of 3.4% and the fiscal deficit will be reduced to 3.9% of the GDP from the estimated 5.1% in

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2012-13. These targets numbers are higher than the TFC suggested fiscal targets. This implies the recognition of fiscal realities by the Government while fixing the fiscal targets. The key feature of the FRBM Act amendments is the flexibility element that the Government specified in the process of fiscal consolidation. The unforeseen contingencies such as the Eurozone debt crisis or rising oil prices due to unrest in the Middle East would provide flexibility to the Government in defining the achievable targets in a three-year rolling Medium Term Expenditure Framework. While for the success of any fiscal rule political commitments are necessary, reasonably high growth is essential. Maintaining fiscal discipline is reasonably easy when the economy is strong and it becomes challenging under adverse conditions. But too much of flexibility in the process provides the pretext to breach the rules in any circumstances. For successful observance of fiscal rules, it becomes incumbent upon the Government to perform better in terms achieving lower fiscal deficit than adhering to the targets during the growth phase. Believing that higher revenue collections would continue interminably and support the future year budget commitments may not be in the interest of a sound fiscal management.

The budget emphasises on infrastructure and industrial development keeping the broad objectives of 12th five year plan in consideration. The budget put forth a number of proposals to facilitate reducing the cost of funding for the infrastructure and some other core sectors. It was proposed to provide ₹15,888 crore for capitalisation of Public Sector Banks, Regional Rural Banks and other financial institutions including NABARD. Lowering withholding tax on external borrowings (ECBs), permitting ECB for working capital requirements of the Airline Industry, allowing ECBs for low cost housing, allowing road sector to access ECBs even for rupee expenditure, removing sector restrictions for venture capital, doubling the allocation for tax-free infrastructure bonds market are other key budget proposals to ease availability of funding for infrastructure sectors. These measures reflect the

Government's move to drive private sector to get funding from abroad. This kind of policy poses the dilemma between developing domestic capital market by lowering the cost of borrowing and seeking funds abroad. The capital market is still not free from barriers and the level of access to the foreign funds is not very clear. Calling for strengthening investment environment, the budget states that efforts are on to arrive at a broad-based consensus in respect of decision to allow FDI in multi-brand retail up to 51%. The political environment to accept the FDI in multi-brand retails, however, is not ripe at the moment.

The budget for 2012-13 dwells at length in supporting the agricultural sector and other social sectors. Stating that agriculture will continue to be a priority for Government, the budget proposed an increase by 18% to ₹20,208 crore in the total Plan Outlay for the Department of Agriculture and Cooperation in 2012-13. The outlay for Rashtriya Krishi Vikas Yojana (RKVY) was increased to ₹9,217 crore in 2012-13. Underlining importance of timely access to affordable credit for farmers, the budget proposed to raise the target for agricultural credit to ₹5,75,000 crore, which represents an increase of ₹1,00,000 crore over the target for the current year. A short term RRB Credit Refinance Fund is being set up to enhance the capacity of Regional Rural Banks to disburse short term crop loans to the small and marginal farmers. It was proposed to modify the Kisan Credit Card Scheme to make it a smart card which can be used at ATMs. A National Mission on Food Processing is proposed to be started to have a better out reach of the food processing sector in 2012-13. The budget also proposed increase in funding for various social sectors programmes such as SC and ST sub plan, rural drinking water and sanitation programme, primary education, National Programme of Mid-Day

Meals in schools, rural health mission, National Social Assistance Programme, and Pradhan Mantri Sadak Yojana. While raising resource allocation to various programmes under the social sector is important, what is more required is to spending the money responsibly, efficiently and effectively to get the results.

The budget aimed at achieving growth recovery, improving fiscal situation, revival of private investment, addressing supply bottlenecks, providing enabling environment for infrastructure, addressing social sector problems, and improving service delivery systems and governance. Although the budget decides on resource allocation to various sectors on the basis of which its efficacy is evaluated, the policy signals that come out of the budget have considerable importance in serving the objectives. While the budget 2012-13 avoided big bang approach to facilitate ushering in major reforms to push the economy ahead, it had some positive features. The idea of cash subsidies, some tax reform measures like introducing a negative list in case of service taxation, expanding the tax base, raising tax rates in the case excise and customs, aligning with tax slabs indicated in DTC, not being over-optimistic as regards fiscal deficit, making attempts at reducing cost of funding for infrastructure are some such elements. The major reform measures were, however, kept in abeyance and political commitment will probably decide their fate.

A final point regarding the role of budget and how much of it is acknowledged in recent years is in order. Annual budgets are analysed and debated more from the point of view of achieving fiscal sustainability. This was reinforced due to the fiscal stress experienced during the late nineties and recently after 2008 global financial crisis and consequent slowdown. Budget management in these circumstances has been construed as an exercise to address the issues like controlling fiscal deficit and government borrowing to limit their adverse impacts. Although fiscal discipline and macroeconomic balance remains paramount, the role of the budgeting system in enhancing prioritisation for allocative efficiency, improving public service delivery, ensuring citizen responsive decisions, and accountability of administrative departments in spending public money needs to be acknowledged. To meet the requirements of allocating resources in accordance with the strategic priorities, efficient and effective use of resources to implement the programmes, and evaluating the results are significant in this context. Judged from these aspects, the budget for 2012-13 remains conventional where resource allocations are indicate. It is still a long road to find answers to the questions relating to basis of budget decision making and accountability for performance of the Government. ■



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Union Budget 2012-13 – Key Tax Proposals in Respect of International Taxation



Honourable Finance Minister started presenting the Direct Tax Proposals on the floor of the house on 16th March, 2012 with the comments: *“The life of a Finance Minister is not easy. Various players, including policy makers, politicians, agriculturists and business houses, participate in the making of the economy. When everything goes well with the economy, we all share in the joy. However, when things go wrong, it is the Finance Minister who is called upon to administer the medicine. Economic policy, as in medical treatment, often requires us to do something, which, in the short run, may be painful, but is good for us in the long run. As Hamlet, the Prince of Denmark, had said in the Shakespeare’s immortal words, “I must be cruel to be kind”.* Thus, he has hinted that some major “cruel” steps are being proposed in his tax proposals. However, he carried on with the speech and declared all goody goody things except certain passing references to the hard steps taken like GAAR etc. He proved the saying *“devil lies in details”*, particularly for the taxation proposals in respect of international transactions. However, he has proposed majority of the amendments with retrospective effects and paved the way for the long drawn litigation instead of providing certainty to the overseas investors. In the above backdrop, this article discusses some major tax proposals which will have far reaching impact on the international tax regime in India.

While introducing Union Budget 2012, the Finance Minister shows his intention to move towards Direct Taxes Code (“DTC”). By incorporating two key proposals of DTC i.e. General Anti Avoidance Rule (“GAAR”) and Advanced Pricing Arrangement (“APA”), he has shown his commitment towards tax reforms. However, he has overruled certain important decisions and brought in the retrospective amendments. Unfortunately, he has introduced the “clarificatory” amendments in respect of taxability of transactions akin to “Vodafone’s case” and surprised the tax payers by introducing the applicability of transfer pricing provisions to certain domestic transactions. He has tightened the rope on overseas investors by proposing furnishing of Tax Residency Certificate (“TRC”) in the specified format in the garb of substance over a form.

In this article, we have discussed certain important tax proposals introduced by the Finance Bill, 2012 (“Finance Bill”) in respect of international taxation.

(Contributed by the Committee on International Taxation of the ICAI.
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Key International Tax Proposals

- Introduction of GAAR;
- Taxability of software transactions – definition of royalty;
- Taxation of sale of shares/assets outside India;
- Taxability of dividend received from overseas subsidiaries;
- Requirement of TRC to access tax treaties; and
- Certain major amendments in transfer pricing provisions.

1. Introduction of GAAR

Till date Indian tax laws do not contain any anti abuse provisions. Principles of tax avoidance were thorough judicial opinions. DTC has introduced the concept of GAAR for the first time. Though the future of DTC is still not certain, Finance Minister has adopted the concept of GAAR as an anti tax avoidance measure in the Income-tax Act, 1961 ("Act"). As per the newly introduced Chapter X-A (containing Sections 95 to 102) it is proposed to grant powers to the tax authorities not to allow tax benefits on the transactions/arrangements which do not have commercial substance or consideration other than solely achieving the tax advantage. As per the proposed amendment, transaction/arrangement will be considered as impermissible if it satisfies any of the following four criteria:

- Not at arm's length;
- Results in misuse or abuse of the provisions of the Act;
- Lacks commercial substance or is deemed to lack commercial substance; and
- It is carried out in a manner, which is normally not employed for bona fide purpose.

Once the transaction/arrangement are considered to be impermissible, the same can be disregarded partly/fully with consequential denial of tax benefits/tax advantages. Further, to keep check on anti abuse on treaty provisions, "treaty override" has been provided when the transactions/arrangements are subject to provisions of GAAR.

While introducing provisions of GAAR, Finance Bill provides that application of GAAR provisions has to be approved by an Approving Panel and thereby giving an assurance to the Tax Payer that opportunity of hearing will be given to them before applying the same. CBDT will formulate the scheme for regulating the condition and manner of application of GAAR provisions.

While introducing GAAR, the Honourable Finance Minister has stated that – *"I propose to introduce GAAR in order to counter aggressive tax avoidance schemes, while ensuring that it is used only in*

Union Budget 2012 has tried to settle the long drawn battle between the Revenue Authorities and the Tax Payers in respect of taxability of sale of software. The Finance Bill proposes to amend provisions of Section 9(1)(vi) with retrospective effect from 1st April 1976 to include payments made for use or right to use of computer software within the purview of royalty. ☺☺

appropriate cases, by enabling a review by GAAR panel." However, as wide powers have been granted to the tax authorities and tax payers have been burdened with the responsibility to prove that transaction/arrangement is not guided by the tax avoidance/escapement, there may be serious doubts in the mind of the tax payers regarding fair implementation of the provisions in view of present day experience of governance, administration and lack of accountability.

2. Taxability of Software Transactions – Definition of Royalty

Union Budget 2012 has tried to settle the long drawn battle between the Revenue Authorities and the Tax Payers in respect of taxability of sale of software. The Finance Bill proposes to amend provisions of Section 9(1)(vi) with retrospective effect from 1st April, 1976 to include payments made for use or right to use of computer software within the purview of royalty. As per the proposed amendment "royalty" includes any consideration paid for right, property or information in respect of all or any right for use or right to use a computer software (including granting of a licence) irrespective of such right, property or information being –

- (1) In the possession or control of the buyer;
- (2) Such right or information used directly by the buyer;
- (3) Such right or property or information is located in India

Thus, it is proposed to treat sale of shrink wrapped software or granting of rights to use software as royalty.

Further, The Finance Bill proposes to overrule the decision of Delhi High Court in the case of *Asia Satellite Telecommunication Co* (w.e.f 1st April, 1976) and provides that "process" includes any transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology.

Though, definition of Section 9(1)(vi) has been proposed to be amended, the Tax Payers still have a

window to apply the provisions of tax treaties, if the same is favourable *vis-à-vis* provisions of the Act.

3. Taxation of Sale of Shares/Assets Outside India

Tax professionals have spent last few days in deliberating and discussing the principles laid down by Honourable Supreme Court in the case of *Vodafone International BV*. As we are all aware, the bone of contention in the recent ruling of the Supreme Court in the case of *Vodafone* has been whether the gains arising to a foreign company from sale of shares of foreign holding company indirectly holding underlying Indian assets (Indian operations) to another foreign company would be subject to tax in India. In this regard, the Supreme Court held that for a transaction of sale of capital asset to be taxable in India, the capital asset ought to be situated in India. The Supreme Court explained that under the scheme of the Act, charge of capital gains in India in the hands of a foreign company requires the following conditions to be fulfilled simultaneously:

- (a) Existence of a capital asset;
- (b) Situs of such capital asset in India; and
- (c) Transfer of the capital asset.

Accordingly, for capital gains to be taxable in India in the hands of the foreign company, the capital asset transferred must be situated in India. Further, Honourable Supreme court has explained the concept of “look at” and “look through” while interpreting the provisions of the law. Court has further discarded the dissecting approach followed by the Revenue Authorities while interpreting the tax provisions.

Provisions proposed under the Finance Bill appear to nullify the key observations made by the highest court of India and proposes to bring to tax all the overseas transactions wherein gain or income can be attributed to the underlying assets in India. Finance Bill has proposed various clarificatory amendments which can be summarised as under:

- Definition of property has been explained and it has been clarified that property includes any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever. [Explanation to Section 2(14)]
- Transfer includes disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent

upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India. Thus, the amended definition will include the transfers irrespective of the fact that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of shares of a company incorporated outside India to the extent said company derives its substantial value of underlying assets situated in India. [Explanation 2 to Section 2(47)]

- Definition of “through” has been provided to include “by means of” or “in consequence of” or “by reason of” transfer of capital asset in India [Explanation 4 to Section 9(1)(i)]
- Any interest/share in a company outside India which derives its value either directly or indirectly or substantially from assets located in India, shall be deemed to have been situated in India. [Explanation 5 to Section 9(1)(i)]
- No regard shall be given to following factors while determining whether an arrangement lacks commercial substance or not:
 - o Period or time for which the arrangement (including operations therein) exists.
 - o Fact of payment of taxes, directly or indirectly, under the arrangement.
 - o Fact that an exit route (including transfer of any activity or business or operations) is provided by the arrangement.

[Section 97(4)]

A reading of the above amendments proposed in the Finance bill seems to suggest that they have been made in light of the observations made by the Supreme Court in *Vodafone*’s ruling.

To summarise, it appears that in view of the above amendments, any transfer of asset/share/right outside India which has substantial underlying asset/value in India will be subject to tax net in India. Further, language used in the proposed section is “substantial” *vis-à-vis* “50% of assets” used in DTC, the same may lead to litigation.

By amending provisions of Section 90 of the Act, it is now proposed to restrict the grant of benefit of the tax treaties only to the resident of foreign countries who procures the Tax Residency Certificate (“TRC”) in prescribed format from respective overseas Governments. The same may be difficult to implement as Foreign Revenue Authorities may not be inclined to give the certificate in the format given by the Indian revenue authorities. ☺

Concept of Advanced Pricing Arrangement has been introduced for the first time in DTC. Finance Minister has introduced the same in the present provisions of the Act to provide certainty to the overseas counterparts and reduce the litigation. Proposed provisions of Section 92CC gives powers to Board with the approval of Central Government to enter into an advanced pricing agreement with any person, determining the arm's length price or specifying manner in which arm's length price to be determined, in respect to the international transactions carried out by that person. ☺☺

4. Taxability of Dividend Received from Overseas Subsidiaries

The Finance Act, 2011 has introduced the provisions of lower tax rate of 15% (plus applicable surcharge and education cess) on gross basis for the repatriation of dividends by Indian shareholders from their overseas subsidiaries under Section 115DDB. The said benefit is now proposed to be extended for one more year and hence any dividends received during the Financial Year 2012-13 from overseas companies will also be liable to tax @ 15% (plus applicable surcharge and education cess). However, companies subject to Minimum Alternate Tax will be required to pay the same @ 18.5% (plus applicable surcharge and education cess).

5. Requirement of TRC to Access Tax Treaties

By amending provisions of Section 90 of the Act, it is now proposed to restrict the grant of benefit of the tax treaties only to the resident of foreign countries who procures the Tax Residency Certificate ("TRC") in prescribed format from respective overseas Governments. The same may be difficult to implement as Foreign Revenue Authorities may not be inclined to give the certificate in the format given by the Indian revenue authorities.

Memorandum explaining provisions explains that provisions have been amended to recognise the concept of substance over a form. However, it is feared that the same may lead to huge litigation and will raise substantial questions over validity of decision of Honourable Supreme court in the case of *Azadi Bachao Andolan* and CBDT circular No 786, where Government itself was litigating to uphold this circular.

6. Certain Major Amendments in Transfer Pricing Provisions

Transfer pricing provisions has completed a decade

of its existence in India. Huge adjustments are being made by the Tax Officers and enormous demands has been raised and being collected. Judiciary is taking different and inconsistent views adding fuel to the litigation. To provide certainty and clarifying certain doubts, Finance Bill has amended various provisions relating to transfer pricing regulations. Further, it proposes to bring certain domestic transaction in its net. Following major amendments has been discussed in detail in the following paragraphs:

- Advanced Pricing Arrangement ("APA")
- Applicability of provisions on certain domestic transactions
- Scope of "international transactions"
- Safe harbor rules
- Penalty provisions

(a) APA:

Concept of Advanced Pricing Arrangement has been introduced for the first time in DTC. Finance Minister has introduced the same in the present provisions of the Act to provide certainty to the overseas counterparts and reduce the litigation. Proposed provisions of Section 92CC gives powers to Board with the approval of Central Government to enter into an advanced pricing agreement with any person, determining the arm's length price or specifying manner in which arm's length price to be determined, in respect to the international transactions carried out by that person. Salient features of APA provisions can be summarised as under:

- The tax payer will approach the Board and arm's length price ("ALP") shall be determined for the proposed international transactions (for which agreement is sought for) by using any method (including prescribed methods) with necessary adjustments or variation. The ALP determined will be deemed to be the ALP for the said international transactions.
- APAs will be binding on the Tax Payer and Commissioner and the income-tax authorities subordinate to him in respect of the said tax payer and said transaction for which APA has been sought for.
- APAs will be valid for maximum period of five year unless there is change in law or facts having bearing on the said agreement.
- Proposed provisions also empower Board to declare any APA as void ab initio, if it finds that the agreement has been obtained by the Tax Payer by fraud to misrepresentation of facts.

It is a welcome move and may go a long way in reducing the transfer pricing litigation provided the same is implemented in intended spirit.

(b) Applicability of provisions on certain domestic transactions:

Surprisingly, the Finance Bill proposes to extend the transfer pricing provisions to certain domestic transactions. Currently, provisions of Section 40A(2)(b) empowers Tax Officer to disallow certain expenses incurred between related parties, if the same are unreasonable or excessive. Further, provisions of Section 10AA/80IA/80IB/80IC, etc. provides that adjustment can be made to the profits derived by the eligible undertakings, if the transactions between eligible and non eligible undertakings of the Tax Payer is not at fair market value. Act does not provide any specific guidance on computation of fair market value of reasonableness of the expenses incurred.

The Finance Bill proposes to extend the applicability of transfer pricing provisions to all the above referred domestic transactions i.e. transactions covered by provisions of Section 40A(2)(b), transactions referred in Section 80A/80IA(8)/80IA(10) and Section 10AA. Further, CBDT has powers to prescribe other transactions which can be covered as "specified domestic transaction" subject to applicability of transfer pricing provisions. The transfer pricing provisions in respect of domestic transactions are applicable only if the aggregate of such transactions are in excess of ₹50 million.

The proposed amendment will cover many more Tax Payers under the purview of transfer pricing provisions and will increase immense compliance burden on them. Further, penalty provisions for non compliance of transfer pricing provisions has been amended and severe penalties has been introduced for failure to comply the provisions. Implementation of the said provisions can be a challenge for Revenue Authorities also due to substantial increase in number of cases subject to transfer pricing.



On a positive note The Finance Bill proposes to remove the cascading effect of Dividend Distribution Tax ("DDT") in a case of holding-subsidiary structure.

Earlier provisions were applicable only in the case where the recipient company is not a subsidiary of any other company. Thus, the benefit is available only to single-tier holding structures. The said benefit is now extended and the Finance Bill provides that any dividend distributed by the holding company, irrespective of it being a subsidiary of another company, can reduce the dividend received from its subsidiary which has suffered DDT while computing DDT payable. ☺☺

The amendment has been proposed in consequence of certain observations made by Honourable Supreme Court in the case of Glaxo Smithkline Asia (P) Limited which suggested Finance Ministry to consider the appropriate provisions for domestic related party transactions.

(c) Scope of "international transactions":

The Finance Bill has amended the definition of "international transactions" with retrospective effect i.e. w.e.f 1st April, 2001 to include following transactions within the purview of "international transactions":

- (i) Tangible property transaction
- (ii) Intangible property transaction
 - a. Marketing related assets – trademarks, trade names, brand names, logos, etc.
 - b. Technology related assets – process, patents, patent applications, technical documentation, technical know-how, etc.
 - c. Artistic related assets – literary work and copyrights, musical compositions, maps, etc.
 - d. Data processing related assets – proprietary computer software, software copyrights, automated databases, etc.
 - e. Engineering related assets – industrial design, product patents, trade secrets, blueprints, etc.
 - f. Customer related assets – customer lists, customer contracts, customer relationships, etc.
 - g. Contract related assets – favourable suppliers, contracts, licence agreements, etc.
 - h. Human capital related assets – trained and organised work force, union contracts, etc.
 - i. Location related assets – leasehold interest, air rights, water rights, etc.
 - j. Goodwill related assets – institutional goodwill, professional practice goodwill, celebrity goodwill, etc.
 - k. Methods, programmes, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists or technical data.
 - l. Any other similar item
- (iii) Financial transactions – capital financing including long-term and short-term borrowings, lending or guarantee, etc.
- (iv) Provision of Services – market research, market development, marketing management, administration, repairs, etc.
- (v) Business restructuring or reorganisation – transaction between Tax Payer and AEs irrespective of facts that it has any bearing on the profit, income, losses or assets of the Tax

Payer at the time of the transaction or at any future date.

This amendment has overruled certain judicial precedents and has far reaching implications on transfer pricing litigation, particularly in view of being retrospective in nature.

(d) Safe harbor rules:

Earlier, provision of Act (before October 2009) provides for safe harbor of $\pm 5\%$ i.e. when the transaction value falls within $\pm 5\%$ of the ALP the Tax Payer has a option to substitute the ALP after applying $\pm 5\%$ range. To explain the same by way of an example...if X co has entered into a sale transaction with its AE say at ₹96. ALP is determined at say ₹100 and hence range of $\pm 5\%$ comes to ₹95 to ₹105. In that event, the Tax Payer was having option to substitute the ALP from ₹100 to ₹96. Controversy was if the transaction has been carried out at ₹94 then adjustment can be made from arithmetic mean of ALP i.e. ₹100 or from lower range i.e. ₹95 and whether $\pm 5\%$ is a standard deduction or not. There were contradictory rulings by various tribunals on applicability of the said provisions. The Finance Bill has put finality on the litigation and proposed a retrospective clarification that range of $\pm 5\%$ is not in the nature of standard deduction and once the transaction value falls outside the range, benefit of the same is not available to the tax payer.

The Finance Act 2011 has amended the provisions of safe harbor and provided that instead of a variation on 5% the allowable variation will be a percentage determined by the Central Government. Central Government has yet not notified any percentage of variation. The Finance Bill proposes to further amend the section to provide an upper limit of 3% with respect to the power of Central Government to determine the safe harbor for the calculation of ALP. The amendment is proposed to be effective from 1st April, 2012 and hence will be applicable for the Financial Year 2011-12 also.

(e) Penalty provisions:

Current provisions of the Act provides for penalty of 2% of the transaction value if the Tax Payer fails to maintain the prescribed documents in accordance with provisions of Section 92D of the Act. The said scope has been proposed to be extended by the Finance Bill and it will also cover non reporting of an international transaction as well as maintaining or furnishing of incorrect documentation/information. Thus, if the Tax Payer fails to report certain transaction, the same may attract penalty of 2% of the value of the said transaction.

7. Other Important Provisions:

- On a positive note The Finance Bill proposes to remove the cascading effect of Dividend Distribution Tax ("DDT") in a case of holding-subsidiary structure. Earlier provisions were applicable only in the case where the recipient company is not a subsidiary of any other company. Thus, the benefit is available only to single-tier holding structures. The said benefit is now extended and the Finance Bill provides that any dividend distributed by the holding company, irrespective of it being a subsidiary of another company, can reduce the dividend received from its subsidiary which has suffered DDT while computing DDT payable.
- To boost the infrastructure industry, The Finance Bill has proposed to tax interest payment by certain specified infrastructure companies to Non Resident in respect of borrowings made in foreign currency from a source outside India between 1st July, 2012 and 1st July, 2015 @ 5% as against present rate of 20%.
- The Finance Bill proposes to amend the provisions of Section 139 of the Act and now it would be mandatory for the resident Tax Payer having any asset (including financial interest in any overseas entity) located outside India or signing authority in any account located outside India to file return of income.

Conclusion

It is important to note that one of the objectives of introduction of DTC/several amendments is to provide certainty and reduce the litigation. However, Honourable Finance Minister has overruled following important decisions delivered by Indian courts (and certain on retroactive basis):

- Honourable Supreme Court decision in the case of Vodafone International BV
- Delhi High Court decision in the case of Ericsson Radio Systems AB
- Delhi High Court decision in the case of Asia Satellite Telecommunications
- Certain Tribunal rulings on applicability of Range of $\pm 5\%$
- Bombay High Court decision in the case of Amadeus India

It is pertinent to put in perspective that whether the amendments made are purely in clarificatory in nature or showing disrespect to judiciary. A question needs to be answered as to whether retrospective amendments provide any certainty to tax payers, particularly to overseas fraternity of investors? ■

Procedural Aspects of Finance Bill, 2012 – Direct Taxes



In this article the author has discussed the procedural aspects of the Finance Bill, 2012 such as Tax Deduction at Source, Transfer Pricing, Dispute Resolution Panel, General Anti-Avoidance Rules (GAAR), Reassessment, Time limit for completing assessment and reassessment, Notification of a class of search cases where compulsory reopening of past six years not required, and Fee for filing of applications before Authority for Advance Rulings (AAR).



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Tax Deduction at Source

TDS on immovable property transactions

The scope of the TDS provisions is proposed to be expanded to also cover tax deduction at source on transfer of immovable property to non-residents.

It is proposed to insert a new provision to provide that every transferee, at the time of making payment or crediting any sum by way of consideration for transfer of immovable property (other than agricultural land), shall deduct tax, at the rate of 1 per cent of such sum, if the consideration paid or payable for the transfer of such property exceeds –

- (a) fifty lakh rupees in case such property is situated in a specified urban agglomeration; or
- (b) twenty lakh rupees in case such property is situated in any other area.

It is further proposed to provide that where the consideration paid or payable for the transfer of such property is less than the value adopted or assessed or assessable by any authority of a State Government for the purposes of payment of stamp duty, the value so adopted or assessed or assessable shall be deemed as consideration paid or payable for the transfer of such immovable property.

It is also proposed to provide that a registering authority shall not register the transfer of any immovable property where taxes are required to be deducted under this provision unless the transferee furnishes proof of deduction and payment of TDS.

It is also proposed that a simple one-page challan for payment of TDS would be prescribed containing details (including PAN) of transferor and transferee and also certain details of the property. The transferee would not be required to obtain any Tax Deduction and Collection Account Number (TAN) or to furnish any TDS statement. The transferor would get credit of TDS like any other pre-paid taxes on the basis of information furnished by the transferee in the challan of payment of TDS.

The one difficulty that could arise is that the purchaser of the property would also have to obtain a PAN number and in cases where the non-resident buyer is making a short visit only for the purpose of getting the property registered in his name, he may not be able to get the PAN within a very short time and therefore, the same will have to be planned well in advance. It may also be noticed that the TDS provision will only be applicable where the land which is not agricultural and the term agricultural land is defined to mean agricultural land in India not being situated within the area stipulated in Section 2(14)(iii)(a) and 2(14)(iii)(b). The question of whether agricultural activity is or is not carried on in this land would therefore not be relevant for the purpose of determination of the requirement to deduct tax at source. The proposed expansion of TDS provisions will apply to transfers on or after 01-10-2012.

TDS on remuneration to directors

With effect from 01-07-2012 it is proposed to amend Section 194J so as to require tax to be deducted at source on remuneration, fees or commission to directors by whatever name called, if such payments are those on which tax is not required to be deducted under Section 192. Therefore tax will have to be deducted on all payments to directors including sitting fees even though not covered by Section 192.

TDS on payments to Non-residents

It is proposed to amend Section 195 to provide that

TDS provisions proposed to be expanded to also cover TDS on transfer of immovable property to non-residents. ”

even a non resident who does not have a place of business or business connection or residence or presence in any manner in India, there will be a requirement to deduct tax at source on payments which are otherwise chargeable to tax in India. This amendment is apparently to get over the observations of Justice Radhakrishnan in his separate concurring decision in the case of Vodafone. This however would lead to the difficulty of compliance as such persons will not merely have to deduct but will also have to remit the same into Government account as well as will have to comply with the requirements of filing returns of TDS which given their non presence in India would lead to substantial difficulties.

Tax Collection at Source (TCS)

TCS is sought to be introduced on cash transactions in bullion and jewellery at the rate of one percent where the sale consideration exceeds ₹2 lakh and where the sale is in cash. This would be irrespective of the fact that the buyer is a manufacturer, trader or purchaser for personal use. While this may be effective in bullion trade, in so far as jewellery is concerned, it would only result in multiple bills being made, so that the value of each sale does not exceed ₹2 lakh.

TCS is also sought to be introduced on the sale of -

- (a) Coal;
- (b) Lignite; and
- (c) Iron ore.

However, the seller shall also not collect tax on sale of the said minerals if the same are purchased by the buyer for personal consumption. Further, the seller of these minerals shall not collect tax if the buyer declares that these minerals are to be utilised for the purposes of manufacturing, processing or producing articles or things.

These amendments are proposed to be effective from 01-07-2012.

Assessee in Default – TDS/TCS

Section 201 is proposed to be amended with effect from 01-07-2012 to provide that the payer will not be treated as an assessee in default where a resident payee -

- (i) has furnished his return of income under Section 139;
- (ii) has taken into account such sum for computing income in such return of income; and
- (iii) has paid the tax due on the income declared by him in such return of income and

(iv) the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.

The date of payment of taxes by the resident payee shall be deemed to be the date on which return has been furnished by the payer.

It is also proposed to provide that where the payer fails to deduct the whole or any part of the tax on the payment made to a resident and is not deemed to be an assessee in default under Section 201(1) on account of payment of taxes by the such resident, the interest under Section 201(1A) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee.

Amendments on similar lines are also proposed to be made in the provisions of Section 206C relating to TCS for clarifying the deemed date of discharge of tax liability by the buyer or licensee or lessee.

Correspondingly, Section 40(a)(ia) is also proposed to be amended to provide that where an assessee makes payment of the nature specified in the said section to a resident payee without deduction of tax and is not deemed to be an assessee in default under Section 201(1) on account of payment of taxes by the payee, then, for the purpose of allowing deduction of such sum, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee.

The provision as it is proposed suggests that in whichever year the payee has remitted the amount and complied with the conditions proposed in Section 201, there can be no disallowance in the hands of the payer of such sum.

Fee and penalty for delay in furnishing TDS and TCS returns

It is proposed –

- (i) to provide for levy of fee of ₹ 200 per day for late furnishing of TDS statement from the due date of furnishing of TDS statement to the date of furnishing of TDS statement. However, the total amount of fee shall not exceed the total amount of tax deductible during the period for which the TDS statement is delayed, and
- (ii) to provide that in addition to said fee, a penalty ranging from ₹10,000 to ₹1,00,000 shall also be levied for not furnishing TDS statement within the prescribed time.

A simple one-page challan for payment of TDS would be prescribed containing details (including PAN) of transferor and transferee and also certain details of the property, proposed. ”

In view of the levy of fee for late furnishing of TDS statement, it is also proposed to provide that no penalty shall be levied for delay in furnishing of TDS statement if the TDS statement is furnished within one year of the prescribed due date after payment of tax deducted along with applicable interest and fee.

Further, it is proposed that if incorrect information is furnished in the TDS statement, a penalty ranging from ₹10,000 to ₹1,00,000 shall be levied for furnishing incorrect information in the TDS statement.

The proposed amendments will take effect from 1st July, 2012.

Liability to pay advance tax in case of non-deduction of tax

It is proposed to amend Section 209 to make an assessee liable for payment of advance tax in respect of income which has been received or paid without deduction or collection of tax.

The proposed amendment will take effect from the 1st April, 2012 and would, accordingly, apply in relation to advance tax payable for the financial year 2012-13 and subsequent financial years.

Rectification/Appeal against TDS statements

Section 200A was inserted by the Finance Act, 2009 to provide for processing of TDS statement. After processing of TDS statement, an intimation is generated specifying the amount payable or refundable. The intimation generated after processing of TDS statement is not –

- (i) subject to rectification under Section 154;
- (ii) appealable under Section 246A; and
- (iii) deemed as notice of demand under Section 156.

It is proposed to provide that the intimation generated after processing of TDS statement shall be –

- (i) subject to rectification under Section 154;
- (ii) appealable under Section 246A; and
- (iii) deemed as notice of demand under Section 156.

The proposed amendments will take effect from 1st July, 2012.

A view can therefore be taken that such intimations will not be appealable prior to this date.

Extension of time for passing TDS orders

Under the existing provisions Section 201 of the Income-tax Act, a person can be deemed to be an assessee in default, by an order, in respect of non-deduction/short deduction of tax. Such order can be passed within a period of four years from end of financial year in a case where no statement as referred to in Section 200 has been filed.

It is proposed to amend Section 194J so as to require tax to be deducted at source on remuneration, fees or commission to directors.

It is proposed to amend provision of Section 201, so as to extend the time limit from four years to six years.

The proposed amendment will take effect retrospectively from 1st April, 2010.

Tax residence certificate for claiming benefit of DTAA

It is proposed that the benefit of the DTAA will be available only when a tax residence certificate is produced by a tax payer. This could probably mean that given a case where the lower deduction under the treaty is to be applied by a payer resident in India, the tax residence certificate will have to be obtained from the country of residence before applying such lower rate.

The proposed amendment will take effect from assessment year 2013-14.

Transfer Pricing

Advance pricing agreement

It is proposed to insert new Sections 92CC and 92CD in the Act to provide for Advance Pricing Agreement (APA) under the Act. The proposed sections provide the following –

1. It empowers Board, to enter into an advance pricing agreement with any person undertaking an international transaction.
2. Such APAs shall include determination of the arm's length price or specify the manner in which arm's length price shall be determined, in relation to an international transaction which the person undertake.
3. The manner of determination of arm's length price in such cases shall be any method including those provided in sub-section (1) of Section 92C, with necessary adjustments or variations.
4. The arm's length price of any international transaction, which is covered under such APA, shall be determined in accordance with the APA so entered and the provisions of Section 92C or Section 92CA which normally apply for determination of arm's length price would be modified to this extent and arm's length price shall be determined in accordance with APA.
5. The APA shall be valid for such previous years as specified in the agreement which in no case shall exceed five consecutive previous years.
6. The APA shall be binding only on the person and the Commissioner (including income-tax

authorities subordinate to him) in respect of the transaction in relation to which the agreement has been entered into. The APA shall not be binding if there is any change in law or facts having bearing on such APA.

7. The Board is empowered to declare, with the approval of Central Government, any such agreement to be *void ab initio*, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts. Once an agreement is declared *void ab initio*, all the provisions of the Act shall apply to the person as if such APA had never been entered into.
8. For the purpose of computing any period of limitation under the Act, the period beginning with the date of such APA and ending on the date of order declaring the agreement *void ab initio* shall be excluded. However if after the exclusion of the aforesaid period, the period of limitation referred to in any provision of the Act is less than sixty days, such remaining period shall be extended to sixty days.
9. The Board is empowered to prescribe a Scheme providing for the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.
10. Where an application is made by a person for entering into such an APA, proceedings shall be deemed to be pending in the case of the person for the purposes of the Act like for making enquiries under Section 133(6) of the Act.
11. The person entering into such APA shall necessarily have to furnish a modified return within a period of three months from the end of the month in which the said APA was entered in respect of the return of income already filed for a previous year to which the APA applies. The modified return has to reflect modification to the income only in respect of the issues arising from the APA and in accordance with it.
12. Where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the agreement applies are pending on the date of filing of modified return, the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the agreement taking into consideration the modified return so filed and normal period of limitation of completion of proceedings shall be extended by one year. One will have to see how this can be implemented in a case where the reassessment has the effect of reducing the income already assessed while giving effect to the APA for normally it is not possible

in reopened proceedings to reduce the income already assessed.

13. If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies has been completed before the expiry of period allowed for furnishing of modified return, the Assessing Officer shall, in a case where modified return is filed, proceed to assess or reassess or recompute the total income of the relevant assessment year having regard to and in accordance with the APA and to such assessment, all the provisions relating to assessment shall apply as if the modified return is a return furnished under Section 139 of the Act. The period of limitation for completion of such assessment or reassessment is one year from the end of the financial year in which the modified return is furnished.
14. All the other provisions of this Act shall apply accordingly as if the modified return is a return furnished under Section 139.

