



THE CHARTERED ACCOUNTANT JOURNAL

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



“In a rapidly changing world, accountants as a professional group will have to evolve new concepts and procedures to meet the varied demands made by society on its skills. One of the areas where attention could perhaps be gainfully focused is the evaluation of the cost or benefit to society of different enterprises, in other words, the field of *social audit*... In a developing economy, it is the accountants who are responsible for ensuring that scarce resources are utilised in the most economic fashion and that different manufacturing and other processes are run to the best possible advantage of the organisation as well as the society. ”

Giani Zail Singh
7th President of India

(At 10th CAPA Conference in New Delhi on November 21, 1983)

Alternative Dispute Resolution in India and Role of CAs

Mahatma Gandhi had said: *"I had learnt the true practice of law. I had learnt to find out the better side of human nature, and to enter men's hearts. I realised that the true function of a lawyer was to unite parties given as under. The lesson was so indelibly burnt unto me that the large part of my time, during the twenty years of my practice as a lawyer, was occupied in bringing about private compromises of hundreds of cases. I lost nothing, thereby not even money, certainly not my soul."* Conflict is a fact of life. It is not good or bad. However, what is important is how we manage or handle it. Mahatma Gandhi showed us a way to do so, and as such, supported and practiced the spirit behind Alternative Dispute Resolution, which is gaining increasing popularity among various stakeholders in India because it expeditious and cost effective feature as compared to formal litigation in the courts of law. Alternative Dispute Resolution (ADR) refers to a variety of streamlined resolution techniques designed to resolve issues in controversy more efficiently when the normal negotiation process fails. It is an alternative to the formal legal system, which has been present in India even before independence.

'Justice Delayed is Justice Denied,' so truly said William E. Gladstone, British Statesman and Prime Minister (1868-1894) and this emphasises the need of the ADR. It is estimated that around 3 crore cases are pending at different courts across the Country and it is believed that the Justice in its true sense is done only if it is timely delivered. A speedy resolution to disputes would significantly contribute to the growth of trade, as well as to the economy. Even in non commercial matters, speedy resolving of disputes will help in peaceful living.

There are various methods of resolving the disputes like negotiation, mediation, conciliation, arbitration or through court proceedings. Section 89 (1) of Code of Civil Procedure, (CPC) 1908 also provides an option for the settlement of disputes outside the court. It provides that where it appears to the court that there exist elements, which may be acceptable to the parties, the court may formulate the terms of a possible settlement other than the court proceedings.

The present Arbitration and Conciliation Act, 1996 is based on the United Nations Commission on International Trade Law (UNCITRAL) model law on International Commercial Arbitration. Arbitration can be ad-hoc or institutional which may be domestic, international or foreign.

The process of arbitration can start only if there exists a valid Arbitration Agreement between the parties and it is considered the most flexible and considerable mechanism. Almost all types of commercial and trade disputes in the nature of civil disputes as well as the international disputes can be resolved through the process of ADR mechanism.

Some major benefits of ADR include: 'party autonomy,' 'flexible and practical procedures,' 'timely and cost effective,' 'confidentiality,' and 'ease of enforcement.'

The Chartered Accountants with their core competence in providing business advisory services, are in an

advantageous position of correctly appreciating the commercial back-ground of disputes or differences and thereby can provide effective services as arbitrators to the user bodies in resolving disputes faster and also in a cost effective manner. Under the Arbitration & Conciliation Act, 1996, the chartered accountants can play a very effective role in 'drafting of arbitration agreement,' and in representing either of the party (plaintiff or the defendant) to the dispute in the arbitral proceedings. They can also be effective on assisting arbitrator in drafting Arbitral Award and assisting the client in preparing submissions to arbitrator. The CAs can also be very useful as an arbitrator and as a member of Arbitral Tribunal. They can offer very crucial services by assisting trade and industry associations in setting up Alternate Dispute Redressal (ADR) mechanism.

The chartered accountants, by virtue of their training and skill sets, also have a crucial role to play in international commercial arbitration as well. In this area, they can help clients in the process of selecting an arbitration institution and also act as an arbitrator for international commercial disputes. They can be effective in determining the procedural law to be applied, drafting commercial trade agreements and drafting arbitration clauses in international contracts and or arbitration agreement considering the arbitration rules promulgated by various international institutions.

Appreciating the larger role of members in ADR Mechanism, the ICAI is imparting requisite knowledge and expertise in the field of arbitration and related areas through a specialised Certificate Course on Arbitration which is conducted by its technical committee on Economic, Commercial Laws & WTO. The course comprises Seven Modules dealing with various aspects of arbitration. Apart from comprehensive theoretical aspects, intensive training on the practical and procedural aspects with case studies and mock proceedings are also organised. The duration of the Course is 40 hours spread over six days. The participants are trained and guided to gain rich experience from eminent faculties. After the six days intensive training the participants are required to qualify the Evaluation Test for getting the Certificate and inclusion of their names in the ICAI Panel of Arbitrators.

The ICAI maintains a Panel of Arbitrators which is widely known and being promoted amongst National and State Chambers of Commerce, apex organisations, judicial and quasi-judicial bodies and apex regulators which seek the services of these Professionals. Presently there are about 450 Chartered Accountants on the ICAI Panel of Arbitrators. The user bodies can save time, energy, cost and resources by appointing CAs as arbitrators and derive maximum benefits of the ADR Mechanism in its true sense.

-Editorial Board

ICAI- Partner in Nation Building

EDITORIAL BOARD

EDITOR	CA. JAYDEEP NARENDRA SHAH, <i>President</i>
JOINT EDITOR	CA. SUBODH KUMAR AGRAWAL, <i>Vice-President</i>
MEMBERS	CA. ANUJ GOYAL CA. K. RAGHU CA. MAHESH P. SARDA CA. M. DEVARAJA REDDY CA. NAVEEN N. D. GUPTA CA. NILESH S. VIKAMSEY CA. P. RAJENDRA KUMAR CA. RAJKUMAR S. ADUKIA CA. RAVI HOLANI CA. SUMANTRA GUHA CA. V. MURALI SHRI PRITHVI HALDEA SHRI GOUTAM GUHA CA. ANIL S. DANI CA. S. SUNDARAMAN CA. K. GOPAL CA. R. GIRI CA. DEEPAK RINDANI NADEEM AHMED SUSANTA K. SAHU DR. N. K. RANJAN NIMISHA SINGH
SECRETARY	
ICAI EDITORIAL TEAM	

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
ICAI Bhawan, Post Box No.7100, Indraprastha Marg,
New Delhi-110002, Tel: +91 (11) 39893989.
E-mail: icaiho@icai.org, Website: www.icai.org

SUBSCRIPTION RATES

Inland subscribers :	₹1,000 per annum
Overseas :	\$150 per annum (subscribers by sea mail)

For Overseas Members/Subscribers

- Air Mail Surcharge : ₹2,100 per annum
- Sea Mail Surcharge : ₹1,100 per annum

CA Students	: ₹1,400 for 3.5 years ₹400 per annum
Other students & faculties	: ₹600 per annum

CLASSIFIEDS:

Minimum ₹1,000/- for the first 25 words or part thereof and ₹250/- for five words or part thereof over and above first twenty five words. Please contact: The Journal Section at ICAI Bhawan, A-29, Sector-62, Noida or call at +91 (120) 3045955 or e-mail at eboard@icai.org

EDITORIAL SUPPORT, DESIGN, ADVERTISEMENT & MARKETING SPENTA MULTIMEDIA

Aaron Rodrigues, Robert George, Nilesh Juvealekar & Anand Dhuri.

MUMBAI: Spenta Multimedia, Peninsula Spenta, Mathuradas Mill Compound, N. M. Joshi Marg, Lower Parel, Mumbai-400013.
Tel: +91 (22) 24811022/24811025, Telefax: -91(22) 24811021.

DELHI: No.7, 1st Floor, Nizamuddin (West) Market.
New Delhi-110013. Tel: +91 (11) 4669 9999.

BENGALURU: Old No. 583, New No. 9, Sri Manjunatha Krupa, 80 Feet Road, 3rd Cross, Opp. Koramangala Police Station, Bengaluru-560095. Tel: +91(80) 4161 8966/77.

KOLKATA: 206-Jodhpur Park, Kolkata - 700068. Tel: +91(33) 2473 5896. Telefax: +91(33) 2413 7973.

CHENNAI: 1st Floor, #5 Montieth Road Egmore, Chennai 600 028. Tel: +91-44-4218 8984/85

HYDERABAD: H.No: 8-2-684/3/R/1&2, Flat No: 304, Alankrith Apts, Gulmohar Avenue, Rd No: 12, Banjara Hills, Hyderabad.
Tel.: +91 9676666691.

ICAI RESERVES THE RIGHT TO REJECT ADVERTISEMENTS
Printed and published by Vijay Kapur on behalf of The Institute of Chartered Accountants of India (ICAI)

Editor – CA. Jaydeep Narendra Shah

Published at ICAI Bhawan, P.O. Box No. 7100, Indraprastha Marg, New Delhi - 110 002 and printed at Spenta Multimedia, Peninsula Spenta, Mathuradas Mill Compound, N. M. Joshi Marg, Lower Parel, Mumbai - 400013

The views and opinions expressed or implied in THE CHARTERED ACCOUNTANT are those of the authors and do not necessarily reflect those of ICAI. Unsolicited articles and transparencies are sent in at the owner's risk and the publisher accepts no liability for loss or damage. Material in this publication may not be reproduced, whether in part or in whole, without the consent of ICAI.

DISCLAIMER: The ICAI is not in any way responsible for the result of any action taken on the basis of the advertisement published in the Journal. The members, however, may bear in mind the provision of the Code of Ethics while responding to the advertisements.

TOTAL CIRCULATION: 2,24,676

Total No. of Pages: 156 including Covers

Cover Image: Rashtrapati Bhavan

Inside Images and Graphics: www.dreamstime.com

VOICE

- 1775** Editorial
1778 From The President

MEMBERS

- 1784** Readers Write
1786 Photographs
1794 Know Your Ethics
1825 Opinion
■ Revenue Recognition in case of Construction Contracts
1915 Classifieds

UPDATES

- 1800** Legal Update
Legal Decisions



- 1901** National Update
1905 Accountant's Browser

- 1819** Circulars and Notifications



ICAI NEWS

- 1792** Health Insurance Scheme for Members of ICAI
1796 ICAI-XBRL Software
1906 Invitation to Contribute Articles for E-Newsletter 'Prudence'
1906 Study Tour on International Taxation to Vienna, Austria
1907 Announcement for the Attention of the Members: Manner of Reporting by the Statutory Auditors on Accounting for Liabilities Arising on Dismantling of Indian Motor Third Party Insurance Pool (IMTPIP) Prescribed by IRDA
1909 Certificate Course on Master in Business Finance
1910 The Institute of Chartered Accountants of India Requires Additional Director (Technical)
1910 Commencement of Certificate Course on Indirect Taxes at Ghaziabad
1911 Second Phase of E-Learning on Standards on Auditing
1912 Notification – Examination
1913 Job Fair for Chartered Accountants - Exclusively Structured for Small and Medium sized CA Firms & Small & Medium sized Enterprises (SMEs) [4th June-18th June 2012]
1914 Invitation for Expression of interest for Authoring Publications relevant to the Members in Practice of ICAI
1915 Commencement of Certificate Course on Forex and Treasury Management at Delhi and Mumbai

EVENTS

- 1784** Two Day Workshop on Auditing Standards
1790 2nd ICAI All Region Conference 2012, Baroda
1916 Forthcoming Events





THE CHARTERED ACCOUNTANT JOURNAL

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

IN THIS ISSUE...

IN CONVERSATION

- 1798** CBEC has High Regard for ICAI and CAs: S. K. Goel



ACCOUNTING

- 1831** Accounting for Foreign Currency Forwards
– CA. S. Sairam
- 1835** Revised Schedule VI – Some Key Aspects
– CA. Bhupendra Mantri



AUDITING

- 1842** Professional Scepticism of Auditors
– CA. Subhash Choudhary

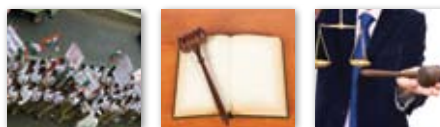


TAXATION

- 1846** Waiver of Term Loan, Working Capital Loan: *Taxability under Income-tax Act, 1961*
– CA. Kirit Priyakant Shah
- 1855** Analysis of Section 36(1)(viii) of Income-tax Act 1961
– CA. Mudit Agarwal

INTERNATIONAL TAXATION

- 1859** Agency Permanent Establishment – Basic Concepts and Issues
– The Committee on International Taxation of the ICAI



CORPORATE AND ALLIED LAWS

- 1865** Ombudsman: A Regulator to Regulate the Regulator
– CA. Rohit Patoria
- 1872** Scheme of Arrangements: Role of the High Court
– Mr. Paras Kumar Jain
- 1876** Merger Control Regime in India
– CA. Sachin Goyal



ETHICS

- 1882** Ethical Governance for a Knowledge-Based Economy: *Reconnecting accounting and auditing with knowledge*
– Dr. Shekhar Suresh Patil



INFORMATION TECHNOLOGY

- 1892** Roadmap for a Successful Technology Transfer
– CA. O. P. Jagati



TECH FOR YOU

- 1898** Scoping Information Technology (IT) Enabled Services by Using COBIT 5
– CA. A. Rafeq

BACKPAGE

- 1925** Cross Word 072
Smile Please





CA. Jaydeep Narendra Shah, President, ICAI

Dear friends,

Economists across the globe have extended countless explanations for the recurring trend of economic meltdown, now a part of business cycle. Uneven sharing of profit, i.e. less return of profit money to lower and middle level workers, has also been cited as one of the reasons. Generally it is seen that industries give back less money and, thereby, share very less profit with their workers in terms of their remunerations than the goods manufactured by them, i.e. price at which goods are sold at. Industries share this profit mainly with the top rung of their workers, i.e. management or policy-/strategy-makers, apart from putting it for fundamental investments.

May Day has just passed, but its relevance will always remain. I wish all stakeholders, including the employees across organisations, a healthy work environment and a justified payback against their efforts. I would like to address the need for *inclusive growth*, a growth that considers all stakeholders of a business in the present economic circumstances. It may appear idealistic to reach a condition called *economic democracy*, as promoted by the celebrated economist J. S. Mill, when workers will start electing their management. But we must respect its spirit as we respect that of the political democracy. I personally would never like to be seen as rich and immaculate amidst the poor. Let me recall what the revolutionary poet Shri Avtar Singh Pash had once said: *The most dangerous eye is that which is frigid ice despite looking at all turbulence of our world, and whose vision forgets to kiss the world with love...* How can we even think of being happy living in castles amidst the people living in huts? We ourselves say that we like to be among people who have similar tastes and sensibilities. Why should we not try to drag more and more people to the class of our tastes and sensibilities? I can never forget even for a while what Gandhiji asked us, i.e. not to hate sinners but

their sin, probably because people become sinner because of their sin and sin is a conditional product that could be diverted and corrected. It is this corrective stand, I would like to pronounce before our stakeholders who are not limited to accountancy, I am sure.

Let us vow to spread prosperity, convenience and, yes, love and respect to the people in our vicinity. Our world at present is badly suffering from imparity and hatred, and we being among the frontrunners of our society will have to start somewhere for the cure.

Now, let me update you on some major developments pertaining to our profession over the last month:

International Initiatives

ICAI and NZICA to Sign MoU: I am happy to inform our stakeholders that necessary clearances have been obtained from the Ministry of Corporate Affairs and the Ministry of External Affairs with regard to our MoU with the New Zealand Institute of Chartered Accountants (NZICA). The NZICA has suggested signing of the MoU at the CAPA meeting to be held in Beijing on 31st May, 2012.

International Scenario on Rotation of Auditors:

International Ethics Standards Board for Accountants (IESBA) Code of Ethics recognises that a threat to professional skepticism is created by the long-association of an auditor. The concept release on rotation by the IFAC explores whether mandatory firm rotation is an appropriate way to address that threat. Recently, Chairman, Ethical Standards Board CA. K. Raghu represented us in the IESBA meeting held in New York. While discussing the issue of *auditors' independence* and *audit-firm rotation* in Indian perspective, it was noticed that many jurisdictions were working on the issue of rotation to enhance the independence of the auditors. As the issue is currently being discussed in many countries, I hope that it will be settled in the forthcoming meetings of IESBA and an international policy and provision on rotation will soon be formulated for compliance by member countries.

Launch of ICAI's Certificate Course on Valuation in Dubai:

I, along with the ICAI Vice-President CA. Subodh Kumar Agrawal, recently visited Dubai to attend events aimed at promoting brand Indian CA. One such event was the Annual International Conference organised by the ICAI UAE (Dubai) Chapter on *Global Economy - Poised for a Paradigm Shift* in which we highlighted the feats and potential of Indian CAs. We also started there a batch of the Certificate Course on Valuation. I must thank CA. S. Santhanakrishnan for his valuable support in this regard.

World Accounting Summit:

I, along with Vice-President CA. Subodh Kumar Agrawal, recently represented Indian CA fraternity at the 8th World Accounting Summit in Dubai on *'The Emergence of the New Condorsement Approach during the Eurozone Crisis & Global Turbulence'*. I was a speaker on the panel to discuss what guidance and services the accounting bodies have been providing to their members through challenging times, along with Mr. Atsu Kato, Vice Chairman, Accounting Standards Board of Japan, CA. G.

Ramaswamy, IFAC Board Member and ICAI past-President, and Mr. Rashid Rahman, President of Institute of Chartered Accountants of Pakistan.

SAFA Meetings in Dhaka: We have effectively put forward the ICAI's vision, perspective and professional growth agenda at various meetings of SAFA organised recently in Dhaka. The meeting was attended by representatives of accountancy bodies from SAARC countries namely India, Pakistan, Bangladesh, Sri Lanka and Nepal. Vice-President CA. Subodh Kumar Agrawal, along with Central Council members CA. Nilesh Vikamsey, CA. Pankaj Tyagee, CA. Vijay Kumar Garg and CA Charanjot Singh Nanda represented ICAI in these SAFA meetings.

National Standard Setters & AOSSG Meetings in Kuala Lumpur: Chairman Accounting Standards Board, CA. Manoj Fadnis and Vice Chairman CA. S. Santhanakrishnan represented ICAI at the meeting of the National Standard Setters in Kuala Lumpur recently where CA. Fadnis made a technical presentation on IAS 32 regarding effect on accounting for foreign currency convertible bonds. Another Central Council colleague CA. Atul C. Bheda attended the Asian-Oceanic Standards Setters Group (AOSSG) meeting in the same city, where matters related to foreign currency translation, insurance contracts, agriculture, leases, etc., were discussed.

International Conference on Corporate Social Responsibility: I recently represented the Indian CA fraternity in the International Conference on 'Making CSR an Actionable Business Agenda' in Dubai, which was organised by the Institute of Directors in association with the ICAI, Federation of Indian Chambers of Commerce and Industry and others. I chaired and moderated a session on *Strategic Corporate Social Responsibility: Creating Shared Value* and put forward Indian CA profession's views on this vital area of CSR. Other distinguished personalities included UAE Minister of Education Mr. Humaid Mohammed Obeid al Qattami, and Ambassador of India to the UAE Mr. M.K. Lokesh.

Asian Round Table Meeting in Singapore & XBRL Conference in Abu Dhabi: Making Indian chartered accountant a matchless professional, well versed with the latest developments in accounting and related fields, is high on my agenda. Towards that end, the XBRL, which has vast potential of providing global opportunities, is one of my focus areas. We at XBRL India have been spearheading the XBRL revolution in the country with the active participation of the Ministry of Corporate Affairs (MCA), SEBI, IRDA and RBI. Taking this drive forward, my Central Council colleague CA. Atul Bheda, who is also a Director, XBRL India, recently participated in 3rd Asian Roundtable meeting hosted by Accounting & Corporate Regulatory Authority of Singapore, which is similar to MCA in India. The meeting deliberated upon the experiences and issues for XBRL implementation. Alongside the meeting, an XBRL National Conference was organised wherein CA. Bheda also presented a paper on the XBRL implementation by MCA in India. Meanwhile, in line with our broader XBRL objectives, XBRL India Director CA. K. Raghu also attended the Membership Development Committee meeting of

XBRL International, which was organised alongside the 24th XBRL International Conference at Abu Dhabi. On behalf of the ICAI, both my central council colleagues made presentations about the developments in India in various sessions of the Conference.

EFAA Annual Conference in Rome: My Central Council colleagues CA. Pankaj Tyagee and CA. Vijay Kumar Garg recently represented ICAI at the European Federation of Accountants & Auditors (EFAA) Annual Conference at Rome, Italy. The conference focused on the theme 'Exploring Business and Professional Ethics for SMPs and SMEs'. The conference provided an excellent opportunity to the participants to discuss the strategy as to how SMPs across the regions can come together and share hands for mutual benefits.

UNCTAD – ISAR Special High-Level Meeting: My Central Council colleague CA. Bhavna Doshi represented us at the UNCTAD – ISAR special high-level meeting on Accounting for Investment and Development in Doha, Qatar. The objective of the meeting was to raise the awareness of policy makers and other stakeholders about the fundamental and critical role that accounting and reporting plays in economic growth, financial stability, facilitating domestic and international investment; and improved transparency.

IAASB NSS Meeting: My Central Council colleague CA. Abhijit Bandyopadhyay represented ICAI at the IAASB NSS meeting at New York. The prime focus of discussion at the meeting was "audit reporting" viz. how to strengthen the audit report so as to enhance its value to a wide array of stakeholders and reduce the expectation gap by giving timely information on possible problem areas to auditee.

IFAC PAO Development Committee Meeting: My predecessors, Past Presidents CA. Amarjit Chopra and CA. G. Ramaswamy represented the Indian CA fraternity at the IFAC PAO Development Committee meeting and the Pan African Federation of Accountants Pre-General Assembly Conference at Tunisia. The PAODC meeting primarily focused on developing the capacity of accountancy profession and updating on activities of other IFAC boards and committees.

Initiatives for Government

Standing Committee on Higher Education and Research Bill, 2011: As you may be aware that recently Ministry of Human Resource Development has released *The Higher Education and Research Bill, 2011*. We were invited by the Ministry to appear before the Standing Committee on Human Resource Development (Chaired by Hon'ble Oscar Fernandes, Member of Parliament) to share our perspective on the proposed model of higher education at national level. It may not be out of place to mention that the ICAI is proposed to be made part of the General Council so as to advise the proposed National Commission on Higher Education and Research on accountancy education in India. Recently, myself, accompanied by Vice-President CA. Subodh Kumar Agrawal, Secretary Shri T. Karthikeyan and Board of Studies Director Shri Vijay Kapur attended the Standing Committee meeting in this regard. We explained

to the Standing Committee about the high position attained by the ICAI in national and international perspective. We also shared our thoughts as to the difficulties in regulating the entire education activity through a seven member commission.

ICAI Organises Workshop for Tamil Nadu Finance Department: After successful conduct of training programmes for officials of the Finance Department during April-December 2011, we would be holding a workshop on *Role and Responsibilities of Nominee Directors in the Board of Government Companies* in the last week of May 2012 on request from the Finance (BPE) Department of the Government of Tamil Nadu, to help their senior officials in keeping pace with the new developments in corporate governance. I am sure that such endeavours will take our brand-building exercise forward.

Suggestions Contained in ICAI's Post-Budget Memoranda Accepted: We had submitted the Post-Budget Memorandums, 2012 on Indirect Taxes and Direct Taxes to the Government, and I am really happy to note that some of our suggestions have been accepted.

Indirect Taxes: The Post-Budget Memorandum on Indirect Taxes, preparation of which was coordinated by Chairman Indirect Taxes Committee CA. Madhukar Hiregange, was duly taken note of by the Government. The suggestions which were accepted included the one on 'specifying time limit for deemed notices issued under sub-Section (1A) of Section 73 of the Finance Act, 1994,' and 'Repair and maintenance contracts under works contracts service'. Further, amendment relating to the exclusion of transactions, which are deemed to be sale of goods in terms of Article 366(29A) of the Constitution namely works contract, lease or hire of goods and temporary transfer of the right to use any goods had been suggested by the Committee in its comments sent to the CBEC on *Revised Concept Paper on Taxation of Services Based on Negative List*.

Direct Taxes: Chairman Direct Taxes Committee CA. Sanjay Agarwal coordinated Post-Budget Memorandum on Direct Taxes, which was seriously considered by the Government. Apart from the members and officials of CBDT, a copy of the Post-Budget Memorandum had also been submitted to Shri Gujaral, Revenue Secretary, Shri Yashwant Sinha, Chairman, Parliamentary Standing Committee on Finance, and Shri. S. S. Palanimanickam, Minister of State (Revenue). Besides this, a copy of the same had also been sent to CCIT's/DGIT's/DIT's for their consideration and feedback. I am happy to acknowledge that many of our suggestions pertaining to direct taxes have been accepted. A statement about the suggestions accepted has been hosted on the ICAI website too.

Request to RBI for Amendments in Provisions on Independence of Auditors: On the issue of conflict of interest, in case an existing internal auditor having been offered statutory audit assignment by the same bank accepts the same after relinquishing the internal audit assignment, we have decided to request and pursue RBI to amend its circular dated 1st January, 2010, in the light of the provisions

mentioned in the *Guidance Note on Independence of Auditors*.

Initiatives towards Social Responsibility

Orienting Media in Finance/Accountancy Scenario and Reporting: An orientation programme for the media fraternity was recently organised in Delhi to make them aware of the evolving accountancy/financial services sector in the country and knowledge dissemination on financial management and regulatory policies. The objective was to enable media professionals to comprehend the financial matters/policies and report these in a simple format for the understanding of common man. Some 30 media professionals comprising editors, correspondents, reporters, etc., from print as well as visual media including *The Times of India*, *Economic Times*, *HT Mint*, *CNBC TV 18*, *Business Today*, *Money Today*, *Business Standard*, *Business Bhaskar*, *Punjab Kesari*, etc., attended the programme. Eminent speakers included Padma Shree Awardee and ICAI past-President CA. T. N. Manoharan and another ICAI past-President CA. Ved Jain.

Initiatives for Profession

Interaction with CBEC Chairman: We recently had detailed discussions on issues of professional interest with CBEC Chairman Shri S.K. Goel when he visited ICAI and addressed us. CBEC Joint Secretary Shri V. K. Garg was also present at the meeting. As you may know, the amendments in Service Tax Rules, along with Point of Taxation Rules, 2011 have withdrawn the facility of payment of service tax on receipt basis, which affect CA firms (firms whose value of taxable services exceeds ₹50 lakh). We impressed upon Shri Goel that this would create a lot of hardship for our members and requested him to extend the facility of payment of service tax on receipt basis to all the CA firms. We also took up transitional issues with Shri Goel. As you may be aware, for CAs, the Point of Taxation (POT) till 31-03-2012 was determined on receipt basis. The POT is also made as a basis of determining the rate of tax under Service Tax Rules, 1994. Consequent to the same, a position has arisen that even in cases where services are provided as well as invoice was raised prior to 31st March 2012 [at old rate of 10.3%], the professionals (which include Chartered Accountants) have to pay service tax at the higher rate of 12.36%. As such, additional 2.06% has to be paid though the same has not been billed nor could be recovered from the clients. We brought to the notice of Shri Goel that this would create hardships for the CAs and thus, relief may be granted to Chartered Accountants from this additional burden by making appropriate changes. We also made a pitch for parity between CAs and lawyers as both the professionals provide similar services when it comes to legal consultancy and representational services. Shri Goel has taken our points of request in right earnest and has promised to look into the issues.

Meeting with Union Minister Mukul Wasnik: I, along with my Central Council colleague CA. Vijay Garg, recently met Union Minister for Social Justice and Empowerment Shri Mukul Wasnik and discussed various matters of professional and national interest. We offered the involvement and services of the Institute and its members to his ministry in

various capacities, to which he expressed keen interest. It was proposed to hold a secretary level meeting to discuss the areas in which the Ministry can use the services of ICAI and its members. We also invited him to address our Council, to which he was quite positive.

Meeting with Odisha CM Naveen Patnaik: As part of our guided efforts to promote professional involvement across various levels of governance in Central and State governments, as also to expand infrastructural base of our profession, I, along with Vice President CA. Subodh Kumar Agrawal and Bhubaneswar Branch Chairman CA. Rajendra Kumar Das met Odisha Chief Minister Shri Naveen Patnaik and discussed as to how more and more services of the CAs can be utilised by the state government. Principal Secretary of Finance Department of Government of Odisha Shri Jugal Kishore Mahapatra, and Past Chairmen of Bhubaneswar Branch CA. Prashant Shekhar Panda and CA. Sarat Kumar Sahu were also present at the meeting. We also specifically discussed allotment of land for proposed ICAI's centre of excellence in Bhubaneswar. He showed keen interest in our proposals and I am quite hopeful of a positive outcome. Separately, we also met the Chief Secretary, Government of Odisha, Shri Vijay Kumar Patnaik to discuss these issues.

Meeting with IBA Chairman MD Mallya: I recently met Indian Banks Association Chairman Shri M. D. Mallya (who is also chairman and managing director of Bank of Baroda) and discussed a range of issues concerning the profession, including bank branch audit and concurrent audit. I also impressed upon him that there was a crucial need for sharing with the ICAI the technological advancements and upgradations being made by the banks, so that the ICAI members can be made aware and be trained with respect to these developments, for the ultimate benefit of the banks and other stakeholders. He was quite positive on this proposal.

Meeting with Secretary, Dept. of Public Enterprises: I, along with Vice-President CA. Subodh Kumar Agrawal, recently had a meeting with Secretary of Department of Public Enterprises Shri O. P. Rawat and discussed various issues of professional and national interest. We offered him the quality services of the Institute in various areas and initiatives of the Department of Public Enterprises. He has showed keen interest in our proposal.

ICAI Membership and Studentship Strengthened: I am glad to inform you that strength of membership and students has been increasing massively, leading our Institute to greater eminence and stature. Number of members has touched a figure of 1,94,690. It is noteworthy to acknowledge here that we have received a good response from our members to the General Amnesty Scheme introduced by us to restore the membership in retrospect, and a total of 732 members have so far responded and got benefited by this Scheme. Student strength has also increased and reached a massive 9,19,884.

Representation to Forward Markets Commission: We have sent a representation to Forward Markets Commission

(FMC) Chairman Shri Ramesh Abhishek regarding audit/inspection of books of accounts of commodity exchanges and its members and fees thereof. FMC is a regulatory and statutory body set up in 1953 under the Forward Contracts (Regulation) Act, 1952, which is overseen by the Ministry of Consumer Affairs, Food and Public Distribution, Government of India.

Initiatives for Members

Orientation for DIRM-Qualified Members: We recently organised an orientation programme for the members who qualified in the DIRM Technical Examination, in Mumbai. It was inaugurated by my Central Council colleague CA. Nilesh S. Vikamsey. I, along with the Vice-President CA. Subodh Kumar Agrawal and my other Central Council colleague CA. Charanjot Singh Nanda also addressed the participants. Here, I am happy to inform that suggested answers for the DIRM Technical Examination held in November 2011 have been hosted on the ICAI website for the members pursuing the DIRM course.

Implementation Guide to Risk-Based Audit Released:

We have recently released *Revised Implementation Guide to Risk Based Audit of Financial Statements* providing comprehensive guidance primarily on implementing the auditing standards relating to understanding the entity and assessing the risk of material misstatements, audit planning, responding to assessed risks beside fraud considerations. Meanwhile, considering the importance and need of internal auditors to have updated knowledge of the global standards and initiatives related to the corporate social responsibility, we have come out with "Guide on Internal Audit of Corporate Social Responsibility" under the guidance of Chairman Internal Audit Standards Board CA. Rajkumar S Adukia. Besides, a 'Technical Guide on Internal audit of Tendering Process' has also been released for the guidance of the members and other stakeholders.

ISA Eligibility Tests Conducted: We conducted ISA eligibility tests at 38 centres across India and Nepal recently. A total of 1,859 candidates took the tests. ISA professional training classes have already been started in India in Lucknow, Raipur, Jamnagar, Jodhpur, Nagpur, Delhi, Mumbai and Latur besides in Sri Lanka.

Approaching Public-Sector Banks: We have sent communications to the chairmen and managing directors of all public-sector banks across the nation, impressing upon them to utilise the services of CAs and CA firms for their various internal assignments.

Certificate Courses: I am happy to inform you that to enhance the capabilities of the members and encourage specialisations by them, we are conducting Certificate Courses on 'Concurrent Audit', 'Enterprise Risk Management', and 'Internal Audit' in Hyderabad, Delhi, Mumbai, Chennai and Kolkata. A one-day workshop on Tender Audit was also organised recently in Delhi for the benefit of our members.

Initiatives for Ethical Professional Practice: Our Ethical Standards Board has recently taken various decisions

for better professional practice. On the issue whether a chartered accountant in practice can sign the revised transfer pricing report which was certified by some other chartered accountant without having his permission to sign the same, it has been decided that she/he will not be signing a revised transfer pricing report but will be issuing a fresh and separate independent report and should, therefore, satisfy himself before issuing such a report.

On the issue whether a CA in practice can establish a TIN facilitation centre (TIN FC), it has been decided that a chartered-accountant-in-practice may establish a TIN-FC. However, it is not permissible for her/him to establish a TIN-FC under franchise from other entity which is already a TIN-FC.

Initiatives for Students

e-Learning: Education and training of students has been my prime endeavour. Towards that objective, I am happy to announce availability of the following twin online facilities for the benefit of CPT Students, particularly those in small towns where quality coaching is not available: (a) Revamped bi-lingual (English & Hindi) e-Learning Modules for CPT Course are now available at www.CAShiksha.com which can be accessed free of cost on self-registration on the said site; and (b) Online Self-Assessment Quiz for the CPT Course to enable students make a self-assessment of their preparation for the forthcoming, examination, chapter-wise and subject-wise. This online facility is available on the Institute's website, which enables the students to assess their preparations quickly. Moreover, every time a different set of questions would appear on the screen as and when students take the tests. Further, we have also hosted additional e-Learning Modules on General Economics subject of CPT which shall prove to be of great help to the students in their preparation. I would earnestly encourage CPT students to make best use of these twin online facilities for better preparation for examinations.

Conventions/Conferences: We are organising National Conventions for students covering all the regions and major cities in June, July and August. A mega International Conference for CA Students is being held in Nagpur on 13th & 14th July, 2012, offering a unique opportunity for Indian students to interact with overseas students and share experiences and learning. An All India Students Conference is also being organised in Baroda on 6th and 7th July, 2012. Some of the other National Conventions for CA Students which are scheduled for June to July, 2012 are at Ghaziabad (23rd and 24th June), Hyderabad (28th and 29th June), Vasai (30th June and 1st July), Jaipur (9th and 10th July), Kolkata (14th and 15th July) and Indore (21st and 22nd July). I request the members to encourage their articulated assistants to not only be present in these conferences but also contribute papers which will go a long way in sharpening their speaking skills.

Faculty Development Programme: With a view to strengthen the CPT Coaching Classes at various places, we recently successfully organised 2nd CPT Faculty

Development Programme at the Centre of Excellence in Hyderabad. As many as 97 faculty members from different branches participated in the programme. I am confident that through this initiative, Regional Councils and Branches would organise more and more classes for CPT students.

Orientation Programme for Chairmen of Students Associations: An orientation programme was organised in Hyderabad recently to enhance awareness amongst the Chairmen of Students' Associations and Branches of Students' Association about activities to be organised by them for students. The programme was attended by 67 members apart from officials from various Regions and Branches and my Central Council colleagues CA. Nilesh S. Vikamsey, CA. Madhukar N. Hiregange, CA. J. Venkateswarlu and CA. Devaraja Reddy.

CA May 2012 Examinations: We successfully conducted Chartered Accountants Examinations of May 2012. A total of 2,52,542 candidates were admitted to appear the examinations, i.e. 83,319 CA Final, 1,43,970 IPCE and 25,253 PCE. The examinations were held at 343 centres in 135 cities of India and 4 cities abroad. I wish these students all the success in these examinations.

Before I conclude, let me acknowledge that our Government has taken a much-required and right step of implementing the *Right to Education Act* and has raised many relevant questions before the responsible and privileged of our nation, indicating especially at their responsibility towards the underprivileged of the nation. At least, it has started a debate. It is up to us as to how we respond and take forward this cause. Being associated with an academic institution and, particularly, with its studies wing for years, I have been strongly in support for our students' access to education and training while critically agreeing to the American Gandhi Martin Luther King, Jr. that the *function of education is to teach one to think intensively and to think critically*, and that the goal of true education is *intelligence plus character*. The most fundamental need of the hour, thus, would be to provide people with an accessible education system, if we want to see our coming generations truly intelligent and with character.

May this Act empower all government and private schools, and control all existing irregularities in their systems! Let us be educated and educate all others around us.

Best wishes,



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

'May 2012 Issue Was Highly Informative'

> It was immensely knowledge enhancing to read the May 2012 issue of the journal. It was highly informative. The editorial titled 'Challenge of Financial Inclusion in India and Role of CAs' very effectively put the concept in perspective and highlighted the role the CAs can play which was supported by valuable quote of Prime Minister Dr. Manmohan Singh. The 'From the President' was motivating and at the same time gave us valuable updates about the profession. The excerpts of the speech given by Deputy Chairman of Rajya Sabha CA. K. Rahman Khan and Chairman of Parliamentary Standing Committee on Finance Shri Yashwant Sinha were also interesting to read. We hope the journal keep up the trend.

CA. S. Jain

> The cover page of May 2012 issue of the journal was very attractive and apt with a rare photograph and professionally relevant quote of former Prime Minister Morarji Desai. Among the various informative and topical articles published in this issue, I liked the 'Tech for You' section the most. The article titled 'Paradigm Shift in Taxing Services' was also particularly informative and useful.

CA. Dharendra Goyal

April 2012 Offered Value Addition to Budget Knowledge

> I am reading CA Journal since I was a student. I want to point out that we have already heard budget speech of finance minister and also views of various speakers at local level in CA fraternity. But when I received April 2012 issue of The *Chartered Accountant*, it was like a value addition to my knowledge about the Union Budget 2012-13 and various doubts were cleared after going through the articles by reputed authors. This issue is not useful only for my CA profession, but it also provides tremendous inputs for my presentations for speech at various forums on budget.

CA. Rinkesh Shah

> The article titled "Salient Features of the Finance Bill, 2012: Direct Taxes" by past-president CA. Ved Jain in the April 2012 issue was very informative. It's privileged to read such a meticulous analysis of budget proposal in a systematic way, incorporating the details and explanations in such a lucid manner coupled with relevant case laws wherever required. Such articles give us the logical background of why the same amendment has been proposed.

CA. Ankit Gajjar, Ahmedabad

'Journal is a Valuable Knowledge Tool'

> I acknowledge the substantial improvement in "CA Journal" in terms of coverage, latest updates, amendments or revisions, etc. in recent months. It is ably promoting the brand Indian CA through reliable knowledge updates. It has become useful tool for a Chartered Accountant in professional pursuits. It really gives a feel good factor, when we compare CA Journal with any other education update book available. Last but not the least I reciprocate my heartfelt thanks to the Editor of CA Journal for improving the quality of the journal in terms of both content and coverage. Also it is very good to get the journal very timely, month after month, which shows the efficiency of the system behind it.

CA. Jayesh M. Mishra

> I got the first correspondence with the Alphabets of Trust prefixed to my name in the form of 'Chartered Accountant'. As a new member of the elite club, I felt delighted and glad with a sense of achievement and responsibility quotient. So far as the journal is concerned, the journal, as always is enriching, value adding and an intellectual treat. The varied articles ensure a balanced monthly diet of professional updates. The editorial board deserves sincere appreciation for the same.

CA. Ruchi Nahar

Editor

For the Attention of Readers

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

Write to Editor

'Information is Power' and our ever-evolving profession needs more and more of that today than ever before. Do you have any relevant points to make, experiences to share, and views to spread among the CA fraternity? If yes, e-mail us at board@icai.org or write to:

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

Event

Two Day Workshop on Auditing Standards by Auditing & Assurance Standards Board – 15th and 16th JUNE 2012, JODHPUR, 12 CPE Hours. For details contact aasb@icai.org or 0120-3045920 or see www.icai.org.



Meeting with Minister of Social Justice & Empowerment

ICAI President CA. Jaydeep Narendra Shah greets the Union Minister of Social Justice & Empowerment Shri Mukul Balkrishna Wasnik in New Delhi while Central Council member CA. Vijay Kumar Garg looks on. (May 4, 2012)



Meeting with Odisha CM Naveen Patnaik

ICAI President CA. Jaydeep Narendra Shah and Vice-President CA. Subodh Kumar Agrawal discuss matters of professional interest with Odisha Chief Minister Shri Naveen Patnaik while Bhubaneswar Branch Chairman CA. Rajendra Kumar Das and past-Chairman CA. Prashant Shekhar Panda and CA. Sarat Kumar Sahu, and Principal Secretary of Finance Department, Government of Odisha, Shri Jugal Kishore Mahapatra look on. (May 20, 2012)



Regional Council Chairmen Meet

ICAI President CA. Jaydeep Narendra Shah and Vice-President CA. Subodh Kumar Agrawal discuss effective functioning, governance and management with EIRC Chairman CA. Prasun K. Bhattacharyya, SIRC Chairman CA. K. Viswanath, WIRC Chairman CA. Durgesh Kabra, NIRC Chairman CA. Durgadas Agrawal and CIRC Chairman CA. Mukesh Singh Kushwah in New Delhi. (April 23, 2012)



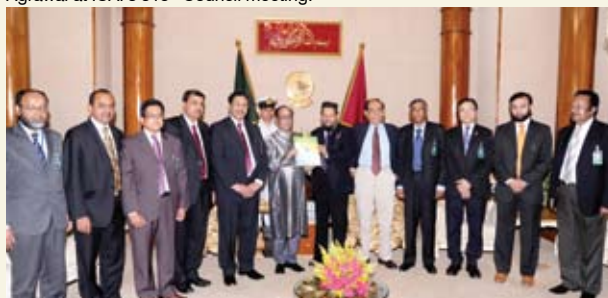
Annual Conference 2012 at ICAI UAE (Dubai) Chapter

ICAI President CA. Jaydeep Narendra Shah lights the lamp to inaugurate Annual Conference 2012: *The Global Economy... Poised for a Paradigm Shift*, while ICAI Vice-President CA. Subodh Kumar Agrawal along with the Chapter Chairman CA. Santhanam Venkatesh and Vice-Chairman CA. James Mathew, among others, share the glory. (April 26, 2012)



ICAI Council Welcomes Rajya Sabha Deputy Chair

Rajya Sabha Deputy Chairman CA. K. Rahman Khan being greeted by ICAI President CA. Jaydeep Narendra Shah and Vice-President CA. Subodh Kumar Agrawal at ICAI's 315th Council meeting.



SAFA Delegates Meet Bangladesh President

SAFA President Muhammad Rafi and ICAI Vice-President CA. Subodh Kumar Agrawal, among other representatives of SAARC countries, meet Peoples' Republic of Bangladesh President Md. Zillur Rahman in Dhaka. (May 2-3, 2012)



Meeting with World Bank Chief Financial Management Officer

ICAI President CA. Jaydeep Narendra Shah presents a memento to World Bank Chief Financial Management Officer Mr. Tony Hegarty, while ICAI Vice-President CA. Subodh Kumar Agrawal looks on.



Trivandrum Branch Turns 40

ICAI President CA. Jaydeep Narendra Shah takes part in celebrations of Trivandrum Branch. Central Council member CA. Devaraja Reddy could be seen sharing the moments with SIRC Chairman CA. K. Viswanath, Branch Chairman CA. Alex Kuriakose and Vice-Chairman CA. Hari C. among other officials of the Branch. (April 30, 2012)



Welcoming CA. Harish Salve in Dubai International Conference

ICAI President CA. Jaydeep Narendra Shah presents a bouquet to noted Supreme Court advocate CA. Harish Salve who was technical speaker in the Annual Conference 2012: *The Global Economy... Poised for a Paradigm Shift* in Dubai. (April 26-27, 2012)



Meeting with CBEC Chairman at ICAI

ICAI President CA. Jaydeep Narendra Shah presents ICAI journal to CBEC Chairman Shri S. K. Goel in presence of ICAI Vice-President CA. Subodh Kumar Agrawal, CBEC Joint Secretary Shri V. K. Garg and Central Council members CA. Madhukar Hiregange and CA. Pankaj Tyagee. (May 1, 2012)



EIRC Orientation Programme

ICAI President CA. Jaydeep Narendra Shah and Vice-President CA. Subodh Kumar Agrawal stand up for members' issues, alongwith Central Council members CA. Abhijit Bandyopadhyay and CA. Sumantra Guha, EIRC Chairman CA. Prasun K. Bhattacharyya, Vice-Chairman CA. Ranjeet K. Agarwal and other officials of EIRC. (May 9, 2012)



Meeting with Secretary, Department of Public Enterprises

ICAI President CA. Jaydeep Narendra Shah presents a bouquet to Shri O. P. Rawat, Secretary, Department of Public Enterprises, Ministry of Heavy Industry & Public Enterprises, Govt. of India, while ICAI Vice-President CA. Subodh Kumar Agrawal looks on.



Inauguration of Seminar on Schedule VI in Cuttack

ICAI Vice-President CA. Subodh Kumar Agrawal lights the lamp to inaugurate the Seminar organised by Cuttack Branch of EIRC.



Valedictory Session of SIRC Diamond Jubilee

ICAI President CA. Jaydeep Narendra Shah share the dais with the ICAI Vice-President CA. Subodh Kumar Agrawal, Central Council members CA. Rajendra Kumar P., CA. S. Santhanakrishnan and CA. V. Murali, SIRC Chairman CA. K. Viswanath, Vice-Chairman CA. D. Prasanna Kumar, Secretary CA. P. V. Rajarajeswaran, IPS and former Intelligence Bureau Special Director Shri K. V. S. Gopalakrishnan, and other members of SIRC.



First Batch of Certificate Course on Valuation in Dubai

ICAI President CA. Jaydeep Narendra Shah and Vice-President CA. Subodh Kumar Agrawal give their best shots along with the participants of the Certificate Course at ICAI Dubai Chapter. The Chapter Chairman CA. Santhanam Venkatesh and Vice-Chairman CA. James Mathew, among others, were also present. (April 26, 2012)



ICAI Employees Get Together

ICAI President CA. Jaydeep Narendra Shah and Vice-President CA. Subodh Kumar Agrawal participate in 19th Social & Cultural Function of ICAI Employees Association in Kolkata. EIRC Chairman CA. Prasun K. Bhattacharyya and Employee Association Secretary Shri Deepak Sharma among others share the dais. (May 9, 2012)

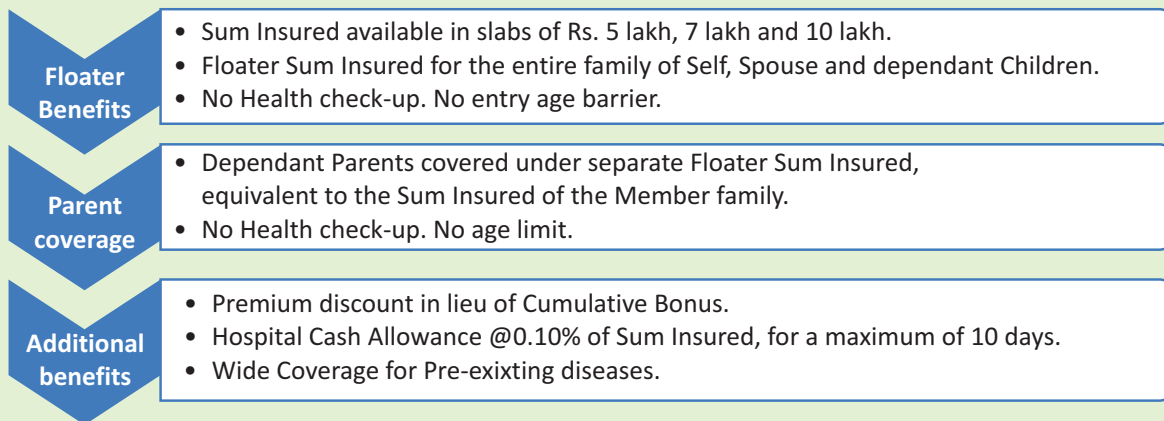


Health Insurance Scheme for Members of ICAI



AN INITIATIVE OF THE COMMITTEE FOR CAPACITY BUILDING OF CA FIRMS AND SMALL & MEDIUM PRACTITIONERS (CCBCAF & SMP), ICAI

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP) of the Institute of Chartered Accountants of India (ICAI) has tied up with The New India Assurance Co. Ltd. for a special Health Insurance Scheme for providing Health insurance to its Members of ICAI.



The Member Can Carry Over Credit For Previous Continuous Insurance . For A Member With Three Years of Continuous Coverage With Any Other Insurer, Pre Existing Diseases Are Covered.

Pre Existing Disease Coverage : Under Individual Policies, Pre Existing Disease Is Covered Only After Four Years. Whereas, In CA Super Medclaim, Coverage For Pre Existing Commences From First Year, As Per Limits Below:

First year of coverage	25% of the admissible claim amount, subject to a maximum of 25% of the sum insured
Second year of coverage	50% of the admissible claim amount, subject to a maximum of 50% of the sum insured
Third year of coverage	75% of the admissible claim amount, subject to a maximum of 75% of the sum insured
Fourth year of coverage	100% of the admissible claim amount, subject to a maximum of 100% of the sum insured

Exclusive portal for the Health Insurance Scheme

The premium can be paid at the online portal <http://icai.newindia.co.in> and Certificate of Insurance generated at the user end.

Details about the Health Insurance Scheme can be seen at <http://icai.newindia.co.in>

Any queries/grievance related to the portal for the health insurance scheme; please contact Shri Mukesh Yadav, Administrative Officer of New India Assurance Co. Ltd, Mumbai on Tel. No. 022-24620311, Mob. No. 09022167230, Email: mukesh.yadav@newindia.co.in or Mr. Kumaresh of M/s gradatim on mob. 09241114119 Email: kumaresh.b@gradatim.co.in

For further details, please contact:-

Mr. Satyanarayan Mohapatra

Sr. Divisional Manager,
New India Assurance Co. Ltd
Mumbai,
E- mail: satyanarayan.mohapatrar@newindia.co.in

Dr. Sambit Kumar Mishra

Secretary, CCBCAF & SMP
The Institute of Chartered Accountants of India
Telephone: 011-30110497
e-mail: sambit.mishra@icai.org



Committee for Capacity Building of CA Firms and Small Medium Practitioners
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

Know Your Ethics*

Ethical Issues in Question-Answer Form

Q. Can a Chartered Accountant in practice allow any person to practice in his name as a Chartered Accountant?

A. No, Clause (1) of Part-I of the First Schedule to the Act prohibits a Chartered Accountant in practice to allow any person to practice in his name as a Chartered Accountant unless such person is also a Chartered Accountant in practice and is in partnership with or employed by him.

Q. Can a Chartered Accountant in practice pay to any person any share, commission or brokerage in the fees or profits of his professional business?

A. No, Clause (2) of Part-I of the First Schedule to the Act prohibits a Chartered Accountant from paying or allowing any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of the deceased partner or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

Q. Can a Chartered Accountant in practice share his fees with the Government in respect of Government Audit?

A. The Institute came across certain Circulars/Orders issued by the Registrar of various State Co-operative Societies wherein it has been mentioned that certain amount of audit fee is payable to the concerned State Government and the auditor has to deposit a percentage of his audit fee in the State Treasury by a prescribed challan within a prescribed time of the receipt of Audit fee.

In view of the above, The Council considered the issue and while noting that the Government is asking auditors to deposit such percentage of their audit fee for recovering the administrative and other expenses incurred in the process, the Council decided that as such there is no bar in the Code of Ethics to accept such assignment wherein a percentage of professional fees is deducted by the Government to meet the administrative and other expenditure.

Q. Can goodwill of a Chartered Accountant firm be purchased?

A. Yes. The Council of the Institute considered the issue whether the goodwill of a proprietary firm of Chartered Accountant can be sold/transferred to another eligible member of the Institute, after the death of the proprietor concerned and came to the view that the same is permissible. Accordingly, the Council passed the Resolution that the sale/transfer of goodwill in the case of a proprietary firm of Chartered Accountants to another eligible member of the Institute, shall be permitted, subject to the provisions appearing at pages 129 -130 of the Code of Ethics, 2009 edition.

Q. Can a Chartered Accountant in practice enter into partnership with a practising Chartered Accountant of a

recognised foreign professional body for sharing fee of their partnership within India?

A. Yes, Clause (4) of Part-I of First Schedule to the Act permits partnership between members of the Institute and the members of the professional bodies and qualifications recognised by the Council of the Institute under Regulation 53B (1) & (2) of the CA Regulations.

Q. Can a practicing Chartered Accountant secure any professional business through the services of a person who is not his employee or partner?

A. No, Clause (5) of Part-I of First Schedule to the Act prohibits a practicing Chartered Accountant from securing any professional business, either through the services of a person who is not an employee of such Chartered Accountants or who is not his partner.

Q. Can a practicing Chartered Accountant solicit clients or professional work by, advertisement?

A. No, Clause (6) of Part-I of the First Schedule to the Act prohibits a practicing Chartered Accountant from soliciting clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.

However, there are following exceptions to it:-

- (i) A member can respond to tenders or enquiries issued by various users of professional services or organisations from time to time and securing professional work as a consequence.
- (ii) A member may advertise changes in partnerships or dissolution of a firm, or of any change in the address of practice and telephone numbers, the advertisement being limited to a bare statement of facts and consideration given to the appropriateness of the area of distribution of newspaper or magazine and number of insertions.
- (iii) A member is permitted to issue a classified advertisement in the Journal/Newspaper of the Institute intended to give information for sharing professional work on assignment basis or for seeking professional work on partnership basis or salaried employment in the field of accounting profession provided it only contains the accountant's name, address, telephone, fax number and e-mail address.

Q. Whether member in practice is permitted to respond to announcement for empanelment for allotment of audit and other professional work and quote fees on enquiries being received?

A. It has been clarified by the Council under proviso (ii) to clause (vi) of the part-I of the first schedule to the Act that if announcements are made for empanelment by the Government, Corporations, Courts, Co-operative Societies, Banks and other similar institutions, the members may respond to such announcements provided the existence of panel is within their knowledge. The Council has further clarified that the quotations of fees can be sent, if enquiries are received by the members in this regard. ■

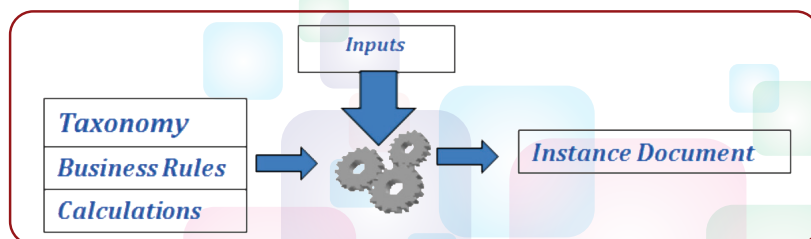
* Contributed by the Ethical Standards Board of the ICAI

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

ICAI-XBRL Software

SALIENT FEATURES - TAX SUITE'

ICAI- XBRL software is a solution for converting Financial information of the Company in XBRL Format as per MCA mandate



- ICAI-XBRL software is a One Stop Complete XBRL Software - On Document editing/Tagging, Quick Viewing, Advance Validating and Finally extensible reporting.
- ICAI-XBRL software is an Intelligent Solution that enables automated processing of business information and hence cut out laborious and costly processes of manual re-entry and comparison.
- Improves the overall quality and accuracy of data obtained from companies.
- Reduce potential errors from manual entry through machine transfers of reporting information.
- Increase the speed at which financial decision can be made by analysts, investors, lenders rating agencies, etc.

About the Arrangement

- i. The KDK Software (I) Pvt. Ltd. (hereinafter referred to as vendor) shall provide initial license free of cost with first two financial years (as per MCA Circular from time to time) activation from date of MOU to Practicing Firms with the Firm registration numbers issued by ICAI. Any registered Practicing Firms with ICAI would be eligible to get single copy of initial license without paying any cost, on special request received from CA firms through the website www.icai.org.in.
- ii. For license renewal, license renewal charges would be Rs. 2000/-. Statutory taxes on License Renewal shall be as applicable.
- iii. The vendor will provide full support free of cost for a period of two financial years. However, afterwards the free support will be provided to practicing firms who renew their license.

Downloading the software:

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

Technical Support for software:

The vendor will provide the technical support to users and renewed customer via phone, email and remote PC access from the date of registering the license.

Email: support@kdksoftware.com; **Phone:** +91-141-4123456



Committee for Capacity Building of
CA Firms and Small Medium Practitioners
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

CBEC has High Regard for ICAI and CAs: S. K. Goel

Chairman of Central Board of Excise and Customs (CBEC) Shri S. K. Goel, who has been extending valuable guidance and support to The Institute of Chartered Accountants of India (ICAI) and its members on various important issues over the time, participated in a meeting of the members and the officials of the ICAI at its headquarters on 1st May, 2012. In his enlightening speech, he touched upon various crucial matters of interest to the profession, with particular reference to the changes effected in indirect taxes by the Union Budget 2012-13. CBEC Joint Secretary, Shri. V. K. Garg was also present in the meeting. Following are the excerpts from Shri Goel's address:



"In the Central Board of Excise and Customs, we have the highest regard for all professional bodies and, particularly, for ICAI because the society and the nation hold the professionals in high esteem. I believe that the professionals are dedicated to objectivity, they are dedicated to truth and what you are trying to do when you are writing accounts for somebody, certifying accounts for somebody, auditing accounts, is to arrive at the truth.

All stakeholders of that enterprise for which you are writing accounts or auditing— the banks who lend money, the shareholders who invest money, the potential suppliers, creditors, buyers, and we, the tax department, all are interested that the truth of the transaction, financial statement, etc., is made

out clearly, and for that we depend on you. By an Act of Parliament, this body (ICAI) has been given this power and status and, as such, your certificate carries a lot of weight. We give a large number of refunds on the basis of certificates issued by chartered accountants; we do a lot of things on the basis of certificates your professional members are giving. We have been involving chartered accountants in our cost audit exercise — special audit, which we carry out under the Central Excise Act. We have been involving chartered accountants in our audit plan. I must also acknowledge that you have been helping our officers in training. We always do pre-budget consultation with various bodies including ICAI and you would have noticed that many of your suggestions are

accepted. It is not that we are just receiving the representation and not examining— we are looking at it sincerely.

I will make only one submission before I address some of the technical points raised by the ICAI. As I mentioned, we consider the professionals as seekers of truth and not as partisan people. Sometimes, the representations which come to us, sometimes the way in which things are represented, gives us the feeling as if the professionals are taking a partisan stand. Do ask for tax concessions as that is your right but at the same time also suggest the ways by which the Government can increase the revenue, because the Government is also one of the important stakeholders in this whole exercise — Government

means public, which the Government represent. When we had pre-budget consultation, we requested everybody to also give suggestions on how to increase revenue because the fiscal deficit is staring us in the face. Suggest the ways of raising taxes without hurting people more than what is required.

Please consider the Government or tax authorities as equal partners. You should play the role of a bridge between the tax payers and tax collectors, and give correct and truthful advice from the beginning.

Your suggestions and the points you have made in the post-budget representation are most welcome. Regarding some points that you have mentioned about 'Point of Taxation Rules' and 'billing versus cash basis', you know that we have done this only for people who are having turnover of more than ₹50 lakh, which will mean only very large chartered accountants would be covered by this, and the smaller ones will still have that benefit as earlier. In any case, we cannot distinguish between the various streams of taxpayers, be it professionals, be it manufacturers or others. The duty liability arises because duty here is not on realisation, the duty here is on the provision of service or manufacture by definition. Still, for the small professionals with a turnover of less than ₹50 lakh, that benefit has been given and even for the bigger ones, if they have a bad debt, if the payment doesn't come,



our certificate carries a lot of weight. We give a large number of refunds on the basis of certificates issued by chartered accountants; we do a lot of things on the basis of certificates your professional members are giving. We have been involving chartered accountants in our cost audit exercise—special audit, which we carry out under Central Excise Act. We have been involving chartered accountants in our audit plan. I must also acknowledge that you have been helping our officers in training” ☺☺

there is always a way out – write off and adjustment can be done, it will take little time but it can be done. Any way, your suggestion has been well noted.

On the other point about where you have billed before 31st March and service are being rendered now, we will look at various permutations and combinations and then try to come out with clarifications.

The other point was raised about the discrimination *vis-a-vis* with advocate. Now, as you know, now for advocates also we have introduced that they will have to pay service tax, of course on reverse charge basis. Our understanding is that there is slight difference, of course, it has been maintained for various policy reasons, that the lawyers are not only tax professionals, they are doing lot of criminal justice and civil justice activities. So, considering that, some distinction has been maintained, but for whatever advices, basically tax advices they are giving to business entities, they will have to pay the tax. As far as CAs are concerned, they are basically giving advices to

business entities, they are not practicing criminal law and civil law in the courts. You are giving advice to business entities only. However, there is a situation where CAs are giving tax advices to individuals also, and to that effect we will see what can be done. Otherwise, we have tried to bring in parity to the extent possible.

On the issue of the continuing professional education, whether it should be liable to service tax, we will examine it, because in the Negative List formal education is basically out, as also vocational education. We will see whether all this can be covered and how it can be covered because you have a valid point.

In the end, I appreciate the Certificate Course on Indirect Taxes which you are going to commence shortly, and the training given to our officers. I welcome your suggestion and the offer that your officers should be associated with the various studies conducted by our department. I would keep in mind whether something can be done in due course.

I reiterate that we have the highest regard for whatever suggestions and advice we receive from various professional bodies and, particularly, from ICAI, we consider these various seriously and sincerely, and whatever is practical and within the constraints, we do try to agree and implement, and we do expect the similar response from the professionals. ■

In the Central Board of Excise and Customs, we have the highest regard for the all professional bodies and, particularly, for ICAI because the society and the nation hold the professionals in high esteem. I believe that the professionals are dedicated to objectivity, they are dedicated to truth and what you are trying to do when you are writing accounts for somebody, certifying accounts for somebody, auditing accounts, is to arrive at the truth. ☺☺

Legal Decisions¹

DIRECT TAXES



Income-tax Act

LD/60/116

CCI Ltd.

Vs.

Jt. CIT

February 28, 2012 (KAR)

[Assessment Year 2007-08]

Section 14A of the Income-tax

Act, 1961 - Total income - Expenditure incurred in relation to income not includible in

Where assessee had not retained shares with intention of earning dividend income and dividend income was incidental to his business of sale of shares, which remained unsold, it could not be said that expenditure incurred in acquiring shares had to be apportioned to the extent of dividend income and such apportioned part of expenditure should be disallowed from deductions

When no expenditure is incurred by the assessee in earning the dividend income, no notional expenditure could be deducted from the said income.

The assessee was a dealer in shares and securities. 63 per cent of the shares, which were purchased, were sold and the income derived therefrom was offered to tax as business income. The remaining 37 per cent of the shares were retained. It had remained unsold with the assessee. It was those unsold shares had yielded dividend, for which, the assessee had not incurred any expenditure at all.

The Karnataka High Court held that where the dividend income is exempted from payment of tax, if any expenditure is incurred in earning the said income, the said expenditure also cannot be deducted. In this case, the assessee had not retained shares with the intention of earning dividend income and the dividend income was incidental to his business of sale of shares, which remained unsold by the assessee. Therefore, it could not be said that the expenditure incurred in acquiring the shares had to be apportioned to the extent of dividend income and that should be disallowed from deductions.

..□..

LD/60/117

CIT

Vs.

Hariprasad Bhojnagarwala

August 2, 2011 (GUJ-FB)

Section 23 of the Income-tax Act, 1961 - Income from house property – Annual value

Benefit of section 23(2) in respect of annual value of house is available to an individual; a Hindu Undivided

Family can be seen being a family of a group of natural persons and, hence, benefit of section 23(2) is also available to a Hindu Undivided Family

The provisions of section 23(2) makes it clear that the benefits of the relief in respect of self-occupied property is available only to the owner who can reside in his own residence, that means, the benefit of relief is available to self-occupied property only to an individual assessee and not to an imaginary assessable entity.

From different decisions and the provisions of law, the following facts emerge:-

- (i) The benefit of section 23(2) is available if the house is in occupation of the owner for the purpose of his own residence; and
- (ii) A partnership firm, which is a fictional entity, cannot physically reside and so a partnership firm cannot claim the benefit of the provision, which is available to an assessable entity only.

The question arises as to, whether a Hindu Undivided Family can be held to be a fictional entity? The answer will be in the negative. A Hindu Undivided Family is nothing but a group of individuals related to each other by blood relations, or in a certain manner. A Hindu Undivided Family can be seen being a family of a group of natural persons. There is no dispute that the said family can reside in the house, which belongs to Hindu Undivided Family. A family cannot consist of artificial persons. The Income Tax Appellate Tribunal, Delhi Bench in the case of *ITO vs. Tarlock Singh & Sons* 29 ITD 139 noticed that under section 13 of General Clauses Act, while the words in masculine gender shall be taken to include females and words in singular shall include plural and vice versa. Therefore, it had rightly held that the word 'owner' would include 'owners' and the words 'his own' would include 'their own'. There is nothing, therefore, in the words used in section 23(2), which excludes application of such provision to HUF, which is a group of individuals related to each other.

..□..

LD/60/118

CIT (Central), Ludhiana

Vs.

Punjab Breweries Ltd.

(Now amalgamated with M/s Unite Breweries)

April 17, 2012 (P&H)

[Assessment year 1989-90]

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

Where assessee company paid C&F fees to a company for which there was no evidence and further, as a result

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

of appointment of C&F agent, there was no increase in sale, and funds were actually passed to Chairman and his wife of holding company of assessee as interest free loans, transactions would be held to be colourable and, hence, liable to be disallowed

The assessee-respondent was engaged in the manufacture and sale of beer of different brands. It was a closely held Company and a subsidiary of United Breweries Ltd. The assessee company was selling products without the help of any handling agent. It had opened a branch office at Faridabad and had employed 8 persons for that office. For the first time, in respect of the assessment year 1987-88 the assessee company appointed M/s Blue Chip as C & F handling agent for the purposes of sale of Mc Dowell products. In respect of the preceding assessment years i.e. 1987-88 and 1988-89, C & F handling charges claimed to have been paid to M/s Blue Chip were disallowed.

The Assessing Officer found that there was no material on record to show that any services were rendered by M/s Blue Chip and Company. It was also found that there was no evidence placed on record by the assessee to show that its sales were promoted by the appointment of the handling agent M/s Blue Chip. From the various transactions between the Blue Chip and Vijay Mallya, the Chairman and M.D. of holding company of the assessee company as well as others it was found that substantial part of the payment had been made to the Blue Chip & Company from the assessee-company as interest free loan to Vijay Mallya and his wife Samira Mallya. Agreement between the assessee company and M/s Blue Chip which formed the basis of C & F handling charges was found to be a sham transaction and a device to reduce the assessee-company's taxable income as well as to create capital in the hands of Blue Chip and interest free liquidity in the hands of United Breweries and Vijay Mallya and his wife. After the agreement, M/s Blue Chip could not find any new buyer for the assessee and the sales of Mc Dowell products showed dramatic decline after the appointment as C & F handling agent. Therefore, the entire sum of ₹12,29,769/- was added to the declared income of the assessee. On appeal, the CIT (A) found that by giving Blue Chip and this had been forced upon the assessee by Mc Dowell at the instance of Vijaya Mallaya who had been benefited by giving this business to M/s Blue Chip. Further, the assessee's staff strength at Faridabad was not reduced by allotting the work to Blue Chip. License fee for this L-I was also being paid by the assessee unlike in Ghaziabad Depot where License fee was collected from other party. Since the work was allotted to Blue Chip, they had given interest free loans to Vijaya Mallaya, his wife and director and other relations. It was

not a genuine transaction but indirectly benefiting Mallayas.

On appeal, the Tribunal found that in the preceding years 1987-88 and 1988-89 the Tribunal had decided the issue in favour of the assessee- respondent. The Tribunal followed the same.

The High Court of Punjab and Haryana held that in the case of *C.K. Gangadharan v. CIT* (2008) 304 ITR 61, the Supreme Court held that if the revenue does not prefer an appeal in one case it would not operate as a bar for the department to prefer an appeal in another case where there is a just cause for doing so or particularly if it is in public interest to do so or for a pronouncement by the higher court when divergent views are expressed by the Tribunals or the High Courts.

In the instant appeal, the view taken by the Tribunal which has decided the issue merely on the ground that in respect of assessment years 1987-88 and 1988-89 the Tribunal had accepted the claim of the assessee-respondent, could not be accepted. It would not be in public interest to accept such a claim when there was no evidence of rendering any service by Blue Chip to the assessee-company. The sole object of diverting funds to Blue Chip was to facilitate passing of funds as interest free loan to Mallayas. Agreement between the assessee-company and Blue Chip company had been found to be a sham transaction by the Assessing Officer as well as by the CIT (A). Therefore, no C&F handling charges could be allowed to the assessee.

.. ..

LD/60/119

SREI Infrastructure Finance Ltd.

Vs.

Income Tax Settlement Commission

March 30, 2012(DEL)

[Assessment year 2009-10 & 2010-11]

Section 50B read with Section 2(42C) of the Income-tax Act, 1961 - Capital gains – Computation of, in case of slump sale

Section 50B applies to all types of 'transfers' that can be categorised as a "slump sale"; further term slump sale as contemplated under section 2(42C) also covers transactions under scheme of arrangement

Under a scheme of arrangement, there was transfer of the petitioner-company's project finance business and assets based financing business, including its shareholding in company SIBPL to its subsidiary SIDFL. The Settlement Commission held that the consideration of ₹375 lacs received by the assessee from SIDFL was taxable under the Section 50B of the Act as 'slump sale'. Settlement Commission has also

computed the taxable capital gains under Section 50B.

The contention of the petitioner was that the 'transfer' under the Scheme of Arrangement was not a sale under Section 50B of the Act. The Scheme of Arrangement was sanctioned by the High Court of Calcutta under Section 391 to 394 of the Companies Act, 1956 and was statutory in nature and character. It was pleaded that Section 50B of the Act had no applicability as the 'transaction' was under the Scheme of Arrangement and the same was not a 'slump sale' as contemplated under Section 2(42C) of the Act. The petitioner claimed that Section 2(42C) deals with limited category/type of transactions i.e. sales, which are construed as a 'slump sale' and the broader and wider definition of the term 'transfer' as defined under Section 2(46) is not applicable to "slump sales".

The High Court held that the term 'slump sale' as now been specifically defined in Section 2(42C) means transfer of one or more undertakings as a result of sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. The use of the word 'transfer' in said section is significant. The term 'transfer' is used in said section is with reference to the transaction in the nature of 'slump sale'. Thus any type of "transfer" which is in nature of slump sale i.e. when lump sum consideration is paid without values being assigned to individual assets and liabilities are covered by the definition clause 2(42C) and then by Section 50B of the Act. This is the reasonable, plausible and natural grammatical meaning which has to be given to the definition clause 'slump sale'. It is not correct to construe and regard the word 'slump sale' to mean that it applies to 'sale' in a narrow sense and as an antithesis to the word 'transfer' as used in Section

2(47) of the Act. The intention of the legislature was to plug in the gap and tax slump sales and not to leave them out of the tax net. The term 'slump sale' has been used in the enactment to describe a particular and specific type of transfers called slump sales. Use of word 'sale' in the term 'slump sale' does not and is not intended to narrow down the concept of 'transfer' as defined and understood in Section 2(47) of the Act. All transfers in nature of 'sales' i.e. 'slump sales' are covered by the definition clause 2 (42C) of the Act. The word 'transfer' as defined and understood in Section 2(47) of the Act is wide. It is an inclusive definition of wide import. It includes sale, exchange or relinquishment, extinguishment of any right in an asset, compulsory acquisition under the law, etc.

The term 'slump sale' has been defined to mean a transfer of a business undertaking or a business for a lumpsum consideration with all its assets and liabilities, without values being assigned to individual assets/liabilities. The said term has no other significance and one should not read into and understand that the word 'sale', used in the term 'slump sale', as a cause/reason to give a restrictive meaning to "slump sale", i.e. it can only apply to "sales" in a narrow sense and not to "transfers" under Section 2(47). This is apparent as, when one reads the proviso and sub-section (1) to Section 50B together and in a harmonious way, it is clear that it applies to all types of "transfers" that can be categorized as a "slump sale". Sub-section (2) to Section 50B of also refers to transfer of an undertaking or division by way of sale i.e. "slump sale" and prescribes the mode of computing and calculating capital gains on such transactions.

Resultantly, the contentions raised by the petitioner were to be rejected.



LD/60/120

CIT-II

Vs.

Kan Construction and Colonizers (P.) Ltd.

April 4, 2012 (ALL)

[Assessment Year 2006-07]

Section 50C read with section 2(14) of the Income-tax Act, 1961 - Capital gains – Full value of consideration

Provisions of section 50C are not applicable with respect of sale of land where plots of land were held by assessee as stock-in-trade and not as capital asset

In the appeal the Revenue has not disputed the finding of Tribunal, that the land in question was stock-in-trade, on the ground of being perverse or against the material on record. The Tribunal has categorically found as a fact that "there is no material to controvert

this contention of the assessee that the plots of land sold were held by the assessee company as stock in trade." This finding is sufficient to dispose of the appeal.

The Lucknow Bench of Allahabad High Court held that section 50C also uses the word "capital asset." For applicability of section 50C one of the essential requirements is that an asset should be capital asset.

From the ratio of the various judicial decision, it can be culled out that whether sale of land is sale of capital asset or stock in trade is essentially a question of fact. There is no rule of thumb to address the said issue. Several principles have been evolved in the judicial decisions, but although are more in the nature of guidelines. The question has to be answered in each case having regard to the circumstances of that case. There may be factors both for and against a particular point of view. The Court has to answer the question on a consideration of all of them in a process of evolution. The inference has to be drawn on a cumulative consideration.

The assessee is a builder. Construction of buildings is its business. The assessee has sold number of buildings, with regard to which there is no dispute. The dispute is with regard to the sale of plots. Investment in purchase and sale of plots by a builder who is indulged in selling buildings is ancillary and incidental to his business activity. It is a matter of record that the assessee has treated the land as stock in trade which finds corroboration from its balance sheet. Stock in trade has been excluded from the definition of capital asset. According to the Webster's New International Dictionary, the 'stock-in-trade' is "*The goods kept for sale by a shopkeeper. The fittings and appliances of a workman.*" In other words, the stock-in-trade includes all such chattels as are required for the purposes of being sold or let to hire on a person's trade. According to Stroud's judicial dictionary, "*stock-in-trade comprises all such chattels as are required for the purposes of being sold, or let to hire on a person's trade*". The Commissioner of Income-tax (Appeals) and the Tribunal on analysis of the facts of the case have reached to the conclusion that section 50C has no application as it was a case of transfer of plots which was stock-in-trade. An income earned from such transaction is liable to be taxed as income from business activity.

The view taken by the Tribunal is on terra-firma. The inference drawn by the Tribunal is based on relevant consideration. There was no grievance to the observations of the Tribunal that in the balance sheet also the land has been disclosed as stock in trade. The provisions of section 50C are not applicable with

respect of sale of land where plots of land were held by assessee as stock-in-trade and not as capital asset.

••••

LD/60/121

General Insurance Corporation of India

Vs.

Deputy Commissioner of Income-tax, Mumbai 1(3)

December 1, 2011 (BOM)

[Assessment Year 2006-07]

Section 147 read with Section 148 and Section 10 of the Income-tax Act, 1961 - Income escaping assessment

Where exemption under clause 10(38) was specifically denied and reasons for reopening assessment merely postulate that exemption under clauses (15), (23G) and (33) of section 10 was wrongly allowed, this is clearly a situation where there is a change in opinion by Assessing Office and thus it can be held that there is no tangible material for Assessing Officer to reopen assessment

The Assessing Officer declined to grant the benefit of an exemption under section 10(38) to the assessee engaged in insurance business, on the ground that during the assessment year the assessee had carried on a regular business activity of trading in shares and was not an investor. The exemptions under clauses (15), (23G) and (33) of section 10 were however allowed. The Assessing Officer, in the reasons which have been declared to the assessee for reopening assessment under section 147, has now taken the view that on a combined reading of section 44 and the First Schedule the position that emerges is that no other section of the Act applies to a company which carries on general insurance business except the provisions contained in Rule 5 of the First Schedule. On this basis, it has been contended that the claims have been "wrongly allowed". The reasons which had been set out by the Assessing Officer constituted a mere change of opinion and there was no tangible material on the basis of which the assessment could be reopened.

The High Court Bombay held that under section 147 the Assessing Officer is empowered to reopen an assessment where he has reason to believe that any income chargeable to tax has escaped assessment for any assessment year. Under clause (3) of Explanation 2 the Legislature has set out cases where income chargeable to tax is deemed to have escaped assessment. Such cases include a case where an assessment is made but (i) income chargeable to tax has been underassessed; or (ii) such income has been assessed at too low a rate; or (iii) such income has been made the subject of excessive relief under the Act; or (iv) excessive loss or depreciation



allowance or any other allowance under the Act has been computed. The power of the Assessing Officer to reopen an assessment even within a period of four years is structured. Following the amendment of section 147 by the Direct Tax Laws (Amendment) Act, 1987 with effect from 1 April 1989 Parliament has provided for only one condition for exercise of the power to reopen an assessment within four years which is that the Assessing Officer has reason to believe that income has escaped assessment. While recognising that after 1 April 1989 the power to reopen assessment is wider than before, the Supreme Court has held in *Commissioner of Income-Tax v. Kelvinator of India Ltd.* [2010] 320 ITR 561 (SC) that a "schematic interpretation" should be given to the words "reason to believe" failing which section 147 would confer arbitrary power upon the Assessing Officer to reopen an assessment on the basis of a mere change of opinion.

In the instant case, it is apparent that the Assessing Officer had applied his mind to the claim of the assessee to exemption under clauses (15), (23G), (33) and (38) of section 10. The exemption under clause (38) was specifically denied. The reasons for reopening the assessment merely postulate that the exemption under section 10 was wrongly allowed. This is clearly a situation where there is a change in opinion by the Assessing Officer. There is no tangible material for the Assessing Officer to reopen the assessment. ■

Section 44 read with Section 147 of the Income-tax Act, 1961 - Insurance business

Where the act of reopening the assessment would have to be regarded as a mere change of opinion which has also not been based on any tangible material, it could be held that the reopening of the assessment is contrary to law

Section 44 provides that the profits and gains of any business of insurance of a mutual insurance company shall be computed in accordance with the rules in the

First Schedule. Part 'A' of the First Schedule containing Rules 1 to 4 deals with profits of life insurance business while Part B consisting of Rule 5 deals with computation of profits and gains of other insurance business.

The Assessing Officer proceeded for reopening the assessment on the premise that in computing the profits and gains of business for an assessee who carries on general insurance business no other section of the Act would apply and that the computation could be carried out only in accordance with section 44 read with Rule 5 of the First Schedule.

The High Court held that the CBDT in its communication dated 21 February 2006 to the Chairman of IRDA clarified that the exemption available to any other assessee under any clauses of section 10 is also available to a person carrying on non-life insurance business subject to the fulfilment of the conditions, if any, under a particular clause of section 10 under which exemption is sought. It needs to be emphasised that it is not the case of the Assessing Officer that the assessee had failed to fulfil the condition which attached to the provisions of the relevant clauses of section 10 in respect of which the exemption was allowed. This of course is apart from clause (38) of section 10 where the Assessing Officer had rejected the claim for exemption in the original order of assessment under section 143 (3). The Assessing Officer above all was bound by the communication of the CBDT. Having followed that in the order under section 143 (3) he could not have taken a different view while purporting to reopen the assessment. Having applied his mind specifically to the issue and having taken a view on the basis of the communication noted earlier, the act of reopening the assessment would have to be regarded as a mere change of opinion which has also not been based on any tangible material. Consequently, the reopening of the assessment is contrary to law.

..□..

LD/60/122

Asstt. CIT, Raipur

Vs.

Major Deepak Mehta

November 8, 2011 (Chattisgarh)

[Assessment Year 1997-98]

**Section 152 read with Section 147 of the Income-tax Act, 1961 -
Reassessment – Other provisions**

Where there was no escapement of assessment or no assessment in respect of said head, which formed reason to believe in notice and in respect of other incomes no notice was issued and assessee had no opportunity to put forward his case under section 152 (2) to avail benefit of said section for dropping proceedings, Revenue cannot take advantage of Explanation 3 to section 147, as same is not available in facts of the case

The assessee filed the income return for declaring income of ₹1,49,854. The return was processed under section 143(1) and it was found that the capital work in progress under the head building shown in the balance sheet as on 31-3-1996 for a sum of ₹15,35,551 was not carried forward to the balance sheet as on 1-4-1996. The total fixed assets on closing balance as on 31-3-1996 was ₹52,51,629 whereas

the opening balance as on 1-4-1996 was shown at ₹31,35,246, showing the difference of ₹21,16,383. A notice under section 143(2)(i) was served on the assessee on 28-2-2001. It was found that there was the total income of ₹12,13,240 and accordingly the order under section 143 (3) read with section 147 was passed on 28-3-2002 by the Assessing Officer.

The Commissioner (Appeals) held that the Assessing Officer found items under assessment other than the one for which he had issued notice. Therefore, he could not take action under section 152(2). The Tribunal held that the assessee had rightly proceeded to invoke the provisions of section 152(2) to resist the Assessing Officer to reopen the whole assessment.

The High Court of Chattisgarh held that from bare perusal of the entire provisions of sections 147 to 153, it is clear that the Assessing Officer should have reason to believe to reopen assessment under the provisions of section 147 before making the assessment, reassessment or recomputation.

The assessee has a right to inform the Assessing Officer that the income which has allegedly escaped assessment was shown and had been taken into account and the assessment had been properly made. In that event the Assessing Officer has an obligation to drop the proceedings of the said income, under the provisions of section 152(2).

Explanation 3 to section 147 provides that if the proceedings on the basis of reasons recorded under sub-section (2) section 148 in the course of proceedings of the income reasons have been recorded under section 148 (2), the other income may also be included, which has escaped assessment for the purpose of assessment or re-assessment under section 147, in the same proceeding.

In the facts of the case, the income in respect of building to the tune of ₹21,16,383 formed reason to believe that the same had escaped assessment, as in the notice issued under section 148. In the course of proceeding other incomes were also found to have escaped assessment.

The assessee filed his reply under section 152(2) stating therein that the said income which had formed reasons in the notice under section 148 had not escaped assessment, as the same was disposed of in the same assessment year itself and for that no details were given.

The Tribunal has also come to the conclusion that, in fact, there was no escapement of assessment or no assessment in respect of the said head, which formed the reason to believe in the notice. In respect of other incomes no notice was issued and the assessee had no opportunity to put forward his case under section 152(2), to avail benefit of the said section for dropping the proceedings. Thus, the Revenue cannot take advantage of the *Explanation 3* to section 147, as the same is not available in the facts of the case.

Explanation 3 is applicable only in the event the income was formed opinion in the notice has been found correct and the proceeding in the respect of the said income was not dropped under section 152(2).

The main object and purpose of section 147 read with section 148 is that if there is any escaped assessment and the Assessing Officer has reason to form the opinion a notice must be given to the assessee to file returns or to show that there was no escaped income and under section 152(2) the proceedings may be dropped. In that context, explanation provides that along with the proceedings for the escaped income which had formed reason to believe and the assessee has been properly intimated to show his case, proceedings of the other incomes may also be examined along with the said income.

The Revenue's appeal, being bereft of merit, was liable to be dismissed.

LD/60/123

A, In Re

Mach 22, 2012 (AAR)

Section 195 read with Section 115-O of the Income-tax Act, 1961, read with Article 10 of the Indo-Mauritius DTAA - Deduction of tax at source - Payments to Non-resident

Where proposal of buy-back is a scheme devised for avoidance of tax and in fact, it is a colorable device for avoiding tax on distributed profits as contemplated in Section 115-O, and further, distribution in question will satisfy definition of dividend under Act and



consequently taxable as such, receipts in hands of Mauritius Shareholder company would be taxable in India in terms of Article 10 of the DTAC between India and Mauritius

The applicant-company is a closely held Public Limited Company. 48.87 % of its share is held by 'A'(U) of USA, 25.06% by 'A'(M) of Mauritius, 27.37% by company 'A'(S) of Singapore and 1.76% by the general public. The applicant has passed a resolution proposing a scheme of buy-back of its shares from existing shareholders in accordance with Section 77A of the Indian Companies Act. 'A' (Mauritius) which holds 25.06% of shares in the applicant and incorporated on 6.4.2001 in Mauritius, proposes to accept the offer of buy-back. It acquired the shares in the applicant during the period 2001 to 2005 for ₹280 per share on the first occasion and ₹320 per share on the subsequent occasions. It is in that context that the applicant approached Authority for Advance Ruling as to whether the capital gains that may arise, is chargeable to tax in India?

The Authority for Advance Rulings ruled that in this case, there is no dispute that no dividend had been paid to any of the shareholders after 1.4.2003 on which date Section 115-O of the Act was introduced in its present form. The accumulation in the reserves was allowed to be increased considerably. It may be noted that the major shares are held by the 'A' group and only 1.76% of shares are outstanding with the general public. The payment of dividend in the normal course by a company making profits, would have meant that the applicant would have been obliged to pay tax on distribution of profits to its shareholders. Instead of distributing the dividend on the basis of profits that accrued, the applicant allowed the reserves to grow. The proposed buy-back, if followed up, would mean that considerable sums would be repatriated to 'A' (M) in Mauritius without the tax on the distributed profits being paid, by resort to paragraph 4 of Article 13 of the DTAC between India and Mauritius. In this context, it is significant to note that neither 'A' (U), USA nor 'A' (S), Singapore accepted the offer of buy-back, obviously because in the case of one it would have been taxable in India as capital gains and in the case of the other, its taxability would have depended on certain conditions being fulfilled, whereas under the India-Mauritius DTAC, capital gains is totally out of the Indian tax net. There was no proper explanation on the part of the applicant as to why no dividends were declared subsequent to the year 2003 when the company was regularly making profits and when dividends were being distributed before the introduction of Section 115-O of the Act in its present form. Therefore, the proposal of buy-back is a scheme devised for avoidance of tax.



In fact, it is a colorable device for avoiding tax on distributed profits as contemplated in Section 115-O of the Act.

It is true that if the receipt in the hands of 'A' (M) is treated as capital gains, it would be Section 46A of the Act that will be attracted and by the force of paragraph 4 of Article 13 of the concerned DTAC, the receipt would not be taxable in India. But in view of the finding that the transaction of buy-back proposed to be resorted to, is a colorable transaction, the question is whether the amount would not be taxable as dividend in terms of Section 2(22) of the Act as amended with effect from 1.4.2003. When the proposed transaction is found to be colorable, it is not a transaction in the eye of law and once it is ignored as such, the arrangement can only be treated as a distribution of profits by a company to its shareholders which does not attract Section 115-O of the Act. Dividend in terms of the definition includes any distribution by a company of accumulated profits to its shareholders. The exemption is only in respect of a germin buy-back of shares. On the finding that the proposed buy-back is colourable, the distribution in question will satisfy the definition of dividend under the Act and consequently taxable as such. Under Article 10, paragraph 2 of the DTAC, dividend paid by a company which is a resident of India, to a resident of Mauritius, may also be taxed in India, according to the laws of India but subject to the limitation contained therein,. It may also be noticed that the payment in question, would also satisfy the definition of dividend in paragraph 4 of Article 10 of the DTAC between India and Mauritius. Therefore, the proposed payment would be taxable in India in terms of paragraph 2 of Article 10 of the DTAC between India and Mauritius.

In the light of the reasoning and conclusion as above, the amount that would be payable by the applicant to 'A' (M) would be taxable in India in terms of Article 10 of the DTAC between India and Mauritius. Further, the applicant is required to withhold tax on the proposed remittance of the proceeds to 'A' (M).

LD/60/124

CIT

Vs.

Ranka & Ranka

November 2, 2011 (KAR)

Section 260A of the Income-tax Act, 1961 - High Court - Appeal to

Instruction No.3/11 dated 9-2-2011 prescribing monetary limit of filing appeal before High Court as ₹10 lakhs is also applicable to all pending appeals

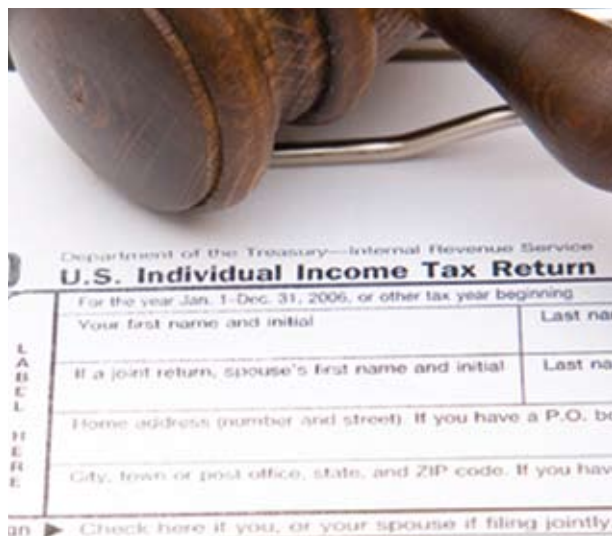
The Centre has formulated the National Litigation Policy to reduce the cases pending in various courts in India under the National Legal Mission to reduce average pendency time from 15 years to 3 years.

Instruction No. 3/11 dated 9-2-2011 is issued subsequent to the aforesaid National Litigation Policy. A perusal of the aforesaid policy makes it clear that though the said instruction was issued as a measure for reducing litigation, it was issued in supersession of the earlier instruction enhancing the monetary limits and prescribing certain conditions. The very fact that clause 11 provides that this instruction will apply to appeals filed on or after 9th February, 2011 and where appeals have been filed before that date, the same will be governed by the instructions on this subject, operative at the time when the said appeal was filed, makes it clear that the said instruction is not applicable to the pending proceedings. The National Litigation Policy provides that appeals in Revenue matters should not be filed if the stakes are not high and are less than that amount to be fixed by the revenue authorities, it equally provided that cases which are found without merit should be withdrawn. Similarly, cases which are covered by the decision of the Courts also have to be withdrawn. Officer has to be

appointed and all pending cases have to be reviewed and frivolous and vexatious matters have to be filtered from the meritorious cases and the same are withdrawn. In other words, the National Litigation Policy dealt with pending cases and wanted the pending cases to be reduced by way of withdrawal, so that valuable time of the Courts would be spent in resolving other pending cases so as to achieve the goal in the National Legal Mission to reduce average pendency from time from 15 years to 3 years.

The National Litigation Policy expressly stated that the Government must cease to be a compulsive litigant. The philosophy, that the matters should be left to the Courts for ultimate decision is to be discarded and the easy approach that let the Court decide, must be eschewed and condemned. The Revenue has not applied its mind in this direction. No attempt is made to reduce the pendency of the litigation by filtering frivolous and vexatious matters from meritorious ones and said cases are withdrawn. The only measure taken for reducing the litigation is, by raising the monetary limit. However, as the same is made prospective, it had no application to the pending cases. Therefore, the said Instruction No. 3/11 do not fulfill the requirement prescribed by the National Litigation Policy. It only partially satisfies the requirement in respect of future litigation. Under the aforesaid instruction, the crucial date is the date of filing of the appeal. It is that date when the tax effect is less than the monetary limit prescribed, the Revenue is precluded from filing such appeals. Though the date of filing of the appeal may be the criteria, that by itself would not provide a rationale sufficient to distinguish between pending cases and cases to be filed in future. The earlier monetary limit was fixed in the year 2005. So it is after six years, the monetary limit is enhanced. If only the Instruction No. 3/11 had been made applicable to the pending cases also, as laid down in the National Litigation Policy, the object of the policy would have been fulfilled. One of the ways of giving effect to the said policy is to make that instruction applicable retrospectively to all pending appeals as on the date of the circular. It would substantially serve the object of the policy.

If Instruction No. 3/11 is also made applicable to the pending appeals before this Court, it would grant relief to the assessee. Apart from granting relief to the assessee, if number of appeals pending before this Court are disposed of on the basis of the said circular, the precious time which would be saved by this Court could be better utilized for deciding disputes where tax effect is enormous. That apart, the duration, an appeal takes in this Court would be reduced as desired by the National Litigation Policy.



The Parliament with the best of intention, as incentive to trade and industry, has extended several benefits under the Act. Without properly appreciating the context and the object with which those provisions are enacted, the department has interpreted those provisions preventing those, benefits reaching the persons to whom it was intended. In most of the cases, the Tribunal has come to the rescue of those assessee, has interpreted those provisions in proper perspective and have extended the benefit to the assessee. It is against those orders, most of the appeals are filed mechanically as compulsive litigation without any sense of responsibility. Most of the appeals which are filed by the Revenue are frivolous and vexatious. The majority of the appeals are filed with the sole object of leaving it to the Courts for ultimate decision. The approach is, 'let the Court decide'. The authority who decides to prefer the appeal is not prepared to take the responsibility. There is an attempt to save their skin, so that tomorrow they are not held responsible in any manner. It is this approach, which is to be eschewed and condemned, as stated in the National Litigation Policy. It is yet another ground to make this circular applicable to the pending proceedings.

The object sought to be achieved by such circulars /instructions and also the law declared by the Apex Court, the National Litigation Policy 2011 as well as the various schemes introduced by the Department granting relief to persons who have not even filed returns and paid taxes, are kept in mind, to bring the circular/instruction in harmony with the National Litigation Policy, it would be appropriate to hold that the benefit of such circular/instruction also applies to the pending cases in appeal in various Courts and Tribunals on the date of the circular/instruction.

..-.-..

Central Excise

LD/60/125
CCE, Surat-I

Vs.

Favourite Industries
February 29, 2012 (SC)

Section 3 of Central Excise Tariff Act, 1985 - Emergency power of

the Central Government to increase duty of excise
Finished goods manufactured by 100% Export Oriented Unit out of raw material supplied by another 100% EOU, and subsequently, cleared in Domestic Tariff Area in accordance with EXIM Policy 1997-2002, are entitled to benefit of exemption provided under Notification No.8/97-CE, dated 1.3.1997

The respondent was engaged in the manufacture of processed Polyester Grey Man Made fabric, out of

raw materials obtained indigenously and/or imported free of Central Excise/Customs duties, as the case may be, under the obligation of export of the final product as well as clearance of final product in the DTA on payment of appropriate duty.

The assessee has contended that they are entitled for the benefit of the exemption from payment of certain amount of duty as provided in the Notification No.8/97-CE, dated 1.3.1997.

However, the revenue submitted that the assessee had purchased the raw material/finished products from a 100% EOU for its manufacturing activity and in the hands of the purchaser industrial unit, the transaction would be a deemed import and the finished goods in question would be deemed to be made out of imported raw material/finished product and, therefore, the assessee could not take the benefit of the Notification No. 8/97-CE. In such cases, Notification No. 2/95-CE was to be applied.

The Supreme Court held that the Notification No.2/95-CE dated 4.1.1995 exempts all excisable goods mentioned in the Schedule to the Tariff Act, from payment of duty leviable under section 3 of the Act. The Notification provides the measure/cap of exemption from payment of excise duty by an assessee/industrial unit. It says the exemption is from the excise duty which is in excess of the amount calculated at 50% of each of the duties of customs leviable under section 12 of the Customs Act, 1962 read with any Notification issued under section 25 of the Customs Act. The Notification also makes it clear with regard to the nature or type of goods that the 100% EOU should be manufacturing in its industrial unit. It says that the exempted goods should be in a nature or type of goods which are, normally, produced/manufactured outside India and, but for any reason, they are imported to India. That only means, there must be a similarity between the goods manufactured by a 100% EOU with that of the goods produced or manufactured outside the country but if it is imported into this country. The Notification provides two conditions in order to avail the benefit provided under the Notification. They are conjoint and not disjoint. Firstly, the exemption is available only, if the goods are produced or manufactured in a 100% EOU or FTA or EHTP unit or STP unit and, secondly, they must be allowed to be sold as per EXIM Policy 1997-2002. Proviso is appended to the Notification. A reference to the same may not be necessary for the purpose of the disposal of this appeal.

The Notification No.8/97-CE, dated 1-3-1997 exempts finished goods, rejects and waste or scrap enumerated in the Schedule to the Tariff Act, from payment of excise duty under section 3 of the Act.

INDIRECT TAXES



Yet again, the Notification provides the entitlement or cap up to which the assessee can avail benefit under the Notification insofar as the payment of excise duty. The Notification also speaks of compliance of two conditions by an industrial unit for taking benefits/ advantage of the Notification. Firstly, the finished goods must be produced or manufactured in a 100% EOU or FTA from the raw material produced or manufactured in India (emphasis supplied). The second condition is that the goods must have been allowed to be sold in India as per sub paras (a), (b), (c), (d) and (f) of para 9.9 or para 9.20 of the EXIM Policy 1997-2002.

The Notification No.8/97-CE speaks of finished goods produced or manufactured by a 100% EOU and if it is sold in a DTA, the said EOU can take the benefit of the Notification no.8/97-CE.

The notification requires to be interpreted in the light of the words employed by it and not on any other basis. There cannot be any addition or subtraction from the notification for the reason the exemption notification requires to be strictly construed by the Courts. The wordings of the exemption notification have to be given its natural meaning, when the wordings are simple, clear and unambiguous.

The finished goods manufactured by the 100% Export Oriented Unit out of the raw material supplied by another 100% EOU, and subsequently, cleared in the Domestic Tariff Area in accordance with the EXIM Policy 1997-2002 are entitled to the benefit of the exemption provided under the Notification No.8/97-CE, dated 1.3.1997.

Customs

LD/60/126

Arteco Coolants India Pvt. Ltd., In re
January 27, 2012 (AAR)

Heading 3824 90 90 of the Customs Tariff Act, 1975 – Super Concentration

Super concentrates named CSC-GEN, CSC-QFB and CIP-FG antifreeze coolant shall be classified as products of chemical industry under residuary entry of Chapter 38 of tariff, i.e., heading 3824 90 90 of First Schedule to the Customs Tariff Act, 1975

The applicant is a wholly owned subsidiary of Arteco NV, Belgium and proposes to undertake the manufacture of antifreeze coolants in India. For this purpose, they propose to import super concentrate, a constituent of the antifreeze coolants to be manufactured by them. Ruling has been sought on the classification of the super concentrate to be imported by them.

The Authority for Advance Rulings ruled that according to the technical literature, Mono Ethylene

Glycol (MEG) is a widely used heat transfer agent (coolant) for automotive and industrial applications. It is used in combination with water and corrosion inhibiting chemicals that provide corrosion resistance to enhance the performance and life of engines. MEG, having low freezing point, contributes to lowering the freezing point of the cooling mixture. Through properties termed as colligative properties, it also raises the boiling point of the mixture – thus, enhancing the effective temperature range in which the coolant can operate. There is a continuous depression of freezing point as the concentration of MEG in water increases until a characteristic concentration is achieved – with the minimum freezing point being reached when the concentration of MEG in water is 70%. Beyond this concentration, the freezing point of the mixture starts rising again, which is why 100% glycol is never used as antifreeze. Boiling point elevation works in a similar manner though there is no maximum experienced. Glycerol has similar uses in antifreezes although it has been overtaken by ethylene glycol in terms of extensive use. However, it is said to be staging a comeback on account of its non-toxicity. Technical literature also shows that the concentration of MEG (and glycerol) in the final antifreeze coolant depends upon the requirements of particular engines or applications.

A perusal of rules 2(a) and 2(b) of the General Rules for Interpretation of Import Tariff shows that while the former refers to “an article”, the latter refers to “a material or substance”. The former deals with incomplete or unfinished articles and articles presented unassembled or disassembled while the latter deals with mixtures and combinations of materials or substances. What is at issue is the classification of a chemical mixture. Hence, *prima facie*, it would appear that rule 2(a) would not apply to this case. The examples given in the relevant HSN explanatory notes to the General Rules for



Interpretation of the Harmonized System seem to bear this out (e.g. bicycle without paddle or tyres, bicycle, unassembled or disassembled, with all components presented together). Equally importantly, notes (III) and (IX), under rule 2(a) state that in view of the scope of headings of sections I to VI, the provisions of rule 2(a) do not normally apply to goods of these sections. Therefore, rule 2(a) cannot apply to this case.

It is rule 2(b) that refers to mixtures and combinations of materials and substances and, having regard to the nature of the goods in question, will apply to the instant case if the goods are capable of being classified in two or more headings. The rule further states that the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3. As explained in the relevant HSN notes, the effect of this rule is to extend the heading referring to any material or substance to include its mixtures and combinations with other materials or substances. It also extends any heading referring to goods of a given material or substance to include goods consisting partly of that material or substance. The notes further explain that such mixtures or combinations, if *prima facie* classifiable under two or more headings, must be classified in accordance with principles of rule 3.

To apply this rule, therefore, one has to first see whether the goods in question, *prima facie*, fall for classification under two or more headings.

The entry in heading 3820 00 00 reads "ANTI-FREEZING PREPARATIONS AND PREPARED DE-ICING FLUIDS". The case turns upon the meaning of the word "preparations". The word "preparations" has not been defined either in the tariff under this heading or in the relevant HSN notes.

From the dictionary meaning, it would appear that the word "preparations" refers to something that is made ready for use, which is clearly not the case here as it is established that the superconcentrates, in the form in which they are imported, cannot be put to use as anti-freeze coolants. Hence, they do not seem to answer the description "anti-freeze preparations". Therefore, rule 3(a) will not be applicable. As according to technical authorities cited the properties of anti-freezing and anti-corrosion are both important in anti-freeze preparations, it cannot be said that any one of them gives the anti-freeze mixture its essential character. Consequently, resort cannot be had to rule 3(b) as well to classify the goods under 3820 00 00. We have already held that rule 2(a) of the General Rules for Interpretation cannot apply to these goods. Therefore, on the basis of meaning of the word "preparations" and the inapplicability of rule 2(a), their classification

under heading 3820 00 00 is ruled out. The product CIP-FG in any case contains no glycol or glycerol and as such has no anti-freeze properties.

The goods are undeniably products of chemical industry. There is other specific headings of the tariff under which they could fall for classification. Consequently, their classification will have to be under the residuary entry of chapter 38 of the tariff i.e. heading 3824 90 90. The list of products mentioned in notes (A) and (B) of the HSN notes for heading 38.24 is an inclusive and not an exhaustive list. It can therefore be only illustrative.

Accordingly, it is to be ruled that the super concentrates named CSC-GEN, CSC-QFB and CIP-FG shall be classified as products of the chemical industry under the residuary entry of Chapter 38 of the tariff, i.e., heading 3824 90 90 of the First Schedule to the Customs Tariff Act, 1975.

..-.-

Banking Laws

LD/60/127

JK Industries Limited

Vs.

Amarlal V. Jumaní

February 1, 2012 (SC)

Section 147 read with Section 138 of the Negotiable Instruments Act, 1881 read with section 320 of the Cr. P. C. – Offences to be Compoundable

As a result of section 147, offences under N.I. Act are made compoundable, but main principle of such compounding, namely, consent of person aggrieved or person injured or complainant cannot be washed away nor can same be substituted by virtue of section 147; it cannot be said that as a result of sanction of a scheme under section 391 of Companies Act, 1956 there is an automatic compounding of offences under section 138 of N.I. Act even without consent of complainant

Under the Scheme of modern legislation, non-obstante clause has a contextual and limited application. The 'non-obstante clause' must be kept measured by the legislative policy and it has to be limited to the extent it is intended by the Parliament and not beyond that.

The non-obstante clause used in section 147 of N.I. Act does not refer to any particular section of the Code of Criminal Procedure but refers to the entire Code. When non-obstante clause is used in the aforesaid fashion the extent of its impact has to be found out on the basis of consideration of the intent and purpose of insertion of such a clause.

It is clear from a perusal of the Statement of Objects and Reasons that offence under the N.I. Act, which

OTHER
ACTS



was previously non-compoundable in view of section 320 sub-section 9 of the Code has now become compoundable. That does not mean that the effect of section 147 is to obliterate all statutory provisions of section 320 of the Code relating to the mode and manner of compounding of an offence. Section 147 will only override section 320 (9) of the Code in so far as offence under section 147 of N.I. Act is concerned.

No special procedure has been prescribed under the N.I. Act relating to compounding of an offence. In the absence of special procedure relating to compounding, the procedure relating to compounding under section 320 shall automatically apply in view of clear mandate of sub-section (2) of section 4 of the Code.

In view of section 4(2) of the Code, the basic procedure of compounding an offence laid down in section 320 of the Code will apply to compounding of an offence under N.I. Act.

It is well settled that a judgment is always an authority for what it decides. It is equally well settled that a judgment cannot be read as a statute. It has to be read in the context of the facts discussed in it. Following the aforesaid well settled principles, the basic mode and manner of effecting the compounding of an offence under section 320 of the Code cannot be said to be not attracted in case of compounding of an offence under N.I. Act in view of section 147 of the same.

Section 320 of the Cr.P.C. contains comprehensive provisions for compounding. A perusal of section 320 makes it clear that the provisions contained in section 320 and the various sub-sections is a Code by itself relating to compounding of offence. It provides for the various parameters and procedures and guidelines in the matter of compounding. It cannot be said that as a result of incorporation of section 147 in the N.I. Act, the entire gamut of procedure of section 320 of the Code are made inapplicable to compounding of an offence under the N.I. Act. If so happened, the compounding of offence under N.I. Act will be left totally unguided or uncontrolled. Such an interpretation apart from being an absurd or unreasonable one will also be contrary to the provisions of section 4(2) of the Code. There is no other statutory procedure for compounding of offence under N.I. Act. Therefore, section 147 of the N.I. Act must be reasonably construed to mean that as a result of section 147, the offences under N.I. Act are made compoundable, but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant cannot be washed away nor can the same be substituted by virtue of section 147 of N.I. Act.

For the reasons aforesaid, it cannot be said that as a result of sanction of a scheme under section 391 of the Companies Act there is an automatic compounding of offences under section 138 of the N.I. Act even without the consent of the complainant.

..-..

SEBI

LD/60/128

DLF Ltd.

Vs.

SEBI

January 1, 2012 (DEL)

Section 11C of SEBI Act, 1992 - Investigation

Where case of complainant-land owner was that petitioner company did not, in its Draft Red Herring Prospectus, disclosed its modus operandi for purchase of lands and it had selectively avoided disclosure of information about intermediary companies those used to purchase lands, so as to avoid disclosure of any potential liability, and civil or criminal proceedings that had arisen or might arise in connection with land purchases, SEBI has jurisdiction of direct investigation against petitioner and its alleged associates about breach of SEBI (Disclosure of Investor Protection Guidelines) 2000

The complainant claimed to have entered into business transactions with an unlisted company, Sudipti in the year 2006. At that time of point of time, Sudipti was controlled by two promoters, namely, DHDL and DREDL, both of whom were wholly owned subsidiaries of DLF, the petitioner. Sudipti was claimed to have been incorporated on 24-3-2006. In connection with public issue, the petitioner filed a Draft Red Herring Prospectus (DRHP) with the SEBI on 12.05.2006. In the said DRHP, it was indicated that Sudipti was one of the joint ventures of DLF. However, this DRHP was subsequently withdrawn by the merchant bankers of the petitioner and a fresh DRHP was submitted on 02.01.2007, in which Sudipti was not mentioned as being associated with DLF.

The complainant claimed that the petitioner and Sudipti had ensnared and cheated him of ₹31,09,50,000 towards sale proceeds of certain lands. A First Information Report (FIR) under section 420 of IPC was got registered at the instance of respondent no.2 against Sudipti and a few others on 26.04.2007.

In pursuance of the directions of the Division Bench of the High Court, SEBI granted hearing to the parties which has resulted in the passing of the impugned order stating that the SEBI would investigate into the allegations in respect of the petitioner and Sudipti and the said investigation would focus on the violations, if

any, of the provisions of the erstwhile SEBI (Disclosure and Investor Protection) Guidelines, 2000.

The Delhi High Court held that the petitioner alleged that SEBI had no jurisdiction to pass such directions having, prima facie observed that petitioner-DLF was aware of the registration of the FIR against Sudipti, the Board proceeded to deal with the question whether it was the petitioner's duty to disclose the same in the prospectus.

The Board noted the case of the respondent-complainant that DLF used Sudipti along with a maze of intermediary companies to purchase land which forms part of the land disclosed in the DRHP. The case of the complaint was that the DLF purchases land through a maze of intermediary companies controlled by it, through a series of back to back purchases of debentures through which the purchase money flowed to an entity that purchases the land and that the company enters into a series of back to back development rights agreements whereby it acquired the development rights in the land so purchased, by paying the same amount of money to the entity purchasing the land in lieu of the development rights, which money is then used to redeem the back to back debentures.

The case of the complainant/Respondent No. 2 was that the DLF did not, in its Draft Red Herring Prospectus, disclose its modus operandi for the purchase of lands and selectively avoided disclosure of information about the intermediary companies it used to purchase lands, so as to avoid disclosure of any potential liability, civil or criminal proceedings

that had arisen or may arise in connection with land purchases.

The Board also took note of the fact that DLF in its DRHP filed in the year 2007 disclosed that out of the total land holdings of approximately 10,000 acres, only 0.5% holding was held by the company and the balance holding was held in the name of the company's subsidiaries/associate/group company/companies under the control and management of key management personnel of the company.

The complainant produced before the Board additional submission to support the allegation against the petitioner. The Board observed that it did not deem it proper to disregard the same without testing the veracity of such submissions in the interest of justice and in the interest of the securities market and the investors.

While observing that the original complaints dated 4th June, 2007, 19th July, 2007 did not contain allegations of the petitioner funding Sudipti indirectly through a series of transactions involving its subsidiaries/associates and the manner of purchasing lands and creating development rights on the land acquired by the companies subsidiaries by indirect funding of such purchases, the Board observed that in the interest of the securities market, the investors, as also the interest of justice, it would not be proper on the part of SEBI to dispose of the complaint by holding that those additional submissions were extraneous to the original complaint filed by the complainant/Respondent No. 2.

The aforesaid observations of the Board left no manner of doubt that the Board has not per se relied upon the additional documents filed by Respondent No. 2 before it.

There is no bar or impediment cast on the Board by the SEBI Act, to say that it would not entertain or look into evidence that the complainant may rely upon in support of his complaint earlier made, while considering whether, or not, to direct an investigation. There is no reason to put any such fetters on the powers of the Board or to read such restrictions into the statute, which are clearly not there. The Board is the Sole authority created by law to deal with complex issues which arise in the management and supervision of the securities markets. Any such restrictions, artificially introduced would denude the Board of its powers and hamper its functioning.

The Division Bench in its judgment, had not precluded the Board from looking into any additional information/ documents that Respondent No. 2/ Complainant might produce in support of his complaints.



The adequacy or sufficiency of the reasons which weighed with the Board in entertaining the reasonable belief with regard to the possible existence of circumstances mentioned in Clauses (a) and (b) of section 11 C (1) cannot be gone into. However, it could not be said that the reasons were not relevant, or have no bearing on the matters in regard to which the Board had formed its belief. It also could not be said that there is no rational or intelligible nexus between the reasons contained in the impugned order, and the reasonable belief entertained by it because, if, the allegations levelled by Respondent No. 2, and the materials relied upon by him would be established, and, on the other hand, the defence of the petitioner would not be substantiated, it might tantamount to violation of the provisions of the SEBI Act; of the Rules, and; of the Regulations made or the direction issued by the Board under the Act, which had been taken note of in the impugned order itself.

Pertinently, it was not even the petitioner's case, that the Board while passing the impugned order had acted out of bad faith against the petitioner. It was clear that the belief entertained by the Board had a rational connection with the reasons given by it in the impugned order, which were not extraneous or irrelevant.

Thus, the SEBI was justified in passing the impugned order directing investigation into the allegations about the breach of the SEBI (Disclosure of Investor Protection Guidelines) 2000, and failure of disclosure of information required to be made in the red herring prospectus by the petitioner-DLF.

Section 11, read with section 11C of Securities and Exchange Board of India Act, 1992 - Functions of Board

Where allegations were made in respect of violations of SEBI Rules, Regulations, etc., at stage of consideration of issue by SEBI as to whether an investigation should be ordered by appointing an investigating authority, parties are not required to be given opportunity to be heard in presence of opposite party

In pursuance of the directions of the Division Bench of the High Court, SEBI granted hearing to the parties which had resulted in the passing of the impugned order stating that the SEBI would investigate into the allegations in respect of the petitioner and its alleged associates and the said investigation would focusing on the violations of the provisions of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 read with the relevant provisions of the Companies Act, 1956.

SEBI, before passing the impugned order did not provide an opportunity to the petitioner to hear

the submissions of the complainant, or to deal with or respond to the written submissions of respondent No. 2-complainant. Similarly, the complainant was not granted an opportunity to hear and deal with or respond to either the oral submissions of the petitioner or to their written submissions. Therefore, the petitioner opposed the validity of the order.