The proposed amendments will take effect from 1st July, 2012.

Transfer Pricing Officer's Power on Transactions not referred to him

It is proposed to amend the Section 92CA of the Act retrospectively to empower Transfer Pricing Officer (TPO) to determine Arm's Length Price of an international transaction noticed by him in the course of proceedings before him, even if the said transaction was not referred to him by the Assessing Officer, provided that such international transaction was not reported by the taxpayer as per the requirement cast upon him under Section 92E of the Act.

The proposed amendment will take effect retrospectively from 1st June, 2002.

It is also proposed to provide an explanation to effect that due to retrospectivity of the amendment no reopening of any proceeding would be undertaken only on account of such an amendment.

The proposed amendment will take effect from 1st July, 2012.

Transfer pricing for domestic transactions

The Supreme Court in the case of *CIT Vs. Glaxo SmithKline Asia (P) Ltd.*, in its order has, after examining the complications which arise in cases where fair market value is to be assigned to transactions between domestic related parties, suggested that Ministry of Finance should consider appropriate provisions in law to make transfer pricing regulations applicable to such related party domestic transactions.

It is, therefore, proposed to amend the Act to provide applicability of transfer pricing regulations to

transactions between related resident parties for the purposes of computation of income, disallowance of expenses etc. as required under provisions of Sections 40A, 80-IA, 10AA, 80A, and sections where reference is made to Section 80-IA, or to transactions as may be prescribed by the Board, if aggregate amount of all such domestic transactions exceeds ₹5 crore in a year. It is further proposed to amend the meaning of related persons as provided in Section 40A to include companies having the same holding company.

The proposed amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the Assessment Year 2013-14 and subsequent assessment years. Consequently it is understood that these provisions cannot be applied to assessment years prior to assessment year 2013-14 even if an assessment or reassessment is pending as the proposed amendment is effective only to assessment year 2013-14 and onwards.

These provisions will apply only where the value of transactions exceed ₹5 crore and the documentation requirements will also be necessary. It will have to be seen how the documentation requirements will have to be met and further as to how the comparables can be obtained in such cases.

However, such assessee cannot approach the DRP but can only file an appeal with the Commissioner of Income Tax (Appeals) as there is no corresponding amendment proposed in the definition of the term eligible assessee to cover such assessee with specified domestic transactions.

Extension for time in filing return of income in TP cases

In case of non-corporate tax payers who have undertaken international transactions, the due date presently is the 30th of September of the assessment year. It is proposed to amend Section 139 to provide that even non-corporate tax payers with international transaction can file their returns by 30th November. This provision, it is proposed will be applicable with effect from assessment year 2012-13. There however seems to be no extension in time for filing the return of income for assessee with specified domestic transactions subject to transfer pricing.

It is proposed to provide that no penalty shall be levied for delay in furnishing of TDS statement if the TDS statement is furnished within one year of the prescribed due date after payment of tax deducted along with applicable interest and fee.

It is proposed that the benefit of the DTAA will be available only when a tax residence certificate is produced by a tax payer. ”



Dispute Resolution Panel

Appeal against directions of Dispute Resolution Panel (DRP)

It is proposed to amend the provisions of Section 253 and Section 254 of the Income-tax Act to provide for filing of appeal by the Assessing Officer against an order passed in pursuance of directions of the DRP in respect of an objection filed on or after 1st July, 2012.

Power of DRP to Enhance Variations

An *explanation* is proposed to be inserted in the provisions of Section 144C to clarify that the power of the DRP to enhance the variation shall include and shall always be deemed to have included the power to consider any matter arising out of the assessment proceedings relating to the draft assessment order. This power to consider any issue would be irrespective of the fact whether such matter was raised by the eligible assessee or not.

The proposed amendment will be effective retrospectively from the 1st day of April, 2009 and will accordingly apply to assessment year 2009-10 and subsequent assessment years.

General Anti-Avoidance Rules (GAAR)

It is proposed to provide General Anti Avoidance Rule in the Income-tax Act to deal with aggressive tax planning.

A. The main features are:-

- (i) An arrangement whose main purpose or one of the main purposes is to obtain a tax benefit and which also satisfies at least one of the four tests, can be declared as an “impermissible avoidance arrangements”.
- (ii) The four tests are—
 - (a) The arrangement creates rights and obligations, which are not normally created between parties dealing at arm’s length.

- (b) It results in misuse or abuse of provisions of tax laws.
 - (c) It lacks commercial substance or is deemed to lack commercial substance.
 - (d) Is carried out in a manner, which is normally not employed for bonafide purpose.
- (iii) It shall be presumed that obtaining of tax benefit is the main purpose of an arrangement unless otherwise proved by the taxpayer.
 - (iv) An arrangement will be deemed to lack commercial substance if –
 - (a) the substance or effect of the arrangement as a whole, is inconsistent with, or differs significantly from, the form of its individual steps or a part; or
 - (b) it involves or includes -
 - (i) round trip financing;
 - (ii) an accommodating party ;
 - (iii) elements that have effect of offsetting or cancelling each other; or
 - (iv) a transaction which is conducted through one or more persons and disguises the value, location, source, ownership or control of fund which is subject matter of such transaction; or
 - (c) it involves the location of an asset or of a transaction or of the place of residence of any party which would not have been so located for any substantial commercial purpose other than obtaining tax benefit for a party.
 - (v) It is also provided that certain circumstances like period of existence of arrangement, taxes arising from arrangement, exit route, shall not be taken into account while determining ‘lack of commercial substance’ test for an arrangement.
 - (vi) Once the arrangement is held to be an impermissible avoidance arrangement then the consequences of the arrangement in relation to tax or benefit under a tax treaty can be determined by keeping in view the circumstances of the case, however, some of the illustrative steps are:-
 - (a) disregarding or combining any step of the arrangement.
 - (b) ignoring the arrangement for the purpose of taxation law.
 - (c) disregarding or combining any party to the arrangement.
 - (d) reallocating expenses and income between the parties to the arrangement.
 - (e) relocating place of residence of a party, or location of a transaction or situs of an

asset to a place other than provided in the arrangement.

(f) considering or looking through the arrangement by disregarding any corporate structure.

(g) re-characterising equity into debt, capital into revenue etc.

(vii) These provisions can be used in addition to or in conjunction with other anti avoidance provisions or provisions for determination of tax liability, which are provided in the taxation law.

(viii) For effective application in cross border transaction and to prevent treaty abuse a limited treaty override is also provided.

B. The procedure for invoking GAAR is proposed as under:-

(i) It is proposed that the Assessing Officer shall make a reference to the Commissioner for invoking GAAR and on receipt of reference the Commissioner shall hear the taxpayer and if he is not satisfied by the reply of taxpayer and is of the opinion that GAAR provisions are to be invoked, he shall refer the matter to an Approving Panel. In case the assessee does not object or reply, the Commissioner shall make determination as to whether the arrangement is an impermissible avoidance arrangement or not.

(ii) The Approving Panel has to dispose of the reference within a period of six months from the end of the month in which the reference was received from the Commissioner.

(iii) The Approving Panel shall either declare an arrangement to be impermissible or declare it not to be so after examining material and getting further inquiry to be made.

(iv) The Assessing Officer (AO) will determine consequences of such a positive declaration of arrangement as impermissible avoidance arrangement.

(v) The final order in case any consequence of GAAR is determined shall be passed by AO only after approval by Commissioner and, thereafter, first appeal against such order shall lie to the Appellate Tribunal.

(vi) The period taken by the proceedings before Commissioner and Approving Panel shall be excluded from time limitation for completion of assessment.

(vii) The Approving Panel shall be set up by the Board and would comprise of officers of rank of Commissioner and above. The panel will have a minimum of three members. The procedure and working of Panel shall be administered through subordinate legislation.

In addition to the above, it is provided that the Board shall prescribe a scheme for regulating the condition and manner of application of these provisions.

The proposed amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the Assessment Year 2013-14 and subsequent assessment years. These provisions cannot be applied to assessment years prior to Assessment Year 2013-14 even if an assessment or reassessment is pending as it is effective only to Assessment Year 2013-14 and onwards.

While there is no right of appeal against the order of the panel, the final order of the Assessing Officer passed with the approval of the Commissioner of Income Tax is appealable before the Income Tax Appellate Tribunal.

These general anti-avoidance rules since they are proposed to be applicable only from Assessment Year 2013-14, it will not be possible to use it for earlier assessment years even in reopening proceedings.

Reassessment

It is proposed to amend the provisions of Section 149 so as to increase the time limit for issue of notice for reopening an assessment to 16 years, which hitherto was six years from the end of the assessment year where the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

Amendments are also proposed to be made in Section 147 of the Income-tax Act to provide that income shall be deemed to have escaped assessment where a person is found to have any asset (including financial interest in any entity) located outside India.

The proposed amendments to the provisions of Sections 147 and 149 will take effect from 1st July, 2012 for enabling reopening of proceedings for and assessment year commencing prior to this date.



Increase of the time limit for issue of notice for reopening an assessment to 16 years from six years is proposed. ☺☺

It is also proposed to amend the provisions of Section 139 so that furnishing of return of income under Section 139 may be made mandatory for every resident having any asset (including financial interest in any entity) located outside India or signing authority in any account located outside India. Furnishing of return by such a resident would be mandatory irrespective of the fact whether the resident taxpayer has taxable income or not.

The existing return forms would also have to be amended to require the assessee who is assessed to tax to disclose such particulars in their return of income.

It is also proposed that in a case where an international transaction or specified domestic transaction falling within TP requirement is not reported by the assessee, it will be a deemed escapement of income for the purpose of re-opening the assessment.

Time limit for completing assessment and reassessment

It is proposed to amend Sections 153 and 153B so as to provide that the time limits for completion of assessments and reassessments shall respectively be increased by three months.

The existing period and the new extended period for completion of pending proceedings and subsequent proceedings under these provisions is given below:

Limitation of time

Proceedings under Section	Current time allowed	Proposed Period
143	21 months from the end of the A.Y.	24 months
143 and 92CA	33 months from the end of the A.Y.	36 months
148	9 months from the end of the F.Y. in which notice issued	12 months
148 and 92CA	21 months from the end of the F.Y. in which notice issued	24 months
250 or 254 or 263	9 months from the end of the F.Y. in which order received	12 months
250 or 254 or 263 and 92CA	21 months from the end of the F.Y. in which order received	24 months

Consequential amendments have been made in the provisions of Section 17A of the Wealth-tax Act for increasing the time limit by three months for completion of assessment/reassessment proceedings.

It is also proposed that in a case where an international transaction or specified domestic transaction falling within TP requirement is not reported by the assessee, it will be a deemed escapement of income for the purpose of re-opening the assessment.



The proposed amendments will take effect from 1st July, 2012.

Notification of a class of search cases where compulsory reopening of past six years not required

Under the existing provisions of Section 153A of the Income-tax Act, it is mandatory to issue a notice for filing of tax returns for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted under Section 132 or requisition is made under Section 132A.

It is proposed that the provisions of Section 153A and 153C be amended so as to empower the Central Government to notify cases or class of cases in which the Assessing Officer shall not issue notice for initiation of proceedings for preceding six assessment years. However, action for completion of assessment proceedings for the assessment year relevant to the previous year in such class of cases in which search or requisition has been made would be taken. This would result in initiating assessment proceedings only for the assessment year relevant to the previous year in which search or requisition has been made.

Consequential amendments are also proposed to be made to the provisions of Section 296 of the Act.

The proposed amendments will take effect from the 1st day of July, 2012.

Fee for filing of applications before Authority for Advance Rulings (AAR)

It is proposed to amend the provisions of Section 245Q so as to provide for increase in the fee for filing an application for advance ruling from ₹2,500 to ₹10,000 or such fee as may be prescribed, whichever is higher.

The proposed amendment will take effect from the 1st day of July, 2012 and will accordingly apply to any application for advance ruling filed on or after the 1st day of July, 2012. ■

The Finance Bill, 2012 – Proposed Amendments In Provisions Relating to Various Deductions



In this article, amendments made by the Finance Bill 2012, in the areas of business expenditure and deductions under chapter VI-A of the Income Tax Act, 1961 have been highlighted. The article also analyses all amendments in respect of business expenditure with particular attention to investment-linked incentive u/s 35 AD, new deductions for expenditure on agricultural extension project and skilled development, rationalisation of the provision 40(a)(ia) and the far reaching amendment in Section 40A(2). All the amendments in Chapter VI-A particularly amendments in Sections 80C, 80D and 80-IA and the new provision of Section 80 TTA have also been discussed. Read on...

The Finance Bill, 2012 presented on 16th March, 2012 contains 112 clauses relating to various direct tax proposals seeking to modify certain existing provisions and insert certain new provisions. In this article an attempt is made to analyse the proposed amendments in provisions relating to various deductions from business income and deductions under Chapter VI-A.

Allowance for Additional Depreciation for Power Sector Under Section 32(1)(iia)

Section 32(1)(iia) provides for additional depreciation @ 20% of cost of new plant and machinery to an assessee engaged in manufacture or production of any article or thing. As an incentive to power sector the benefit of additional depreciation has been proposed to be extended to any assessee engaged in generation or generation and distribution of power with effect from Assessment Year 2013-14.

Extension of Period for Claiming Weighted Deduction of 200% for In-house Scientific Research Expenditure Incurred by a Company engaged in Business of Bio-technology or Manufacturing Any Article Under Section 35(2AB)

As per the existing provision the deduction is available for expenditure incurred upto 31st March, 2012. The said period is proposed to be extended from 31st March, 2012 to 31st March, 2017.

Weighted deduction for capital expenditure on certain specified businesses under Section 35AD and extension of such deduction to new specified businesses

At present investment-linked 100% deduction (i.e. deduction for capital expenditure for business) is



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provided under Section 35AD to assessee engaged in eight specified businesses. Initially, three specified businesses were covered by the Finance (No.2) Act, 2009. Thereafter, three more specified businesses were brought within the scope of this section by the Finance Act 2010. The Finance Act, 2011 extended the benefit of this section to two more specified businesses. The Finance Bill, 2012 proposes to bring three more businesses within the scope of Section 35D. These are business of setting up and operating an inland container depot or a container freight station notified/ approved under the Customs Act, 1962, business of bee-keeping and production of honey and beeswax and business of setting up and operating warehousing facilities for storing sugar.

Deduction for capital expenditure (other than cost of land, goodwill and financial instruments) is proposed to be enhanced from 100% to 150% for assessee engaged in the five specified businesses viz. (a) setting up and operating cold chain facility, (b) setting up and operating warehousing facility for storing agricultural produce, (c) building and operating hospital with minimum 100 beds for patients, (d) developing and building affordable housing projects under prescribed scheme and (e) production of fertilizers in India. Weighted deduction will be effective from assessment year 2013-14.

At present 100% of capital expenditure is allowed to assessee engaged in setting up and operating hotel of 2-star and above category. It is proposed that the owner shall be deemed to have been carrying on such specified business even if the operation of such business is transferred to another person. This proposal has been made in recognition of the fact that in hotel industry there is franchise business system where the owner may get the hotel operated by another entity under outsourcing arrangement.

New provision regarding weighted deduction for expenditure on agricultural extension project

For encouraging the business enterprises to provide better and effective agricultural extensive services a new Section 35CCC is proposed to be inserted with effect from assessment year 2013-14 to provide that where an assessee incurs any expenditure on agricultural extension project notified by the CBDT, the assessee shall be entitled to claim weighted deduction at 1.5 times of such expenditure.

New provision regarding weighted deduction for expenditure on skill development for company assessee

In National Manufacturing Policy notified by the Department of Industrial Policy and Promotion it was

The Finance Bill, 2012 proposes to bring three more businesses within the scope of Section 35D. These are business of setting up and operating an inland container depot or a container freight station notified/ approved under the Customs Act, 1962, business of bee-keeping and production of honey and beeswax and business of setting up and operating warehousing facilities for storing sugar. ”

proposed to provide tax incentive for skill development in manufacturing sector. In terms of such proposal new Section 35CCD is being inserted with effect from assessment year 2013-14 to provide that where a company incurs any expenditure (other than cost of land or building) on any notified skill development project, it will be entitled to claim weighted deduction at 1.5 times of such expenditure. It appears that capital expenditure other than cost of land/building qualifies for such deduction.

Rationalisation of the provision relating to disallowance of expenditure under Section 40(a) (ia)

The amendment for Rationalisation of the provision relating to disallowance of expenditure under Section 40(a)(ia) is in consequence of the amendment in Section 201. As per the proposed amendment if the payer fails to deduct the whole or any part of the tax as per the provision of Chapter XVII-B on the amount paid to any resident payee, the payer shall not be deemed to an assessee in default in respect of such tax, if the following conditions are satisfied:

- (a) The payee has furnished his return of income under Section 139;
- (b) He has included such income in the return of income;
- (c) He has paid the tax due on the income declared in such return of income
- (d) The payer furnishes a certificate of chartered accountant in prescribed form.

The date of payment of taxes by such payee shall be deemed to be the date of filing of his return of income.

Accordingly, as per the proposed amendment in Section 40(a)(ia) where an assessee fails to deduct whole or part of tax at source on any sum but is not deemed to be an assessee in default under Section 201(1), then for the purpose of Section 40(a)(ia) the assessee shall be deemed to have deducted and paid the tax on such sum on the date of filing of the return of income by the resident payee and

therefore, no disallowance under Section 40(a)(ia) shall be made.

Amendment of the provision of Section 40A (2) in respect of payment made to interested persons

This amendment is in consequence of the amendment in the provisions relating to transfer pricing from assessment year 2013-14. As per the amended Section 92 even any income arising from specified domestic transaction shall also be computed having regard to the Arm's length price, where the aggregate amount of such transactions exceeds in the previous year exceeds ₹5 crores. As per the proposed new Section 92BA "specified domestic transaction" shall include any expenditure for which payment has been made to interested persons referred to in Section 40A(2)(b).

Presently, Section 40A(2) provides that where an assessee incurs any expenditure in respect of which payment has been or is made to any person specified in clause (b) therein and if the Assessing Officer is of the opinion that the payment is excessive or unreasonable, having regard to the fair market value of goods or services received, such excess amount shall be disallowed. It is now proposed that disallowance on account of any expenditure, being excessive or unreasonable, having regard to the fair market value shall not be made under Section 40A (2), if such transaction is at arm's length price as defined in Section 92F. Thus, if the payment made to interested person referred to in Section 40A(2) exceeds the arm's length price computed under prescribed method (like comparable uncontrolled price method, cost-plus method, retail price method, etc.), the excess amount shall be liable to be disallowed.

Change in presumptive taxation provision under Section 44AD

As per the existing provision in case of eligible assessee engaged in eligible business a sum equal to 8% of turnover or gross receipts or any higher sum is deemed to be income from such business, where turnover or gross receipts does not exceed Rs. 60 lakhs. The said limit of turnover or gross receipts is proposed to be enhanced to ₹1 crore from assessment year 2013-14.

It is also proposed that this scheme of presumptive taxation shall not apply to a person carrying on profession specified in Section 44AA, a person earning commission or brokerage and a person carrying on business of agency.

Modification of certain provisions in Chapter VI-A

At present deduction under Section 80C is allowed in respect of payment of life insurance premium, if the

premium amount does not exceed 20% of the actual capital sum assured. It is now proposed that from assessment year 2013-14 deduction will be allowed, if the premium amount does not exceed 10% of capital sum assured. For this purpose, "capital sum assured" means the minimum amount assured under the insurance policy on happening of the insured event at any time during the term of the policy without considering the value of any premium agreed to be returned or any benefit by way of bonus or otherwise over the sum actually assured.

Benefit of deduction under Section 80D in respect of medical insurance premium is allowable upto maximum amount of ₹15,000 and in case of senior citizen, upto ₹20,000. The effective age of a senior citizen is proposed to be reduced from 65 years to 60 years from assessment year 2013-14. Similar amendment is proposed in Section 80DDB.

Benefit of Section 80D shall also be available in respect of payment for preventive health check up upto maximum amount of ₹5,000. However, this deduction is within the overall limit of ₹15,000/₹20,000. Payment for preventive health check up can be made in cash.

Deduction under Section 80G in respect of donation shall not be allowed from assessment year 2013-14 for donation in cash for a sum exceeding ₹10,000.

Similarly, deduction under Section 80GGA in respect of donation for scientific research or rural development shall not be allowed from assessment year 2013-14, if the payment for such donation is made in cash for a sum exceeding ₹10,000.

As per the provision of Section 80-IA profit of eligible undertaking is computed after adjustment of profit of such undertaking in respect of inter-undertaking transfer of goods or services and also transfer of goods or services from/to related party. At present such adjustment is made on the basis of the open market price of such goods or services. It is proposed that from assessment year 2013-14 that adjustment for inter-undertaking transfer of goods and services shall be made on the basis of open market price. or the arm's length price as defined in Section 92F, where the transfer of such goods or services is between related parties.

New provision in Chapter VI-A for deduction in respect of interest on savings account

A new Section 80 TTA is proposed to be inserted from assessment year 2013-14 to provide for deduction to individual and Hindu Undivided Family in respect of interest on savings account maintained with bank, a cooperative bank and post office for maximum amount of ₹10,000 from gross total income. ■

Shift from Profit-Linked Deduction to Investment-Linked Incentive

The Income-tax Act provided for profit linked exemption/deduction under various sections. Some of the exemptions or deductions were provided in the Section 10A, 10AA and 10B and Sections 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID and 80-IE. Such benefits were found to be inefficient, inequitable, imposing higher compliance and administrative burden, resulted in revenue loss, increased litigations and led to competitive demand for similar tax benefits. Further, these benefits also encouraged diversion of profits from the taxed sector to the exempt/untaxed sector. Therefore, w.e.f. assessment year 2010-11, a departure was made and now onwards incentive linked tax incentive (instead of profit linked exemption/deduction) shall be allowed to assessee carrying on certain specified business as it was felt that investment-linked incentive are relatively less distortionary in their impact. In this regard, section 35AD was inserted for specified business. Read on...

The Finance Act, 2009 introduced investment-linked tax incentive for the following businesses:—

- (a) Setting up and operating cold chain facilities for specified products;
- (b) Setting up and operating warehousing facilities for storage of agricultural produce;
- (c) Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network.

This was done with a view to creating rural infrastructure and environment friendly alternate means of transportation for bulk goods.

The Finance Act, 2010 also included the following business within the purview of specified business if they start functioning on or after 1-4-2010;

- (i) The business of building and operating anywhere in India, a new hotel of two-star or above category, as classified by the Central Government;
- (ii) Building and operating, anywhere in India, a new hospital with at least 100 beds for patients;
- (iii) Developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed.

The Finance Act, 2011 further included the following business within the purview of specified business, if they start functioning on or after 1-4-2011.

- (i) Developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed;
- (ii) Production of fertilizer in India.

The salient features of the new regime of investment-linked tax incentives are as follows:—

1. Nature and amount of deduction: 100% deduction shall be allowed an account of any expenditure of capital nature incurred wholly and exclusively for the purpose of the above specified business carried on by such assessee



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during the previous year in which such expenditure is incurred by him.

Expenditure incurred prior to commencement of operation to be allowed in the year of commencement of operation: The expenditure incurred, wholly and exclusively, for the purposes of any specified business, shall also be allowed as deduction during the previous year in which he commences operations of his specified business, if—

- (a) the expenditure is incurred prior to the commencement of its operations; and
- (b) the amount is capitalized in the books of account of the assessee on the date of commencement of its operations.

1. Any expenditure of capital nature shall not include any expenditure incurred on the acquisition of any land or goodwill or financial instruments.
2. The assessee carrying on business referred to in clause (iii) above shall be allowed, in addition to deduction under sub-section (1), a further deduction in the previous year relevant to the assessment year beginning on the 1st day of April, 2010, of an amount in respect of expenditure of capital nature incurred during any earlier previous year, if—
 - (a) such business has commenced its operation at any time during the period beginning on or after 1.4.2007 and ending on 31.3.2009; and
 - (b) no deduction for such amount has been allowed or is allowable to the assessee in any earlier previous year.

2. Conditions to be satisfied: This section applies to the specified business which fulfils all the following conditions:

- (i) It is not set up by splitting up, or the reconstruction, of a business already in existence;
- (ii) It is not set up by the transfer to the specified business of machinery or plant previously used for any purpose (See notes 2 and 3 in the box given below);
- (iii) Where the business is of laying and operating a cross country natural gas or crude or petroleum oil pipeline network, etc., it showed satisfy the following conditions also:
 - (a) It is owned by an Indian company or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act;
 - (b) It has been approved by the Petroleum and Natural Gas Regulatory Board established under sub-section (1) of section 3 of the Petroleum and Natural Gas Regulatory Board Act, 2006 and notified by the Central Government in the Official Gazette in this behalf;
 - (c) It has made not less than such proportion of its total pipeline capacity available for use on common carrier basis by any person other than the assessee or an associated person as prescribed by the Petroleum and Natural Gas Regulatory Board; and
 - (d) It fulfils any other condition as may be prescribed.

3. Deduction under Chapter VIA for such specified business not allowed: Where a deduction under this section is claimed and allowed in respect of the specified business for any assessment year, no deduction shall be allowed under the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" in relation to such specified business for the same or any other assessment year.

1. The Petroleum and Natural Gas Regulatory Board Regulations specify a common carrier capacity condition of one-third of the total capacity for natural gas pipeline network and one-fourth of the total capacity for petroleum product pipeline network.
2. Any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if—
 - (i) such machinery or plant was not, at any time prior to the date of the installation by the assessee, used in India;
 - (ii) such machinery or plant is imported into India from any country outside India; and
 - (iii) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.
3. Where in the case of a specified business, any machinery or plant or any part thereof previously used for any purpose is transferred to the specified business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in such business, then, for the purposes of clause (ii) of sub-section (2), the condition specified therein shall be deemed to have been complied with.
4. An "associated person", in relation to the assessee, means a person,—
 - (i) who participates, directly or indirectly, or through one or more intermediaries in the management or control or capital of the assessee;
 - (ii) who holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the capital of the assessee;
 - (iii) who appoints more than half of the Board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of the assessee; or
 - (iv) who guarantees not less than ten per cent of the total borrowings of the assessee.
5. "Cold chain facility" means a chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce.

6. The following provisions of section 80-IA, so far as may be, apply to this section in respect of goods or services or assets held for the purposes of the specified business.
- Section 80-IA(6) relating to transfer of goods or service from the specified business to another business of the assessee or vice versa at market value.
- Section 80-IA(7) relating to audit of accounts of the assessee and
- Section 80-IA(10) relating to transaction with the other assessee to be done at market value if it is closely connected.

Set Off and Carry Forward and Set Off of Loss of a Specified Business Referred to in Section 35AD [Section 73A]

The loss of a specified business referred to in section 35AD of any assessment year is allowed to be set off only against profit and gains, if any, of any other specified business. But if such loss of specified business has not been wholly set off, so much of the loss as is not so set off or the whole loss where the assessee has no income from any other specified business, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

- (i) It shall be set off against the profits and gains, if any, of any specified business carried on by him assessable for that assessment year; and
- (ii) If the loss can not be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

In other words, loss of specified business can be carried forward indefinitely till it is set off.

The loss of an assessee on account of a "specified business" claiming deduction under section 35AD would be allowed to be set off against the profit of another "specified business" under section 73A, whether or not the latter is eligible for deduction under section 35AD. Therefore, an assessee who currently operates a hospital or a hotel would be able to set off the profits of such business against the losses, if any, of a new hospital or new hotel which begins to operate after 1.4.2010 and which is eligible for deduction of expenditure under section 35AD.

Amendments Proposed by Finance Bill, 2012

A. Three new businesses included

It is proposed to include three new businesses as "specified business" for the purposes of the investment-linked deduction under section 35AD, namely:—

- (a) setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962;
- (b) bee-keeping and production of honey and beeswax; and
- (c) setting up and operating a warehousing facility for storage of sugar.

The dates of commencement of the "specified business" are detailed in section 35AD(5) as per which the date of

commencement of operations for availing investment linked deduction in respect of the three new specified businesses shall be on or after 1.4.2012.

These amendments will take effect from 1.4.2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

B. Deduction for five specified businesses enhanced from 100% to 150% of the capital expenditure

It is also proposed that the following specified businesses commencing operations on or after 1.4.2012 shall be allowed a deduction of 150% of the capital expenditure under section 35AD of the Income-tax Act, namely:—

- (i) setting up and operating a cold chain facility;
- (ii) setting up and operating a warehousing facility for storage of agricultural produce;
- (iii) building and operating, anywhere in India, a hospital with at least one hundred beds for patients;
- (iv) developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed; and
- (v) production of fertilizer in India.

This amendment will take effect from 1.4.2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

C. Deduction in case of an assessee engaged in the business of building and operating a hotel to be allowed even in a case where operations are carried on by another person

Currently, the investment-linked deduction under section 35AD is allowed to an assessee engaged in the business of building and operating a hotel whereby the deduction can only be granted to the owner of a hotel if he himself operates it.

In service industries like hotels, a franchisee business system exists where the hotel owner may get the hotel operated through an outsourcing arrangement.

Therefore, the Finance Bill, 2012 has provided a suitable clarification so that a hotel owner continues to be eligible for the investment-linked deduction under section 35AD if he, while continuing to own the hotel, transfers the operation of such hotel to another person. Accordingly, a new sub-section (1A) is proposed to be inserted in section 35AD to provide that where the assessee builds a hotel of two-star or above category as classified by the Central Government and subsequently, while continuing to own the hotel, transfers the operation thereof to another person, the assessee shall be deemed to be carrying on the specified business of building and operating hotel.

This amendment will take effect retrospectively from 1.4.2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent assessment years. ■

Amendments Relating to the Capital Gains Taxation



Primary focus of the Finance Bill, 2012 was to plug possible leakages of the revenues arising on account of shortcomings of the provisions of the Income-tax Act, 1961. With respect to the provisions relating to the Capital Gains taxation, amendments were equally divided between some substantive provisions introducing new incentives and plugging the loopholes. There are various clarificatory amendments made in the provisions dealing with the Capital Gains. While some of these clarificatory amendments have been given retrospective effects, some have been given prospective effect. Read on to know more...

The Finance Bill, 2012 ["the Bill"] seeks to make amendments which can be divided into the following broad topics:

- i) Retrospective amendments dealing with capital gains arising from transfer of shares of a foreign company with primary objective or effect of transferring management and control of a company / interest situated in India;
- ii) Retrospective amendments dealing with determination of cost of acquisition of capital assets in case of conversion of a proprietorship concern / partnership firm into a company;
- iii) Extension of benefit of deduction U/s. 54 B[Capital Gains on transfer of Agricultural Land] to HUFs;
- iv) Introduction of relief from capital gains tax on account of investment into MSME Company;
- v) Amendment dealing with determining full value of consideration received or accrued as a result of transfer, in case where the consideration is not ascertained or determined at the time of transfer;
- vi) Expanding scope of reference which can be made to the DVO U/s. 55 A;
- vii) Clarificatory amendment to Section 47 (vii) dealing with cases of amalgamation;

Note: The issue relating to the item (i), which primarily deals with the amendments to nullify the decision of the Hon'ble Supreme Court in the case of Vodafone, is dealt elsewhere in the journal and, therefore, that aspect has not been discussed herein.

Cost of Acquisition on Conversion

With a view to providing tax neutrality to corporatisation of a proprietorship concerns and partnership firm, amendments were made to the Income-tax Act, 1961 ["the Act"] by the Finance (No. 2) Act, 1999 by inserting Clauses (xiii) and (xiv) to Section 47 of the Act.



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Section 47 (xiii) covered two cases being (a) transfer of tangible or intangible asset by a firm to a company as a result of succession of a firm by a Company in the business carried on by the firm; and (b) transfer of a capital asset to a company as a result of demutualisation or corporatisation of a recognised stock exchange. Similarly, Section 47 (xiv) covered cases of transfer of capital asset or intangible asset by a proprietorship concern to a company as a result of succession of the sole proprietorship by a Company in the business carried on by the firm. By virtue of this provision, the transfer of assets involved was not regarded as transfer and was therefore not chargeable to capital gains tax.

However, to complete the tax neutrality, it ought to have been provided that cost of acquisition in the hands of the Company in such cases would be the same as the cost of acquisition of the assets so transferred would be the same as the cost of acquisition in the hands of the firm or sole proprietor as the case may be immediately prior to its transfer to the Company. However, necessary provisions with respect to the same were not made in the provisions of section 49 of the Act, which otherwise dealt with such type of cases of succession, providing that the cost of acquisition in the hands of the successor will be the same as the cost in the hands of the previous owner. To ensure that no assessee takes undue advantage of these provisions, an amendment is sought to be made by the Bill to Section 49 (1)(iii)(e). With this amendment, it would not now be permissible to take higher value as cost of acquisition in the hands of Company, even where the assets are transferred by the Firm / Sole Proprietorship at higher value. This amendment is sought to be made with retrospective effect from 1st April, 1999 i.e. right from the date on which this tax neutrality was provided for in the Act.

Exemption U/s. 54 B [Agricultural Land]

If an assessee transfers a land, which in the two years prior to the date of its transfer was used by him or his parents for agricultural purposes, and earns capital gains thereon [including capital gains arising from transfer of short term capital asset], the Assessee would be eligible for exemption, if and to the extent of such capital gain being used for purchase of another

land to be used for agricultural purposes. It was held in the case of *CIT vs. G. K. Devarajulu* (1991) 92 CTR (Mad) 184 : (1991) 191 ITR 211 (Mad) that benefit of section 54 B cannot be allowed if the transferor is an HUF, especially due to the usage of the words "or his parents" and it was held that the exemption U/s. 54 G is available only to an individual.. Similarly AP High Court¹ also took similar view and restricted exemption U/s. 54 G only to Individuals.

The Bill proposes to grant benefit of section 54 B also to the land owned by an HUF, if the said HUF has used it in 2 years immediately preceding the date of transfer for agricultural purposes. This amendment is sought to be effective from 1st April, 2013 and shall accordingly apply with effect from A.Y. 2013-14.

Capital Gains Exemption on Investment in New MSME Company

A new section 54 GB is sought to be inserted for granting exemption from Capital Gains arising from transfer of a long term capital asset [LTCG] being residential property [a house or a plot of land], if the same is invested in a newly formed company. The Scheme of the exemption works in the following manner:

- a) It applies to LTCG arising to an individual or an HUF on transfer of a residential property. Residential property for this purpose includes a house or a plot of land. Since the term a house or a plot of land are used as explaining the term "Residential Property", I am of the view that a house or a plot of land shall mean only residential house and residential plot. Accordingly a commercial house property or a plot of land for commercial purposes would be excluded from eligibility.
- b) The Assessee earning the LTCG is required to invest the net consideration so accruing as a result of transfer by way of subscription of equity shares of an eligible company on or before due date of filing the return of income for the year in which the LTCG arises;
- c) Eligible company for this purpose means, the company which fulfills each of the following conditions:
 - (i) It is a Company which is incorporated in India between 1st April of the PY in which the residential property is transferred and due date of filing the return of income for the said PY.
 - (ii) The Company is engaged in the business of manufacture of an article or thing;
 - (iii) It is a company which qualifies to be a "Small" or "Medium" enterprise under the Micro, Small and Medium Enterprises Act, 2006 [MSME Act]. It must be kept in mind that investment in Micro Enterprises is not eligible.