The Delhi High Court held that SEBI has been invested with powers & responsibilities to function in a dual capacity. It functions in an inquisitorial capacity while examining the issue, whether reasonable grounds exist to believe that the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market or, whether any intermediary or any person associated with the securities market has violated any of the provisions of the SEBI Act or the rules & regulations made thereunder, or directions issued by the Board. If it finds that reasonable grounds exist to believe the existence of the aforesaid state of affairs, it can direct an investigation by an investigating authority under section 11C of the Act. Once the investigation has been ordered under section 11C and an investigation report made, the SEBI while examining the said report and acting upon it, functions in its quasi judicial capacity. This is evident from section 11(4) of the Act.

The submission of the petitioner ought to have been granted a full-fledged hearing by the Board i.e., the Board should have heard the Respondent No. 2 complainant in the presence of the petitioner, and the petitioner should have been provided with the written submissions of Respondent No. 2 and should also have been provided opportunity to meet the case of Respondent No. 2 at the stage of consideration of the issue whether an investigation should be ordered by appointing an investigating authority, therefore, cannot be accepted. If accepted, it would lead to a piquant situation where the Board shall, only on the basis of a prima facie assessment return its findings which would, in turn, impinge upon the functions to be discharged by the investigating authority to be appointed to investigate into the matter. Pertinently, an investigating authority is extensively empowered to unearth facts (see section 11C(2) to 11C(9) of the SEBI Act), and cause a detailed investigation into the matter. That exercise would get defeated if the Board were to, on the basis of a prima facie view, return findings of fact by itself holding a full fledged hearing. As in the case of Competition Commission of India, in the present case as well, the functions to be performed by SEBI cannot be rendered nugatory by imposition of unnecessary directions or impediments which are not postulated by the plain language of section 11C. ■

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)

A. NOTIFICATIONS

1. Insertion of Rule 2F-"Guidelines for setting up an Infrastructure Debt Fund for the purpose of exemption under Section 10(47)

Section 10(47) provides that any income of an infrastructure debt fund, set up in accordance with the guidelines as may be prescribed, which is notified by the Central Government in the Official Gazette for the purposes of this clause, shall not be included while computing the total income of a previous year of any person. In exercise of the powers conferred this section, the Central Board of Direct Taxes has through this notification notified Income-tax (5th Amendment) Rules, 2012 which will come into force from the date of its publication in the Official Gazette.

The said amendment Rules have inserted Rule 2F dealing with "Guidelines for setting up an Infrastructure Debt Fund for the purpose of exemption under Section 10(47)", which provides for certain conditions to be fulfilled for claiming said exemption.

[Notification No. 16/2012- dated 30-04-2012]

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

..E..

INDIRECT TAXES



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

A. SERVICE TAX

1. Services provided by the Agricultural Produce Marketing Committee (APMC)/Board out of the market fee are not liable to service tax

The services provided by APMC out of the 'market fee' (mandi shulk) collected from the licensees, do not fall under the category of Business Support Services (BSS). In the light of the distinction provided between BSS and Business Auxiliary Services (BAS) in the instructions dated 28-02-2006 issued from F.No.334/4/2006-TRU, the service provided by APMC out of the market fee is not in the nature of 'outsourced service'.

As statutory bodies, APMCs provide basic facilities in the market area out of the 'market fee' collected from the licensees, mainly to facilitate the farmers, purchasers and others. APMCs provide a host of services to the licensees in relation to the procurement of agricultural produce, which are 'inputs' in terms of the definition given in Section 65(19) of the Finance Act, 1994 itself. To that extent the meaning of 'input' is much wider in scope than the meaning assigned in rule 2(k) of CENVAT Credit Rules, 2004. Therefore, it is clarified that the services provided by the APMC are classifiable as BAS and hence covered by the exemption under Notification 14/2004-ST.

However, any other service provided by the APMCs for a separate charge (other than 'market fee') to either the licensees or farmers or any other person, e.g. renting of shops in the market area, etc. would be liable to tax under the respective taxable heads.

[Circular No. 157/8/2012 ST dated 27-04-2012]

2. Service tax payable @ 12% on 8 specified services and services taxable under reverse charge if the payment is received after 31st March, 2012 - CBEC clarifies

Service tax rate has been increased from 10% to 12% with effect from 01-04-2012. There have been doubts regarding applicability of rate of tax in case of 8 specified service providers (covered under Rule 7 of POT Rules, 2011) and services on which tax is paid under reverse charge when the invoices have been issued and services rendered prior to 1st April, 2012.

The Board has clarified that the rate of service tax prevalent on the date when point of taxation occurs is the rate of service tax applicable on any taxable service. Therefore, in the abovementioned cases where the point of taxation is the date of payment, service tax should be charged @ 12% on these services, if the payment is received on or after 1st April, 2012 even though the invoices have been issued before 1st April, 2012.

It has also been clarified that the supplementary invoices may be issued to reflect the new rate of tax, if required to recover the differential amount and that CENVAT credit can be availed on such supplementary invoices and tax payment challans (in case of reverse charge).

[Circular No. 158/9/2012 ST dated 08-05-2012]

B. CENTRAL EXCISE

1. Quarterly returns prescribed for certain goods specified under Notification No.12/2012 CE dated 17-03-2012

Quarterly return of production and removal of goods has also been prescribed for the assessee who is availing exemption in respect of goods falling under Sl.No.67, 128, 199(I) and 200(I) of *Notification No. 12/2012 CE dated 17-03-2012* and does not manufacture any other excisable goods other than those specified in the said notification, and other relevant particulars, within ten days after the close of the quarter to which the return relates.

[*Notification No. 23/2012 CE(NT) dated 18-04-2012*]

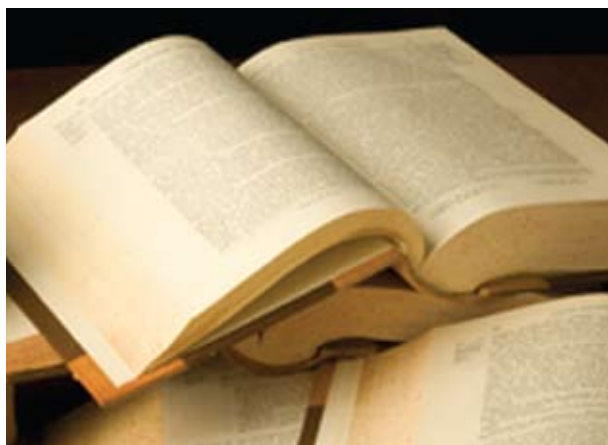
2. Reversal of credit not required where excise duty has been paid on the process of cutting, slitting and printing of aluminium foils (final product) – Order issued under Section 5B of the Central Excise Act, 1944

An order has been issued by the Central Government under Section 5B of the Central Excise Act, 1944 to provide that an assessee who has paid excise duty on the process of cutting, slitting and printing of aluminium foils (final product), need not reverse the CENVAT credit taken or utilised, of the duty or tax or cess paid on inputs, capital goods and input services used in the making of the said final product.

The credit can be taken irrespective of the fact that the process of cutting, slitting and printing of aluminium foils have been held as not amounting to manufacture by the Central Excise and Service Tax Appellate Tribunal in the case of *M/s Printo India Graphics (P) Ltd. Vs CCE, Delhi* and upheld by the Supreme Court.

The non-reversal of the credit would be subject to following conditions:

- the said non-reversal shall be allowed only for the CENVAT credit taken upto the 15-03-2012.
- the said non-reversal shall be allowed only when excise duty has been paid on removal of the said final product.



- the said assessee shall not prefer a claim of refund of the excise duty paid by him on the said final product:

Further, the CENVAT credit, if any, taken by the buyer of the said final product, of the excise duty paid by the said assessee on the said final product made and cleared up to the 15th March, 2012 shall not be required to be reversed.

[*Notification No.24/2012 CE(NT) dated 19-04-2012*]

3. Rule 6 of the CENVAT Credit Rules, 2004 has been amended to provide that provisions of sub-rule (1), (2), (3) and (4) of rule 6 would not apply to supplies made for setting up of solar power generation projects or facilities. Further, reference to *Notification No. 6/2006 CE dated 1-03-2006* in rule 6 has been substituted with reference to *Notification No. 12/2012 CE dated 17-03-2012*.

[*Notification No. 25/2012 CE(NT) dated 08-05-2012*]

4. Articles of jewellery exempt from excise duty

Articles of jewellery falling under Heading 7113 of the Central Excise Tariff have been exempted from excise duty. Further, all goods falling under Heading 8607 have also been exempted from excise duty if the same are manufactured by a factory belonging to the Central Government and they are intended for use by any department of the Central Government.

[*Notification No. 23/2012 CE dated 08-05-2012*]

5. Clarification regarding admissibility of exemption under area-based Notification No. 56/2002-CE dated 14-11-2002

Notification No. 56/2002-CE dated 14-11-2002 exempts excise duty on specified goods cleared from industrial units in the State of Jammu & Kashmir to the extent of duty paid in cash by way of a refund mechanism, for a period of ten years from the date of publication of the notification or from the date of commencement of commercial production, whichever is later. The exemption is available to new units which have commenced commercial production on or after 14-06-2002 as well as existing units which have undertaken substantial expansion or have made new investments for employment generation on or after 14-06-2002.

It has been clarified that the exemption period of ten years is to be computed from the date of publication of the notification when a new unit commences commercial production or an existing unit undertakes substantial expansion and commences commercial production from such expanded capacity during the period from 14-06-2002 to 14-11-2002. However, if a new unit commences commercial production or an existing unit undertakes substantial expansion and commences commercial production from such

expanded capacity after the date of publication of the notification, i.e., 14-11-2002, the ten year exemption period is to be computed from the date of commencement of commercial production in the case of new units and from the date of commencement of commercial production from the expanded capacity in the case of existing units.

[Circular No. 965/08/2012 CX dated 17-04-2012]

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)

A. Permission to Authorised Dealer (AD) Category II for additional activity and opening of Nostro account

A. P. (DIR Series) Circular No. 104 dated 4th April, 2012 and A.P. (DIR Series) Circular No. 109 dated 18th April, 2012

RBI has vide A. P. (DIR Series) Circular No. 104 dated 4th April, 2012, allowed AD Category-II to open Nostro accounts subject to specified terms and conditions. However, it has now been clarified that AD Category II entities desirous of opening Nostro accounts shall approach the RBI for a one time approval to open and operate Nostro accounts.

For detail terms and conditions, please refer the circular available on RBI website at:

<http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=7146&Mode=0>

B. Liberalisation/Rationalisation of ECB Policy

1. A.P. (DIR Series) Circular No. 111 dated 20th April, 2012

Keeping in view the announcements made by the Union Finance Minister in the Union Budget for the Year 2012-13, RBI has further rationalised and liberalised the extant guidelines as under:-

- (i) **Enhancement of Refinancing limit for Power Sector**
Indian companies in the power sector shall be allowed to utilise 40% of the fresh ECB raised towards refinancing of the Rupee loan/s availed by them from the domestic banking system, under the approval route, subject to the condition that at least 60% of the fresh ECB proposed to be raised should be utilised for fresh capital expenditure for infrastructure project(s).
- (ii) **ECB for Maintenance and Operation of Toll systems for Roads and Highways**
ECBs shall also be allowed for capital expenditure

under the automatic route for the purpose of maintenance and operations of toll systems for roads and highways provided they form part of the original project.

2. A.P. (DIR Series) Circular No. 112 dated 20th April, 2012

Presently, existing ECB can be refinanced by raising a fresh ECB, subject to the condition that the fresh ECB is raised at a lower all-in-cost. Henceforth, the borrowers desirous of refinancing/rescheduling an existing ECB can raise fresh ECB at a higher all-in-cost under the approval route subject to the condition that the enhanced all-in-cost does not exceed the all-in-cost ceiling prescribed as per the extant guidelines.

3. A.P. (DIR Series) Circular No. 113 dated 24th April, 2012

Presently, availing of ECB for working capital is not a permissible end-use. On a review of the policy related to ECB and keeping in view the announcement made in the Union Budget for the Year 2012-13, RBI has decided to allow ECB for working capital as a permissible end-use for the civil aviation sector, under the approval route, subject to the specified conditions. ECB availed for working capital/refinancing of working capital shall not be allowed to be rolled over.

The application for such ECB should be accompanied by a certificate from a Chartered Accountant confirming the requirement of the working capital loan and the projected foreign exchange cash flows/earnings which would be used for servicing the loan. AD should ensure that the foreign exchange for repayment of ECB is not accessed from Indian markets and the liability is extinguished only out of the foreign exchange earnings of the borrowing company.

For detailed conditions, refer this circular available on RBI website at: <http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=7162&Mode=0>

4. A. P. (DIR Series) Circular No.119 dated 7th May, 2012

As per the extant guidelines, ECB proceeds can be utilised for permissible foreign currency expenditure and Rupee expenditure. It has now been decided that at the time of availing Loan Registration Number (LRN) from the RBI, borrowers should provide bifurcation of the utilisation of the ECB proceeds towards foreign currency and Rupee expenditure in Form-83. The primary responsibility to ensure that the ECB proceeds meant for Rupee expenditure in India are repatriated to India for credit to their Rupee accounts is that of the borrower concerned. The designated AD bank shall also be required to ensure that the ECB proceeds

meant for Rupee expenditure are repatriated to India immediately after drawdown.

C. Transfer of Funds from Non-Resident Ordinary (NRO) account to Non-Resident External (NRE) Account

A. P. (DIR Series) Circular No.117 dated 7th May, 2012.

Presently, transfer of funds from NRO to NRE account is not permissible. Consequent to the recommendation made by the Committee to Review the Facilities for Individuals Under FEMA, 1999 under the Chairmanship of Smt. K. J. Udeshi, the RBI has permitted NRIs (as defined in Foreign Exchange Management (Deposit) Regulations, 2000) to transfer funds from NRO account to NRE account within the overall ceiling of USD 1 million per financial year subject to payment of tax, as applicable (i.e. as applicable if funds were remitted abroad). Such credit of funds to NRE account shall be treated as eligible credit to NRE Account.

D. Release of Foreign Exchange for Miscellaneous Remittances

A.P. (DIR Series) Circular No.118 dated 7th May, 2012.

With a view to further liberalise the documentation requirements, the limit for foreign exchange remittance for miscellaneous purposes on the basis of a simple letter from the applicant without obtaining Form A-2, has been raised from \$5000 to \$25,000 with immediate effect. It has also been clarified that ADs need not obtain any document, including Form A-2, except a simple letter from the applicant containing the basic information as long as the foreign exchange is being purchased for a current account transaction (not included in the Schedules I and II of Government Notification on Current Account Transactions), and the amount does not exceed \$ 25,000 or its equivalent and the payment is made by a cheque drawn on the applicant's bank account or by a Demand Draft.

E. Foreign Direct Investment (FDI) in India

Consequent to the amendments in the Consolidated FDI Policy – Circular 1 of 2012 effective from 10th April, 2012, the RBI has issued following circulars to give effect to these amendments:

1. Issue of equity shares by conversion of imported second-hand machinery under the FDI Scheme

A. P. (DIR Series) Circular No.120 dated 8th May, 2012

Presently, issue of equity shares/ preference shares by conversion of import of capital goods/machineries/equipments (including second-hand machineries) and pre-operative/pre-incorporation expenses (including payments of rent, etc.) is permitted under the Government route subject to certain terms and conditions. It has now been decided to exclude conversion of

imported second-hand machinery from the purview of this provision.

2. Amendment to the FDI Scheme relating to Foreign investment in Commodity Exchanges and NBFC Sector

A. P. (DIR Series) Circular No.121 dated 8th May, 2012

Presently, foreign investment in commodity exchanges is allowed under the Government approval route (i.e. though the Foreign Investment Promotion Board) within a composite (FDI & FII) ceiling of 49% with FDI limit of 26% and FII limit of 23% under Portfolio Investment Scheme (PIS), subject to other conditions specified. Henceforth, prior approval of the Government would be required only for FDI component and Government approval would not be required for investment by registered FIIs in commodity exchanges.

Further, it is clarified that the activity of 'leasing and finance' which is one of the 18 NBFC activities under the extant FDI policy wherein FDI up to 100% is permitted under automatic route covers only 'financial leases' i.e. FDI is permitted only in 'financial leases' (financial leasing activity) and not in 'operating leases' (operating leasing activity).

E. Risk Management and Inter Bank Dealings

1. A. P. (DIR Series) Circular No.122 dated 9th May, 2012

AD banks are permitted to deploy foreign currency funds representing surpluses in the nostro accounts for granting loans to resident constituents for meeting their foreign exchange requirements or for the rupee working capital/capital expenditure needs subject to the prudential/interest-rate norms, credit discipline and credit monitoring guidelines in force.

Recently, the RBI has reviewed the interest rate and the end use of the FCNR(B) deposits and accordingly, it has been decided that FCNR(B) funds representing deposit liabilities may be utilised for making loans to resident constituents for meeting (i) their foreign exchange requirements or (ii) for the rupee working capital/capital expenditure needs of exporters/corporates who have a natural hedge or a risk management policy for managing the exchange risk subject to the prudential/interest-rate norms, credit discipline and credit monitoring guidelines in force.

2. A. P. (DIR Series) Circular No.123 dated 10th May, 2012

The intra-day open position/daylight limit of the Ads has been fixed at five times the Net Overnight Open Position Limit available to them or the existing Intra-day open position limit as approved by the RBI, whichever is higher, for positions involving Rupee as one of the currencies.

F. Exchange Earner's Foreign Currency (EEFC) Account

A. P. (DIR Series) Circular No.121 dated 8th May, 2012

- Henceforth, 50% of the balances in the EEFC accounts should be converted forthwith into rupee balances and credited to the rupee accounts as per the directions of the account holder. This process may be completed within a fortnight from the date of the circular and compliance reported to the RBI.
- In respect of all future forex earnings, an exchange earner is eligible to retain 50% (as against the previous limit of 100%) in non-interest bearing EEFC accounts. The balance 50% shall be surrendered for conversion to rupee balances.
- Accordingly, EEFC account holders henceforth will be permitted to access the forex market for purchasing foreign exchange only after utilising fully the available balances in the EEFC accounts. ADS are, accordingly, required to obtain a declaration while selling foreign exchange to their constituents.

The above provisions will apply, *mutatis mutandis*, also to holder of either a Resident Foreign Currency Account (RFC) or a Diamond Dollar Account (DDA).

CORPORATE LAWS



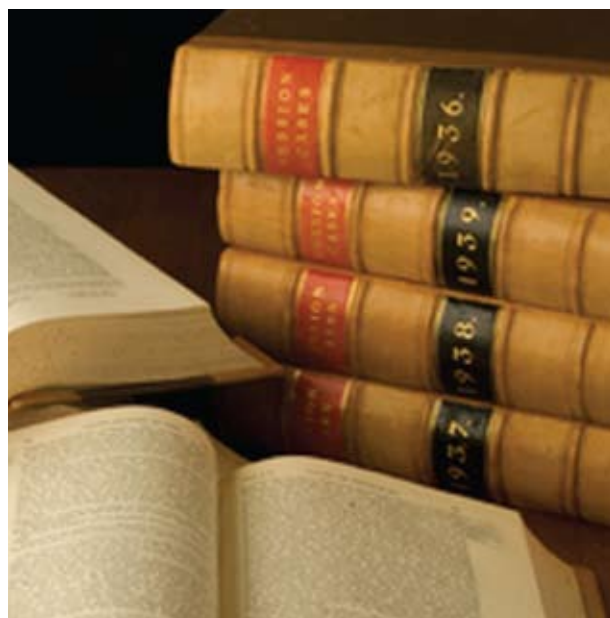
(Matter on Corporate Laws has been contributed by CA. Jayesh Thakur)

MCA (www.mca.gov.in)

1. Alterations in the Schedule XIV of the Companies Act, 1956

The MCA has issued Notification No. F. No.17/292/2011 CL-V dated 17-04-2012 amending and altering

Schedule XIV to the Companies Act, 1956 by inserting



after serial number IV relating to Ships and the entries relating thereto, serial number V and entries, namely, "V- Intangible Assets : 1. Intangible Assets (Toll Road) created under Build, Operate and Transfer, Build, Own, Operate and Transfer or any other form of Public Private Partnership Route". It is provided that the amortisation amount or rate should ensure that the whole of the cost of the intangible asset is amortised over the concession period. Total Revenue shall be reviewed at the end of each financial year and the projected revenue shall be adjusted to reflect any changes in the estimate which will lead to the actual collection at the end of the concession period. The Notification may be referred to for the manner and mode of working the amortisation amount and which also provides an illustrative example for the purpose. One may refer to the above citation for further details.

2. Clarification on Name Availability Guidelines, 2011

The MCA has issued General Circular No. 7/2012 dated the 25th April 2012 and referred to its earlier guidelines regarding availability of name by the system online without backend process by the Registrar of Companies (ROC) on certification given by practising professionals which has been re-examined and it has been decided as under :

- The facility of name approval through STP mode on certification by professional will continue to be available. However, such names will be put to online check by the system for ascertaining similarity with trademarks. If there is similarity of proposed name with any existing trademark, the work item will be transferred for processing in non-STP mode.
- All the name applications submitted in STP mode will be put for system check and if there is exact match of any of the two words (other than the words private limited/limited) proposed in new company's name with any existing company's name, then such name will also be processed in non-STP mode.
- All the names approved in STP mode will be made available on the dash-board of the concerned ROC for immediate examination. Such STP approved names will not be available for filing of incorporation documents up to:-
 - 1900 hrs. of the same day, if the name through STP mode is approved by the system upto 1100 hrs. on any working day.
 - 1900 hrs. of the any next working day if the name is approved after 1100 hrs. on any working day or on holiday/non-working day.
- Name approval application in case of single word (other than words private limited/limited) shall not be processed in STP mode.

The new process will be implemented effective from 20-05-2012. One may refer to the above citation for further details.

3. Companies amendment rules - new forms notified

The MCA has issued Notification No. G.S.R. 313(E) dated 24-04-2012 notifying and substituting new forms 23C (Form of application to the Central Government for appointment of cost auditor) and 23D (Information by cost auditor to Central Government). One may refer to the above citation for further details.

SEBI (www.sebi.gov.in)

4. Extension of Timeline For Submission Of Annual Audited Financial Results for listed companies

The SEBI has issued Circular No. CFD/DIL/LA/SK/AT/8278/2012 dtd. 11-04-2012 pursuant to representations received from listed entities and the auditing fraternity regarding difficulties faced in submission of annual financial results along with Q4 results, more specifically owing to the first time adoption of the revised Schedule VI format notified by the MCA and which is applicable for FY 2011-12 results. It has been decided to, as a one-time measure, for the purpose of submission of FY 2011-12 financial results, restore, the earlier provision for the time being and review the situation at a later stage. Accordingly, the timeline for submission of financial results for FY 2011-12 for the last quarter and in respect of annual audited results for FY 2011-12, listed entities have an option to either:

- Submit limited reviewed Q4 results within 45 days from end of the quarter and thereafter submit annual audited results as soon as they are approved by the Board, or
- Submit annual audited results within 60 days from the end of fourth quarter along with Q4 results which would be a balancing figure.

One may refer to the above citation for further details.

5. Listing Agreement amended for Format for Disclosure of Financial Results

The SEBI has issued Circular No. CIR/CFD/DIL/4/2012 dated 16-04-2012 pursuant to the Ministry of Corporate Affairs having revised the format for disclosure of Balance Sheet under revised Schedule VI of the Companies Act, 1956. It has been decided to carry out consequential amendments to Clause 41 of the Listing Agreement regarding interim disclosure of financial results by listed entities to the stock exchanges, which has been drawn from the format under Schedule VI of the Companies Act, 1956. The format for the said disclosure is been given in the Annexure to this circular referred above. The above shall be applicable for financial year ended on 31st March, 2012 for all filings made after the date of this circular. One may refer to the above citation for further details and the format for disclosure of financial results.



6. Master circular for stock exchange/cash market

The SEBI has issued Master Circular No. CIR/MRD/DP/11/2012 dtd. 13-04-2012 as it has been issuing various circulars/directions from time to time and in order to enable the users to have an access to all the applicable circulars/directions at one place, a master circular for stock exchange/cash market has been prepared. This master circular is a compilation of the circulars/communications issued by SEBI up to 31st March, 2012 and shall come into force from the date of its issue. One may refer to the above citation for further details.

7. Master circular for depositories

The SEBI has issued Circular No. CIR/MRD/DP/10/2012 dtd. 13-04-2012 as it has been issuing various circulars/directions from time to time and in order to enable the users to have an access to all the applicable circulars/directions at one place, a master circular for depositories has been prepared. This master circular is a compilation of the circulars/communications issued by SEBI up to 31st March, 2012 and shall come into force from the date of its issue. One may refer to the above citation for further details.

8. Filing of offer documents under SEBI ICDR Regulations

The SEBI has issued Circular No. CIR/CFD/DIL/5/2012 dtd. 03-05-2012 in partial modification of its earlier circular and it has been decided that the draft offer documents in respect of issues of size upto ₹500 crores shall be filed with the concerned regional office of SEBI under the jurisdiction of which the registered office of the issuer company falls. Merchant bankers are accordingly advised to file the draft offer documents/offer documents with the concerned office of the SEBI, based on the estimated issue size. Where the issue size is more than ₹500 crores, the filing of the documents would be done with the Mumbai regional office. One may refer to the above citation for further details. ■

Revenue Recognition in case of Construction Contracts

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

A. Facts of the Case

1. A public sector company (hereinafter referred to as the 'company'), listed in the stock exchanges at NSE and BSE, is engaged in the field of engineering, manufacture of equipments, erection and commissioning of power projects. In addition, the company is in the business of transportation, transmission and defence, etc. In power project business, the contracts received by the company are either Engineering, Procurement and Construction (EPC) contracts or Boiler, Turbine and Generator (BTG) Packages, where civil works and Balance of Plant (BOP) package items are not in the scope. The normal execution period of a contract ranges between 3 to 5 years. The scope of the contract includes supply of equipments, erection, commissioning, ensuring guaranteed output from the machines, completing the trial operation and synchronising the plant to the grid. The normal warrantee/guarantee period is between 18 to 24 months. The company has 15 manufacturing units, 4 power sector regions, service centers and regional offices besides project sites spread all over India and abroad. The responsibility of manufacturing units is engineering, manufacture and supply of the equipments as per the agreed specifications whereas the power sector regions/site offices are responsible for erections, commissioning, purchase of BOP items and civil works (for EPC contracts). Conducting trial operations and synchronising the power station to the grid are also the responsibility of the power sector regions.
2. The querist has stated that long-term construction contracts are obtained by the company's marketing wing which allocates the scope and value to various manufacturing units and regions/sites for execution. The units/regions bill the customer based on the Billing Break Up (BBU) agreed with the customer. The billing to the customer is based on agreed terms and conditions either based on BBU and in few contracts, on reaching certain milestones. According to the querist, the billing value may not represent the true value of the despatches or the project progress at the site. The billing is mainly to ensure cash flows. Hence, the turnover for a period is arrived at after adjusting the value of works done to the billed amount through valuation adjustment account.
3. The accounting policy of the company for revenue recognition in respect of construction contracts is stated by the querist as below:
 - A. *For construction contracts entered into on or after 01.04.2003*
 "Revenue is recognised on percentage completion

method based on the percentage of actual cost incurred upto the reporting date to the total estimated cost of the contract."

4. The accounting practice in respect of construction contracts covered under Accounting Standard (AS) 7 (revised 2002), 'Construction Contracts' is as below:

For working out the percentage of completion, the following accounting practice is being followed from the financial year 2003-04. The percentage of completion is worked out based on actual cost incurred upto reporting period divided by total estimated cost of the contract. Total estimated contract cost is worked out based on actual cost incurred plus estimated remaining cost to complete the work at the end of the reporting period. Actual cost incurred upto reporting period is worked out as follows:

(a) By manufacturing units

Actual cost incurred for each contract is worked out based on actual cost incurred upto the reporting date in respect of items *manufactured and physically despatched to the project site* (emphasis supplied by the querist). Raw materials, stores and spares procured by the units and work in progress (WIP), which are not a despatchable unit are not considered as actual cost incurred for the purpose of working out the percentage of completion. Similarly, finished goods, which are lying at unit and not physically despatched from manufacturing unit to project site are not considered for the purpose of calculating actual cost incurred for working out percentage of completion for revenue recognition. The costs incurred on above are recognised as inventory in the accounts.

(b) By power sector regions/sites

Actual cost incurred towards engineering, commissioning, etc. by region/site is considered for working out percentage of completion for revenue recognition. Further, items like steel, cement and bought-outs directly supplied from supplier to project site and billed to the customer are also considered as part of actual cost incurred for working out percentage of completion for revenue recognition. Cost incurred in design and drawings for a project till milestones as per billing schedule, is exhibited as Contract WIP and no revenue is recognised till such date. Actual costs incurred including manhours spent, engineering, designing cost, etc. are part of actual cost incurred upto the reporting period.

5. The querist has stated that in case of construction contracts covered under AS 7 (revised 2002), normally more than one manufacturing unit/region of the company are involved for execution of the contract. Each unit/region of the company recognises its revenue in respect of allocated scope of work in their books based on the above accounting practice. Since the percentage of completion with respect to a contract will differ for each unit/region of the company which is based on the progress of their scope of work, there is a need to work out the percentage of completion of a contract for the contract as a whole to recognise the revenue in line with the requirements of AS 7 (revised 2002). The total contract revenue, actual cost incurred upto the reporting period, estimated total cost at the end of the reporting period, etc. are consolidated based on the inputs given by units/regions involved in a contract to concerned business sector to work out the percentage of completion at the total contract level and any adjustment between revenue recognised by unit and revenue to be recognised at overall contract level is made by the business sector. The difference between the revenue recognised by the unit/regions and revenue as worked out on consolidated level are recognised through valuation adjustment account in the accounts of business sector.
 6. The querist has further stated that percentage of completion is worked out based on the actual cost incurred upto the reporting period based on the above as a percentage to the total estimated cost of the contract. The percentage as worked out is multiplied with the total estimated contract revenue to determine revenue upto the reporting period. The same is recognised as revenue upto the reporting period.
 7. The disclosures made in the notes to accounts pursuant to AS 7 (revised 2002) have been stated by the querist as follows:
 - (a) Contract revenue recognised for the year as per AS 7 (revised 2002)
 - (b) In respect of contract in progress at the end of the year
 - Cost incurred and recognised profit (less recognised losses)
 - Amount of advance received
 - Amount of retentions (deferred debts)
 - (c) In respect of dues from customers after appropriate netting off
 - Gross amount due from customer for the contract work as an asset
 - Gross amount due to customer for the contract work as a liability
 - Contingencies
- The following note is also given:
- "The estimates of total costs and total revenue in respect of construction contracts entered on or after 1st April, 2003 in accordance with Accounting Standard (AS) 7 (revised 2002), 'Construction Contracts' are reviewed and updated periodically during the year by the management and necessary adjustments are made in the current year's account."
8. During the audit of annual accounts for the financial year 2009-10, the querist has informed that the Government audit has raised the following queries:
 - (a) Revenue in respect of construction contracts is to be recognised on percentage of completion method based on the percentage of actual cost incurred upto the reporting date to the total estimated cost of the contract as per the significant accounting policy of the company. However, in contravention to its accounting policy, the company is considering the ratio of cost of despatches to the total estimated cost instead of the ratio of actual cost incurred upto reporting date to the total estimated cost for recognition of revenue from construction contracts.
 - (b) The Government audit is of the view that the cost of steel/cement purchased at project sites specific to the projects which has been billed to the customers as per BBU and in respect of which certain percentage of the money is also collected, is not to be treated as cost incurred, since these materials have not been put to use/or consumed in the construction activities. In the view of the Government audit, these materials are required for future activity of civil and structural work to be done subsequently and cannot be considered as cost incurred for working out percentage of completion for revenue recognition.
 - (c) Further, the Government audit is of the view that the estimated contract revenue and estimated contract cost in respect of construction contracts covered under AS 7 (revised 2002) are dynamic in nature and undergo series of changes in executing the contract, i.e., for projects which existed at opening of financial year and continuing at the end, there is a change in the estimated contract revenue and estimated cost of a contract due to factors given below, which have an effect on the turnover and profit for the year. In the view of the Government audit, in terms of paragraph 37 of AS 7 (revised 2002) it is a change in accounting estimate and the impact should have been disclosed in the accounts considering the requirements of AS 7 (revised 2002) and Accounting Standard (AS) 5, 'Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies'.
 9. The company has expressed its views as follows:
 - (a) In case of manufacturing units
Paragraph 26 of AS 7 (revised 2002) reads as follows:

"A contractor may have incurred contract costs that relate to future activity on the contract. Such contract costs are recognised as an asset provided it is probable that they will be recovered. Such costs

represent an amount due from the customer and are often classified as contract work in progress.”

Actual cost incurred towards purchase of raw material, stores, spares etc., work in progress at the manufacturing units, as well as finished goods at stores, not physically despatched from manufacturing units to project sites are for future activity and hence, cannot be considered as part of actual cost incurred in ascertaining the percentage of completion. Therefore, accounting treatment of showing these as part of inventory, contract WIP/finished goods is in order.

The wording of the accounting policy, i.e., ‘actual cost incurred’ is in line with the words used in AS 7 (revised 2002) and it should not be linked with the cost of purchases of raw material, stores and cost incurred on WIP/finished goods, etc.

(b) Power Sector Regions

As per paragraph 30 of AS 7 (revised 2002), the cost of materials delivered to a contract site has to be excluded from the contract costs, unless the materials have been made (purchased) specifically for the contract.

The cost incurred on steel, cement procured by power sector regions lying at project site is specifically for the project for which risks, rewards and ownership are on customer and billing is made to customer and the money is being realised.

Therefore, considering the same for calculation of actual cost incurred is in line with AS 7 (revised 2002). Further, since the ownership of the material has been transferred to the customer and the material is lying at the customer site under their custody, the same cannot be shown as inventory in the accounts of the company.

Further, supply of steel/ cement material at site are construed as contract activity and recognition of revenue is in line with paragraph 21 of AS 7 (revised 2002) which, inter alia, states that **“when the outcome of a construction contract can be estimated reliably, contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date.”**

(c) Disclosure

The contract execution period in respect of long term contracts is between 36 months to 60 months, the estimated contract revenue and contract cost do have a lot of uncertainty at the initial stages and the estimates are refined as the project progresses based on the detailed engineering, bill of quantities, latest price trends of inputs and project deliverables, unforeseen contingencies, addition/deletion to the scope, modification required, site constraints, exchange rate

fluctuations and so on and these changes do impact estimated contract revenue and estimated cost.

The increase/decrease in the estimated contract revenue and estimated contract cost is bound to happen in case of long term contract due to increase/decrease in the prices of steel, cement and other input cost, etc. These are not a change in accounting estimates.

Further, as per paragraph 37 of AS 7 (revised 2002), the effect of change in estimates of contract revenue or contract costs, or the effect of a change in the estimate of the outcome of a contract, is accounted for as per AS 5. It does not mention about disclosure. Disclosure requirements are given under paragraphs 38 to 44 of AS 7 (revised 2002) which are being complied by the company as stated in the earlier paragraphs. Hence, further disclosures as per AS 5 in addition to disclosure as per AS 7 (revised 2002) are considered not required.

B. Query

10. In view of the above facts, the querist has sought the opinion of the Expert Advisory Committee on the following issues:

- (a) In the case of manufacturing units, whether the practice of cost of manufactured items despatched to project site alone being considered as ‘cost incurred’ without considering the cost of raw material in stocks, works in progress at the plant, finished goods at stores as cost incurred is in line with the revenue recognition principle as per AS 7 (revised 2002). Also, whether the wording of the accounting policy of the company is in line with the revenue recognition principle as per AS 7 (revised 2002).
- (b) In the case of erection sites, whether the cost of cement and steel procured and delivered at the project site, specific to the project, in respect of which billing has been done as per the BBU agreed with the customer can be considered as ‘cost incurred’ in working out the percentage of completion as per AS 7 (revised 2002) and whether the same is in line with the revenue recognition principle as per AS 7 (revised 2002).
- (c) Whether change in estimated revenue and estimated cost due to reasons explained in paragraph 9(c) above at the end of the reporting period in respect of long term contracts executed over a longer period needs to be disclosed as ‘change in estimates’ as per AS 5.

C. Points Considered by the Committee

11. The Committee notes that the basic issues raised in the query relate to determination of contract cost incurred in the facts and circumstances of the

company for calculating the stage of completion while recognising contract revenue and disclosure of the effects of changes in estimated contract revenue and estimated contract cost. The Committee has, therefore, considered only this issue and has not examined any other issue that may arise from the Facts of the Case, such as, determination of turnover, recognition of revenue at unit/region level and at consolidated level, combining and segmentation of contracts, propriety of considering change in scope of contract as change in accounting estimates, etc. Further, the Committee, while answering the query has laid down the broad principles of determining the 'contract cost incurred'. The Committee further presumes that the construction contracts in the context of which the query has been raised are those that involve both manufacture of equipments at the manufacturing units of the company and erection and commissioning, etc. at the project sites. The Committee also presumes from the Facts of the Case that it is at the company level that the contract cost incurred has to be determined and not at the manufacturing unit/project sites level.

12. At the outset, the Committee wishes to point out that contract cost incurred should be seen from the overall contract perspective irrespective of the fact that performance of the construction contract involves processing/performance of various activities at different locations, viz., manufacturing units, project sites, etc. As regards the determination of 'contract cost incurred', the Committee notes the following paragraphs of AS 7, notified under the Companies (Accounting Standards) Rules, 2006 relating to recognition of contract revenue and expenses:

"21. When the outcome of a construction contract can be estimated reliably, contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date. An expected loss on the construction contract should be recognised as an expense immediately in accordance with paragraph 35."

"29. The stage of completion of a contract may be determined in a variety of ways. The enterprise uses the method that measures reliably the work performed. Depending on the nature of the contract, the methods may include:

- (a) the proportion that contract costs incurred for work performed upto the reporting date bear to the estimated total contract costs; or
- (b) surveys of work performed; or
- (c) completion of a physical proportion of the contract work.

Progress payments and advances received from customers may not necessarily reflect the work performed.

30. When the stage of completion is determined by reference to the contract costs incurred upto the reporting date, only those contract costs that reflect work performed are included in costs incurred upto the reporting date. Examples of contract costs which are excluded are:
 - (a) contract costs that relate to future activity on the contract, such as costs of materials that have been delivered to a contract site or set aside for use in a contract but not yet installed, used or applied during contract performance, unless the materials have been made specially for the contract; and
 - (b) payments made to subcontractors in advance of work performed under the subcontract."

13. The Committee notes that paragraph 21 of AS 7 requires recognition of contract revenue by reference to the stage of completion of the contract activity at the reporting date, when the outcome of the contract can be estimated reliably. Paragraph 31 of AS 7 deals with recognition of contract revenue when the outcome of the contract cannot be estimated reliably. Thus, percentage of completion method should be followed only when the outcome of the contract can be estimated reliably. Since the company, in the extant case, is following percentage of completion method, the Committee presumes that outcome of the construction contract in this case can be estimated reliably.

14. The Committee notes from the above-reproduced requirements of AS 7 that determination of contract costs incurred for calculating stage of completion depends upon the performance of contract activity rather than mere incurrence of cost. Costs that relate to future activity are to be recognised as 'work-in-progress'. As to what can be considered as performance of contract activity depends upon the facts and circumstances of the case. Every activity performed in relation to a contract may not lead to completion of a stage or milestones. Accordingly, a judgement is to be exercised by the management while determining contract costs incurred considering various factors, such as, terms and specifications of the contract, identifiability with the contract, achievement of milestone in relation to the contract, etc.

15. As regards the cost of items of raw material, work-in-progress and finished goods, purchased or manufactured and lying at stores or at manufacturing site, or at project site, the Committee is of the view that it should be seen whether these can be considered

as 'contract cost incurred' applying the judgement based on the considerations stated in paragraph 14 above, viz., identifiability with the contract, i.e., whether these can be considered to be specific for a construction contract as per its specifications, achievement of milestone in relation to the contract, etc. In this regard, the Committee notes from paragraph 30 of AS 7 that there is no restriction in considering supply of materials to the customer site as 'actual contract cost incurred', which are manufactured/ purchased specifically for the contract. However, in case of items which are not manufactured/ purchased specifically for the contract e.g., the items which are commonly used across various contracts, the cost of such items if only delivered at the contract site should not be considered unless these are used/installed/applied during contract performance.

16. In view of the above, the Committee is of the view that the practice of the company to consider the cost of manufactured items despatched to the project site alone as 'cost incurred' is not correct since mere event of despatch cannot be considered as a completion of a stage and may not trigger revenue recognition. The Committee is of the view that it is performance of the contract activity rather than despatch of items from one location to another that should be considered while determining stage of completion.
17. The Committee notes from the Facts of the Case that materials, such as, steel and cement are directly supplied from the supplier to the project site and billed to the customer, however, these have not yet been applied or used. The Committee is of the view that mere billing to the customer or even receipt of money from the customer cannot be a sole criterion for considering an item as 'contract cost incurred' for determining the stage of completion. As regards whether steel and cement procured and delivered at the contract site can be considered to be specific as being argued in the Facts of the Case, the Committee is of the view that these items are general in nature for a construction activity and cannot be said to be specific for a project even though supplied directly at the contract site. Accordingly, these should be considered for determining 'cost incurred' only when these have been used/ applied for performance of contract activity. Till that time, these should be considered as 'Work in Progress'.
18. With regard to disclosure requirements of effect of change in estimated contract revenue and contract cost, the Committee notes the following paragraphs of AS 7 and AS 5 notified under the Rules (revised 2002) in respect of change in estimates:

AS 7

"37. The percentage of completion method is applied on a cumulative basis in each accounting

period to the current estimates of contract revenue and contract costs. Therefore, the effect of a change in the estimate of contract revenue or contract costs, or the effect of a change in the estimate of the outcome of a contract, is accounted for as a change in accounting estimate (see Accounting Standard (AS) 5, Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies). The changed estimates are used in determination of the amount of revenue and expenses recognised in the statement of profit and loss in the period in which the change is made and in subsequent periods."

AS 5

27. The nature and amount of a change in an accounting estimate which has a material effect in the current period, or which is expected to have a material effect in subsequent periods, should be disclosed. If it is impracticable to quantify the amount, this fact should be disclosed.

The Committee notes that the change in contract costs affecting the percentage of completion is inherent in construction business. The effect of change in either costs or revenue shall be a change in estimate to be accounted in accordance to AS 5 read with AS 7 (revised 2002). The querist's argument that no disclosure is required as AS 7 is silent does not hold good and not appropriate. The Committee further notes that AS 7 (revised 2002) requires the change in estimate to be accounted as per AS 5, which covers both recognition and disclosure. Accordingly, the effect of change in the estimated contract revenue and cost, which has or is expected to have a material effect in the current period or subsequent periods needs to be disclosed as per the requirements of AS 7 as well as AS 5. However, if it is impracticable to quantify the amount of change, this fact should be disclosed.

D. Opinion

19. On the basis of the above, the Committee is of the following opinion on the issues raised in paragraph 10 above:

- (i) It is the performance of contract activity rather than despatch of items from one location to another that should be considered while calculating stage of completion, which is determined with reference to the contract costs that contribute to the performance of contract activity rather than the total cost incurred upto the reporting date as discussed in paragraph 14 above. Accordingly, the practice of the company of considering the cost of items merely despatched to the project site is not correct. The wording of the accounting policy of the company seems to be in line with the

principles of AS 7. However, the application of this policy should be modified on the lines indicated above in paragraphs 14 and 17 above.

- (ii) As regards steel and cement procured and delivered at the contract site, it should be seen whether these can be considered as 'contract cost incurred' applying the judgement based on the considerations stated in paragraphs 14 and 15 above. Mere billing to the customer cannot trigger considering a cost as 'contract cost incurred'. These items are general in nature for a construction activity and cannot be said to be specific for a project even though supplied directly at the contract site. Accordingly, these should be considered for determining 'contract cost incurred' only when these have been used/ applied for performance of contract activity. Till that time, these should be considered as 'Work in Progress'.
- (iii) Change in estimates on account of changes in estimated contract revenue and costs should be disclosed in accordance with AS 5 read with AS 7. Accordingly, the effect of change in the estimated contract revenue and cost, which has or is expected to have a material effect in the current period or subsequent periods needs to be disclosed as per the requirements of AS 7 as well as AS 5. However, if it is impracticable to quantify the amount of change, this fact should be disclosed.

1	The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute.
2	The Opinion is based on the facts supplied and in the specific circumstances of the querist. The Committee finalised the Opinion on 12.08.2011. The Opinion must, therefore, be read in the light of any amendments and/or other developments subsequent to the issuance of Opinion by the Committee.
3	The Compendium of Opinions containing the Opinions of Expert Advisory Committee has been published in twenty 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 .

Accounting for Foreign Currency Forwards



Being a developing country, arguably India has a long way to go before it can make other countries accede to transacting with it in the Indian Rupee. This exposes Indian entrepreneurs to the vagaries of foreign exchange rates. On such occasions they would be better placed if they could freeze their cash flows and enhance their efficiency in other crucial activities such as financing and budgeting. One of the most common means resorted to under such circumstances is to sign up a forward contract with a banker. Thus, accounting for forward contracts assume a lot of significance in a country like India, where hedging is becoming almost indispensable to survive competition. Besides, it is imperative for every corporate to carefully weigh the accounting policies, and adopt the one that best suits it and provides greater advantages. This article discusses some of the practical aspects of accounting for forward contracts in the light of recent pronouncements and developments.

Forward Contract

In common parlance, a forward currency contract refers to a contract that fixes the quantity of two currencies to be exchanged on a specified future date. The exchange ratio at which the contract is executed is called the forward rate. The difference between the forward rate and the spot rate on the date of the contract is called a forward premium or discount.

What Does AS11 Say?

The Accounting Standard 11 on '*The effect of changes in foreign exchange rates*' specifically covers accounting for a forward contract or a financial instrument, which in substance is a forward contract and one that is not entered into for the purpose of trade or speculation.

As per AS11, the aforesaid forwards will have to be originally accounted at the transaction date spot rate and restated at the spot rate on the balance sheet date, while the forward discount or premium paid or accrued will have to be deferred and amortised over the unexpired period of the contract. The result is that once the upfront forward premium or discount portion is removed and separately accounted, the foreign currency payable or receivable under the forward contract becomes a normal monetary item, which will get restated at the closing rate at every balance sheet date. This also establishes an offsetting relationship with the original receivable or payable monetary item for which the contract is entered into.



CA. S. Sairam

(The author is a member of the Institute. He can be reached at subramaniansairam@yahoo.com)

If a forward contract has been intended for trade or speculation, then the standard requires that we mark the contract to market on each reporting date. 'Mark to market' means that the carrying amount of the contract will be restated using a forward rate applicable for the remaining unexpired period of the contract. For example, if a contract fixes the forward rate on 1-12-2011 as 1 \$=₹50 as the rate for a transaction to be done after six months, i.e., 31-5-2012, then as on 31-3-2012, which is the balance sheet date, we will have to check the forward rate available in the market for the remaining two months (1-4-2012 to 31-5-2012), which may be, say, 1 \$=₹52, and use this rate for restating the forward contract.

Some Practical Insight

Forward contract with a banker nowadays are of two types: 1) Underlying and 2) Past performance-based forward deals. In the banking parlance, a forward deal based on Underlying means that the forward deal has been taken based on either one or more (a) Commercial Invoices (Import/Export), or (b) Purchase Orders from customers. A forward deal based on past performance means that as per RBI regulations, the company will be allowed to sign up forward contracts for a specified amount in the entire financial year. This specific amount is fixed based on an average computation of past foreign currency exposure to imports and exports of the company.

Indian GAAP recognises three types of foreign currency exposures of an entity (import or export). To this a forward contract may be generally related to, namely:

1. A recognised monetary asset or liability (e.g. debtors or creditors in foreign currency as per books)
2. An unrecognised firm commitment, and
3. Highly probable forecast transaction

An unrecognised firm commitment is a binding agreement to purchase or sell a specified quantity of a resource at a specified price at a future date. A highly probable forecast transaction is an anticipated, uncommitted future transaction. 'highly probable' means 'more likely than not'.

With this background, we can map these currency exposures to the types of forward contract mentioned at the inception para for the purpose of accounting under Indian GAAP as below:

Current Accounting Scenario

Few years ago, ICAI issued an announcement clarifying that AS11 does not apply to forward contracts, which are meant to hedge an unrecognised firm commitment or a highly probable forecast transaction. But later on it withdrew the announcement citing that AS30 relating to '*Financial instruments – Measurement and Recognition*' will become mandatory from 1-4-2011 to all entities except SMEs, and will regulate the accounting for all derivative transactions. But the Ministry of Corporate Affairs (MCA) has not yet notified AS30 for the purpose of Section 211 (3C), which means that AS30 will still not be applicable for companies, but applicable for non-companies, which are not described as SMEs. Should there be confusion that with the withdrawal of the aforesaid announcement whether AS11 will now become applicable to the rest of the categories of forward contracts? No. This is due to following:

The reason for withdrawal of the announcement was the introduction of another standard, which has not yet been made applicable and not any change in fundamentals or amendment to AS11 per se. Thus, the essence of AS11 has not diluted.

Para 36 of AS11 talks about forward contracts, which are non-speculative, and are entered into to establish the amount of foreign currency available (export) or required (import) *as on the settlement date of transaction*. But the settlement date of a transaction will not be known correctly for a transaction, which is only at the PO stage or a mere forecasted transaction, though highly probable.

Thus, AS11 will be still be applicable only to forward contracts, which are entered into in respect of a recognised asset or liability (i.e., Underlying Invoice).

As far as other forward contracts (i.e., relating to unrecognised firm commitment or highly probable forecast transaction) are concerned, there is no mandatory applicable standard as of now. But again, ICAI had issued an announcement on 29-3-2008 as a guideline for foreign currency derivatives other than forwards covered under AS11. This announcement clarifies that the company has to mark all such derivatives to market. Any gain or loss due to such marking to market will be taken to P&L, because of the concept of 'prudence' as advocated in AS1 on the disclosure of accounting policies. It may be

1. Recognised Asset or Liability	:	Commercial Invoice-based forwards (Underlying)
2. Unrecognised Firm Commitment	:	Purchase Order-based forwards (Underlying)
3. Highly Probable forecast transaction	:	Past performance-based forwards

recalled that the same accounting principle has been laid down in AS11 for forwards meant for trading or speculation.

Popular Accounting Practices

In fact, what is being followed by many major Indian companies in respect of foreign currency derivatives is a combination of AS11, and either AS30 or Mark to Market (MTM). More appropriately, if such mark to market is a gain, then most companies prefer not to take the credit to their Profit and Loss account on principles of conservatism. The table below shows the derivative accounting policies adopted by some of the popular Indian companies as per their annual reports for the FY2010-11.

Once this is done, all fair value changes will go to add or deduct the carrying amount of the forward contract, which is already accounted under AS30 principles. Treatment of the corresponding gain or loss account will depend on the type of hedge designated as below,

- If it is a fair value hedge, the gain or loss in fair value is taken to P&L
- If it is a cash flow hedge, the gain or loss in fair value will be accumulated in a separate equity reserve (corporate uses the popular name 'Hedging Reserve')

Cash flow hedge is predominantly used for highly probable forecast transaction for one important reason

S.No	Name of Company	Forward Contracts Relating To		
		Recognised Asset/Liability	Firm Commitment	Highly probable Forecast transaction
1	Tata Motors	AS11	Not specified	AS30 - Cash flow Hedge
2.	Infosys	AS30 adopted to the extent it is not contradicting other AS, and other authoritative pronouncements of Company Law and other regulatory requirements		
3.	Reliance Communications	AS11	Any loss arising out of marking of a class of derivative contracts to market price is recognised in the Profit and Loss Account. Income, if any, arising out of marking a class of derivative contracts to market price is not recognised in the Profit and Loss Account	
4.	Tech Mahindra	AS11	Not specified	AS30 - Cash Flow Hedge
5.	Bajaj Auto	The Company has adopted the accounting treatment and disclosures in accordance with the principles laid down in AS30 and AS32 on foreign currency derivative contracts.		
6.	Essar Oil and Gas	AS11	Mark to Market	
7.	Tata Consultancy Services	AS11	Ind AS39 adopted. These are accounted as Cash Flow Hedges. (Ind AS39 is the IFRS Converged version with fundamentally the same principles as of AS30)	

What is AS30 All About?

AS30 requires the following:

- If Hedge accounting is not followed, then mark all forward contracts to market, and dispose of the resultant changes being gain or loss to P&L.
- If Hedge accounting is followed, then the company has to do two important things, namely:
 - a. Designate the hedged item (risk carrying instrument) and hedging instrument (i.e. exchange risk offsetting instrument)
 - b. Decide whether to follow a fair value hedge or a cash flow hedge

that it avoids unnecessary hit to P&L when the forecast transaction is yet to happen and the fair value changes have nothing to offset in P&L. All these accounting treatments are possible if there is a proper hedging documentation as required by AS30, and in case of cash flow hedge, the hedge is effective as defined and set out in the standard. If the auditor does not approve the hedge documentation, all derivatives will have to be separately accounted at their fair value on each reporting date. In other words, AS30 will not be helpful if the company does not establish the hedging purpose of its derivatives outstanding as on the Balance sheet

As far as other forward contracts (i.e., relating to unrecognised firm commitment or highly probable forecast transaction) are concerned, there is no mandatory applicable standard as of now. But again, ICAI had issued an announcement on 29.3.2008 as a guideline for foreign currency derivatives other than forwards covered under AS11. This announcement clarifies that the company has to mark all such derivatives to market. Any gain or loss due to such marking to market will be taken to P&L, because of the concept of 'prudence' as advocated in AS1 on the disclosure of accounting policies. It may be recalled that the same accounting principle has been laid down in AS11 for forwards meant for trading or speculation. ☺

by means of an efficient hedging accounting and documentation.

It may also be noted that ICAI issued another announcement with regard to application of AS30 while reasoning that MCA had not yet notified AS30, and laid that with effect from 1-4-2011, Ind AS39 will be applicable with respect to derivative accounting to all companies, which fall in the Phase-1 of converged GAAP (IFRS) compliance. For others, AS30 will be applicable. But until now, IFRS has not set in and, therefore, AS30 is still recommendatory.

Usefulness of ERP Software for Hedge Accounting

As mentioned above, hedge accounting requires that a Cash Flow hedge should be effective, and only then hedging documentation will be required. The Hedge effectiveness needs to be tested prospectively at the time of inception of the hedging relationship, and

retrospectively at the end of each reporting period to determine the expensing portion of the fair value change (i.e., ineffective portion)

Testing of hedge effectiveness requires maintenance of proper records. In case of an underlying-based forward contract, the company has to keep a track of all invoices or purchase orders, which are marked for hedging and mark them off as 'utilised' as and when they are received or paid and the related forwards are utilised. It calls for care when there are also bookings based on past performance, so that when an invoice, which is already marked as underlying for another forward contract, does not again get knocked-off while utilising a past performance-based forward deal or vice versa. If this blunder is committed, there will be difficulty in obtaining the quarterly certifications as mandated by RBI regulations.

The above issues can be encountered by implementing an ERP such as SAP, with a 'Treasury' module. This module basically operates a Hedge management, system which captures/tracks all forward deal details in a single screen. It categorises them as those on an underlying and past performance basis. It also interacts with another system called 'Exposure Management System,' from where it links all the related invoices or purchase orders. Thus, at any time one can put out a report showing the amount of outstanding forwards and the related outstanding invoices due to be utilised. It can also show a transaction log how various deals were utilised in the period, which forms the basis for testing the effectiveness as required by the AS. Considering that this will involve a significant manual exercise, an ERP in this regard could be the best bet, subject, of course, to passing the cost-benefit tests.

Conclusion

To summarise the status of compliance with accounting standards with respect to foreign currency forward contracts:

Type of Entity	Forward Contracts Relating To	
	Recognised Monetary item	Firm Commitment/Highly probable Forecast transaction
Companies incorporated under Companies Act 1956	AS11 till date	Up to 31-03-2009 : MTM From 01-4-2009 TILL DATE : MTM or AS-30 (either fully or to the extent AS-11 is not applicable)
Other cases	From 1-4-2011 AS-30 will be applicable.	Up to 31-3-2009 : MTM 01-04-2009 to 31-3-2011 : MTM or AS-30 (either fully or to the extent AS11 is not applicable) 01-04-2011 onwards : AS-30 in full

Thus, prudent entities will be leveraged accordingly by opting either Mark to Market or Hedge accounting policy, which will stabilise the charge to Profit & Loss account. ■

Revised Schedule VI – Some Key Aspects



The Ministry of Corporate Affairs vide its notification no. S.O.447E dated 28-2-2011 (as amended by notification no. F. No. 2/6/2008-CL-V, dated 30-3-2011) has replaced the existing Schedule VI of Companies Act, 1956, with the Revised Schedule VI. The notification has come into force for the Balance Sheet, and Profit and Loss Account to be prepared for the financial year commencing on or after 1-4-2011. Accordingly, every company preparing its financial statements on or after 1-4-2011 is required to prepare its financial statements as per Revised Schedule VI. In India, most companies prepare their financial statements for the financial year, i.e., from 1st April to 31st March for laying the same in the Annual General Meeting in accordance with Section 210 of Companies Act, 1956. Like the old Schedule VI, the Revised Schedule VI also requires to give corresponding amounts (comparatives) for the immediately preceding reporting period for all items shown in the Financial Statements, including that in notes on accounts. Accordingly, the companies, which are reporting their financial statements as on 31st March 2012, are required to give its corresponding financial statements for the period 2010-11. Hence, a convergence of its already audited financial statements for the financial year 2010-11 is required. Read on for an update...



CA. Bhupendra Mantri

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

The various requirements, as provided in the Revised Schedule VI, are drawn from International Accounting Standard 1 '*Presentation of Financial Statements*' (Corresponding Indian Accounting Standard 1). Formats of the balance sheet and the profit & loss account given in the Revised Schedule VI have taken shape from the requirements of IAS 1. In India, though Indian Accounting Standards corresponding to IFRS have been notified by the Ministry of Corporate Affairs, the date of applicability of such Accounting Standards is yet to be notified. However, with the applicability of the Revised Schedule VI to all types of companies, irrespective of their size and nature, companies are required to prepare their financial statements

as per the Revised Schedule VI. Hence, formats of financial statements of Indian Companies will now be in the manner financial statements are prepared in accordance with IFRS.

The preparation of financial statements, as per Revised Schedule VI, involves a number of practical issues, viz., related to new requirements, compliance of accounting standards, disclosures and also nature of companies. A few of these issues are discussed hereunder:

Whether Corresponding Figures for Previous Years are to be Re-audited

As stated above, for comparative corresponding figures, financial statements for the immediate previous year are to be redrawn as per revised formats of balance sheet and statement of profit & loss. In particular, the Revised Schedule VI requires classifying each asset and liability into current and non-current. There are certain additional disclosures, which were not required by old Schedule VI. The primary requirements for preparation of financial statements are provided under Section 211(1), 211(2) and 227(2) of the Companies Act, 1956 as under:

“Section 211: Form and contents of balance sheet and profit and loss account

(1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit or in such other form as may be approved by the Central Government, either generally or in any particular case; and in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of the balance sheet under the heading "Notes" at the end of that Part:

Provided that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity or to any other class of company for which

a form of the balance sheet has been specified in or under the Act governing such a class of company.

(2) Every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year and shall, subject as aforesaid, comply with the requirements of Part II of Schedule VI, so far as they are applicable there to:

Provided that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of profit and loss account has been specified in or under the Act governing such a class of company.”

Section 227: Power and Duties of auditors –

(2) The auditor shall make a report to the members of the company on the accounts examined by him, and on every balance sheet and profit and loss account, and on every other document declared by this Act to be part of or annexed to the balance sheet or profit and loss account, which are laid before the company in a general meeting during his tenure of office, and the report shall state whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view -

(i) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year; and

(ii) in the case of the profit and loss account, of the profit or loss for its financial year.

Clause 5 of General Instructions given in Revised Schedule VI requires that except in case of the first Financial Statements laid before the Company (after its incorporation) the corresponding amounts (comparatives) for the immediately preceding reporting period for all items shown in the financial statements, including notes shall also be given. Financial statements for the year 2010-11 prepared in accordance with old Schedule VI were already audited, the corresponding amounts (comparatives) for the immediately reporting period requires resetting, restating and re-classification to meet with the new requirement. The statutory auditors require to re-examine and not re-audit such corresponding figures to the extent the manner of presentation is changed and also in particular the assets and liabilities are re-classified in current and non-current distinction.

Claue 5 of General Instructions given in Revised Schedule VI requires that except in case of the first Financial Statements laid before the Company (after its incorporation) the corresponding amounts (comparatives) for the immediately preceding reporting period for all items shown in the financial statements including notes shall also be given. ☺

Determination of Operating Cycle

The Revised Schedule VI requires that an item being an asset or liability shall be classified as current:

		<u>Criteria Applicable for</u>
i	if it is expected to be realised/settled, intended for sale or consumption in the entity's normal operating cycle, or	Asset and Liability
ii	is expected to be realised/settled within 12 months, or	Asset and Liability
iii	if it is held primarily for the purpose of being traded or	Asset and Liability
iv	is cash or cash equivalent, or	Asset
v	if entity does not have unconditional right to defer settlement of liability for at least 12 months after reporting period.	Liability

All other assets or liabilities not falling into above criteria are non-current.

The clause 2 of Notes to Part I of Revised Schedule VI defines the operating cycle as under:

"An operating cycle is the time between the acquisition of assets for processing and their realisation in cash or cash equivalents. Where the normal operating cycle cannot be identified, it is assumed to have duration of twelve months."

Considering the above definition, a number of issues would arise in determination of normal operating cycles of a company depending upon the nature of business of the company. A few of the issues are as under:

Whether credit period allowed by the supplier be reduced in computing operating cycle

The definition of operating cycle talks about the period from acquisition of asset to realisation in cash or cash equivalents. Hence, from the literal interpretation of the definition, such credit period is not required to be reduced. However, another view may be that operating cycles must be taken as from the date of cash outgo for acquisition of the asset to their realisation. Considering the fact that in any business, liquidity position is



Generally, in any business, the operating cycle remains constant from period to period. However, if there is major change in the business circumstances, the

companies will need to consider change in operating cycle, if any. For example, in earlier period if any company used to sell goods on 90 days credit basis but now it has started receiving advance from its customers for supply of goods. Then the operating cycle will reduce by 90 days in the year under consideration. 

determined considering the payments and realisation, it would be appropriate to reduce the credit period allowed by the supplier in computing operating cycle.

Financial Institutions and Non-Banking Financial Companies (NBFC)

The peculiar facts of the Financial Institutions and NBFCs are that they provide advances to the borrowers for various terms viz. short term advances up to one year as well as long term advances for more than one year. The long term advances may be even for more than 20 years. Further, many long term borrowings are realised in instalments during the period of advance. Thus, each advance given by the company has its own realisation period which is separate and distinct from the other. In these circumstances, determination of operating cycle will be a complex task. The company should determine its average period of realisation of advances which shall be considered as operating cycle. Alternatively if operating cycle is not determinable, the same may be taken as 12 months.

Real Estate Project Developers

In real estate projects, the developer may have many projects which may accomplish in the period of more than one year, say a particular project is expected to complete in three years and all properties in this project are expected to be sold in four years. The developer receives the sale consideration in advance in number of instalment considering the total work completed by him. However, since the possession of the respective property is not transferred, the amount so received from customers is shown as advance received from customers. Further, the expenditure for development of the property is also incurred in phase-wise and not in one go. In these circumstances, whether the operating cycle should be considered as four years being expected period of completion of the project or due weightage should also be given to the advance

received from the customers and the year-wise expenditure. If these are considered, the operating cycle should be lesser.

The advance received from the customer is shown as liability till the possession of the property is not given but fact remains that it is ultimately towards the realisation of property developed. Thus, the expected realisation should be considered while determining the operating cycle.

As stated above, the expenditure is incurred in phase-wise and not in one go. Thus expenditure incurred at a later date is realised in short period. Thus, for computing operating cycle in real estate projects, averaging should be done.

Rubber Plantation and Wine Business

In the rubber plantation business, initially, the rubber plantation takes six to seven years and thereafter plants become mature for tapping. Thus, the question that arises is whether in such cases operating cycles for rubber plantation companies must be taken at six to seven years. In this respect, the attention is drawn towards the opinion of the Expert Advisory Committee dated 23-3-2007 '*Accounting treatment of surplus realised on sale of rubber trees*,' wherein it is opined that rubber plants are fixed assets for rubber planting companies, and any expenditure incurred on rubber plantations should be capitalised when they become mature for tapping. Therefore, the cost so capitalised needs to be amortised during the useful life of the rubber plants. The definition of operating cycle considers the time for acquisition of assets which are processed, and their realisation. As opined by the Expert Advisory Committee, rubber plants are fixed assets and are not processed, further they are not kept for sale by companies. Hence, the time of six to seven years taken for plantations should be considered as part of operating cycle. What is being processed is the extracted rubber from these plants. Hence, time from the extraction of rubber from plants, their processing, sale into the market and realisation from debtors must be considered as operating cycle.

In the wine business, manufacturing of certain specific wine takes substantial period of time which may be 5 years, 10 years or even 30 years. The ingredients used for manufacturing of raw material are processed for manufacturing of such wines. Thus, the operating cycle for manufacturing of specific wines must be computed considering the time for manufacturing of such wines.

Whether Operating Cycle may change from period to period

Generally, in any business the operating cycle remains

constant from period to period. However, if there is major change in the business circumstances, the companies will need to consider change in operating cycle, if any. For example, in earlier period if any company used to sell goods on 90 days credit basis but now it has started receiving advance from its customers for supply of goods. Then the operating cycle will reduce by 90 days in the year under consideration. The operating cycle in industry is not relevant for a particular company. Rather it is company's own business circumstances which need to be considered for determination of operating cycle in a particular period. Operating cycle is not required to be computed by looking into each transaction, rather it should be computed by uses of averages. Further, normal business behaviour must be considered in computing the normal operating cycle by ignoring any abnormal business transaction during the year of consideration.

Current/Non-Current Distinction of Assets and Liabilities

The major exercise for companies in preparation of the balance sheet as per Revised Schedule VI is classification of all of its assets and liabilities into current and non-current as mentioned above. Though the criteria for classification of assets into current and non-current appears to be simple to understand but at number of times, professional judgement is required to be made for classifying the assets and liabilities into current and non-current. A few of the issues with regard to classification of assets and liabilities are discussed as under:

Inventories held since long

In many cases there may be certain inventories which may be held since long. For example, a readymade garment manufacturer company has purchased certain cotton fabric in anticipation of order to be received by it for supply of readymade cotton cloth. However, the orders for readymade cotton cloth are not received and,

The major exercise for companies in preparation of balance sheet as per Revised Schedule VI is classification of all of its assets and liabilities into current and non-current. Though the criteria for classification of assets into current and non-current appears to be simple to understand but at number of times, professional judgement is required to be made for classifying the assets and liabilities into current and non-current.

therefore, the company has not used the cotton fabrics and same are lying with the company for last two years. Though the company wishes to use the cotton fabric, it has no alternative to use the same in near future for want of order. Further, since the fabric purchased has become old, the prices of the fabrics in the market have also gone down. Hence, the company do not intend to sell the fabric in the market. In these circumstances, a judgement is required whether company expects to consume the fabric within operating cycle or 12 months. If so, then only the cotton fabrics have to be classified as current asset. Otherwise, it has to be classified as non-current. Similarly, one needs to consider the classification of stores and spares items into current and non-current.

Debtor outstanding since long

Where any specific debtor is outstanding for a longer period say two years, again a judgement would be required whether such debtor is recoverable within operating cycle or 12 months. Considering the fact that debtor is outstanding for a longer period, substantive evidence should be there with the company if it claims that debtors are current. Further, where any provision is created against recovery from such debtor, the same has to be classified as non-current.

Classification of security deposits (either asset or liability)

Where any company has deposited any security, say towards performance of any contract and security deposits are receivable only when the contract is complete, the company needs to make a judgement about the estimated time of completion of the respective contracts in respect of which deposits are made. Deposits in respect of contracts expected to be completed within operating cycle or 12 months, need to be classified as current and other deposits have to be classified as non-current. Sometimes deposits may be held by electricity companies or telecom companies towards providing electricity connection or telephone services, which the company always expects to continue for longer period unless the circumstances otherwise suggest. Such deposits should be classified as non-current as there is no expectation of refund of such deposits.

Security deposits are also received by some companies from its contractors or other suppliers or selling agents, etc. In such cases again the companies need to ascertain the expected date of refund of security deposits to the respective contractors or suppliers based on estimated time of completion of contract or supplies respectively. In case of selling and distribution agents, deposits are taken by the company at the time

Clause 3(d) of Notes to part I of Revised Schedule VI provides that a liability shall be classified as current when the company does not have unconditional right to defer settlement of the liability for at least 12 months after the reporting date. Terms of a liability that could, at the option of the counterparty, result in its settlement by the issue of equity instruments do not affect its classification. ☞



of appointment of such agents. The company used to expect that such agents will continue to be associated with the company for a longer period. In these circumstances, deposits from such agents should be classified as non-current liability. However, if the circumstances suggest otherwise, then such deposit may be classified as current.

Taxes Refundable

Many times the companies need to deposit various demands of taxes viz. Income Tax, Service Tax and Excise duty, etc. Against this recoverable amount, there may be pendency of appeals before appellate authorities or courts. For few of the taxes so deposited, the company may not have chance of refund because of its legal position of winning in the appeals. Further, even if the company has chances of winning, the timings of outcome of appeals may not be known to the company. In some cases, the company may have expectation that the appeals will be decided within operating cycle or 12 months from the reporting date and within this period due refunds will be received by the company. Thus, for classification of such assets into current or non-current, item to item has to be considered carefully.

MAT Credit Entitlement

A company expects that MAT Credit receivable recognised during the year under consideration i.e.

financial year 2011-12 shall be adjusted against the tax as per normal computation in the next year i.e. 2012-13. The company's normal operating cycle is less than 12 months. Whether MAT Credit receivable should be shown as current or non-current? Here one is to consider that even if the company expects to pay taxes as per normal computation for the next year and would be entitled to adjust the MAT credit against taxes, it can do so only after 31-3-2013 at the time of filing of return of income. Thus, MAT Credit cannot be adjusted within 12 months from the reporting date i.e. 31-3-2012. Hence, MAT credit receivable should be classified as non-current.

No right to defer settlement of the liability

Clause 3(d) of Notes to part I of Revised Schedule VI provides that a liability shall be classified as current when the company does not have unconditional right to defer settlement of the liability for at least 12 months after the reporting date. Terms of a liability that could, at the option of the counterparty, result in its settlement by the issue of equity instruments do not affect its classification. While explaining in Guidance Note on the Revised Schedule VI issued by the ICAI, it has been said that banks generally do not demand repayment of loans on minor defaults of debt covenants, therefore, in such situations, the companies generally continue to repay the loan as per its original terms and conditions. Hence, considering that the practical implications of such minor breach are negligible in the Indian scenario, an entity could continue to classify the loan as "non-current" as on the balance sheet date on the ground that the loan is not actually demanded by the bank at any time prior to the date on which the financial statements are approved.

Here it is pertinent to note that companies can deviate from the requirement of Revised Schedule VI only where compliance with the requirement of the Act, including accounting standards as applicable to the companies, requires any change in treatment or disclosure including addition, amendment, substitution or deletion in the head/sub-head or any changes *inter se*, in the financial statements forming part thereof. To such extent, the requirements of the Revised Schedule VI will stand modified. The guidance given

in the Guidance Note, however, does not meet any of the requirements of the Act or accounting standards applicable to companies though it deviates from the requirement of the Revised Schedule VI. Hence, classification of the liability where any condition is breached resulting into repayment on demand as non-current may be questionable.

The companies should maintain proper records with it so as to establish that all the terms and conditions of the liabilities have been satisfied by it and, therefore, these liabilities are not payable on demand. The auditor has to take due care regarding the same to examine whether there is any condition which has not been complied with before the date of reporting.

Exercise at Every Reporting Period

The companies have to report the assets and liabilities into current and non-current distinction considering the conditions existing in each reporting period. Thus, in most of the companies, it would be an annual exercise of classification. However, where companies are required to prepare their balance sheet for any interim period, this exercise is to be performed by the companies for each interim period.

Disclosure Requirements of Balance Sheet and Statement of Profit or Loss

The Revised Schedule VI requires that each item on the face of the balance sheet and statement of profit and loss shall be cross-referenced to any related information in the notes to accounts. However, it nowhere requires that for each such item, there should be a separate note in the notes to accounts. Therefore, the companies may provide a single note for one or more items on the face of balance sheet and statement of profit and loss. For example, the companies have to present Long Term Investments and Current Investments as two separate line items. However, for both these items, a single note can be given in the notes to accounts. Similarly, single note can be given for long term provisions and short term provisions or other items as suitable to the company. The following may be suggestive format for disclosure by way of note.

Particulars of Provisions	Current Year As at _____			Previous Year As at _____		
	Short Term Provisions	Long Term Provisions	Total	Short Term Provisions	Long Term Provisions	Total
Employee benefits, Warranties, Environmental Clean Up, Taxation, Dividend, etc.						

By showing all the provisions in one note, the companies will be able to co-relate the disclosures given in AS 29 '*Provisions, Contingent Liabilities and Contingent Assets*.' Companies may disclose the notes as per its circumstances in the manner as suitable to its reporting requirements. Various issues regarding these disclosures are discussed hereunder:

Long-term Borrowings

The Revised Schedule VI requires disclosing terms of repayment of term loans and other loans. So far as term loans are concerned, generally the repayment schedule is defined. However, mostly in case of unsecured loan, repayment schedules are not defined. Loans received from directors are shown to be as promoters' contribution for banking purpose and it is committed to the bank that the same shall not be repaid in future. In these circumstances, it cannot be said that the loans so received are repayable. However, where no such commitment is there, the company management needs to ascertain the terms of repayment for appropriate disclosure as required by Revised Schedule VI.

Trade Payables

In the Revised Schedule VI, trade payable is a payable if it is in respect of the amount due on account of goods purchased or services received in the normal course of business. In the old Schedule VI, disclosure was required for Sundry Creditors. The term 'Sundry Creditors' was defined in the *Guidance Note on terms used in financial statements* as amount owed by an enterprise on account of goods purchased or services received or in respect of contractual obligations. Thus, amount payable under contractual obligations only in relation to trade requirements are to be classified under trade payable. The liabilities on account of purchase of fixed assets, reimbursement of expense, audit fees, contribution to PF, etc. may be classified as other liabilities.

Trade Receivables

The Revised Schedule VI requires that aggregate amount of trade receivables outstanding for a period exceeding six months from the date they are due for payment should be separately stated. In the old Schedule VI disclosure of sundry debtors was required which were outstanding for a period exceeding six months. Thus, in the old Schedule VI, the debtors exceeding a period six months were to be computed from the date of invoice whereas in the Revised Schedule VI trade receivables are to be computed from the due date. Thus, for debtors, the management has to ascertain the due date for complying with this disclosure requirement. In case there is no documentary evidence suggesting the due date, normal credit period allowed should be considered.

In the Revised Schedule VI, trade receivable is a receivable if it is in respect of the amount due on account of goods sold or services rendered in the normal course of business. In the old Schedule VI, disclosure was required for Sundry Debtors. The term 'Sundry Debtors' was defined in the *Guidance Note on terms used in financial statements* as person from whom amounts are due for goods sold or services rendered or in respect of contractual obligations. Thus amount receivable under contractual obligations only in relation to trade requirements are to be classified under trade receivables.

Statement of Profit and Loss

In the Revised Schedule VI, a specific format is given for statement of profit & loss, which was not there in the old Schedule VI. However, format so given may be suitably modified by the companies as per their convenience. For example, in the format, there is no disclosure requirement regarding prior period items. The Note 5 of General Instructions for preparation of statement of profit and loss requires giving additional information about prior period items. However, para 15 of AS 5 '*Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies*' requires that the nature and amount of prior period items should be separately disclosed in the statement of profit and loss in a manner that their impact on the current profit or loss can be perceived. Thus, to comply with the requirement of accounting standards, the Revised Schedule VI will stand modified for disclosure of prior period items separately in the statement of profit & loss.

Conclusion

Preparation of financial statements as per Revised Schedule VI is a challenging task involving various practical issues. There may be a number of other issues which one may come across while preparing financial statements as per Revised Schedule VI. The issues may vary from company to company as well as industry to industry. Due care and thorough analysis is required by the companies accomplishing this task. Compiling of various information for the purpose of disclosure requirements as per Revised Schedule VI, education of staff not only who are related to finance and account but in the other departments as well viz. production, marketing and stores, etc. is another challenge in preparation of financial statements as basic data are provided by such staff. All companies should take the convergence exercise timely so as to avoid any delay in preparation of and presentation of financial statements for the year 2011-12 considering the time constraints in Clause 41 of Listing Agreement and also under Section 210 read with Section 166 of Companies Act, 1956. ■

Professional Scepticism of Auditors



The public places high trust on the audited financial statements because it enhances the degree of confidence of intended users. A high-quality audit features the exercise of professional judgement by the auditor and more importantly, a mindset that includes professional scepticism throughout the planning and performance of the audit. The auditor's professional scepticism becomes particularly important when addressing areas of audit that are more complex, significant or highly judgemental. It helps in determining whether changes in accounting estimates from the prior period are appropriate in the given circumstances. Professional scepticism is also crucial in reviewing the judgements and decisions made by management in making accounting estimates to identify whether there are indicators of possible management bias. As an attitude, professional scepticism is fundamentally a mindset which drives the auditor behaviour to adopt a questioning approach when considering information and arriving at conclusions. This article analyses auditors' professional scepticism as a very important aspect of auditing. Read on...

Professional Scepticism

Professional scepticism is an important attribute that enhances the auditor's ability to identify and respond to conditions that may indicate possible misstatement in the financial statements. It includes a critical assessment of audit evidence and being alert for audit evidence that contradicts other audit evidence or that brings into question the reliability of information obtained from management. This critical assessment is necessary for the auditor in order to draw appropriate conclusions. Adopting

and applying a skeptical mindset is ultimately a personal and professional responsibility to be embraced by every auditor. It is an integral part of the auditor's skill set and is closely interrelated to the fundamental concepts of auditor independence and professional judgement, and contributes to audit quality.

It is also influenced by personal behavioural traits, which include motivation and competence. Audit firms have an important role to play in cultivating a skeptical mindset in auditors by providing the



CA. Subhash Choudhary

(The author is a member of the Institute.
He can be reached at
skchoudhary32@gmail.com)

necessary education and training to them. This includes designing and implementing policies and procedures that promote an internal culture which recognises that scepticism is essential in performing audit engagements.

According to Standard on Auditing (SA) 200 Revised, *“Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing,”* issued by the Institute of Chartered Accountants of India, professional scepticism is defined as an attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud, and a critical assessment of audit evidence. The IAASB’s International Standards on Auditing define professional scepticism as “an attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud, and a critical assessment of audit evidence.” It requires the auditor to plan and perform an audit with professional scepticism recognising that circumstances may exist that cause the financial statements to be materially misstated. The definition describes the following important elements that help in understanding as to what professional scepticism means.

- As **an attitude**, professional scepticism is fundamentally a mindset which drives the auditor behaviour to adopt a questioning approach when considering information and arriving at conclusions. In this regard, it is inseparably linked to the fundamental principles of auditor’s objectivity and independence.
- It also includes **being alert to conditions that may indicate possible fraud**, for example, audit evidence that contradicts

other audit evidence obtained, or information that brings into question the reliability of documents or responses to inquiries to be used as audit evidence.

- Lastly, it is **a critical assessment of audit evidence**, which comprises both information that support and contradict management’s assertions. It means questioning and considering the sufficiency and appropriateness of audit evidence obtained in the light of the circumstances. The matter of difficulty, time, or cost involved is not in itself a valid basis for the auditor to omit an audit procedure for which there is no alternative or to be satisfied with audit evidence that is less than persuasive.

Importance of Professional Scepticism in Audit of Financial Statements

It plays a fundamentally important role in the audit and is an integral part of the auditor’s skill set and is closely interrelated with professional judgement. It facilitates the appropriate exercise of professional judgement by the auditor, in cases like:

- The nature, timing and extent of audit procedures to be performed.
- Whether sufficient audit evidence has been obtained and whether more needs to be obtained.
- Drawing of conclusions based on the audit evidence obtained.

The application of professional scepticism enhances the effectiveness of an audit procedure and reduces the possibility that the auditor might select an inappropriate audit procedure, misapply an appropriate audit procedure, or misinterpret the audit results.

Professional scepticism is often demonstrated in the various discussions held by the auditor during the course of an audit. For example, the auditors communicating with the management about an accounting practice which may not be the most appropriate practice considering the particular circumstances of the entity.”

Application of Professional Scepticism in Audit

The application of professional scepticism is relevant and necessary throughout the audit process. The stages where it can be applied are:

- While accepting the engagement, considering matters such as the integrity of principal owners and management.
- Identifying and assessing risks of material misstatement, e.g. performing risk assessment procedures.
- Designing the nature, timing and extent of further audit procedures that are responsive to assessed risks of material misstatement, and evaluating audit evidence.
- Designing and performing substantive analytical procedures since the auditor’s expectations play an important role when evaluating the results of analytical procedures and challenging management’s explanations for deviations from expected results.
- Forming an opinion on whether the financial statements are prepared, in all material respects, in accordance with the applied financial reporting standards.

Demonstration of Professional Scepticism

It is often demonstrated in the various discussions held by the auditor during the course of an audit. For example, the auditors communicating with the management about an accounting practice which may not be the most appropriate practice considering the particular circumstances of the entity.

Audit documentation is one of the most critical evidences of professional scepticism because it provides evidence that the audit was planned and performed in accordance with the applicable legal and regulatory requirements. *Standards on Auditing – 220 (SA-220)* states that - "The auditor shall document:

- (a) Issues identified with respect to compliance with relevant ethical requirements and how they were resolved.
- (b) Conclusions on compliance with independence requirements that apply to the audit

Fraud is very difficult to detect since it includes sophisticated and carefully

organised schemes designed to conceal. The auditor's professional scepticism is particularly important when considering the risks of material misstatement due to fraud. It includes requirements specifically addressing the need to maintain professional scepticism throughout the audit, recognising the possibility that a material misstatement due to fraud could exist, notwithstanding the auditor's past experience of the honesty and integrity of the entity's management. ”

engagement, and any relevant discussions with the firm that support these conclusions.

- (c) Conclusions reached regarding the acceptance and continuance of client relationships and audit engagements.
- (d) The nature and scope of, and conclusions resulting from, consultations done during the course of the audit engagement.

Since professional scepticism is a state of mind, it is sometimes difficult to capture through documentation as to how the auditor applied professional scepticism throughout the audit. There may be no single way in which the auditor's professional scepticism is documented or demonstrated.

Steps for Enhancing Awareness About Professional Scepticism

Professional scepticism is influenced by personal behavioural traits and competence level of the individuals undertaking the audit. Within the engagement team it is influenced both by the actions of the firm's leadership and the engagement partner, and by the culture and business environment of the firm.

Firm Level

The firm's leadership and the examples it sets significantly influence the internal culture of the firm. The continuous reinforcement of the importance of professional scepticism on audit engagements influences an individuals' behaviour.

Opportunities for the firm to create expectations and insist on importance of professional scepticism are:

- Establishing policies and procedures to promote an internal culture recognising that quality is essential in performing engagements.

- Promoting a quality-oriented practice through clear, consistent and frequent actions and messages from all levels of the firm's management. This may be communicated by training seminars, meetings, formal or informal dialogue, mission statements, newsletters, or briefing memoranda.

Engagement Level

At this level, the engagement partner is required to take responsibility for the overall quality of each audit engagement assigned to him. An ideal opportunity to address and emphasise on the engagement team about the importance of professional scepticism throughout the audit is during the discussion by the engagement partner and other key engagement team members about the susceptibility of the entity's financial statements to material misstatement. This discussion also provides a basis upon which engagement team members communicate and share new information that may affect risk assessments or the audit procedures performed.

While activities at the firm level and engagement level contribute to the mindset of professional scepticism, it is the responsibility of each individual auditor to maintain an attitude of professional scepticism.

Professional Scepticism with Respect to Fraud - Auditor's Responsibilities

Fraud is very difficult to detect since it includes sophisticated and carefully organised schemes designed to conceal. The auditor's professional scepticism is particularly important when considering the risks of material misstatement due to fraud. It includes requirements specifically addressing the need to maintain

professional scepticism throughout the audit, recognising the possibility that a material misstatement due to fraud could exist, notwithstanding the auditor's past experience of the honesty and integrity of the entity's management. It also requires the auditor to investigate further where conditions identified during the audit caused the auditor to believe that a document may not be authentic or that terms in a document have been modified but not disclosed to the auditor.

Audit procedures that are effective for detecting error may not be effective in detecting fraud. The risk of the auditor not detecting a material misstatement resulting from management fraud is greater than for employee fraud, because management is frequently in a position to directly or indirectly manipulate accounting records, present fraudulent financial information or override control procedures designed to prevent similar frauds by other employees.

Aspects Where Professional Scepticism May be Important

- The auditor's professional scepticism becomes particularly important when addressing areas of audit that are more complex, significant or highly judgemental.
- Determining whether changes in accounting estimates from the prior period are appropriate in the given circumstances.
- Reviewing the judgements and decisions made by management in making accounting estimates to identify whether there are indicators of possible management bias.
- When evaluating management's plans for future actions in relation to its going concern assessment, whether the outcome of these plans is likely to improve the situation and whether management's

Today's financial reporting seeks to address information that is more relevant to users. As a result, more judgement and increased subjectivity is involved in management's accounting and reporting decisions. Also, many entities today face difficult economic conditions that give rise to unique financial reporting and auditing challenges. These developments heighten the importance of professional scepticism by auditors, especially in areas of financial reporting that are complex or highly judgemental. It is, therefore, in the public interest to re-emphasise upon both auditors and others the important role that professional scepticism has to play in audit. ”



plans are feasible in the circumstances.

- Any information during the course of audit that may indicate previously unidentified or undisclosed related party relationships or transactions; and in the context of identified significant transactions outside the entity's normal course of business, when evaluating whether the business rationale (or lack thereof) of the transactions suggests that

these may have been entered into to engage in fraudulent financial reporting or to conceal misappropriation of assets or the reliability of external confirmation requests.

- Remaining alert while performing other audit procedures for instances of non-compliance or suspected non-compliance with those laws or regulations that may have a material effect on the financial statements or that have a fundamental effect on the operations of the entity causing it to cease operations, or call into question its continuance as a going concern.

Today's financial reporting seeks to address information that is more relevant to users. As a result, more judgement and increased subjectivity is involved in management's accounting and reporting decisions. Also, many entities today face difficult economic conditions that give rise to unique financial reporting and auditing challenges. These developments heighten the importance of professional scepticism by auditors, especially in areas of financial reporting that are complex or highly judgemental. It is, therefore, in the public interest to re-emphasise upon both auditors and others the important role that professional scepticism has to play in audit.

References:

1. www.iaasb.org
2. *Standard on Review Engagements (SRE) 2400 (Revised), "Engagements to Review Financial Statements"*
3. *Standard on Auditing (SA) 200 Revised, "Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing."*
4. *Standard on Auditing (SA) 220 (Revised), "Quality Control for an Audit of Financial Statements"* ■

Waiver of Term Loan, Working Capital Loan: Taxability under Income-tax Act, 1961



With globalisation, business in India has expanded manifold. While existing units have expanded their footprint, new entities have entered the booming Indian business arena by availing of various types of finances such as term loans and working capital loans from public institutions, banks, private parties, etc. Due to various reasons such as stiff global competition, new inventions and global recession, among others, the financial position of many units has deteriorated and, as a result, their accounts with financial institutions or banks have become non-performing assets (NPA). Such units enter into a one-time settlement with banks or financial institutions by paying a stipulated amount against the loan amount, while the balance is waived-off. A pertinent question that arises is the taxability under the Income-tax Act, 1961 of the sum waived-off term loans and working capital loans by banks, financial institutions or depositors. This article analyses the issue in the light of the latest decision of the Delhi High Court in the case of *Logitronics Pvt. Ltd. vs. CIT* [333 ITR 386 (Delhi)].

The latest decision of the Delhi High Court in the case of *Logitronics Pvt. Ltd. vs. CIT* [333 ITR 386 (Delhi)] has provided a totally new dimension to the issue. The facts of the case (I.T.A. No. 1623 of 2010) before the Delhi Court were as under:

“The issue in this case relates to the treatment, which is to be given to the extent of amount of loan and interest waived-off by financing institutions from where the loan was raised. The appellant is the assessee-company, which is engaged in the business of manufacturing of electronic products. It was enjoying a loan facility from State Bank of India (SBI). As the appellant could not discharge its liability for a specific period of time, keeping in view guidelines/directions of the SBI, it categorised this loan as non-performing. The loan due to the bank was ₹4,76,92,213, while the outstanding interest was ₹1,90,42,295. The issue of recovery of



CA. Kirit Priyakant Shah

(The author is a member of the Institute. He can be reached at kpshahca@yahoo.com)

the loan was referred to the Debt Recovery Tribunal in 2000. During the pendency of these proceedings, the assessee had settled the matter with the SBI. Pursuant to a one-time settlement with the bank, on payment of ₹1,85,00,000 against the loan of ₹4,76,92,213 (principal amount), the remaining sum of ₹1,90,42,295 was waived-off. In the tax return filed by the assessee, it showed the interest waived off as income, but not the amount of loan waived off by the SBI, though the amount of interest written off, i.e., ₹1,90,42,295 was credited to the profit and loss account and was offered for taxation. However, relying upon the decision of this court in the case of *CIT vs. Tosha International Ltd.* [2011] 331 ITR 440 (Delhi) [2009] 176 Taxman 187, the principal amount written off, i.e., ₹2,91,42,213 that was directly taken to the balance sheet under the head, capital reserve, was not offered for taxation”.

The Assessing Officer, on the following ground, held that even the waiver of the principal amount of loan was also taxable:

“Income was taxable under the head Profit and Gains of Business or Profession, because the loan was taken for the purpose of business, and a one-time settlement was an integral part of the business.”

In the first appeal, the commissioner of Income Tax (Appeals) deleted the addition, holding that the provisions of Sections 2(24), 28(i), 28(iv) and 41(1) of the Act were not applicable, and as such the Assessing Officer was not justified in making addition being the waiver of the principal amount of loan.

On second appeal filed by the Revenue, the Income Tax Appellate Tribunal reversed the order of the CIT (Appeals).

Against the order of the Tribunal, the following substantial questions of law were raised before the High Court for consideration:

“(1) Whether the Tribunal was right in law in holding that taxability of waiver of loan would be governed by the purpose for which the loan was taken, as much as, though the waiver of loan taken/utilised

for acquiring capital asset does not constitute income. However, the waiver of loan taken for the purpose of business/trading activity gives rise to income taxable under the Act?

- (2) Whether the waiver of loan, a subsequent event has the effect of changing the nature and character of loan, a capital receipt into a trading receipt and therefore the ratio of the judgement of the Supreme Court in *CIT vs. T. V. Sundaram Iyengar and Sons Ltd.* [1996] 222 ITR 344, wherein, unclaimed deposits received in the course of trading transaction were held to be taxable is applicable to the waiver of loan?”

The High Court considered the findings brought on record by the Tribunal that the assessee had obtained the loan or the credit facility by way of hypothecation of finished goods, semi-finished goods, raw material, book-debts, receivable claims, securities and rights by way of first charge, which indicated that the assessee had obtained the loan facility for its business activity or trading operations.

On page 402, vide para 23, the High Court has laid down as under:

“In the context of waiver of loan amount, what follows from the reading of the aforesaid judgement is that the answer would depend upon the purpose for which said loan was taken. If the loan was taken for acquiring the capital asset, waiver thereof would not amount to any income eligible to tax. On the other hand, if this loan was for trading purpose and was treated as such from the very beginning in the books of account, as per *T.V. Sundaram Iyengar and Sons Ltd.* [1996] 222 ITR 344 (SC), the waiver thereof may result in the income more so when it was transferred to the profit and loss account.”

With due respect to the High Court, we may now proceed to analyse and understand whether the view taken by the High Court is plausible or not with respect to the prevalent legal precedence and the provisions of the Income-tax Act, 1961. Therefore, let us analyse the statutory provisions laid down under Section 2(24), 28(iv), and 41(1) of the Act.

(A) Applicability of Section 28(i)

Section 28: The following income shall be chargeable to income tax under the head “Profits and gains of business or profession”, -

- (i) the profits and gains of any business or profession, which was carried on by the assessee at any time during the previous year;

The Delhi High Court in the case of *Logitronics Pvt. Ltd. (supra)* and *Bombay High Court in the case of Solid Containers Ltd. vs. Deputy CIT* 308 ITR 417, by applying the decision of *CIT vs. T.V. Sundaram Iyengar and Sons Ltd.* 222 ITR 344 (SC), held that in the case of the Bank loan used as working capital for trading purpose and waived by the bank. The loan so waived-off, which has been transferred to the profit and loss account, shall be assessed as business income. ☺

- (a) As per Section 28(i) only the profits and gains arising from carrying on the business by the assessee is chargeable to tax. In *Universal Radiations vs. CIT* (201 ITR 800), the Supreme Court observed that for being taxable, the income should have accrued out of the business carried on by the assessee. The Supreme Court has laid down that the word “from” according to dictionary means “out of”. The income thus should have accrued out of the business carried on by the assessee. An income directly or ancillary to the business may be an income from business, but any income to an assessee carrying on business does not become an income from business unless the necessary relationship between the two is established.

- (b) The observation of Madras High Court in the case of *Iskraemeco Regent Ltd. vs. CIT*, 331 ITR 317 (Mad.), as regards to the nature of bank loan in the business are worth nothing. The High Court has laid down as under:

“It is a well-established principle of law that every deposit of money would not constitute a trading receipt. Broadly, though a receipt may be in connection with the business, it cannot be said that every such receipt is a trading receipt. Therefore, the amount referable to the loans obtained by the assessee towards the purchase of its capital asset would not constitute a trading receipt. The said issue has been fortified by the judgement of this court in *CIT vs. A.V.M. Ltd.* [1984] 146 ITR 355.”

The High Court has further held as under:

“In the present case on hand, admittedly the assessee was not trading in money transactions. A grant of loan by a bank cannot be termed a trading transaction and hence it cannot also be construed in the course of business. Indisputably, the assessee obtained the loan for the purpose of investing in its capital assets. A part of this loan amount, along with this interest, was waived-off by way of an agreement between the parties. Therefore, the facts involved in the present case are totally different to the

It can be argued that waiver of working capital loan cannot be termed a trading transaction, and it cannot also be construed to be flowing out the income (revenue) stream of transactions during the course of business. Hence, the waiver of working capital loan by the bank cannot be taxed under Section 28(i) of the Income-tax Act, 1961.

facts involved in *CIT vs. T.V. Sundaram Iyengar and Sons Ltd.* [1996] 222 ITR 344 (SC). In the said case, admittedly there was a trading transaction, whereas in the present case it is not so. *What has been done in the present case is a mere waiver of loan. It is only a mere waiver, which has been effected by the bank in favour of the assessee. There is no change of character with regard to the original receipt, which was capital in nature into that of a trading transaction. It is further seen that there is a marked difference between a loan and a security deposit.* (emphasis supplied)

In the above referred case, the High Court was concerned with the waiver of the term loan utilised for purchase of capital assets. However, what applies to the term loan also equally applies to the working capital loan. Ultimately, both term loan and working capital loan are on capital account. As per the accounting principles, loan is always considered a capital receipt, and the waiver of the same would also be on capital account. Hence, the character of the loan remains the same at the time of receipt as well as at the time of the waiver of loan.

- (c) As far as waiver of term loan is concerned, the High Court, as mentioned below, unanimously agreed that waiver of the term loan utilised for the purchase of capital asset is not chargeable to tax under Section 28(i).

(i) *Iskraemeco Regent Ltd. vs. CIT* 331 ITR 317 (Mad.)

(ii) *Mahindra & Mahindra Ltd. vs. CIT* 261 ITR 501 (Bom.)

(iii) *Logitronics Pvt. Ltd. vs. CIT* 333 ITR 386 (Delhi)

However, the Delhi High Court in the case of *Logitronics Pvt. Ltd.* (supra) and Bombay High Court in the case of *Solid*

Containers Ltd. vs. Deputy CIT 308 ITR 417, by applying the decision of *CIT vs. T.V. Sundaram Iyengar and Sons Ltd.* 222 ITR 344 (SC), held that in the case of the Bank the loan used as working capital for trading purpose and waived off by the bank. The loan so waived off has been transferred to the profit and loss account and shall be assessed as business income.

Both the above referred High courts have decided on the basis of the purpose for which the bank loan is utilised. The courts held that if the loan was utilised for acquiring capital asset, waiver thereof would not amount to any income exigible to tax. However, if the loan was utilised for trading purpose, relying on *T.V. Sundaram's case* (supra), the waiver thereof shall be charged to tax as trading receipt. In the author's opinion, the purpose for which the loan is obtained is irrelevant consideration for deciding the character of the receipt either as capital or revenue. (60 ITR 52)(SC).

- (d) For ages the principle that has been well settled in this regard is that the quality and nature of a receipt for income-tax purposes is fixed once and for all when the subject receipt is received and no subsequent operation could change the nature of the receipt. It means that the taxability of a receipt is fixed with reference to its character at the moment it was received and merely because the recipient subsequently treats the receipt as his own that does not become income character. Thus, if a receipt is of capital nature it does not become income merely because subsequently the receipt is treated as his own money by the recipient due to various reasons. The mother decision for this theory has an early English decision in *Morley (Inspector of Taxes) vs. Tattersall* (1939) 7 ITR 315 (CA), which has been followed in India also by the courts and the Tribunal in numerous cases in a variety of contexts, more prominently in the context of forfeiture of loans, forfeiture of security deposits from customers, etc. For example, one may see *CIT vs. Motor & General Finance Ltd.* (1974) 94 ITR 582

The Supreme Court in the case of *CIT vs. Kerala Estate Mooriad Chalapuram* (166 ITR 155) has held: "What was returned to the assessee has nothing to do with activities of the assessee, it does not arise from business nor does it arise from agricultural operation when the assessee is an agriculturist. ☺"

(Delhi) and *CIT vs. A.V.M. Ltd.* (1984) 146 ITR 355 (Mad.)

However, an exception to the principal was carved out by the Supreme Court in the decision of *CIT vs. T.V. Sundaram Iyengar & Sons Ltd.* (222 ITR 344). On the basis of this decision one is required to find out whether waiver of working capital loan is an event which would convert the capital receipt into income taxable under the Act?

Now, the above decision of the Supreme Court does not lay down a universal principle that in every case a capital receipt when appropriated by an assessee to himself necessarily becomes income; it would again depend on the facts and circumstances of each case. The point to be noted is that this Supreme Court decision dealt with a situation where the amounts of deposits were received from the customers during the course of trading transactions and they were adjusted against the sale price of goods receivable from the customers; and, therefore, this decision is to be understood and confined in its application in the light of the specific facts obtaining in this case. This is established and illustrated by a later decision of the Supreme Court in *Travancore Rubber & Tea Company Ltd. vs. CIT* (2000) 243 ITR 158. In this case, the assessee was in the business of growing rubber and tea. It entered into an agreement with a purchaser to sell its old and unyielding rubber trees and received a certain amount as earnest money and advance. But, subsequently, the purchaser failed to pay up the balance money. Thereupon, the assessee cancelled the agreement and forfeited the amount of earnest money/advance paid by the purchaser.

The question was whether the amount so forfeited by the assessee was its income liable to tax. The assessee contended that the quality and nature of receipt for income tax purpose were fixed once and for all when the subject receipt was received and that no subsequent operation could change the nature of the receipt. The assessee had relied on the decision of the *Morley (Inspector of Taxes) vs. Tattersall* (1939) 7 ITR 315 (CA). As against this, the Department had relied on the Supreme Court decision of *Karam Chand Thappar* (222 ITR 212). However, the Supreme Court held that the amount of advance money paid by the purchaser was a capital receipt in the hands of the assessee since the assessee was not carrying on the business of selling trees which constituted capital assets of the assessee, and that the amount forfeited related directly to capital assets of the assessee. The Supreme Court categorically observed that the cancellation of the sale of capital assets would not be such a subsequent event as to change the nature of the receipt of the forfeited amount. The decision of the Supreme Court (243 ITR 158) is followed in number of decisions where the amount received is not during the course of business but in the capital filed. For example, *Deputy CIT vs. Lotus Finance and Investment (P) Ltd.* (2004) 82 TTJ (Asr) 559.

On the basis of the above referred analysis, it can be argued that waiver of working capital loan cannot be termed as a trading transaction and it cannot also be construed to be flowing out the income (revenue) stream of transactions during the course of business. Hence, the waiver of working capital loan by bank cannot be taxed under Section 28(i) of the Income-tax Act, 1961.

The tribunal in the case of *Deepak Fertilisers and Petrochemicals Corporation Ltd. vs. Deputy CIT* (2008) 304 ITR (AT) 167 (Mum.) has held that the amount of debenture application money forfeited by the company on non-payment of call money by the debenture holders constituted a capital receipt and could not be taxed.

The Gujarat High Court in the case of *CIT. vs. Alchemic Pvt. Ltd.* (130 ITR 168) has held that the amount received by way of cash or money cannot be brought to tax under

Section 28(iv) as any benefit or perquisite, as the section applies only to non-monetary benefit or perquisite. It is submitted that the judgement of Gujarat High Court has been approved by the apex court in *CIT vs. Mafatlal Gangabhai & Co. Pvt. Ltd.* (219 ITR 644).

One may also rely on the following decisions to strengthen the argument that waiver of working capital loan is not a trading receipt:

- (i) The Tribunal in the case of *Comfund Financial Services (I) Ltd. vs. Dy. CIT* (67 ITD 304) (Bom.), has held that loan transaction between the assessee and bank is on capital account and remission of loan by bank could not be considered to constitute a revenue income in the hands of the assessee. The loans from credits stand completely on a different footing from the transaction in which the assessee indulged by utilising such loan.
- (ii) The Supreme Court in the case of *CIT vs. Kerala Estate Mooriad Chalapuram* (166 ITR 155) has held: "what was returned to the assessee has nothing to do with the activities of the assessee, it does not arise from business nor does it arise from agricultural operation when the assessee is an agriculturist."
- (iii) The company had issued NCDs for raising capital for setting up of cement business and the amounts received were initially shown as loan liability. NCDs were forfeited for non-payment of call money. The Tribunal held that since the NCDs were issued in order to borrow the funds to raise the capital, the amount received is lien thereof has assumed the character of capital receipt if at all not treated to be a loan liability, is as much as issuance of NCDs was not a business of the assessee. [*Prism Cement Ltd. vs. JCIT* 103 TTJ63 (Mum.)].
- (iv) As per the facts of the case before the Tribunal in the case of *Comfund Financial Services (I) Ltd. vs. Dy. CIT* 37 ITD 304

(Bom.) the assessee was dealing in shares and securities making payment of shares out of its overdraft account. The assessee had incurred heavy losses hence, the bank loan was waived by the bank. The tribunal held that the loan transaction between the assessee and the bank were on the capital account and the remission of loan by the bank could not be considered to constitute a revenue income in the hands of the assessee.

- (v) The fact that there is a difference between an amount received in the course of a trading transaction and other deposit or loan is evident from the decision of the Supreme Court in the case of *K.M.S. Lakshmanier & Sons vs. CIT* 23 ITR 202(SC), where trade advances were not treated as loans, whereas security deposits were treated as loans.
- (vi) The company had received a loan under order of BIFR as a measure of restructuring its business. The loan was renounced by the lender and the amount was transferred to profit and loss account. Hon'ble Tribunal in the case of *APR Ltd. vs. Dy. CIT* 87 ITD 618 (Hyd.) held that the loan does not lose its capital nature even where it is renounced by the lender and becomes the money of the assessee. It was further held that the amount received by the company is a capital receipt and does not become chargeable revenue receipt by such fact of transfer to profit and loss account. The Tribunal had relied on the decision of apex court in *K.M.S. Lakshmanier & Sons vs. CIT* (supra). [Also refer: *Helios Food Improvers (P) Ltd. vs. Dy. CIT*, 14 SOT 546 (Mum.) & *Smartalk (P) Ltd. vs. ITO*, 122 TTJ 782 (Mum.)]
- (vii) As regards to forfeitures of shares held by the shareholder for non payment of calls, the Lahore High Court categorically held that such sum was neither a revenue receipt nor profit on the working

of the company but in the nature of a capital receipt and not assessable to income tax at all. (*Multan Electric Supply Company Ltd.*, In re (1945) 13 ITR 457)

- (viii) The tribunal in the case of *Deepak Fertilisers and Petrochemicals Corporation Ltd. vs. Deputy CIT* (2008) 304 ITR (AT) 167 (Mum.) has held that the amount of debenture application money forfeited by the company on non payment of call money by the debenture holders constituted a capital receipt and could not be taxed.

(B) Applicability of Section 28(iv)

Section 28(iv): "The value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession."

It provides that the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession, is chargeable as part of the profits under the head of "Profits and Gains of business or profession" and it is deemed to be income under Section 2(24).

The Gujarat High Court in the case of *CIT. vs. Alchemic Pvt. Ltd.* (130 ITR 168) has held that amount received by way of cash or money cannot be brought to tax under Section 28(iv) as any benefit or perquisite, as the section applies only to non-monetary benefit or perquisite. It is submitted that the judgement of Gujarat High Court has been approved by the apex court in *CIT vs. Mafatlal Gangabhai & Co. Pvt. Ltd.* (219 ITR 644)

As regards to the waiver of the principal amount of loan, the Division Bench of the Bombay High Court in the case of *Mahindra & Mahindra Ltd. vs. CIT* (261 ITR 501) has held that Section 28(iv) does not apply to benefits in cash or money. Hence, the waiver of loan amount would not constitute business income under Section 28(iv).

The decision of the *Alchemic Pvt. Ltd.* has been followed in the case of *Dy. CIT vs. Garden Silk Mills Ltd.* [320 ITR 720 (Guj.)]

II the courts have unanimously decided that whether it is term loan or working capital or private deposits, the amount waived-off is not taxable

A
under Section 41(1). 99

On the basis of the decision of the Supreme Court, one can easily argue that there cannot be disallowance of depreciation under Section 41(1), with reference to capital assets against which there is a waiver of loan by banks, financial institutions or private parties. ☹☹

As regards the waiver of bank loan, the Madras High Court in the case of *Iskraemeco Regent Ltd. vs. CIT* (331 ITR 386) and Delhi Court in the case of *Logitronics Pvt. Ltd. vs. CIT* (333 ITR 386) has held that the same is not taxable under Section 28(iv).

(C) Applicability of Section 41(1)

Section 41(1):

- (1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,—
- (a) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or
 - (b) the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause (a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year.

[Explanation 1] -----

[Explanation 2] -----

- (i) Section 41(1) enacts adjustment provisions whereby the Revenue taken back what it has already allowed, "Section 41(1) creates a fiction. What is not income in the ordinary sense of the term is deemed to be the income under this provision." *CIT vs. Sahney Steel Pvt. Ltd.* [152 ITR 39 (AP)]
- (ii) "From the very opening part of the provision, it is apparent that it applies to a case where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee and subsequent thereto during any previous year, if the assessee obtains any amount in respect of such loss or expenditure or some benefit in respects of such trading liability by way of remission or cessation thereof, the same is to be deemed to be profits and gains of business or profession and accordingly chargeable to income tax as the income of that previous year. The *sine qua non* of invoking Section 41 is that in any earlier assessment year the allowance or deduction ought to have been made in computing the income chargeable under the tax. It obviously concerns the computation of taxable income made in accordance with the provisions of the Income-tax Act, 1961 in the assessment and not merely on the basis of treatment of such amount in the books of account"
[*CIT vs. Bhawan Va Path Nirman (Bohra) & Co.* (No.2)258 ITR 444 (Raj)]
[*C.I.T. vs. Chetan Chemicals Pvt.Ltd.* 188 CTR 572 (Gu)]
- (iii) Conditions precedent of for applicability of sub-section (1) of Section 41 are:
 - (a) An allowance or deduction had been made, in the computation of profits and gains of a business or profession in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee and
 - (b) Subsequently, during any previous year the assessee had obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof.
- (iv) By keeping in mind the above-referred statutory provisions of Section 41(1), let

From the discussion in this article, it can be submitted that waiver of working capital loan cannot be taxed under Section 28(i), 28(iv) and 41(1) of the Income Tax-act, 1961. ☞



us decide whether waiver of term loan or working capital loan by the bank or financial institution or waiver of private loans by the private parties is chargeable to tax under Section 41(1)?

All the courts have unanimously decided that whether it is term loan or working capital or private deposits the amount waived off is not taxable under Section 41(1).

Madras High Court in the case of *Iskraemeco Regent Ltd. vs. CIT* (331 ITR 316) has held that Section 41(1) is inapplicable.

“Similarly, in so far as the applicability of Section 41(1)(a) of the Income-tax Act is concerned, the same also cannot have any application in as much as the said provision would be applicable only to a trading liability. Accordingly, it was held that a loan received for the purpose of capital asset would not constitute a trading liability and hence Section 41(1) has no application. The said issue has also been considered in *Mahindra & Mahindra Ltd. vs. CIT* [2003] 261 ITR 501(Bom), wherein it has been held as follows:

“Alternatively, it was argued on behalf of the Department that in this case waiver constituted remission of trading liability and, therefore, Section 41(1) stood attracted. We do not find any merit in this argument. Firstly, in the present case, the prerequisite of Section 41(1) is not applicable. In order to apply Section 41(1), an assessee should have obtained a deduction in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee. In this case, the assessee has not obtained such allowance or deduction

in respect of expenditure or trading liability. It is not disputed that the assessee has paid interest at 6% over a period of ten years to KJC ₹57,74,064. In respect of that interest, the assessee never got deduction under Section 36(1)(iii) or Section 37. In the circumstances, Section 41(1) of the Act was not applicable. Secondly, even assuming for the sake of argument that the assessee had got deduction on allowance even then Section 41(1) was not applicable because such deduction was not in respect of loss, expenditure or trading liability. In order to get over this alternative argument, it was argued by the Department that the loan was used to buy toolings on which the assessee got depreciation allowance of ₹27,29,858 and, therefore, the amount of ₹27,29,585 should be set-off against ₹57,74,064. We do not find any merit in this argument. The Department's case is that the assessee got remission of ₹57,74,064. Remission for depreciation is not in issue before us. The only argument of the Department throughout has been that the waiver constituted remission of ₹57,74,064. In the circumstances, we cannot direct set off of ₹27,29,585 against ₹57,74,064. It is important to bear in mind that, before Section 41(1) came to be enacted, various judgments as reported in *Mohsin Rehman Penkar vs. CIT* (1948) 16 ITR 183 (Bom) and *Orient Corporation vs. CIT* (1950) 18 ITR 28 (Bom) had laid down that remission was not income and in order to get over those judgements Section 41(1) came to be enacted. In the case of *CIT vs. Phoolchand Jiwan Ram* (1981) 131 ITR 37 (Delhi), the assessee-firm had purchased goods. They had also obtained loans from a party, accounts were settled and the balance was credited to the partner's account. It was held by the Delhi High Court that the amount referable to loans was not a trading liability. Thus, only amounts allowed as deduction in earlier years could be treated as trading liability. In other words, unless the amounts have been allowed as deduction in earlier years they cannot be treated as trading liability. In the circumstances, Section 41(1) was not applicable. This case applies to the facts of our case also. In the case of *CIT vs. A.V.M. Ltd.* (1948) 146 ITR 355 (Mad), it has been held by the Madras High Court that every deposit money does not constitute trading

receipt. Although such a receipt may be in connection with business, it could not be dealt with by the assessee as a receipt of its trade. Therefore, the amounts referable to loans received for purchase of capital assets would not constitute a trading liability, and accordingly Section 41(1) was not attracted."

The Madras High Court has also relied on the decision of the Division Bench of the Gujarat High Court in *CIT vs. Chetan Chemicals (P.) Ltd.* 267 ITR 770.

(D) Disallowance of Depreciation Under Section 41(1)

Disallowance of depreciation under Section 41(1), with reference to capital assets against which bank has waived term loan:

- (i) In the case of *Mahindra & Mahindra Ltd.* (Supra); with reference to the waiver of principal amount of loan the Department had taken alternative argument that the loan was used to buy capital asset on which assessee had got depreciation allowance of ₹27,29,585 and, therefore, the depreciation allowance shall be taxed under Section 41(1). *Hon'ble High Court held that we do not find any merit in this argument.* The Department's case is that the assessee got remission of depreciation allowance. However, remission for depreciation is not in issue before us. In short, the High court did not consider this issue and no decision was given on the same.
- (ii) In the case of *Nectar Beverages Pvt. Ltd. vs. Dy. CIT* [267 ITR 385 (Bom.)] it was held by the Bombay High Court that "expenditure" in Section 41(1) includes depreciation. Hence, the assets in respect of which depreciation had been granted and on sale of the asset as scrap, amount received shall be taxable under Section 41(1).

However, the Supreme Court has reversed the decision of the Bombay High Court [*Nectar Beverage Pvt. Ltd. vs. Dy. CIT* (314 ITR 314)].