W With a view to providing tax neutrality to corporatisation of a proprietorship concerns and partnership firm, amendments were made to the Act by the Finance (No. 2) Act, 1999 by inserting Clauses (xiii) and (xiv) to Section 47 of the Act. ☺☺

¹ 291 ITR 98

The Bill proposes to grant benefit of section 54 B also to the land owned by an HUF, if the said HUF has used it in 2 years immediately preceding the date of transfer for agricultural purposes. This amendment is sought to be effective from 1st April, 2013 and shall accordingly apply with effect from A.Y. 2013-14. ☺☺

- (iv) The Assessee owns more than 50 % of the equity shares or more than 50 % of the voting power after subscription of shares.
- d) Further, the Company is required to invest the money so subscribed in new plant and machineries [other than excluded machineries] within a period of 1 year from the date of subscription of money by the Assessee; Investment in plant and machineries used in or outside India, any office appliances including computer or computer software, vehicle or any plant or machinery 100 % of the cost of which is allowed as deduction [as depreciation or otherwise] is not allowed to be made.
- e) Capital Gains exemption is available in proportion of the amount invested by way of subscription of equity shares to the net consideration. Accordingly if 100 % of the net consideration is invested in subscription of equity shares then 100 % capital gains is tax free, else proportionate amount would be allowed as exemption.
- f) It is also provided that it is obligatory to subscribe for shares on or before the due date of filing the return of income. However, the Company is given time of 1 year from the date of subscription to investment in plant and machineries. Accordingly, if the Company has not made investment in new plant and machineries on or before the due date of filing the return of income of the Assessee [individual or HUF], then the Company should deposit the money [to the extent not utilized for purchase of plant and machineries] in a separate bank account opened under a scheme notified for this purpose [Capital Gains Account Scheme]. The money deposited in this Account is to be utilized in the manner to be prescribed.
- g) Lock-in condition of 5 years is provided for the Assessee and also the Company, meaning that the Assessee cannot transfer the shares so subscribed for a period of 5 years from the date of subscription of shares and if the Assessee transfers these shares within the said period then capital gains exemption granted to that extent shall be taxed in the year in which the shares are sold in addition to the capital gains on sale of shares itself. Similarly, if the Company transfers the new plant and machineries

purchased out of the money subscribed, within a period of 5 years from the purchase of the new plant and machineries, then also the Assessee would be liable to pay tax on the capital gains to that extent in the year of such transfer by the Company. The Company would be liable to capital gains tax arising on transfer of the new plant and machineries.

In this deduction it should be kept in mind that the exemption is available not only for investment in new plant and machineries, but it has to be ensured that the company in which the investment is made is a newly incorporated company. Condition of holding more than 50 % of the shares is required to be complied with directly by the transferor and it is not permitted to hold shares through or together with relatives.

There is presently a restriction on transfer of shares by the Assessee during lock-in period, however, there appears to be no restriction on reducing the shareholding below 50 % within the lock in period of 5 years.

This exemption is available with effect from A.Y. 2013-14 and would accordingly apply to transfer of residential property referred to herein on or after 1st April, 2013.

Determination of Full Value of Consideration – Section 50 D

One of the essential conditions for the levy of capital gains tax is to determine full value of consideration accruing as a result of transfer. It has been held time and again if one of the major components of computing provision is not possible to be determined then the whole machinery provision fails and accordingly the charge of tax fails². There are times when the transfer of the Asset takes place based either on contingent payments on consideration payable based on future realisation, etc. In such a situation, since the consideration is not possible to be determined, alternative arguments were being taken that either the charge fails or capital gain tax is payable only when the consideration is finally ascertained. This resulted in either escapement of tax altogether or at least postponement of tax liability to a future date, when the transfer of the asset has taken place earlier.

It is proposed to insert Section 50 D by the Bill to provide that in cases where the consideration is not ascertainable or cannot be determined at the time of transfer then for computing capital gains, fair market value of such asset shall be treated as full value of consideration accruing or received as a result of such transfer.

This amendment will affect the case of joint development agreement done in the real estate, wherein similar arguments were being taken.

² B.C. Srinivasa Setty [1981] 128 ITR 294 and also Sunil Siddharthbhai 156 ITR 509

Reference to the Valuation Officer

Section 55A of the Act, provide that an AO is authorised to make a reference to a valuation officer for determining value of a capital asset, provided in his opinion the value ascertained by the Assessee is lower than the fair market value. Therefore, the AO was permitted to refer to valuation only cases of alleged undervaluation.

Section 55 (2)(b) of the Act, gives an option to the assessee to substitute fair market value as on 1st April, 1981 as cost of acquisition in case where the subject asset was held by him from a period anterior to 1st April, 1981. At times disputes have arisen, where in the opinion of the AO, the Assessee had taken higher FMV as on 1.4.1981 and accordingly taken higher indexed cost of acquisition and lower capital gains. In such an even the AO made references to the DVO for ascertaining the FMV as on 1st April, 1981.

It was held in several cases³ that power to refer the valuation as on 1.4.1981 is not available with the AO, as the primary condition that the value adopted by the Assessee is lower than the FMV is not satisfied [in these cases, the allegation is the converse]. Therefore, the references to the DVO were struck down as without jurisdiction and consequent additions were deleted.

To enable the AO to also make a reference in cases where in his view the value adopted by the Assessee is higher than the FMV, it is not provided that the AO can make a reference where in his opinion the value adopted by the Assessee is at variance with the FMV.

This amendment is made effective only from 1st July, 2012. It may accordingly and possibly not apply to references made prior to 1st July, 2012.

Amalgamation Cases

Section 47 (vii) of the Act, provides that when a shareholder holding shares in an amalgamating company transfer his share in pursuance of a scheme of amalgamation, such transfer is not treated as a transfer and accordingly no capital gains is levied. The exemption is subject to the conditions that:

- a) Transfer by him is in consideration of allotment of shares in the amalgamated company; and

It is proposed to insert Section 50 D by the Bill to provide that in cases where the consideration is not ascertainable or cannot be determined at the time of

transfer then for computing capital gains, fair market value of such asset shall be treated as full value of consideration accruing or received as a result of such transfer.

- b) The amalgamated company is an Indian Company.

In case where the Amalgamated Company holds shares of the Amalgamating Company, then in consequence of amalgamation no shares are allotted to the Amalgamated Company as a result of amalgamation, but the shares so held by it gets extinguished. As has been held in case of Anarkali Sarabhai⁴ extinguishment of shares would amount to transfer. Since in this case, there would not be any consideration received by allotment of shares as a result of transfer, there could have been tax implication in the hands of the Amalgamated Company and possible claim of loss on account of extinguishment.

To remove this hardship an amendment is sought to be made for providing that there would not be any requirement for allotting shares of the amalgamated company to the extent the shares of the amalgamating company are held by the amalgamated company.

Similar issue was also there in case of demerger as defined U/s. 2 (19AA) of the Act. In case of a demerger the shareholders of the Demerged Company [the Company whose undertaking is demerged] are required to be allotted shares of the Resulting Company in proportion to their holding of shares of the Resulting Company [the Company to whom the undertaking is transferred]. However, when the Resulting Company itself is one of the shareholders of the Demerged Company, then it would be incorrect to allot shares of the Resulting Company to itself and, therefore, the shares will be allotted only to the shareholders of the Demerged Company other than the Resulting Company. To ensure that such types of demergers also meet the tests of the definition of demerger as contained in section 2 (19AA), the definition is amended to provide that the shares are to be allotted proportionate basis, except where the Resulting Company is the shareholder of the Demerged Company.

This amendment is also proposed to be made effective from 1st April, 2013.

Conclusion

There are various clarificatory amendments made in the provisions dealing with the Capital Gains. While some of these clarificatory amendments have been given retrospective effects, some have been given prospective effect. It is further seen that clarifications given for removing hardship to the Assessee are made only prospectively. However, when such clarifications are given for nullifying a decision of a ruling or judgement of a high court against the tax department, the same have been given retrospective effect. It is my view that a consistent approach should be adopted in all fairness. ■

³ Umedbhai International [2011] 330 ITR 506 (Cal); HiabenJayantial Shah [2009] 310 ITR 31 (Guj)

⁴ [1997] 224 ITR 422 (SC), Also case of Mrs. Grace Collis [2001] 248 ITR 323 (SC)

Union Budget 2012: Extension of TDS and TCS Provisions to more Areas



The author in this write up has discussed the provisions relating to TDS and TCS proposed to be introduced in the Income-tax Act, 1961 by the Finance Bill, 2012. According to the author these provisions are justified on the ground of generating revenue to the Government early, but it needs to be ensured that the money collected through the new provisions by way of TDS & TCS goes to the kitty of the Government.

Introduction

Section 190 of the Income-tax Act, 1961 (the Act) provides for collection of tax by way of deduction at source (TDS) or collected by way of advance tax or recovered at source (TCS) as per the provisions of Section 206C of the Act. Thus, before a case is taken up for assessment for determination of tax liability of an assessee, he has already paid substantial amount by way of TDS & TCS and advance tax as per the provisions in Parts A, B, BB, C of Chapter XVII of the Act and also by way of self assessment at the time of submission of return if any tax is found due after adjustment of TDS, TCS & advance tax. In the discussion to follow, only new provisions relating to TDS and TCS proposed to be introduced in the Act are being considered. However, before that, the philosophy behind TDS needs to be briefly mentioned.

Why TDS?

Deduction of tax at source is a convenient way of tax collection since it helps in earlier collection of tax, lessens its impact for the deductees because the tax is deducted before receipt of the payments liable to tax. Practically no cost is incurred and botheration felt by the IT Department. The Government is also secured from the chances of losing tax in case the taxpayer's financial position worsens by the time the assessment gets finalised. Further, the person making a deduction of tax at source is required to pay such deducted amounts to the credit of the Central Government in the manner prescribed [Section 200]. Failure to make deduction where the law provides for one, and



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Deduction of tax at source is a convenient way of tax collection since it helps in earlier collection of tax, lessens its impact for the deductees because the tax is

deducted before receipt of the payments liable to tax

failure to make payment of the deducted amount of tax, amount to contumacious conduct on the part of the person liable to deduct and/or pay the tax and penal consequences follow for any such default [Section 201]. The person making the deduction has to furnish a certificate of such deduction in the prescribed form [Section 203]. He has to furnish the prescribed returns with the Assessing Officer for such deductions, etc. [Section 206]. In view of these advantages, the Government has been extending the coverage of TDS provisions to newer areas and the same has been done at the time of drafting the Finance Bill, 2012 also. The new proposals relating to TDS (and also TCS) coverage are being analysed in later discussion.

New areas of extension of TDS schemes

The new areas to which the TDS scheme has been extended are:

A. Deduction of tax at source on transfer of certain immovable properties

Vide Clause 73 of the Finance Bill, a new Section is being inserted as Section 194LAA after the existing Section 194LA. The contents of this clause are analysed in later discussion.

The proposed law

Under the existing provisions of the Act, on transfer of immovable property by a non-resident, tax is required to be deducted at source by the transferee. However, there is no such requirement on transfer of immovable property by a resident except in the case of compulsory acquisition of certain immovable properties.

Deemed consideration in certain situations

In order to collect tax at the earliest point of time and also to have a reporting mechanism of transactions in the real estate sector, it is proposed to insert a new provision to provide that every transferee, at the time of making payment or crediting any sum by way of consideration for transfer of immovable property (other than agricultural land), shall deduct tax, at the rate of 1 per cent of such sum, if the consideration paid or payable for the transfer of such property exceeds-

- (a) fifty lakh rupees in case such property is situated in a specified urban agglomeration; or
- (b) twenty lakh rupees in case such property is situated in any other area.

Ensuring compliance

It is proposed to provide that where the consideration paid or payable for the transfer of such property is less than the value adopted or assessed or assessable by any authority of a State Government for the purposes of payment of stamp duty, the value so adopted or assessed or assessable shall be deemed as consideration paid or payable for the transfer of such immovable property.

Care for taxpayers

For reducing the compliance burden on the transferee, it is proposed that a simple one page challan for payment of TDS would be prescribed containing details (including PAN) of transferor and transferee and also certain details of the property. The transferee would not be required to obtain any Tax Deduction and Collection Account Number (TAN) or to furnish any TDS statement as this would be mostly a one time transaction. The transferor would get credit of TDS like any other pre-paid taxes on the basis of information furnished by the transferee in the challan of payment of TDS.

Applicability of the new provision

As it is, an anti-evasion/avoidance provision, it is proposed to bring it into operation early after the passing of the Finance Act, 2012. Hence its date of operation has been proposed as 1st October, 2012.

B. TDS on remuneration to Director of Companies (Clause 71 of the Bill)

Presently, tax at source is deductible on remuneration/salary to the Managing or Whole Time Directors of the Companies. But not on payments which are not in the nature of salaries or on sitting fees paid to them. Hence it is proposed to amend Section 194J to provide that tax is required to be deducted on the remuneration paid to a director, which is not in the nature of salary, at the rate of 10 per cent of such remuneration. This change is proposed to be done by amending Section 194J. This provision is to be operative from 1st July, 2012.

In view of the advantages, the Government has been extending the coverage of TDS provisions to newer areas and the same has been done at the time of drafting the Finance Bill, 2012

It is proposed to insert a new provision to provide that every transferee, at the time of making payment or crediting any sum by way of consideration for transfer of immovable property (other than agricultural land), shall deduct tax, at the rate of 1 per cent of prescribed sum

Tax collection at source

A. Section 206C- Profits and gains from the business of trading in alcoholic liquor, forest produce, etc.

This section provides that every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in case or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax.

Sl.No.	Nature of goods	Percentage
(i)	Alcoholic liquor for human consumption (other than Indian made foreign liquor) and tendu leaves	Ten per cent
(ii)	Timber obtained under a foreign lease	Fifteen per cent
(iii)	Timber obtained by any mode other than under a forest lease	Five per cent
(iv)	Any other forest produce not being timber or tendu leaves	Fifteen per cent

The AO has been given power to restrict the operation of this section in some cases.

Tax at source is being collected presently by sellers from buyers of Tendu leaves, timber from forest lease or by other means, forest products other than timber or tendu leaves, scrap and also in respect of contracts for parking lot, toll plaza, mining and quarrying. The tax so collected is to be deposited to Government account.

B. TCS on bullion & jewellery

The application of collection at source provisions are proposed to be extended, from the angle of reducing the quantum of cash transactions to bullion and jewellery sector and for curbing the flow of unaccounted money in the trading system of bullion and jewellery. It is proposed to provide that the seller of bullion and jewellery shall collect tax at the rate of 1

per cent of sale consideration from every buyer of bullion and jewellery if sale consideration exceeds two lakh rupees and the sale is in cash. This would be irrespective of the fact whether buyer is a manufacturer, trader or purchase is for personal use.

This provision is to come into force from 1st July, 2012.

C. TCS on sale of certain minerals

Mining sector is an important segment of Indian economy but the trading of minerals remained largely unregulated resulting in non-reporting or underreporting of trading in minerals transactions for taxation purpose.

In order to collect tax at the earliest point of time and also to improve reporting mechanism of transactions in mining sector, it is proposed that tax at the rate of 1 per cent shall be collected by the seller from the buyer of the following minerals:

- (a) Coal;
- (b) Lignite; and
- (c) Iron ore

However, the seller shall not collect tax on sale of the said minerals if the same are purchased by the buyer for personal consumption. Further, the seller of these minerals shall not collect tax if the buyer declares that these minerals are to be utilised for the purposes of manufacturing, processing or producing articles or things.

This provision too is to be operative from 1st July, 2012.

Conclusion

These provisions are justified on the ground of generating revenue to the Government early. But it needs to be ensured that the money collected through the new provisions by way of TDS & TCS goes to the kitty of the Government. This may be a difficult exercise in the cases where tax is collected from jewellery and bullion sales and purchases where the seller is an individual whose identity may be difficult to establish and the money may not reach Government's account for that reason. Hence, safeguards will have to be provided concerning such collections.

Secondly, the new TDS rule regarding Director's remuneration may be hard in small companies where sitting fees are paid at the rate of say ₹2000 per meeting. Generally 4 or 5 meetings are held in a year. Hence a threshold limit needs to be prescribed for this. A limit of ₹10000 may be a good limit and tax may be deducted only in cases where payment increases ₹10000 in a year on the full amount. Section 194J provides a limit of ₹30000 in a year. ■

Service Tax Perspective of Finance Bill, 2012



Here, service tax perspectives of the Finance Bill, 2012, as the title suggests, have been presented and discussed. Service tax provisions have been in force since 1994, and up to the enactment of the Finance Bill, 2012, taxation especially with respect to service tax has been dealt with positively. The Bill has adopted a different approach, where any activity undertaken by a person for another for consideration will fall within the ambit of service tax. The services specified in the negative list of services as well as those exempted by virtue of an exemption notification, will not attract any service tax. By taking this single step, the scope of services which attract service tax has increased manifold. Many other changes regarding service tax have either been effected or are proposed to be effected in the Bill. Here, the author has attempted to deal with significant changes either effected or proposed to be introduced in the arena of service tax.

Introduction

Service tax provisions have been in force since 01.07.1994. Since then up to the enactment of the Finance Bill, 2012, the Central Government has followed the positive policy of taxation in respect of service tax. It means that in order to levy service tax on any service it must fall within the specified list of taxable services. However, the Finance Bill, 2012 has adopted an altogether different approach. According to a new approach, any activity undertaken by a person for another for consideration will fall within the ambit of service tax. However, those services which have been specified in the negative list of services as well as those services which are exempted by virtue of an exemption notification will not attract any service tax. Hence, by taking this single step, the scope of services which will attract service tax has increased manifold. Further, many other changes have either been effected or are proposed to be effected by the Finance Bill, 2012 in respect of service tax.



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Definition of "Service"-Section 65B (44) w.e.f. from Enactment of Finance Bill, 2012

The term *service* has not been statutorily defined in the Finance Act, 1994 [hereinafter abbreviated as "Act"]

right from the inception to enactment of the Finance Act, 2011. However, now the Central Government has defined the term *service*:

“Service” means any activity carried out by a person for another for consideration and *includes a declared service* but shall not include:-

- (a) An activity which constitutes merely-
 - (i) A transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - (ii) A transaction in money or actionable claim;
- (b) A provision of service by an employee to the employer in the course of or in relation to his employment;
- (c) Fees taken in any Court or Tribunal established under any law for the time being in force.

Further, *three Explanations* have also been appended to the above definition of term “service”. According to first Explanation nothing contained in this clause shall apply to:

- (A) The functions performed by the Members of Parliament, Members of the State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or
- (B) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- (C) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

In addition, the second explanation provides that an unincorporated association or body of persons and a member thereof shall be treated as distinct persons. Moreover, an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishment of distinct persons. The third explanation provides that a person carrying on business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory.

Change in Charging Section-Section 66B to be Inserted on Enactment of Finance Bill, 2012

It is worth highlighting that once the above definition of term service becomes effective, there will be change in charging section also. Thus, section 66B reads:

“There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent, on

the value of all services, other than those services **specified in the negative list**, provided or **agreed** to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.”

Declared Services- Section 66E w.e.f. the date of enactment of Finance Bill, 2012

Since, the term *service* includes a declared service, it becomes essential to understand the meaning and philosophy of the term *declared service*. If any of following activities is undertaken by a person for another consideration, it would tantamount to provision of service. It is worth appreciating that most of the following activities are already subject to levy of service tax. The purpose of bringing these services within the ambit of term *declared services* is to remove any kind of uncertainty for ensuring the uniform application of service tax law throughout the country.

S.No.	Brief Description
(a)	Renting of immovable property;
(b)	Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion certificate by the competent authority;
(c)	Temporary transfer or permitting the use or enjoyment of any intellectual property right;
(d)	Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software;
(e)	Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
(f)	Transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;
(g)	Activities in relation to delivery of goods on hire purchase or any system of payment by instalments;
(h)	Service portion in the execution of a works contract;
(i)	Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.

Since, the term *service* includes a declared service, it becomes essential to understand the meaning and philosophy of the term *declared service*. If any of following activities is undertaken by a person for another consideration, it would tantamount to provision of service. It is worth appreciating that most of the following activities are already subject to levy of service tax. ”



Negative List of Services-Section 66D w.e.f. Date of Enactment of Finance Bill, 2012

A careful perusal of new charging Section 66B reveals that service tax will be applicable on all services other than those services which are specified in the negative list. The list of services falling within the ambit of negative list has been given in Section 66D of the Bill. Here, it is sufficient to indicate that negative list in all covers 17 services, e.g. services provided by Government or a local authority, RBI, foreign diplomatic missions located in India, etc.

Significant Amendments in Service Tax Rules, 1994

Increase in Rate of Tax w.e.f. 01.04.2012

At present, service tax is levied at the rate of 10.3% on all taxable services. The said rate of tax will be increased to 12.36% with effect from 01.04.2012 by virtue of Notification no. 2/2012 dated 17.03.2012. Changes have also been made in respect of rate of tax in Service Tax Rules 1994 and Works Contract (Composition Scheme of Payment of Service Tax) Rules 2007.

Taxable Service	Special Rate of Tax w.e.f. 01.04.2012
Services In Execution of Works Contract	4.8%
Money Changer Services[Falling under Rule 6(7B) of Service Tax Rules, 1994]	
Up to ₹1,00,000/-	0.12% of the gross amount of currency exchanged, subject to minimum amount of ₹30/-
An amount exceeding ₹1,00,000/- and up to ₹10,00,000	120/- [calculated @ 0.12% on first ₹1,00,000] plus 0.06% [on the remaining balance] of the gross amount of currency exchanged
An amount exceeding ₹10,00,000/-	₹660 [calculated on first ₹10,00,000 as per above second slab] plus 0.012% [on the remaining balance] of the gross amount of currency exchanged, subject to maximum amount of ₹6,000/-
Distributor or Selling Agent of Lotteries[Falling under Rule 6(7C) of Service Tax Rules, 1994]	
If the lottery or lottery scheme is one where guaranteed prize payout is more than 80%	₹7,000/- on every ₹10 lakh (or part of ₹10 Lakh) of aggregate face value of lottery tickets printed by the organizing State for a draw
If the lottery or lottery scheme is one where guaranteed prize payout is less than 80%	₹11,000/- on every ₹10 lakh (or part of ₹10 Lakh) of aggregate face value of lottery tickets printed by the organizing State for a draw

The special rate of tax payable in respect of life insurance business services (falling under Rule 6(7A) of Service Tax Rules, 1994) has also been increased from 1.5 % to 3 % in respect of first year premium charged from policy holders. However, in all subsequent years, the rate of service tax has been retained at 1.5% of the amount of premium.

Exemption of 60% to Transport of Passengers by Air Services w.e.f. 01.04.2012

Exemption of 60% has been provided in respect to

services provided by an aircraft in relation to scheduled or non-scheduled air transport vide Notification no. 06/2012 dated 17.03.2012.

Extension of Time limit for Issuance of Invoice (Rule 4A)

In terms of Rule 4A of STR, 1994 prevailing up to 31-03-2012 a service provider is required to issue an invoice either within 14 days from the date of completion of service or receipt of any payment received against such taxable service, whichever is earlier. However, with effect from 01.04.2012, the above-mentioned time limit of 14 days stands revised:

A service provider providing any service other than Banking & other financial services	30 days from the date of completion of relevant taxable service.
A service provider providing engaged in providing Banking & other financial services	45 days from the date of completion of these taxable services

No Need to Issue Supplementary Invoice in Specific Situation (Sixth Proviso to Rule 4A)

With effect from 01.04.2012 where taxable service provider receives an amount up to ₹1000/- in excess of the amount as indicated in the invoice, no supplementary invoice is required to be issued provided that service provider has opted to determine the point of taxation based on the option given in Point of Taxation Rules, 2011 [hereinafter abbreviated as POT Rules, 2011]. In simple words, in the above situation, an exception has been carved out where a service provider need not comply with the POT Rules, 2011. This relaxation will benefit all service providers, particularly service providers engaged in providing telecommunication services and providing credit card, debit card and charge card services.

Payment of Service Tax (Rule 6) w.e.f. 01.04.2012

Two new provisos will be inserted to Rule 6(1) of Service Tax Rules 1994 with effect from 01.04.2012. The two new provisos stipulate:

- According to newly inserted third proviso taxable services covered under Rule 3(1) of Service Tax Rules, this sub-Rule shall not apply if the payment is received within the period specified by the R.B.I. including such extended period as may be allowed from time to time. In simple words, the special dispensation allowed to Exporters of Services under Rule 7(a) of the POT Rules, 2011 has been shifted to Service Tax Rules with a view to ensure certainty in the application of rate of tax

while retaining the benefit of payment of tax until payment is received.

- According to newly inserted fourth proviso in case of individuals and partnership firms whose aggregate value of taxable services provided from all the premises does not exceed ₹50 lakh in the preceding financial year, the service provider shall have an option to pay tax on taxable services provided or to be provided by him up to ₹50 lakh in the current financial year, by the dates specified in this sub-rule with respect to the month or quarter, in which payment is received. It is worth highlighting that earlier only eight categories of service providers (including practicing CAs) were entitled to deposit service tax on receipt basis. However, with effect from 01.04.2012, all service providers have been given the benefit of depositing tax on receipt basis if their aggregate value of taxable services does not exceed ₹50 lakh in the preceding financial year.

Certain Relaxations for Self-Adjustment of Excess Tax Paid (Rule 6(4B) of STR, 1994 w.e.f. 01.04.2012)

The upper ceiling of ₹2,00,000/- of self-adjustment of service tax has been removed with effect from 01.04.2012. Further, the details and reasons for such self-adjustment need not be intimated to the Superintendent of Central Excise with effect from 01.04.2012.

Amnesty from Penalty in r/o Renting of Immovable Property Services- Insertion of Section 80(2)

If tax on renting of immovable services as due on 06.03.2012 is fully deposited along with interest within six months from the date on which the Finance Bill, 2012 receives the assent of the President, no penalty will be levied.

Important Changes in Point of Taxation Rules w.e.f. 01.04.2012

Amendment in definition of "Continuous Supply of Service":

Notification no. 4/2012 dated 17.03.2012 has amended the definition of Continuous Supply of Service. As per current position, the term "Continuously" is generally

The special rate of tax payable in respect of life insurance business services (falling under Rule 6(7A) of Service Tax Rules, 1994) has also been increased from 1.5 % to 3 % in respect of first year premium charged from policy holders. However, in all subsequent years, the rate of service tax has been retained at 1.5% of the amount of premium.

A ccording to newly inserted third proviso taxable services covered under Rule 3(1) of Service Tax Rules, this sub-Rule shall not apply if the payment is received within the period specified by the R.B.I. including such extended period as may be allowed from time to time. ”



misunderstood as the service which takes more than three months for completion. However, with the insertion of the words **or on recurrent basis**, it has been clarified that even if same service is provided repeatedly under the contract for a period exceeding three months in such a case same will be considered as “Continuous Supply of Service”.

Insertion of New Rule regarding Date of Payment:

After Rule 2 of Point of Taxation Rules, 2011, Rule 2A has been inserted which defines the **Date of Payment**. The Department has, inter alia, clarified vide D.O.F. No. 334/1/2012-TRU dated 16.03.2012 that a new rule has been created keeping in view impending change in rate effective from April 1, 2012 and introduction of Negative List at a later date. In normal circumstances this date shall be earlier of the dates of entry into books of accounts or actual credit in the bank account (when applicable). However, when there is change in effective rate of tax or a new levy between the said two dates, the date of payment shall be date of actual credit in the bank account, if the amount is credited through a banking instrument more than four working days after the date of such change.

Amendment in Determination of Point of Taxation (Rule 3):

Following provisos are being inserted in the Rule 3 after Clause (b):

- (i) In case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service

provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service;

- (ii) Wherever the provider of taxable service receives a payment up to rupees one thousand in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined in accordance with the provisions of Clause (a).

The first proviso is nothing but is the explanation which was firstly appended to the Rule 6 of POT Rules, 2011. There is no difference in the Rule 3 and the Rule 6 of POT Rules, 2011 except this explanation. Now, this explanation has been incorporated in the Rule 3 itself by way of proviso. *Consequently, Rule 6 of Point of Taxation Rules, 2011 has been omitted.*

The second proviso has been newly inserted in the Rule 3 of POT Rules, 2011. As per this proviso, if a service provider receives payment up to ₹1,000 in excess of the amount specified in the invoice, in that case service provider has an option to pay tax as per the provisions of Clause (a) of the said Rule. This amendment has been made in order to make the relevant amendment in Rule 4A (by inserting sixth proviso) of STR, 1994 workable.

Amendment in respect to Payment of Tax in Cases of New Services (Rule 5) Current Position:

Presently Rule 5 reads as under:

“5. Payment of tax in cases of new services.-

Where a service, **not being a service covered by rule 6**, is taxed for the first time, then, –

- (a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;
- (b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been **issued within the period referred to in Rule 4A of the Service Tax Rules, 1994**”.

Now, Rule 5 has been substituted with the following new Rule:

“5. Payment of tax in case of new services.—

Where a service is taxed for the first time, then,—

- (a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;
- (b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued **within fourteen days of the date when the service is taxed for the first time.**”.

It is apparently clear from the aforesaid provisions

that there are two major differences in the both new Rule 5 and Rule 5 which is to be substituted. These have been discussed as under:

- (1) *Omission of words "not being a service covered by rule 6"*: Since, Rule 6 itself has been omitted; these words are of no significance in this Rule.
- (2) Substitution of words *"issued within the period referred to in rule 4A of the Service Tax Rules, 1994"* with *"issued within fourteen days of the date when the service is taxed for the first time"*

Rule 7 regarding Specified Services or Persons Amended:

A new Rule 7 has been substituted in place of the old Rule 7. As per the current Rule, notwithstanding anything contained in the POT Rules, 2011, the point of taxation in respect of following Services is the *date on which payment is received or made*:

- (a) The services covered by *sub-Rule (1) of Rule 3* of Export of Services Rules, 2005;
- (b) The persons required to pay tax as recipients under the rules made in this regard in respect of services notified under *sub-Section (2) of Section 68* of the Finance Act, 1994;
- (c) Individuals or proprietary firms or partnership firms providing following taxable services
 - (i) Consulting Engineer's Service [65 (105)(g)]
 - (ii) Architect's Services [65 (105)(p)]
 - (iii) Interior Decorator's Service [65 (105)(q)]
 - (iv) Chartered Accountant Service [65 (105)(s)]
 - (v) Cost Accountant Service [65 (105)(t)]
 - (vi) Company Secretary Service [65 (105)(u)]
 - (vii) Scientific and Technical consultancy [65 (105)(za)]
 - (viii) Legal Service [65 (105)(zzzzm)]

However, as per the substituted Rule 7 with effect from 01.04.2012, point of taxation in respect of the persons required to pay tax as recipient of service shall be the date on which payment is made, provided payment should be made within six months of the date of invoice. Further, as per substituted second proviso to Rule 7 in case of *associated enterprises*, where the person providing the service is located outside India, the point of taxation shall be the *date of debit (under the erstwhile second proviso it was date of credit)* in the books of account of the person receiving the service or date of making the payment whichever is earlier.

On the other hand, in case of export of services & above-mentioned eight specified services, the point of taxation is the date of payment. The special dispensation has been shifted from the POT Rules to Service Tax Rules with a view to provide certainty in the application of rate of tax.

Determination of Point of Taxation on the basis of Best Judgment:

A new Rule 8A has been inserted by which power has been granted to Central Excise Officer to determine Point of Taxation by way of Best Judgment where the tax-payer is unable to furnish the necessary details i.e. date of payment or date of invoice or both for determining the Point of Taxation.

Exemption to Small Service Providers w.e.f. 01.04.2012:

Amendment has been made in the meaning of term "aggregate value" [vide notification 5/2012 dated 17.03.2012] keeping in view the fact that first clearances up to ₹10 lac will be constituted in terms of invoices and not payments received.

Deferring tax on Transport of Goods by Rail Services:

Following three notifications has been issued for extending the exemptions/ provisions governing taxability of "Transport of Goods by Rail" to 01.07.2012:

Notification No	Purpose
7/2012 dated 17.03.2012	Exemption to goods transported by rail
8/2012 dated 17.03.2012	Exemption to specified goods
9/2012 dated 17.03.2012	Abatement of 70%

Provisions Applicable w.e.f Date on which Proposed Section 66B is Made Applicable

Amendment in Service Tax (Determination of Value) Rules, 2006:

Notification No. 11/2012 dated 17.3.2012 amended Service Tax (Determination of Value) Rules, 2006. The amendment Rules shall come in to force on the date



However, as per the substituted Rule 7 with effect from 01.04.2012, point of taxation in respect of the persons required to pay tax as recipient of service shall be the date on which payment is made, provided payment should be made within six months of the date of invoice. ”

on which section 66B of the Finance Act, 1994 comes in to effect.

Determination of Value in respect to Services in Execution of Works Contract (Rule 2A):

Rule 2A of the Rules has been substituted by new Clause 2A. New Rule 2A uses the words *in Clause (8) of the Section 66E of the Act in place of in sub-Clause (zzzza) of Clause (105) of Section 65 of the Act* used in erstwhile Rule 2A. Similarly, words or sales tax as the case may be have been deleted from the erstwhile Rule 2A(ii) and the same has been reframed as "Clause (c)" under the explanation to Rule 2A(i) in new amended Rules. New Rule 2A(ii) has been inserted stating that where value has not been determined under Clause (i), the person liable to pay tax on the taxable service involved in the execution of the works contract shall determine in the manner prescribed there.

As per Rule 2A(ii), where value has not been determined under Rule 2A(i) same may be determined:

- (A) If work contract has been entered into for execution of *original works* then tax shall be payable on 40% of *total amount* charged for the work contract. It is also provided that where gross amount charged for execution of work contract includes the value of land tax shall be payable on 25% of the total amount including such gross amount
- (B) In case of other works contract including completion



After Rule 2 of Point of Taxation Rules, 2011, Rule 2A has been inserted which defines the *Date of Payment*. The Department has, inter alia, clarified vide D.O.F. No. 334/1/2012-TRU dated 16.03.2012 that a new rule has been created keeping in view impending change in rate effective from April 1, 2012 and introduction of Negative List at a later date.☺☺

and finishing services not covered under Clause (A) service tax shall be payable on 60% of the total amount charged for the works contract.

Terms *original works* and *total amount* have been explained in the explanation to Clause (B). Original works means all new construction and all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable. Similarly, total amount means sum total of gross amount and the value of all goods (excluding the VAT tax paid, if any) and services supplied free of cost for use in or in relation to the execution of works contract, under the same contract or any other contract. For a situation, where value of goods or services supplied free of cost is not ascertainable, the same shall be determined on the basis of fair market value of the goods or services that have closely available resemblance.

Determination of Value of Taxable Service involved in Supply of Food and Drinks in a Restaurant or as Outdoor Catering:

New Rule 2C has been inserted after Rule 2B. New Rule 2C deals with determination of value of taxable service involved in supply of food and drinks in a restaurant or as outdoor catering. Rule 2C states that, subject to Section 67 of the Finance Act, 1994, value of taxable service involved in the supply of food or drinks for consumption in a restaurant shall be 40% of the total amount and if provided as an outdoor caterer shall be 60% of the total amount. For the purpose of Rule 2C "total amount" has been defined in explanation 1 to Rule 2C. "total amount" means the sum total of gross amount and the value of all goods (excluding the VAT tax paid, if any) and services supplied free of cost for use in or in relation to supply of food or any other article of human consumption or any drink, under the same contract or any other contract. It is also provided that where value of goods or services supplied free of cost is not ascertainable, the same shall be determined on the basis of fair market value of the goods or services that have closely available resemblance. Explanation 2 to Rule 2C states that any goods mentioned under chapter 1 to 22 of the CETA, 1985[which deals with food and beverages] mean for human consumption shall not be considered as "input" for service portion in an activity wherein goods, being food or any other article of human consumption or drink is supplied in any manner as part of activity.

Inclusions & exclusions in the Value of Taxable Service (Rule 6):

Under Rule 6 of the erstwhile Rules, under sub-rule (i)

Terms *original works* and *total amount* have been explained in the explanation to Clause (B). *Original works* means all new construction and all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable. ”



words “in any manner; and” in clause (viii) has been substituted by words “in any manner”. A new inclusion in the value of taxable service namely “*the amount realized as demurrage or by any other name whatever called for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service*” has been added to the list of inclusions.

Further, in sub-Rule (2) (which deals with exclusions) for Clause (iv) (which used to read *Interest on loans*), the following clause shall be substituted:

1. Interest on-
 - (a) deposits; and
 - (b) delayed payment of any consideration for the provision of services or sale of goods; and
- After clause (v), the following clause shall be inserted:
- (vi) Accidental damages due to unforeseen actions not relatable to the provision of service.

Rule 7 of the erstwhile Rules has also been omitted altogether by amendment Rules 2012.

Exemption Notification:

Notification no 12/2012 dated 17.03.2012 has granted exemption to specified services and specified service providers/recipients.