The Supreme Court has held that prior to April 1, 1988, both sub-section(1) and sub-section(2) of Section 41 existed in the statute book. Section 41(2) specifically brought to tax the balancing charge as a deemed income under the Act. The necessity to keep Section 41(2) as provision in addition to Section 41(1) arose from the fact that in its very nature depreciation is neither a loss, nor expenditure, nor a trading liability referred to in Section 41(1).

On the basis of the above-referred decision of the Supreme Court, one can easily argue that there

cannot be disallowance of depreciation under Section 41(1), with reference to capital assets against which there is a waiver of loan by banks, financial institutions or private parties.

From the discussion in the preceding paras, it can be submitted that waiver of working capital loan cannot be taxed under Section 28(i), 28(iv) and 41(1) of the Income-tax Act, 1961. Before concluding let us also analyse the applicability of Section 2(24) to the facts of the case of *Logistronics Pvt. Ltd.* (supra):

Applicability of Section 2(24):

The word income is formidably wide and vague in its scope. It is word of elastic import. Unless otherwise the context requires, the word "Income" should be given its ordinary natural meaning. The apex court held so in the case of *CIT vs. G.R. Kartikeyan* (reported in 201 ITR 866). The court also held that a receipt not falling within the ambit of any specific clause may yet be income. In such cases though the various conditions like capital vs. revenue, etc. still needs to be passed through to call a particular receipt as income. Another aspect of the definition of "income" is that the definition incorporated some of the specific incomes within the ambit of the purview of the term "income". Such incomes are to be understood as incomes because of the deeming fictions prescribed by the law. In other words, even if such deeming receipt may not fall within the ambit of any of the clauses mentioned in Section 2(24), or may not be of the nature of income in general, it may still be income. As far as the case of waiver of working capital loan is concerned, the nature of loan as a capital receipt remains intact even after the waiver of the loan and it does not take the nature of income. And if it is neither in the nature of income in general nor fictionally provided in the act to be income then in that case it would be outside the scope of charging Section 4 of the Income-tax Act, 1961. Wherever legislature wanted to treat any item which is not in the nature of income, the same is artificially treated as income by adding to the definition of Section 2(24) of the Income-tax Act, 1961. For example, Section 2(24)(vi) provides that income includes "any capital gains chargeable under Section 45," and, thus, it is clear that a capital receipt simpliciter cannot be taken as income. [*Kushal K. Bangia vs. ITO* (2012) 18 taxmann.com 31 (Mum. Tribunal)]

From the discussion in the above para, it can be submitted that waiver of working capital loan may not be treated as income as per Section 2(24) of the Act and therefore in view thereof the issue partakes an important dimension in the wholesome issue in this regard. ■

Analysis of Section 36(1)(viii) of Income-tax Act 1961

Section 36(1)(viii) of the Income-tax Act 1961 allows deduction in respect of special reserve created and maintained by a specified entity, an amount not exceeding 20% of the profits derived from eligible business computed under the head "Profits and Gains of Business and Profession" (before making any deduction under this clause) carried to such reserve account. Provided that where the balance lying in special reserve account on the 1st day of the previous year exceeds twice the paid up capital and general reserve of the specified entity, no allowance under this clause shall be made in respect of such excess. This article analyses Section 36(1)(viii) and clarifies some critical issues relating to this section along with some case laws and clarification given by Expert Advisory Committee of ICAI in this regard.

Section 36(1)(viii) of the Income-tax Act 1961 allows deduction in respect of special reserve created and maintained by a specified entity, an amount not exceeding 20% of the profits derived from eligible business computed under the head "Profits and Gains of Business and Profession" (before making any deduction under this clause) carried to such reserve account.

Provided that where the balance lying in special reserve account on the 1st day of the previous year exceeds twice the paid up capital and general reserve of the specified entity, no allowance under this clause shall be made in respect of such excess.

It means the lower of the following will be allowed as deduction:

1. Amount transferred to special reserve account created under Section 36(1)(viii).
2. 20% of profits derived from eligible business.
3. 200% of (paid up share capital and general reserve as on the last day of the previous year) minus balance lying in special reserve account on the first of previous year.

For this purpose:--

- A) "Specified entity" means:--
- a) A financial corporation specified in section 4A of the Companies act, 1956.
 - b) A financial corporation which is a public sector company.
 - c) A banking company.
 - d) A co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.
 - e) A housing finance company.
 - f) Any other financial corporation including a public company.
- B) "eligible business" means:-
- a) The business of providing long-term finance for-
 - i. Industrial or agricultural development.
 - ii. Development of infrastructure facility in India.
 - iii. Development of housing in India.



CA. Mudit Agarwal

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

- b) The business of providing long term finance for the construction or purchase of houses in India for residential purpose.
- c) The business of providing long term finance for development of infrastructure facility in India.
- C) Banking company to which The Banking Regulation Act, 1949 applies and includes any bank or banking institution referred to in section 51 of that act.
- D) "Infrastructure facility" means:-
 - a) An infrastructure facility as defined in the Explanation to clause (i) of sub-section (4) of Section 80 or any other public facility of a similar nature as may be notified by the Board in this behalf in Official Gazette and which fulfils the conditions as may be prescribed.
 - b) An undertaking referred to in clause (ii) or clause (iii) or clause (iv) or clause (vi) of sub-section (4) of Section 80-IA; and
 - c) An undertaking referred to in sub-section (10) of Section 80-IB
- E) "Long-term finance" means any loan or advance where the terms under which money is loaned or advanced and repayment along with interest thereof during a period of not less than five years;

After study of the above section, it is clear that deduction under Section 36(1)(viii) of the Income-tax Act, 1961 can be claimed for creating and maintaining special reserve in the aforesaid section out of the profits of providing long term finance for development of infrastructure facilities in India. The deduction shall be available till the balance lying in special reserve account as on the first day of previous year does not exceed twice the amount of paid up capital and general reserve.

Now, let us clarify some critical issues relating to the aforesaid section along with some case laws and clarification given by Expert Advisory Committee of ICAI in this regard.

1. Whether maintenance of special reserve created is compulsory for availing deduction under Section 36(1)(viii)?

Before assessment year 1998-1999, deduction under Section 36(1)(viii) had been allowed on creation of special reserve. There was no such condition to maintain the reserve for a certain period. But the section has been amended w.e.f assessment year 1998-1999 intended to confer the benefit under this section only if special reserve created is to be maintained.

In the case of Rural Electrification corporation Ltd., Authority for Advance Rulings (Income Tax), New Delhi vide AAR No. 759 of 2007 dated 31st March

Deduction under Section 36(1)(viii) of the Income-tax Act, 1961 can be claimed for creating and maintaining special reserve in the aforesaid section out of the profits of providing long term finance for development of infrastructure facilities in India. The deduction shall be available till the balance lying in special reserve account as on the first day of previous year does not exceed twice the amount of paid up capital and general reserve. ”

2009 stated that the material variation between the provisions as they stood in the assessment year 1997-1998 and the assessment year 1998-1999 is that of insertion of word "and maintained" with effect from 1-4-1998. The amendment has been effected primarily to incorporate the condition regarding maintenance of reserve and seems to have been necessitated to overcome some deficiencies in the act, such as likely misuse of the provision.

2. Whether the amendment made in assessment year 1997-1998 will apply on the special reserve created before the amendment took place

In the case of Rural Electrification corporation Ltd., Authority for Advance Rulings (Income Tax), New Delhi vide AAR No. 759 of 2007 dated 31st March, 2009 stated that Clause (viii) of Section 36(1), as it stood before amendment, cannot be construed as to imply an obligation to maintain the special reserve intact. It would amount to reading words which were not there in pre-amended provision. The importance of difference between the expressions 'created' and 'maintained' cannot be understated. But for the amendment, the restriction against withdrawal of special reserve cannot be read into main clause. There is no doubt that the purpose of the expression 'and maintained' is obviously to impose an additional obligation and it is not merely declaratory of the existing legal provision.

In view of above, it emerges that the amendment takes effect from 01-04-1998 and shall apply in relation to the assessment year 1998-1999 and subsequent years.

3. When the amount will be withdrawn from special reserve account, what will be the tax consequences before and after amendment in assessment year 1998-1999?

The consequence of withdrawing the amount from the special reserve account in the previous year is taken care of by sub-section (4A) of Section 41.

If any deduction has been allowed in respect of any special reserve under Section 36(1)(viii) of the Income-tax Act and it is subsequently withdrawn, then it shall be deemed to have been profits and gains of the business and are chargeable to income tax. But this provision is applicable only from the assessment year 1998-1999.

The combined effect of the amendments made by the Finance act 1997 in Section 36(1)(viii) and Section 41 have been aptly analysed by a division bench of Kerala High court in *Kerala Finance Corporation Vs. CIT* and stated that the condition for availing benefit under this section is that a reserve fund should be created. In the absence of any condition that it should be continued to be maintained, there is no warrant to think that Legislature intended to confer the benefit of the provision only if it continued to maintain the reserve. Further any retrospective effect cannot be presumed to be a condition for granting the benefit as per the provision which stood prior to the amendment in question.

In view of the above, it emerges that Section 41(4A) will not apply on the amount withdrawn from the special reserve which had been transferred to special reserve before the assessment year 1998-1999.

4. Whether Deferred Tax Liability should be created in the accounts for the amount of tax to be deferred due to availing deduction under Section 36(1)(viii)

As we know, Accounting Standard 22 "Accounting for taxes on income" requires recognition of deferred tax for all the timing differences. Since the deduction claimed today under Section 36(1)(viii) will be taxed in the year in which the amount withdrawn from the special reserve account, it results into timing difference as per AS 22. Hence deferred tax liability should be created in the accounts.

Further, the Expert Advisory Committee of ICAI opined that in the period in which special reserve is created, the accounting income remains unaffected as the same is created below the line. However, the taxable income for the same year gets reduced by the amount of special reserve thus

In view of the above, it emerges that Section 41(4A) will not apply on the amount withdrawn from the special reserve which had been transferred to special reserve before the assessment year 1998-1999.

Accounting Standard 22 "Accounting for taxes on income" requires recognition of deferred tax for all the timing differences. Since the deduction claimed today under Section 36(1)(viii) will be taxed in the year in which the amount withdrawn from the special reserve account, it results into timing difference as per AS 22. Hence deferred tax liability should be created in the accounts.

resulting into lesser tax liability. Thus, a difference arises between the accounting income and taxable income for that period. And this difference is capable of reversal in the period in which the special reserve is utilised or withdrawn as in the year of utilisation or withdrawn, it would be added to the taxable income. Hence deferred tax liability should be created.

Even if an enterprise expects that a difference between accounting and taxable income will not reverse within a reasonable period (partial provision approach), the difference should be recognised as timing difference if it is capable of reversal at any time in future. Thus, deferred tax is to be provided for all timing differences.

5. Whether is there any condition in which full tax benefit can be availed in spite of providing deferred tax liability

Yes, full tax benefit can be availed in spite of providing deferred tax liability only in the case where the company demonstrated by passing a resolution that it had no intention to withdraw any amount from special reserve account.

This view had been expressed by the Accounting Standards Board of the Institute of Chartered Accountants of India (ICAI) vide letter dated 02-06-2009 on representation made by "Power Finance Corporation Limited" regarding the creation of DTL on special reserve created and maintained under Section 36(1)(viii) of the Income-tax Act, 1961. Accounting Standard board stated that if the company passes a board resolution that it had no intention to withdraw any amount from special reserve account created and maintained under Section 36(1)(viii) of Income-tax Act 1961, then the company can stop creating DTL on special reserve and can also reverse the DTL on special reserve created in earlier years. And there will be no violation of the Accounting Standard 22. Further, the Comptroller and Auditor General of India vide letter No. CA-IV/80/2010 dated 09-08-2010 had also the same view that non-provision of DTL

on special reserve was acceptable, in case the company demonstrated by passing a resolution that it had no intention to withdraw from the special reserve.

6. Whether the balance lying in special reserve account will be a part of Tier-1 capital

Yes, special reserve will be a part of Tier-1 capital for banking companies. But only the net amount (net of DTL) of such special reserve should be taken into account for the purpose of Tier-1 capital. Reserve Bank of India DBOD mailbox clarification dated 23-12-2009 also stated that the balance lying in the special reserve account created and maintained under Section 36(1)(viii) net of DTL will be a part of Tier-1 capital for banking companies.

Illustrative example for accounting and tax treatment under Section 36(1)(viii) of Income-tax Act, 1961:

The following information is available for XYZ Ltd. A banking company which is eligible for deduction under Section 36(1)(viii):

- Income from activities mentioned under Section 36(1)(viii) before deduction under Section 36(1)(viii) is ₹150 lakh
- Income from other activities is ₹750 lakh
- Amount transferred to special reserve account during the previous year 2010-2011 is ₹40 lakh
- Paid up capital and general reserve as on 31-03-2011 is ₹110 lakh
- Amount standing credit in special reserve account as on 01-04-2010 is ₹200 lakh
- Deduction under Section 36(1)(viii) already claimed in earlier year ₹170 lakh
- XYZ withdraw ₹60 Lakh on 10-04-2011 (Assessment year 2012-2013)

Computation of allowable deduction under Section 36(1)(viii)

Least of the following is deductible

- Amount transferred to special reserve account = ₹40 lakh
- 20% of ₹150 Lakh = ₹30 lakh
- 200% of ₹110 lakh i.e. ₹220 Lakh minus ₹200 Lakh = ₹20 lakh

Hence, amount of deduction = ₹20 Lakh

Tax implications for the Assessment Year 2012-2013

As per accounts

Amount standing credit to special reserve account as on 01-04-2010 = ₹200 lakh

From the study of the section 36(1)(viii) along with applicable case laws and the opinion of Expert Advisory Committee in relation to creation of deferred tax liability

on deduction claimed under this section, the author is of the opinion that there is only an interest benefit for the entities due to deferment of tax liability since deduction claimed today will be taxed in future on withdrawing the amount from special reserve account. ”

Add: amount transferred to Special reserve during 2010-2011 = ₹40 lakh

Amount standing credit to special reserve account as on 31-03-2011 = ₹240 lakh

As per tax laws

Deduction already claimed upto 01-04-2010 = ₹170 lakh

Deduction claimed during 2010-2011 = ₹20 lakh

Total deduction claimed upto 31-03-2011 = ₹190 lakh

Maximum amount of withdrawal permissible (on which no tax will be imposed)

₹240 lakh minus ₹190 Lakh = ₹50 lakh*

Withdrawal made on 10-04-2011 = ₹60 lakh

Amount which is chargeable to tax = (60 lakh – 50 lakh) = ₹10 lakh

*Since total deduction claimed upto 31st March, 2011 is only ₹190 Lakh i.e. on which tax had not been paid yet. The balance lying in special reserve account is ₹240 lakh. It means, tax had already been paid on ₹50 Lakh (₹240 lakh – ₹190 lakh). Hence withdrawal up to ₹50 lakh will not attract any tax.

Conclusion

From the study of the Section 36(1)(viii) along with applicable case laws and the opinion of Expert Advisory Committee in relation to creation of deferred tax liability on deduction claimed under this section, the author is of the opinion that there is only an interest benefit for the entities due to deferment of tax liability since deduction claimed today will be taxed in future on withdrawing the amount from special reserve account.

Reference:

- <http://law.incometaxindia.gov.in>
- <http://www.cabible.com>
- <http://www.taxmann.com>
- RBI Master Circular No. DBOD BRBC.18/21.04.141/2010-11. ■

Agency Permanent Establishment – Basic Concepts and Issues

In spite of infrastructure concerns and lack of clarity on policy reforms, India continues to remain a country of opportunities for global companies. India attracted its highest ever monthly inflow of FDI amounting to \$ 8.1 billion, in March 2012. Many times, global companies before setting up an entity in India choose to operate in India through principal-agent relationship for varied reasons like avoiding hassles of setting-up the infrastructure, saving operational costs, try out Indian business conditions etc. In this context, if the form or substance of Indian operations undertaken by foreign company through an agent is not structured carefully, the foreign enterprise might get exposed to the risk of constituting an Agency Permanent Establishment (Agency PE). The subject of Agency PE has been discussed and debated in great detail by every forum of the Indian courts – from Authority of Advance Rulings to Tribunals to the Supreme Court. In this article, efforts have been made to analyse basic concepts of Agency Permanent Establishment and circumstances in which a person can be considered as an agent of a foreign enterprise. The second and third part of the series would respectively deal with the concept of Dependent Agent PE and Attribution of Profits to PE.

Introduction

Traditionally, the countries have taxed income if, under the laws of the country, the income is found to have some nexus with the territory. Residence based taxation or source based taxation are two generally practiced concepts in international tax.

Countries following source based taxation, tax income which has been sourced from the country. Such scheme of taxation is not concerned with the residential status of the enterprise. Countries following residence based taxation on the other hand tax income earned by its residents.

In such a situation, there is a possibility that the same income is taxed twice in two different jurisdictions on source and residence basis.

Hence, to prevent such double taxation of same income, normally countries enter into an agreement known as Double Taxation Avoidance Agreement ('DTAA'), which generally allocates rights of taxing a particular income between residence country and source country.

Basic concepts – Permanent Establishment

The concept of Permanent Establishment ('PE') was introduced in the DTAA's to define; and allocate taxing rights of the Contracting Countries in relation to an income. Its basic purpose is that if a foreign enterprise undertakes activities in the source country which exists beyond a reasonable period and is also of enduring or permanent nature, the source country would have the right to tax the income of foreign enterprise attributable to such activities. Thus, in simple words, if a foreign enterprise has a PE in source country, the source country would get right to tax income attributable to such PE.

Definition of PE under the Income Tax Law and DTAA

A permanent establishment is broadly defined to

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

mean a fixed place of business through which the business of an enterprise is wholly or partly carried on.

However, under one exception to general rule of PE, if, under certain conditions, a person is acting on behalf of an enterprise, the enterprise is deemed to have a PE though it does not have any fixed place of business. This exception to the basic rule PE is referred to as Agency PE.

Under provisions of Income-tax Act, 1961 ('the Act'), the term 'business connection' is of relevance. As per provisions of the Act, income arising by a foreign enterprise through a business connection in India would be taxable in India. Thus, the term 'business connection' is akin to the principle of PE and marks the dividing line between doing business with a country and doing a business within that country.

As the Indian judiciary puts it; the words 'business connection' postulate the existence of a substantial element of an enduring or permanent nature of a foreign enterprise in another country, which can be attributed to a fixed place of business in that country. It should be of such a nature that it would amount to a virtual projection of the foreign enterprise of one country into the soil of another country.

Basic concepts – Agency PE under the Act

The term PE has been inclusively defined as part of transfer pricing regulation. The clause (iiia) of Section 92F of the Act defines the term PE as follows:

"PE includes a fixed place of business through which the business of the enterprise is wholly or partly carried on."

As can be observed, a PE in the nature of an agency is not specifically covered in the definition.

However, under the Act, a non-resident would be taxable on income arising/accruing through or from any business connection in India.

Typically, the Courts consider any activity of a foreign enterprise carried on in India through the use of any asset, employees or other personnel as constituting a business connection in India. The Hon'ble Supreme Court in the case of R. D. Agarwal [1965] 56 ITR 20 (SC) has laid down the following tests for existence of a business connection in India:

- Business connection means something more than "business";
- There should be a relation between a business carried on and some activity in India which contributes to the earning of profits;
- There should be an element of continuity between the business and activity in India.

Under the business connection rule, explanation 2 to Section 9(1)(i) provides for rules of taxability of income arising in principal-agent relationship.

Definition of Agency PE

Definition under the Act

Explanation 2 to Section 9(1)(i) of the Act states that the term 'business connection' would include any activity carried on through an agent if:

- a) The agent has and habitually exercise authority to conclude contracts, unless the activities are confined to purchase of goods or merchandise; or
- b) The agent habitually maintenance a stock of goods or merchandise and delivers them on behalf of foreign enterprise; or
- c) The agent habitually secures orders mainly or wholly for his principal.

However, a broker or a general commission agent or any independent agent is excluded from the above rule if he is acting in the ordinary course of his business. But, if such an agent works mainly or wholly on behalf of his principal, he may not considered as a broker, general commission agent or an agent of an independent status.

Definition of PE under the OECD and UN Model Convention

Different tax treaties define Agency PE in different manner. However, normally a tax treaty follows any one of the following Model Conventions:

- a) The 2011 United Nations Model Convention ('the UNMC'); and
- b) The 2010 OECD Model Convention ('the OECD MC')

Article 5(5) of OECD MC 2010 defines Agency PE as follows:

Where a person — other than an agent of an independent status applies — is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise.

Exception to above rule of Agency PE - Article 5(6)

An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

Article 5(5) of UN Model convention 2011 defines Agency PE as follows:

Where a person — other than an agent of an independent status — is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 (viz. general, preparatory or auxiliary activities) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or*
- b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.*

Exception to above rule of Agency PE - Article 5(7)

An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

Analysis of the above definitions

As per provisions of the Act

A bare reading of the definition of business connection given in 9(1)(i) of the Act shows that constitution of business connection does not require physical presence of the foreign enterprise and relationship with an agent is also covered. Following conditions are required to be satisfied for a business connection in nature of an Agency PE to arise in India:

- (A) An agent undertakes business activity on behalf of a foreign enterprise;

AND

- (B) Such an agent has and habitually exercises authority to conclude contracts on behalf of the foreign enterprise. However, activities undertaken by agent limited to only purchase of goods on behalf of non-resident would not be covered in this clause

OR

- (C) The agent has no authority but habitually maintains stock of goods from which goods are delivered on behalf of the foreign enterprise

OR

- (D) The agent habitually secures orders in India mainly or wholly for the foreign enterprise

Thus, if a foreign enterprise conducts business in India through an agent and fulfills condition (A) along with any of the conditions prescribed in (B) or (C) or (D) above, it would constitute business connection in India.

Exception – However, if the above activities are undertaken by an agent having an independent status and acting in its ordinary course of business, it would not constitute a business connection. Further, if such an independent agent works wholly or mainly for the foreign enterprise he would not become an agent of an independent status.

Under OECD and UN Model Commentary

The definition of the term 'Agency PE' given under OECD and UN MC are much narrower compared to the definition provided under the Act.

- The OECD MC postulates presence of two conditions for creating Agency PE i.e. Condition (A) pertaining to presence of an agent; and Condition (B) pertaining to authority to conclude contracts.
- Under the UN MC, Agency PE can be created upon fulfillment of above Condition (A) and Condition (B) as well as on fulfillment of Condition (A) and Condition (C).

Exceptions under OECD MC and UN MC

Further, under the exceptions provided under OECD MC and UN MC, Agency PE cannot be created if the agent is acting in its independent capacity and while undertaking ordinary course of business. Additionally, the UN MC specifically provides that the above exception would not apply if the independent agent's activity are wholly devoted on behalf of the foreign enterprise and conditions between the agent and the foreign enterprise are not at arm's length.

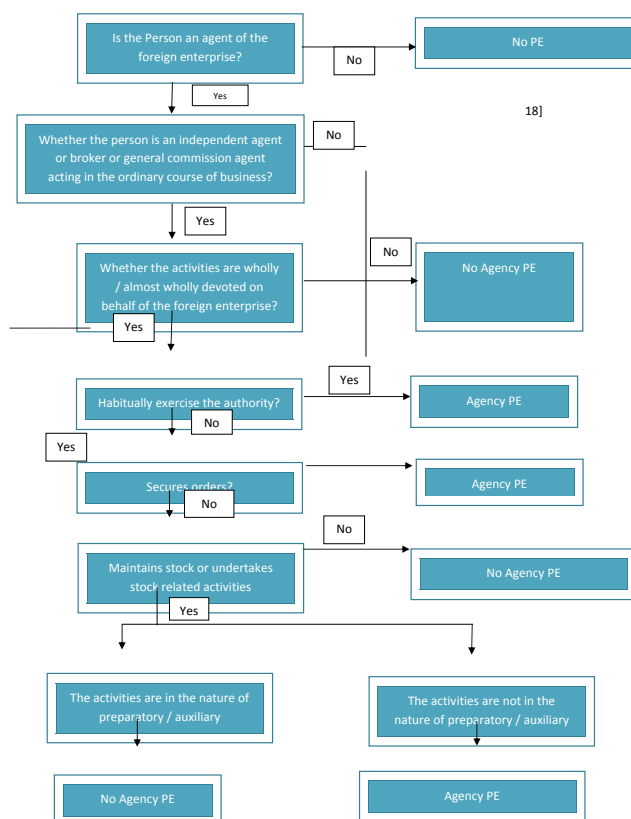
Comparison of the above definitions

Particulars	Explanation 2 to Section 9(1)(i) of the Income-tax Act	OECD Model	UN Model
Conditions creating Agency PE (business connection under the Act)			
1. Authority to conclude contract	Has and habitually exercises the authority to conclude the contract	Has and habitually exercises the authority to conclude the contract	Has and habitually exercises the authority to conclude the contract
2. Maintain stocks of goods	Has no authority to conclude contract but maintains the stock from which goods are delivered	Does not contain such clause	Has no authority to conclude contract but maintains the stock from which goods are delivered
3. Authority to secure orders	Habitually secures orders mainly or wholly for the enterprise	Does not contain such clause	Does not contain such clause
Exclusion to the above conditions			
An agent of an independent status	A broker or a general commission agent or an independent agent acting in its ordinary course of business is excluded	A broker or a general commission agent or an independent agent acting in its ordinary course of business is excluded	A broker or a general commission agent or an independent agent acting in its ordinary course of business is excluded
Mainly/ Wholly clause	Where the agent works mainly/ wholly for the enterprise, such agent is not considered as a independent agent	Does not contain such clause	Where the agent works mainly/ wholly for the enterprise and condition between them are such that would not be made between two independent parties , such agent is not considered as an independent agent

Thus, based on the above analysis, while ascertaining the existence of agency PE, the first test is to determine whether the person whose services are availed by the foreign enterprise may be regarded as an agent of the foreign enterprise as per commercial laws of the source country. If such person can be regarded as an agent of the foreign enterprise, the second step is to ascertain whether such an agent is independent *agent* acting in its ordinary course of his business or is dependent agent. If after determination of the above two steps, it is found that the agent is dependent or is independent but works wholly or mainly on behalf of his principal, the third step would be to ascertain whether he undertakes any of the activities in the nature of concluding contracts, securing orders or maintaining stock.

Based on the language used in the Section 9(1)(i) of the Act, the above conditions are pictorially explained in the flow chart below:

Flow chart depicting the above analysis



Issues arising in Agency PE

- When a person can be regarded as an agent**
As mentioned above, the first step in ascertaining Agency PE would be to determine whether foreign enterprise undertakes business through an agent.

The term agent has not been defined with reference to Agency PE. Accordingly, one has to interpret the term having regard to the meaning assigned to it in the Indian Contract Act, 1872. **Section 182 of the Indian Contract Act, 1872** provides that

"An 'agent' is a person employed to do any act for another, or to represent another in dealing with third persons. The person for whom such act is done, or who is so represented, is called the 'principal'".

Under the principal-agent relationship, the agent has the authority to legally bind the principal and create legally enforceable obligations between the principal and third parties. In such relationship, the principal controls over the business activities (value creating activities) of the agent and continues to bear the entrepreneurial risks. Further, in order to determine whether a person is an agent or not, factual analysis apart from the legal agreement entered between the parties should be considered.

In order to constitute an agency PE, a person must be acting on behalf of the foreign enterprise and be regarded as an agent under the internal commercial laws of the source country. In other words, if a person is dealing with the foreign enterprise on principal to principal basis, presence of the person may not, per se, create agency PE exposure for the foreign enterprise in the source country.

Jurisprudence on agency relationship under the commercial laws

a) **Galileo International Inc [2008] 19 SOT 257 (Delhi)**

The Delhi Tribunal has recognised the principle that prior to ascertaining whether an enterprise is a dependent agent or an independent agent, the enterprise has to first fulfill the test of agency under the commercial laws. The Delhi Tribunal in Para 17.3 observed as under:

"....An agent is a person employed to do any act for another or to represent another in dealing with third person. What an enterprise can do directly but if not so done directly but done through an agent appointed for the purpose, it will be deemed to have been done indirectly."

Further, the Delhi Tribunal held that the fact that the foreign enterprise has an agent in India or not has to be proved based on facts of the case and not only based upon the agreement entered between the parties. Hence, even if the agreement between the foreign enterprise with Indian person provides that the agreement is on principal to principal basis, the same may not be conclusive if on facts, it is found that agency arrangement exists.

Similar views were also taken by ITAT in the case of DHL Operations BV [2005] 142 TAXMAN 1 (Mum.) (Mag.) (ITA Nos 7987 and 7988 of 1992) and Amadeus Global Travel Distribution S.A. 113 TTJ 767 (Delhi).

b) **Laird Technologies India (P) Ltd. [2010] 323 ITR 598 (AAR)**

The AAR held that the Indian company was not actually required to act as an agent of the foreign enterprise in any sense while conducting the business. In this regards, it relied on review of the terms of the Agreement entered by the Indian company with the foreign enterprise, its actual practice as well as below mentioned facts:

- It had been carrying on its business operations by itself without any directions or instructions from the foreign enterprise;
- It bore the risk and responsibility of its business transactions. Further, the risk of pricing a product continued to exist with it;
- It supplied goods to its client not on behalf of the foreign enterprise but on its own and its transactions with its client have been on a principal-to-principal basis;
- Under the agreement entered with the foreign enterprise, it is left free to establish business relationships with other potential clients in India;
- It had recruited its own sales personnel for the task;
- It was neither dependent on the foreign enterprise economically nor it had been subjected to any





form of control by the foreign enterprise from functional point of view;

- It reserved the right to renegotiate on its own terms;
- Above all, there was nothing to show that its activities were devoted wholly or almost wholly to or on behalf of the foreign enterprise.

Factors Influencing test of dependent vs. independent agent

Once it is determined that there exists agency relationship between Indian company and the foreign enterprise, the second step would be to determine whether the Indian company is a dependent agent or an independent agent.

Majority of the DTAA's entered by India exclude agents having independent status from the ambit of the Agency PE clause. These tax treaties provide that any person, though acting on behalf of the foreign enterprise, would not be regarded as dependent agent if such person is

- An independent agent;
- Not legally and/or economically dependent on the foreign enterprise; and
- Acts in its ordinary course of business.

Based on jurisprudence on the subject, some of the factors that can be considered as relevant to determine the status of an agent are discussed below.

Economic and legal independence:

The first criterion to determine whether the agent is an

independent agent or a dependent agent, it needs to ascertain if the agent is economically and/or legally dependent on the foreign enterprise. If the agent is economically and/or legally dependent on the foreign enterprise, he will, generally, lose his independent status.

View given in Commentary on OECD MC and UN MC:

The OECD MC and UN MC states that a person will be considered to be independent agent only if:

- he is independent of the enterprise both legally and economically,

AND

- he acts in the ordinary course of his business when acting on behalf of the enterprise.

Both the above conditions have been explained in detail by OECD MC which in Para 38 states that following points should be considered while determining that enterprise is legally and economically independent.

- Whether agent's commercial activities are subject to detailed instructions or to comprehensive control by the foreign enterprise
- Whether the entrepreneurial risk has to be borne by the agent or by the enterprise the agent represents.
- Whether agent is responsible to his principal for the results of his work but not subject to significant control with respect to the manner in which that work is carried out
- Whether agent exercises freedom in the conduct of business within the authority granted by the agreement.
- The extent of the obligations which an agent possesses vis-à-vis the enterprise.
- Number of principals represented by the agent, etc.

Additionally, OECD MC in Para 38.1 also states that while determining legal dependence, control exercised by parent company over its subsidiary in its capacity as shareholder would not be relevant while determining whether agent is dependent agent of PE.

UN MC also accepts the above view given in OECD MC.

Ordinary course of business

As explained above, apart from agent being engaged in independent capacity, he also needs to act in his ordinary course of business. An ordinary course of business presupposes that activities undertaken by an agent are such that would have been undertaken by similar independent agent.

(continued on page 131)

Agency Permanent Establishment – Basic Concepts and Issues

(continued from page 92)

View given in Commentary on OECD MC and UN MC:

The OECD MC states that an agent cannot be said to act in his ordinary course of business, if it undertakes activities which belong to scope of operations covered by the enterprise rather than that of the agent. For example, if a commission agent not only sells goods of an enterprise but also exercises an authority to conclude contracts, he would be considered to be acting out of his ordinary course of business of being a commission agent.

Further, OECD MC also states that in deciding whether or not particular activities fall within or outside the ordinary course of business of an agent, normal business activities undertaken by a broker, commission agent or other independent agent would need to be compared with activities undertaken by an agent.

The commentary on UN MC has also made observations similar to views given by OECD MC. The judicial precedents on the above points are discussed below.

Jurisprudence on economic and legal independence

a) Galileo International Inc [2008] 19 SOT 257 (Delhi)

The Delhi Tribunal has held that if an agent is functionally and financially dependent on the principal, it can be said that the agent is not of an independent status.

Jurisprudence on ordinary course of business activities

a) Galileo International Inc [2008] 19 SOT 257 (Delhi)

The Indian entity was carrying on two types of

activities viz. i) full fledged travel agency business; and

ii) maintain and operate the system for providing electronic global distribution services to airlines, hotels etc by connecting travel agents utilising a computerised reservation system.

Based on the facts, the Indian entity was totally dependent on the foreign enterprise in respect of rendering of services to the clients of foreign enterprise as *that part of the activities of the Indian entity* was carried on solely for the foreign enterprise.

b) Western Union Financial services Inc [2007] 104 ITD 34 (Delhi)

The revenue authorities argued that agents of the appellant who was engaged in the business of money transfer services (viz. department of posts, commercial banks, NBFCs and tour operators) did not act in their ordinary course of business. According to the revenue authorities, though it was usual for the post offices and banks to provide money transfer services, traditionally these services were restricted to money transfers within India. Accordingly, facilitation of international money transfers was beyond ordinary course of business of the agents of the appellant.

Rejecting the contention of the revenue authorities, the ITAT held that it was normal for the banks etc to engage in money transfer business. It was not material that the money, in this case, was remitted from outside India instead of from within India.

Activities – Mainly/wholly on behalf of other enterprise;

Another criterion to ascertain the status of an agent is to evaluate whether, in the ordinary course of business, if the agent is mainly or wholly working for the foreign enterprise. If, based on the facts, it is demonstrated that the agent is working mainly or wholly for the foreign enterprise, it would be less likely that agent is of independent status.

View given in Commentary on OECD MC:

The OECD MC in Para 38.6 states that independent status is less likely if the activities of the agent are performed wholly or almost wholly on behalf of only one enterprise over the lifetime of the business or a long period of time. However, this fact is not by itself determinative and must be considered along with other factors.

View given in Commentary on UN MC:

UN MC apart from confirming the above views given in OECD MC further adds an agent would be not considered to be of independent status, if its activities



are devoted wholly or almost wholly on behalf of an enterprise and conditions between that enterprise and the agent are different from those which would have been made between independent enterprises. Thus, in other words, if the conditions between agent and enterprise are not at arm's length and agent works wholly or almost wholly on behalf of an enterprise, he would not be considered to be an agent of independent status. Further, it also states that the mere fact that the number of enterprises for which the independent agent acts has fallen to one does not of itself change his status from independent to dependent, though it might serve as an indicator of the absence of the independence of that agent.

Jurisprudence on mainly/wholly on behalf of other enterprise

a) DHL Operations BV [2005] 142 TAXMAN 1 (Mum.) (Mag.) (ITA Nos 7987 and 7988 of 1992)

The Tribunal held that the words in a statute or document take their colour from the context. The ITAT further held that while making enquiry relating to the activities of the non-resident vis-à-vis the activities of the agent of independent status, enquiry need not be made as to whether the agent is carrying on various activities other than the activity of being an agent of the non-resident. However, the relevant enquiry is as to whether the entire activities relating to the non-resident are carried on wholly or almost wholly by the agent on behalf of the non-resident enterprise.

b) Speciality Magazines (P) Ltd., [2005] 274 ITR 310 (AAR)

The AAR held that the terms 'wholly' and 'almost wholly' are not technical terms or terms of art. They must receive their ordinary meaning as understood by English speaking people. The word 'wholly' means entirely, completely, fully, totally; 'almost wholly' would mean very near to wholly, a little less than whole. In terms of percentage 'almost wholly' would mean anything less than 90%.

Since the applicant was earning income from other clients (the clients other than the foreign enterprise) between 22% to 25%, based on the facts, the AAR held that the activities of the applicant were not carried out wholly or almost wholly for foreign enterprise.

India's position on Article 5(6) of the OECD MC

Though India has made several reservations on the language and interpretation of Article 5(5), Article 5(6) and commentary on these articles, the following reservation may create significant issues.

"India reserves the right to make it clear that an agent



whose activities are conducted wholly or almost wholly on behalf of a single enterprise will not be considered an agent of an independent status."

Thus, as per the above reservation, Indian government has only reiterated the position given under existing second proviso to Explanation 2 to Section 9(1)(i) of the Act which also states that if an agent is wholly or mainly dependent on foreign enterprise, he would lose his independent status.

Concluding

As can be seen from the above discussions, subject matter of determining whether an agent is dependent or independent has been extensively discussed by the Indian courts and is the first step while analysing the concept of Agency PE. Further, it is pertinent to note that Direct Tax Code Bill 2010 has specifically defined Permanent Establishment, which includes Agency PE similar to the definition provided in various DTAA's signed by India. In light of the above discussions, foreign enterprises undertaking business in India through agency agreements would need to consider the above factors for determining whether their agent is an independent agent or dependent agent. Accordingly, once, it is ascertained that the agent is a dependent agent, the next question which would need to be considered is whether undertaking business through dependent agent would create Agency PE in India. ■

Ombudsman: A Regulator to Regulate the Regulator

“Corruption is like a ball of snow, once it’s set a rolling it must increase.”

- Charles Caleb Colton



An ombudsman is someone who investigates complaints made by people against the government or any public organisation. An Ombudsman has become a standard part of the machinery of any democratic government in the modern world. The institution of ombudsman originated in Scandinavian countries. The Government of India has designated several ombudsmen for the redressal of grievances and complaints from individuals in the banking, insurance and other sectors being serviced by both private and public bodies and corporations. The author in this article has dealt in more details some regulatory authorities impacting common man apart from Banking, Insurance and Income Tax Ombudsman.

The word ombudsman has one familiar element, man, but it is difficult to think of what ombuds could mean? Ombud means "commissioner" coming from Old Norse umbodh, "charge, commission, administration by a delegacy". An ombudsman is someone who investigates complaints made by people against the government or any public organisation. Ombudsman means "the grievance man" or a "commissioner of the administration". A precise definition of Ombudsman cannot be given.

In the flush of power, the administration very often exhibits a tendency to disregard individual rights and interest in the name of public good. It is not eccentric to conclude that if there is more administration, there will be more mal-administration." In these circumstances, the quest for an effective control mechanism over the administration has led the people to the institution of ombudsman.



CA. Rohit Patoria

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

Ombudsman is “Public safety Valve” against mal-administration. A good system of administration, in the ultimate analysis has to be responsible and responsive to the people. An Ombudsman has become a standard part of the machinery of any democratic government in the modern world. The institution of ombudsman originated in Scandinavian countries. Sweden was the first country to adopt this institution as early as 1809.

Owing to intensive increase in governmental activities, the occasion of individual grievances multiplied. Referring to this situation, the Justice Report said: “There appears to be a continuous flow of relatively minor complaints not sufficient in themselves to attract public interest, but nevertheless of great importance to the individuals concerned, which gives rise to the feeling of frustration and resentment because of inadequacy of the existing means of seeking redress.”

The Banking, Insurance, Income Tax and Indirect Tax are few sectors which directly impact the professionals and there is need for awareness among professionals about the functioning, jurisdiction and powers of ombudsman in these sectors.

History of Ombudsman in India

Sri M.C. Setalvad, in his speech at the All India Lawyers’ Conference held in 1962 suggested the idea of establishing an institution similar to that of an Ombudsman.

The Central Government introduced the first Lokpal and Lokayuktas Bill in 1968. An Administrative Reforms Commission (ARC) set up on 5th January 1966 recommended a two-tier machinery: *Lokpal at the Centre* and one *Lokayukta* each at the *State level* for redressal of people's grievances. The Indian Lokpal is synonymous to the institution of Ombudsman existing in the Scandinavian countries. Lokayukta institution has come into existence in different years, in different States in India. Orissa is the first state to present a bill on establishment of Lokayukta in 1970; however, Maharashtra is the first state to have established the institution in 1972.

The Central Government introduced the first Lokpal and Lokayuktas Bill in 1968 and lastly in 2011, the Lokpal Bill was passed by the Lok Sabha (on 27th December 2011).

Need to regulate the Regulators

Soon after the Indian economy began opening to the private sector during 1991-1992, the need for regulation was realised and was translated into action with the establishment of regulatory authorities for different sectors. However, most of these regulatory authorities are still in the evolution. There can never be

The Central Government introduced the first Lokpal and Lokayuktas Bill in 1968. *Lokpal at the Centre* and one *Lokayukta* each at the *State level* for redressal of people's grievances.

a free-for-all in a market economy, howsoever open it is. The operation of a free market economy in a smooth manner, and without hurting consumer interests, is simply not possible or feasible without an effective regulator. India's tryst with free market forces began in 1991-1992.

Government began with allowing the private sector to enter the power generation; followed by the - telecom sector with the government allowing the private sector to offer cellular services and following it up with the entire gamut of telecom services, aviation business, oil refining business, private sector petrol pumps Insurance business, piped supply of gas. The list is virtually endless.

Regulatory Authorities impacting common man

If *state monopoly* is bad, *private monopoly* could be worse. Private sector entered areas hitherto reserved for the public sector. This necessitated the setting up of regulatory bodies. Even though there are large number of regulatory authorities — from Coir Board to Coastal Zone Authority — not all of them impact the common man in his daily life. Following are some regulatory authorities impacting common man apart from Banking, Insurance and Income Tax which are dealt with in this article in more details.

- Telecom Regulatory Authority of India (TRAI) ;
- Securities Exchange Board of India (SEBI);
- Forward Markets Commission (FMC);
- Central & State Electricity Regulatory Commission (CERC & SERC);
- Pension Fund Regulatory Development Authority ;
- Airport Economic Regulatory Authority;
- Petroleum and Natural Gas Regulatory Board

Telecom Regulatory Authority of India (TRAI)

Soon after allowing the private sector to offer telecom services in Delhi and Mumbai there was a mad rush by private operators. Bids were ridiculously high and all new private telecom companies collapsed when they began to demand such high tariffs that potential customers simply disappeared. In order to regulate all this, the TRAI was set up in 1997. But the TRAI got into a series of spats with Department of Telecommunication (DoT). Being both the licensor and the policy-maker, there was a serious conflict in roles DoT played as it was also a player and competing with the new private

Orrissa is the first state to present a bill on establishment of Lokayukta in 1970 however, Maharashtra is the first state to have established the institution in 1972.

entrants. This resulted in an amendment in the TRAI Act to give more teeth to the regulator. A super regulator on top of TRAI Telecom Dispute Settlement and Appellate Authority (TDSAT) was also set up in 2000 to appeal against any TRAI order.

Securities Exchange Board of India (SEBI)

Although SEBI notified the SEBI (Ombudsman) Regulations, 2003 for the establishment of the Office of the Ombudsman to redress the grievances of investors in the securities and capital market, one of the weakest areas in investor protection in the capital and securities market has been the poor grievance redressal mechanism. Despite several attempts, market regulator SEBI has failed to successfully implement the ombudsman method for grievance redressal.

Speedy redressal of investor grievances that was the driving force behind SEBI's August 2003 ombudsman regulations has not taken off due to legal hitches. There is a need for setting up an independent ombudsman.

Forward Markets Commission (FMC)

As for FMC which now regulates the national multi-commodity exchange (MCX), the less said, the better. When inflation is shooting high, there is widespread demand, including from political circles, that there should be serious curb on the commodity exchange, as its futures trading had led to food articles' price inflation. Today, the regulator is safe but food articles prices continue to be high.

Central Electricity Regulatory Commission (CERC) & State Electricity Regulatory Commission (SERC)

CERC and SERC are the two **electricity regulators**—one operating at the central level and the other at various state levels. Both CERC and SERC have been taking tough stand in resolving disputes between different power generators, fixing of tariff, wheeling of power and distribution of power, especially after the private sector entered every gamut of the power sector. But their role in meeting consumer interests remains largely undefined, though the electricity regulators are supposed to ensure that power companies, whether at generation level or at the consumer end (that is distribution), do not indulge in profiteering.

The following New Regulators are yet to make their presence.

1. Pension Fund Regulatory and Development Authority (PFRDA)

PFRDA was established by Government of India on 23rd August, 2003. The Government has, through an executive order dated 10th October, 2003, mandated PFRDA to act as a regulator for the pension sector. The mandate of PFRDA is development and regulation of pension sector in India.

2. Petroleum & Natural Gas Regulatory Board (PNGRB)

The Petroleum and Natural Gas Regulatory Board (PNGRB) was constituted under The Petroleum and Natural Gas Regulatory Board Act, 2006 (NO. 19 OF 2006) notified *vide* Gazette Notification dated 31st March, 2006 to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to promote competitive markets and for matters connected therewith or incidental thereto.

3. Airports Economic Regulatory Authority (AERA)

The Airports Economic Regulatory Authority (AERA) is a statutory body constituted under the Airports Economic Regulatory Authority of India Act, 2008 (27 of 2008) was established by the Government *vide* its Notification No. GSR 317 (E) dated 12-05-09 with its head office at Delhi.

Banking Ombudsman

The Banking Ombudsman Scheme was introduced under Section 35A of the Banking Regulation Act, 1949 by RBI with effect from 1995. A senior official shall be appointed by the Reserve Bank of India to redress customer complaints against deficiency in certain banking services. As on date, 15 Banking Ombudsmen have been appointed with their offices located mostly in state capitals. All Scheduled Commercial Banks, Regional Rural Banks and Scheduled Primary Co-operative Banks are covered under the Scheme. Banking Ombudsman is a quasi judicial authority.

Territorial jurisdiction

- Branch of the Bank complained against
- In case of services with centralised operations and

Soon after the Indian economy began opening to the private sector during 1991-92, the need for regulation was realised and was translated into action with the establishment of regulatory authorities for different sectors.

Credit Cards, it can be the place of residence of the complainant

Prerequisite

Before making a complaint to Ombudsman, Complainant should make a written representation to the Bank. Bank should have either *rejected* the complaint or an *unsatisfactory reply* should have been received or the complaint should stand *un-replied* for at least one month. The complaint must be lodged within one year of the events mentioned above

Type and Scope of the complaints considered by a Banking Ombudsman is very comprehensive. Banking Ombudsman does not charge any fee. Complaint can be filed by an authorised representative.

Maximum limit on the amount of compensation is ₹10 lakh. In addition the maximum compensation ₹1 lakh for mental agony and harassment is also prescribed. If the award is acceptable, the complainant has to send letter of acceptance of the award in full and final settlement to the concerned Bank. Not satisfied with the decision passed by the Banking Ombudsman, one can approach the appellate authority against the Banking Ombudsmen's decision. Appellate Authority is vested with a Deputy Governor of the RBI.

Types of Complaints

- non-payment or inordinate delay in the payment or collection;
- non-acceptance, without sufficient cause, of small denomination notes or coins tendered and for charging of commission for this service;
- non-payment or delay in payment of inward remittances ;
- failure or delay in issue, of drafts, pay orders or bankers' cheques;
- non-adherence to prescribed working hours;
- failure or delay in providing a banking facility (other than loans and advances) promised in writing by a bank or its direct selling agents;
- delays, non-credit of proceeds to parties' accounts, non-payment of deposit or non-observance of the Reserve Bank directives, if any, applicable to rate of interest on deposits in any savings, current or other account maintained with a bank ;
- delays in receipt of export proceeds, handling of export bills, collection of bills, etc., for exporters provided the said complaints pertain to the bank's operations in India;
- refusal to open deposit accounts without any valid reason for refusal;
- levying of charges without adequate prior notice to the customer;

In order to regulate telecom services, the TRAI was set up in 1997. A super regulator on top of TRAI Telecom Dispute Settlement and Appellate Authority (TDSAT) was also set up in

2000 to appeal against any TRAI order.

- non-adherence by the bank or its subsidiaries to the instructions of Reserve Bank on ATM/debit card operations or credit card operations;
- non-disbursement or delay in disbursement of pension to the extent the grievance can be attributed to the action on the part of the bank concerned, (but not with regard to its employees);
- refusal to accept or delay in accepting payment towards taxes, as required by Reserve Bank/ Government;
- refusal to issue or delay in issuing, or failure to service or delay in servicing or redemption of Government securities;
- forced closure of deposit accounts without due notice or without sufficient reason;
- refusal to close or delay in closing the accounts;
- non-adherence to the fair practices code as adopted by the bank; and
- any other matter relating to the violation of the directives issued by the Reserve Bank in relation to banking or other services.
- deficiency in Internet banking services;
- non-adherence to the provisions of Fair Practices Code for lenders as adopted by the banks or Code of Banks Commitment to Customers;
- non-observance of Regulatory guidelines on engagement of recovery agents by the banks.

Insurance Ombudsman

It is created by a Government of India Notification dated 11th November, 1998. Governing body of insurance council issues orders of appointment of the Insurance Ombudsman. The governing body of insurance council consists of representatives of insurance companies. The term of office is for three years or 65 years of age whichever is earlier. Governing body has appointed twelve Ombudsmen across the country allotting them different geographical areas as their areas of jurisdiction. Ombudsman has to perform two types of functions (1) conciliation, (2) Award making. Ombudsman's powers are restricted to insurance contracts of value not exceeding ₹20 lakh.

The insurance companies are required to honour the awards passed by an Insurance Ombudsman within three months. The complaint is not made later than one year after the insurer had replied.

No fees/charges payable for lodging a complaint. In case both parties agree for mediation, the Ombudsman shall give his recommendation within one month; otherwise, he shall pass his award within three months from the date of receipt of the complaint. The awards are binding upon the insurance companies. If the policy holder is not satisfied with the award of the Ombudsman he can approach other venues like Consumer Forums and Courts of law for redressal of his grievances. As per the policy-holder's protection regulations, every insurer shall inform the policy holder along with the policy document in respect of the insurance Ombudsman in whose jurisdiction his office falls for the purpose of grievances redressal arising if any subsequently.

Pre-requisite conditions for lodging a complaint

1. The complaint must be by an individual on a 'Personal Lines' insurance and within the terms of reference of the Insurance Ombudsman.
2. A representation should stand made to the Insurance Company and either an unsatisfactory reply should have been received or the representation should stand un-replied for at least one month.
3. The complaint must be lodged within one year of the events mentioned above.
4. The total relief sought must be within an amount of ₹20 lakh.
5. The subject matter of the complaint should not currently be or have earlier been before a Court/ Consumer Forum.

Territorial jurisdiction

- Branch or Office of the Insurer complained against.
- In case of Group Insurance policies, it can be the place of residence of the complainant.

Personal lines

Any aggrieved individual who has taken an Insurance Policy on personal lines (or if deceased, the legal heir(s) under such policy) can approach Ombudsman.

Insurance on personal lines means a policy taken or given in an individual capacity, e.g. life insurance, personal accident insurance, mediclaim insurance, insurance of personal property of the individual such as motor vehicle, household articles, etc.

A II Scheduled Commercial Banks, Regional Rural Banks and Scheduled Primary Co-operative Banks are covered under the Scheme. Banking Ombudsman is a quasi judicial authority.

Type of Complaints that can be entertained

Complaints pertaining to -

- repudiation of claims totally or partially,
- delay in settlement of claims,
- any dispute on the legal construction of the policies in so far as such disputes relate to claims,
- disputes regarding premiums paid/payable and non-issue of insurance documents.

The Complaint is to be made in writing and may be lodged through personal approach or through post/fax/email (followed by hard copy).

Income Tax Ombudsman

Epitome of the Income Tax Ombudsman Guidelines, 2006

'Income tax authority complained against' means the junior-most Income Tax Officer not below the rank of an Income Tax Officer who has given the cause of grievance to the complainant. The Ombudsman shall be independent of the jurisdiction of the Income Tax department. Tenure is two years extendable by one year or age of 63 years, whichever is earlier. No reappointment. The Central Government shall specify the territorial jurisdiction of each Ombudsman. Ombudsman to send a monthly report to the Chairman, CBDT and Secretary, Department of Revenue in the Ministry of Finance recommending appropriate action.

Procedure for filing the complaint

- make a complaint against the Income-tax official in writing to the Ombudsman for grievance either personally or through the authorised representative.
- complaint shall be duly signed by the complainant and the authorised representative, if any
- Clearly state:
 - 1) Name and address;
 - 2) Income Tax authority against complain is made;
 - 3) Documents submitted to the Income Tax authority;
 - 4) The issue for which the redressal is sought.
- Also mention:
 - 1) Date on which first complaint was made to the income-tax authorities;
 - 2) The higher authority approached after the first level failed to respond; and
 - 3) The time gap since following on the complaint.

Complaint made through electronic means shall also be accepted.

A complaint to the Income-tax Ombudsman, not only will it benefit the complainant, but also benefit others. Thus, approaching the ombudsman also helps the government and authorities to better our tax process. ”

Pre-requisite conditions for lodging a complaint

Before making a complaint to the Ombudsman, you (Complainant) should make a written representation to the Income Tax Authority superior to the one complained against such authority should have either *rejected* the complaint or an *unsatisfactory reply* should have been received or the complaint should stand *un-replied* for at least one month.

The complaint must be lodged within one year of the events mentioned above. The complaint is not in respect of the same subject matter which was settled through the Office of the Ombudsman in any previous proceedings. No complaint shall be made to the Income-tax Ombudsman on an issue which has been or is the subject matter of any proceeding in an appeal, revision, reference or writ before any Income Tax Authority or Appellate Authority or Tribunal or Court.

Grounds on which complaint shall be filed

A complaint on any one or more of the following grounds alleging deficiency in the working of the Income-tax Department may be filed with the Ombudsman:

- (a) delay in issue of refunds beyond time limits prescribed by law or under the relevant instructions issued from time to time by the Central Board of Direct Taxes;
- (b) sending of envelopes without refund vouchers in cases of refund;
- (c) non adherence to the principle of 'First Come First Served' in sending refunds;
- (d) non acknowledgement of letters or documents sent to the department;
- (e) non up-dating of demand and other registers leading to harassment of assesseees;
- (f) lack of transparency in identifying cases for scrutiny and non communication of reasons for selecting the case for scrutiny;
- (g) delay in disposing cases of interest waiver;
- (h) delay in disposal of rectification applications;
- (i) delay in giving effect to the appellate orders;
- (j) delay in release of seized books of account and assets, after the proceedings under the Income-tax Act in respect of the years for which the books of account or other documents are relevant are completed;

- (k) delay in allotment of permanent account number (PAN);
- (l) non-credit of tax paid, including tax deducted at source;
- (m) non-adherence to prescribed working hours by Income Tax officials;
- (n) unwarranted rude behaviour of Income Tax officials with assesseees;
- (o) any other matter relating to violation of the administrative instructions and circulars issued by the Central Board of Direct Taxes in relation to Income-tax administration.

Award

The ombudsman mediates between the income-tax department and the tax-payer or tax assessee and seeks to settle the issue and pass a decision also called 'award', based on the income-tax rules and guidelines.

If a complaint is not settled by agreement within a period of one month from the date of receipt of the complaint or such further period as the Ombudsman may consider necessary, he may pass an award after affording the parties reasonable opportunity to present their case.

'Award' passed shall be a speaking order.

A token compensation amount not exceeding ₹1,000/- can be awarded for the loss suffered by the complainant.

Award shall not be binding on the Income Tax Department unless the complainant furnishes to it, within a period of 15 days from the date of receipt of a copy of the award, a letter of acceptance of the award in full and final settlement of his complaint.

If the complainant *does not accept* the Award passed by the Ombudsman or *fails to furnish* his letter of acceptance within the said period of 15 days or within such time, not exceeding a period of 15 days that may be granted by the Ombudsman, the award shall lapse and be of **no effect**.

Concluding remarks

A complaint to the ombudsman, not only will it benefit

The Indirect Tax Ombudsman Guidelines, 2011 came into force from 11th May, 2011 are introduced with the objective of enabling the resolution of complaints relating to public grievances against the Customs, Central Excise and Service Tax Department and to facilitate the satisfaction or settlement of such complaints. ”

you, but also benefit others. The ombudsman is asked to make a *note of the problem areas for taxpayers*, which is then sent to the CBDT and the Union Finance Ministry. He also sends a report once a year to the Government of India and the CBDT to inform them of officials who have not been acting the right way. Thus, approaching the ombudsman can help the government and authorities better our tax process.

Indirect Tax Ombudsman

The Indirect Tax Ombudsman Guidelines, 2011 which came into force from 11th May, 2011 are introduced with the objective of enabling the resolution of complaints relating to public grievances against the Customs, Central Excise and Service Tax Department and to facilitate the satisfaction or settlement of such complaints. These are more or less on similar lines as The Income Tax Ombudsman Guidelines, 2006.

Grounds on which complaint shall be filed

A complaint on any one or more of the following grounds alleging deficiency in the working of the Customs, Central Excise and Service Tax Department may be filed with the Ombudsman:

- (a) delay in the issue of refunds or rebate beyond time limits prescribed by law or under the relevant instructions issued from time to time by the Central Board of Excise and Customs;
- (b) delay in adjudication;
- (c) delay in registration of tax payers;
- (d) delay in giving effect to Appellate orders;
- (e) non-adherence to the principle of "First Come First Served" in sending refunds;
- (f) non-adherence to the rules prescribed for disbursement of drawback;
- (g) non-acknowledgement of letters or documents sent to the department;
- (h) delay in release of seized books of account and assets, after the proceedings under the Customs, Central Excise and Service Tax statutes in respect of the years for which the books of account or other documents are relevant are completed;
- (i) non-adherence to prescribed working hours by Customs, Central Excise and Service Tax officials;
- (j) unwarranted rude behaviour of Customs, Central Excise and Service Tax officials with assesseees;
- (k) any other matter relating to violation of the administrative instructions and circulars issued by the Central Board of Excise and Customs (CBEC) in relation to Customs, Central Excise and Service Tax administration.

The institution of ombudsman is considered as easy, quick and inexpensive machinery for the redress of individual grievances of the citizens. ”

Provided that, if on any of the grounds above, the responsibility for taking action is with the CBEC or on a Centralised authority e.g., [Director General (Systems)], then the Ombudsman shall not have the power to pass an award. In such cases, the decision of the Ombudsman shall be recommendatory in nature and shall be forwarded in writing to the Revenue Secretary or the Chairman, CBEC or the centralised authority, as the case may be.

A token compensation amount not exceeding ₹5,000/- can be awarded for the loss suffered by the complainant in addition to an award after allowing the parties a reasonable opportunity to present their case.

Conclusion

A good system of administration, in the ultimate analysis has to be responsible and responsive to the people. The Government of India has designated several ombudsmen for the redressal of grievances and complaints from individuals in the banking, insurance and other sectors being serviced by both private and public bodies and corporations. The institution of ombudsman is considered as easy, quick and inexpensive machinery for the redress of individual grievances of the citizens. However, most of these regulatory authorities are still in the evolution.

References:

www.thefreedictionary.com
 en.wikipedia.org
 www.rbi.org.in
 www.irdaindia.org
 www.incometaxindia.gov.in
 www.cbec.gov.in
 www.smeworld.org

- For List of Insurance Ombudsmen: http://www.irdaindia.org/ombudsmen/ombudsmenlist_new.htm
- The awards of ombudsman have been made available in the website of 'Governing Body of Insurance Council' under the following link: <http://www.gbic.co.in/synopsis.html> ■

Scheme of Arrangements: Role of the High Court



An attempt has been made in this article to analyse the role and power of the High Court in sanctioning the scheme of arrangement.

With the IPL season over recently, it would be apt to add flavour of cricket. In the scheme of arrangement or compromise (Scheme), the High Court (Court) acts like an umpire in cricket who has to see that both the teams play according to the rules and do not overstep the limits. But how best the game is to be played is left to the players and not to the umpire¹.

Essentially the provisions concerning the Scheme are stipulated under the Companies Act, 1956, (the Act) and the Companies (Court) Rules, 1959 (the Rules). Sections 390 to 394 of the Act are the basic Sections which deal with the Scheme. The other provisions of the Act which deal with meetings of the requisite class and procedural requirements for convening and holding such meetings are also essential to note. The Rules relevant for the purpose of sanction of the Scheme are rules 6, 7, 9, 10 and 59 to 87. The Scheme is primarily the Court supervised process. Section 391 of the Act, clothes the Court with the power to sanction the Scheme. Section 392 empowers the Court to supervise the carrying out of the Scheme or to modify the same and to order the winding up if deemed necessary. Section 394 *inter alia* gives power to the Court either through



Mr. Paras Kumar Jain

(The author is a Company Secretary. He can be reached at paraskumar.jnuziveeduseeds.com)

¹ Miheer H. Mafatlal vs Mafatlal Industries Ltd., (1996) 87 Comp. Cases 792

In the scheme of arrangement or compromise, the High Court acts like an umpire, but how best the game is to be played is left to the players and not to the umpire.

the order sanctioning the Scheme or by a subsequent order to make provisions for certain matters including incidental, consequential and supplemental matters as are necessary to secure that the re-construction or amalgamation is fully and effectively carried out.

In the Scheme, the Court is primarily involved at three stages (i) firstly, when the applicant seeks directions to call the meeting(s) of the requisite class; (ii) secondly, when the applicant seeks its sanction for the Scheme based on compliance of directions earlier given and the applicable provisions of the law; and (iii) thirdly, if need be, when its directions are sought for the proper working of the sanctioned Scheme.

How should the Court act while sanctioning the Scheme?

The Court doesn't simply sanction's the prayer of the members' or the creditors', as the case may be, as expressed in the resolution passing the Scheme. In exercising its discretion to sanction the Scheme, the Court considers, first, whether the statutory provisions have been fulfilled; secondly, whether the classes were fairly represented by those who attended the meeting; thirdly whether the statutory majority was acting *bona fide*; and, fourthly, whether the Scheme is such which a "man of business" would reasonably approve. The celebrated principles as laid out by the apex court² and on which the Court usually rely while considering the Scheme are summarised below:

1. The requisite statutory procedure for supporting the Scheme has been complied with and that the requisite meetings have been held;
2. The Scheme is backed up by the requisite majority vote as required;
3. At the meeting requisite class persons had the relevant material to enable them arrive at an informed decision for approving the Scheme. The majority decision of the concerned class is just and fair to the class as a whole so as to legitimately bind even the dissenting members of that class;
4. Necessary material is placed before the voters at the meetings concerned;
5. The requisite material is placed before the Court and the Court is satisfied about the same;
6. The proposed Scheme is found not to be violative of any provision of law and is not contrary to

public policy. For ascertaining the real purpose underlying the Scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the Scheme and can judiciously X-ray the same;

7. The requisite class acted in bona fide and in good faith and did not coerce the minority;
8. The Scheme as a whole is just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the Scheme is meant; and
9. Once the aforesaid broad parameters are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the Scheme even if in the view of the Court there would be a better Scheme for the company and its members or creditors.

Are the powers of the Court different under 392 and 394? Can the Court modify the Scheme? Can the Court order winding up in the Scheme?

Section 392 (1)(b) stipulates that the Court may give such directions in regard to any matter or make such modifications in the Scheme as it may consider necessary for the proper working of the Scheme. Under Section 392(2) the Court has power to make an order of winding up if it is satisfied that the Scheme sanctioned under Section 391 cannot be worked satisfactorily with or without modifications. On the other hand, Section 394(1)(vi) restricts this power essentially to incidental, consequential and supplemental matters only. Plain reading suggests that powers of the Court under Section 392(1)(b) are of wider amplitude than the powers under Section 394(1)(vi).

The scope of the Court's power under Section 394(1)(vi) are merely intended to deal with such matters as may be incidental, consequential and supplemental to the amalgamation in the sense that direction with regard to these matters as necessary to give effect to the amalgamation and reconstruction and to make it complete and effective³.

The Court exercises supervisory powers over the carrying out into reality the Scheme sanctioned by it. If

Sections 390 to 394 are the basic sections which deal with the Scheme. The Rules relevant for the purpose of sanction of the Scheme are rules 6, 7, 9, 10 and 59 to 87.

² Miheer H. Mafatlal vs. Mafatlal Industries Ltd., (1996) 87 Comp. Cases 792

³ Union of India vs. Asia Udyog Pvt. Ltd., 1974 44 CompCas 359 Delhi

Powers of the Court under section 392(1)(b) are of wider amplitude than the powers under Section 394(1)(vi). ”

any difficulties arise in the working out of the Scheme, the Court can modify the same, so that its purpose can be achieved for the mutual advantage and benefit of requisite class of persons who are parties to it⁴.

The framers of the law in India have conferred statutory powers on the Court to make such modifications in the Scheme as the Court may consider necessary for its proper working⁵. The power of widest amplitude are conferred on the Court under Section 392 and this extends not only to giving directions but also to making such modification in the Scheme as the Court may consider necessary, the only limitation on the power of the Court being that such directions should be given and modifications should be made for its proper working⁶. Thus the direction or modification, whatever is necessary, is only to ensure proper working of the Scheme to achieve that object and no other.



Section 392 creates a duty on the Court to supervise the carrying out of the Scheme and this power and duty was created to enable the Court to take steps from time to time to remove all obstacles in the way of enforcement of a sanctioned Scheme. While sanctioning, the Court shall anticipate some hitches and difficulties which it can remove by the order of the sanction. So long as the basic nature of the arrangement remains the same the power of modification of the Court is unlimited, the only limit being that the modification should be necessary for the working arrangement. It must be noted that the power of the Court does not extend to re-writing the Scheme in any manner⁷.

Section 392(2) stipulates that if the Court is satisfied that the Scheme sanctioned under Section 391 cannot be worked satisfactorily with or without modifications it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under Section 433 of this Act. However, if the Scheme can be worked as it is or by making modifications, the Court will have no power to wind up the Company under Section 392(2)⁸.

It cannot be said that where the Scheme is governed by the provisions of Section 394, Section 392 would have no application.

The exigencies, facts and circumstances play dominant role in passing any order under Sections 391 to 394 after sanctioning of the Scheme. The Court is not powerless and it can never become *functus officio*. Sections 391 to 394 should be construed to be are interlinked and interconnected⁹.

To what extent the Court can interfere in valuation?

The valuation of shares is a technical matter and it requires considerable skill and experience. The Court while sanctioning the Scheme does not function as an Appellate Court and as such the Court's obligation is limited to be satisfied that the valuation is done by an independent body in accordance with law. The Court need not ascertain mathematical accuracy of the valuation on the basis of an arithmetical test.

It is no-brainer to guess that there are bound to be differences of opinion among accountants as to what is the correct value of the shares of a company. The test of fairness of valuation is not whether the offer is fair to a particular member, who may have reasons of his own

⁴ D.S. Venkatraman vs. Gujarat Industries Pvt. Ltd., (1977) 47 CompCas 352 Bom

⁵ Mansukhlal vs. M.V. Shah, 1976 46 Comp. Cas. 279

⁶ S. K. Gupta & Anr vs. K. P. Jain & Anr., AIR 1979 SC 734

⁷ Reliance Natural Resources Ltd. vs. Reliance Industries Ltd., (2010) 156 Comp Cas 455(SC) (Hon. B. Sudershan Reddy, J., dissenting)

⁸ J.K. (Bombay) (P) Ltd. vs. New Kaiser-I-Hind Spg. & Wvg. Co., (1970) AIR 1041

⁹ Reliance Natural Resources Ltd. vs. Reliance Industries Ltd., (2008) 82 SCL 303 Bom

for not agreeing to the valuation, but the overwhelming majority of the members' who have approved of the valuation. The Court should not interfere with valuation in the absence of it being shown to be vitiated by fraud and malafide. The mere fact that determination done by slightly different method might have resulted in different conclusion would not justify interference of the Court¹⁰.

Can the Court stay criminal proceedings while sanctioning the Scheme?

Section 391(6) stipulates that the Court may, at any time after an application has been made to it, stay the commencement or continuation of any suit or proceeding against the company on such terms as the Court thinks fit, until the application is finally disposed off. The phrase "proceeding" as employed by sub-section (6) is of wide import. It is pertinent to note that the word "proceeding" has not been defined by the Act. There are conflicting views of the Courts on whether word "proceeding" indicates that it is confined only to civil proceedings or does it also include criminal proceedings.

The Bombay High Court took a view that Section 391(6) cannot be utilised for staying criminal proceedings against the company for which the Scheme is proposed and that Section 391(6) would include only civil proceedings¹¹. The Allahabad High Court has concurred with the views of the Bombay High Court¹². The Gujarat High Court held that the Court has jurisdiction to stay even criminal proceedings pending against the directors and the company when the Scheme is moved before the court. The Rajasthan High Court has concurred with the views of the Gujarat High Court¹³.

With all due respect, it is submitted that in this matter the better view seems to be that of the Bombay and the Allahabad High Court because the word "proceedings" as employed by sub-section (6) must be construed ejusdem generis with the expression 'suit' used before it. This also seems to be the view of Delhi High Court¹⁴.

If the Scheme can be worked as it is or by making modifications, the Court will have no power to wind up the Company under Section 392(2).



Conclusion

Thus, it can be inferred that the Court is not merely a rubber stamp or a registering authority in the Scheme and it tends to play a supervisory role within the contours of the broad parameters noticed hereinabove. The Court doesn't express its opinion on the merits of the Scheme and its consideration is restricted to the issue that the Scheme is not violative of the principles of law, public policy and, is not opposed to public interest. To sum up the role of the Court in the language of cricket:

Laws of both cricket and Scheme are sufficiently complex and covers numerous and specific matters of fair, unfair and dangerous play. In both the games, the umpire is the sole judge of what is fair, unfair and dangerous play. The Court acting as an umpire in the Scheme would inter alia decide whether the bowler was throwing? Whether the bowler bowled "no-ball" or "wide ball" or "dead ball"? Whether ball struck the ground before being caught or not? The distinction being that while the Court can exercise some powers *suo moto* in the Scheme in a game of cricket a batsman is not to be given out by an umpire unless there is an appeal from the fielding side. ■

¹⁰ Hindustan Lever Employees Union vs. Hindustan Lever Ltd, (1995) 83 Comp. Cases 30

¹¹ State of Tamil Nadu vs. Uma Investments Pvt. Ltd., (1977) 47 CompCas 242 (Bom)

¹² Alps Industries Ltd. , MANU/UP/0261/2010

¹³ TCI Infrastructure Finance Ltd., (2007) 79 SCL 35 (RAJ.)

¹⁴ Krishna Texport Industries Ltd. vs. DCM Limited, MANU/DE/0787/2008

Merger Control Regime in India



With enforcement of provisions related to Mergers and Acquisitions (M&A) as provided in Competition Act, 2002, Indian economy entered into a new era of merger control regime in line with rest of the world. While this regime is decades old in EU and US, it is pretty new for Indian Corporate and economy as a whole. At the heart of the regime is the fundamental principle that M&A deals which are likely to adversely affect competition in the market in India will not be permitted to be consummated. This article provides a glimpse into the merger control provisions applicable in India.

The provisions of Competition Act, 2002 (the Act) relating to regulation of M & A (Referred to as Combinations in the Act) i.e. Section 5, 6, 20, 29, 30 and 31 were enforced through Central Government Notification with effect from 1st June, 2011. Competition Commission of India (Commission) has the power to make regulations for implementing the provisions of the Act. The Commission had issued the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (Combination Regulations) for implementing the provisions of the Act relating to regulation of combinations on 1st June, 2011. Commission has notified certain amendments to these regulations on 23rd February, 2012.

What are Combinations?

Section 5 of the Act describes combinations as mergers/ amalgamations or acquisition of control, shares, voting rights or assets when the value of assets/turnover of the parties to the combination or the group that meet asset or turnover thresholds provided in the Act. The



CA. Sachin Goyal

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

present threshold limits are detailed below.

- a) Enterprise level:** Parties to the combination have, either combined assets of more than ₹1,500 crores or combined turnover of more than ₹4,500 crores in India. If both or any of the parties to the combination have assets/turnover outside India also, then parties to the combination have, either combined assets of more than \$ 750 million including at least ₹750 crores in India or combined turnover of more \$ 2,250 million including at least ₹2,250 crores in India. These thresholds are summarised below.

	Assets	Turnover
In India	₹1,500 crores	₹45,00 crores
In India and out-side India	\$ 750 million (including ₹750 crores in India)	\$ 2,250 million (including ₹ 2,250 crores in India)

- b) Group level:** The group to which the enterprise whose control, shares, assets or voting rights are being acquired i.e. the target enterprise would belong after the acquisition or the group to which the enterprise remaining the merger or amalgamation would belong has either assets of more than ₹6,000 crores in India or turnover more than ₹18,000 crores in India. If the group has assets/turnover outside India also, then the group has assets of more than \$ 3 billion including at least ₹750 crores in India or turnover of more than \$ 9 billion including at least ₹2,250 crores in India.

	Assets	Turnover
In India	₹6,000 crores	₹18,000 crores
In India and out-side India	\$ 3 billion (including ₹750 crores in India)	\$ 9 billion (including ₹2,250 crores in India)

Turnover includes value of sale of goods or services excluding indirect taxes, if any. Assets include not only the fixed assets but all the current assets including investments and shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls.

Target Enterprise Exemption

In order to provide relief to smaller acquisitions, Government of India, vide notification dated 4th March, 2011 and 27th May, 2011, has exempted an enterprise whose control, shares, voting rights or assets are being

Section 5 of the Act describes combinations as mergers/ amalgamations or acquisition of control, shares, voting rights or assets when the value of assets/ turnover of the parties to the combination or the group that meet asset or turnover thresholds provided in the Act.

acquired and having turnover less than ₹750 crores in India or assets less than ₹250 crores in India from the provisions of Section 5 of the Act for a period of five year. This notification is applicable only to combinations in the form of acquisition of control, shares, voting rights or assets only and is not applicable to combinations in the form of mergers and amalgamations.

What is Group?

Group has been defined as two or more enterprises which are in a position to:-

- exercise 26% or more of the voting rights in the other enterprise; or
- appoint more than 50% of the members of the board of directors in the other enterprise; or
- control the management or affairs of the other enterprise.

Government of India, vide notification dated 4th March, 2011, has exempted a group exercising less than 50% of voting rights in any other enterprise from the provisions of Section 5 of the Act for a period of five years.

Time Limit for filing Notice

Section 6(2) of the Act provides that any person or enterprise, who or which proposes to enter into a combination, shall give a notice to the Commission disclosing the details of the proposed combination, within 30 days of approval of the mergers/ amalgamations or acquisition, as the case may be, by the board of directors or of the execution of any other agreement or document in relation to the acquisition. Combination Regulations provide that reference to board of directors shall mean and include –

- Individual himself in case of sole proprietorship,
- Karta in case of HUF,
- Board of Directors in case of a company,
- Governing body so empowered in case of corporation established under an Act, association of person, body of individuals, cooperative societies, local authority,
- Authorised partner in case of firm,
- Person authorised to act in this behalf in case of any other artificial juridical person.

Commission may also admit a notice filed beyond the period of 30 days. However, in such cases, Commission may proceed to impose penalty under Section 43A of the Act. As per Section 43A of the Act, the Commission can impose a penalty for failure to give a notice of the combination, which may extend to 1% of the total turnover or the assets of the combination, whichever is higher. Commission also has the power to inquire into a combination which has not been filed but ought to have been filed with the Commission within one year from the date on which such combination has taken effect.

Section 6(2A) provides that the proposed combination cannot take effect for a period of 210 days from the date it notifies the Commission or till the Commission passes an order, whichever is earlier. If the Commission does not pass an order during the said period of 210 days the combination shall be deemed to have been approved.

Acquisitions by Financial Institutions

Provisions of Section 6(1) and Section 6(2) of the Act would not apply to share subscription or financing facility or any acquisition by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement. However, they are required to report the details of acquisition including the details of control, circumstances for exercise of such control and the consequences of default arising out of such loan agreement or investment agreement, as the case may be within seven days from the date of the acquisition in Form III as provided in regulations.

Factors to be considered for assessment of Combinations

The basic premise for regulating combinations lies in determining whether a combination may have appreciable adverse effect on competition in relevant market in India. In order to assess/determine this effect, following factors will be considered by the Commission in accordance with Section 20(4) of the Act.

- a) actual and potential level of competition through imports in the market;
- b) extent of barriers to entry into the market;
- c) level of combination in the market;
- d) degree of countervailing power in the market;

Commission has power to inquire into a combination which has not been filed but ought to have been filed with the Commission within one year from the date on which such combination has taken effect.

- e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
- f) extent of effective competition likely to sustain in a market;
- g) extent to which substitutes are available or are likely to be available in the market;
- h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
- i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
- j) nature and extent of vertical integration in the market;
- k) possibility of a failing business;
- l) nature and extent of innovation;
- m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;
- n) Whether the benefits of the combination outweigh the adverse impact of the combination, if any.

Prima Facie Opinion

The Commission has to form a *prima facie* opinion within a period of 30 calendar days of receipt of the said notice as to whether the proposed combination is likely to cause or has caused appreciable adverse effect on competition in India. If the Commission is *prima facie* of the opinion that a combination has caused or is likely to cause appreciable adverse effect on competition, it will issue a show cause notice to the parties as to why investigation in respect of such combination should not be conducted. On receipt of the response, if Commission is of the *prima facie* opinion that the combination has or is likely to have appreciable adverse effect on competition, the Commission may initiate investigation as per the provisions of the Act.

Exemption from notification of combination

Regulation 4 of combination regulations provides the categories of combinations (mentioned in Schedule I of the combination regulations) which are ordinarily not likely to cause an appreciable adverse effect on competition in India, and therefore need not normally to be reported to the Commission. These categories are summarised as below:

- 1) An acquisition of shares or voting rights, solely as an investment or in the ordinary course of business in so far as the total shares or voting rights held by the acquirer does not entitle the acquirer to hold 25% or more of the total shares or voting rights

If Commission is of the *prima facie* opinion that the combination has or is likely to have appreciable adverse effect on competition, the Commission may initiate investigation as per the provisions of the Act.

of the target enterprise and also do not lead to acquisition of control of the target enterprise.

- 2) An acquisition of shares or voting rights, where the acquirer already holds 50% or more shares or voting rights in the target enterprise, except in the cases where the transaction results in transfer from joint control to sole control.
- 3) An acquisition of assets, not directly related to the business activity of the acquirer or made solely as an investment or in the ordinary course of business, not leading to control of the target enterprise.
- 4) An amended or renewed tender offer where a notice to the Commission has been filed by the party making the offer, prior to such amendment or renewal of the offer.
- 5) An acquisition of stock –in-trade, raw materials, stores and spares in the ordinary course of business.
- 6) An acquisition of shares or voting rights pursuant to a bonus issue or stock splits or consolidation of face value of shares or buy back of shares or subscription to rights issue, not leading to acquisition of control.
- 7) Any acquisition of shares or voting rights by a securities underwriter or a registered stock broker of a stock exchange on behalf of its clients.
- 8) An acquisition of control or shares or voting rights or assets by one person or enterprise of another person or enterprise within the same group.
- 9) A merger or amalgamation of subsidiaries wholly owned by enterprises belonging to the same group.
- 10) An acquisition of current assets in the ordinary course of business.
- 11) A combination taking place entirely outside India with insignificant local nexus and effect on markets in India.

Form for filing the Notice

Notice related to proposed combination can be filed with the Commission either in the Form I or Form II specified in combination regulations. Form I is a very short form for initial scrutiny wherein basic details regarding parties to the combination, brief about the proposed combination etc. are to be given. On the contrary, Form II is a long form wherein detailed

information is required to be given by parties. Though, parties have a choice to file the notice in any of these forms, but the Commission desires that, in following cases, notice may be given preferably in Form II.

1. Where parties to the combination are engaged in similar business activities and their combined market share is more than 15% in relevant market; or
2. Where parties to the combination have vertical relationship with each other and their individual or combined market share is more than 25% in relevant market.

Amended combination regulations have increased the applicable fee to ₹10,00,000/- and ₹40,00,000/- for filing Form I and Form II respectively.

Obligation to file the Notice

In case of acquisition, it is the obligation of the acquirer to file the notice with the Commission and in case of merger/amalgamation, parties are required to jointly file the notice. The notice should be duly signed and verified by –

- a. Individual himself in case of sole proprietorship firm;
- b. Karta in the case of a Hindu Undivided Family (HUF);
- c. Managing Director and in his or her absence, any Director or the company secretary, duly authorised by the board of directors in the case of a company;
- d. President or the Secretary in the case of an association or society or similar body or the person so authorised by the legal instrument that created the association or the society or the body;
- e. Partner in the case of a partnership firm;
- f. CEO in the case of a co-operative society or local authority;
- g. In the case of any other person, by that person or by some person duly authorised to act on his behalf.

Notice is to be filed along with two copies and one electronic version. Recent amendment to regulation also requires a summary of the combination in not less than 2,000 words along with nine copies and an electronic version to be filed along with the notice.

Notice related to proposed combination can be filed with the Commission either in the Form I or Form II specified in combination regulations.

Defects and incomplete information in the Notice

Under regulation 14 of combination regulations, during scrutiny of the notice, if the Commission is of the opinion that notice has not been filed properly or incomplete information has been given in the notice, it may ask the parties to remove these defects in the notice.

Further as per regulation 5, in the course of inquiry, if the Commission finds that it requires additional information, it may direct the parties to provide such additional information within the time prescribed. Time taken by parties to submit their response is excluded from the period of 30/210 days as the case may be.

Relevant Market

Appreciable adverse effect on competition is assessed with reference to relevant market in India. Delineation of relevant market is the first step in the assessment of appreciable adverse effect on competition. The factors prescribed under Section 20 (4) are analysed with reference to the relevant market.

As per Section 2(r), "relevant market means" the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets.

As per Section 2 (s), "relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring areas.



In case of acquisition, it is the obligation of the acquirer to file the notice with the Commission and in case of merger/amalgamation, parties are required to jointly file the notice.

As per Section 2 (t) "relevant product market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.

Orders of the Commission

On the basis of its assessment of the combination, in accordance with the factors laid down in Section 20(4) of the Act, if the Commission is of the opinion that the -

- Proposed combination does not have any appreciable adverse effect on competition, it will approve the combination.
- Proposed combination has an appreciable adverse effect on competition, but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination. If the parties accept and carry out such modifications, the Commission will approve the combination. Parties may also propose amendment to such modifications. If the Commission agrees to such amendments, then it will approve the combination otherwise parties will be given time to accept the modifications originally proposed by the Commission. If the parties fail to accept these modifications, the combination will be deemed to be have an appreciable adverse effect on competition and thus, will be ordered not to be consummated.
- Proposed combination has an appreciable adverse effect on competition, it will direct that the combination shall not take effect. However, prohibition is generally resorted to when it is possible to alter the combination so as to remove its anti competitive effects on the relevant market.

Though the Act prescribes 210 days as the period for assessment, through the Combination Regulations, the Commission has self imposed a limit of 180 days to pass the final order.

Request for Confidentiality

Parties to the combination may request for confidential treatment in respect of information given to the Commission if the same contains business and trade secrets, price sensitive information, details of key suppliers and competitors, business plans, etc. The request should clearly state the reasons, justification and implication for the business of the parties to the combination. The Commission will take a decision on the basis of this request and may grant confidentiality treatment to the information submitted.

Appeals

Appeals against the orders of the Commission may be filed with Competition Appellate Tribunal within 60 days of the receipt of order/direction/decision of the Commission.

Rationale behind amendments in the combination regulations as notified on 23rd February, 2012

Combination Regulations were amended through a notification issued on 23rd February, 2012. As per the press release issued by the Commission, the amendments are with a view to provide relief to the corporate entities from making filings for combinations which are unlikely to raise adverse competition concerns, reduce their compliance requirements, make filings simpler and to move towards certainty in the application of the Act and the Regulations. Major amendments in the combination regulations are discussed below.

1. Newly inserted regulation 5(9) provides for attribution of value of assets and turnover of a transferor company to the transferee company where assets are transferred to the transferee company for the purpose of effecting a combination. The implication of this amendment is that if a division/unit is transferred to a group company and then other entities invest in the latter, then value of assets/turnover of the enterprise transferring the division/unit shall also be considered for computing thresholds under the Act.

Illustration

Company A has two business divisions namely X and Y. Now A hives off division X into its newly created wholly owned subsidiary company B. Since this is an intra-group acquisition of assets, this transaction would not be required to be notified in terms of regulation 4 read with category 8 of Schedule I of the Combination Regulations. After that, another company P acquires 51% stake in B. For the purpose of P's acquisition, assets and turnover of A will be added to the assets and turnover of B for computing assets and turnover for the purpose of Section 5 of the Act i.e. determining whether the transaction is a combination.

2. By amending category (1) of Schedule I, Commission has dispensed notification requirement in respect of acquisition of shares or voting rights that are less than 25% of the total shares or voting rights and not leading to acquisition of control of the target enterprise. However, the acquisition should be solely as an investment or in the ordinary course of business of the acquirer. By this amendment, Commission has aligned its

guidelines with recently released takeover code by SEBI.

3. Newly inserted category 8(A) in Schedule I has dispensed notification requirement in respect of merger or amalgamation of subsidiaries wholly owned by enterprises belong to the same group. Earlier, the notification requirement was dispensed only in respect of intra-group acquisitions of control or voting rights or shares or assets.
4. By amending category (6) of Schedule I, in addition to bonus issue, stock splits, consolidation of face value and right issue in some cases, the Commission has dispensed notification requirement in respect of acquisition of shares or voting rights pursuant to buy back or right issue not leading to control.
5. Before the amendment, Form I was divided into 2 parts. In some cases, only part I was required to be filled. Now this distinction has been done away with and for all transactions Form I is to be filled in its entirety. This will lead to more clarity and uniformity in filing requirement. Further, parties are now required to provide details of value of assets and turnover and copies of approval of the combination.
6. Applicable fee has been increased to ₹10 lakh (from existing ₹50,000) for filing Form I and ₹40 lakh (from existing ₹10 lakh) for filing Form II. This has been done after considering resources deployed in the assessment of the notice, and keeping in view the fees charged by other regulatory authorities in India and abroad.

Opportunities for CAs

As per the provisions of the Act, Chartered Accountants, holding certificate of practice, are eligible to appear before the Commission on behalf of their clients. CAs may also provide advisory services in relation to filing the notices with the Commission.

Conclusion

Though the merger control regime is in nascent stage but it is a good beginning for betterment of society at large. It is an international regulatory process designed to prevent anti competitive effects of mergers and acquisitions. Corporate India should see this regime as in larger interest of society. It has been nearly 11 months that merger control regime has been in force in India. During this time period more than 45 cases (filed in Form I and II) have been approved by the Commission and on an average time taken by Commission to approve the cases is only 15-17 days approximately. This is in addition to 3 Form III cases noted by the commission. Thus, Commission has lived up to the expectations of all stakeholders. ■

Ethical Governance for a Knowledge-Based Economy: *Reconnecting accounting and auditing with knowledge*



On the backdrop of calls to reform auditing, accounting and the regulation thereof, this article presents a review of the history of accounting and ethics in the political economy. Ethical lapses, major and minor, are traced to *bounded rationality* of professional decision-makers—an idea that earned two Nobel prizes twenty-four years apart. The article makes the case that understanding the psychology and purpose of management, and the role of knowledge in channeling human nature towards creative endeavors, are critical for curbing ethical lapses in the contemporary political economy which is very different from the one for which Kautilya wrote his treatise twenty-four hundred years ago. A knowledge-based framework is proposed for planning and auditing capital investments ex-ante and ex-post, intended to facilitate learning and continuous improvement through conduct that business and political leaders can feel proud about passing on to future generations. This paper seeks to make the case that questions of ethics are fundamentally about every individual's place in the organisation and the socio-economic system at large, and can only be resolved properly through a concerted focus by everyone on knowledge-building.

Introduction

The beginning of twenty-first century was marked by an emphasis on ethics in business and education, if only in response to scandals and crises that shook the public's trust in institutions public and private. The collapse of Satyam Computers is a case in point, as is the 2G Spectrum controversy that continues to embroil business and government leaders alike. With numerous articles, books and codes of ethics written to address the *lessons* learned, one would imagine a world poised to once and for all remove any doubt that the discourse, the decision-making, and the actions in our institutions will henceforth be ethical. Alas, such is not likely to be the case because the prevailing *code of ethics* approach requires individuals to take into account a multitude of moral, economic, social, ecological and political factors that may be relevant when making decisions. The assumption is that anyone obliged to abide by the codes is not only informed about all such factors but also has the cognitive capacity to process that knowledge and make the right decision in the institutional context. That assumption is often violated because decision-making is predicated upon the exercise of incomplete knowledge and responsible judgment (Patil, 2011). With minor differences, nearly all organisations follow the "code of ethics" approach without explicitly recognising how it is the exercise of irresponsible judgment informed by incomplete knowledge—sometimes by design, that is often at

Dr. Shekhar Suresh Patil

(The author may be reached at shekhar_s_patil@yahoo.com.)

the root of ethical lapses. Therefore, this paper seeks to present a new perspective on ethics in decision-making—individual as well as collective, and proposes a knowledge-based approach to ethical governance.

Ethics is often defined, simplistically, as a choice between right and wrong. The problem is that if one is not informed about all relevant moral, economic, social, political, and ecological factors, then right versus wrong ends up being a choice that relies more on judgment and less on knowledge. In their Nobel Prize lectures delivered twenty-four years apart Herbert Simon and Daniel Kahneman argued that choice (and therefore, each individual's notion of right and wrong) is predicated upon "bounded" rationality, i.e. rationality that is a function of the individual's knowledge, contextual reasoning, and cognitive capacity (Simon, 2001; Kahneman, 2002). Knowledge implies a coherent theory and empirical evidence in the context in which the theory and empiricism apply, all of which must be explicitly formulated to facilitate reasoning and cognition. When these are in short supply, irresponsible or flawed judgment is more likely. Therefore, this paper argues that the prevailing approaches that seek to address lapses of judgment through codes and rules of conduct that treat decision-making as *black-box* predicated upon individual morality cannot be effective in curbing the recurring lapses of ethics in business and government. Organisations need to make ethical decision-making an integral part of the culture at all levels, starting with top leaders who earn their wages primarily for their ability to exercise responsible judgment in the face of uncertainty (Knight, 1921).

A Brief History of Ethics

It is not the intent of this paper to get into the debate over whether ethical thinking or religion came first in the history of human intellectual development. However, it is worth noting that the first known theory of organising human society and economy along with the members' duty to society dates back to an ancient document in the UNESCO Memory of the World Register, described as *among the first literary documents in the history of humankind*. The Rgveda is one of the knowledge pillars on which the superstructure of Asian culture is built (Gopalakrishnan and Dhadphale, 2007), because it explains the interconnectedness of life forms and the elements of nature. It is this connectedness, especially when there is no explicit gain in it from one individual's point of view, which defines an ethical way of being (Keller, 2007). The Rgveda conceives human society as being comprised of four distinct but interconnected classes wherein members of each class serve the society at large: those predisposed to learning and the pursuit of knowledge, those predisposed to governing

If one is not informed about all relevant moral, economic, social, political, and ecological factors, then right versus wrong ends up being a choice that relies more on judgment and less on knowledge. ”

and defending the ones governed, those given to trade, farming and work in general, and those given to serving others. A careful reading of the Rgvedic verses makes it clear that *class* refers to intellectual predisposition that can be changed through the development of one's intellect, because class is *not* determined by the family in which one is born—an interpretation confirmed by a member of independent India's Constituent Assembly and one of the co-authors of the country's Constitution (Deo, 1988). Rgvedic theory of human society implies that only those dedicated to learning and the pursuit of knowledge can discern the contextual implications of ethics in an ever-changing political economy, explaining why emperors and kings and now presidents and prime ministers have to rely on wise counsel about the consequences of their actions—not just on the written word or the vote. For all those *not inclined to learn* the self-fulfilling nature of the man-made rules is clear: "subjects primed to defect or compete are more likely to do so and, therefore, will be more likely to induce a comparable response in their counterpart, validating their initial impressions of the competitive nature of the situation and the untrustworthiness of their counterpart. Conversely, subjects primed, through the naming of the game, to cooperate, will elicit more cooperative responses from their counterparts, again validating their initial beliefs about the nature of the situation and the person they are playing with....Theories become dominant when their language is widely and mindlessly used and their assumptions become accepted and normatively valued, regardless of their empirical validity" (Ferraro, et al., 2005). Therefore, reliance on theory to the exclusion of empirical evidence and responsible judgment fails to recognise the dynamic nature of the political economy and each individual's place in it, which itself can change with learning.

As humans engaged in an increasingly diverse range of economic activity the Rgvedic constructs of social organisation morphed into many different socio-economic constructs known as castes, quite like the way species derive from class in the modern-day biological classification of living organisms. Contemporary professional and trade groups and even the silos of academic disciplines—where the members seek to advance the interests of the group, are no different from the socio-economic construct of caste in India, the crucial exception being that in an era void of

public education the “learning” happened in the family and therefore the caste system ossified around the notion that the family of birth determines an individual’s occupation, place in society, and duty to the whole. The tension between one’s duty as defined by the social constructs and the person’s yearning for liberty of self-determination always existed, but the collective desire to value social stability over individual liberty suppressed it for millennia. Enlightened individuals, prophets and saints saw through the inherent injustices in rigid social orders and led to the creation, whether consciously or not, of new social groups that proclaimed equality of all *within the group* but created divisions in the society at large. The Declaration of Independence of a young nation was the first to enshrine in the founding document the “self-evident” truth of equality and individual liberty and the right to pursue happiness, as a basis for governance with the consent of the governed (Jefferson, 1776). The *Taittiriyaopanishad*, another ancient Indian contribution to literature and philosophy, had long ago identified happiness as the ultimate goal of human existence, achievable after a preceding stage of human development wherein the mind concentrates on a purpose, the ultimate purpose of “development” being happiness itself (Deo, 1988; Mead, 2006). However, it was not until Peter Drucker recognised in the wake of the civil rights movement in the USA that another key development sowed the seed of what came to be known as the knowledge economy, soon to be elbowed out by the so-called “market” economy. According to Drucker, for the first time in human history one Mr. Taylor saw “work itself as deserving the attention of the educated. Before, work had always been taken for granted, especially by the educated. If they ever thought of it, they knew that work had been ordained – by God or nature” (Drucker, 1968). Frederick Taylor passionately put forth the theory that the purpose of management itself is to scientifically and systematically help an individual determine the most profitable occupation that fits the individual’s abilities, by way of applying knowledge to work, because “the one who tries to do his best would be abused by his fellow-workers for so doing” (Taylor, 1911-12). A system of nurture had to be institutionalised to minimise the damage that people would do to one another in any endeavor where cooperation is a necessary condition.

Therefore, reliance on theory to the exclusion of empirical evidence and responsible judgment fails to recognize the dynamic nature of the political economy and each individual’s place in it, which itself can change with learning. ”

That was the genesis of the “system” that people refer to colloquially when discussing much of what ails our society and polity, a vision that not only recognised but devised a way to create and use knowledge to effectively deal with the inherent flaws of human nature. More recently Francis Fukuyama attributed western successes in the last couple of centuries to the scientific method and its institutionalisation in universities, to which “scientific” management made significant contributions (Fukuyama, 2011).

The scientific method sought to determine, better than any other means hitherto employed by humans, the position of the individual in the organisation and the socioeconomic system at large—a highly desirable means to an end but one predicated upon the submission of human nature to knowledge acquired by employing the scientific method. Taylor forcefully argued that “our opportunity lies in systematically cooperating to train and make this competent man...rather than in searching for some unusual or extraordinary man” (Taylor, 1911-12). Until then, it was largely up to the individual to pursue knowledge; Taylor made the case that it is “the duty of those on the side of the management to deliberately study the character, the nature and the performance” of every worker and to use that knowledge to “deliberately and systematically train and help and teach...” At long last humans had cracked the code of *how* to determine one’s rightful place in the society and the economy and how that can change with knowledge, leading to a meteoric rise in the numbers of colleges and universities in the twentieth century. Unfortunately, Taylor’s testimony opened the Pandora’s box because it paved the way for humans to use measurement to maximise profitability of the organisation and the individual, by placing the individual in the most profitable position. His prescriptions hardened the divisions in society, this time between management as the agent of capital seeking to maximise profits, and the workers seeking to earn a decent wage, each viewing the other as the adversary on the pathway to power and money.

Arthashastra

The author of an ancient treatise on political economy—The *Arthashastra*, or “the science of import”—had long ago advocated the use of spies and other means to cause dissension and infighting among adversaries, after exhausting the options of amicable resolution, monetary means or bribery, and punishment. As an astute observer of human nature and mentor to perhaps the first great emperor in the history of India, what the author Kautilya advised to emperors and kings reverberated through folk wisdom like the *Panchatantra* (Olivelle, 1997), finding a home in the psyche of the

The scientific method sought to determine, better than any other means hitherto employed by humans, the position of the individual in the organization and the socioeconomic system at large—a highly desirable means to an end but one predicated upon the submission of human nature to knowledge acquired by employing the scientific method. ”

masses over the centuries. Actions that employ bribery or cause infighting might not be considered ethical by some, but the extent to which individuals, businesses and governments engage in such activities is hard to tell. What is clear is that the prescriptions that a professor of political economy at Takshashila University devised for kings and emperors some twenty-four hundred years ago are still in force and have trickled down to how individuals conduct themselves. Lessons from The *Arthashastra* are even being cast in a new light and even justified in the eyes of the political, corporate, and military leader as him being “not so much as a wealth maximising warrior, but more as a tragic hero who had to do evil to reap good” and as “practical guidance for use by the modern corporations” (Coates, 2010). Interestingly, The *Arthashastra*’s emphasis on virtuous behavior by the leader and the advice to lead by example is the most relevant lesson today and resonates strongly with perhaps the best contemporary description of ethical governance, written after the implications of the Sarbanes-Oxley Act of the United States (which exempted certain banking operations) were becoming clear: “Good governance is a mixture of the enforceable and the intangible. Organisations with strong governance provide discipline and structure; instill ethical values in employees and train them in the proper procedures; and exhibit behavior at the board and executive levels that the rest of the organisation will want to emulate” (Wagner and Dittmar, 2006). If instead we see the *Arthashastra*’s prescriptions of harsh justice and brutal opportunism as administratively convenient tactics to further the goal of wealth maximisation by pitting capital against labor and private interests against reasonable government action, then we would have learned nothing in 2400 years.

Glocalisation, not Globalisation

As the divisions between capital and labor or owners and workers ossified around the pursuit of their respective self-interest and became entrenched in the political economy, the phenomenon of globalisation

made the search for the competent worker easier than nurturing individuals in-house to improve performance. The key to lasting prosperity was lost within decades after western society figured out a transparent way to determine each individual’s rightful place in the society and the economy by taming the animal spirits that tend to cause more harm than good. Even Paul Samuelson—a towering figure in economics and management education, from whose books the likes of Dr. Manmohan Singh and members of the Planning Commission studied economics, observed the following about the excessive financialisation in the name of globalisation: “Fiendish Frankenstein monsters of financial engineering had been created, a lot of them at MIT, some of them by people like me...there’s no CEO who understands at all a derivative¹. All they know is that somebody tells them in their organisation, ‘We’ve got a wonderful profit center’...I’m not sure that all of the fiendish stuff could have been picked up by centrist regulators, but you don’t have to be perfect in anything in economic life. If you spent 70 years in economics, you’ll understand that” (Samuelson, 2008). The report of the Financial Crisis Inquiry Commission instituted by the US government provided many insights into the causes of the crisis (FCIC, 2011). Perhaps the most significant of the causes is the spread of a culture of risk management that undermined genuine innovation by devolving into risk transfer to those not as knowledgeable or not yet born—in the form of debt passed on to future generations. That the powers-that-be were clueless about sound risk management practice was evident in the statement of a former governor of the US central bank—the Federal Reserve, and director of the National Economic Council, quoted in the FCIC report: “Securitisation was diversifying the risk...But it wasn’t reducing the risk...You as an individual can diversify your risk. The system as a whole, though, cannot reduce the risk. And that’s where the confusion lies.” The bounded rationality of brilliant minds advising the US president is evident in this “financial” view of economics, which sees risk management from a purely financial perspective and entirely misses the fact that the purpose of innovation through knowledge-building is in fact to reduce risks to an acceptable level (Patil, 2011). That is the essence of the knowledge economy.

DuPont’s Jim Porter was among the first to recognise the risks of unfettered globalisation and coined the term “glocalisation” (Porter, 2006). Global corporations had recognised the need to balance global pursuits with local needs—down to the individual. Although Taylor’s ideas were buried in the annals of history, exceptions

¹ Derivative financial products isolate economic activity from knowledge by creating additional degrees of separation, and have the insidious effect of drawing the society’s best minds to esoteric “financial” innovation rather than meaningful knowledge-based innovation. The financial crisis has proved that these are products of “un-artha” shastra, which is also evident in these words of the most influential teacher of economics in the twentieth century.

like Tom Gilbert (who “bemoaned” how people misconstrued scientific management²) revived the idea of using performance data intelligently (Gilbert, 1996). Human “competence” became more a function of the work process than the individual (Prahlad & Hamel, 1990). The pendulum of management education swung quickly in the direction of “processes” as the measure of competence, DuPont recognising the importance of work processes and PepsiCo being the first to recognise in their slogan “Performance with Purpose” that global processes must serve local purpose. In spite of this renewed focus on the process and the purpose, away from the individual, the monetary incentives that Taylor had prescribed for illiterate workers who could not think on their own about bettering their prospects became a legitimate mechanism for compensating the most educated. The resulting pursuit of profits through the externalisation of intangible costs and risks to those not as knowledgeable probably led Nobel laureate Amartya Sen to observe in his essay *The Reach of Reason* that even Adam Smith did not subscribe to the notion of blind pursuit of self-interest, and noted that humans have the distinct capacity to let an enlightened self-interest, or even passion, prevail over a narrowly defined personal self-interest (Sen, 2000). Sen is not alone in acknowledging that neoclassical economics has freely used Adam Smith’s prescriptions that call for the least regulation of business while studiously ignoring the parts that would restrict...the claim that the science of economics requires that all individuals be free to pursue their self-interest (Keller, 2007). The ability to see beyond a narrowly defined self-interest is evident in peoples of all religions and cultures, as is opportunism at the expense of others. However, dating back all the way to Aristotle in the West and the Buddha’s *Kalama-Sutta* in the East, the role of reason had always been recognised. Therefore, reasoning is and always was part of human development; the challenge is how to use reason to balance the pursuit of profits and growth with ethical governance in the best interests of the individual, the community, the business, the state, and the planet. In fact, Taylor’s ethical reasoning for encouraging profits and economic growth through cooperation was that the continuous application of knowledge to work would make some types of work redundant, requiring that those workers made redundant be trained as knowledge workers and employed in the application of knowledge to work—requiring “higher” education for ceaseless knowledge-building.

In spite of all this wisdom accumulated by humans over the centuries, why does unethical conduct so often shake our confidence in our institutions? It is the age-old tension between “boundedly rational”

loyalty to an established order or system and one’s place in it, especially when it is lucrative, and the very human instinct of compassion and caring for the interconnectedness of life. Institutional disincentives prevent individuals from questioning actions that might threaten their own place in the system, exploiting their bounded rationality that suppresses the exercise of responsible judgment. Academic education itself has been captured by the establishment’s interest in “exclusive reliance on particular economic theories”, viewing responsible judgment as unworthy of a place in management education and the way science informs policy (Khurana, 2007). As a result, students are trained to be boundedly rational, that is, rational within the bounds of the supposedly scientific method of the profession or occupation or the system from which the student would draw subsistence in later years of life. Each profession or interest group then seeks to influence regulatory policy to exclude the inherent incompleteness of human knowledge and uncertainty from the rule-making, serving powerful interests who stand to benefit from man-made rules that manufacture certainty on paper and foster “creative” accounting disconnected from reality.

Rise of Accounting as a Force behind Corporations

The rise of accounting as a distinct and vital profession serving the political economy was key to the rise and the reach of the organisation, public and private, in the twentieth century. As corporate organisations became influential and knowledge became a commodity, the accounting profession evolved to become a rigid, transaction-based legal construct rather than a resilient, knowledge-based economic construct as it was originally conceived by Frederick Taylor. Taylor’s original emphasis on using knowledge and individual performance to facilitate cooperation was lost in “professional” and budgetary silos, as was the fact that his prescription of monetary incentives was meant for illiterate workers—conditioned to serve—who could not or did not think on their own about bettering their economic prospects. Though they never saw it, the scientific method that Taylor and his compatriots employed to make workers and supervisors think differently about work ultimately proved to be effective in moving individuals up the value-added production

The key to lasting prosperity was lost within decades after western society figured out a transparent way to determine each individual’s rightful place in the society and the economy by taming the animal spirits that tend to cause more harm than good. ”

² Dale Brethower of the International Society for Performance Improvement, describing his “late night symposia” with Tom Gilbert in personal e-mail communication with the author, April 24, 2008.

ladder, as is evident today in IBM's practice of measuring and rewarding knowledge workers (Baker, 2009) and in John-Deere's Continuous Improvement Pay Plan (Sprinkle & Williamson, 2004). Unfortunately, in the society at large the "scientific method" predicated upon the use of knowledge to facilitate cooperation became subservient to rule-making and Regulatory Capture through lobbying by modern-day castes jostling for influence, exploiting the "relational" nature of the compact between those who govern and the governed. The academic separation between relational and transactional contracts meant that the Rgvedic notion of the society as a human body with interconnected specialised parts cooperating effortlessly—information and communications technology being the blood of the system—failed to take root yet again (Montes & Irving, 2008). Accounting facilitated "too big to fail" organisations and financial incentives originally intended to motivate illiterate workers to think differently became institutionalised in the form of the "bonus" culture coupled with transactions that rely less on knowledge and more on deal-making. Managers reveled in the "control" that accounting provided over workers, notwithstanding the fact that need for control had to give way to fostering creativity as the workers' level of education rose, a fact operationalised quite well by IBM. As such, the remedies for ethical lapses that rely on rigid, formula-based notions of budgeting and accounting and pretend to appeal to one's "moral" instincts are not likely to do any good in an age where nurturing creativity, individual and collective, must replace rigid accounting as the primary force that moves firms and markets. To that end, the society needs resilient, real-time, knowledge-based means of tracking money.

When and Why Questions of Ethics Arise

The new *glocalised* economy calls for a deeper understanding of when and why questions of ethics arise. Glocalisation implies a balancing act between processes designed for global application, and local purpose. To that end an organisation can be conceived in a broad sense as a collection of *competencies* or work processes brought together by multiple firms involved in the commercialisation process. Each firm, including the owner, brings to bear the competencies that the firm can perform or lead most effectively. Such competency-based organisation is not a new concept (Patil, 2006). At its core, the concept of competency-based organisation utilises the Rgvedic idea of the interconnectedness of firms and markets as parts of a human body, with different organs and systems of organs as competencies or work processes pursuing a meaningful purpose. Taylor was probably

The remedies for ethical lapses that rely on rigid, formula-based notions of budgeting and accounting and pretend to appeal to one's "moral" instincts are not likely to do any good in an age where nurturing creativity, individual and collective, must replace rigid accounting as the primary force that moves firms and markets. To that end the society needs resilient, real-time, knowledge-based means of tracking money. ”

the first to think of systematically determining each individual's place within such an organisation by scientific measurement of performance and costs, and Ronald Coase was the first to look inside the firm to systematically think through the functions or work processes that the firm can perform well on its own and the functions that are best procured from the market—paying a transaction cost each time the firm has to reach outside into the market (Coase, 1937). Prahalad and Hamel revived the idea of core competence and focused the executives' attention on the products and services their firm can deliver more effectively relative to the competition. Separately, Tom Gilbert revived the idea of using data intelligently to evaluate individual and collective performance, with the goal of life-long learning of individuals seeking to move up the value-added production ladder. Tracing the idea back to the Rgveda, a kidney is really good at what it does; so is the liver, so are the limbs, and so is the head, except in human society anyone can be the part of choice and excel by virtue of temperament and concentration of the mind on purposeful learning. The philosophy also resonates with the idea of distributed leadership wherein anyone can temporarily step up to lead (Gronn, 2008), but if indeed distributed leadership is to have primacy over other forms of leadership then leaders at the top of organisational hierarchies cannot claim rewards that far exceed the median compensation in the firm.

On the larger economic landscape, we have numerous firms and multiple markets who each serve a purpose that contributes to the whole, and numerous individuals who perform different functions within a firm. The *relational* contract between the firms and individuals within the firm serve to reduce the *transaction* costs of the firm. Over time, the forces of creative destruction and legacy costs imply that firms or parts of firms that fail to sustain excellence will wither away and new ones will take their place. The need for relentless pursuit of excellence and effective risk management through knowledge-building in a market economy puts a strain on relationships within and outside the firm, creating reasons to transfer risks to others and raising issues of

ethics. Therefore, ethics in the modern economy is less about individual morality and more about how systems designed by humans seek to balance the pursuit of economic growth with knowledge-building aimed at reducing, not transferring, risks to accomplishing the stated purpose. Individuals at lower levels in the organisational hierarchy work with knowledge that has been explicitly formulated in theory and written down based on evidence gathered over time. Individuals in the upper echelons of the hierarchy are required to work with knowledge that cannot always be formulated and may not, therefore, be written down. The threshold is where accounting becomes disconnected from the actual work that accountants seek to measure. Once again the history can be traced back to Frederick Taylor, who devised measurement of work to improve productivity and sowed the seed of modern accounting. As accounting became established as a distinct discipline, its connection with physical work became progressively weaker and what used to be simple bookkeeping of activities and trades involving individuals and tangible assets became more and more disconnected from reality requiring more rule-making to address the disconnects and questions of ethics. The concept of how questions of ethics arise is illustrated in Fig. 1.

Reconnecting Accounting/Auditing with Knowledge

Central to the idea of the knowledge economy is the assumption that workers and managers alike submit to knowledge that seeks to balance individual aspirations and rewards with the need to sustain social, ecological and economic diversity and growth. Human knowledge is dynamic and incomplete by definition, so the changing nature of knowledge implies that rigid accounting constructs must give way to knowledge-based, resilient constructs focused on the stated purpose. Clarity of purpose helps people define the dependent variables, cost being one, and then work back to identify the independent and institutional or control variables. While all cost-related measures are the dependent variables, *the focus of accounting and auditing in particular needs to be on the independent variables* that make up the “knowledge” that drives costs and other dependent variables of interest. That was the core of the knowledge economy that Taylor conceived one hundred years ago. Blind embrace of the “market” economy led to accounting being disconnected from knowledge itself and connected with “market” forces, causing the neglect of organisational and social context of accounting and auditing and ultimately causing the failure of audits (Sikka, 2009). Individual nations as well

Ethical “glocal” governance is less about individual morality and more about balancing –
Cultural tendencies with laws on the books
Judgment-driven processes with written work processes
Strategic decisions with rule-based decisions

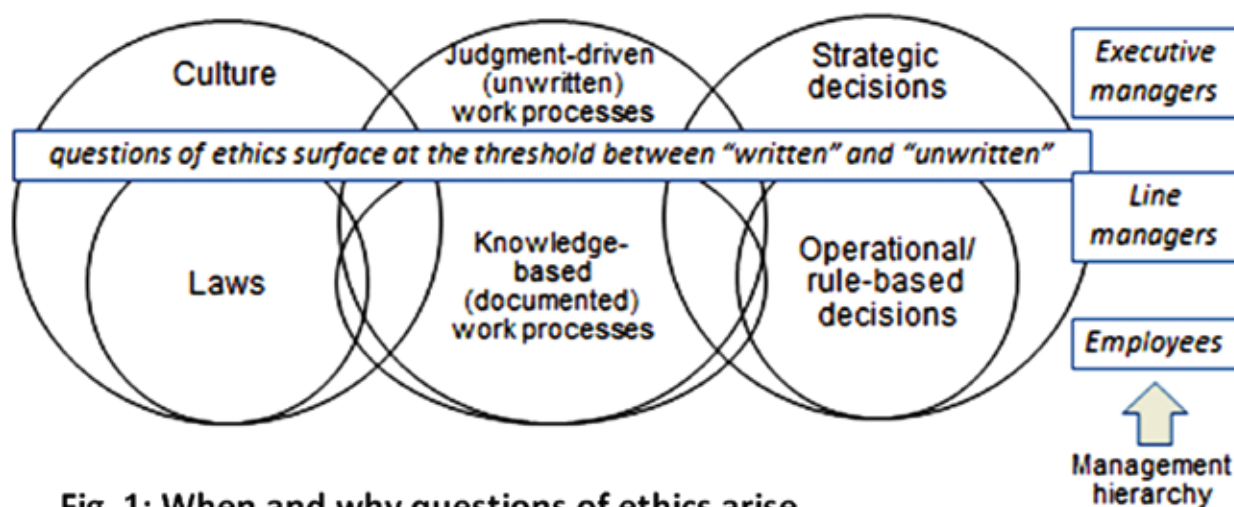


Fig. 1: When and why questions of ethics arise

as the global economy are paying the price for having strayed from the connection between contextual knowledge and the “counting of money.” The resulting calls for reform must seek to once again establish that connection between knowledge and money, starting with more interconnected university education.