Abatements in respect of Certain Services w.e.f. Date on which Section 66B Comes into Effect

The following table briefly exhibits the comparative position of taxability after availing benefit of abatements in respect of specified services:

Sl. No.	Name of Taxable Service	Existing Taxable Portion	Proposed Taxable Portion	CENVAT Credit
1.	Convention center or mandap with catering	60%	70%	All credit except on inputs, of Chapter 1 to 22 of CETA, 1985 will now be available.
2.	Pandal or Shamiana with catering	70%	70%	
3.	Costal Shipping	75%	50%	No Credit as at present
4.	Accommodation in hotel etc.	50%	60%	Credits on input services allowed
5.	Railways: goods	30%	30%	All credits will be allowed
6.	Railways: Passengers	New Levy	30%	All credits will be allowed

It is clarified that above list is illustrative only.

Service Tax Liability under Reverse Charge

Normally a service provider is liable to discharge/deposit Service Tax to the credit of Central Government. However in order to safeguard the revenue in certain situations the liability for discharging Service Tax liability has been shifted to service recipients which is popularly known as ‘Reverse charge Mechanism’.

Position prior to enactment of Finance Bill 2012

The services used to fall within the ambit of Section 68(2) read with Rule 2(1)(d) of Service Tax Rules, 1994 are goods transport agency, general insurance business, insurance auxiliary service by an insurance agent, service provided by a person from a country

other than india, business auxiliary service of mutual fund distributor and sponsorship service.

Position after Enactment of Finance Bill 2012

The scope of Reverse charge mechanism has been enlarged by including within its ambit 10 services in total. Besides, it is also worth mentioning that for the first time in respect of certain taxable services liability for payment of service tax has been shifted to be discharged both by the relevant service provider as well as the service receiver.

The services in relation to which both service recipients as well as the service providers are required to discharge service tax liability in a specified proportion are:

This mechanism of distribution of service tax liability between the service provider and service recipient shall only be applicable if such services are provided by any individual, Hindu undivided family, proprietary firm, partnership firm whether registered including association of persons, located in the taxable territory to any body corporate.

In addition to the services specified in the table above, the following services have also been added vide Notification No. 15/2012 wherein service tax is payable by the recipient of service:

- a) Services provided or agreed to be provided by an Arbitral Tribunal



Normally a service provider is liable to discharge/ deposit Service Tax to the credit of Central Government. However in order to safeguard the revenue in certain situations the liability for discharging Service Tax liability has been shifted to service recipients which is popularly known as 'reverse charge mechanism'.

- b) Services provided or agreed to be provided by an Individual Advocate
c) Services provided or agreed to be provided by way of support service by Government or local body.

Significant Changes in CENVAT Credit Rules, 2004 w.e.f. 01.04.2012 unless otherwise Specified

Various changes have been effected in CENVAT Credit Rules, 2004 by Notification No. 18/2012-Central Excise (N.T.) dated 17.03.2012. However, here only the most important changes have been given:

A. Substitution of Rule 5 w.e.f. 01.04.2012:

This Rule deals with refund of CENVAT credit. The substituted Rule 5 does not require any kind of correlation between exports and input services used in such exports. In other words, duties or taxes paid on any goods or services which qualify as inputs or input services will be entitled to be refunded in the ratio of export turnover to the total turnover.

B. Change in Rule 6(3) w.e.f. 01.04.2012:

Consequent upon increase in rate of service tax from 10% to 12%, the service tax rate for CENVAT reversal in respect of exempt services has also been increased from 5% to 6% of the exempted services.

C. Enlargement of Scope of Duty Paying Documents Specified under Rule 9(1) w.e.f. 01.04.2012:

Rule 9(1)(e) has been substituted with a view to allow availment of credit on the basis of a challan evidencing payment of service tax by the service recipient as the person liable to pay service tax.

D. Amendment in Rule 14 w.e.f. 17.03.2012:

Rule 14 deals with recovery of CENVAT credit wrongly taken or erroneously refunded. The words *taken or utilised wrongly* have been substituted with the words *taken and utilised wrongly*. The effect of aforementioned substitution is that interest does not become recoverable in a situation where the assessee by mistake takes the CENVAT credit but reverses the same before its utilization.

Conclusion

The Finance Bill, 2012 proposes to make multi-dimensional changes in the scope of service tax. In order to properly understand these changes, thorough reading of the relevant Act, rules and notifications, circulars and departmental clarifications is required. Finally, these changes have also enlarged the scope for professional services provided by chartered accountants. ■

Finance Bill-2012: An Analysis of Major Amendments in Penal Provision under Direct Taxes



This article presents multi-dimensional discussion on the newly-introduced penal provisions proposed by the Union Finance Minister Shri Pranab Mukherjee in his Finance Bill-2012. Leave aside his intentions, it would be actually interesting to observe the proposed penal provisions under the Direct Taxes. Major amendment proposed in the penal provisions under the Direct Taxes through Finance Bill-2012 is in the form of newly-introduced Section 271AAB, which is related to the penalty imposable on the *undisclosed income* found during the course of search initiated under Section 132 of the Income-tax Act, 1961, which pertains to a *specified previous year*. The article also discusses the concerns of a *tax deductor* in our country, as compliance with TDS formalities not a simple job. In this regard, the article focuses on the further proposed penal provisions in this respect applicable for the TDS/TCS returns related to the tax deducted or collected for the period commencing on and from 1st July, 2012. Read on:

The Finance Minister Mr. Pranab Mukherjee, in Finance Bill-2012 presented on 16th March, 2012, has proposed very few changes in the penal provisions under Direct Taxes, but whatever proposed in this respect has a very wide effect on the taxpayer community. Let us first pay attention to an interesting quote from the Finance Minister during the presentation of his Budget speech: *The life of a finance minister is not easy. Various players, including policy-makers, politicians, agriculturists and business houses, participate in the making of the economy. When everything goes well with the economy, we all share in the joy. However, when things go wrong, it is the Finance Minister who is called upon to administer the medicine. Economic policy, as in medical treatment, often requires us to do something, which, in the short run, may be painful, but is good for us in the long run. As Hamlet, the Prince of Denmark, had said in Shakespeare's immortal words, "I must be cruel only to be kind."*

This quotation has many dimensions with applicability to most of the direct and indirect provisions proposed by Mr. Mukherjee; but if we are looking for some proposal where his words directly apply to, it would be the newly-introduced penal provisions proposed by him in the Finance Bill-2012. His intention may or may not literally be true, but it would be interesting to observe how that is suitably applicable to the proposed penal provisions under the Direct Taxes.



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Penalty on Undisclosed Income Found during Search Section- 271AAB

This *major amendment* proposed in the penal provisions under the Direct Taxes through Finance Bill-2012 is in the form of newly-introduced Section 271AAB, which is related to the penalty imposable on the *undisclosed income* found during the course of search initiated under Section 132 of the Income-tax Act, 1961 which pertains to a *specified previous year*. The provisions in this respect are still there in the form of Section 271AAA, but it is proposed to insert a new and stringent Section 271AAB, which will be applicable in the cases where search has been initiated on or after 1st July, 2012. New provisions proposed through this Section 271AAB applicable on search initiated on or after 1st July, 2012, can be understood:

1. **Penalty @ 10% of the undisclosed Income of the specified previous year:** if the assessee admits such *undisclosed income* during the course of search in his statement under Section 132(4), specifies and substantiates the manner in which such income is derived, pays the tax along with interest and files return before the *specified date*, he will be liable to a penalty of 10% of such *undisclosed income*, which can be described as *Concessional* penalty, i.e. first slab of penalty under Section 271AAB.
2. If such *undisclosed income* is not admitted during the course of search, but disclosed in the return of income filed after the search but before *specified date* along with paying the tax and interest thereon, the taxpayer will be liable to a penalty of 20% of such *undisclosed income*, i.e. second slab of the penalty.
3. If such *undisclosed income* is neither admitted during the course of search as mentioned in the aforementioned situation 1 nor disclosed in the ITR filed after the search with paying the tax and interest on it before specified date as in the aforementioned situation 2, the taxpayer will be liable to a penalty of a minimum of 30% and a maximum up to 90% of the undisclosed income, i.e. third and highest slab of the penalty.

Here, kindly note that the meaning of *undisclosed income* and *specified previous year* is the same as given in the existing corresponding Section 271AAA of the Income-tax Act, 1961 in this respect and, further, there was no mention of specified date in the existing Section 271AAA. Hence, it is defined in Section 271AAB. For better understanding of this newly-proposed penal provisions, let us observe the definitions of *specified date*, *specified previous year* and *undisclosed income*:

1. *Specified date means*—the due date of furnishing of return of income under sub-Section (1) of Section 139 or the date on which the period specified in the notice issued under Section 153A for furnishing of return of income expires, as the case may be.
2. *Specified previous year means*—the previous year (i) which has ended before the date of search, but the date of furnishing the return of income under sub-Section (1) of Section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the date of search; or (ii) in which search was conducted.
3. *Undisclosed income means*—(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under Section 132, which has—(A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or (B) otherwise not been disclosed to the Chief Commissioner or Commissioner before the date of search; or (ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.

To analyse the newly-proposed penal provisions under Section 271AAB, let us observe the existing Section 271AAA in this respect:

The *existing provision* is given in Section 271AAA, which is only applicable on search initiated on or before 30th June, 2012. Let us observe the existing provision:

1. Undisclosed income found during the course of search pertains to a *specified previous year* — the definition of specified previous year is mentioned above.
2. If the taxpayer admits such undisclosed income during the course of search in a statement under Section 132(4), specifies and substantiates the manner in which he derives the income and pays the tax together with the interest thereon, *no* penalty is payable.
3. If such undisclosed income is not admitted at the time of search along with complying all the conditions mentioned in the above-mentioned point 2, a penalty of 10% of the undisclosed income will be payable.

See that *no penalty is payable* in the aforementioned situation mentioned in point 2 under existing Section 271AAA and we can consider *confession of such undisclosed income during the course of search and payment of tax and interest on it* as immunity from penalty at present, but now in the same type of situation, a penalty of 10% of the such *undisclosed income* has been proposed through the new Section 271AAB with respect to search initiated on or after 1st July, 2012. Further to get the benefit of this concessional penalty, the condition of *specified date* is also added.

If the *conditions in point 2* are not fulfilled by the taxpayer, a flat penalty of 10% of such *undisclosed income* is applicable under the existing Section 271AAA, which is applicable to the search initiated on or before 30th June, 2012. Irrespective of whether the income has been disclosed in the return of income, the rate of penalty applicable is 10% of the undisclosed income, but under the newly-proposed Section 271AAB, the penalty will be 20% if the taxpayer declares the income in the return of income before the *specified date* and pays the tax and interest before that specified date, though he does not admit it during the course of search.

If the *undisclosed income* is neither admitted during the course of search nor it is disclosed in the return filed after the search with paying the tax and interest on it before specified date then tax payer will be liable to a penalty of minimum of 30% and maximum up to 90% of the undisclosed income under the newly-proposed Section 271AAB, but under existing Section 271AAA, the amount of penalty under this situation is only 10%. Please note that the difference in quantum of penalty is very big.

Though *the immunity from the penalty* under the existing Section 271AAA if the undisclosed income pertains to a specified previous year and it is admitted during the course of search, etc., can be construed as very *liberal treatment*, but the newly-proposed provisions under Section 271AB has negative aspects also, because the last part of the penal provisions having minimum 30% penalty and maximum 90% of the undisclosed income gives discretionary power to the assessing officer to decide the quantum of penalty, which, in case of penal provision, is not a desirable situation. In the existing provisions, the penalty of 10% is at flat rate and no discretionary power is given to the assessing officer to decide the quantum of the penalty amount.

Further the last part of the newly-proposed penal provisions, which is provided in the Section 271AAB(c), has a steep hike in the form of 30% (minimum) to 90% (maximum) from the existing 10% amount of penalty as mentioned in the existing Section 271AAA, which has a flat penalty of 10% in such a situation. Further, in

the corresponding *Clause 231* of the *Direct Taxes Code Bill-2010*, the penalty in such a situation is mentioned as *Not less than the amount of tax but not more than double of the amount of Tax*. Reason of such a massive upward change in the maximum amount of penalty up to 90% of *undisclosed income* can only be explained by the lawmakers especially when the *maximum limit* of penalty is crossing the limit, which is proposed by them in the DTC.

See here that the provisions of existing Section 271AAA and proposed Section 271AAB are applicable only when the undisclosed income found during the course of search, which pertains to a *Specified previous year* and if the undisclosed income does not pertain to a specified previous year, these Sections are not applicable and penalty mentioned under *Section 271(1) (c)* will be applicable.

The *proposal* will certainly *strengthen* the penal provisions with respect to the undisclosed income found during the course of search as compared to the existing provisions applicable in this respect. Further, it will also motivate and give the opportunity to the taxpayer to declare the undisclosed income in return of income and pay tax plus interest before specified date, *if it is not admitted during the course of search for any reason*, to avoid the more higher penalty. The phase-wise increase in penalty is the basic and special characteristic of this new penal provision, which is inspired by *Clause 231* of the *Direct Tax Code Bill 2010*.

Failure to Furnish Correct TDS/TCS Returns within Specified Time: Section 271H

The life of *tax deductor* in our country is not easy. It is always said that compliance with TDS formalities is a very tedious job for them. Kindly note that the further proposed penal provisions in this respect applicable for the TDS/TCS returns related to the tax deducted or collected for the period commencing on and from 1st July, 2012, will make the life of a TDS deductor more difficult.

On the other hand, lawmakers have their own reasons for introducing the stringent penal provisions in this respect, because delayed submission of TDS/TCS returns and submitting the inaccurate particulars in the TDS returns is the major hurdle in timely and accurate processing of the IT returns and giving timely credit to the deductees, and all this results in a delay in granting the refunds. We must admit here that, these days practically, if the particulars of TDS/TCS are correct, disposal and delivery of refunds to the deductees is very fast.

Presently, there is a penalty for delayed filing of TDS/TCS returns, but there is no specific penalty

for submitting inaccurate or wrong particulars in the quarterly TDS/TCS returns, and, now, a penal provision has been proposed in the form of *Section 271H* to motivate the deductor to file the correct and accurate particulars in TDS/TCS returns within time, so that the returns of the deductees can be processed fast and accurately.

The *proposed penalty* under *Section 271H* is the penalty ranging from ₹10,000 to ₹1,00,000 for delayed and incorrect TDS/TCS returns. The assessee has to pay penalty for furnishing the incorrect particulars in TDS/TCS returns like incorrect PAN, amount of tax deducted, wrong details of taxed posited, etc., in the TDS/TCS returns, hence the tax deductor must be careful now to file the correct details in the TDS/TCS returns. But in case of delayed filing of TDS/TCS returns, this provision has given *one year* time from the due date to file the TDS/TCS returns after depositing the TDS/TCS amount along with interest thereon to avoid this penalty. The reason for this relaxation for the delayed returns is the fact that a new Section is also introduced for prescribing a *prepaid fees* in case of delay in filing of TDS/TCS returns.

The *penalty under Section 271H* is applicable for the TDS/TCS returns, which are related for the TDS/TCS deducted or collected on or after 1st July, 2012, and further, if the assessee proves that he has reasonable cause for the failure, no penalty under this Section can be imposed because *Section 271H* is also proposed to be included in *reasonable cause Section 273 B* with effect from 1st July, 2012.

A new *Section 234E* is proposed to levy a fee of ₹200.00 per day (subject to a total amount of TDS/TCS for the period) in case of delayed furnishing of TDS/TCS returns. The above amendment is proposed to be introduced to ensure timely filing of TDS/TCS returns, so that the claim of TDS credit and consequent refund to the deductee can be processed and delivered and grievances in this respect can be minimised.

However, it may result in unnecessary and sometimes very heavy burden on the deductor in terms of cost, because it is a *prepaid mandatory fee* which has to be paid before filing of the TDS/TCS return. This fee is applicable to the TDS/TCS returns, which are related to the TDS/TCS for the period started on or after 1st July, 2012.

Kindly note that there is an existing provision for payment of ₹100 per day (subject to the total amount of TDS/TCS for the period) for such type of failure under *Section 272A(2) (k)*, but it is not a *prepaid penalty* provision and, further, it is not mandatory penal provision and assessee has the *reasonable cause Section 273 B* to protect him from penalty, if he proves

that he has reasonable cause for such delay. The penalty under *Section 272A* shall not be applicable to the TDS/TCS returns related to the tax deducted/collected on or after 1st July, 2012, since after that prepaid fees provisions under *Section 234E* are applicable.

Note that the *TDS/TCS problem is a multi-dimensional problem*, because, at times the wrong or incorrect particulars are supplied due to negligence of the deductee also, so enhancing the amount of penalty may motivate the deductor to comply with the provisions within time. But it will not be the sole and desirable solution of the problem and, further, the TDS/TCS related existing problems of the taxpayers, especially when the procedural problems of TDS/TCS deductors, are not solved before introduction of this harsh and cost burden penal provision.

Failure to Maintain and Report Certain International Transactions: Section 271AA

The existing *Section 271AA* is proposed to be replaced by a new *Section 271AA* with effect from 1st July, 2012, and now a penalty @ 2% of the value of international transaction will be levied if the taxpayer:

1. Fails to maintain the prescribed documents or information as required by *Sections 92D(1) and 92D(2)*, or
2. Fails to report such international transaction which he required to report, or
3. Maintains or furnish incorrect information and documents.

Kindly note that the existing provision under *Section 271AA* is application only if the person fails to keep and maintain the documents as required by *Sections 92D (1) and 92D (2)* with respect to such international transactions and it is not applicable on failure to report such transactions or maintaining or furnishing the incorrect information and documents. The penalty for failure to submit report as required under *Section 92E* is provided in *Section 271BA* which is only ₹1 lakh and the same is considered at very low side so now non-reporting of such international transactions or maintain or furnish incorrect information and documents regarding these transactions has been covered under *Section 271AA* with a penalty @ 2% of the value of international transaction w.e.f. 1st July, 2012.

Penalty under *Section 271BA* will also continue with this new penal provision under *Section 271AA*. Further, *specified domestic transactions* are also proposed to be added with international transactions in *Section 271AA* w.e.f. 1st April, 2013, and accordingly this amendment will be applicable from the assessment year 2013-2014. ■

Legal Decisions¹

DIRECT TAXES



Income-tax Act

LD/60/101

*SKF Boilers and Driers Pvt. Ltd, In Re,
February 22, 2012 (AAR)*

**Section 9 read with Section 5 and
195 of the Income-tax Act, 1961 -
Income - Deemed to accrue or arise
in India**

Where plant was exported by Indian manufacturer from India to Pakistan, commission paid to agent in Pakistan would be taxable in India when export order was executed in India

The applicant, Indian company received an order for supply of Rice Par Boiling and Dryer Plants from Pakistan. The order was received through two agents in Karachi. The plant was shipped. On completion of the export order, the assessee paid commission to the agents. The applicant's case was that the payment of commission on export order did not accrue or arise to the two non-residents in India and, hence, there is no liability to tax in India. The provision of tax withholding under section 195 of the Act would not apply.

The Authority for Advance Rulings held that section 5(2)(b) deals with the scope of total income whereby the income of a non-resident includes all income from whatever source derived, which accrues or arises or is deemed to accrue or arise in India during such previous year. Under section 9(1)(i), income accruing or arising directly or indirectly, through or from any business connection in India or source of income in India shall be deemed to accrue or arise in India. Sections 5 and 9 thus proceed on the assumption that income has a situs and the situs has to be determined according to the general principles of law. The words 'accrue' or 'arise' occurring in section 5 have more or less a synonymous sense and income is said to accrue or arise when the right to receive it comes into existence. No doubt the agents rendered services abroad and have solicited orders, but the right to receive the commission arises in India when the order is executed by the applicant in India. The fact that the agents have rendered services abroad in the form of soliciting the orders and the commission is to be remitted to them abroad are wholly irrelevant for the purpose of determining the situs of their income. The income arising on account of commission payable to the two agents is deemed to accrue and arise in India, and is taxable under the Act in view of the specific provision of section 5(2)(b), read with section 9(1)(i). The TDS provision of section 195 would apply.

LD/60/102

Organisation Development Pte Ltd.

Vs.

*Deputy Director of Income-tax (International Taxation)
February 9, 2012 (ITAT-Chennai)
[Assessment Year 2007-08]*

**Section 9 of the Income-tax Act, 1961 read with
Article 12 of the DTAA between India and Singapore -
Income - Deemed to accrue or arise in India**

Payment for process of development of strategic performance management tool balance score card system cannot be divided into two segments, one for royalty relatable to software and other for fees for technical services; software was only a part of tool of management consultancy and was never to be considered as independent divorced of total system and whole of amount received by assessee was nothing but fees for technical services and same was definitely taxable under DTAA between India and Singapore

The assessee, Singapore Company received payment on account of services rendered by it in developing Balance Score Card (BSC) system for its clients. For the development of such BSC system which is a strategic performance management tool, clients were required to download from the sites designated by the assessee a licensed software.

The assessee had sent its Principal Consultant with a team for helping its clients in implementing a licensed software, which was required to develop the Balance Score Card for such clients. The clients were required to make lump sum payments for downloading such software from the designated sites and such software was to be used in various phases of developing the Balance Score Card system.

The Chennai Bench of Tribunal held that a properly designed Balance Score Card can alert a manager on the areas where performance deviated from expected levels, and trigger improved performance. The measures will vary from organization to organization, as per its own goals and different strategies to reach such goals. It cannot be said this is a type of service which can be used by any organization by application of an off the shelf software. The software might be helpful in development of the phases of the Balance Score Card as well as functioning thereafter. But, considerable skill will be required in identifying the measures and fixing the targets for each such measure for a decisive meaningful Balance Score Card for different areas. So, the software is only a part of the total process of development of Balance Score Card.

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

The software used by the assessee cannot be considered independent, but only as a part of the service rendered by the assessee. By means of the Balance Score Card system developed by the assessee, the clients were getting an advantage which went much beyond the period of agreement between the assessee and its clients. The Balance Score Card definitely enabled the clients to acquire the skills necessary for implementing their business strategies more effectively and this is definitely a long term objective. Assessee had definitely made available technical knowledge and skill which enabled its clients to acquire the knowledge for using Balance Score Card system for their business purposes for meeting their long term targets and the benefits ran well into the future. No doubt, all technical and consultancy services cannot fall within the scope of definition of "fees for technical services" as defined under the DTAA. To fit into the terminology "the technical knowledge, skill, etc." shall remain with the person receiving the services even after the particular contract comes into end. Balance Score Card did not become useless or was not meant for the use of the business needs of its clients after the tenure of the agreement it had with such clients. The Balance Score Card prepared for each client and system of filling data in such Balance Score Card on a continual basis, based on different types of measures adopted which again depended on the needs of each client and their functions can be considered as tools designed for exclusive use of such clients and the use of such a management tool would continue with such clients. Necessarily the technical knowledge and skill for use imbibed by the assessee remained with such clients. Thus, the fees received for designing of the management tool called Balance Score Card will definitely fall within the definition of "fees for technical services" as given under sub-clause (iv) of Article 12 of DTAA between India and Singapore. The software cannot be treated independently and a part of the amounts received by the assessee cannot be considered as royalty. The software was only a part of the tool of management consultancy and was never to be considered as independent divorced of the total system. Thus, the whole of the amount received by the assessee was nothing but fees for technical services and the amount was definitely taxable under the DTAA.

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LD/60/103

Topman Exports

Vs.

CIT, Mumbai

February 8, 2012 (SC)

[Assessment Year 2002-2003]

Section 28(iiid) read with Section 28(iiib) and Section 80HHC of the Income-tax Act, 1961 – Profit on transfer of Duty Entitlement Pass Book Scheme

Not entire amount received by assessee on sale of Duty Entitlement Pass Book (DEPB), but sale value less face value of DEPB will represent profit on transfer of DEPB by assessee

It will be clear from section 28 that under clause (iiib) cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India is by itself income chargeable to income tax under the head "Profits and Gains of Business or Profession". DEPB is a kind of assistance given by the Government of India to an exporter to pay customs duty on its imports and it is receivable once exports are made and an application is made by the exporter for DEPB. Therefore, DEPB is "cash assistance" receivable by a person against exports under the scheme of the Government of India and falls under clause (iiib) of Section 28 and is chargeable to income tax under the head "Profits and Gains of Business or Profession" even before it is transferred by the assessee.

Under clause (iiid) of Section 28, any profit on transfer of DEPB is chargeable to income tax under the head "Profits and Gains of Business or Profession" as an item separate from cash assistance under clause (iiib). As DEPB has direct nexus with the cost of imports for manufacturing an export product, any amount realized by the assessee over and above the DEPB on transfer of the DEPB would represent profit on the transfer of DEPB.

Thus, while the face value of the DEPB will fall under clause (iiib) of section 28 of the Act, the difference between the sale value and the face value of the DEPB will fall under clause (iiid) of section 28. It is not right to take the view that the entire sale proceeds of the DEPB realized on transfer of the DEPB and not just the difference between the sale value and the face value of the DEPB represent profit on transfer of the DEPB.

The cost of acquiring DEPB, is not nil because the person acquires it by paying customs duty on the import content of the export product and the DEPB which accrues to a person against exports has a cost element in it. Accordingly, when DEPB is sold by a person, his profit on transfer of DEPB would be the sale value of the DEPB less the face value of DEPB which represents the cost of the DEPB. The second reason given by the High Court in the impugned judgment is that under the DEPB scheme, DEPB is given at a percentage of the FOB value of the exports so as to neutralize the incidence of customs duty on the import content of the export



products, but the exporter may not himself utilize the DEPB for paying customs duty but may transfer it to someone else and therefore the entire sum received on transfer of DEPB would be covered under clause (iiid) of Section 28.

DEPB represents part of the cost incurred by a person for manufacture of the export product and hence even where the DEPB is not utilized by the exporter but is transferred to another person, the DEPB continues to remain as a cost to the exporter. When, therefore, DEPB is transferred by a person, the entire sum received by him on such transfer does not become his profits. It is only the amount that he receives in excess of the DEPB which represents his profits on transfer of the DEPB.

As per section 28 under which "cash assistance" received or receivable by any person against exports such as the DEPB and "profit on transfer of the DEPB" are treated as two separate items of income under clauses (iiib) and (iiid) of section 28. If accrual of DEPB and profit on transfer of DEPB are treated as two separate items of income chargeable to tax under clauses (iiib) and (iiid) of Section 28 of the Act, then DEPB will be chargeable as income under clause (iiib) of section 28 in the year in which the person applies for DEPB credit against the exports and the profit on transfer of the DEPB by that person will be chargeable as income under clause (iiid) of section 28 in his hands in the year in which he makes the transfer. Accordingly, if in the same previous year the DEPB accrues to a person and he also earns profit on transfer of the DEPB, the DEPB will be business profits under clause (iiib) and the difference between the sale value and the DEPB (face value) would be the profits on the transfer of DEPB under clause (iiid) for the same assessment year. Where, however, the DEPB accrues to a person in one previous year and the transfer of DEPB takes place in a subsequent previous year, then the DEPB

will be chargeable as income of the person for the first assessment year chargeable under clause (iiib) of Section 28 and the difference between the DEPB credit and the sale value of the DEPB credit would be income in his hands for the subsequent assessment year chargeable under clause (iiid) of Section 28. This interpretation, therefore, does not lead to double taxation of the same income, which the legislature must be presumed to have avoided.



Section 80HHC read with Section 28(iii) of the Income-tax Act, 1961 - Deductions - Profits from export business

It cannot be concluded that where an assessee does not have export turnover exceeding ₹ 10 crores and it does not fulfil conditions set out in third proviso to Section 80HHC (iii), assessee is not entitled to a deduction under Section 80HHC on amount received on transfer of DEPB

Sub-section (1) of Section 80HHC makes it clear that an assessee engaged in the business of export out of India of any goods or merchandise to which this Section applies shall be allowed, in computing his total income, a deduction to the extent of profits referred to in sub-section (1B), derived by him from the export of such goods or merchandise. Sub-section (1B) of Section 80HHC gives the percentages of deduction of the profits allowable for the different assessment years from the assessment years 2001-2002 to 2004-2005. Sub-section (3)(a) of Section 80HHC provides that where the export out of India is of goods or merchandise manufactured or processed by the assessee, the profits derived from such exports shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee.

The formula in sub-section (3)(a) of Section 80HHC is as follows:

$$\text{Profits derived from exports} = \frac{\text{Profits of the business} \times \text{Export Turnover}}{\text{Total Turnover}}$$

Explanation (baa) under Section 80HHC states that "profits of the business" in the aforesaid formula means the profits of the business as computed under the head "Profits and Gains of Business or Profession" as reduced by (1) ninety per cent of any sum referred to in clauses (iia), (iiib), (iiic), (iiid) and (iiie) of Section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of similar nature including any such receipts and (2) the profits of any branch, office, warehouse or any other establishment of the assessee situated outside India.

Thus, ninety per cent of the DEPB which is "cash assistance" against exports and is covered under clause (iiib) of section 28 will get excluded from the "profits of the business" of the assessee if such DEPB has accrued to

the assessee during the previous year. Similarly, if during the same previous year, the assessee has transferred the DEPB and the sale value of such DEPB is more than the face value of the DEPB, the difference between the sale value of the DEPB and the face value of the DEPB will represent the profit on transfer of DEPB covered under clause (iiid) of Section 28 and ninety per cent of such profit on transfer of DEPB certificate will get excluded from "profits of the business". But, where the DEPB accrues to the assessee in the first previous year and the assessee transfers the DEPB certificate in the second previous year, as appears to have happened in the present batch of cases, only ninety per cent of the profits on transfer of DEPB covered under clause (iiid) and not ninety per cent of the entire sale value including the face value of the DEPB will get excluded from the "profits of the business". Thus, where the ninety per cent of the face value of the DEPB does not get excluded from "profits of the business" under explanation (baa) and only ninety per cent of the difference between the face value of the DEPB and the sale value of the DEPB gets excluded from "profits of the business", the assessee gets a bigger figure of "profits of the business" and this is possible when the DEPB accrues to the assessee in one previous year and transfer of the DEPB takes place in the subsequent previous year. The result in such case is that a higher figure of "profits of the business" becomes the multiplier in the aforesaid formula under sub-section (3)(a) of Section 80HHC for arriving at the figure of profits derived from exports.

To the figure of profits derived from exports worked out as per the aforesaid formula under sub-section (3) (a) of Section 80HHC, the additions as mentioned in first, second, third and fourth proviso under sub-section (3) are made to profits derived from exports. Under the first proviso, ninety per cent of the sum referred to in clauses (iiia), (iiib) and (iiic) of Section 28 are added in the same proportion as export turnover bears to the total turnover of the business carried on by the assessee. In this first proviso, there is no addition of any sum referred to in clause (iiid) or clause (iiie). Hence, profit on transfer of DEPB or DFRC are not to be added under the first proviso. Where therefore in the previous year no DEPB or DFRC accrues to the assessee, he would not be entitled to the benefit of the first proviso to sub-section (3) of Section 80HHC because he would not have any sum referred to in clause (iiib) of Section 28 of the Act. The second proviso to sub-section (3) of Section 80HHC states that in case of an assessee having export turnover not exceeding ₹10 crores during the previous year, after giving effect to the first proviso, the export profits are to be increased further by the amount which bears to ninety per cent of any sum referred to in clauses (iiid) and (iiie) of Section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee. The third proviso to sub-section (3) states that in case of an assessee having export turnover exceeding ₹10 crores,

similar addition of ninety per cent of the sums referred to in clause (iiid) of Section 28 only if the assessee has the necessary and sufficient evidence to prove that (a) he had an option to choose either the duty drawback or the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme; and (b) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme. Therefore, if the assessee having export turnover of more than ₹10 crores does not satisfy these two conditions, he will not be entitled to the addition of profit on transfer of DEPB under the third proviso to sub-section (3) of Section 80HHC.

The aforesaid discussion would show that where an assessee has an export turnover exceeding Rs.10 crores and has made profits on transfer of DEPB under clause (d) of Section 28, he would not get the benefit of addition to export profits under third or fourth proviso to sub-section (3) of Section 80HHC, but he would get the benefit of exclusion of a smaller figure from "profits of the business" under explanation (baa) to Section 80HHC of the Act and there is nothing in explanation (baa) to Section 80HHC to show that this benefit of exclusion of a smaller figure from "profits of the business" will not be available to an assessee having an export turnover exceeding ₹10 crores. In other words, where the export turnover of an assessee exceeds ₹10 crores, he does not get the benefit of addition of ninety per cent of export incentive under clause (iiid) of Section 28 to his export profits, but he gets a higher figure of profits of the business, which ultimately results in computation of a bigger export profit. Therefore, it cannot be concluded that where an assessee does not have the export turnover exceeding ₹10 crores and it does not fulfil the conditions set out in the third proviso to Section 80HHC (iii), the assessee is not entitled to a deduction under Section 80HHC on the amount received on transfer of DEPB.

This apart, as per the words used in *Explanation* (baa) to Section 80HHC read with the words used in clauses (iiid) and (iiie) of Section 28, the assessee would be entitled to a deduction under Section 80HHC on export profits.

Note: Judgment of Bombay High Court set aside.



LD/60/104
Catholic Syrian Bank Ltd.
Vs.

CIT, Thrissur
February 17, 2012 (SC)
[Assessment Year 2002-2003]

Section 36(1)(vii) of the Income-tax Act, read with section 36(1)(viii) of the Income-tax Act, 1961 - Bad debts

The proviso to section 36(1)(vii) operates only with reference to rural loans of a bank; a bank is entitled separately to general deduction up to an amount in an account which has become bad debt and is written off in books of account as irrecoverable

The clear legislative intent of the relevant provisions and unambiguous language of the circulars with reference to the amendments to section 36 of the Act demonstrate that the deduction on account of provisions for bad and doubtful debts under section 36(1)(viii) is distinct and independent of the provisions of section 36(1)(vii) relating to allowance of the bad debts. The legislative intent was to encourage rural advances and the making of provisions for bad debts in relation to such rural branches. Another material aspect of the functioning of such banks is that their rural branches were practically treated as a distinct business, though ultimately these advances would form part of the books of accounts of the principal or head office branch. The deductions permissible under section 36(1)(vii) should not be negated by reading into this provision, limitations of section 36(1)(viii) on the reasoning that it will form a check against double deduction. Such approach would be erroneous and not applicable on the facts of the case in hand.

Interpretation and Construction of Relevant Sections

The language of section 36(1)(vii) of the Act is unambiguous and does not admit of two interpretations. It applies to all banks, commercial or rural, scheduled or unscheduled. It gives a benefit to the assessee to claim a deduction on any bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year. This benefit is subject only to section 36(2) of the Act. It is obligatory upon the assessee to prove to the assessing officer that the case satisfies the ingredients of section 36(1)(vii) on the one hand and that it satisfies the requirements stated in section 36(2) of the Act on the other. The proviso to section 36(1)(vii) does not, in absolute terms, control the application of this provision as it comes into operation only when the case of the assessee is one which falls squarely under section 36(1)(viii) of the Act. The explanation to section 36(1)(vii), introduced by the Finance Act, 2001, has to be examined in conjunction with the principal section. The explanation specifically excluded any provision for bad and doubtful debts made in the account of the assessee from the ambit



and scope of 'any bad debt, or part thereof, written-off as irrecoverable in the accounts of the assessee'. Thus, the concept of making a provision for bad and doubtful debts will fall outside the scope of section 36(1)(vii) simpliciter. The proviso, will have to be read with the provisions of section 36(1)(viii) of the Act. Once the bad debt is actually written off as irrecoverable and the requirements of section 36(2) satisfied, then, it will not be permissible to deny such deduction on the apprehension of double deduction under the provisions of section 36(1)(viii) and proviso to section 36(1)(vii). This does not appear to be the intention of the framers of law. The scheduled and non-scheduled commercial banks would continue to get the full benefit of write off of the irrecoverable debts under section 36(1)(vii) in addition to the benefit of deduction of bad and doubtful debts under section 36(1)(viii). Mere provision for bad and doubtful debts may not be allowable, but in the case of a rural advance, the same, in terms of section 36(1)(viii)(a), may be allowable without insisting on an actual write-off.

As per the proviso to clause (vii), the deduction on account of the actual write off of bad debts would be limited to excess of the amount written off over the amount of the provision which had already been allowed under clause (viii). The proviso by and large protects the interests of the Revenue. In case of rural advances which are covered by clause (viii), there would be no such double deduction. The proviso, in its terms, limits its application to the case of a bank to which clause (viii) applies. Indisputably, clause (viii)(a) applies only to rural advances.