Excessive financialisation and bounded rationality of the agents of capital are at the root of how industrial/organisational psychology evolved and became institutionalised in accounting, budgeting, and how they are taught in our colleges and universities. A “budget” can realistically be set only after sufficient knowledge-building has occurred, which still leaves some uncertainty in the cost estimate. To account for uncertainty the Americans tend to think in terms of “contingency” but the Germans tend to think in terms of real-time accounting consistent with the purpose. In reality, an estimate at the micro- or individual project level remains an estimate while knowledge-building seeks to minimise the uncertainty consistent with institutional risk tolerance. At the macro- or programme-level, a budgetary number can be set based on a composite basket of all estimated project costs. The program or business manager must manage the program within the budget and adjust individual project scope and cost estimates as needed, to meet the budget at the program level (Patil, 2011). The process is far from perfect, requiring executive management support for factors that are well beyond the control of business or program managers. However, a strong link between knowledge-building, evolution of cost estimates, budgets, cost accounting and auditing can focus the team’s energies on being creative with knowledge rather than with accounting and auditing (Christensen and Dysert, 2005). Fig. 2 illustrates a framework to connect budgeting for investments large and small, cost accounting, and auditing, with knowledge.

Ethics in the modern economy is less about individual morality and more about how systems designed by humans seek to balance the pursuit of economic growth with knowledge-building aimed at reducing, not transferring, risks to accomplishing the stated purpose. ”

A definition for each category on the Roman numeral scale is as follows:

- I Feasibility estimate: Minimal work is/was done to develop the estimate. (It’s a guess!)
- II Estimate based on preliminary scope: Some work is/was done, but limited to rough outlines of the scope and preliminary conversations with the stakeholders.
- IV Estimate based on scope defined for the purpose of budget: The work is/was at an advanced stage. Cross functional/inter-disciplinary reviews are/were conducted and the results from the reviews as well as stakeholder input incorporated into budgetary estimate.
- V Estimate based on planning for Implementation: The team has/had performed a final review including an analysis of potential risks, discussed risk mitigation and change management plans, and incorporated measurable uncertainty into the plans and the cost estimate.

Instead of linking activities or tasks to accounts as is normally done, each “deliverable” based on purposeful knowledge-building is linked to a cost account, recognising the inherently probabilistic nature of knowledge itself. So, the team needs to list the deliverables and then work back to think through the knowledge-building required to produce each deliverable and the effectiveness of the estimate

Key Deliverables from the project/ investment	Limited ← Estimate Quality and Completeness of Planning → Advanced (circle one option that most closely indicates the status)			
	Feasibility Estimate	Estimate Based on Preliminary Scope	Estimate Based on Budgetary Scope	Estimate Based on Planning
1.	I	II	IV	V
2.	I	II	IV	V
3.	I	II	IV	V
4.	I	II	IV	V
5.	I	II	IV	V

Add more as needed...

Fig. 2: Reconnecting accounts and budgets with knowledge

A “budget” can realistically be set only after sufficient knowledge-building has occurred, which still leaves some uncertainty in the cost estimate. To account for uncertainty the Americans tend to think in terms of “contingency” but the Germans tend to think in terms of real-time accounting consistent with the purpose. ”

that corresponds to that deliverable. Individual cost accounts for the deliverables are ranges of costs and remain so throughout implementation but the overall cost at the program level is expressed as “a number.” As knowledge-building proceeds from *limited to advanced* the team and the auditor can circle the appropriate Roman numeral, indicating the extent of knowledge-building that corresponds to the budgetary numbers. Implementation performance can then be correlated with the extent of knowledge building at the time of budgeting. A fully developed audit rubric requires that each Roman numeral is defined specifically for each deliverable, but that is beyond the scope of this paper.

Concluding Thoughts

This paper has sought to make the case that questions of ethics are fundamentally about every individual's place in the organisation and the socio-economic

system at large, and can only be resolved properly through a concerted focus by everyone on knowledge-building. Fundamentally, that knowledge-building includes the determination of everyone's rightful place in the organisation and the socio-economic system at large. That is the central question that human society has grappled with over millennia, a key to which can be found in the Taittiriyaopanishad in the form of training everyone to concentrate the mind on a purpose. The United States had successfully solved the puzzle in the twentieth century, before the boundedly rational “fiendish Frankenstein monsters” so eloquently described by Paul Samuelson arrived on the stage. No other economist has had Samuelson's 70-year long view of the political economy, and a Nobel Prize, so the arguments about the role of regulatory policy gloss over deeper socioeconomic issues and fail to address the fundamental question of the sense of purpose of the political economy, every organisation within the political economy, and every individual within every organisation. Information and communications technologies that were not available to extraordinary leaders throughout human history now make it possible to focus all stakeholders on knowledge-building, which can minimise if not eliminate ethical lapses. However, until a sense of purpose is restored and minds opened up to concentrate on knowledge-building rather than rule-making as the central focus of profit-making and economic growth, no amount of codes of ethics and rule-making can stem the failure of ethics in business and government.

Select Bibliography

- Christensen, Peter and Dysert, Larry R. “Cost estimate classification system – as applied in engineering, procurement, and construction for the process industries”, *TCM Framework: 7.3 - Cost Estimating and Budgeting*, AACE International Recommended Practice No. 18R-97, 2005.
- Baker, Stephen. *The Numerati*, Houghton Mifflin Harcourt, 2008.
- Coase, R. H. The Nature of the Firm, *Economica*, 4: 386-405, 1937.
- Coates, Breana E., “The Ultimate Pragmatist: Kautilya's Philosophy on Nation-Building”, International Society on Military Ethics Conference, University of San Diego, January 28, 2010.
- Deo, Shankarrao, *Upanishadateel daha goshti* (Ten stories from the Upanishads), Continental Publication, Pune, India, 1988.
- Drucker, P.F. *The Age of Discontinuity*, New York: Harper & Row, 1968.
- Financial Crisis Inquiry Commission. *Final report of the national commission on the causes of the financial and*



economic crisis in the United States, Washington, DC: U.S. Government Printing Office, 2011.

Ferraro, F., Pfeffer, J., Sutton, R.I. "Economics Language and Assumptions: How theories can become self-fulfilling", *Academy of Management Review*, 30-1, 2005.

Fukuyama, Francis. Lunch with FT: Francis Fukuyama – Senior Fellow at the Center on Democracy, Development and the Rule of Law at Stanford University, Financial Times Ltd., May 27, 2011.

Gilbert, Thomas. *Human Competence: Engineering Worthy Performance*, Pfeiffer (John Wiley & Sons, Inc.), 1996.

Gopalakrishnan and Dhadphale. Nomination Form for the inclusion of Rigvedasamhita in the Memory of the World Register, UNESCO, 2007.

Gronn, P. "The future of distributed leadership", *Journal of Educational Administration*, 46-2, 2008.

Jefferson, T. *The Declaration of Independence*, (archives.gov/exhibits/charters/declaration.html), 1776.

Kahneman, D. Maps of Bounded Rationality: A perspective on intuitive judgment and choice, Nobel Prize lecture, 2002.

Keller, A. Craig. "Smith versus Friedman: Markets and ethics", *Critical Perspectives on Accounting*, Volume 18, Issue 2, Pages 159-188, February 2007.

Khurana, R. *From Higher Aims to Hired Hands: The Social Transformation of American Business Schools and the Unfulfilled Promise of Management as a Profession*, Princeton University Press, 2007.

Knight, Frank H. *Risk, Uncertainty, and Profit*, Boston, MA: Hart, Schaffner & Marx; Houghton Mifflin Co. (<http://www.econlib.org/library/Knight/knRUP6.html#Pt.III,Ch.VII>), 1921.

Mead, G. R. S. *Taittiriyanopanishad*, Whitefish, Montana: Kessinger Publishing, 2006.

Montes, Samantha D. and Irving, P. Gregory. "Disentangling the effects of promised and delivered inducements: Relational and transactional contract elements and the mediating role of trust", *Journal of Applied Psychology*, Vol 93(6), Nov 2008, 1367-1381.

Olivelle, Patrick. *The Panchatantra*, Oxford, UK: Oxford University Press, 1997.

Patil, Shekhar S. "Competency-based organization for project management", *Chemical News*, Journal of the Indian Chemical Manufacturers Association, Vol. II, No. 8, 2006, pp. 37-41.

Patil, Shekhar S. "Decision-making and risk management in a globalised Knowledge Economy", *International Journal of Engineering Management and Economics*, Vol. 2, Nos. 2/3, 2011.

Porter, Jim. "Offshoring Engineering, A Globalization Conundrum?", Presentation to the National Academy of Engineering, <http://www.nae.edu/File.aspx?id=10298>, October 24-25, 2006.



Prahalad, C. K. and Hamel, Gary. "The core competence of the corporation", *Harvard Business Review*, 68(3), 79-91, 1990.

Samuelson, Paul. "Nobel Laureates Trace How the Economy Began to Fall Apart", Public Broadcasting Service interview by Paul Solman, http://www.pbs.org/newshour/bb/business/july-dec08/nobel_12-16.html (accessed in December 2011), 2008.

Sen, Amartya. "East and West: The Reach of Reason", *New York Review of Books*, Vol. 47, no. 12, pp. 33-38, 20 July 2000.

Sikka, Prem, Filling, Steven and Liew, Pik. The audit crunch: reforming auditing, *Managerial Auditing Journal*, Vol. 24, No. 2, 2009.

Simon, H. Theories of bounded rationality, In *The Legacy of Herbert Simon in Economic Analysis*, Volume I, edited by Peter E. Earl, Cheltenham, UK and Northampton, MA: Edward Elgar, 51-66, 2001.

Sprinkle, Geoffrey B. and Williamson, Michael G. "The evolution from Taylorism to employee gainsharing: a case study examining John Deere's Continuous Improvement Pay Plan", *Issues in Accounting Education*, Vol. 19, Issue 4, Sarasota: Nov. 2004.

Taylor, Frederick Winslow. Hearings before Special committee of the House of Representatives to investigate the Taylor and other systems of shop management under authority of H. res. 90, (<http://catalog.hathitrust.org/Record/002007191>), October 4, 1911-February 12, 1912.

Wagner, S. and Dittmar, L. "The unexpected benefits of Sarbanes-Oxley", *Harvard Business Review*, 84-4, 2006. ■

Roadmap for a Successful Technology Transfer



In this stage of globalisation, cross-border technology transfer has increased manifold. Despite an abundance of natural resources, skilled manpower and market, a developing country like India still lags behind the developed countries in technology and productivity. With liberalisation in economy for the last twenty years or so, there has been a constant emphasis on the enhancement of advanced technology through import. This advancement of technology may be brought in either by setting up a joint venture where foreign companies including promoters contribute technology in addition to capital, or simply by importing the technology. In this article, the author has opted to discuss the latter, i.e. import of technology. Read on:

With globalisation of economy, there has been a corresponding increase in cross-border technology transfer. In a developing country like India, there is an abundance of natural resources, skilled man power and huge market potential. However, in terms of technology and productivity, it lags behind the developed countries. As such, with liberalisation of Indian economy since 90's, there is regular stress on import of advanced technology by Indian Inc. Technology transfer may take place in two forms. It may be either setting up a joint venture in India whereas the foreign promoter contributes technology in addition to capital or simple import of technology by the Indian company.

Liberalisation in Import of Technology

Earlier, the automatic approval for foreign technology collaboration agreements were subject to: (a) the lump sum payments not exceeding \$ 2 million, (b) royalty payable being limited to 5% for domestic sales and 8% for exports and (c) the period of royalty not exceeding seven years from the date of commencement of commercial production or ten years from the date of agreement, whichever is earlier. Royalty limits were net of taxes. Any foreign technology agreement not meeting all above parameters was subject to government (RBI's) approval. However, since the introduction of Press Note 8 (2009 series) with effect from 16th December, 2009, all above ceilings have been withdrawn. Moreover, automatic approval is permissible irrespective of quantum of lump sum payment, rate



CA. O. P. Jagati

(The author is a member of the Institute. He may be reached at opjagati@rediffmail.com)

of royalty as well as tenure for payment of royalty. This liberalisation has enabled Indian companies to negotiate more effectively for import of foreign technology without procedural hassle and delay.

Evaluation of Technology Transfer Proposal

Any technology transfer proposal needs to have financial evaluation and legal evaluation. We will touch upon mechanism of both the requirements.

A. Financial Evaluation

A lot of homework is necessary before doing the financial evaluation of the proposal. The initial exercise comprises of reputation of the overseas technical collaborator, relevance of the output product to be generated by application of proposed technology to the existing business of the Indian company, market size of the output product and growth rate as well as special features of the proposed product *vis-à-vis* the existing similar products manufactured by other companies. Although, a CFO is expected to rely upon the such information collected from marketing and technical personnel of the company, he should be involved in the discussion process so as to have a better understanding of the need for the technology import. He should have a detailed discussion with the CEO so as to understand the fine points of the proposal which in turn will enable him to make financial evaluation prudently. Once the Management is convinced *prima facie* about the utility of the proposed technology, the CFO should prepare a business plan in order to justify the commercial viability of the proposal. The usual components of business plan should be:

- a) Estimate of market penetration
- b) Profitability projection
- c) Cash flow projection
- d) Discounted present value and payback period

Estimate of Market Penetration

The first exercise is to estimate the market penetration by the company after the technical absorption *vis-à-vis* the market size. Although, there is no specific period for which the business plan should be made, it is usually believed that five to seven years projection can be considered as fair one to do the financial evaluation. A model market estimate of market penetration has been exhibited in Annexure 1. Although, the CFO will depend on the input data given by the marketing department for above projection, he should seek external survey reports and database on the market size, growth and past performance of key competitors as may be available for the product emanating from the underlying technology. The CFO should endeavor to evaluate the veracity of market growth by analysing the

historical data of the key competitors. He should also have a macro review the market size and growth of the industry in which the subject product falls.

Profitability Projection

Once the business projection is ready for the planned period, the next step should be to prepare a financial statement showing the profitability of the proposed technology import. With availability of ERP package, it is now possible to estimate the material cost, labour and other direct cost with much accuracy. The projected financial statement will give the first hand information whether the proposed technology is a profitable one and, if so, whether the percentage of profit on sales is comparable with that from the existing business. Annexure 2 exhibits a model financial projection statement which may be customised as per need of the organisation.

Ultimately Cash is the King

After the year wise profit after tax (PAT) is arrived at, the next step should be evaluate the investment decision by evaluating the cash flows over the select period. Discounted pay back method is a better option to evaluate an investment decision, since it encompasses both the net present value of cash flow as well as the payback period for the investment. Once each year net cash flow spreading over the plan period is reinstated into present value after applying the relevant discounting rate, the payback period may be arrived at by observing the cumulative NPV. The year in which the cumulative NPV becomes positive, is considered as the payback year. The discounting rate is an important variable for calculation of discounted payback period. By simple definition, it is the cost of capital, which is the minimum acceptable rate of return on the funds deployed in a project. It is the compensation for time and risk. As per traditional theory, weighted average cost of capital is based on the cost of individual components of capital, e.g. equity, preference, debt, etc. The composite cost is the weighted average of the cost of various sources of funds, weights being the proportion of each source of funds in the capital structure. However, most of the times, the capital for a project is a hybrid of share capital, retained earnings, bank borrowings, etc., without any source wise quantification. In such cases, the Capital Asset Pricing Model (CAPM) is a simple but preferred tool followed by many financial analysts to arrive at the composite cost of capital. Another argument in favour of such tool is that it considers the rate of returns from two diametrically opposite funds of the economy, both from risk and time point of view. As such it considers government bond which is risk free but of longer tenure

as well as share market which is most risky, but highly liquid.

Calculation of cost of capital (COC): $COC = \text{Risk free return} + [\text{Beta factor} * \text{Risk premium}]$

First of all, a CFO has to choose one long-term risk free gilt edged security as he deems appropriate in the particular situation. Usually, 10-year Government of India Bond is considered as a long-term risk free investment. Beta factor is a measurement of how much the price of a particular stock jumps up and down compared with how much the stock market, e.g. Sensex, Nifty, CNX, etc., as a whole jumps up and down. If a share price moves exactly in line with market index, then the stock's beta is 1. A stock with a beta of 1.5 would rise by 15%, if the market rose by 10%, and fall by 15% if the market fell by 10%. However, a CFO of an unlisted company may encounter the problem of ascertaining the beta for his company. In such a case, an industry average beta may be derived at which may be considered as the beta for the unlisted company. Risk premium means the equity market return less the risk free return. For equity market return, the CFO may consider movement of Sensex/Nifty index in the past for a reasonably long duration, say five years. We will explain the derivation of the formula by an illustration. Let's consider that ten year Government of Bond has a return of 7.50%. Let's assume that based on CNX index for last five years, the Beta factor of the company is 0.53. Further, we may assume that last five year return from equity market is 25% based on Sensex. Based on above data, the COC will be:

$$COC = 7.50\% + 0.53 * (25\% - 7.5\%) = 16.78\%$$

If the COC is 16.78%, the discounted cash flow and payback period of Alpha Limited can be calculated as shown in Annexure C. From above illustration, it is seen that whereas the business from proposed technology will yield an operating profit of 11.51 % by 7th year, the discounted payback period is five years plus assuming the cost of capital as 16.78%. However, the management may derive/adjust the COC as per its own risk and return perception.

With availability of ERP package, it is now possible to estimate the material cost, labour and other direct cost with much accuracy. The projected financial statement will give the first hand information whether the proposed technology is a profitable one and if so, whether the percentage of profit on sales is comparable with that from the existing business.

B. Legal Evaluation

Once, the project is justified on basis of financial parameters, the next step is to do legal evaluation of terms and conditions as put forth in the draft agreement. The CFO should look into the following points while reviewing the draft agreement.

1. Subject matter of technical know-how

The products for which technical know-how is imported should be described with full clarity. Generic description may lead to unwarranted controversy later on. For example, if an Indian company wants to import some technology for manufacture of rice milling plant, instead of mentioning the subject matter as technology for manufacture of rice milling plant, it will be better if specific machines for which technology is imported are mentioned. A typical rice milling plant comprises of key machines, like Paddy Husker, Paddy Separator, Abrasive Whitener, Friction Whitener, De-Stoner and Sifter. In reality, the licensee company may be already having technology for some machines for which it may not import the technology. By specific citation of the machines for which technology is required rather than generic description of rice milling plant, there will be clarity towards rights and obligations of both the parties to the agreement.

2. Mode of technology transfer

The agreement should contain the modality of technology transfer, e.g. simple handover of technical designs, drawings and formulae, or development of proto type machine/pilot plant using the proposed technology. However, it is always preferred to develop a prototype machine/pilot plant by the licensee company in presence of technical personnel from licensor company applying the underlying technical designs, drawings and formulae. It will in fact validate the technology and will leave no room of controversy in later stage.

3. Territory of the agreement

This clause has a lot of commercial importance. Whereas, the licensee company will be interested for wider range of countries in which it can sell its products manufactured by application of the imported technology, the licensor will obviously be interested to restrict it to the extent possible so that it can sell its technology to more interested parties

Once, the project is justified on basis of financial parameters, the next step is to do legal evaluation of terms and conditions as put forth in the draft agreement. The CFO should look into the following points while reviewing the draft agreement. ”

outside the admissible territory. Further, whereas, the licensor normally grants non-assignable and non-transferable license, the Indian licensee company should always ensure exclusive license right so that it gets competitive advantage in the permissible territory.

4. *Improvement of technology*

With increased focus on R&D and innovation, it is quite natural that there may be distinct improvement in the subject technology either by efforts of the licensor or the licensee. Ideally, each party should share the improvement achieved by it with the other party. The obligation of sharing of such information and consideration, if any, should be properly incorporated in the agreement.

5. *Trademark and logo of licensor*

The licensee may use the trademark and logo of the licensor in advertisement, brochures and other promotional materials provided it is allowed in the agreement. Usually, the licensor expects the licensee to use its trademark and logo since it enhances the recognition of its products in global market. However, the licensee should evaluate whether such usage will be to its advantage or it is better to use its (licensee's) own trademark and logo, before accepting the clause.

6. *Intellectual Property Rights (IPR)*

With IPR related statutory provision and related administrative control becoming stringent day by day, the licensee company should ensure that the proposed technology will not result in infringement of any existing IPR. It should ascertain from the licensor whether the technology is covered under any patent taken by the licensor, whether there is any patent in the permissible territory for similar products, whether any competitor in the permissible territory is already having a registered trademark same or similar to that some of the licensor registered in the licensor country. Licensee Indian company may also do parallel due diligence through some IPR consulting firm. At any cost, the licensee company should ensure that the subject technology does not infringe any patented

technology in the country of both the licensor and the licensee. It is always advisable to put a clause in the agreement that in case the licensee company suffers due to legal claim and action by any third party on ground of IPR infringement, the licensor should indemnify the licensee for the loss inflicted on it.

7. *Payment of tech fees and royalty*

Although, ceiling for tech fees and royalty has been lifted, while drafting the consideration clause abundant care should be taken to define the time schedule for such payment as well as the basis of calculation of royalty. The payment of tech fees should be scheduled in tranches in tandem with progress of technology absorption. Royalty calculation should be calculated on the invoiced amount of supplies of the licensed products exclusive of excise duty, sales tax, landed cost of standard bought out components from the licensor and the landed cost of the imported components. Tech fess and royalty payment is subject to deduction of withholding tax by the licensee at the applicable rate. Usually, there is resistance by the licensor for such withholding tax and it insists for grossing up. In such case, the withholding tax is borne by the licensee and it becomes an additional



Royalty calculation should be calculated on the invoiced amount of supplies of the licensed products exclusive of excise duty, sales tax, landed cost of standard bought out components from the licensor and the landed cost of the imported components. Tech fess and royalty payment is subject to deduction of withholding tax by the licensee at the applicable rate. ”

In some cases, the licensor may agree to give the perpetual ownership right subject to payment of royalty as a specified rate.

However, the ultimate decision depends upon the mutual consent. It is always advisable to work out this clause at the time of execution of original agreement, rather than taking a decision after expiration of the tenure. ”



cost. With introduction of double taxation avoidance treaty with almost all major countries, the licensor can get tax credit for such withholding tax and therefore the Indian company should not easily accept the grossing up demand. The prevailing withholding tax rate is 20% where the licensor does not have an Indian PAN.

8. *Non-disclosure agreement*

It is quite imperative that both the licensor and licensee should ensure that the confidential information shared or exchanged during the tenure of the technology transfer agreement is not misused by employees or other external parties who in course of the agreement get an access to such information. Usually the parties to a tech transfer agreement prefer to execute the non-disclosure agreement prior to sign the technology transfer agreement, since even prior to the formal decision of transfer of technology; there might be exchange of some critical information or trade secret.

9. *Governing laws and arbitration clause*

Prior to liberalisation of automatic approval for technology transfer in 2009, there was a condition that the technology transfer agreement should be governed by Indian laws in order to avail automatic approval route besides satisfying other conditions. However, there is no such conditionality now.

Both licensor and licensee can mutually decide the country whose laws will be applicable. It may be a neutral country also. Usually, arbitration clause is incorporated in international agreement for settlement of any legal dispute. Both the licensor and the licensee can decide the modality of engagement of arbitrators and the venue of arbitration proceedings. The Indian licensee company should try to have Indian governing laws as well as any Indian city as the venue for arbitration proceeding. However, if it is not possible, at least it should be ensured that the selected country should have a sound judiciary system. Similar care should be taken for selecting the venue for arbitration proceeding. The Indian licensee company should ensure that the arbitration proceeding is subject the procedural rules of United Nations Commission on International Trade Law (UNCITRAL).

10. *Perpetuity of ownership transfer*

It is a vital point in any technology transfer agreement. Once the tenure of the agreement is expired upon payment of royalty for the stipulated period, the licensee will lose its right to use the technology unless it is specifically mentioned otherwise. The licensee as the first preference should insist that there should be perpetual transfer of ownership of the technology after the normal expiry of the agreement, so that it can continue to manufacture and sell the products in the defined territory without financial obligation. It may even sell the technology to a third party in the said territory. In some cases, the licensor may agree to give the perpetual ownership right subject to payment of royalty as a specified rate. However, the ultimate decision depends upon the mutual consent. It is always advisable to work out this clause at the time of execution of original agreement, rather than taking a decision after expiration of the tenure. In case, the license has got the subject product patented in India, it should insist for ownership right at least during the tenure of the patent, which is normally 20 years, if the licensor is not prepared for perpetual transfer.

A successful technology transfer can be considered as a combination of sound body, intelligent mind and passionate soul. If the credibility of the technology is compared with a sound body, an intelligent mind is required to decide its logical appropriateness for the business of the licensee. And ultimately like a passionate soul, the technology once acquired should be absorbed and applied for effective and gainful commercial application with all sincerity.

Annexure 1

Estimate of Market Penetration of Alpha Limited by Acquisition of New Technology

Year	1 st	2 nd	3 rd	4 th	5 th	6 th	7 th
Market Size (₹ Crores)	4,000	4,400	4,840	5,324	5,856	6,442	7,086
Market Growth %	10%	10%	10%	10%	10%	10%	10%
Alpha Limited Business:							
Value (₹ Crores)	40	180	375	600	850	1,200	1,400
Alpha Market Share %	1%	4%	8%	11%	15%	19%	20%

Annexure 2

Summary of Financial Projection of Alpha Limited pursuant to Acquisition of New Technology

Year	1 st		2 nd		3 rd		4 th		5 th		6 th		7 th	
Total Sales (₹ crores)	40.00	% to sales	180.00	% to sales	375.00	% to sales	600.00	% to sales	850.00	% to sales	1,200.00	% to sales	1,400.00	% to sales
Material	20.00	50.00%	90.00	50.00%	187.50	50.00%	300.00	50.00%	425.00	50.00%	600.00	50.00%	700.00	50.00%
Labour	2.20	5.50%	9.70	5.39%	20.30	5.41%	32.40	5.40%	45.90	5.40%	64.80	5.40%	75.60	5.40%
Personnel Cost - Production	1.20	3.00%	1.30	0.72%	2.50	0.67%	2.80	0.47%	4.40	0.52%	4.90	0.41%	5.50	0.39%
Factory Overhead	6.50	16.25%	29.20	16.22%	60.80	16.21%	97.20	16.20%	137.70	16.20%	194.40	16.20%	226.80	16.20%
Total Manufacturing Cost (A)	29.90	74.75%	130.20	72.33%	271.10	72.29%	432.40	72.07%	613.00	72.12%	864.10	72.01%	1,007.90	71.99%
Personnel Cost - Marketing & Admin.	2.40	6.00%	3.60	2.00%	5.00	1.33%	6.70	1.12%	8.80	1.04%	11.30	0.94%	14.20	1.01%
Royalty	2.80	7.00%	12.60	7.00%	26.30	7.01%	42.00	7.00%	59.50	7.00%	84.00	7.00%	98.00	7.00%
Sales Commission	2.00	5.00%	9.00	5.00%	18.80	5.01%	30.00	5.00%	42.50	5.00%	60.00	5.00%	70.00	5.00%
Warranty	0.80	2.00%	3.60	2.00%	7.50	2.00%	12.00	2.00%	17.00	2.00%	24.00	2.00%	28.00	2.00%
Depreciation & Amortisation	8.50	21.25%	11.10	6.17%	13.70	3.65%	8.50	1.42%	5.80	0.68%	3.20	0.27%	1.90	0.14%
Sundry Overheads	4.00	10.00%	4.80	2.67%	5.80	1.55%	6.90	1.15%	8.30	0.98%	10.00	0.83%	11.90	0.85%
Finance Cost	0.20	0.50%	0.90	0.50%	1.90	0.51%	3.00	0.50%	4.30	0.51%	6.00	0.50%	7.00	0.50%
Total Sales & Admin. Expenses (B)	20.70	51.75%	45.60	25.33%	79.00	21.07%	109.10	18.18%	146.20	17.20%	198.50	16.54%	231.00	16.50%
Total Cost (A+B)	50.60	126.50%	175.80	97.67%	350.10	93.36%	541.50	90.25%	759.20	89.32%	1,062.60	88.55%	1,238.90	88.49%
Operating Profit [Sales -(A+B)]	(10.60)	-26.50%	4.20	2.33%	24.90	6.64%	58.50	9.75%	90.80	10.68%	137.40	11.45%	161.10	11.51%
Profit After Tax	(10.60)	-26.50%	2.84	1.58%	16.82	4.49%	39.52	6.59%	61.34	7.22%	92.81	7.73%	108.82	7.77%

Annexure 3

Discounted Cash Flow Statement

Year	1 st	2 nd	3 rd	4 th	5 th	6 th	7 th
Profit After Tax	(10.60)	2.84	16.82	39.52	61.34	92.81	108.82
Add: Depreciation & Amortisation	8.50	11.10	13.70	8.50	5.80	3.20	1.90
Less: Tech Fees	19.80	13.40	12.90	-	-	-	-
Less: Working Capital	4.00	14.00	19.50	22.50	25.00	35.00	20.00
Net Cash Inflow / (Outflow)	(25.90)	(13.46)	(1.88)	25.52	42.14	61.01	90.72

Discounting Year Factor
 Net Present Value @ 16.78%
 Pay back period (discounted)

(25.90)	1	2	3	4	5	6
	(11.53)	(1.38)	16.01	22.64	28.07	35.73
5 years +						



Scoping Information Technology (IT) Enabled Services by Using COBIT 5

Enterprises today in the rapidly changing digital world are inundated with new demands, stringent regulations and risk scenarios emerging daily, making it critical to effectively govern and manage information and related technologies. This has resulted in enterprise leaders being under constant pressure to deliver value to enterprise stakeholders by achieving business objectives. This has made it imperative for management to ensure effective use of information and technology investments and related IT for not only supporting enterprise goals but also to maintain compliance with internally directed and externally imposed regulations. This dynamic changing environment provides a challenge for chartered accountants as assurance providers to provide assurance with the required level of confidence. However, with the right type of skills and toolsets this provides an excellent opportunity for chartered accountants to act as consultants who provide relevant IT enabled services. A key component of this knowledge base is usage of globally accepted good practices and frameworks and developing a holistic approach which meets the needs of stakeholders. This article provides an overview of how COBIT processes are structured and explains how to scope the assignment with example of recommended approach for selecting the relevant processes and good practices of COBIT. This can be used as a model for providing IT enabled services.

Using COBIT to Meeting Different Stakeholder Needs

For using COBIT, it is important to understand that COBIT 5 has been engineered to meet expectations of multiple stakeholders. It is designed to deliver benefits to both an enterprise's internal stakeholders, such as the board, management, employees, etc. as well as external stakeholders - customers, business partners, external auditors, shareholders, consultants, regulators, etc. It is written in a non-technical language and is therefore usable not only by IT professionals and consultants but also by senior management personnel, assurance providers, regulators for understanding and addressing IT-related issues as relevant to them. Globally from the GRC perspective, COBIT (www.isaca.org/cobit) has been widely used with COSO (www.coso.org) by management, IT professionals, regulators and auditors (internal/external for implementing or evaluating Governance and management practices from an end-to-end perspective. COBIT has been used an umbrella framework under which other standards and approaches, such as ITIL, ISO 27001, etc. have been integrated into overall enterprise governance. Diagram 1 provides sample examples of the different stakeholder needs which can be met by using COBIT 5.

Governance Domain and Processes

The COBIT 5: Enabling Processes guide publication provides a brief introduction to the COBIT concepts and provides the comprehensive contents covering the "process" enabler. COBIT 5 covers all functions and processes within the



Diagram 1

enterprise. It does not focus only on the IT function, but treats information and related technologies as assets that need to be dealt with the same way as any other asset by everyone in the enterprise. It is organised into five domains with clear demarcation between Governance and Management processes and practices. The Governance processes deal with the stakeholder governance objectives: value delivery, risk optimisation and resource optimisation and include practices and activities aimed at evaluating strategic options, providing direction to IT and monitoring the outcome (Evaluate, direct

and monitor [EDM] in line with the ISO/IEC 38500 standard concepts). The Governance domain contains five governance processes; within each process, evaluate, direct and monitor (EDM) practices are defined. These are:

1. Ensure governance framework setting and maintenance.
2. Ensure benefits delivery.
3. Ensure risk optimisation.
4. Ensure resource optimisation.
5. Ensure stakeholder transparency.

Management Domain and Processes

The management domain is based on the principles of PBRM (Plan, Run, Build and Monitor) as shown in Diagram 2. It and has totally 32 processes and covers enterprise activities end-to-end (i.e., all business and IT function areas), making the involvement, responsibilities and accountabilities of business stakeholders in the use of IT more transparent.

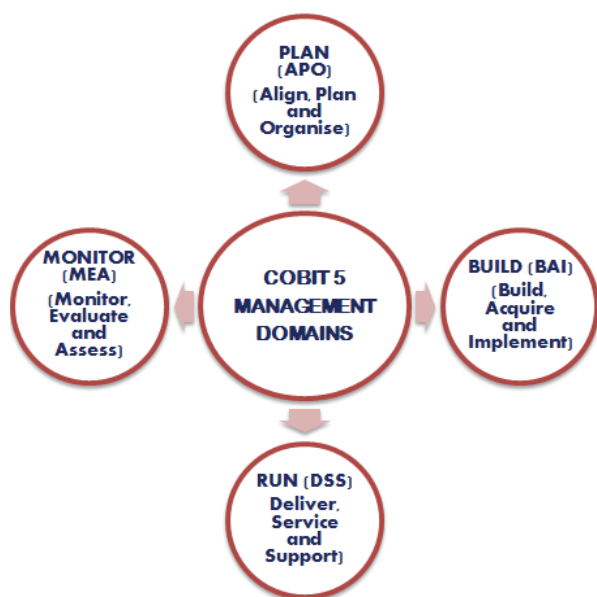


Diagram 2

Understanding Structure of COBIT 5 Enabling Process Knowledge Base

COBIT 5 provides complete, consistent, and easily navigable guidance to help promote access of information and assist in meeting any applicable legal, regulatory and contractual requirements. The good practices for each of the 37 processes (5 relating to governance and 32 relating to management) are presented consistently in a generic structure which makes understanding and using them easier. Understanding the structure of one process is sufficient as the same structure is consistently used for all processes. The generic structure of the process is explained below:

- Process identifier
 - o Process label: The domain prefix (EDM, APO, BAI, DSS, MEA) and the process number
 - o Process name: A short description, indicating the main subject of the process. (Example: EDM 03 Ensure Risk Optimisation)
- Area of the process: (Example: Governance or

management)

- Domain name: (For example: Evaluate, Direct and Monitor)
- Process description: An overview of what the process does and a high-level overview of how the process accomplishes its purpose.
- Process purpose statement: A description of the overall purpose of the process.
- Goals cascade information: Reference and description of the IT-related goals that are primarily supported by the process and related metrics to measure the achievement of the IT-related goals.
- Process goals and metrics: A set of process goals and a limited number of example metrics.
- RACI chart: A suggested assignment of level of responsibility for process practices to different roles and structures. The enterprise roles listed are shaded darker than the IT roles. The different levels of involvement are:
 - o R(esponsible): Who is getting the task done?
 - o A(ccountable): Who accounts for the success of the task?
 - o C(onsulted): Who is providing input?
 - o I(nformed): Who is receiving information?
- Detailed description of the process practices for each practice:
 - o Practice title and description. Example: EDM1.01 Evaluate the governance system.
 - o Practice inputs and outputs, with indication of origin and destination.
 - o Process activities, further detailing the practices.
- Related guidance—References to other standards and direction to additional guidance

How to Scope IT Enabled Services Using Relevant Content from COBIT 5

The good practices of COBIT 5 can be used as relevant depending on stakeholder needs or scope and objectives of assurance/consulting assignment. The first step to using COBIT 5 is selecting the relevant processes based on needs/scope/objective. There are multiple approaches to navigate and select relevant processes and customising COBIT for use. The recommended approach which is based on extensive research by ISACA is given below:

1. Using the COBIT 5 Goals Cascade. This approach explained in detail in the COBIT 5 framework has the following steps:
 - a. Identify Stakeholder needs and based on this select relevant Governance objectives from: Benefits Realisation, Risk optimisation and Resource optimisation. (Please refer Figure 3 of COBIT 5 Business Framework)
 - b. Based on the Governance objectives, select the relevant enterprise goals from the list of 17 enterprise goals. (Please refer Figure 5 of COBIT 5 Business Framework)
 - c. Based on the selected Enterprises Goals, select relevant IT-related Goals from the list of 17 IT-related goals. (Please refer Figure 22 of COBIT 5 Business Framework)
 - d. Based on the selected IT-related goals, use the criteria of P (Primary) or S (Secondary) to select relevant COBIT 5 process. (Please refer Figure 23 of

COBIT 5 Business Framework)

- e. Review the contents of this list and further filter the list based on relevance.
- f. Use the relevant contents (Process description, purpose, Goals cascade and metrics, Process Goals and related Metrics, RACI Chart, practices with Input-output document references, list of activities and related guidance) to prepare the benchmark of COBIT as applicable to you.
- g. Customise these extracted contents of COBIT 5 as relevant to your requirements by integrating with other frameworks and internal practices and integrate them with policies, procedures and practices and guidelines of the enterprise.

It is noted that the above approach has to be used with caution and the identified processes from this approach need to be validated and filtered based on relevance. Users may not have all the information to follow each of the steps. Then, they may skip earlier steps and directly start from enterprise goals mapping or IT related goals mapping and select the relevant IT processes.

Developing Customised Approach for Scoping Assignments

In addition to the approach given above, there are other approaches also which can be developed by users based on their experience and expertise of using COBIT. For example, a good understanding of the COBIT 5 Concepts and COBIT 5 Enabling process documents will enable a user to select relevant processes by a quick walk-through and reading of the COBIT 5 process description and purpose statements. Further, processes can also be selected by searching on key words as relevant to the needs. However, whatever approach is used, it is important to validate and customise the contents based on relevance.

The complete lists of 37 processes of COBIT 5 are given below. By reading the contents of each of the process, one can get good idea of what is covered in each of these processes. The contents from each of these processes or a combination of selected processes as relevant can be made for preparing the proposal which becomes starting point from discussion regarding scope and objective of the assurance/consulting assignment. Once the scope is agreed upon, the extracted contents from these processes can be customised and used as a benchmark for providing the required services.

Governance Domain Processes:

(EDM: Evaluate, Direct and Monitor)

- | | |
|------|---|
| EDM1 | Set and Maintain the Governance Framework |
| EDM2 | Ensure Value Optimisation |
| EDM3 | Ensure Risk Optimisation |
| EDM4 | Ensure Resource Optimisation |
| EDM5 | Ensure Stakeholder Transparency |

Management Domain Processes:

(APO: Acquire, Plan and Organise)

- | | |
|------|--|
| APO1 | Define the Management Framework for IT |
| APO2 | Define Strategy |
| APO3 | Manage Enterprise Architecture |
| APO4 | Manage Innovation |
| APO5 | Manage Portfolio |
| APO6 | Manage Budget & Cost |

- | | |
|-------|---------------------------|
| APO7 | Manage Human Resources |
| APO8 | Manage Relationships |
| APO9 | Manage Service Agreements |
| APO10 | Manage Suppliers |
| APO11 | Manage Quality |
| APO12 | Manage Risk |
| APO13 | Manage Security |

(BAI: Build, Acquire and Implement)

- | | |
|-------|----------------------------------|
| BAI1 | Manage Programmes and Projects |
| BAI2 | Define Requirements |
| BAI3 | Identify & Build Solutions |
| BAI4 | Manage Availability and Capacity |
| BAI5 | Enable Organisational Change |
| BAI6 | Manage Changes |
| BAI7 | Accept & Transition of Change |
| BAI8 | Knowledge Management |
| BAI9 | Manage Assets |
| BAI10 | Manage Configuration |

(DSS: Deliver, Service and Support)

- | | |
|------|---------------------------------------|
| DSS1 | Manage Operations |
| DSS2 | Manage Service Requests and Incidents |
| DSS3 | Manage Problems |
| DSS4 | Manage Continuity |
| DSS5 | Manage Security Administration |
| DSS6 | Manage Business Process Controls |

(MEA: Monitor, Evaluate and Assess)

- | | |
|------|--|
| MEA1 | Monitor and Evaluate Performance and Conformance |
| MEA2 | Monitor System of Internal Control |
| MEA3 | Monitor and Evaluate Compliance with External Requirements |

Conclusion

The key differentiator of COBIT 5 is that it can be customised for enterprises of all sizes, industries and geographies regardless of the technology platform or the enterprise architecture. A reading of the COBIT 5 framework publication (available as a free download) will provide understanding of the five key principles, seven critical enablers, overall architecture and process structure of COBIT. The key to successful use of COBIT, in addition to concept understanding is learning the practical approach of navigating and selecting relevant processes and related contents, integrating them with other frameworks and customising it as per needs of the assignment whether it is in assurance or consulting. COBIT 5 has a rich repository of knowledge which can be readily customised for building a suite of specific IT enabled services. The harmonious blend of five principles and the seven key enablers with excellent collection of good practices combined with the fact that COBIT 5 is hugely popular globally accepted framework makes it the most suitable framework for providing IT enabled services for chartered accountants and IT consultants. Research has confirmed that those who invest time in understanding and using COBIT 5 will definitely reap rich rewards and add value.

The COBIT 5 framework is available to all as a free download from ISACA at www.isaca.org/cobit. All figures/diagrams are adapted from publications of ISACA. ■

Government Makes Norms Stringent for Incorporation of Firms

In order to identify vanishing companies with public shareholding, the government has formed a committee to monitor such firms and has made the norms stringent for incorporation of companies. "A Coordination and Monitoring Committee (CMC) co-chaired by secretary Ministry of Corporate Affairs and chairman SEBI has been set up to identify and monitor the state of affairs of vanishing companies," Minister of State for Corporate Affairs RPN Singh said in a written reply to the Lok Sabha. The CMC will also take appropriate action against such companies in terms of the Companies Act and SEBI Act, he said. "...Norms for incorporation of companies have been made more stringent by introduction of Directors Identification Number (DIN), mandatory filing of all details of directors etc," he added further to a query whether norms for vanishing companies had been tightened in view of the multi-crore Satyam fraud and to protect the interest of small investors. He said, "As on date 86 prosecutions have been filed against companies presently identified as 'vanishing companies'," the minister said.

(Source: Press Trust of India)

Direct Taxes Code Bill in Monsoon Session: Finance Minister

Finance Minister Pranab Mukherjee has said that he intends to introduce the revised Direct Taxes Code (DTC) Bill, which seeks to overhaul the 50 year-old income tax laws, in the monsoon session of Parliament. While moving the Finance Bill in Rajya Sabha for consideration and returning, Mukherjee also said that most of the recommendations of the Parliamentary standing committee headed by Yashwant Sinha would be accepted. The Finance Bill has already been approved by the Lok Sabha after incorporating several changes to the original proposal. Several contentious proposals such as the General Anti Avoidance Rules have been watered down and deferred, while other controversial issues such as excise duty on jewellery have been dropped.

Mukherjee said he had incorporated certain amendments such as removal of the cascading effect of the dividend distribution tax, allowing venture capital to invest in all sectors, introduction of Advance Pricing Agreements and raising the threshold limit for audit and presumptive taxation to ₹1 crore, which have been endorsed by the standing committee. The standing committee on DTC had given a number of recommendations, including raising income tax exemption limit to ₹3 lakh from ₹1.8 lakh now.

(Source: <http://www.business-standard.com/india/>)

Activities Taxed by State Governments to be Exempted from Service Tax Levy

The government has agreed to make changes in the definition of services in the Negative List to address states concern on the levy of service tax on activities already taxed by states. The move can also be seen as a strategy

to secure the support of states for introduction of the Goods & Services Tax (GST). "Some states, through the empowered committee of state finance ministers, have expressed concern. I have decided to address their concern by making changes in the definition of service, which would exclude activities specified in the Constitution as deemed sale of goods," Finance Minister Pranab Mukherjee said while initiating a discussion on the Finance Bill. The definition of works contract has been enlarged to include movable properties. Exemption for specified services relating to agriculture in the Negative List has been extended to agricultural produce, enlarging the scope of the entry. A negative list for taxation of services was announced in the Budget in March as a step towards the proposed GST. It contained a list of 17 services to be exempted from service tax, while everything else was proposed to be taxed. This was a shift from the current system, in which only 119 services are taxed. States had expressed concern that some activities listed under the States List in the Constitution were proposed to be taxed by the Centre under its residuary powers, and this could lead to double taxation. These had asked the government to include those items in the Negative List till the GST was introduced.

(Source: <http://www.financialexpress.com/news>)

Finance Minister Scraps 'Draconian' Clause in Customs Law

The finance minister has scrapped a proposed tough amendment in the customs and central excise law that would have made granting of bail only after hearing the public prosecutor, bringing much needed relief for the business community, exporters and importers. Lawmakers had slammed the proposed changes in the Finance Bill and had termed the provisions as "draconian". The proposed amendment in the law had said that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence punishable for a term of imprisonment of three years or more under Section 135 shall be released on bail or on his own bond unless the public prosecutor has been given an opportunity to oppose the application for such release. Finance minister Pranab Mukherjee, while initiating the discussion on the Finance Bill in Lok Sabha, said he had taken note of the concerns expressed by members. "The House will recall that certain amendments were proposed in the customs and central excise law in respect of the classification of offences as cognizable and non-bailable. In response to concerns expressed by members that the proposal regarding grant of bail only after hearing the public prosecutor is too harsh, I propose to omit this provision entirely," Mukherjee said. He said only serious offences under the customs law involving prohibited goods or duty evasion exceeding ₹50 lakh shall be cognizable. "However, all these offences shall be bailable," Mukherjee said.

(Source: <http://www.thehindubusinessline.com/>)

Government Rolls Back 1% TDS on Property Sales

The government has rolled back the proposed 1% tax deduction at source (TDS) on transfer of immovable property. Initiating the debate on the Finance Bill for 2012-13 in the Lok Sabha, Finance Minister Pranab Mukherjee said the government had decided to roll back the levy after receiving various representations. "The Finance Bill proposes that every transferee of immovable property (other than agricultural land), at the time of making payment for transfer of the property, shall deduct tax at the rate of 1 % of such sum," Mukherjee said. "I have received a number of representations pointing out the additional compliance burden this measure would impose. I, therefore, propose to withdraw this provision for levy of TDS on transfer of immovable property," he added. In the budget for financial year 2012-13 presented 16th March, the finance minister had proposed to levy TDS on transfer of immovable property, in a bid to tighten screw on corruption and black money in the property markets. Bowing to pressure, Finance Minister Pranab Mukherjee announced a slew of measures to provide relief to the jewellery sector and postponed implementation of the general anti-avoidance rules (GAAR) by one year, but offered no concessions to Vodafone involved in tax dispute. Moving the Finance Bill, 2012 for consideration and passage in the Lok Sabha, Mukherjee halved the capital gains tax for private equity investors to 10%.

(Source: www.financialexpress.com)

Service Tax on Railway Freight from 1st July

Using the Railways to transport goods would become more expensive from 1st July, with the government bringing the sector under the service tax net. The move, while being inflationary, would further reduce competitive edge of the national transporter against the road sector. According to official sources, the finance ministry does not want to further defer the levy as it goes against its plan to complete the service tax chain by bringing all activities barring a few in the negative and exemption lists under the tax net. Moreover, the levy has the potential to provide additional revenue to the tune of ₹1,000 crore to the exchequer. A finance ministry official said that the proposed levy on the railways would only have marginal impact on prices as there would be an abatement of 70% on gross freight charged by railways. This would mean that service tax would be levied only on 30% of freight charges of the railways thereby bringing down the effective rate down from 12.3% (including education cess of 2% and higher education cess of 1%) to just about 3.6%.

(Source: <http://www.hindustantimes.com>)

Finance Ministry Examining CBDT Report on Black Money

Nearly 10 months after it was formed to examine ways to check the menace of black money, a committee under the chairmanship of Central Board of Direct Taxes (CBDT) chief has submitted its report to the finance ministry. The ministry, however, declined to share its details saying

"action taken" on the basis of the report is to be laid in Parliament. The government had on 27th May, 2011 constituted the committee to examine ways to strengthen laws to curb the generation of black money in the country, its illegal transfer abroad and its recovery. It also declined to share the copy of the report as it is "exempted under Section 8(1)(c) and Section 8(1)(e) of the RTI Act, 2005". The Section 8(1)(c) bars "information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature". Earlier, replying to another RTI application, the Government has said there was "no authentic figures" about the amount of deposits held by Indian citizens in Swiss banks, which are exclusive of their lawful and legitimate deposit. The government has also commissioned a study to estimate quantum of black money in the country which is expected to complete its work by September this year. The Government has said negotiations of 16 new Tax Information Exchange Agreements (TIEAs) to keep a tab on flow of black money have been concluded with Bahamas, Bermuda, British Virgin Islands, Isle of Man, Cayman Islands, Jersey, Monaco, Saint Kitts and Nevis, Argentina, Costa Rica, Guernsey, Macau, Liberia, Marshall Islands, Congo and Gibraltar.

(Source: <http://www.ndtvprofit.com>)

Indirect Tax Collection Up 9%

In the current financial year, the indirect tax collection, which includes excise duty, customs duty, and service tax, has been at ₹91,035 crore, which is 9% higher than the previous year, while the service tax contributes ₹3,705 crore alone.

Mumbai tops the list in the zone in the collection of service tax with ₹580 crore, followed by Delhi with a collection of ₹377 crore, Chennai with a collection of ₹374 crore and Kolkata with a collection of ₹177 crore. Bangalore collected ₹114 crore and Ahmedabad ₹73 crore.

(Source: <http://www.economicstimes.com>)

Net Direct Tax Collections Rise 7-fold in April

The net direct tax collections rose to a whopping ₹14,812 crore in April this year, a seven fold increase compared to the same period of last fiscal. Net direct tax collections, gross collections minus refunds, was at ₹1,992 crore in April 2011. The net collection was higher mainly due to lower refunds given by the revenue department in April 2012. The gross direct tax collection in April fell by over 7% to ₹24,631 crore, official sources said. The collection was ₹27,091 crore in April 2011. During April 2012, the net personal income tax collection went up by a huge 70% to ₹14,423 crore. The figure was ₹8,472 crore in the corresponding month last fiscal. The net collection in corporate taxes was ₹383 crore in April 2012. Besides, collection from wealth tax stood at ₹6 crore, down from ₹10 crore collected in April 2011. The government has fixed a direct tax collection target of ₹5.70 lakh crore for the current fiscal.

(Source: News Agencies)

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals/Newspapers received during April and May, 2012 for the reference of Faculty/Students & Members of the Institute.

1. ACCOUNTING

Assessing the Impact of Alternative Fair Value Measures on the Efficiency of Project Selection & Continuation by Judson Caskey & John s. Hughes. *The Accounting Review*, Vol.87/2, 2012, pp.483-512.

Corporate Reporting of Non Financial Leading Indicators of Economic Performance & Sustainability by Jeffrey r. Cohen, etc. *Accounting Horizons*, Vol.26/1, 2012, pp.65-90.

Financial Reporting: "Going Concern" Gone by Bruce Pounder. *Strategic Finance*, April 2012, pp.21-22+24.

PCAOB Inspections & Large Accounting Firms by Bryan K. Church & Lori B. Shefchik. *Accounting Horizons*, Vol.26/1, 2012, pp.43-63.

Towards a Sustainable Cost Accounting Model: The Emerging Role of the CMAs as Friend of the Earth by Sujit Kumar Roy. *The Management Accountant*, April 2012, pp.384-389.

The Value Relevance of International Financial Reporting Standards: Empirical Evidence in an Emerging Market by Fatima A. Alali & Paul Sheldon. *The International Journal of Accounting*, Vol. 47, 2012, pp.85-108.

2. AUDITING

Audit Fees & Book-Tax Differences by Michelle Hanlon, etc. *JATA Spring 2012*, pp.55-86.

Can Reporting Norms Create a Safe Harbor? Jury verdicts against Auditors under Precise & Imprecise Accounting Standards by Kathryn Kadous & Molly Mercer. *The Accounting Review*, Vol.87/2, 2012, pp.565-587.

Fraud findings: The Joint Venture Swindle by James Carroll. *Internal Auditor*. April 2012, pp.29-30.

Fraud Investigation: Don't Jump to Conclusions by David Malamed. *CA Magazine*, May 2012, pp.38-41.

Occupational Fraud: the Fraudster's Mind by Joseph T. Wells. *Internal Auditor*. April 2012, pp.53-56.

3. ECONOMICS

Changing Contours of Global Crisis – Impact on Indian Economy by Anand Sinha. *RBI Bulletin*, April 2012, pp.725-737.

The Challenge of Globalization: Some Reflections from the Reserve Bank Perspective by Suvvuri Subbarao. *RBI Bulletin*, April 2012, pp.699-705.

Class Struggles, Ideologies, Economic Transformations and Colonialism by Amiya Kumar Bagchi. *Eco. & Pol. Weekly*, April 14, 2012, pp.33-45.

Does India's employment guarantee scheme guarantee employment ? by Puja Dutta etc. *Eco. & Pol. Weekly*, April 21, 2012, pp.55-64.

Implications of Basel III for capital, liquidity & profitability of Banks by B. Mahapatra. *RBI Bulletin*, April 2012, pp.771-781.

4. INVESTMENT

Corporate Debt Restructuring: More Than A Mere Fad? by Jayantika Singh. *Company Law Journal*, Vol.2, 2012, pp.1-13.

Customer-base Concentration: Implications for Firm Performance & Capital Markets by Panos N. Patatoukas. *The Accounting Review*, Vol.87/2, 2012, pp.363-392.

Gray Markets and Multinational Transfer Pricing by Romana L. Autrey & Francesco Bova. *The Accounting Review*, Vol.87/2, 2012, pp. 393-421.

Negative – Book – Value Firms & Their Valuation by Ching-Lih Jan & Jane A. Ou. *Accounting Horizons*, vol.26/1, 2012, pp.91-110.

Regulating Venture Capital Funds: The Way Ahead by Abhishek Kumar & Karandeep Makkar. *Company Law Journal*, vol.2, 2012, pp.14-22.

5. MANAGEMENT

India's Best CFOs Essay by Alokesh Bhattacharyya. *Business Today*, April 29, 2012, pp.48-50.

India's Best CFOs Trends by Anand Adhikari. *Business Today*, April 29, 2012, pp. 63-66.

New Survey of Workplace Ethics Shows Surprising Results by Curtis c. Verschoor. *Strategic Finance*, April 2012, pp.12-15.

6. TAXATION & FINANCE

Budget 2012: Tinkering with Subsidies by Mala Lavani. *Eco. & Pol. Weekly*, April 14, 2012, pp.15-18.

Controversy on Taxability of Cross-border Software Payments by Rajan Vora & Hemen Chandariya. *BCAJ*, April 2012, pp.9-19.

Direct Tax Code & Taxation of Agricultural Income: A Missed Opportunity by D.P. Sengupta & R. Kavita Rao. *Eco. & Pol. Weekly*, April 14, 2012, pp.51-60.

Direct Tax Proposals in the Finance Bill, 2012 – An Overview by S. Rajaratnam. *The Management Accountant*, April 2012, pp.397-398.

The INS & Outs of Section 1030A by Peter Rayney. *Accountancy*, April 2012, pp.45-47.

Liability to Pay Interest for Wrong Availment of CENVAT Credit by M. Govindarajan. *The Management Accountant*, April 2012, pp.399-402.

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



Invitation to Contribute Articles for E-Newsletter 'Prudence'

We are pleased to inform you that looking into the relevance of e-newsletter 'PRUDENCE' released by the Committee on Public Finance & Government Accounting and support received from our readers and authors, it has been decided by the competent authority to release the e-newsletter every month instead of bi-monthly.

The April-May 2012 issue of the E-Newsletter is available at the URL http://www.icaai.org/new_post.html?post_id=3825&c_id=241.

We expect our experts, researchers and writers to be more pro-active in contributing articles and invite them 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 June 2012 issue of its E-newsletter.

If the article is published, a token honorarium of ₹3000/- per article shall be paid. Discretion of the Committee regarding publication /non-publication of the article shall be final and abiding therewith under copyright of the Committee. Material of this

E-Newsletter may not be reproduced, whether in part or in whole, without the consent of Editorial Board of Committee. Authors may only submit original work that has not been appeared elsewhere in any publication. A formal signed undertaking in the form of a letter stating that "the article is original and does not infringe any copyright and has not been published elsewhere or has not been sent for publication" should be sent along with the article.

The articles (up to 1500 words) may be sent to us latest by 10th June 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
Email: cpf_ga@icaai.org



Study Tour on International Taxation to Vienna, Austria - Organised by Committee on International Taxation of The Institute of Chartered Accountants of India



The Committee on International Taxation of ICAI with a view to empower members of the profession to render high quality professional services in the field of International Taxation is in the process of finalizing a Study Tour on International Taxation to Vienna, Austria consisting of ICAI members.

The Study Tour is proposed in the last week of August, 2012.