As far as foreign banks are concerned, under section 36(1)(viii)(b) and as far as public financial institutions or State financial corporations or State industrial investment corporations are concerned, under section 36(1)(viii)(c), they do not have rural branches. Thus, it can safely be inferred that the proviso is self indicative that its application is to bad debts arising out of rural advances.

The scope of the proviso to clause (vii) of section 36(1) has to be ascertained from a cumulative reading of the provisions of clauses (vii), (viii) of section 36(1) and clause (v) of section 36(2) and only shows that a double benefit in respect of the same debt is not given to a scheduled bank. A scheduled bank may have both

urban and rural branches. It may give advances from both branches with separate provision accounts for each.

In the normal course of its business, a bank is to maintain different accounts for the rural debts for non-rural/urban debts. It is obvious that the branches in the rural areas would primarily be dealing with rural debts while the urban branches would deal with commercial debts. Maintenance of such separate accounts would not only be a matter of mere convenience but would be the requirement of accounting standards.

Under law, it is obliged to maintain accounts which would correctly depict its statement of affairs. This obligation arises implicitly from the requirements of the Act and certainly under the mandate of accounting standards.

Banks could, for valid reasons, have rural accounts more distinct from the urban, commercial accounts:

- (a) It is obligatory upon each bank to ensure that the accounts represent the correct statement of affairs of the bank.
- (b) Maintaining the common account may result in over stating the profits or the profits will shoot up which would result in accruing of liabilities not due.
- (c) Accounting Standard (AS) 29, issued in 2003, concerns treatment of 'provisions, contingent liabilities and contingent assets'. Under the head 'Use of Provisions', clauses 53 and 54 justify maintenance of distinct and different accounts.

The Supreme Court in the case of *Vijaya Bank vs. Commissioner of Income Tax & Another* (2010) 5 SCC 416, held that under the accounting practice, the accounts of the rural branches have to tally with the accounts of the head office. If the repaid amount in subsequent years is not credited to the profit and loss account of the head office, which is what ultimately matters, then there would be a mismatch between the rural branch accounts and the head office accounts. Therefore, in order to prevent such mismatch and to be in conformity with the accounting practice, the banks should maintain separate accounts. Of course, all accounts would ultimately get merged into the account of the head office, which will ultimately reflect one account (balance sheet), though containing different items.

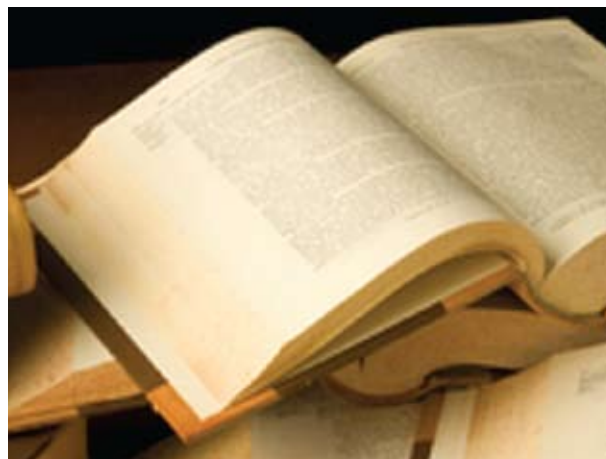
Another example that would support this view is that, a bank can write off a loan against the account of 'A' alone where it has advanced the loan to party 'A'. It cannot write off such loan against the account of 'B'. Similarly, a loan advanced under the rural schemes cannot be written off against an urban or a commercial loan by the bank in the normal course of its business. In other words, if the case of the assessee does not fall under section 36(1)(viiia), the proviso/limitation would not come into play.

It is useful to notice that in the proviso to section 36(1) (vii), the explanation to that section, section 36(1)

(viiia) and 36(2)(v), the words used are 'provision for bad and doubtful debts' while in the main part of section 36(1)(vii), the Legislature has intentionally not used such language. The proviso to section 36(1)(vii) and sections 36(1)(viiia) and 36(2) (v) have to be read and construed together. They form a complete scheme for deductions and prescribe the extent to which such deductions are available to a scheduled bank in relation to rural loans etc., whereas section 36(1)(vii) deals with general deductions available to a bank and even non-banking businesses upon their showing that an account had become bad and written off as irrecoverable in the accounts of the assessee for the previous year, satisfying the requirements contemplated in that behalf under section 36(2). The provisions of section 36(1)(vii) operate in their own field and are not restricted by the limitations of section 36(1)(viiia) of the Act.

Conclusion:

The provisions of sections 36(1) (vii) and 36(1)(viiia) of the Act are distinct and independent items of deduction and operate in their respective fields. The bad debts written-off in debts, other than those for which the provision is made under clause (viiia), will be covered under the main part of section 36(1)(vii), while the proviso will operate in cases under clause (viiia) to limit deduction to the extent of difference between the debt or part thereof written off in the previous year and credit balance in the provision for bad and doubtful debts account made under clause (viiia). The proviso to section 36(1)(vii) will relate to cases covered under section 36(1)(viiia) and has to be read with section 36(2)(v) of the Act. Thus, the proviso would not permit benefit of double deduction, operating with reference to rural loans while under section 36(1)(vii), the assessee would be entitled to general deduction upon an account having become bad debt and being written-off as irrecoverable in the accounts of the assessee for the previous year. This, obviously, would be subject to satisfaction of the requirements contemplated under section 36(2).



Consequently, the question is answered in favour of the assessee.

Note: Judgment of the Full Bench of Kerala High Court set aside.

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LD/60/105
CIT, Kolkata – III
Vs.

Dataware Private Limited
September 21, 2011 (CAL)
[Assessment Year 2001-02]

Section 68 of the Income-tax Act, 1961 – Cash Credits

So long it was not established that return submitted by creditor had been rejected by its Assessing Officer, Assessing officer of assessee was bound to accept same as genuine when identity of creditor and genuineness of transaction through account payee cheque has been established

The share application money was paid to the assessee-company by account payee cheque. The creditor appeared before the Assessing Officer, disclosed its PAN number and also other details of the accounts but in spite of that the Assessing Officer did not enquire further from the assessing officer of the creditor but in stead, himself proceeded to consider the profit and loss account of the creditor and opined that he had some doubt about the genuineness of such account.

The High Court of Calcutta held that the Assessing officer of the assessee could not take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself was an income tax assessee. After getting the PAN number and getting the information that the creditor was assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence.

So long it was not established that the return submitted by the creditor had been rejected by its Assessing Officer, the Assessing officer of the assessee was bound to accept the same as genuine when the identity of the creditor and the genuineness of transaction through account payee cheque has been established. Therefore, no addition could be made under section 68.

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LD/60/106
Red Hat India Private Limited, In Re
February 3, 2012 (AAR)

Section 245 of the Income-tax Act, 1961 - Refunds – Set off of tax

If the applicant before Authority for Advance Rulings had already filed a return of income involving the amount

arising out of identical transaction on which a question for the Authority's ruling is raised by filing an application under section 245Q(1), the application before the Authority for Advance Rulings will be barred by the clause (i) of the proviso to section 245R(2) and the application will have to be rejected.

The Authority for Advance Rulings is a creature of the Income-tax Act. The provisions of the Act that create it and confer jurisdiction on it in certain matters, also restricts its jurisdiction or divests it of its jurisdiction in certain circumstances. One of the situations or circumstances, is when the question raised before it, has arisen before the Income-tax Authority. The question referred to in the proviso to section 245R(2), is the question before the Authority for Advance Rulings. When a return is filed, so many aspects arise out of that return. The question of computation of total income, computation of the exemptions and exclusions, acceptance or non-acceptance of an item of expenditure and ultimately the determination of chargeable income and the determination of the tax due, are all questions that arise. Therefore filing of a return ushers in all these questions. By filing a return, an assessee invites an adjudication on all the questions arising out of that return. Subsection (2) of section 245R only speaks of the question arising before the Authority. So if an answer to that question would be involved in the return filed or would arise out of the return filed, it would be a case where the bar is attracted. The arising of a question from out of a return filed, cannot depend on the volition, diligence, care or lack of care on the part of the Assessing Officer. A jurisdiction cannot depend on such vagaries.

When an income is received or is expended as a permissible expenditure, both figure in the return and are dealt with while completing the assessment. If the return is accepted after scrutiny or without scrutiny, it would only mean that the claim of the applicant has been accepted by the Assessing Officer. The implication is that the question is answered in his favour. That would not mean that, that question or aspect has not arisen before the Assessing Officer, on the filing of the return.

The relevant date for considering the question is the date of filing of the application and that filing of a return prior to filing of the application for Advance Ruling would lead to a rejection of the application. Consistent with the purpose sought to be achieved, emphasized on behalf of the applicant, it is for an applicant, eligible in that behalf, to move this Authority at the earliest opportunity and not to wait until after it invokes the jurisdiction or is obliged to invoke the jurisdiction of the Assessing Officer, by filing a return of income. The obligation to file a return can well be fulfilled after moving this Authority and the Assessing Officer will have to await a Ruling by this Authority and take shelter under section 153 to complete the assessment. It could not be denied that the Ruling the Authority will give, will also impact the return already pending when the

application before this Authority was moved. It will then be impossible to say that the aspect does not arise out of the return filed.

When this Authority took the view in *Monte Harris and other* cases that the date of the filing of the application before the Authority should be the crucial date for determining the question of the applicability of clause (i) of the proviso to section 245R(2) and not the date when the application comes up for hearing either under section 245R(2) or under section 245R(4), the Authority was searching for a definite and consistent terminus a quo. This Authority felt that the period could not be left to the vagaries of the progress of the application before this Authority or the vicissitudes of procedure. The same principle should be applied to the other limb of the proviso. That can be achieved only by fixing the point at the filing of a return of income by the applicant and not the vagaries of the Income-tax authority issuing a notice or on the date of that notice. The Assessing Authority has a period of one year to issue a notice under any one of the provisions, and the starting point could not be made to depend on his issuing a notice or on his not issuing a notice at all. After all, while filing a return, a person is expected to be honest and is expected to set out all information truthfully even if he is of the view that an item of income derived is not chargeable to tax or is not chargeable to tax in this country. By filing a return, that person is inviting the Assessing Officer to decide the question for him and that makes the question pending before the income-tax authority. Then clearly, the bar under clause (i) of the proviso to section 245R(2) would be attracted.

Arbitration and Conciliation Act

LD/60/107

Drive India Enterprise Solutions Ltd.

Vs.

Haier Telecom (India) Pvt. Ltd.

December 19, 2011 (BOM)

Section 9 of the Arbitration and Conciliation Act, 1996 – Interim measures by Court

OTHER
LAWS



Banker, who has issued Standby Letters of Credit (SBLC) or given bank guarantee, would only be required to reimburse amount upon a demand being made to issuing bank; banks are not required to go into each of breaches of contracting parties before honouring SBLCs as they are in nature of guarantees for the payment

The appellant-petitioner and Respondent No.1 entered into agreements for import and supply of certain mobile handsets. The petitioner was to issue certain Standby Letters of Credit (SBLC) at the request of Respondent No.1 but in favour of Respondent No. 2. The SBLCs were issued by Respondent No. 3. It was contended by the Petitioner that Respondent No. 1 did not supply the

products in terms of the aforesaid agreements though the petitioner made full payment under the contract. The suit was filed for restraining Respondent No. 2 from encashing SBLCs.

The Bombay High Court held that the terms of the contract between the Petitioner and Respondent No.1 with regard to the delivery of the goods which aspect has been challenged by the Petitioner needed not be considered as the Court in a Suit for an injunction against the invocation of SBLCs was required to be guided only in terms of the SBLCs. The SBLCs were clear and unambiguous. The SBLCs had been extended from time to time. They had to be honoured as per the demand. They have to be paid as per the express terms contained therein without protest. Since they were independent of the terms and conditions of the agreement, those terms could not be considered.

The SBLC was expressly made subject to the uniform, customs and practice for Documentary Credits, (2007 Revision) International Chamber of Commerce (Publication 600) ("UCP"). Clause 14 (h) of the UCP states that if a credit contains a condition without stipulating the document to indicate compliance with the condition, banks will deem such condition as not stated and will disregard it.

The SBLC stipulates payment within 90 days from the date of shipment, but it did not stipulate any documents indicating the date of shipment. In this case no document was required to be presented for filing of SBLC e.g. any bill of lading. The banker is enjoined to disregard such condition.

It is settled position in law that SBLCs, as much as bank guarantees, are required to be honoured as per their terms and no Court may interfere with the due compliance thereof except in the case of established egregious fraud or irretrievable loss, harm and injustice.

In the instant case fraud was not even alleged by the Petitioner. The injustice was in the non delivery of the goods despite the claim of having made full payment. This contention itself was merely stated without being substantiated. In fact it was not even required to be stated or substantiated in this suit since neither the issuing bank nor the Court itself is required to go into those aspects. Assuming that there was no delivery or even short delivery or defective delivery, the law with regard to the SBLCs, as much as bank guarantees, was that those aspects are alien to the issues in a Suit in respect of invocation of such documents.

There was an arbitration contemplated by the parties. The arbitration agreement was invoked. In the arbitration the rights of the parties to the contract with regard to the delivery of the goods and the payment of the price would be decided and determined. The SBLC was quite different. The very fact that there was an arbitration provided in the contract between the parties

was the umbrella to guard against the injustice claimed. There was, therefore, no "irretrievable injustice"; it would be retrieved in arbitration. That was precisely why a separate guarantee for the demand by way of a SBLC or a bank guarantee was given. Hence, such SBLC was independent of the contract. Consequently even the term of the SBLC determining the mode of payment e.g. being 90 days from the date of the shipment was inconsequential when the description of the document is not supplied.

The banker would not know and would not be concerned with the date of shipment. The banker, who has issued the SBLC or given the bank guarantee, would only be required to reimburse the amount upon a demand being made to the issuing bank. It need hardly be mentioned that commercial trade, more specially international trade, would collapse if banks or even Courts are required to go into each of the breaches of the contracting parties before honouring the SBLCs which are in the nature of guarantees for the payment.

Therefore, the LC drawn in favour of Respondent No.2 would have to be honoured by Respondent No.3.

Competition Act

LD/60/108

Union of India

Vs.

Competition Commission of India

February 17, 2012 (DEL)

Section 19 read with Section 2(h) of the Competition Act, 2002 - Inquiry into certain agreements and dominant position of enterprise

Running railways, has a commercial angle and is capable of being carried out by entities other than the State, and it is, therefore, not an inalienable function of the State; therefore, Union of Government, (Railway Ministry) running railways covered by definition of 'enterprise'

Unless an activity can be classified as "relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence & space", it cannot avoid being classified as an 'enterprise' under Section 2(h) of the Act. If it is an 'enterprise' under section 2(h), the Commission gets jurisdiction under Chapter IV of the Act.

Section 54 of the Act, which provides that the Central Government may, by notification, exempt from the application of the Act, or any provision thereof, and for such period as it may specify in such notification, inter alia, "any enterprise which performs a sovereign function on behalf of the Central Government or a State Government". Pertinently, no notification has been issued by the Central Government in relation to the services rendered by the Indian Railways. Even in relation to an enterprise which is engaged in activity, including an activity relatable to



the sovereign function of the Government, the Central Government may grant exemption only in respect of activity relatable to sovereign functions. Therefore, an enterprise may perform some sovereign functions, while other functions performed by it, and the activities undertaken by it, may not refer to sovereign functions. The exemption under Section 54 could be granted in relation to the activities relatable to sovereign functions of the Government, and not in relation to all the activities of such an enterprise. Pertinently, there is no notification issued under Section 54 either under Clause (c), or under the proviso. This clearly shows that the Central Government does not consider any of the activities of the petitioner as relatable to sovereign functions.

Even when the Government runs the Railways for providing quick and cheap transport for people and goods and for strategic reasons, it cannot be said that it is engaged in an activity of the State as a sovereign body.

Functions of the Government in a welfare state are manifold, all of which cannot be said to be the activities relating to exercise of sovereign power. The functions of the State not only relate to the functions of the country or the administration of justice (which are recognized as sovereign functions), but they extend to many other spheres as, for example, education, commerce, social, economic and political activities. These activities cannot be said to be related to sovereign power. The running of Railways was held to be a commercial activity.

Where the Union of Government had entered into a Concession Agreement under its PPP policy, by which informant had to perform activities related to running of railways, the informant was performing a commercial activity and rendering services for a charge, which, prior to the entering into the agreement with the Union of India, was being performed by the Union of India. The Union of India is also carrying out an activity, viz. running the railways, which also has a commercial angle and is capable of being carried out by entities other than the State, as is the case in various other developed countries. It is, therefore, not an inalienable function of the State. Therefore, the submission of the Union of India that it is not covered by the definition of 'enterprise', had no merit and is rejected. ■

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. 5, dated 06-02-2012.

Non-Residents having Liaison office in India to furnish Annual Statement in Form No. 49C

The Finance Act, 2011 has inserted new Section 285 to provide that a non-resident having liaison office in India would be required to file a statement in the prescribed format to the Assessing Officer having jurisdiction within 60 days from the end of the financial year, providing the details in respect of activities carried out by the liaison office in India during the financial year.

Accordingly, in exercise of the powers conferred by Section 285 read with Section 295, the CBDT has, through this notification, inserted Rule 114DA, dealing with Furnishing of Annual Statement by a non-resident having Liaison Office in India, to provide for the following:

- The annual statement for every financial year shall be furnished in Form No. 49C.
- The annual statement shall be duly verified by the Chartered Accountant or the person authorised in this behalf by the non-resident person, who shall be known as the Authorised Signatory.
- The annual statement shall be furnished in electronic form along with digital signature.
- The DGIT (Systems) shall specify the procedure for filing of annual statement and shall also be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to statements so furnished.

2. Notification No. 7, dated 14-02-2012, as amended by Notification No. 13, dated 06-03-2012

Specification of bonds for interest exemption under Section 10(15)(iv)(h)

Section 10(15)(iv)(h) exempts interest on bonds/debentures issued by any public sector company and notified by the Central Government in the Official Gazette. Accordingly, the Central Government has authorised Rural Electrification Corporation Limited (RECL) to issue, during the financial year 2011-12, tax free, secured, redeemable, non-convertible bonds of rupees 1,000 each, only by way of public issue and not by way of private placement, aggregating to ₹3,000 crores subject to fulfilment of

certain conditions relating to tenure of bonds, PAN, interest rate and commission on sale, as detailed in the said notification. Further, for availing the benefit under the said section, the holder of such bonds is required to register his/her name with the said entity.

3. Notification No. 6, dated 14-02-2012

Modification in the aggregate amount of bonds to be issued by IRFCL during F.Y. 2011-12

The Central Government had, vide Notification No. 52/2011 dated 23-09-2011, in exercise of the powers conferred by Section 10(15)(iv)(h), notified the issue of tax-free secured, redeemable, non-convertible bonds of, *inter alia*, Indian Railways Finance Corporation Ltd. (IRFCL), aggregating to ₹10,000 crores to be issued during the F.Y. 2011-12, the interest on which would be exempt under the said section.

Now, vide this notification, the Central Government has amended the above notification to specify the aggregate amount of bonds as ₹7,000 crores instead of ₹10,000 crores, as specified in the earlier notification, for issue of such bonds of Indian Railways Finance Corporation Ltd. (IRFCL)

4. Notification No. 8, dated 17-02-2012

Provisions of DTAA with the Govt. of Tanzania to be given effect to in India from 01-04-2012

In exercise of the powers conferred by Section 90 of the Income-tax Act, 1961, the Central Government has, through this notification, notified that all the provisions of the Agreement between Government of the Republic of India and the Government of the Republic of Tanzania for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed in Tanzania on 27-05-2011 shall be given effect to in the Union of India with effect from 1st April, 2012.

5. Notification No. 9, dated 17-02-2012

Salaried Individuals exempt from filing Return of Income for AY 2012-13 if total income does not exceed ₹5 lakh.

Under Section 139(1C), the Central Government may, by notification in the Official Gazette, exempt any class or classes of persons from the requirement of furnishing a return of income having regard to such conditions as may be specified in that notification.

Accordingly, the Central Government has, vide this notification, exempted individuals whose total income

does not exceed ₹5 lakh from the requirement of furnishing a return of income under Section 139(1) for A.Y. 2012-13, if his total income consists of only income chargeable to income-tax under the head "Salaries" and interest, not exceeding ₹10,000, from savings account in a bank chargeable under the head "Income from other sources".

The other conditions to be satisfied by such individual to avail the benefit of this exemption are that he should have –

- (1) reported his PAN to his employer;
- (2) reported his interest income from savings bank account to his employer and his employer should have deducted tax thereon;
- (3) received Form 16 from his employer, wherein his PAN and details of income and tax deducted at source and deposited to the credit of the Central Government should be mentioned;
- (4) discharged his total tax liability for the assessment year through TDS and its deposit by the employer to the Central Government;
- (5) no claim for refund of taxes due to him for the income of the assessment year; and
- (6) received salary from only one employer for the assessment year.

Further, the exemption from the requirement of furnishing a return of income-tax shall not be available where a notice under Section 142(1) or Section 148 or Section 153A or Section 153C has been issued for filing a return of income for the relevant assessment year.

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

II. Relevant announcements relating to Central Processing Centre (CPC)

1. "Set up of New E-filing call centre by CPC

CPC Bangalore has been set up for faster processing of all e-filed returns of the country. E-filing facility for income tax payers are currently being provided from New Delhi. These facilities will soon be made available from CPC Bangalore premises. A limited five member call center is being setup at CPC Bangalore premises. This new e-filing call center has started working from **15th March 2012**. For any query related to online filing of Income Tax Returns, please **call 080-25186960 between 9 am to 6 pm** on all working days. Taxpayers are advised to make use of the above facility to clarify their doubts on E filing."

2. Due date for submission of ITR-V

The due date for submission of ITR-V for A.Y. 2011-12 has been extended upto 31-03-2012 or 120 days from the date of upload, whichever is later (with no further extension likely).

INDIRECT TAXES



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

A. SERVICE TAX

1. No service tax on toll fee paid by users: Circular No. 152/3/2012-ST dated 22.02.2012 has been issued to

clarifies that Service tax is not leviable on toll paid by the users of roads, including those roads constructed by a Special Purpose Vehicle (SPV) created under an agreement between National Highway Authority of India (NHAI) or a State Authority and the concessionaire (Public Private Partnership Model, Build-Own/Operate-Transfer arrangement). Tolls collected under the PPP model by the SPV is collection on own account and not on behalf of the person who has made the land available for construction of the road.

However, if the SPV engages an independent entity to collect toll from users on its behalf and a part of toll collection is retained by that independent entity as commission or is compensated in any other manner, service tax liability arises on such commission or charges, under the Business Auxiliary Service.

B. CENTRAL EXCISE

1. Rebate of duty paid would be allowed even for export of goods to Nepal: CBEC has issued *Notification No. 02/2012-Central Excise (N.T.)* dated 22-02-2012 to delete the word "Nepal" from the opening paragraph of *Notification No. 21/2004-Central Excise (N.T.)* dated 06-09-2004 which allow rebate of the duty paid on excisable goods used in the manufacture or processing of goods exported out of India except to Nepal and Bhutan.

Hence, now even export to Nepal would be treated as an export to any country and rebate of the duty paid on excisable goods used in the manufacture or processing of goods would be allowed for export of goods to Nepal.

2. Stringent Restrictions on manufacturer, first stage dealer, second stage dealer and an exporter: CBEC has issued *Notification Nos. 03-05/2012-Central Excise (N.T.)* dated 12-03-2012 which provide very stringent restrictions on manufacturer, first stage dealer, second stage dealer and an exporter prima facie found knowingly involved in any of the seven activities mentioned in the *Notification No. 05/2012-Central Excise (N.T.)* dated 12-03-2012 if the duty of excise or CENVAT Credit alleged to be involved exceeds ₹ 10 lakh. The restrictions which may be imposed are like payment of duty on each removal of goods, restriction on utilization of CENVAT Credit, etc.

3. Change in ownership or shifting of Unit to a new location within the specified area does not affect the exemption under area – based Notifications No.

49/2003-CE and 50/2003-CE, both dated 10.06.2003: CBEC has issued *Circular No. 960/03/2012-CX dated 17.02.2012* which clarify that exemption under area – based *Notifications No. 49/2003-CE and 50/2003-CE, both dated 10-06-2003* would continue to be available even in the following cases:

- (i) when there is change in the ownership of a Unit already availing of the benefit of an area-based exemption Notification.
- (ii) when a Unit availing the exemption physically shift to a new location within the areas specified in the exemption Notification.
- (iii) when a Unit availing of the exemption under an area-based Notification expands by acquiring a plot of land adjacent to its existing premises and installing new plant/machinery on such land.

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. Clarification on reporting requirement for Purchase of Immovable Property in India

A.P. (DIR Series) Circular No. 79 dated 15th February, 2012

Presently, a person resident outside India, who has established in India, a branch, office or other place of business, excluding a liaison office, acquires any immovable property in India is required to file with the RBI a declaration in the prescribed form IPI not later than 90 days from the date of such acquisition.

The extant regulations do not prescribe any reporting requirements for transactions where a person resident outside India who is a citizen of India or a Person of Indian Origin as defined in Regulation 2(c) of Notification No. FEMA 21/2000-RB, *ibid*, acquire/s immovable property in India. Accordingly, Form IPI has now been amended for greater clarity.

2. Export of Goods and Services - Simplification and Revision of Softex Procedure

A.P. (DIR Series) Circular No. 80 dated 15th February, 2012

Presently, the Designated officials of the Ministry of Information Technology, Government of India at the Software Technology Parks of India (STPIs) or at Free Trade Zones (FTZs) or Export Processing Zones (EPZs) or Special Economic Zones (SEZs), had been authorised to certify exports declared through SOFTEX Forms. This procedure is revisited and revised as given below, in consultation with the stakeholders involved.

As per the revised procedure, a software exporter, whose annual turnover is at least ₹1,000 crore or who files at least 600 SOFTEX forms annually, will be eligible to submit a statement in excel format as per the prescribed format giving all particulars along with quadruplicate set of SOFTEX form to the nearest STPI. STPI will then verify the details and decide on a percentage sample check of the documents in details. Software companies will submit all the documents on demand to STPI within 30 days of their advice or any reasonable/extended time at the discretion of the Director, STPI, at the request from the exporter. STPI will thus certify the statement and SOFTEX forms in bulk on the "Top Sheet" regarding the values, etc. and will thereafter forward the first copy of the revised SOFTEX format to the concerned Regional Office of RBI, the duplicate copy along with bulk statement in excel format to Authorised Dealers for negotiation/collection/settlement, the third copy to the exporter and the last copy will be retained by STPI for its own record. Under the revised procedure, the exporters, however, will have to provide information about all the invoices including the ones lesser than \$25,000, in the bulk statement in excel format. The revised procedure for submission of the SOFTEX form and other relevant documents are detailed in the Annex to the circular.

The new procedure will be effective initially in STPI Bangalore, Hyderabad, Chennai, Pune and Mumbai with effect from 1st April, 2012. Based on the success in these centers, it would be adopted by all the STPIs and SEZ/EPZ/100% EOU/EHTP/DTA units by June 2012.

The above circular is available on RBI website at: <http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=7009&Mode=0>

3. Receipt of advance payment for export of goods involving shipment (manufacture and ship) beyond one year

A.P. (DIR Series) Circular No.81 dated 21st February, 2012

RBI has permitted AD Category- I banks to allow exporters to receive advance payment for export of goods which would take more than one year to manufacture and ship and where the 'export agreement' provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment subject to the specified conditions.

For condition, please refer circular available on RBI website at: <http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=7012&Mode=0>

4. Liberalisation in release of Foreign Exchange for Imports

A.P. (DIR Series) Circular No. 82 dated 21st February, 2012

Presently, applications by persons, firms and companies for making payments, exceeding \$500 or its

equivalent towards imports into India must be made in Form A-1. The said limit has been reviewed and it has been decided as a measure of liberalisation to raise the above limit for foreign exchange remittance towards imports without any documentation formalities, from \$500 or its equivalent to \$5,000 or its equivalent, with immediate effect. It is clarified that the ADs need not obtain any document, including Form A1, except a simple letter from the applicant containing the basic information viz., the name and the address of the applicant, name and address of the beneficiary, amount to be remitted and the purpose of remittance, as long as the exchange being purchased is for a current account transaction (and is not included in the Schedules I and II of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 framed by Government of India vide Notification No. G.S.R.381 (E) dated 3rd May, 2000, as amended from time to time, the amount does not exceed \$5,000 or its equivalent and the payment is made by a cheque drawn on the applicant's bank account or by a Demand Draft.

5. Import of Gold on loan basis - Tenor of loan and opening of stand-by Letter of Credit (SBLC)

A.P. (DIR Series) Circular No. 83 dated 27th February, 2012

Presently, the maximum tenor of gold loan is 240 days consisting of 60 days for manufacture and exports plus 180 days for fixing the price and repayment of gold loan as per the Foreign Trade Policy 2004-2009 of the GOI and that the tenor of the SBLC, for import of gold on loan basis, where ever required, should be in line with the aforesaid tenor of gold loan.

As per Para 4A 23.2 and Para 4A 23.3 of the Handbook of Procedures (HBP) Vol. I of the Foreign Trade Policy (FTP) 2009-14, the export has to be completed within a maximum period of 90 days from the date of release of gold on loan basis and the exporter shall have flexibility to fix the price and repay gold loan within 180 days from date of export. Accordingly, the maximum tenor of gold loan becomes 270 days at present (i.e. 90 days for manufacture and export plus 180 days for fixing the price and repayment) as per FTP 2009-14.

Accordingly, AD Banks are advised to comply that the maximum period of gold loan shall be as per the Foreign Trade Policy 2009-14 or as notified by the GOI from time to time, in this regard and the tenor of SBLC, for import of gold on loan basis, where ever required, should also be in line with the tenor of gold loan.

6. Compilation of R>Returns - Reporting under Foreign Exchange Transactions – Electronic Reporting System (FETERS)

A.P. (DIR Series) Circular No. 84 dated 29th February, 2012

RBI had vide A.P. (DIR Series) Circular No.77 dated 13th March, 2004, issued guidelines for compilation of R>Returns and reporting under FETERS. In view of the subsequent developments necessitating further modifications in FETERS, the following changes are made in reporting of R>Returns from the next financial year (i.e., transactions taking place from 1st April, 2012):

- (i) The purpose codes for classification and reporting of foreign exchange transactions in FETERS should be as per the revised classification with effect from first fortnight of April 2012 as per the guidelines provided in the circular.
- (ii) AD banks may indicate purpose codes for all foreign exchange transactions (including receipts under non-export transactions below ₹5 lakhs) under FETERS. The present system of reporting of non-export transactions below ₹5 lakhs (a) on a consolidated basis in BoP file and (b) submission of purpose-wise distribution of a sample of such small receipt transactions (as part of R-return in the URS file under FETERS), will be discontinued for transactions beyond 31st March, 2012.
- (iii) The amount field in all FETERS files will be increased to 15-digit format.
- (iv) 6-digit port code will be used uniformly for reporting under FETERS.

For the detailed revised Guidelines for Submission of Data under the FETERS, please refer the above circular available at: <http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=7026&Mode=0>

7. External Commercial Borrowings (ECB) for Infrastructure facilities within National Manufacturing Investment Zone (NMIZ)

A.P. (DIR Series) Circular No. 85 dated 29th February, 2012

As per the extant guidelines, the infrastructure sector for the purpose of availing ECB is defined to include (i) power, (ii) telecommunication, (iii) railways, (iv) road including bridges, (v) sea port and airport, (vi) industrial parks, (vii) urban infrastructure (water supply, sanitation and sewage projects), (viii) mining, refining and exploration and (ix) cold storage or cold room facility, including for farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat. Developers of SEZ were also allowed to provide such infrastructure facilities within the SEZ.

Keeping in view the infrastructural needs of the proposed NMIZs, it has now been decided to allow developers of NMIZ also to avail of ECB under the "approval route" for providing infrastructure facilities within the NMIZ, as indicated above. Press release for the same was issued dated 29th February, 2012.

8. Clarification on delegation of power - in Establishment of Branch Offices (BO)/Liaison Offices (LO) in India by Foreign Entities

A.P. (DIR Series) Circular No. 88 dated 1st March, 2012

It has been clarified that transfer of assets of LO/BO to subsidiaries or other LO/BO or any other entity is permitted only with the specific approval of the Central Office of the Foreign Exchange Department, RBI.

9. Foreign Institutional Investor (FII) investment in 'to be listed' debt securities

A.P. (DIR Series) Circular No. 89 dated 1st March, 2012.

Presently, as per the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 as amended, the Securities and Exchange Board of India (SEBI) registered FIIs are allowed to invest only in listed non-convertible debentures (NCDs)/bonds issued by an Indian company.

SEBI has, vide their circular CIR/IMD/FIIC/18/2010 dated 26th November, 2010, issued instructions on the revised allocation of investment limits to FIIs. In terms of paragraph 8 of the circular, SEBI has allowed FIIs to invest in 'to be listed' debt securities. Accordingly, it has been decided that SEBI registered FIIs/sub-accounts of FIIs can now invest in primary issues of Non-Convertible Debentures (NCDs)/bonds only if listing of such bonds/NCDs is committed to be done within 15 days of such investment. In case the NCDs/bonds issued to the SEBI registered FIIs/sub-accounts of FIIs are not listed within 15 days of issuance to the SEBI registered FIIs/sub-accounts of FIIs, for any reason, then the FII/sub-account of FII shall immediately dispose of these bonds/NCDs either by way of sale to a third party or to the issuer and the terms of offer to FIIs/sub-accounts should contain a clause that the issuer of such debt securities shall immediately redeem/buyback the said securities from the FIIs/sub-accounts of FIIs in such an eventuality.

10. Clarification on Liberalised Remittance Scheme (LRS) for Resident Individuals

A.P. (DIR Series) Circular No. 90 dated 6th March, 2012.

RBI has clarified that -

- (i) the LRS facility is available to all resident individuals including minors. In case of remitter being a minor, the LRS declaration form must be countersigned by the minor's natural guardian.
- (ii) Remittances under the facility can be consolidated in respect of family members subject to individual family members complying with the terms and conditions of the scheme; and
- (iii) Remittances under the scheme can be used for purchasing objects of art subject to the provisions of other applicable laws such as the extant Foreign Trade Policy of the Government of India.

For the modified LRS application cum declaration form, please refer above circular available on RBI website:

<http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=7047&Mode=0>

11. Reporting Platform for OTC Foreign Exchange and Interest Rate Derivatives

FMD.MSRG.No.67/02.05.002/2011-12 dated 9th March, 2012

As per the recommendation of a Working Group constituted in June 2010 to work out the modalities for an efficient, single point reporting mechanism for all OTC interest rate and forex derivative transactions, RBI has decided that:

- (i) All inter-bank OTC inter-bank foreign exchange derivatives shall be reported on a platform to be developed by the Clearing Corporation of India Limited (CCIL).
- (ii) All/selective trades in OTC foreign exchange and interest rate derivatives between the Category-I Authorised Dealer Banks/market makers (banks/PDs) and their clients shall be reported on the CCIL platform subject to a mutually agreed upon confidentiality protocol.

CCIL has been advised to undertake development of reporting platform for the purpose mentioned above. Besides, the market representative bodies, viz. Foreign Exchange Dealers Association of India (FEDAI), Fixed Income, Money Market and Derivatives Association of India (FIMMDA) and Primary Dealers Association of India (PDAI) have been advised to assist the CCIL in development of the confidentiality protocol. The CCIL will, in due course, keep the banks/PDs informed of the technology upgradation required for the purpose along with the time lines for completion of various milestones.

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CORPORATE LAWS



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

MCA (www.mca.gov.in)

1. Registration of companies or LLPs by professionals

The MCA has issued General Circular No. 02/2012 dtd. 01-03-2012 clarifying that where at the time of incorporation of companies, one of the objects is to carry on the business of banking, insurance or to practice the profession of chartered accountancy, cost accountancy and company secretaries, then the concerned Registrar of Companies shall incorporate the same only on production of in-principle approval/NOC from the concerned regulator/professional institutes. It is also clarified that where one of the objects is to carry on the business/profession of

architecture, then the concerned Registrar of Companies/ Registrar of LLP shall incorporate the same only on production of the in-principle approval/NOC from the concerned regulator. One may refer to the above citation for further details.

2. Timeline extended for DIN holders to submit PAN

The MCA has issued General Circular No. 04/2012 dtd. 09-03-2012 extending the timeline for filing form DIN-4 by DIN holders for furnishing PAN and to update PAN details upto 30-04-2012. One may refer to the above citation for further details.

3. Committee constitution to formulate a policy document on corporate governance

The MCA has issued General Circular No. 03/2012 dtd. 07-03-2012 stating that while the issue of how corporates decide to carry on their affairs is largely a matter of their choice subject to conformity with the law, the increasing importance of businesses to the economies and complexities of operating in an inter-dependent world have brought home the need for business chambers, professions, regulators and even the governments to take interest in this aspect. Also, concerns relating to the quality of corporate governance system and the need to maintain its integrity and public accountability have resulted in a number of public interventions all over the world including the well known Cadbury Code (1992) and the Sarbanes-Oxley Act (2002) of the UK and US respectively. In India, too, a few elements of good corporate governance find mention in legal frameworks like the listing agreement of SEBI and a few of the provisions of the Companies Bill 2011. More detailed guidelines are also available, including the Voluntary Code on Corporate Governance of the CII (1998) and the National Voluntary Guidelines on Corporate Governance of this Ministry (2009) which are currently under revision by a Committee under the Chairmanship of Shri Kiran Karnik. The MCA states that a need has, however, been felt to also have a formal policy document that synthesises the disparate elements in diverse guidelines, draws on innovative best practices adopted by specific companies, incorporates the current international trends, and anticipates emerging demands on corporate governance in enterprises in various classes and scales of operation. While the policy is expected to be applicable across the corporate sector, it is not intended to dilute or whittle down the liberty to self-govern that is the hallmark of functioning of this sector - it is only intended to ensure that board and management practices and other processes conform to more standardised norms. A concept paper on the subject entitled "Concept Paper on National Corporate Governance Policy, 2012" was earlier released and which was meant to facilitate public discussion and in ascertaining views of all stakeholders and suggesting a policy document by the Committee constituted. The paper is also meant to

serve as the basis for the deliberations and the outcome of the work of the Committee. A Committee under the Chairmanship of Mr. Adi Godrej is formed for the purpose and submit its report. One may refer to the above citation for further details.

4. Role-check for the DSCs belonging to authorised signatories of Banks/FIs

The MCA has issued Circular No. HQ/104/2007 dtd. 17-02-2012 reiterating that the use of DSCs has been mandated for all filings to ensure the security and integrity of documents filed with the Registry. To substantiate the requirements, the MCA has introduced role-check for the Digital Signature Certificates (DSCs) to ensure that these are correctly applied by the authorised signatory. The MCA has already introduced role-check of DSCs for directors of companies from the Director Identification Number (DIN) database and the professionals (company secretary/chartered accountant/cost accountant) from the database taken from the respective institutes. Following the same process, a mechanism has been formulated (as given in the Annexure to this Circular) to implement a similar role-check to establish the veracity of authorised signatories of banks and financial institutions (FIs), which is important for charge related services. The banks and FIs advance credit to the companies and create a charge on the assets so financed. The charges so created are required to be registered with the ROC in order to be a secured creditor. The registration/modification/satisfaction of a charge are filed with the ROC through the prescribed form which has to bear the digital signatures of the company representative as well as that of the authorised signatory from the bank/FI. The role-check in respect of the authorised signatory from the bank/FI is required to ensure that the DSC applied is actually the digital signature of the authorised person. In view of critical nature in respect of charge related services, all banks and financial institutions are requested to follow the role-check process devised and published through this Circular at an early date in the MCA21 system. One may refer to the above citation for further details.

SEBI (www.sebi.gov.in)

5. Investor grievance redressal mechanism at stock exchanges

The SEBI has issued Circular No. CIR/MIRSD/2/2012 dtd. 15-02-2012 regarding the investor service centres and recalling that presently, stock exchanges having nationwide terminals, such as National Stock Exchange of India Ltd.(NSE) and Bombay Stock Exchange Ltd. (BSE) operating in equity as well as equity derivative segments are providing investor grievance redressal mechanism and arbitration facility (arbitration as well as appellate arbitration) at four regional centres (Delhi, Mumbai, Kolkata and Chennai). Now, with a view to increase investor confidence in the securities market and

in order to make it more convenient to the investors to file their grievances and arbitration cases near to their places, SEBI has initiated steps to set-up this facility by stock exchanges at more centres after examining the data on complaints and arbitrations filed by investors from various regions. In consultation with all the major stock exchanges, it has been hence decided that initially, (a) NSE and BSE shall set up Investor grievance redressal mechanism at Ahmedabad and Hyderabad by 31st March, 2012 and at Kanpur and Indore by 30th September, 2012, (b) NSE and BSE shall provide arbitration facility (arbitration as well as appellate arbitration) at all the above mentioned four new centers by 30th September, 2012. They shall abide by all the applicable circulars issued by SEBI in this regard, and, (c) NSE and BSE shall have adequate infrastructure and manpower, as considered appropriate, at these new centres to handle investor grievance redressal mechanism and arbitration facility effectively. One may refer to the above citation for further details.

6. Standardised lot size for SME exchange/platform

The SEBI has issued Circular No. CIR/MRD/DSA/06/2012 dtd. 21-02-2012 referring to the framework prescribed by it earlier for setting up of a stock exchange/trading platform by a recognised stock exchange having nationwide trading terminals for Small and Medium Enterprises (SMEs). Now, it has been decided to standardise the lot size for Initial Public Offer (IPO) proposing to list on SME exchange/platform and for the secondary market trading on such exchange/platform. The following may be noted :

- At the IPO stage, the Registrar to Issue in consultation with merchant banker/s, issuer and the stock exchange shall ensure to finalise the basis of allotment in minimum lots and in multiples of minimum lot size, as per the above given table. The secondary market trading lot size shall be the same, as shall be the IPO lot size at the application/allotment stage, facilitating secondary market trading.
- At the IPO stage if the price band decided, falls within two different price bands than the minimum application lot size shall be decided based on the price band in which the higher price falls into. For example: if the proposed price band is at 24-28 than the Lot size shall be 4,000 shares.
- The lot size shall not be reduced by the exchange to below the initial lot size if the trading price is below the IPO issue price.
- The stock exchanges can review the lot size once in every six months/wherever warranted, by giving an advance notice of at least one month to the market. However, as far as possible the stock exchange shall ensure that odd lots are not created.
- Further, the stock exchanges shall ensure that the lot size shall be the same for a securities traded across the exchanges.

- In case of oversubscription, if the option to retain 10% of the net offer to public for the purpose of making allotment in minimum lots is exercised, then it shall be ensured by the issuer/stock exchanges/merchant bankers that the post issue paid up capital of the issuer does not go beyond ₹25 crore.

One may refer to the above citation for further details and the different price bands with the applicable lot size.

7. Offer for sale of shares by promoters through the stock exchange mechanism

The SEBI has issued Notification No. CIR/MRD/DP/7/2012 dtd. 23-02-2012 modifying its earlier circular on the above subject and now providing that cumulative orders/bid quantity information shall be made available online by the exchanges at specific time intervals and that the indicative price shall be disclosed by the exchanges only during the last half an hour of the duration of the offer for sale. It is also clarified that the indicative price shall reflect the volume weighted average price of all the bids that have exhausted the quantity offered. The SEBI has issued another circular CIR/MRD/DP/8/2012 dtd. 27-02-2012 clarifying that the contents of the advertisement, if any, to be issued for the above shall be restricted to the contents of the notice as given to the stock exchange. One may refer to the above citation for further details.

8. Amendment to SEBI (mutual funds) regulations

The SEBI has issued Notification No. LAD-NRO/GN/2011-12/38/4290 dtd. 21-02-2012 amending the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 by inserting the new definition of an advertisement to mean and include all forms of communication issued by or on behalf of the asset management company/mutual fund that may influence investment decisions of any investor/prospective investors. Amendment is also made in relation to valuation of investments whereby now every mutual fund shall ensure that the asset management company computes and carries out valuation of investment made by its scheme(s) in accordance with the investment valuation norms specified in Eighth Schedule, and publishes the same. It is also provided that a mutual fund and/or asset management company shall be liable for action under the applicable provisions of the Act and the Regulations framed thereunder in case the advertisement issued is in contravention with the Advertisement Code specified in Sixth Schedule and in case the valuation of securities is in contravention of the principles of fair valuation specified in Eighth Schedule. One may refer to the above citation for further details and also for the advertisement code.

9. Distributor due diligence by mutual funds

The SEBI has issued Circular No. Cir/IMD/DF/7/2012 dtd. 28-02-2012 clarifying that the due diligence of distributors is solely the responsibility of mutual funds/AMCs which shall not be delegated to any agency. However, mutual funds/AMCs may take assistance of an agency of repute while carrying out due diligence process of distributors. Also, under the current regulations, AMCs shall appoint separate fund manager for each separate fund managed by it unless the investment objectives and assets allocations are the same and the portfolio is replicated across all the funds managed by the fund manager. On representation that a perfect replication of portfolio between the mutual fund scheme and schemes/products under other permissible activities of AMC may not be achieved at all times. Hence, it has been decided that the replication of minimum 70% of portfolio value shall be considered as adequate for the purpose of said compliance, provided that AMC has in place a written policy for trade allocation and it ensures at all points of time that the fund manager shall not take directionally opposite positions in the schemes managed by him. Also, in order to bring transparency while addressing the issue of conflict of interest wherein a fund manager is common across mutual fund schemes and schemes/products under other permissible activities of AMC, the AMC shall, (a) disclose on their websites, the returns provided by the said manager for all the schemes (mutual fund, pension funds, offshore funds, etc.) on a monthly basis, (b) in case of any performance advertisement is issued by the AMC for any scheme, then the details of returns of all the schemes (mutual fund, pension funds, offshore funds etc) managed by that fund manager shall be provided, and, (c) in case the difference between the annual returns provided by the schemes managed by the same fund manager is more than 10% then the same shall be reported to the trustee and explanation for the same shall be disclosed on the website of the AMC. One may refer to the above citation for further details.

10. Valuation of debt and money market instruments and advertisement

The SEBI has issued Circular No. Cir/IMD/DF/6/2012 dtd. 28-02-2012 and stated that it had earlier brought in standardised practice in the mutual fund industry, especially in the debt market segment, and had then asked mutual funds to value all money market and debt securities with residual maturity of up to 91 days at the weighted average price at which they are traded on the particular valuation day. This residual maturity of 91 days is now reduced to 60 days. Also, in order to further enhance transparency, the AMCs shall disclose all details of debt and money market securities transacted (including inter scheme transfers) in its schemes portfolio on AMCs' website and the same shall be forwarded to AMFI for consolidation and dissemination as per format

enclosed. These disclosures shall be made settlement date wise on daily basis with a time lag of 30 days. In relation to advertisement, it is clarified that, (a) while advertising payout of dividends, all advertisements shall disclose the dividends declared or paid in rupees per unit along with the face value of each unit of that scheme and the prevailing NAV at the time of declaration of the dividend, (b) impact of distribution taxes : while advertising returns by assuming reinvestment of dividends, if distribution taxes are excluded while calculating the returns, this fact shall also be disclosed, (c) payout of dividend/bonus : while advertising payouts, all advertisements shall disclose, immediately below the pay out figure (in percentage or in absolute terms) that the NAV of the scheme, pursuant to payout would fall to the extent of payout and statutory levy (if applicable), and, (d) in case of money market schemes or cash and liquid schemes, wherein investors have very short investment horizon, the performance can be advertised by simple annualisation of yields if a performance figure is available for at least seven days, 15 days and 30 days provided it does not reflect an unrealistic or misleading picture of the performance or future performance of the scheme. One may refer to the above citation for further details.

11. Guidelines for Credit Rating Agencies

The SEBI has issued Circular No. CIR/MIRSD/3/2012 dtd. 01-03-2012 and stated that under the SEBI (Credit Rating Agencies) Regulations, 1996 (the Regulations), a credit rating agency (CRA) has been defined as a body corporate which is engaged in the business of rating of securities offered by way of public or rights issues. The term "securities" has been defined in Clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956. It is observed by SEBI that the CRAs registered with SEBI also carry out rating of other securities/instruments and loans/facilities provided by banks which are not regulated by SEBI. Such ratings are being used by the other regulators or their regulated entities for the specified purposes. SEBI hence considers it desirable that in addition to the review/accreditation process put in place by these regulators, if any, such ratings should also be governed by the same stringent norms as applicable for rating of securities issued by way of public and rights issues. Hence, it has been decided in consultation with the CRAs and also with other regulators that for the above mentioned ratings, CRAs shall follow the applicable requirements pertaining to rating process and method-ology and its records, transparency and disclosures, avoidance of conflict of interest, code of conduct, etc., as prescribed in the Regulations and circulars issued by SEBI from time to time. It is also stated by SEBI that the half-yearly internal audit for the CRAs as prescribed by SEBI shall also cover the above mentioned ratings. One may refer to the above citation for further details.

RBI (www.rbi.gov.in)

12. Dissemination of Credit Information of suit-filed accounts

The RBI has issued Circular No. RBI/2011-12/408/UBD.CO.BPD.Cir.No.19/09.11.200/2011-12 dtd. 13.02.2012 reiterating that in addition to Credit Information Bureau (India) Ltd. (CIBIL), Certificate of Registration (CoR) has been issued to three CICs, viz. Experian Credit Information Company of India Pvt. Ltd., Equifax Credit Information Services Pvt. Ltd. and High Mark Credit Information Services Pvt. Ltd. to commence the business of credit information under the Credit Information Companies (Regulation) Act, 2005. Later, the Credit Information Bureau (India) Ltd. has also been registered under Circular No. DBOD No. CID.BC.84/20.16.042/2011 12 dtd. 05-03-2012. The RBI has now advised to submit the quarterly list of suit filed accounts of ₹1 crore and above, classified as doubtful or loss, to CIBIL and/or to any other credit information company which has obtained CoR from RBI and of which the bank is a member. It has also advised to submit the list of suit filed accounts of willful defaulters of ₹25 lakh and above as at the end of quarter March, June, September and December to CIBIL and/or any other credit information company which has obtained CoR from RBI and of which your bank is a member. The CICs have been advised to disseminate credit information covering data supplied by banks/FIs on such suit filed account on their respective websites. One may refer to the above citation for further details.

13. Convergence of Indian Accounting Standards with IFRS for UCBs

The RBI has issued Circular No. UBD.CO.BPD. No. 25/12.05.001/2011-12 dtd. 06-03-2012 reiterating that the Core Group constituted by the Ministry of Corporate Affairs, Government of India had approved in March 2010, a road map for convergence of Indian Accounting Standards (Ind-AS) with the International Financial Reporting Standards (IFRS). In the Annual Policy Statement 2010-2011 of the Reserve Bank issued on 20th April, 2010, it was stated that Urban Cooperative Banks (UCBs) having net worth in excess of ₹300 crore would, while preparing its accounts, converge with IFRS in tandem with the time schedule given for scheduled commercial banks and accordingly convert their opening balance sheet as on 1st April, 2013 in compliance with IFRS converged Ind-AS. UCBs having net worth in excess of ₹200 crore but not exceeding ₹300 crore would convert their opening balance sheet as on 1st April, 2014 in compliance with IFRS converged Ind-AS. UCBs having net worth in excess of ₹200 crore are, therefore, advised to take necessary steps to ensure that they are in readiness to adopt the IFRS converged Ind-AS from 1st April 2013 or 1st April 2014 as the case may be. One may refer to the above citation for further details. ■

Accounting for payments made in respect of land pending execution of conveyance deeds and borrowing costs incurred in respect thereof

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. The Government of India directed a State Port Trust (SPT) to construct a new Port. Accordingly, SPT acted as the executing agency and completed a Port. The Government of India provided a sum of ₹426.11 crore to SPT towards implementation of the Port. The Government of India vide their letter dated 14.02.2002 directed SPT to handover the completed Port to ABC Limited (hereinafter referred to as 'the company') which is owned by the Government of India and was incorporated with the specific purpose of corporatising the Port. Both parties acknowledge that cost of land acquired by the SPT for the Port amounting to ₹14.81 crore has not been included in the estimated cost of the project arrived at as on 22.06.2001 (which is the date on which commercial operation of the Port was achieved) on the advice of the Government of India. Both parties expressly undertook to be bound by the decision of the Government of India on the cost of the land. Accordingly, the SPT handed over all the assets (excluding land) and liabilities with respect to the Port Project to the management of the company on 22.06.2001.
2. The querist has stated that the Port has been developed / constructed on 2,083.74 acres of land acquired from 3 Government agencies as given below. The following amounts were paid to the Government agencies being the vendors of land while taking possession of the land. The kind of title that will accrue to the company against these payments was not known at the time of making these payments.

Vendors of acquired land	Extent (in acres)	Total Amount	Paid by SPT	Paid by the company
State Electricity Board (SEB), State Government	1103.98	15,20,87,099	5,20,87,099	10,00,00,000
State Industrial Development Corporation Ltd (SIDCO), a State PSU	950.00	9,56,72,600	9,56,72,600	Nil

Vendors of acquired land	Extent (in acres)	Total Amount	Paid by SPT	Paid by the company
Salt Department, Government of India	29.76	11,35,692	11,35,692	Nil
Total	2083.74	24,88,95,391	14,88,95,391	10,00,00,000

3. The above amount of ₹24.89 crore was paid by (i) SPT to the extent of ₹14.89 crore and (ii) the company to the extent of ₹10.00 crore, all during the construction period.
4. SPT used its own financial resources and constructed the Port. The entire amount spent by SPT (as the Executor of the Project) together with all the assets created except land was transferred by SPT to the company on 22.06.2001 at its actual values as per the Government directives. However, the amount of ₹14.89 crore paid by SPT towards taking possession of land for the company was retained by SPT in its books and not transferred to the books of the company as per the Government directions.
5. After nearly 6 years, viz., in the financial year 2007-08, the Government of India finally decided that the land can be owned by the company and directed the company to pay to SPT the amount of ₹14.89 crore (originally paid by SPT towards land for the port of the company) together with interest of ₹16.51 crore, all totaling to ₹31.40 crore. The breakup for interest of ₹16.51 crore is (i) interest from the date(s) of payments to 22.06.2001- ₹6.58 crore and (ii) interest from 23.06.2001 to the day of payment by the company- ₹9.93 crore.
6. The company paid the said sum of ₹31.40 crore to SPT. Since the nature of title that will accrue to the company was not known at the time of making these payments, the company retained the entire amount of ₹31.40 crore in its books as 'Advance for Land' and grouped under 'Loans and Advances' in its balance sheet as on 31.03.2008.

7. Thus, the total amount retained in 'Advance for Land' in the books of the company stands at ₹41.40 crore as on 31.03.2008, comprising (i) ₹24.89 crore of amounts paid for acquisition of land and (ii) ₹16.51 crore of interest relating to the period after taking possession of the land / commencement of commercial operations.
8. Based on the subsequent developments in this regard between the company, the Government and Government agencies involved in this issue, the company expects to get 'Orders of Alienation of Title' for the land from the respective vendors of the land in due course of time. The querist has informed that formal transfer of title for the land would be through issuance of 'Orders of Alienation of Title' by the transferor Government, when land is transferred by Government agencies to a Public Sector Undertaking.

B. Query

9. On the facts and in the circumstances of the case, the querist has sought the opinion of the Expert Advisory Committee on the following issues:
- Whether the company can capitalise the value of land at ₹24,88,95,391 in the financial year 2010-11, with a suitable disclosure in the Notes to Accounts as 'Pending receipt of formal Orders of Alienation of Title, the consideration of ₹24,88,95,391 paid for acquisition of land in earlier years is capitalised during this year'.
 - Whether the company can charge the interest of ₹16.51 crore paid to SPT to its profit and loss account of the financial year 2010-11 as a separate line item with a suitable disclosure in the Notes on Accounts by stating that "Interest of ₹16.51 crore paid to SPT during the financial year 2007-08, which was kept under 'Advance for Lands' has been charged to revenue during this year as the company expects to get Orders of Alienation of Title for the land from the respective vendors of the land in due course of time. This is an extraordinary item and non-recurring in nature".
 - If the answer to the above questions are negative, what is the correct treatment to be accorded in the books of account of the company for this total amount of ₹41.40 crore? What kind of disclosure would be required to be made in the Notes to Accounts of the company?

C. Points Considered by the Committee

10. The Committee notes that the basic issue raised in the query relates to accounting treatment of payment made in respect of land of Port pending execution of conveyance deeds. The Committee, while answering the query, has considered only this issue and has not examined any other issue that may arise from the Facts of the Case, such as, accounting for the assets (except land) and liabilities transferred from SPT to the company, propriety of deducting TDS from the amounts paid by the company to SPT, etc. The Committee also wishes to point out that in paragraph 1 of the Facts of the Case, the querist has stated that the amount paid by the SPT towards acquisition of land is ₹14.81 crore, whereas, at other places, the same is stated at ₹14.89 crore. Accordingly, the amount of ₹14.81 crore seems to be a typographical error.
11. As regards accounting for payments made in respect of land, the Committee notes paragraph 17(b) of Accounting Standard (AS) 1, 'Disclosure of Accounting Policies' and paragraph 35 of the Framework for the Preparation and Presentation of Financial Statements, issued by the Institute of Chartered Accountants of India, which provides as follows:

AS 1

"17(b) Substance over Form

The accounting treatment and presentation in financial statements of transactions and events should be governed by their substance and not merely by the legal form."

Framework for the Preparation and Presentation of Financial Statements

"35. If information is to represent faithfully the transactions and other events that it purports to represent, it is necessary that they are accounted for and presented in accordance with their substance and economic reality and not merely their legal form. The substance of transactions or other events is not always consistent with that which is apparent from their legal or contrived form. For example, where rights and beneficial interest in an immovable property are transferred but the documentation and legal formalities are pending, the recording of acquisition/disposal (by the transferee and transferor respectively) would in substance represent the transaction entered into."

From the above, the Committee is of the view that for accounting purposes, the transactions and events should be recorded in accordance with their substance and economic reality rather than legal form. The Committee notes from the Facts of the Case that in the extant case, the company has paid consideration for purchase of land and it is not only possessing such land but also utilising the same for its commercial purposes. However, the formal transfer of such land is yet to be executed in favour of the company. The Committee is of the view that in the present case, the execution of Orders of Alienation of Title is only procedural in nature and if it does not affect the beneficial interest which are bestowed on the company, the company can account for such land in its books at the time of transfer of such beneficial interest to the company provided other conditions for recognition of asset as detailed in paragraph 12 below are fulfilled. The company, in such case, should also give suitable disclosures to convey to the users of financial statements that the execution of conveyance deeds in favour of the company is in progress.

12. The Committee further notes paragraphs 49(a), 58 and 88 of the Framework for the Preparation and Presentation of Financial Statements, issued by the Institute of Chartered Accountants of India, as below:

“49(a) An asset is a resource controlled by the enterprise as a result of past events from which future economic benefits are expected to flow to the enterprise.”

“58. There is a close association between incurring expenditure and obtaining assets but the two do not necessarily coincide. Hence, when an enterprise incurs expenditure, this may provide evidence that future economic benefits were sought but is not conclusive proof that an item satisfying the definition of an asset has been obtained. ...”

“88. An asset is recognised in the balance sheet when it is probable that the future economic benefits associated with it will flow to the enterprise and *the asset has a cost or value that can be measured reliably.*” (Emphasis supplied by the Committee.)

The Committee notes from the Facts of the Case that until and unless the Government issued a final order that the title to the land can be obtained by the company alongwith determining the final payments that the company would make to SPT, the cost of land cannot be measured reliably. Accordingly, in accordance with paragraph 88 of the Framework, as reproduced above, the Committee is of the view that although in the extant case, the land may meet the criteria of an asset for the company, but before the financial year 2007-08 when the said order was issued by the Government of India, it cannot be recognised in the books of the company.

13. The Committee notes that as per the Government Order issued during the financial year 2007-08, the company was requested to make payment to SPT of the amount invested by it for land acquisition along with interest thereon @ SBI PLR as amended from time to time. The Committee is of the view that the payments determined on the basis of SBI PLR cannot be treated as ‘borrowing costs’ as neither the company has borrowed any funds from SPT on which the borrowing costs may be said to have incurred nor it is payment for any delays on the part of the company. In fact such delay has occurred on the part of the Government for reaching the final decision for transfer of land. The Committee notes that it is based on the order of the Government that assets are being transferred from one entity to another at the amounts specified in the Order. Considering the principle of ‘Substance over Form’, as discussed in paragraph 11 above, the Committee is of the view that in the extant case, the reference by the Government to a rate of interest is only as a reference point for determination of final sale consideration of the land and does not automatically lead to an inference that the amount so computed is of the nature of interest. In substance, the company is paying the total amount as a consideration to obtain the title to land. Accordingly, the company should recognise the total amount of ₹41.40 crore as cost of land in its books of account. The Committee is, therefore, of the view that the question of disclosure of interest paid, as an extraordinary item, does not arise.

D. Opinion

14. On the basis of the above, the Committee is of the

following opinion on the issues raised in paragraph 9 above:

- (i) The company should capitalise the total amount of ₹41.40 crore paid to SPT as 'land' and not as 'Advance for land' from the date when the company possess the beneficial interest in the same and its cost can also be measured reliably as discussed in paragraphs 11 and 12 above and not in the financial year 2010-11. However, the company should give suitable disclosures to convey to the users of financial statements that the execution of conveyance deeds in favour of the company is in progress.
- (ii) The Government has made reference to a rate of interest as a means to compute final sale consideration of the land. The amount so determined is in substance not "interest" in the facts and circumstances of the case as stated in paragraph 13 above. Therefore, the question of disclosure of interest paid as an extraordinary item does not arise.
- (iii) Refer to (i) 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 10.10.2011. 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 nine volumes. A CD of Compendium of Opinions containing twenty nine 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.

IFAC Releases Revisions to Policy Position Paper Two

The International Federation of Accountants (IFAC) has released revisions to Policy Position Paper 2, promoting a single set of auditing standards for all audits, including of Small- and Medium-Sized Entities. It is a revised version of Policy Position Paper 2, *A Single Set of Auditing Standards: Audits Of Small- And Medium-Sized Entities*. The use of International Standards on Auditing (ISAs) for audits of small- and medium-sized entities has again been brought into focus following the release of the European Commission's proposed audit legislation late last year. Policy Position Paper 2, *A Single Set of Auditing Standards: Audits Of Small- And Medium-Sized Entities*, was first issued by IFAC in 2008. The main revisions to the position paper include updated references to The Clarified ISAs; other standards that the IAASB has issued and that are relevant to small and medium practitioners; and tools and guidance made available to practitioners by IFAC and the IAASB.

(Source: <http://www.ifac.org/>)

IESBA Proposes Changes to Code of Ethics Definition of Engagement Team

The International Ethics Standards Board for Accountants (IESBA), an independent standard-setting board that develops and issues, in the public interest, high-quality ethical standards and other pronouncements for professional accountants worldwide recently released for public exposure proposed changes to the definition of "engagement team" in the IESBA *Code of Ethics for Professional Accountants* (the Code). The proposals address comments received by the International Auditing and Assurance Standards Board on its Exposure Draft (ED) on ISA 610, *Using the Work of Internal Auditors*. A number of respondents to that ED pointed out the perceived inconsistency between the independence requirements for external auditors under the Code and the use of internal auditors to perform external audit procedures. Through this Exposure Draft, the IESBA seeks to ascertain whether the proposed changes to the definition adequately clarify the term "engagement team" and eliminate the perception that the Code and the ISA are in conflict. The IESBA invites all stakeholders to comment on its proposals in the Exposure Draft, *Proposed Change to the Definition of "Engagement Team"*. To submit a comment, visit the IESBA website at www.ifac.org/ethics. Comments on the Exposure Draft are requested by 31st May, 2012.

(Source: <http://www.ifac.org/>)

IAASB Staff Issues Q&A Document on Professional Skepticism

The staff of the International Auditing and Assurance Standards Board (IAASB) recently released *Professional Skepticism in an Audit of Financial Statements*, a new question-and-answer (Q&A) publication that re-emphasises to auditors the importance of an attitude of professional skepticism when performing their role. The Q&A publication focuses on the requirements and application material in the ISAs and the IAASB's quality control standard that are of particular relevance to the proper understanding and application of professional skepticism during an audit of financial statements. In addition, answers are provided regarding what audit firms and auditors can do to enhance

awareness of the importance of professional skepticism, identify aspects of an audit where professional skepticism may be particularly important, and how professional skepticism can be evidenced.

(Source: <http://www.ifac.org/>)

IASB and EFRAG Discuss Status of Ongoing Projects and Other Topics

The International Accounting Standards Board (IASB) and the European Financial Reporting Advisory Group (EFRAG) met recently to discuss the IASB's ongoing work on the four major open projects and to address a number of other matters. EFRAG is the private sector body responsible for stimulating debate in Europe about the evolution of International Financial Reporting Standards (IFRSs) and for providing input to the work of the IASB, after appropriate due process, on behalf of Europe. The meeting focused on the four major open projects: Insurance Contracts, Leases, Financial Instruments and Revenue Recognition. In addition to general updates, the IASB provided a preliminary assessment of the comments that have been received on the exposure of the revised revenue recognition proposals, while the EFRAG updated the IASB on the results of their field tests on these proposals. The EFRAG also commented on the Leases project, on the IASB's project to make limited improvements to the classification and measurement model in IFRS 9 and discussed its plans to field test the IASB's general hedge accounting Review Draft. In other matters, the recent ESMA paper on 'materiality' was discussed, as was EFRAG's forthcoming discussion paper on the Disclosure Framework. The IASB and EFRAG also addressed the potential for coordination on research projects, the due process for the IASB's forthcoming post-implementation reviews and how user outreach can be coordinated.

(Source: <http://www.ifrs.org/>)

IASB Issues Amendments to IFRS 1

The International Accounting Standards Board (IASB) recently issued amendments to IFRS 1 *First-time Adoption of International Financial Reporting Standards*. The amendments, dealing with loans received from governments at a below market rate of interest, give first-time adopters of IFRSs relief from full retrospective application of IFRSs when accounting for these loans on transition. This is the same relief as was given to existing preparers of IFRS financial statements. The amendments are mandatory for annual periods beginning on or after 1st January, 2013. Earlier application is permitted.

(Source: <http://www.ifrs.org/>)

Research Identifies Biggest Challenges Facing Finance Organisations

The Institute of Management Accountants and a leading vendor of cloud computing business management software suites and ERP product provider have released a 23-page report, offering insights into the greatest challenges faced by today's finance organisations, along with the steps that companies are taking to overcome them. The report, "Rising to the Challenge—Productivity in Accounting and Finance Organisations," surveyed 1,726 IMA members who represent finance organisations across all different industries. According to the report, the key challenges faced by finance

organisations include streamlining processes and improving productivity in order to reduce costs and achieving gains in productivity through business processes improvement efforts. Other challenges include improving strategic activities such as planning, budgeting, forecasting, cost and profitability analysis, and providing performance scorecards and reporting. Finance organisations also face challenges running a global business efficiently; implementing/upgrading information systems; and connecting the finance team with the front office. The research found that financial organisations most often achieve productivity gains through the use of improved technology and automation, while a substantial number of organisations integrate the various information systems within an organisation. By doing so, according to the report, organisations also may be able to enhance their responsiveness to customers. The report is available at <http://www.imanet.org/> (Source: <http://www.accountingtoday.com/>)

ASB Plans Cooling-Down Period for New Standards

International Accounting Standards Board chairman told attendees at a financial conference in Mexico City that the board plans to give accountants a period of relative stability to give them time to adjust to all the new standards. He noted that the IASB is approaching the completion of its convergence program with the Financial Accounting Standards Board in the U.S. The two boards have been in the process of re-exposing several of the standards, which include leasing, revenue recognition, financial instruments and insurance contracts, to get further feedback before finalising them. However, there remain important differences between the standards that still need to be resolved. Meanwhile, the Securities and Exchange Commission has not yet made a decision on whether or not to approve the incorporation of International Financial Reporting Standards into the U.S. financial reporting system. (Source: <http://www.accountingtoday.com/>)

IAASB Enhances Compilations Standard; Addresses SME Needs

Countless entities around the globe—especially small- and medium-sized entities (SMEs)—look to professional accountants in public practice to assist in the preparation and presentation of their financial information. Recognising the important role practitioners play in providing accounting and financial reporting expertise to entities in support of high-quality financial reporting, the IAASB recently released International Standard on Related Services (ISRS) 4410 (Revised), *Compilation Engagements*, addressing such service engagements. ISRS 4410 (Revised) clarifies the practitioner's role and responsibilities in a compilation engagement and matters that need to be considered when accepting such engagements, and emphasises the importance of quality control. It also expands the traditional compilation engagement report to make clear to users the practitioner's contribution to the compiled financial information presented by management, and the key features of a compilation engagement. The revised standard is effective for compilation engagement reports dated on or after 1st July, 2013. (Source: <http://www.ifac.org/>)

Accountant Hiring Expected to Remain Steady in Q2

Staffing levels in accounting and finance are anticipated to stay fairly steady in the second quarter, according to a survey of CFOs by staffing company Robert Half International. The company's Financial Hiring Index found that 91% of the 1,400 CFOs surveyed said they expect to maintain their current personnel levels in the second quarter, up from 69% at the beginning of the year. In addition, 4% of the CFOs polled said they plan to add employees, while 5% predict staff decreases. The CFOs surveyed mostly remain optimistic about their businesses. 91% said they are confident in their companies' growth prospects in Q2, up four points from the first-quarter survey. The East South Central states of Alabama, Kentucky and Mississippi, along with the Mountain states of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah and Wyoming are projected to see the most active hiring in the second quarter. A net 5% of executives interviewed in each of these regions said they are planning to hire full-time accounting and finance employees. Executives with wholesale firms plan to do the most hiring in the second quarter, according to the survey. A net 10% of CFOs in the wholesale industry said they anticipate adding staff. (Source: <http://www.accountingtoday.com/>)

Swiss Lawmakers Vote to Accept U.S. Tax Plan

Swiss lawmakers have passed a tax proposal seen as key to settling a U.S. probe into Swiss banks with hidden offshore accounts. The proposal, which clarifies how Switzerland would hand over data on Americans suspected of dodging taxes at home, seeks to backstop an expected deal over U.S. probes into 11 banks including Credit Suisse and Julius Baer, likely to comprise a data handover and fine payment. Switzerland's lower house recently passed the proposal by 110 votes to 56 votes, sealing an initial backing taken last week. Switzerland's upper house passed the plan in December. Specifically, the plan would allow Switzerland to hand over data on suspected tax evaders, even if U.S. tax authorities cannot identify alleged offenders by name or bank account. The move represented a weakening of Switzerland's long-cherished secrecy laws, which have underpinned its finance industry on which the economy relies heavily. Provided a 100 day waiting period without a call for a referendum, attention is likely to shift to the U.S.-Swiss talks, which is meant to sweep Swiss bank accounts clean of offenders and make good on past transgressions. (Source: <http://www.accountingtoday.com/>)

LinkedIn Launches Accounting Group

LinkedIn has recently launched a special group for accountants that is already attracting a growing group of accountants. The LinkedIn Accounting group launched recently has quickly grown to nearly 500,000 members, led by LinkedIn content editor who is a former business news reporter at the Associated Press. This Accounting group has been attracting comments from members in the U.K., Canada and other countries in addition to the U.S. In looking at the industries not represented across the over 1 million user-created groups on LinkedIn, it was noticed there was a sizable number of members who self-identified in the accounting, real estate, and entertainment industries. Hence, the three industries were selected for this initial test. (Source: <http://www.accountingtoday.com/>)

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals/Newspapers received during February-March, 2012 for the reference of Faculty/Students & Members of the Institute.

1. ACCOUNTING

Determinants of Analysts' Cash Flow Forecast Accuracy by Jinhan Pae & Sung-Soo Yoon. *Journal of Accounting, Auditing & Finance*, Vol.27/1, pp.123-144.

Financial Reporting: Has the Door Opened for Investment Fund GAAP? by Glenn Gillard & Goind Ram Khatri. *Accountancy Ireland*, Feb. 2012, pp.26-34.

Financial Reporting/International: Three Common Currency Adjustment Pitfalls by Scott L. Spencer & Glenn E. Richards. *Journal of Accountancy*, Feb. 2012, pp.30-35.

How to Pass Financial Accounting by Carla Davison. *Accountancy*, Feb. 2012, pp.82-83.

Reading Between the Lines: An Empirical Examination of Qualitative Attributes of Financial Analysts Reports by Brady Twedt & Lynn Rees. *Journal of Account & Public Policy*, Vol. 31, 2012, pp.1-21.

The Thin Red Line: What Happens When a Forensic Accountant Walks Through Your Door? by Anne Lampe. *CPA Australia*, Feb. 2012, pp.56-65.

2. AUDIT

Audit & Ethics: A Complete Protection Measure for Shareholder Groups by Rahul Nath. *The Management Accountant*, Feb. 2012, pp.193-196+198.

Auditor Mergers, Audit Quality & Audit Fees: Evidence From the PricewaterhouseCoopers merger in the UK by Rong Ding & Yuping Jia. *Journal of Account & Public Policy*, Vol. 31, 2012, pp.69-85.

Do Financial Analysts Add Value by Facilitating More Effective Monitoring of Firms' Activities? by Boochun Jung etc. *Journal of Accounting, Auditing & Finance*, Vol.27/1, pp.61-99.

Doubts Over Audit Exemption for Subsidiaries by Brian Hanney. *Accountancy*, Feb. 2012, pp. 70.

The Impact of Nonaudit Services on Capital Markets by Seunghan Nam & Joshua Ronen. *Journal of Accounting, Auditing & Finance*, Vol.27/1, pp.32-60.

Investors' Perceptions of Auditors' Economic Dependence on the Client: Post-SOX Evidence by Carl Hollingsworth & Chan Li. *Journal of Accounting, Auditing & Finance*, Vol.27/1, pp.100-122.

What's Your Fraud IQ? by Dawn Taylor & Andi McNeal. *Journal of Accountancy*, Feb. 2012, pp.36-39.

3. ECONOMICS

State of Competition in Indian Power Sector: An Exploratory Analysis by Gopal K. Sarangi. *International Journal of Regulation & Governance*, Vol.11/2, pp.21-39.

Upskill to Face Down Economic Challenges by ICPAS. *CPA Singapore*, Feb. 2012, pp.30-35.

4. EDUCATION

Establishing Classroom Rapport Through Communication Skills by Letha Ram Mohan. *University News*, Feb. 6-12, 2012, pp.14-16.

Good Governance: Challenges & Prospects by V. Rajeswari. *University News*, Feb. 13-19, 2012, pp.13-16.

Integrating ICT in Teacher Education: An Enevitale Step Towards Improving the Quality of Education by Raju Narayana Swamy. *University News*, Feb. 6-12, 2012, pp.1-6.

5. INVESTMENT

Allowance of FDI Up to 51% in Multi Brand Retailing by Shivani Gupta. *The Management Accountant*, Feb. 2012, pp.185-192.

Valuation of Intellectual Property (IP) in Emerging Markets – Role of CMAs in IP Accounting & Audit by K. P. C. Rao. *The Management Accountant*, Feb. 2012, pp.204-210.

6. MANAGEMENT

Better Risk Management, Better Bottom Line by Michael Spellman. *Accountancy Ireland*, Feb. 2012, pp.47-49

Climate Finance & Financial Gradients: Perspectives & Methods by Arnab Bose. *International Journal of Regulation & Governance*, Vol.11/2, pp. 57-76.

Innovations in Finance: Financial Engineering by P. K. Sinha & Sanchari Sinha. *The Management Accountant*, Feb. 2012, pp.143-149.

Innovations in Finance: Management & the Role of the New Age CFO by Soumen Mukerjee. *The Management Accountant*, Feb. 2012, pp. 140-142.

Islamic Finance: Changing the face of Banking in Africa by Merisha Kassie & Yusuf Dukander. *Accountancy SA*, Feb. 2012, pp.35.

Risk Governance a Foundation for Effective Risk Management by Mike Sullivan. *Accountancy Ireland*, Feb. 2012, pp.44-46.

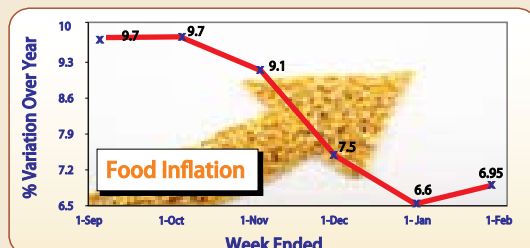
7. TAXATION & FINANCE

Corporate Social Responsibility & Tax Aggressiveness: An Empirical Analysis by Roman Lanis & Grant Richardson. *Journal of Account & Public Policy*, Vol. 31, 2012, pp.86-108.

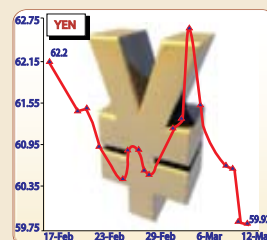
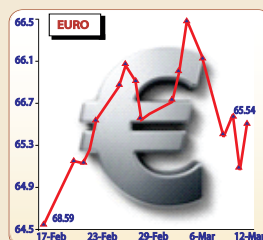
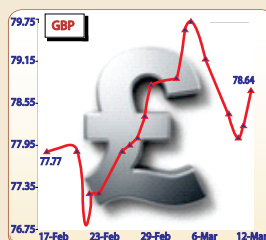
Legitimacy of Reference to OECD Commentary For Interpretation of Income Tax Act & DTAAs by Ankit Virendra Sudha Shah. *BCAJ*, Feb. 2012, pp.9-18.

Full Texts of the above articles are available with the Central Council Library, ICAI, which can be referred on all working days. For further inquiries please contact on 011-23370154 or by e-mail at library@icai.org

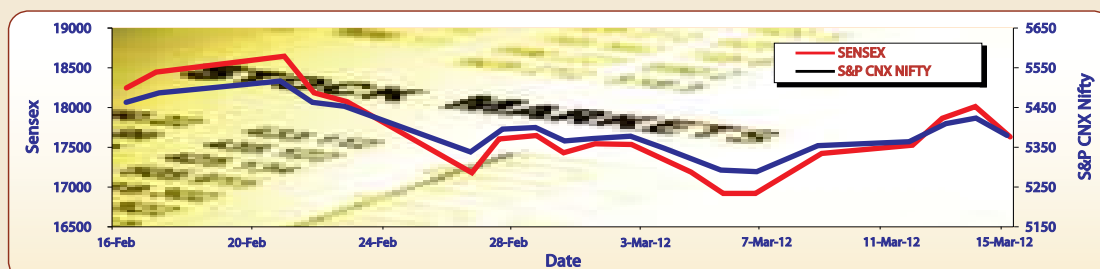
Economic Indicators



Indian Rupee vs. Major Foreign Currencies (February 16, 2012 to March 15, 2012)



Stock Markets



Selected Indicators

(per cent per annum)

Item	2011		2012				
	Mar. 4	Jan. 27	Feb. 3	Feb. 10	Feb. 17	Feb. 24	Mar. 2
Cash Reserve Ratio ⁽¹⁾	6.00	6.00	5.50	5.50	5.50	5.50	5.50
Bank Rate	6.00	6.00	6.00	6.00	9.50	9.50	9.50
Base Rate ⁽²⁾	8.25/9.50	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⁾	7.75/9.50	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⁾	6.91	8.97	8.99	8.70	8.81	8.73	8.97

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 eboard@ical.org.

Vision 2030



The Institute of Chartered Accountants of India (ICAI) had released its Vision 2030 document setting out its *Vision for 2030, Mission, Strategic Priorities and Action Plan* for the coming three years during the 62nd Annual Function of the ICAI held on 11th February, 2012. The Document was released by honorable Dr. M. Veerappa Moily, Union Minister of Corporate Affairs.

Accordingly, ICAI aims at harnessing the opportunities and addressing the challenges presented by the rapidly changing environment so that, by 2030, ICAI becomes:

World's leading accounting body,
a regulator and developer of **trusted and independent professionals** with
world class competencies
in accounting, assurance, taxation, finance and business advisory services

ICAI Vision 2030 emphasises four elements:

- a) **To be World's Leading Accounting Body:** ICAI envisions becoming the world's leading accounting body by playing a predominant role in setting world class standards in identified service areas developing thought leadership and research that addresses concerns of countries, developed, developing and under-developed.
- b) **A Regulator and Developer of Trusted and Independent Professionals:** ICAI will lay further thrust on its regulatory and developmental role that sets the highest standards of professional and ethical conduct of its members as a core value. Each and every member of ICAI will not only have the obligation to maintain exacting standards of clarity, transparency and disclosure and present an independent, informed and balanced opinion but ICAI will make examples of delinquent members to ensure
- c) **With World Class Competencies:** ICAI will ensure that members have the right skills to serve global markets which are regularly updated and are relevant in the changing economic order. ICAI will provide holistic education, effective practical training and continuous professional development to ensure that the knowledge base of the profession keeps pace with emerging global practices and innovations.
- d) **In Accounting, Assurance, Taxation, Finance and Business Advisory Services:** ICAI will strengthen facilities available for providing education, training and continuous updation of knowledge as also research and development relevant in current times to establish thought leadership in these areas where members of ICAI have been providing services.

ICAI will leverage **technology and infrastructure** and partner with its stakeholders to:

- Impart world class education, training and professional development opportunities to **create global professionals**
- Develop an **independent and transparent regulatory mechanism** that keeps pace with the changing times
- Ensure adherence to **highest ethical standards**
- Conduct **cutting edge research and development** in the areas of accounting, assurance, taxation, finance and business advisory services
- Establish ICAI members and firms as Indian multi-national service providers

It sets out its Mission as:

The Mission 2030 of ICAI lays focus on following key elements:

- a) **Global Professionals:** ICAI will develop skilled professionals with competencies to service clients not only within India but across the globe that requires technical skills as also cross cultural appreciation and understanding of global needs. As one of the largest producers of CAs in the world, we will make sure our members can take the rightful place in the global talent pool.
- b) **Independent and Transparent Regulatory Mechanism:** ICAI will further strengthen and visibly demonstrate its regulatory role through proactive, visible, timely and unbiased action. We will create public awareness and sensitise all stakeholders to the effectiveness of the quasi judicial role of ICAI and ensure inclusion of wider section of users of member services in carrying out our role as regulator.
- c) **Highest Ethical Standards:** ICAI will continue to inculcate highest ethical standards amongst its members to assist them in upholding the values
- d) **Cutting-edge Research and Development:** ICAI will become the hub of valued Thought leadership and innovation in the field of accounting, assurance, taxation, finance and business. ICAI will devote resources and create an enabling environment to become the predominant contributor to setting standards across the world in these fields. We will support, fund and take up research on issues that impact locally and globally.
- e) **Multi-national Service Providers:** ICAI will facilitate the Indian professional services firms and professionals to establish as multi-national service providers and help them in harnessing global opportunities on one hand and assist them in building capabilities on the other.

that the accounting profession stands for. We will continue to include and emphasise ethical values as part of the education and training of students and members.

The six strategic priorities and Action Plan in line with Vision 2030 are:

I	Create enabling framework for and facilitate Indian firms and professionals to leverage global opportunities
II	Leverage national leadership position to assume leadership in regional and international accounting fraternity
III	Revitalize education and training systems and establish an enabling ecosystem to produce globally competitive accounting professionals
IV	Adapt regulatory mechanism to the changing times
V	Undertake branding and awareness campaign to enhance public perception of ICAI and professionals affiliated to ICAI
VI	Strengthen organizational infrastructure and technological capabilities to improve engagement with all stakeholders



Draft Chartered Accountants (Amendment) Regulations, 2012

[PUBLISHED IN THE GAZETTE OF INDIA, PART III, SECTION 4, DATED 23rd FEBRUARY, 2012]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA]

NOTIFICATION

New Delhi, the 23rd February, 2012

No.1-CA(7)/145/2012.- The following draft of certain regulations further to amend the Chartered Accountants Regulations, 1988, which the Council of the Institute of Chartered Accountants of India proposes to make, is hereby published, as required by sub-section (3) of section 30 of the Chartered Accountants Act, 1949 (38 of 1949) for the information of all persons likely to be affected thereby; and notice is hereby given that the said draft regulation shall be taken into consideration after the expiry of a period of forty-five days from the date on which the copies of the Gazette of India, in which these draft regulations are published, are made available to the public;

Any person desiring to make any objection or suggestion in respect of the said draft regulations, may forward the same to the Council of the Institute of Chartered Accountants of India within the period so specified addressed to the Secretary, the Institute of Chartered Accountants of India, Indraprastha Marg, New Delhi – 110 002;

Any objection or suggestion which may be received from any person with respect to the said draft regulations before the expiry of the period so specified shall be taken into consideration by the Council.

Draft Regulations

1. (1) These regulations may be called the Chartered Accountants (Amendment) Regulations, 2012.

(2) They shall come into force on the date of their final publication in the Official Gazette.

2. In the Chartered Accountants Regulations, 1988, (hereinafter referred to as the said regulations), in regulation 2, in sub-regulation (1),-

(i) after clause (xiii), the following clause shall be inserted, namely:-

“(xviii a) “rules” means the rules made by the Central Government under the Act;”;

(ii) in clause (xv), for the words “or any Deputy”, the words “or any Additional or Joint or Deputy” shall be substituted.

3. in regulation 25C of the said regulations, for the words “Common Proficiency Test” wherever they

occur, the words “Common Proficiency Course” shall respectively be substituted.

4. in regulation 25D of the said regulations,-

(i) in sub-regulation (1),-

(a) after the words, “Central Government”, the words “or the State Government” shall be inserted;

(b) after the words “as equivalent thereto”, the words “for the purposes of admission to graduation courses” shall be inserted.

(ii) after sub-regulation (1), the following sub-regulations shall be inserted, namely:-

“(1A) Any graduate or post graduate referred to in sub-clause (ix) of regulation 2 shall be exempted from passing the Common Proficiency Test under this regulation if such person is a -

(i) graduate or post graduate in commerce having secured in aggregate a minimum of fifty-five per cent of the total marks or its equivalent grade in the examination conducted by any recognised University (including Open University) by studying any three papers of 100 marks each out of Accounting, Auditing, Mercantile Laws, Corporate Laws, Economics, Management (including Financial Management), Taxation (including Direct Tax Laws and Indirect Tax Laws), Costing, Business Administration or Management Accounting; or

(ii) graduates or post graduates other than those referred to in clause (i), having secured in aggregate a minimum of sixty per cent. of the total marks or its equivalent grade in the examination conducted by any recognised University (including Open University);

(1B) Any candidate who has passed the Intermediate examination conducted by the Institute of Cost and Works Accountants of India set up under the Cost and Works Accountants Act, 1959 (23 of 1959) or by the Institute of Company Secretaries of India set up under the Company Secretaries Act, 1980 (56 of 1980) shall also be exempted from passing the Common Proficiency Test under this regulation.

Explanation,- For the purpose of sub-regulations (1A) and (1B),-

- (i) for calculating the percentage of marks, the marks secured in subjects in which a person is required by the University (including open University) to obtain only pass marks and for which no special credit is given for higher marks, shall be ignored; and
- (ii) any fraction of half or more shall be rounded up to the next whole number.”.

5. In regulation 28C of the said regulations,-

- (a) for the words “Professional Competence Examination” wherever they occur, the words “Intermediate (Professional Competence Course) Examination” shall respectively be substituted;

(b) in sub-regulation (1),-

(i) in clause (a),-

(a) after the words, “Central Government”, the words “or the State Government” shall be inserted;

(b) after the words “as equivalent thereto”, the words “for the purposes of admission to graduation courses” shall be inserted;

(ii) (a) in clause (b), for the word “worked”, the word “served” shall be substituted;

(b) after the words “examination is held”, the words “and has been so continuing on the first day of the said month” shall be inserted;

(iii) in the second proviso, after the words, brackets and letters “to appear in the Professional Education (Examination II)”, the words, brackets and letters “and he fulfils the condition laid down under clause (b)” shall be inserted.

6. In regulation 28D of the said regulations, -

(a) for the words “Integrated Professional Competence Course” wherever they occur, the words “Intermediate Course” shall respectively be substituted;

(b) for sub-regulation (2), the following regulation shall be substituted, namely:-

“(2) No candidate shall be eligible for enrolment to any of the level of the Intermediate Course, unless he –

(a) has passed the Common Proficiency Test held under these regulations and Senior Secondary Examination (10+2 examination) conducted by an examining body constituted by law in India or an examination recognised by the Central Government or the State Government as equivalent thereto for the purposes of admission to graduation courses; or

(b) has been exempted from passing Common Proficiency Test under regulation 25D.”;

(c) after sub-regulation (2), the following sub-regulation shall be inserted, namely:-

“(2A) Notwithstanding anything contained in sub-regulation (2), a candidate who is pursuing the final year of graduation course shall be provisionally registered to the Intermediate Course which shall be confirmed only on submission of satisfactory proof of having passed the graduation examination with the minimum marks as specified in sub-regulation (1A) of regulation 25D within such period not exceeding six months as may be decided by the Council, from the date of appearance in the Final year graduation examination:

Provided that if such candidate fails to produce the proof within the aforesaid period, his provisional registration shall be cancelled and the registration fee or the tuition fee, as the case may be, paid by him shall not be refunded and for the purpose of these regulations no credit shall be given for the theoretical education undergone.”

7. In regulation 28E of the said regulations, -

(a) for the words “Integrated Professional Competence Examination”, “Integrated Professional Competence Course” and “Professional Competence Examination” wherever they occur, the words “Intermediate Examination”, “Intermediate Course” and “Intermediate (Professional Competence Course) Examination” shall respectively be substituted;

(b) in sub-regulation (1), after clause (b), the following proviso shall be inserted, namely,-

"Provided that a candidate who has been exempted from passing Common Proficiency Test as specified in sub-regulation (1A) of regulation 25D and enrolled for the Intermediate Course shall be eligible to appear in the examination on completion of nine months of practical training under regulation 50.";

8. In regulation 29B of the said regulations, in sub-regulations (1) and (2) after the words "Professional Competence Examination" wherever they occur, the words "or the Intermediate (Professional Competence) Examination" shall respectively be inserted.

9. In regulation 29C of the said regulations, -

(A) in sub-regulation (1),-

(i) in clause (i),-

(a) for the words "Professional Competence Examination", the words "Intermediate Examination" shall be substituted;

(b) the word "and" occurring at the end, shall be omitted;

(ii) in clause (ii), after the words "examination is held", the words "or has been serving the last six months of practical training under regulation 50 on the first day of the month in which the examination is held" shall be inserted;

(iii) after clause (ii), the following clauses shall be inserted, namely:-

"(iii) he produces a certificate to the effect that he has undergone a study course for such period, as on the first day of the month in which examination is held, in such manner as may be decided by the Council from time to time; and

(iv) completed the Advanced Course on Information Technology Training under these regulations for such period and in such manner as may be decided by the Council, from time to time.";

(iv) for the proviso, the following proviso shall be substituted, namely:-

"Provided that a candidate who has passed Professional Education (Examination-II) under the syllabus as decided by the Council under sub-regulation (5) of regulation 28B and has

completed the practical training as is required for admission as a member on or before the last day of the month preceding the month in which the examination is held or has been serving the last twelve months of practical training including excess leave, if any, on the first day of the month in which the examination is held and has completed the prescribed study course and also Advanced Course on Information Technology Training, shall be admitted to the Final Examination.";

(B) in sub-regulation (2),-

(a) after the words "Integrated Professional Competence Examination", the words "or the Intermediate Examination" shall be inserted;

(b) after the words "examination is held", the words "and has completed the prescribed study course and also Advanced Course on Information Technology Training" shall be inserted.

10. In regulation 31 of the said regulations, -

(i) in clause (ii), for the words "Professional Competence Examination", the words "Intermediate (Professional Competence Course) Examination" shall be substituted;

(ii) in clause (iii), for the words "Integrated Professional Competence Course", the words "Intermediate Course" shall be substituted.

11. For regulation 36A of the said regulations, the following regulation shall be substituted, namely:-

"36A Requirement for passing the Common Proficiency Test.-- A candidate for the Common Proficiency Test shall ordinarily be declared to have passed the test if he obtains at one sitting a minimum of thirty per cent marks in each section and a minimum of fifty per cent marks in the aggregate of all the sections, subject to the principle of negative marking, in such manner as may be determined by the Council, from time to time.

Explanation,- For the removal of doubt, it is hereby declared that the provisions of this regulation shall apply to a Common Proficiency Test held on or after the commencement of the Chartered Accountants (Amendment) Regulations, 2012."

12. In regulation 37B of the said regulations, for the words "Professional Competence Examination" wherever they occur, the words "Intermediate (Professional

Competence Course) Examination" shall respectively be substituted.

13. In regulation 37C of the said regulations, -

- (i) for the word "Integrated Professional Competence Examination" wherever they occur, the words "Intermediate Examination" shall respectively be substituted;
- (ii) for the word "Professional Competence Examination" wherever they occur, the words "Intermediate (Professional Competence Course) Examination" shall respectively be substituted;

14. In regulation 40 of the said regulations, -

- (i) for the word "Professional Competence Examination", the words "Intermediate (Professional Competence Course) Examination" shall be substituted;
- (ii) for the word "Integrated Professional Competence Examination", the words "Intermediate Examination" shall be substituted.

15. In regulation 43 of the said regulations, -

- (i) after sub-regulation (2), the following sub-regulation shall be inserted, namely:-

"(2A) A member in full time employment with a firm of chartered accountants shall be entitled to train one articulated assistant provided he has been in employment with the same firm for a continuous period of three years.";

- (ii) in sub-regulation (3), clause (i) shall be omitted.

16. In regulation 45 of the said regulations,-

- (i) for the words "Integrated Professional Competence Course" wherever they occur, the words "Intermediate Course" shall be substituted;
- (ii) in sub-regulation (1), in clause (b), for sub-clause (i), the following sub-clause shall be substituted, namely:-

"(i) has passed the Professional Education (Examination-II) or has passed Group I level or Accounting Technician level of Intermediate Examination held under these regulations or has been exempted from passing Common Proficiency Test under sub-regulation (1A) of regulation 25D; and";

(iii) in sub-regulation (2),

- (a) after the words "Central Government", the words "or the State Government" shall be inserted;
- (b) after the words "as equivalent thereto", the words "for the purposes of admission to graduation courses" shall be inserted.

17. In regulation 50 of the said regulations, -

- (i) in the third proviso, for the words "Professional Competence Examination", the words "Intermediate (Professional Competence Course) Examination" shall be substituted;
- (ii) for fourth Proviso, the following provisos shall be substituted, namely:-

"Provided also that a candidate enrolled for the Intermediate Course shall be eligible to three years of articles training on his passing the Group I level or Accounting Technician level of the Intermediate Examination:

Provided also that a candidate who is a graduate or post graduate and has been exempted from passing the Common Proficiency Test shall be eligible to three years of articles training on his registration to the Intermediate Course."

18. In regulation 51 of the said regulations, in sub-regulation (1), for the word "Professional Competence Examination", the words "Intermediate (Professional Competence Course) Examination" shall be substituted.

19. After regulation 51B of the said regulations, the following regulation shall be inserted, namely:-

"51C. Advanced Course on Information Technology Training. - A candidate shall undergo an Advanced Course on Information Technology Training as may be determined by the Council which shall not be less than one hundred hours and not more than five hundred hours and in such manner and within such time as may be determined by the Council from time to time."

20. In regulation 69 of the said regulations, in sub-regulation (1), in clause (b), for sub-clauses (ii) and (iii), the following sub-clauses shall respectively be substituted, namely:-

“(ii) has passed the Professional Education (Examination-II) or Group I level or Accounting Technician level of Intermediate Examination held under these regulations or has been exempted from passing the Common Proficiency Test as specified under sub-regulation (1A) of regulation 25D; and

(iii) has successfully completed computer training programme or Information Technology Training as may be specified from time to time by the Council and in the manner so specified.”.

21. In regulation 72 of the said regulations, in sub-regulation (1), for the words “Professional Competence Examination”, the words “Intermediate (Professional Competence Course) Examination” shall be substituted.

22. After regulation 72B of the said regulations, the following regulation shall be inserted, namely:-

“72C. Advanced Training Course on Information Technology. - A candidate shall undergo an Advanced Course on Information Technology Training as may be determined by the Council which shall not be less than one hundred hours and not more than five hundred hours and in such manner and within such time as may be determined by the Council from time to time.”.

23. In regulation 127 of the said regulations, in sub-regulation (1), for item 4, the following item shall be substituted, namely:-

“4. The States of Bihar, Chattisgarh, Jharkhand, Madhya Pradesh, Rajasthan, Uttarakhand and Uttar Pradesh.”.

24. In regulation 130 of the said regulations, in sub-regulation (2), -

(i) in clause (xvii), the word “and” appearing at the end shall be omitted;

(ii) after clause (xvii), the following clauses shall be inserted, namely:-

“(xvii a) to publish Newsletter for dissemination of useful information;

(xix b) to conduct Continuing Professional Education Programmes on topics of professional relevance; and”.

25. In regulation 134 of the said regulations,-

(i) in sub-regulation (1), -

(a) for the words “April of the year”, the words “April of the financial year” shall be substituted;

(b) after the proviso, the following provisos shall be inserted, namely:-

“Provided further that, if the professional address is not borne on the Register on the relevant date, the residential address borne on the Register shall determine his regional constituency:

Provided also that, in the case of a member having his professional address outside India and eligible to vote, his regional constituencies shall be determined according to his professional address in India registered immediately before he went abroad or the residential address in India borne on the Register on the relevant date, whichever is later.”;

(ii) in sub-regulation (2),--

(a) for the words “April of the year”, the words “April of the financial year” shall be substituted;

(b) for the words “on the date of election”, the words “on the last date of scrutiny of nominations” shall be substituted;

(c) the following provisos shall be inserted, namely:-

“Provided that no person shall be eligible to stand for election to a Regional Council, if -

(a) he is holding a post under the Central Government or a State Government;

(b) he is or has been elected as a Member to Regional Council for more than three consecutive terms; or

(c) he is or has been elected as the Chairman under Regulation 137:

Provided further that, no person who has been found guilty of any professional or other misconduct and whose name is removed from the Register or has been awarded penalty of fine, shall be eligible to contest for election to a Regional Council,-

- (i) in case of misconduct falling under the First Schedule to the Act, for a period of three years;
- (ii) in case of misconduct falling under the Second Schedule to the Act, for a period of six years,

from the completion of the period of removal of name from the Register or payment of fine, as the case may be:

Provided also that, no person who has been auditor of the Regional Council shall be eligible to contest for election to a Regional Council for a period of three years after he ceases to be the auditor of that Regional Council.”;

- (iii) in sub-regulation (3), for the words and figures “under regulation 85”, the words, figure and bracket “under rule 8 read with Schedule 3 to the Chartered Accountants (Election to the Council) Rules, 2006” shall be substituted;

- (iv) for sub-regulation (4), the following sub-regulation shall be substituted, namely:-

“(4) (i) At least three months before the date of election, the Council shall publish, for each regional constituency, a list of members eligible to vote showing distinctly and separately -

- (a) whether the voter is an associate or a fellow;
- (b) the address of each member as determined under sub-regulation (1) for deciding the eligibility of the member to vote;
- (c) in the case of a voter residing outside India, in addition to his address in India under clause (b), his address outside India if furnished to the Institute by the voter concerned;
- (d) details of internet address or e-mail address as furnished by a voter to the Institute, provided an express consent is given by the voter for its inclusion in the list of voters;
- (e) the manner in which the voter shall exercise his franchise; and
- (f) in case the voter is to exercise his franchise at a polling booth, the number and address of the polling booth, at which the franchise shall be exercised.

- (ii) Subject to the provisions of these regulations, the address of a member published in the list of voters for determining the manner in which he shall be entitled to cast his vote, the constituency and the polling booth to which he shall belong for the purpose of casting his vote shall be final.

- (iii) The inclusion of the name of a member in the list of members eligible to vote shall not confer an absolute right to vote at the election which shall be subject to the other provisions of these regulations and the Act and rules made thereunder.

- (iv) The list of members eligible to vote shall be made available at the Headquarters of the Regional Council and its branches on payment of such price as may be fixed by the Council.

- (v) An announcement about the availability of the list, shall be put on the website of the Regional Council, notice board of the Regional Council, as well as the notice board of the branches of the Regional Council, wherever these exist.

- (vi) If a clerical mistake or omission is detected in the list of members eligible to vote, the Secretary may rectify such mistake at any time by issue of a suitable corrigendum.”;

- (v) in sub-regulation (6), -

- (i) in clause (i), for the words “appropriate form”, the words “form approved by the Council” shall be substituted;

- (ii) for clause (ii), the following clause shall be substituted, namely:-

“(ii) delivered along with requisite fees, security deposit and other papers specified for the purpose in the form approved by the Council to the Secretary by name not later than 6 P.M. on the notified date:

Provided that no nomination delivered after the last date and time notified for the election shall be entertained by the Panel for scrutiny of nominations.

- (iii) An acknowledgement of delivery shall be issued by the Secretary or by a person authorised by him on receipt of nomination

form mentioning the time and date of receipt of nomination form.”;

- (vi) after sub-regulation (6), the following sub-regulation and *Explanation* shall be inserted, namely:-

“(6A) The nomination shall be valid only if it is accompanied by a statement and verified by the candidate containing the information called for.

Explanation.— For the purpose of this sub-regulation, a valid nomination means a nomination which contains all the particulars called for through the nomination form and incomplete nomination without one or more particulars shall liable to be rejected.”;

- (vii) in sub-regulation (7), for the words “one thousand rupees”, the words “twenty-five thousand rupees” shall be substituted;

- (viii) after sub-regulation (7), the following sub-regulation shall be inserted, namely:-

“(7A) A candidate for election, in addition to fee as provided in this Chapter shall pay, irrespective of the number of nominations filed, an amount of ten thousand rupees as security deposit, which shall be forfeited if he fails to secure not less than one per cent of the original votes polled in the concerned regional constituency.”;

- (ix) in sub-regulation (8), for the words “in consultation with an approval”, the words “with the prior approval” shall be substituted;

- (x) after sub-regulation (9), the following sub-regulation shall be inserted, namely:-

“(9A) At the time of giving his decision, the President may -

- (a) dismiss the dispute referred to him under sub-regulation (9);
- (b) declare the election of all or any of the elected candidate to be void;
- (c) declare the election of all or any of the elected candidate to be void and to declare the applicant or any other candidate to have been duly elected; or

- (d) may pass such order as to costs as he may consider appropriate.”;

- (xi) in sub-regulation (10), for the words and figures “prescribed in Chapter VI of these regulations”, the words, brackets and figures “specified in the Chartered Accountants (Election to the Council) Rules, 2006” shall be substituted.

26. In regulation 135 of the said regulations, in sub-regulation (4), the *Explanation* shall be omitted.

27. In regulation 137 of the said regulations,-

- (i) in item (i) of sub-regulation (1), for the word “September”, the word “February” shall be substituted;

- (ii) in sub-regulation (7), in item (i), after clause (e), the following clause shall be inserted, namely:-

“(f) Continuing Professional Education Committee.”;

- (iii) in sub-regulation (11), for the word “September”, the word “February” shall be substituted.

28. In regulation 141 of the said regulations, in the proviso to sub-regulation (1), for the word “September” the word “February” shall be substituted.

29. In regulation 149 of the said regulations, for sub-regulation (1), the following sub-regulation shall be substituted, namely:-

“(1) The Regional Council shall, on a requisition made in writing by at least ten per cent of the total number of members of the region or seven hundred fifty members in the region, whichever is less, convene an extraordinary General Meeting.”.

30. In regulation 159 of the said regulations,-

- (i) in sub-regulation (1), for the figure and word “100 members”, the figure and word “150 members” shall be substituted;

- (ii) after sub-regulation (1), the following sub-regulation (1A) shall be inserted, namely:-

“(1A) The Council may also, by notification in the Gazette of India, set up a branch of a Regional Council at such place in a district in which there is neither the headquarter of the Regional Council nor a branch of the Regional Council is located provided there are 100 members having their addresses registered in that district.”.

31. After regulation 161 of the said regulation, the following regulation shall be inserted, namely:-

"161A. Meetings of Council through teleconferences or video conferences. - A meeting of the Council, through tele conferencing or video conferencing may, at any time, be called subject to such conditions as may be determined by the Council from time to time."

32. After regulation 169 of the said regulations, the following regulation shall be inserted, namely:-

"169A. Meetings of Standing Committee through teleconferences or video conferences. - A meeting of the Standing Committee, through tele conferencing or video conferencing may, at any time, be called subject to such conditions as may be determined by such Committee from time to time."

33. In regulation 177 of the said regulations, in sub-regulation (3), after the word and figure "regulations 169", the figure and letter "169A", shall be inserted.

34. In regulation 184, for sub-regulation (1), the following sub-regulation shall be substituted, namely:-

"(1) Where a holder of a certificate granted by the Council has lost it, the Council may, on an application made in this behalf, duly supported by an affidavit of the applicant to the effect that he was in possession of such a certificate and had lost it, issue a duplicate, -

- (a) in case of a certificate of membership or a certificate of practice as an associate or fellow on payment of a fee of five hundred rupees; and
- (b) in case of any other certificates issued under these regulations on payment of a fee of two hundred rupees."

35. In regulation 192 of the said regulations, in the proviso,-

- (i) in clause (b), the word "and" appearing at the end shall be omitted;
- (ii) after clause (c), the following clauses shall be inserted, namely:-

"(d) in case of certain management consultancy services as may be specified by the resolution of the Council from time to time, the fees may be based on percentage basis which may be contingent upon the findings, or results of such work;

- (e) in the case of certain fund raising services, the fees may be based on a percentage of the fund raised;
- (f) in the case of debt recovery services, the fee may be based on a percentage of the debts recovered;
- (g) in the case of services related to cost optimisation, the fees may be based on a percentage of benefit derived; and
- (h) any other services or audit as may be decided by the Council."

36. In regulation 203 of the said regulations,-

- (i) in item No. (14),-
 - (a) for the word "staff", the words "officers and employees" shall be substituted;
 - (b) for the word "President", the words "Executive Committee shall" shall be substituted;

- (ii) after item number (20), the following item shall be inserted, namely:-

"(20A) signing all agreements, contracts, deeds, documents and undertaking, etc., on behalf of the Institute subject to the approval of the President;"

- (iii) in item number (21), for the words "signing vakalatnamas", the words "taking necessary steps in matters of any civil or criminal or other proceeding on behalf of the Institute in courts or forums or judicial or quasi-judicial authorities and signing vakalatnamas" shall be substituted;

- (iv) after item number (23), the following item shall be inserted, namely:-

"(23a) authorising any officer of the Institute to exercise or discharge any powers or duties under item (7), (9), (10), (11), (12), (16), (17), (18) and (19), as may be considered necessary from time to time."

37. In regulation 204 of the said regulations, for the words and letters "in connection therewith in accordance with the rules contained in Schedules 'C', 'D', 'E', 'F', 'G' and 'H' ", the words "in connection with the post qualification courses in Management Accountancy, Corporate Management, Tax Management, Information Systems Audit,

Insurance and Risk Management, and International Trade Laws and World Trade Organisation" shall be substituted.

38 In Schedule A to the said regulations, -

- (i) in Form "4" relating to Certificate of Membership in the opening paragraph, for the words and figures "This is to certify that of was admitted as an Associate of the Institute on the ... day of 20....." the following shall be substituted, namely:-

"This is to certify that of was admitted as an Associate of the Institute on the day of..... 20... and he/she is entitled to use the letters A.C.A. after his/her name.";

- (ii) in Form "5" relating to Certificate of Membership in the opening paragraph, for the words and figures "This is to certify that of was admitted as a Fellow of the Institute on the day of..... 20.....", the following shall be substituted, namely:-

"This is to certify that of was admitted as a Fellow of the Institute on the day of..... 20... and he/she is entitled to use the letters F.C.A. after his/her name.".

File No.1-CA(7)/145/2012

Sd/-
(T. Karthikeyan)
Secretary

Note: The principal regulations were published in the Gazette of India, Extraordinary, vide notification number 1-CA(7)/134/88, dated the 1st June, 1988 and subsequently amended by the following notification numbers:-

- (i) Notification No.1-CA(7)/1/89 published in the Gazette of India, dated the 7th October, 1989;
- (ii) Notification No.1-CA(7)/10/90 published in the Gazette of India, dated the 19th January, 1991;
- (iii) Notification No.1-CA(7)/11/90 published in the Gazette of India, dated the 19th January, 1991;
- (iv) Notification No.1-CA(7)/12/91 published in the Gazette of India, dated the 23rd February, 1991;
- (v) Notification No.1-CA(7)/13/90 published in the Gazette of India, dated the 2nd February, 1991;
- (vi) Notification No.1-CA(7)/19/92 published in the Gazette of India, dated the 7th March, 1992;
- (vii) Notification No.1-CA(7)/28/95 published in the Gazette of India dated the 1st September, 1995;
- (viii) Notification No.1-CA(7)/30/95 published in the Gazette of India, Extraordinary dated the 13th March, 1996;
- (ix) Notification No. 1-CA(7)/31/97 published in the Gazette of India, dated the 16th August, 1997;
- (x) Notification No. 1-CA(7)/44/99 published in the Gazette of India dated the 26th February, 2000;
- (xi) Notification No.1-CA(7)/45/99 published in the Gazette of India, dated the 26th February, 2000;
- (xii) Notification No.1-CA(7)/51/2000 published in the Gazette of India, Extraordinary, dated the 17th August, 2001;
- (xiii) Notification No.1-CA(7)/59/2001 published in the Gazette of India, Extraordinary dated the 28th September, 2001;
- (xiv) Notification No.1-CA(7)/64/2002 published in the Gazette of India, Extraordinary dated the 31st March, 2003;
- (xv) Notification No.1-CA(7)/64A/2003 published in the Gazette of India, Extraordinary dated the 4th December, 2003;
- (xvi) Notification No.1-CA(7)/83/2005 published in the Gazette of India, Extraordinary dated the 28th July, 2005;
- (xvii) Notification No.1-CA(7)/84/2005 published in the Gazette of India, dated the 17th June, 2006;
- (xviii) Notification No. 1-CA(7)/92/2006 published in the Gazette of India, dated the 13th September, 2006;
- (xix) Notification No. 1-CA(7)/102/2007(E) published in the Gazette of India, dated the 17th August, 2007;
- (xx) Notification No.1-CA(7)/116/2008 published in the Gazette of India, dated the 25th September, 2008;
- (xxi) Notification No.1-CA(7)/123/2008 published in the Gazette of India, dated the 3rd December, 2008.



Setting up of Branches of WICASA, CICASA and EICASA

In pursuance of Regulation 81(5) of the Chartered Accountants Regulations, 1988, read with Rule 4 of the Chartered Accountants Students' Association Rules (as contained in Appendix No. (5) to the Chartered Accountants Regulation 1988), the Council of the Institute of Chartered Accountants of India is pleased to announce the Setting up of Branch of WICASA at Bharuch, Branches of CICASA at Bilaspur, Muzaffarnagar, Pali, Branches of EICASA at Cuttack, Siliguri, Rourkela with effect from February 23, 2012.

The Branches shall be known as under:

1. Bharuch Branch of WICASA
2. Bilaspur Branch of CICASA
3. Muzaffarnagar Branch of CICASA
4. Pali Branch of CICASA
5. Cuttack Branch of EICASA

6. Siliguri Branch of EICASA
7. Rourkela Branch of EICASA

As prescribed under Rule 4(b), of the Chartered Accountants Students' Association Rules, the Branch shall, at all time function subject to the control, supervision and direction of the Central Council, exercised through the Regional Council or the Regional Students' Association and shall be governed by the directions issued by the Central Council from time to time, for the functioning of the Branches of Students' Association or such other directions that may be issued from time to time.

Sd/-
(T. Karthikeyan)
Secretary





Request to Contribute Articles - Journal on Management Accounting and Business Finance



The Committee on Management Accounting (CMA) of ICAI invites practical articles, case studies, write-ups and other similar materials in the areas of Management Accounting and Business Finance for publishing in its journal i.e. *Journal on Management Accounting and Business Finance*. The objective of this Journal is to spread advanced knowledge on Management Accounting and allied areas which are relevant for the members of the profession, allied professional and others concerned. The Journal is to focus on publication of articles for practical, advanced and research oriented knowledge. An indicative list of topics on which contribution can be made is as follows:

1. Recent Developments in Financial Management
2. Role of CFO in an Organisation
3. CFO – A Controller or Value Creator
4. Role of Finance Professional in Corporate Governance
5. Management Accounting: A Tool of Decision Making
6. Strategic Management and Management Accounting
7. Management Information System – Aid to Decision Making
8. Time Value of Money
9. Study on Management of Working Capital
10. Significance of CMA Data in Assessment of Working Capital
11. Evolution in Working Capital Management: from Tondon Committee to Chore Committee....Consortium Funding through Multiple Banking and the Current Scenario
12. Strategies of Negative Working Capital
13. Latest Financial Products offered Internationally and in India for Working Capital Finance
14. How to Manage Excess Cash and Liquidity?
15. Latest Developments in Dividend Distribution Strategies
16. Over Pricing of Public Issue: A Game for Self Destruction
17. Financial Indicators for the Buy Back of Shares
18. Creating Value, Valuation will Follow - A Right Management Objective

19. Take Out Finance
20. Infrastructure Funding: Strength and Weaknesses of Financial Institutional Framework
21. Preparation of Techno-Economic Feasibility Report

The articles submitted for consideration of publication should be of 3000-5000 words (along with executive summary of about 150 words) typed double spaced on A4 size paper with one inch margin all around. In order to facilitate the blind review process, the author should not mention his/her name on the body of the manuscript. The article along with scanned photograph, brief profile and complete contact details of the author(s) may be sent by email at cma@icai.org. Three hard copies of manuscript along with, executive summary and brief profile may be sent at the following address:

Secretary,
Committee on Management Accounting (CMA),
The Institute of Chartered Accountants of India,
ICAI Bhawan
Administrative Block, Third Floor
A-29, Sector 62
NOIDA - 201309
Phone: 0120- 3045905

Authors may note that in appreciation of their contribution to the MABF journal an honorarium of ₹5,000/- per article would be paid to them. Detailed Guidelines for writing the articles are available on the webpage of the Committee at www.icai.org

Chairman,
Committee on Management Accounting (CMA)
ICAI, New Delhi
Email: vinodjainca@gmail.com
Mobile: 09811040004





Committee on Management Accounting Invites Applications for Visiting/Regular Faculty for Certificate Course in Master* in Business Finance (MBF) At New Delhi, Mumbai, Chennai, and Kolkata



The Institute of Chartered Accountants of India (ICAI) conducts one year Certificate Course in *Master in Business Finance* (MBF) for Qualified Chartered Accountants. The course comprehensively covers expert level of knowledge and practical expertise in Finance. This is a one year course with class room teaching on Saturdays and Sundays with Two weeks mandatory Residential course in ICAI's Centre of Excellence, Hyderabad. The course has 3 Levels with 6 papers. The course content include basics financial management, applied financial analysis, forecasting, financial planning, capital budgeting, project financing, merchant banking, investment banking, fund raising, business valuation, merger and acquisitions, portfolio management, banking, forex risk management, treasury management, financial markets, corporate structuring, equity research and international finance. Detailed Prospectus is available at www.icaai.org.

The course is currently being addressed by renowned financial and management experts including, professors of IIMs, XLRI, IIT and other Top Management Institutes and Universities, Leading

Bankers, Merchant Bankers, CFOs, PE Funds, Highly Experienced Forex & Treasury Managers, senior Chartered Accountants as visiting Professors. **Expression of interest is invited from leading financial experts in India/overseas for full time / visiting faculty. Please send your detailed profile by email or in hard copy at the address given below. Suitable attractive remuneration/honorarium and travel cost/allowances as per Rules on contractual/hourly basis will be paid to the faculty.**

**Secretary,
Committee on Management Accounting
The Institute of Chartered Accountants of India,
A- 29, Sector 62
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Ph: (0120) 3045905
Mobile No. 9310542607
E-Mail: alokray@icaai.in; cma@icaai.org,
vinodjainca@gmail.com**

*Indicate level of Expertise and not a Post Graduate Degree.



Invitation for Empanelment of Resource Persons for Investor Awareness Programmes

The Committee on Financial Markets and Investors' 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 experience, knowledge and 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 reimburse a sum of ₹5,000 or actual expenditure, whichever is less, 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@icaai.org



Invitation to Contribute Articles for E-Newsletter - *Prudence*

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 February-March 2012 issue of the E-Newsletter is available at the URL http://www.icaai.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 April-May 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 30th April 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@icaai.org





For the Attention of the Members:

Expert Panel for Addressing Queries Arising During Bank Branch Audits for Year Ending 31st March 2012

Dear Members,

The bank audit season is around the corner. Given the fact that the banking industry is typical in terms of its geographical and customer spread, the volume and varied nature of products and services offered, coupled with the strict constraints for completing the audits, the members, many a times, face a lot of issues/ queries while conducting Bank Branch Audit. These could include determination of NPA status, implications of complicated data found in a branch audit, unavailability of any relevant RBI circular, implications of the requirements of an RBI circular, nature and adequacy of documentation, possible wordings of the audit report on some important matters in branch audit, issues relating to LFAR, etc.

With a view to support our members for fast resolution of such queries, the Auditing and Assurance Standards Board and the Committee on Information Technology are pleased to offer an Online support to our members from **26th March, 2012 to 10th April, 2012** for the bank branch audits for the year ended 31st March 2012. The queries can be sent at bankauditfaq@icai.org.

The online support facility will be managed by an expert panel constituting the following members:

Panel Coordinators

CA. Abhijit Bandyopadhyay, CCM and Chairman, Auditing and Assurance Standards Board

CA. Atul Bheda, CCM and Chairman, Committee on Information Technology

CA. Rajkumar Adukia, CCM, CA. Manoj Fadnis, CCM, CA. Jayant Gokhale, CCM, CA. Sanjeev Maheshwari, CCM, CA. Shrinivas Joshi, Member, WIRC, CA. Mehul Shah, Member (IT Support)

Other Members on the Panel

CA. Abhay Kamat, CA. Abhijeet Sanzgiri, CA. Anagha Thatte, CA. Ashutosh Pednekar, CA. Dhananjay Gokhale, CA. Dilip Dixit, CA. Giriraj Soni, CA. I.B. Sonawalla, CA. Ketan Saiya, CA. Ketan Vikamsey, CA. Makarand Joshi, CA. Manoj Daga, CA. Mitil Chokshi, CA. Mrudul Gokhale, CA. Niranjan Joshi, CA. Nitant Trilokekar, CA. Parag Hangekar, CA. Prakash Kulkarni, CA. Ramesha Shetty, CA. Sandeep Welling, CA. Sanjay Rane, CA. Uday Sathaye, CA. Vipul Choksi

The queries so received will be distributed amongst the members of the panel on random basis and they would reply to the same.

Disclaimer

Members may specifically be informed that the views expressed by the experts would be their personal views and not necessarily the views of the Institute of Chartered Accountants of India. The Institute or the members of the Panel, in any case, would not take any responsibility of actions taken based on such advice.

To enable us to serve you better, you are also advised to -

- Be brief but provide full information and facts.
- Do not mention the name of the Bank or Branch to avoid problem of violation of confidentiality.
- Avoid rejoinders, if possible.
- Do not send the same query twice.
- Draft the report on your own.
- Use your own judgment.



Faculty Required:

Post-Qualification Course on Information Systems Audit, Workshops, Conferences and Seminars in IT-related areas

The Committee on Information Technology of ICAI offers a highly popular Post-Qualification Course (PQC) on Information Systems Audit (ISA) leading to the designation D.I.S.A. (ICAI); over 34500 members have got trained so far under this course. The Committee also conducts workshops, conferences and seminars in IT and IT-related areas across the nation.

The Committee is in the process of enhancing its faculty bank on national level in order to effectively conduct the ISA and IT-related workshops, conferences and seminars, which are generally organised on holidays including Saturdays and Sundays. They would help in developing practical case studies, preparing questions bank, etc., while developing the IT aspects of the accountancy profession.

Chartered accountants and other experts specialising in this area are requested to fill in the online form available at http://cit.icai.org/empanel_faculties.aspx giving their complete contact information.

You can also send your detailed CV indicating your educational and professional qualifications and experience especially in IS Audit, teaching experience, area of specialisation, PPTs and case studies that you propose to undertake during your deliberations to *The Secretary, Committee on Information Technology, The Institute of Chartered Accountants of India, ICAI Bhawan, Hostel Block, Fifth Floor, A-29, Sector-62, Noida-201309*. In case of any query, interested competent applicants may call us at +91 (120) 3045961/989, or alternatively e-mail us at cit@icai.in. The honorarium would be in the range of ₹ 1000/-

and ₹1250/- per hour depending on your qualifications and experiences. Apart from this, incidental expenses for outstation sessions will also be paid at actual as per rules.

Case Studies Required

The Committee also proposes to develop series of Case Studies on Information Systems Audit to be used

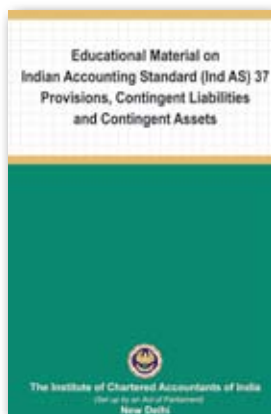
as part of the course deliberations and bring a publication in due course of time. Each case study should preferably contain a brief synopsis, objective, test data, processes/ procedures to be followed, sample reports and their interpretation. Attractive honorarium and incidental expenses at actual would be paid for the case studies accepted and approved by the Committee, for which proposals are invited at the aforementioned address.



New Publications

Educational Material on Indian Accounting Standard (Ind AS) 37, Provisions, Contingent Liabilities and Contingent Assets

In accordance with the objective to provide necessary support and guidance to members and other stakeholders for proper implementation of IFRS-converged Indian Accounting Standards, the **Ind AS (IFRS) Implementation Committee** has brought out Educational Material on Indian Accounting Standard (Ind AS) 37, *Provisions, Contingent Liabilities and Contingent Assets*. Ind AS 37 prescribes the principles for recognition, measurement and disclosure of provisions. It also requires to disclose



certain information regarding provisions, contingent liabilities and contingent assets, in the notes to enable users to understand their nature, timing and amount. This publication contains summary of Ind AS 37 discussing the key requirements of the Standard in brief and Frequently Asked Questions (FAQs) on issues which are expected to be encountered while implementing this Standard. The text of Indian Accounting Standard (Ind AS) 37, *Provisions, Contingent Liabilities and Contingent Assets*, has also been included as an Appendix to make this publication comprehensive.

Price: ₹75/-

Ordering information

The publication can be purchased directly from the Sales Counters at the ICAI's Regional Offices or at the Head Office. To order by post, requisition may be sent to the Postal Sales Department of ICAI at postalsales@icai.org or postalsales@icai.in.



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eCommerce and Avenues for CAs¹

Investments in Information Technology are continuously increasing with more and more enterprises as also the government opting to ride the digital wave. The rapid growth and confluence of information with communication technology has made cheaper information processing power readily and remotely accessible to all, making the world a global village with no barriers or boundaries. This integrated use of information with communication technology has increased the pace of transactions and services being provided digitally, not only by private and public enterprises but also by government entities. Information and Communications Technology (ICT) is opening new vistas of commerce breaking all barriers and boundaries in line with the phrase: "Geography is History". Business and Commerce, which was transacted in the physical world, is now becoming more and more electronic, resulting in new ways of delivering products and services to customers and integrating with vendors. eCommerce has become a buzz-word for Indian enterprises and it is an integral part of our daily life. The central and state governments have also initiated various measures for providing online services to citizens using the electronic medium. There are large number of websites providing any number of goods and services online. The Information technology Act 2000 among other things provides legal recognition for electronic transactions thus enabling growth of eBusiness and eCommerce in India. It is projected in the near future that enterprises which do not have a digital presence may not have a physical presence. This article provides an overview of eCommerce, types of eCommerce, benefits and risks and the role of auditors and accountants.

eBusiness and eCommerce

eBusiness: eBusiness can be defined as the integration of Web technologies with the various business processes of business. Business process can encompass the set of activities, which accomplish the marketing, sales, finance and manufacturing functions, etc. The synergy of business and technology is the single most important characteristic of eBusiness. Key business processes are being transformed through the use of Internet technologies. The transformation that occurs is what is known as eBusiness. eBusiness utilises information intelligence for identifying workflow efficiencies, monitoring competition, building partnerships, and marketing strategically. It involves electronic coordination of the distribution channel to work with suppliers and partners in delivering products effectively and efficiently to customers. eBusiness supports the integration of customer data at each point of interaction to strategically identify characteristics and preferences. It promotes optimisation of office operations such as order processing, purchasing, inventory management, and invoicing in reducing the cost of doing business.

eCommerce refers to the use of technology to enhance the processing of commercial transactions

between a company, its customers and its business partners. eCommerce is changing the way business is conducted. Traditional sources of competitive advantage are now being supplanted with the power and control shifting from suppliers to customers. Global markets are now accessible to even small enterprises and the traditional role of middlemen is getting drastically reduced. Many of the products and services, which were physical, are now available in electronic mode. eCommerce is a composite of technologies, processes and business strategies that facilitate the instant exchange of information within and between enterprises thereby strengthening the relationships with buyers, making it easier to attract new customers, improving and at times innovating service delivery to markets on a global scale.

However, it may be noted that quite often the terms eBusiness and eCommerce are used interchangeably.

eGovernance initiatives by Government

A brief overview of eGovernance initiatives by government at strategic levels are highlighted here.

eGovernance in India has steadily evolved from computerisation of Government Departments to initiatives that encapsulate the finer points of

¹ CA A. Rafeeq: The author is a member of the Institute and can be reached at rafeeq@vsnl.com.

Governance, such as citizen centricity, service orientation and transparency. Due cognizance has been taken of the notion that to speed up eGovernance implementation across the various arms of Government at National, State, and Local levels, a programme approach needs to be adopted, guided by common vision and strategy. This approach has the potential of enabling huge savings in costs through sharing of core and support infrastructure, enabling interoperability through standards, and of presenting a seamless view of Government to citizens.

The National eGovernance Plan (NeGP), takes a holistic view of eGovernance initiatives across the country, integrating them into a collective vision and a shared cause. Around this idea, a massive countrywide infrastructure reaching down to the remotest of villages is evolving, and large-scale digitisation of records is taking place to enable easy, reliable access over the Internet. The ultimate objective is to bring public services closer home to citizens, as articulated in the Vision Statement of NeGP. "Make all Government services accessible to the common man in his locality, through common service delivery outlets, and ensure efficiency, transparency, and reliability of such services at affordable costs to realise the basic needs of the common man"

The eBiz initiative, being piloted by the Department of Industrial Policy and Promotion, seeks to provide comprehensive Government-to-Business (G2B) services to business entities with transparency, speed, and certainty. It aims at reducing the points of contact between business entities and Government agencies, standardising "requirement information", establishing single-window services, and reducing the burden of compliance, thereby benefiting stakeholders such as entrepreneurs, industries and businesses, industry associations, regulatory agencies, industrial promotional agencies, banks and financial institutions, and taxation authorities.

Benefits of eCommerce

eCommerce has its own challenges of implementation and risk management. However, successful implementation can provide immense benefits to enterprises. Some of the key benefits are given below:

- Reduction in costs to buyers from increased competition in procurement as more suppliers are able to compete in an electronically open marketplace.
- Reduction in errors, time, and overhead costs in information processing by eliminating requirements for re-entering data.

- Reduction in costs to suppliers by electronically accessing on-line databases of bid opportunities, on-line abilities to submit bids, and on-line review of rewards.
- Reduction in time to complete business transactions from delivery to payment.
- Reduction in inventories and reduction of risk of obsolete inventories as the demand for goods and services is electronically linked and implementation of just-in-time inventory and integrated manufacturing techniques are made possible.
- Reduction in overhead costs through uniformity, automation, and large-scale integration of management processes.
- Reduction in use of ecologically damaging materials through electronic coordination of activities and the movement of information rather than physical objects.
- Reduction in advertising costs, delivery cost, notably for goods that can also be delivered electronically and reduced design and manufacturing cost.
- Creation of new markets through the ability to easily and cheaply reach potential customers.
- Easier access into new markets, especially geographically remote markets, for enterprises regardless of size and location.
- Better quality of goods as specifications are standardised.
- Faster time to market as business processes are linked thus enabling seamless processing and eliminating time delays.

Risks of eCommerce

Despite the key benefits of eCommerce, there are a number of risks which cause concern for management and which need to be mitigated by implementing appropriate remedial measures. The risks associated with eCommerce are multi-faceted. The perception of risks is likely to be different to different people depending on who they are and what they do in business. To implement eCommerce by using available technologies for business advantage is a business decision and not a security issue. Implementing right level of security is a key enabler of eCommerce. To implement security, it is important to be aware of the risks, below is sample listing of risks of eCommerce:

- **Problem of Anonymity:** There is need to identify and authenticate users in the virtual global market anyone can sell to or buy from anyone, anything from anywhere. The risk being the web merchants may be bogus, and customers may be fictitious.

- **Repudiation of Contract:** There is possibility that the electronic transaction in the form of contract, sale order or purchase by the trading partner or customer may be denied.
- **Lack of Authenticity of Transactions:** The electronic documents that are produced in the course by an electronic commerce transaction may not be authentic. The document contents may not be reliable.
- **Data Loss or Theft or Duplication:** The data transmitted over the Internet may be lost, duplicated, tampered with or replayed.
- **Attack from Hackers:** Web servers used for e-commerce may be vulnerable to hackers. The web-enabled software and browsers may also contain bugs.
- **Denial of Service:** Service to customers may be denied due to non-availability of system as it may be affected by viruses, e-mail bombs and floods. The network may not be disrupted due to natural disasters.
- **Non Recognition of Electronic Transactions:** There is the problem of legal recognition of eCommerce transactions, as electronic records and digital signatures may not be recognised as evidence in courts of law.
- **Lack of Audit Trails:** Audit trails in electronic commerce system may be lacking and the logs may be incomplete, too voluminous or easily tampered with.
- **Problem of Piracy:** Intellectual property may not be adequately protected when such property is transacted during eCommerce. Rights of original owners through Copyrights, designs, trademarks and patents may be infringed.

Types of eCommerce

Business-to-Consumer (B2C) eCommerce

B2C eCommerce brings vendors and consumers together in an online marketplace in order to transact business. Typically, a B2C eCommerce business has a virtual store front for consumers to purchase goods and services eliminating the need to physically view or pick up the merchandise.

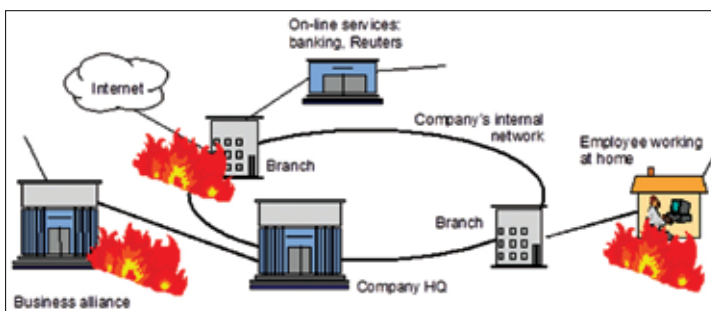
Consumer-to-Consumer (C2C) eCommerce

C2C eCommerce sites provide a virtual environment in which consumers can sell to one another through a third-party intermediary. The consumer is responsible for many aspects of the transaction inclusive of setting the initial sales price and bidding timeframe, shipping the product to the consumer,

and dealing with customer satisfaction issues. The eCommerce enterprise is responsible for displaying product and services, providing search capabilities, handling the financial aspects of the transaction, and providing other intermediary-type services. These stages include search, valuation, negotiation, payment, and delivery.

Business-to-Business (B2B) eCommerce

B2B eCommerce refers to businesses conducting electronic transactions with other businesses. B2B eCommerce includes a spectrum of business activities, such as financials, purchasing, inventory management, sales, advertising, payment and delivery systems, customer service, and many others. This segment is significantly larger than B2C e-commerce simply given the size and number of business transactions that occur daily in the international marketplace.



Risks of eCommerce

Business-to-Government (B2G) eCommerce

B2G eCommerce, also known as e-government, refers to the use of information and communication technologies to build and strengthen relationships between government and employees, citizens, businesses, non-profit organisations, and other government agencies.

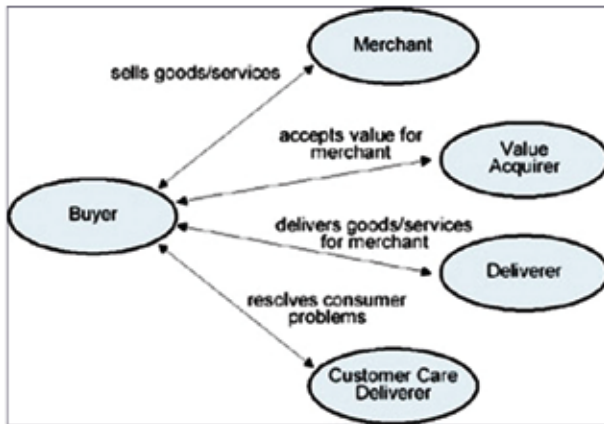
Mobile eCommerce

Mobile commerce (mCommerce) involves applications, mobile devices, middleware, and wireless networks. mCommerce is made possible by a wireless infrastructure with the means to access mobile applications including financial services, shopping, production location, and interactive games, among others. mCommerce is next-generation eCommerce because users do not need a wired connection to access the Internet and is increasingly becoming more prominent.

Business-to-Employee (B2E) eCommerce

B2E eCommerce, from an intra-organisational perspective, has provided the means for a business

to offer online products and services to its employees. B2E applications may include employee benefits and discounts, retirement account and insurance policy management, general announcements, and human resource policies, among others.



e-Commerce services and roles

Key Aspects to be Considered in Implementing eCommerce

Successful implementation of eCommerce requires involvement of key stakeholders and should ideally include representatives from: accounting/finance, internal audit, IT security, telecommunications, end users, system analysts and legal. Further, key trading partners, external auditors and representatives from other institutions such as banks, trading houses, brokers and other third-party services should also be involved to obtain valuable insight into the design and deployment of the eCommerce solution. Other key aspects to be considered are:

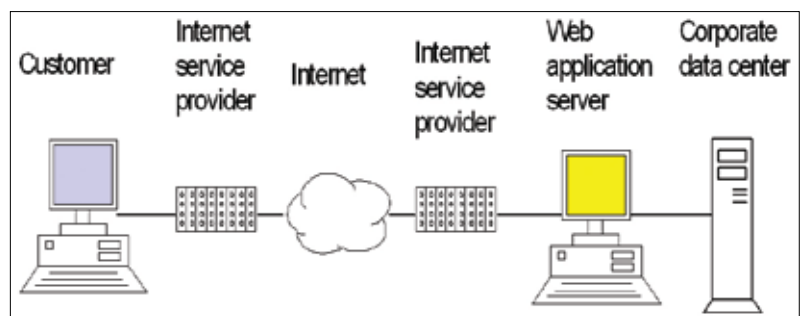
- Implementing appropriate policies, standards and guidelines
- Performing cost benefit analysis and risk assessment to ensure value delivery
- Implementing the right level of security across all layers and processes
- Establishing and implementing the right level of baseline (best practice) controls
- Integration of eCommerce with the business process and the physical delivery channels
- Providing adequate user training
- Performing post implementation review to ensure controls are working as envisaged.

Implementation Strategy for eCommerce

The strategy for implementing eCommerce within the

enterprise has to be driven by the overall business strategy and would depend on the level of maturity of business processes, current level of IT deployment and IT strategy. The strategy would vary from enterprise to enterprise. However, the following four-level approach indicates typical features of development and implementation of eCommerce in an enterprise:

1. **On-line presence:** Typified by a web site as a "virtual storefront". This level has no real impact on business processes except within the marketing function.
2. **Integrated on-line business:** This occurs when on-line business activities are integrated with existing internal processes and systems. The intended benefit is substantial reduction in operational and transactional costs.
3. **Advanced on-line business:** At this stage, on-line capabilities are further developed. The content, inter-activity and technological capabilities of the web site are improved for better customer experience. Secure payment systems are included. The integration with processes and workflow is intensified, e.g., data warehousing, integrated call centres and a real strategy are developed for every stage of the supply chain. This step generates additional revenues at a lower cost and new ways of managing customer relationships.
4. **Full electronic business:** This means interacting and trading on-line with customers and business partners on a one-to-one basis. Dynamic relationships and additional revenues are created by cross-selling.



A typical eCommerce implementation

Involvement of CAs in an eCommerce Implementation

CAs can assist organisations by participating in the evaluation of the enterprises online activities both at pre-implementation and post-implementation stage. Several opportunities exist for chartered accountants as accounting and audit professionals to assist

management right from development of eCommerce business strategy to implementation and audit. CAs can assist in developing new procedures designed to account for varying tax revenue, which be transferred to enterprises across the country/globe. Working with the entity's legal staff in drafting policies to address trans-border flow of goods and services, and the proper accounting for revenue and expenses associated with these transactions is an additional project which would benefit from involvement by accounting and finance professionals. eCommerce will require CAs to re-examine the nature of their client's business practices and how the business will begin to record transactions which up until a few years ago, may never have existed within the enterprise.

CAs as Auditors can also participate beyond their traditional roles of evaluating financial internal controls and identifying potential operational control exposures. Their proactive role in assessing the nature of their organisation's Web-based business and eCommerce controls will be a value-added service which they can provide directly to organisational management and indirectly to the consumer. Auditors, for example, can perform a self-assessment audit of their client's web site and online portal by reviewing controls at all levels of business transactions in all stages from data capture to data storage and related compliance.

Specific Role for Chartered Accountants in eCommerce

Illustrative list of services which can be provided by CAs by proactively involving in their client's move to conducting business electronically (eCommerce) are given below:

- Joining the eCommerce design team at the initial stage of the eCommerce project's development, providing expertise on internal control structures.
- Assessing the business objectives and financial analyses for implementing eCommerce processes and services.
- Working more closely with the entity's marketing and/or sales department(s) to gain a better understanding of the "what's" and "whys" behind the entity's drive to conduct business electronically.
- Coordinating internal and external audit assessments, and providing or evaluating assurances for eCommerce and business relationships.
- Evaluating the impact of eCommerce activities on accounting, financial and legal reporting activities (e.g., revenue and expense recognition, foreign exchange activities, tax collection and filings, regulatory compliance, record retention, organisational structure).

- Performing operational reviews of end-user eCommerce requirements to determine if once implemented, eCommerce systems, will meet current and projected user requirements.
- Assisting in the continual evaluation of the eCommerce system in the phases of pre-implementation and post-implementation.
- Performing audits of the functional areas which both surround and support the movement of business electronically (e.g., Telecommunications, operating systems, networks, EFT systems, accounting and business processing applications, change control and new system development procedures, data warehousing, mining, and retention procedures, etc.).
- Performing operational audits to determine if the entity's usage of the internet is actually improving enterprise-wide information and work-flows, helping to redefine the way the organisation communicates with customers, and leveraging global resources.

Conclusion

The number of enterprises implementing eCommerce is increasing drastically with even small and medium enterprises using this medium. As eCommerce blossoms into the next business processing environment it is important to consider upfront issues relating to audit and control, security, backup and disaster recovery. Further, there could be issues pertaining to project management, authorisation and authentication, web design, marketing and customer services. All these issues need to be resolved by involving the appropriate stakeholders which include accounting, audit and security professionals. Chartered accountants can assist enterprises in successful preparing to compete in the virtual marketplace dominated by eCommerce by reengineering existing business practices. Accounting practices and policies across the board may also require extensive revision to allow the accurate analysis and recording of micro-payments, digital cash transactions, and multiple currency exchanges.

CAs should be ready to face a never ending list of technological advances aimed at making consumers' lives easier, fuller, and richer. However, if IT is not appropriately controlled, the basic internal and external control structures will erode leading to catastrophic impact on enterprises. CAs in their role as auditors must be able to function in an environment beset with a high degree of change and growing technical competencies of its professionals. The challenge is to learn technology as relevant and offer value addition services to clients. eCommerce is one such challenge and opportunity for CAs. ■

CROSSWORD

070

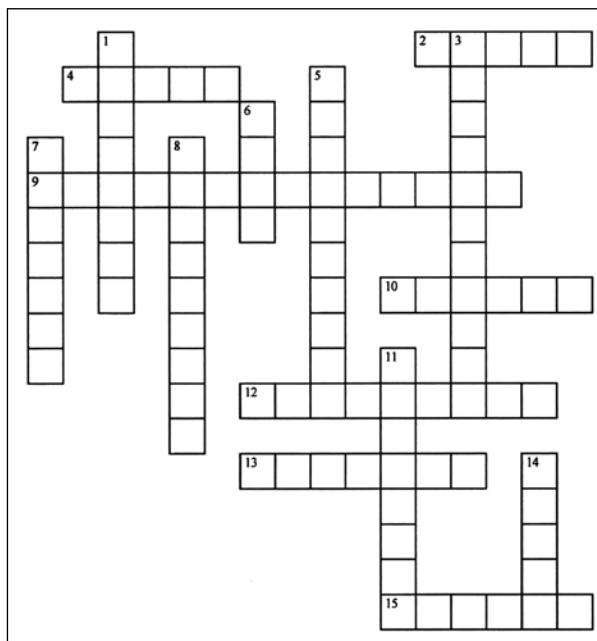
ACROSS

- 2 _____ Audit is defined as inspection of a company to assess the total environmental impact of its activities or of a particular product or process.
- 4 UID-Aadhar to get adequate funds for enrolment of _____ crore persons, in addition to the 20 crore persons already enrolled.
- 9 Tax Free Bonds of ₹ 60,000 crore to be allowed for financial _____ projects.
- 10 The Hyderabad-based Company _____ to merge with Tech Mahindra.
- 12 The Finance Bill 2012 proposes to address the anomaly on the applicability of MAT provisions in respect of electricity, banking and _____ companies.
- 13 Negative list of services has been defined in proposed Section 66D of _____ Act, 1994.
- 15 Income characterised as _____ would generally attract withholding tax, whereas any income characterised as sales income or business profits generally would not be subject to tax in the absence of a Permanent Establishment.

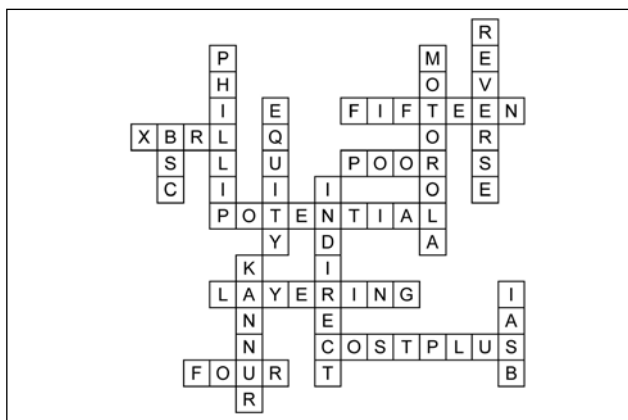
DOWN

- 1 The Finance Bill 2012 proposes to make various amendments with retrospective effect to overcome SC judgment in the case of _____.
- 3 SMS on passenger mobile phone in case of e-ticket to be accepted as proof of valid.
- 5 The Finance Bill 2012 proposes to introduce two new weighted _____ of 150% in respect of expenditure incurred on agriculture

- extension project and skill development.
- 6 Indian brand _____ made it to top 50 among world's 500 best brands this year as per the latest ranking by global consultancy firm 'Brand Finance'
- 7 Microsoft to launch _____ 8 in October this year.
- 8 _____ coach factory manufactured 10 coaches in 2011-12; phase-II to be commissioned in 2012-13.
- 11 In _____ pricing study, analysis of functions, risk and asset (FAR) is of prime importance.
- 14 The _____ Accord stands on three pillars: minimum capital requirements, regulatory supervision and market discipline.



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 069



1 I went to my solicitor and told him that I wished to make a will but didn't know what to do. He said "Just leave it all to me". I was a bit upset by this and replied " Well, I had intended to leave something to the family as well".

2 Man 1: After buying this new hearing aid, I am able to hear something two blocks away.
Man 2: Cool, how much did it cost?
Man 1: The time is three past ten.