The Committee is in dialogue with the Institute for Austrian and International Tax Law, Vienna University of Economics and Business to organize a short duration Course for the members joining the study tour. It is also proposed that the said Institute will provide certificate of participation to the participants.

Most current topics will be selected for the short duration course to ensure maximization of benefits

of the Study tour. It will be a great opportunity to update knowledge in the field of International Tax. Similar tour was conducted last year which was very successful.

There are 25 seats and the registrations will be done on first come first serve basis.

For further details and registration please contact:

Study Tour Coordinator

Ashish Bhansali
Secretary,
Committee on International Taxation,
ICAI
citax@icaai.org
Phone: 0120-3045923
Mob: 09310532063





ANNOUNCEMENT FOR THE ATTENTION OF THE MEMBERS

Manner of Reporting by the Statutory Auditors on Accounting for Liabilities Arising on Dismantling of Indian Motor Third Party Insurance Pool (IMTPIP) Prescribed by IRDA

1. As the members are aware, the Insurance Regulatory and Development Authority (IRDA) had vide its Order No. IRDA/NL/ORD/MPL/277/12/2011 dated 23rd December 2011 had directed the dismantling of the Indian Motor Third Party Insurance Pool (IMTPIP) with effect from 31st March 2012.
2. Subsequently, vide its Order No. IRDA/F&A/ORD/MTTP/070/03-2012 dated 22nd March 2012, in exercise of its powers under section 34 of the Insurance Act, 1938, prescribed, *inter alia*, the following accounting treatment in respect of the "transitional liabilities" relating to the financial years 2009-10, 2010-11 and 2011-12, arising on account of such dismantling as follows:
"3. The IMPTPIP liabilities upon estimation/re-estimation of actuarially determined liabilities relating to the financial years (accounting years as the practice is) 2009-10, 2010-11 and 2011-12 following the dismantling of the IMTPIP shall be determined and such determined liabilities (Transitional Liabilities) shall be recognized by insurers by making an irrevocable choice to recognize the said transitional liabilities:
 - a. *Immediately in the financial year ending March, 2012; or*
 - b. *As an expense on a straight-line basis over upto the three years beginning with the financial year ending March, 31, 2012.*
 - c. *An insurer opting for (b) above, shall:*
 - (i) *Disclose at the end of each financial year the amount of transitional liabilities that remains unrecognized; and the amount recognized in the financial year; and*
 - (ii) *Shall ensure that the expense to be recognized in subsequent years shall not be less than the expense that shall fall due on a straight-line basis; and*
 - (iii) *In case the actual liability in respect of past years i.e. underwriting years until March, 31, 2012 being more than the amount on straight-line basis, such additional liabilities shall be recognized in full, in addition to the amount falling due for recognition on straight-line basis."*
3. The Council of the Institute of Chartered Accountants of India at its 316th meeting held from 15th to 17th May 2012 considered the accounting treatment prescribed under paragraph 3(b) of the above mentioned Order of IRDA *vis a vis* the impact thereof on the auditor's report since non-recognition of the said liability where an insurer exercises the option under paragraph 3(b) is not in accordance with accounting principles generally accepted in India.
4. On a consideration of the matter, the Council of the Institute noted that the aforesaid accounting treatment has been prescribed by the IRDA in exercise of its powers under section 34 of the Insurance Act, 1938. Accordingly, the statutory auditors need not qualify their audit report on account of such accounting treatment followed by the insurance company. The matter should, however, be brought out by the auditors in the audit report by way of an "Emphasis of Matter Paragraph" in accordance with the Standard on Audit (SA) 706, "Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report, provided the non-recognition of the said liability pursuant to the aforesaid order of IRDA is appropriately disclosed, with quantification, by the insurer by way of the notes to the accounts in the financial statements.
5. An illustrative Emphasis of Matter Paragraph in the audit report is as follows:
 "Emphasis of Matter
 Without qualifying our opinion, we draw attention to Note X to the financial statements, which describes deferment of the liability on dismantling of the Indian Motor Third Party Insurance Pool by the Company to the extent of Rs.YYY pursuant to the exercise of the option for the accounting treatment for the same prescribed under paragraph 3(b) of Insurance Regulatory and Development Authority Order no. IRDA/F&A/ORD/MTAP/070/03/2012 dated 22nd March 2012. "
6. Members may note that the aforesaid disclosure in the Notes to the Accounts would normally include.
 - Quantification of the actual amount of the total liability on dismantling.
 - amount of transitional liabilities that remains unrecognized; and
 - the amount recognized in the financial year;

7. Further, pursuant to dismantling of the IMTPIP by the IRDA, the insurance company's accounting policy for recognition of liability incurred by it in respect of third party risks of specified commercial motor vehicles (specified risks) would also undergo a change. Accordingly, the Company would also need to appropriately disclose such change in accounting policy in its Notes to Accounts. An illustrative disclosure in this respect is this regard is also given below.

8. An illustrative Notes to Accounts in respect of treatment of liability arising on account of dismantling of IMTPIP for the financial years 2007-08 and 2008-09 and the transitional liability in respect of the financial years 2009-10, 2010-11 and 2011-12 is as follows:

"During the year, the Insurance Regulatory and Development Authority vide its Orders No. IRDA/NL/ORD/MPL/277/12/2011 dated 23rd December 2011 directed the dismantling of the Indian Motor Third Party Insurance Pool (IMTPIP).

Subsequently, the IRDA vide its Order No. IRDA/F&A/ORD/MTTP/070/03-2012 dated 22nd March 2012, in exercise of its powers under section 34 of the Insurance Act, 1938, prescribed, the following accounting treatment in respect of the liability arising on account of the dismantling of the IMTPIP:

"2. The additional IMPTPIP liabilities upon re-estimation of actuarially determined liabilities relating to underwriting years 2007-08 and 2008-09 shall be accounted for and recognized in full in the financial year ending March 31, 2012 itself. The Pool Manager shall quantify the liability in respect of each insurer for this purpose.

3. The IMPTPIP liabilities upon estimation/re-estimation of actuarially determined liabilities relating to the financial years (accounting years as the practice is) 2009-10, 2010-11 and 2011-12 following the dismantling of the IMTPIP shall be determined and such determined liabilities (Transitional Liabilities) shall be recognized by insurers by making an irrevocable choice to recognize the said transitional liabilities:

(a) Immediately in the financial year ending March, 2012; or

(b) As an expense on a straight-line basis over upto the three years beginning with the financial year ending March 31, 2012."

As a result of dismantling of the IMTPIP, the Company has incurred the following liability:

2007 – 08 : Rs. DDD (as quantified by the Pool Manager)

2008 – 09 : Rs. GGG (as quantified by the Pool Manager)

Total (A) : Rs. JJJ

Transitional Liability

2009-10 : Rs. PPP

2010-11 : Rs. QQQ

2011-12 : Rs. TTT

Total Transitional liability (B): Rs. AAA

TOTAL LIABILITY ON ACCOUNT OF DISMANTLING (A) + (B) : Rs. HHH

Accordingly, in terms of the requirements of paragraph 2 of IRDA's Order of 22nd March 2012, an amount of Rs.JJJ has been charged to the Profit and Loss Account for the current financial year ended 31st March 2012.

Further, the Company has decided to exercise the option given under paragraph 3(b) of the aforesaid Order of IRDA in respect of the accounting treatment of Transitional Liability amounting to Rs.AAA and, thus, would amortize the amount of Rs.AAA over a period of three years. Accordingly, Rs.CCC (representing one-third of Rs.AAA) has been charged to the Profit and Loss Account for this financial year. Further, in terms of the requirements of paragraphs 3(b) and (c) of the aforesaid Order of IRDA, the balance amount carried forward is Rs.YYY (Rs.AAA – Rs.CCC).

Had the Company chosen to exercise the option given under paragraph 3(a) of the aforesaid Order of the IRDA, the Company would have been required to recognise the entire amount of Transitional Liability of Rs.AAA in its Profit and Loss Account for the year 2011-12. Accordingly, the profit of the company would have been lower by Rs.YYY pursuant to recognition of the said liability in the year of dismantling of IMTPIP."

9. An illustrative Notes to Account in respect of change in the accounting policy in respect of third party risks of specified commercial motor vehicles is as follows:

"Till the financial year 2010-11, the Company had the following accounting policy in respect of third party risks of specified commercial motor vehicles (specified risks):

(state the policy hitherto being followed by the company)

Pursuant to the dismantling of the IMTPIP by the IRDA with effect from 31st March 2012, with effect from 1st April, 2012, it would not be possible for the Company to transfer the risks incurred by it on account of third party risks of specified commercial motor vehicles by way of reinsurance of same through IMTPIP. Accordingly, the Company would be required to provide for the entire amount of related liability and also recognize the entire amount of other related expenditure in the financial statements of the relevant financial year."





Certificate Course on Master in Business Finance

**4th Batch at Delhi, Mumbai, Bangalore & Kolkata
from July 2012**

Course Objective

The Committee on Management Accounting (CMA) of ICAI will conduct 4th Batch of Master in Business Finance Certificate Course (MBFCC). Course coverage is extensively wide across various topics of advanced financial management like Capital Market, Investment Banking, Fund Raising & Fund Management, Corporate Valuation, Merger & Acquisitions, Banking, Forex Market, Treasury Management, Risk Management etc. with an aim to provide knowledge and skill required for tomorrow's CFO and high end consultancy in finance.

Course Highlights

- Comprehensive Finance Curriculum
- Skill augmenting to match India Inc Growth
- Unique mix of faculty
- Focus on Indian Market
- Innovative practical and managerial applications

Eligibility

Only the Members of ICAI and the Students of the Institute who have passed the CA Final Examination are eligible to pursue this Course.

Course Contents

LEVEL I

Paper I - Financial Planning, Analysis & Management

Paper II - Fund Raising, Structuring & Portfolio Management

LEVEL II

Paper III - Financial Markets & Capital Market

Paper IV - Forex, Treasury & International Finance

LEVEL III

Paper V - Valuations, Acquisitions and Risk Analysis

Paper VI - Banking & Trade Finance

Course Duration

This is approximately One year course. Classes will be held on 2nd and 4th Saturdays (2 pm to 8 pm) and Sundays (9 am to 2 pm). Further, there will be two residential programmes at Centre of Excellence at Hyderabad.

Two Weeks Full Time Residential Programme at Centre of Excellence, Hyderabad

The Residential Programme aims at bringing eminent national and international faculty members to guide the students in undertaking practical and innovative project work. The fees for Two Residential Programmes at Centre of Excellence at Hyderabad is Rs 20,000 (Rs. Twenty thousands only) which includes cost of stay, food etc.

Faculty

The Faculty members for the course are from IIM's, XLRI, NIBM, MDI, premier Universities, Public & Private Sector Banks/ Financial Institutions, Mutual Funds, PE Funds, Merchant Bankers, Senior Chartered Accountants from Industry Profession and reputed academicians.

Course Registration

The course registration is on receipt of duly filled in and signed Course Registration form with course fee of Rs. 30,000 (Rs. Thirty Thousands only) vide DD/ Pay Order in favor of "The Secretary, ICAI" payable at Delhi. Course fee can also be paid online through ICAI Payment Portal: www.icai.com/html

Registration Form Submission:

The Registration form with course fee has to be sent at the following address:

The Secretary, Committee on Management Accounting (CMA)

ICAI Bhawan, Administrative Block, 3rd Floor
A-29, Sector - 62 Noida (U.P)

Pin: 201 309

Ph: 0120-3045905 / 945 and 9350799912

E-mail: cma@icai.org

(Details in website www.icai.org)

**Committee on Management Accounting
The Institute of Chartered Accountants of India**



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
Requires
Additional Director (Technical)

For its Technical Directorate which provides support to the Accounting Standards Board, Committee for Implementation of Indian Accounting Standards (IFRS), Committee for Accounting Standards for Local Bodies, Research Committee, Expert Advisory Committee and other assignments relating to providing inputs to the accounting pronouncements issued by the Institute.

Essential knowledge and skills required for the incumbent would include expert knowledge of the Accounting Standards in India and IFRSs apart from the other pronouncements, such as Guidance Notes, Opinions of Expert Advisory Committee and other technical literature issued by the ICAI. The skills required include application of the aforesaid pronouncements in specific situation with a view to advise the relevant Committees/board and to draft the relevant pronouncements. This would require ability to objectively analyse issues involved in various alternatives and perceive their implications in implementation.

He/ She would act as a part of the senior team in the Technical Directorate comprising technical and administrative personnel.

Qualification and Experience:

Chartered Accountant with experience of application

of Accounting Standards in India or abroad of 15 years.

Remuneration:

Present total monthly emoluments inclusive of Basic Pay, DA at Central Government rates and HRA at 35% of Basic Pay and Transport subsidy will be ₹ 1,65,000 in the pay band of HAG + ₹ 75500-80000

Other usual benefits such as LTC, PF, Pension, etc as per the rules of the Institute would also be applicable.

Higher remuneration and pay protection can be considered for deserving candidates subject to final decision of the Institute.

In appropriate cases contractual arrangements can also be considered.

For structured application and other details, please visit our website <http://www.icaai.org>. Interested candidates may e-mail their structured format application at ad.td@icaai.org or can send through speed post/courier to the Deputy Secretary, HRD (P) at the above address, superscribing on the envelope "Application for the Position of Additional Director in Technical Directorate" within 15 days.

Advt.No.ICAI/Rectt./02/2012



Commencement of Certificate Course on Indirect Taxes at Ghaziabad

Next batch of Certificate Course on Indirect taxes is starting from 17th June, 2012 at Ghaziabad.

Eligibility

Members of ICAI

Course Duration

12 days

Faculty

Eminent experts of the field and erudite speakers drawn from all over the country will share their knowledge and wisdom with the participants of this Certificate Course.

Fees for the Course

₹ 15,000 [Including fees for the immediate examination to be held after completion of the Course]

Venue

Country Inn & Suites by Carlson Sahibabad,
Distt Ghaziabad (U.P.)
64/6 Site-iv, Sahibabad, Uttar Pradesh, Ghaziabad
201010, India

Certificate

A certificate will be awarded to the members on successful completion of course and passing the examination.

CPE Hours

70 Hours (50 Structured and 20 Unstructured)

Registration

Members desirous of attending the said Course may convey their interest and send the duly filled Registration Form along with the demand draft for ₹15,000/- towards the prescribed fee at the earliest to the Secretary, Indirect Taxes Committee, The Institute of Chartered Accountants of India, ICAI Bhawan, 4th Floor, Research Block, A-29, Sector 62, Noida - 201 309, Uttar Pradesh or may contact at 0120-3045954 and send mail at ccidt@icai.org

Demand Draft should be made in favor of 'The Secretary, The Institute of Chartered Accountants of India' payable at New Delhi. Alternatively, members may register by making online payment of the prescribed

fees of ₹15,000/- at ICAI website and sending the hard copy of the duly filled registration form to the address mentioned above.

The Course Director CA. Aunj Goyal, Central Council Member 9810041371, 9312258364, anujgoel28@sify.com, anujgoyal@icai.org Joint Course Coordinator CA. Somya Agarwal 9560005410 somya@asap.net.in and CA. Ashish Vaish 9654726747 ashish.vh@gmail.com can be contacted.

Please visit: www.icai.org for further information

Note: The commencement of certification course is subject to the minimum number of participants as prescribed by the Committee. It may be noted that due to limitation of seats, the registration will be on 'first come first serve' basis.



Second Phase of E-Learning on Standards on Auditing by Auditing and Assurance Standards Board

After the successful launch of its first phase of E-learning on Standards on Auditing (SAs), the Auditing and Assurance Standards Board has now launched the **Second Phase of E-learning** on these Standards on Auditing.

Significant features of E-learning:

- Step by step coverage on all important aspects of a Standard.
- Colourful and interactive lessons.
- Learning at your speed and convenience.
- Quiz at the end of each module to test understanding.

The Second Phase of E-learning covers the following:

- Preface to the Standards on Quality Control, Auditing, Review, Other Assurance and Related Services.
- SA 200, Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing.
- SA 300, Planning an Audit of Financial Statements.

- SA 315, Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment.
- SA 320, Materiality in Planning and Performing an Audit.
- SA 500, Audit Evidence.
- SA 505, External Confirmations.
- SA 550, Related Parties.
- SA 560, Subsequent Events.
- SA 700, Forming an Opinion and Reporting on Financial Statements.

Other Details:

Duration of Course: 7 hours (Maximum time limit- 90 days)

Credit of CPE Hours: 6 Hours

Course Fees: ₹500/-

Log on to <http://elearn.icai.org> for registration and other details.

Those members who are interested in registering for the first phase of e-learning can also log on to <http://elearn.icai.org> for details of Standards covered, registration, etc.





Notification - Examination

May 2nd, 2012

**TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA
NOTIFICATION**

No.13-CA(EXAM)/ISA/J/2012: - In pursuance of Rule 7 of Schedule 'F' to Regulation 204 of the Chartered Accountants Regulations, 1988 (as amended vide Notification No. 1-CA(7)/59/2001 dated 28th September 2001), the Council of the Institute of Chartered Accountants of India is pleased to notify that the Information Systems Audit (ISA) Course Assessment Test will be held on **23rd June 2012 (Saturday) from 10.30 AM to 2.30 PM** at the following cities provided that sufficient number of candidates offer themselves to appear from each city as detailed below.

upon cash payment on or from 14th May, 2012. Alternatively, the format of application form can be downloaded from the website of the Institute viz. www.icai.org and the cost of the application form of ₹100/- can be added to the Assessment Test fee of ₹1000/- and the Demand Draft for ₹1100/- has to be sent. The last date for receipt of duly filled in application forms is 1st June, 2012.

Payment of fees for the Assessment Test should be made only by Demand Draft. The Demand Draft may be of any Scheduled Bank and should be drawn

Sl. No.	Name of the Cities	Sl. No.	Name of the Cities	Sl. No.	Name of the Cities
1	AGRA	16	GOA	31	MUMBAI
2	AHMEDABAD	17	GUWAHATI	32	NAGPUR
3	AKOLA	18	GWALIOR	33	NASIK
4	AMRITSAR	19	HYDERABAD	34	PATNA
5	AURANGABAD	20	INDORE	35	PUNE
6	BANGALORE	21	JABALPUR	36	RAIPUR
7	BAREILLY	22	JAIPUR	37	RAJKOT
8	BHOPAL	23	JALANDHAR	38	RANCHI
9	BHUBANESWAR	24	JAMSHEDPUR	39	SILIGURI
10	CHANDIGARH	25	JODHPUR	40	SURAT
11	CHENNAI	26	KANPUR	41	TRICHUR
12	COIMBATORE	27	KOLHAPUR	42	VADODRA
13	DELHI / NEW DELHI	28	KOLKATA	43	VAPI
14	DEHRADUN	29	LUCKNOW	44	VARANASI
15	FARIDABAD	30	LUDHIANA	45	VISAKHAPATNAM

The Council reserves the right to withdraw any centre at any stage without assigning any reason. The above Test is open only to eligible Members of the Institute who are already registered with the Institute for the said course. The fees payable for the above Assessment Test is ₹1000/-.

Applications for admission to the Assessment Test is required to be made in the prescribed form which may be obtained from the Additional Secretary (Exams), The Institute of Chartered Accountants of India, ICAI Bhawan, Indraprastha Marg, New Delhi – 110 002 on payment of ₹100/- per application form. **The forms are also available in the Regional and Branch Offices of the Institute and can be obtained**

in favour of "The Secretary, The Institute of Chartered Accountants of India, payable at New Delhi" only. Application together with the prescribed fee be sent so as to reach the Additional Secretary (Exams) at New Delhi on or before **1st June, 2012**.

The application together with the prescribed fee should be sent by Speed Post/Registered Post to the Additional Secretary (Exams.), New Delhi. The applications received after **1st June, 2012** will not be entertained under any circumstances.

(G. SOMASEKHAR)
ADDITIONAL SECRETARY (EXAMS)





Job Fair for Chartered Accountants - Exclusively Structured for Small and Medium sized CA Firms & Small & Medium sized Enterprises (SMEs) [4th June-18th June 2012]

The Committee for members in Industry (CMII) provides opportunity to the employers to interact with newly qualified Chartered Accountants and makes all arrangements at its centres, thereby providing a cost effective mode of recruiting newly qualified Chartered Accountants.

The Committee for members in Industry (CMII) and Committee for Capacity Building of CA Firms & Small and Medium Practitioners (CCBCAF & SMP) of The Institute of Chartered Accountants of India (ICAI) is pleased to welcome all Firms of Chartered Accountants (CAs) and all leading companies to the forthcoming Exclusively Structured Campus Placement Programme for Small and Medium Sized CA Firms and Small & Medium Sized Enterprises (SMEs). In its endeavor to provide quality Accounting, Finance, Tax, Audit and Management Consultancy personnel to small and medium sized Industries and to provide a platform to the newly qualified Chartered Accountants, CMII would be conducting Job Fair as per below mentioned schedule.

Job Fair Schedule

The Job Fair will be organized at various centres viz. Ahmedabad Bangalore, Chennai, Hyderabad, Jaipur, Kolkata, Mumbai, New Delhi, Pune, and Pune. The schedule of programme is given below.

Eligibility for Job Fair- June 2012

A.) All the Chartered Accountants who have taken/ applied the membership of ICAI as on 15th May, 2012 and B) Candidates registered for Campus Placement Programme conducted during Feb-Mar, 2012 and could not be placed are automatically eligible for this Campus Placement Programme and also received their membership number .

INVITATION TO EMPLOYERS

Organisations intending to recruit Chartered Accountants through the scheme given below are requested to get in touch with Dr Surinder Pal, Secretary, Committee for Members in Industry, Indraprastha Marg, New Delhi - 110002, Tel. No. (011) 30110430 E-mail: spal@icai.in (or) Mr Ajeet Nath Tiwari, Placement Coordinator at Tel +91(11) 30110450 E-mail: placements@icai.org or log on to www.cmii.icai.org or <http://www.icai.org>.

CA. Rajkumar S Adukia
Chairman, CMII

CA. Pankaj Tyagee
Chairman, CCBCAF
&SMP

CA. Pankaj Tyagee
Vice Chairman, CMII

CA. Vijay K Garg
Vice Chairman, CCBCAF
&SMP

Centres	Last date for Company Registration (Upto 05:00 PM)	Last date for Shortlisting by Companies (Upto 05:00 PM)	Consent sending by Candidates (Upto 11:00 PM)	Interview Dates
Mumbai	30 th May, 2012	31 st May, 2012	1 st June, 2012	4 th June, 2012
Pune	31 st May, 2012	1 st June, 2012	2 nd June, 2012	5 th June, 2012
Jaipur	2 nd June, 2012	4 th June, 2012	5 th June, 2012	7 th June, 2012
Ahmedabad	6 th June, 2012	7 th June, 2012	8 th June, 2012	11 th June, 2012
New Delhi	6 th June, 2012	7 th June, 2012	8 th June, 2012	12 th June, 2012
Kolkata	6 th June, 2012	7 th June, 2012	8 th June, 2012	13 th June, 2012
Hyderabad	7 th June, 2012	11 th June, 2012	12 th June, 2012	14 th June, 2012
Bengaluru	11 th June, 2012	12 th June, 2012	13 th June, 2012	15 th June, 2012
Chennai	13 th June, 2012	14 th June, 2012	15 th June, 2012	18 th June, 2012



Invitation for Expression of interest for Authoring Publications relevant to the Members in Practice of ICAI



Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) is meant to encourage and enhance close links between the Institute of Chartered Accountant of India and the Chartered Accountants in Practice, so as to provide for them, a base of reference in terms of knowledge, expertise, skills and assistance in their professional growth, simultaneously pursuing the goal of providing newer opportunities to the practitioners & Firms.

One of the major responsibilities of CCBCAF & SMP is to bring out publications on various topics relevant for the Members in Practice of the Institute of Chartered Accountants of India (ICAI).

The CCBCAF & SMP invites Expression of Interest from members of the Institute and other experts who are interested in developing / preparing basic drafts of the publications on topics relevant to the Members in Practice of ICAI. The intending authors of the CCBCAF & SMP publications are expected to have appropriate level practical experience in the relevant area along with the knowledge of various aspects of profession.

The CCBCAF & SMP publication has to be prepared as self-learning booklets in the form of handbooks with proper mix of theory and practical case studies.

Apart from getting recognition among their professional brethren, for their contribution in preparing the background materials, the authors of the accepted publication materials will get:

1. Their names printed in the Publications
2. Honorarium and reimbursement of incidental expenses as per the prevailing policy of the Institute. (Which will depend upon the size, time and efforts required to prepare such publication materials).

The intending authors are required to send a formal request letter with the following details:-

1. Brief profile of the author
2. Specific experience and expertise in the relevant topic for which they offer themselves to write the background materials which will enable the CMII secretariat for allotting the preparation of material for them
3. Proposed coverage of the Publication (in about 2000 - 3000 words)
4. Sources of primary and secondary data based on which the Publication material will be written
5. Time frame within which they can submit the publication material.

Address:

Dr. Sambit Kumar Mishra

Secretary, Committee for Capacity Building of CA Firms

and Small & Medium Practitioners (CCBCAF&SMP),
The Institute of Chartered Accountants of India,
Post Box No.7100, Indraprastha Marg,
New Delhi - 110 002
Email: sambit.mishra@icai.org, ccbcaf@icai.org

It may be noted that mere submission of the Expression of Interest may not lead to allotment of the particular publication materials to a particular applicant. The Institute reserves the right to request any other expert (though they may not have offered their expression of interest in this regard) to prepare publication materials. No communications will be entertained in this regard. Only selected authors will be individually communicated.

Indicative topics on which CCBCAF & SMP would like to bring out publications are given below:

1. Mentoring Guidelines for Small & Medium Practitioners
2. Evaluating and Improving Performance : A Guide for Small & Medium Practitioners
3. Handbook for the Practice Management
4. E-Business and the Small & Medium Practitioners
5. Handbook for Information Security Governance : Practitioner/ CA Firms perspectives
6. Issues & Perspectives of Financial Reporting by Small & Medium Practitioners
7. A study of Mergers & Acquisitions: An International Perspective
8. Implementing the Accounting Standards: Technical Issues pertaining to the Practitioners/CA Firms
9. Issues in Auditing Standards, Expectations, and compliance requirements Practitioner/CA Firms perspective
10. Cost & Financial Management: Practitioner/CA Firms perspective
11. LLP: Practitioner/CA Firms perspective
12. MDP : Practitioner/CA Firms perspective
13. A Roadmap to GST: Practitioner/CA Firms perspective
14. A Roadmap to Direct Tax Code: Practitioner/CA Firms perspective
15. Auditors' Report under the Companies Act – Issues on CARO, Documentation
16. Export Documentation : A Guideline for Small & Medium Practitioners
17. Professional Opportunities: A Snapshot for Small & Medium Practitioners
18. Other topics relevant to Practitioners/ CA Firms

CA. Pankaj Tyagee
Chairman

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





Commencement of Certificate Course on Forex and Treasury Management at Delhi and Mumbai

The Committee on Financial Markets and Investors' Protection (CFM&IP) is one of the Non-Standing Committees of the ICAI which conducts **Certificate Course on Forex and Treasury Management** (FxTM for professional development of members in this field. The aim of the Course is to provide a platform to the members to interact with the domain experts and to understand the recent developments in the field of Forex and Treasury. Moreover, the course was designed so as to enable candidates to understand and conquer the complexities of Forex and Treasury Management and to develop skill sets which would be required for making sound financial decisions. It is important to know the intricacies of forex risk management especially during these times when Indian rupee fluctuations causing a lot of financing strain on the importers of products and services and for organisations having foreign currency exposure.

The Committee will be starting new batches of Certificate Course on Forex and Treasury Management at Delhi and Mumbai in June-July 2012. Registrations will be on first come first served basis in view of limited seats.

Eligibility: Members of the ICAI.

Registration: For registration, please fill in the registration form available on the website of the ICAI at link <http://220.2>

27.161.86/18248form_cftm.pdf and send it along with fee at the address given below:

Secretary, Committee on Financial Markets and Investors' Protection

The Institute of Chartered Accountants of India

ICAI Bhawan, Administrative Block, Third Floor

A-29 Sector 62, Noida - 201309

Contact No. (0120) 3045945/9650075010/9310542607

E-Mail: fxtm@icai.org

Fee: ₹25,000 (Rs. Twenty Five thousand only). The fee can be paid by D.D./Pay Order/Multicity cheque drawn in the favour of "The Secretary, The Institute of Chartered Accountants of India", payable at New Delhi. Payment can also be made online through the ICAI website at <http://www.icai.org/ccm.html?progid=9>

For any query or further details, please contact on the phone numbers or by email as given above.

CA. Vinod Jain

Chairman, Committee on Financial Markets and Investors' Protection



Classifieds

- 4921 A Delhi based CA firm having offices at Mumbai, Bangalore and Jaipur invites merger proposals from Hyderabad and Delhi based CA firms that are in existence for about 3-5 years. Contact: Mr. Manoj Sharma at 09873485885 / manoj.sharma@snr.net.in
- 4922 CA with D.I.S.A., Certified IFRS, Certified Valuer (ICAI) qualification having over 30 years experience in practice seeks professional arrangement from larger firms for mutual benefit. Contact: 9927009068. E-mail: fca.kuldeep@yahoo.com
- 4923 Ahmedabad based CA firm established in 2009 having three partners seeks work on assignments/sub-contract/partnership/retainership basis anywhere in India contact : 9426406760/rinkeshshahco@gmail.com
- 4924 Rajasthan based 60 years old firm invites proposal for merger from Delhi and Jaipur based firms on mutually beneficial terms. Can visit site www.kld.co.in; contact: kldca1953@gmail.com
- 4925 Need qualified/semi qualified persons for our Guwahati office. Persons who has the experience of working at CA office may also apply at nrjbfn@gmail.com. Contact: 09435011373, 09435067000.
- 4926 Guwahati based CA Firm wants to open branches all over India. Looking for new CAs as partners on simple and attractive terms. Contact: 09435190811; goswami255@gmail.com
- 4927 Ghaziabad based CA firm having 22 years experience mainly in internal audit and management consultancy seeks assignments on contract/partnership basis in and around NCR and Uttaranchal. Contact 09810313048, aagarawala@yahoo.co.in
- 4928 Required CA firm for merger. Also required partners/qualified assistants to open branch in India. Retired/lady members can apply. Contact: S. Kanungo, Flat No. 24, Shiela Mansion, Rath Road, Bhubaneswar-751014 or E-mail: ssahoo8998@gmail.com
- 4929 A Chartered Accountant firm in South India requires young Chartered Accountant based in Hyderabad. Partnership options can be considered. Contact: tax.eroode@gmail.com, 9842750391, 9095075000.
- 4930 Practising CA previously in government employment with experience in ULB accounting reforms initiatives seeks work in the said fields on partnership basis. Contact: atanusm@gmail.com/9874972227

Forthcoming Events¹

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours	Topics (in brief without details of technical sessions, timings and speakers)	Contact Person
1.	Two Days National Conference on Indirect Taxes	22 nd & 23 rd June, 2012	Ernakulam	12	- Paradigm shift in Service Tax - The Negative list of Services - Analysis of Declared Services, Exemptions & Abatements - Issues in CENVAT Credit - Valuation under Customs - Works Contract - Service Tax & VAT mixed issues - Place of Provision of Service Rules - Service Tax refund in case of SEZ's - Investigations – Summons – Search & Seizure – Prosecution – Provisional attachment – Cognisable & Non- Cognisable offences	CA. P. P. Mathukutty Chairman Ernakulam Branch of SIRC of ICAI Mobile: 09447048672 Phone: (484) 2369238, 2372953, 2369258 E-mail: ernakulam@icai.org
2.	Two/Three - Days Course on "Enabling Service Tax Practice" Committee intends to organise 100 such courses across India	15 th and 16 th June, 2012	Dehradun	12/18	- Overview of the Indirect Tax structure in India - Definition of service and its taxability - Concept of negative list of services and Exempted Service - Tax liability under 'Reverse charge Mechanism' & Joint Charge Mechanism - Point of taxation - Statutory compliance - Valuation of Taxable Service - CENVAT Credit Rules - Practical methods of dealing with departmental officers - Provision & Rules not covered above	Mrs. Vasantha Vijay Mobile: 09379918344 E-Mail: bosidt_blr@icai.in
3.	National Workshop on Media & Entertainment	1 st and 2 nd June, 2012	The Orchid – A Five Star ECOTEL Hotel, Near Domestic Airport, Mumbai.	12	- Industry Overview and Typical Business Models — Film Industry, Music, Radio, Television including DTH and IPTV, Event Management - International Tax Issues in Entertainment Industry with respect to shooting of Foreign Films in India and typical Issues relating to Film Production - Copyright, Trademark, Work Permits, Visa Rules, Contracts and Stamp Duty - Service tax, VAT and Customs Issues in M & E Space - Funding Options in the Media & Entertainment Industry - Valuation and Merger & Acquisition in the Media & Entertainment Industry - Cross Border Taxation of Entertainers and Sportsmen - Exchange Control Regulations impacting the Media & Entertainment Industry, Shooting of Films outside India and subsidy availment - Professional Opportunities for Chartered Accountants in the Media & Entertainment Industry	Ms. Srabani Kapoor, Mobile: 09321239894 E-mail: kapoor@icai.in Ms. Shweta Verma, Phone: 011-30110491 Mobile: 09312090638 E-mail: shweta.verma@icai.in Ms. Ekta, Phone: 011 -30110555 Mobile: 9312089136 Email: cmii_events@icai.in

¹ For more details about the forthcoming events please refer the detailed announcements hosted on the ICAI website www.icai.org

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours	Topics (in brief without details of technical sessions, timings and speakers)	Contact Person
4.	How To Be Successful In Practice & How To Be A Successful Entrepreneur-For Young Chartered Accountants	5 th June, 2012	ICAI Premises of Chennai office	6	- How to be a successful professional - Skill Required to be Driver of Organisation and Marketing Client / Partners / Staff Relationship, - Principles of Networking, Partnership Arrangement, Structuring of Firm/ LLP Pvt. Ltd. Company - Professional Avenues - How to be effective Entrepreneurs & Various Avenues for Entrepreneurs - Funding of Start-up and other Projects - Professional Opportunities as Business Solution Provider	Dr. P. T. Giridharan Phone: 044-30210303 E-mail: giridharan@icai.org
5.	Residential Refresher Course	8 th to 10 th June, 2012	Majorda Beach Resort, Margao, Goa	12	- The General Anti-Avoidance Rules Proposed in Finance Bill 2012 - Salient features of GST - Open House – Issues relevant for CA Professional in Industry - International Taxation, Transfer Pricing emphasis on NRI Taxation - Critical issues on Direct Taxes - New Service Tax Proposals - Companies Bill 2011 - Recent Judicial Rulings with Special emphasis on Corporate Taxation	Ms. Ranjita, Phone: 0832 -2438516 E-mail: goa@icai.org Ms. Ruchi Gupta, Phone: 011-30110549 Mobile: 09312089136 E-mail: ruchi_gupta@icai.in Ms. Shweta Verma, Phone: 011-30110491 Mobile: 09312090638 E-mail: shweta.verma@icai.in
6.	National Workshop on Enhancing Value of Business by protection of Intellectual Property Rights	15 th June, 2012	ICAI Bhawan, Cuffe Parade, Colaba, Mumbai	6	- Importance of Protection of IP in Business/WIPO/TRIPs/Overview of all Laws and International IPs - Patents, Geographical Indications/ Circuits/Plant Varieties - Valuation of IP, Designs/Copyrights and Accounting & Taxation of IP - Indirect Taxes Service Tax/Works Contract, etc	Ms. Srabani Kapoor, Phone: 022 -39802910 Mobile: 09321239894 E-mail: kapoor@icai.in Ms. Priyanka Sharma, Phone: 011-30110548 Mobile: 09312089136 E-mail: priyanka.sharma@icai.in Mr. Yogendra Pandey, Phone: 011-30110555 Mobile: 09312090638 E-mail: cmiicommitee@icai.in
7.	How To Be Successful in Practice & How to be a Successful Entrepreneur-for Young Chartered Accountants	30 th June, 2012	ICAI Premises of Bangalore Office	6	- How to be a successful professional - Skill Required to be Driver of Organisation and Marketing Client/Partners/Staff Relationship, - Principles of Networking, Partnership Arrangement, Structuring of Firm/ LLP Pvt. Ltd. Company - Professional Avenues - How to be effective Entrepreneurs & Various Avenues for Entrepreneurs - Funding of Start-up and other Projects - Professional Opportunities as Business Solution Provider	Mr. Jagadish Kumar N.S, Assistant Secretary Mobile: 09342732548 Phone: 080-30563542 E-mail ID: jagadish.ns@icai.org , dcobangalore@icai.org
8.	National Workshop on Investment Banking	20 th and 21 st July, 2012	The Orchid – A FiveStar ECOTEL Hotel, Near Domestic Airport, Mumbai.	12	- Overview of Investment Banking ,Origin, USA, UK, etc - Professional Opportunities - Mergers & Acquisitions , Considerations in cross border transactions - Private Equity & Proposed alternative investment regulations - IPO/Private Placement	Ms. Srabani Kapoor, Mobile: 09321239894 E-mail ID: kapoor@icai.in Ms. Ruchi Gupta, Phone: 011-30110549 Mobile: 09312089136 E-mail: ruchi_gupta@icai.in

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours	Topics (in brief without details of technical sessions, timings and speakers)	Contact Person
					- Valuation - Project Funding/loan Syndication - Analysis of recent blockbluster Investment Banking Transactions - Takeover /Sweat Equity, etc.	Ms. Anchal Jain, Phone: 011-30110549 Mobile: 09312090638 E-mail: campus@icai.in
9.	National conference on Agriculture sector	25 th August, 2012	Hotel Orchid, Mumbai	6	- Overview of Agriculture Sector – Current and Future Scenario - Finance for Agriculture Sector - Accounting for Agriculture Sector - Growth Strategy for Agriculture Sector	Ms. Ekta, Phone: 011 -30110555 Mobile: 09312089136 E-mail: cmii_events@icai.in Ms. Anchal Jain, Phone: 011-30110549 Mobile: 9312090638 E-mail: campus@icai.in
10.	Three Days Seminar on “Data Analytics and Continuous Control Monitoring”	15 th , 16 th & 17 th June 2012 29 th , 30 th June & 1 st July, 2012 6 th , 7 th & 8 th July, 2012 20 th , 21 st & 22 nd July, 2012 24 th , 25 th & 26 th August, 2012	New Delhi Hyderabad Kolkata Chennai Ahmedabad	18	- Continuous Auditing and Continuous Control Monitoring - Importance of CAATs in Internal Audit - Using MS Excel for Data Analytics - Using MS Access for Data Creation and Report Generation - Using MS Access for Data Analysis - Use of IDEA CAATs for Data Analysis - Use of IDEA for detecting red flags and fraud investigation - Use of ACL CAATs for Data Analysis - Use of ACL for detecting red flags and fraud investigation - Use of Active Data CAATs for Data Analysis - Information Technology Audit – Computer Forensics & Data Analytics	CA. Rajkumar S. Adukia Chairman, Internal Audit Standards Board Phone: 0120-3045949 Mobile: 09820061049 09323061049 E-mail: rajkumarfca@gmail.com CA. Rajendra Kumar P. Vice Chairman, Internal Audit Standards Board Phone: 0120-3045949 Mobile: 09382303403 E-mail: council.rk@gmail.com Secretary, Internal Audit Standards Board Phone: 0120-3045949 Mobile: 09310542606 E-mail: cia@icai.org ; iasb.program@icai.in
11.	National Conference Organised by: CPE Committee of ICAI Hosted by: Hyderabad Branch of SIRC of ICAI	17 th & 18 th June, 2012	Shanti Sarovar, Brahmakumaris, Gachibowli, Hyderabad	12	Taxation of Trusts & Charitable Societies, Transfer Pricing, TDS & TCS – recent Amendments, Tax Audit provisions, Development Agreements & Capital Gains, Service Tax, Revised Schedule VI	CA. M. Devaraja Reddy Chairman, CPE Committee of ICAI Mobile: 09399935799 E-mail: devarajareddy@yahoo.com CA. Dayakar Gelli Chairman Hyderabad Branch of SIRC of ICAI Mobile: 09849026209 Phone: 040-23317026/27/28, 30638600 E-mail: Hyderabad@icai.org Mr. N. K. Bansal Secretary CPE Committee of the Institute of Chartered Accountants of India Mobile: 09312089135 E-mail: cpehours@icai.in ; bansalnk@icai.in

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours	Topics (in brief without details of technical sessions, timings and speakers)	Contact Person
12.	One Day Seminar on Standards on Auditing - Understanding the Revised Auditing Standards	9 th June, 2012	Bhubaneswar	6	Overview of Standards on Auditing Risk Assessment and Fraud Risk Considerations (SA 315 & SA 240) Audit Materiality in Planning & Performing the Audit (SA 320 & SA 450) Audit Documentation – SA 230 New Audit Reporting Standards (SA 700 Revised, SA 705 & SA 706)	Seminar Chairman CA Abhijit Bandyopadhyay, Chairman, Auditing and Assurance Standards Board Mobile: 0983105 9999 E-mail: babhijit@deloitte.com Seminar Coordinator CA. Rajendra Kumar Das Chairman, Bhubaneswar Branch of EIRC of ICAI Mobile: 09437013865 E-mail: bhubaneswar@icai.org Secretary Auditing and Assurance Standards Board Phone: 0120-3045920 Mobile: 9350799938 E-mail: aasb@icai.org
13.	One Day Seminar on Standards on Auditing - Understanding the Revised Standards on Auditing	23 rd June, 2012	Pune	6	Risk Assessments and Fraud Risk Considerations for Auditors – SA 315 & SA 240 New Audit Reporting Standards – SA 700, SA 705, SA 706 & SA 720 Audit Documentation (SA 230) and Audit Evidence (SA 500) Audit Materiality (SA 320 & SA 450) and Audit Sampling (SA 530)	Seminar Chairman CA. Abhijit Bandyopadhyay, Chairman, Auditing and Assurance Standards Board Mobile: 0983105 9999 E-mail: babhijit@deloitte.com Seminar Director CA. Shiwaji B Zaware, Vice Chairman, Auditing and Assurance Standards Board, Pune Phone.: 09822047131 E-mail: sbzaware@icai.org Seminar Coordinators CA. Sanjay N Pawar, Chairman, Pune Branch of WIRC of ICAI Phone: 09421231234 Email: pune@icai.org CA. Pramod Shingte, Pune Mobile: 09823015614 E-mail: pramodshingte@gmail.com Secretary Auditing and Assurance Standards Board Phone: 0120-3045920 Mobile: 9350799938 E-mail: aasb@icai.org
14.	One Day Seminar on Standards on Auditing - Enhancing the Quality of Audit	27 th June, 2012	Ernakulam	6	Overview of Standards on Auditing Risk Assessments and Fraud Risk Considerations for Auditors – SA 315 & SA 240	Seminar Chairman CA Abhijit Bandyopadhyay, Chairman, Auditing and Assurance Standards Board Phone.: 0983105 9999 Email: babhijit@deloitte.com

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours	Topics (in brief without details of technical sessions, timings and speakers)	Contact Person
					Audit Sampling (SA 530) and Subsequent Events (SA 560) Audit Documentation (SA 230) & Audit Evidence (SA 500) New Audit Reporting Standards (SA 700 Revised, SA 705, SA 706 & SA 720)	Seminar Director CA. J. Venkateswarlu, Central Council Member, Hyderabad Mobile: 09392017738 E-mail: jv@icai.org Seminar Coordinator CA. P. Mathukutty, Chairman, Ernakulam Branch of SIRC of ICAI Mobile: 09447048672 E-mail: ernakulam@icai.org Secretary Auditing and Assurance Standards Board Phone: 0120-3045920 Mobile: 9350799938 E-mail: aasb@icai.org
15.	One Day Seminar on Auditing - Understanding the Revised Auditing Standards	29 th June, 2012	Guwahati	6	Risk Assessments and Fraud Risk Considerations for Auditors – SA 315 & SA 240 New Audit Reporting Standards – SA 700, SA 705, SA 706 & SA 720 Audit Documentation – SA 230 & Audit Evidence – SA 500 Issues in Tax Audits	Seminar Chairman CA Abhijit Bandyopadhyay, Chairman, Auditing and Assurance Standards Board Mobile: 0983105 9999 Email: babhijit@deloitte.com Seminar Director CA Purshottam Gaggarg, Guwahati Mobile: 09864025016 E-mail: purshotamgaggarg@hotmail.com Seminar Coordinator CA. Naveen Garg, Chairman, Guwahati Branch of EIRC of ICAI Mobile: 09864035670 E-mail: guwahati@icai.org Secretary Auditing and Assurance Standards Board Phone: 0120-3045920 Mobile: 9350799938 E-mail: aasb@icai.org
16.	One Day Seminar on Standards on Auditing	6 th July, 2012	Bangalore	6	Auditing Standards - Overview of Recent developments Audit Planning and Audit Documentation Risk Assessment and Audit Materiality Revised schedule VI Requirements and Disclosures - impact on financial Statements Panel Discussion on Auditors' Considerations wrt Revised Schedule VI	Seminar Chairman CA. Abhijit Bandyopadhyay, Chairman, Auditing and Assurance Standards Board Mobile: 0983105 9999 E-mail: babhijit@deloitte.com Seminar Director CA. K. Raghu , Central Council Member, Mobile: 09341219091 E-mail: cakraghu@raghu.com

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours	Topics (in brief without details of technical sessions, timings and speakers)	Contact Person
						Seminar Coordinator CA. Nithin M. Chairman, Bangalore Branch of SIRC of ICAI Mobile: 09945682356 E-mail: bangalore@icai.org Secretary Auditing and Assurance Standards Board Phone: 0120-3045920 Mobile: 9350799938 E-mail: aasb@icai.org
17.	One Day Seminar on Standards on Auditing - Enhancing the Quality of Audit	13 th July, 2012	Hyderabad	6	Overview of Standards on Auditing Risk Assessments and Fraud Risk Considerations for Auditors – SA 315 & SA 240 Audit Sampling (SA 530) and Audit Materiality (SA 320) Audit Documentation (SA 230) and Audit Evidence (SA 500) New Audit Reporting Standards (SA 700 Revised, SA 705, SA 706 & SA 720)	Seminar Chairman CA. Abhijit Bandyopadhyay, Chairman, Auditing and Assurance Standards Board Mobile: 0983105 9999 E-mail: babhijit@deloitte.com Seminar Directors CA. J. Venkateswarlu, Central Council Member, Hyderabad Mobile: 09392017738 E-mail: jv@icai.org CA. M. Devaraja Reddy, Central Council Member, Hyderabad Mobile: 09399935799 E-mail: devarajareddy@yahoo.com Seminar Coordinator CA. Dayakar Gelli, Chairman, Hyderabad Branch of SIRC of ICAI Mobile: 09849026209 E-mail: hyderabad@icai.org Secretary Auditing and Assurance Standards Board Phone: 0120-3045920 Mobile: 9350799938 E-mail: aasb@icai.org
18.	Full Day Practical Workshop On Excel	Friday, 03 rd August, 2012	ICAI Bhawan, Kalali-Tandalja Road, Atladra, Baroda	6	The workshop will broadly include following topics: • Importing Data from Tally / SAP/ Other ERP in the Excel and what Care needs to be taken for getting correct data. • How to Manage Large Files in Excel and common mistakes done in large files. • Use of Excel in analysis of Data for Different Audits. • Use of Excel for Bank Reconciliation. • Analysis of Sales Register from Audit Perspective.	1) For Registrations: Baroda Branch of WIRC of ICAI ICAI Bhawan, Kalali-Tandalja Road, Atladra, Baroda -390012, Gujarat. Phone: 0265-2680593/2681115, E-Mail: baroda@icai.org 2) Workshop Chairman- CA. Atul Bheda, Chairman-Committee on Information Technology, ICAI, E-Mail: atul.bheda@icai.org

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours	Topics (in brief without details of technical sessions, timings and speakers)	Contact Person
					- Useful Tricks and Techniques of Excel. - Password Management of Office and Personal Data. - How to Block Website in Office. - Effective Use of V- Look up and Pivot Table - Effective Use of Formula Auditing Function PS: Capacity of IT Lab is 38 Members. Registration will be done on First Come First Serve Basis.	3) Workshop Coordinator- CA. Pradeep Agrawal, Chairman, Baroda Branch of WIRC of ICAI Mobile: 093272 43479, 098985 60967 E-Mail: pradeepagrawalca@gmail.com 4) Workshop Jt-coordinator- CA. Arpan Dodia, Committee Member of Baroda Branch of WIRC of ICAI Mobile: 098983 83530 E-Mail: arpan_dodia@icai.org
19.	National Conference on Cloud Computing	15 th June, 2012	Hotel Le-Meridian, Bangalore	6	- Impact of Cloud Computing on the CA Profession - Cloud Architecture and Challenges - Accounting in a Cloud Computing environment - Case Studies - Audit approach and Risk in a Cloud Computing Environment - Opportunities for CA's in the Cloud Computing Environment	The Chairman Bangalore Branch of SIRC 16/O Miller Tank Bed Area Vasant Nagar Bangalore - 560052 Phone: (080) 30563500 E-Mail: bangalore@icai.org The Secretary Committee on Information Technology The Institute of Chartered Accountants of India 5th Floor, Hostel Block, ICAI Bhawan, A-29, Sector-62, Noida - 201309, India Phone: 120-3045961 E-mail: cit@icai.org Website: http://cit.icai.org & www.icai.org
20.	Residential Refresher Course	7 th June, 2012	Manali	15	- Revised Schedule VI - Issues on Income Tax - Issues on Service Tax - Overview of IFRS, Company Law	Programme Chairman CA. Pankaj Tyagee Chairman, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI E-mail: pankajtyagee@gmail.com Mobile: 0 9313976289
21.	Workshop on Capacity Building Measures through IT Tools	9 th June, 2012	Ajmer	3	- ICAI-XBRL - ICAI-Tax Suite	Programme Chairman CA. Pankaj Tyagee Chairman, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI Email: pankajtyagee@gmail.com Mobile: 09313976289 Program Co-ordinator CA. Bharat Bhushan Bansal Chairman Ajmer Branch of CIRC of ICAI Email: bansalajm@gmail.com Mobile: 09829071889

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours	Topics (in brief without details of technical sessions, timings and speakers)	Contact Person
22.	National Conference on Empowerment of the Profession through Excellence	9 th June, 2012	Chandigarh	6	- Taxation of Real Estate Transaction - Emerging Issues on Service Tax - Recent Controversies on Income-tax - Revised Schedule VI - Capacity Building through IT Tools	Programme Chairman CA. Pankaj Tyagee Chairman, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI E-mail: pankajtyagee@gmail.com Mobile: 09313976289 Program Co-ordinator CA. Sanjeev Sharma, Chairman, Chandigarh Branch of NIRC of ICAI E-mail: casharmasanjeev@gmail.com Mobile: 09888484801
23.	Residential Refresher Course	29 th June to 1 st July, 2012	Dalhousie	12	- Emerging Issues on Income Tax - Emerging Issues on Service Tax - Revised Schedule VI - Overview of XBRL - Professional Opportunities at a Glance	Programme Chairman CA. Pankaj Tyagee Chairman, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI E-mail: pankajtyagee@gmail.com Mobile: 09313976289 Program Co-ordinator CA. Deepak Malhotra E-mail: deepakmalhotra@yahoo.com Mobile: 9814124233 Program Convenor CA. Neeraj Sharma, Chairman, Amritsar Branch of NIRC of ICAI E-mail: nersha@hotmail.com Mobile: 09814054585, 09855254585
24.	Workshop on Capacity Building Measures for Practitioners & CA Firms	29 th June, 2012	Gorakhpur	6	- Revised Schedule VI - Issues on Income Tax - ICAI-XBRL Software - Payroll Software	Programme Chairman CA. Pankaj Tyagee Chairman, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI E-mail: pankajtyagee@gmail.com Mobile: 09313976289 Program Co-ordinator CA. Arvind Prasad Chairman Gorakhpur Branch of CIRC of ICAI E-mail: arvindprasadandco@rediffmail.com Mobile: 09415314237
25.	Workshop on Capacity Building Measures for Practitioners & CA Firms	15 th June, 2012	Bhopal	3	- Revised Schedule VI - ICAI-XBRL Software	Programme Chairman CA. Pankaj Tyagee Chairman, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI E-mail: pankajtyagee@gmail.com

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours	Topics (in brief without details of technical sessions, timings and speakers)	Contact Person
						Program Co-ordinator CA. Salil Jain Chairman Bhopal Branch of CIRC of ICAI E-mail: saliljainca@rediffmail.com Mobile: 09826083140
26.	Workshop on Capacity Building Measures for Practitioners & CA Firms	16 th June, 2012	Bilaspur	6	- Revised Schedule VI - Issues on Income Tax - ICAI-XBRL Software - Payroll Software	Programme Chairman CA. Pankaj Tyagee Chairman, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI E-mail: pankajtyagee@gmail.com Program Co-ordinator CA. Govind Madhaw Gupta Chairman Bilaspur Branch of CIRC of ICAI E-mail: gmgupta.ca@gmail.com Mobile: 09827156680
27.	National Conference	29 th and 30 th June 2012	ICAI Auditorium, Indore (M. P)	12	- Accounting & Auditing Issues in Revised Schedule VI - Goods and Service Tax (GST) - Concept of Negative List Based Taxation of Services -Exclusions and Exemptions - Issues for Professionals in Service Tax - Strategies for Growth of Small & Medium Firms - Practical Issues in FEMA - Significant Issues in Accounting - Transfer Pricing provisions for domestic transactions - Proposed Penalty Provisions under Income Tax Act - Proposed amendments in Sections 68 & 56(2) of the Income Tax Act	CA. M. Devarajareddy, Chairman, CPE Committee of ICAI Mobile: 09399935799 E-mail: devarajareddy@yahoo.com CA. Manoj Fadnis Central Council Member, Indore Mobile: 09302217716, E-mail: manojfadnis@icai.org CA. Sheetal Jain Chairperson, Indore Branch of CIRC of ICAI Mobile: 09826701100, E-mail: sheetalajain@yahoo.com
28.	Three Days National Residential Seminar	29 th June, 2012 to 1 st July, 2012	The Raviz Resort & Spa, Lake Ashtamudi, Kollam, Kerala	12	Service Tax – Recent Admendments, Revised Schedule VI, Issues in Tax Deduction at source & Business Deductions	CA. Rajendra Kumar P. Central Council Member, ICAI Mobile: 09382303403 E-mail: rk@ssaca.in Chairman Quilon Branch of SIRC of ICAI Mobile: 099495114025 Phone: 0474-2750583; 2763506 E-mail: quilon@icai.org

CROSSWORD

072

ACROSS

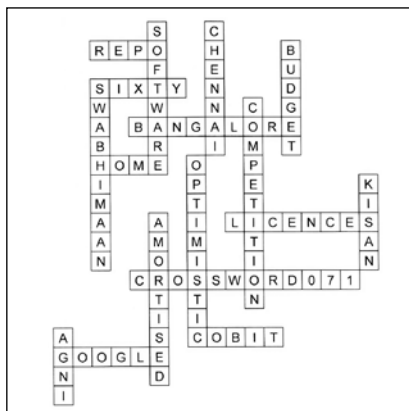
2. Coordination and Monitoring Committee (CMC) co-chaired by secretary Ministry of Corporate Affairs and chairman SEBI has been set up to identify and monitor the state of affairs of _____ companies. (9)
6. An _____ is a person who investigates complaints made by people against the Government or any public organisation. (9)
8. A forward currency contract refers to a contract that fixes the _____ of two currencies to be exchanged on a specified future date. (8)
9. _____ recently announced the exit of its co-branded card partnership with Jet Airways in response to changing consumer preferences. The alliance had come to force in 1999. (8)
10. 'Investment-friendly' environment in Gujarat encourages automakers to be heading for the state. _____ is the newest addition to a growing list of carmakers that are either already present in, or looking to move into the State. (10)
12. A Bill to _____ the micro-finance institutions (MFIs) providing micro-finance services was introduced in the Lok Sabha recently. (8)
14. Thirteen Indian students have made it to the regional finalists' list of Google _____ Fair, an annual online fair that calls for innovative project ideas from students in the age group of 13-18 (three categories). The list comprises 90 students from across the globe. (7)
15. Using the Railways to transport _____ would become more expensive from 1st July, with the Government bringing the sector under the service tax net. (5)

DOWN

1. The Ministry of Corporate Affairs amended Schedule XIV of the Companies Act, 1956 to permit amortisation of _____ assets relating to toll road projects created through a Build Operate Transfer, Build Own Operate Transfer or other

Public Private Partnership route (collectively PPP arrangements), based on a pattern that reflects the projected revenue profile over a concession period. (10)

3. The Government has rolled back the proposed 1% tax deduction at source (TDS) on transfer of _____ property. (9)
4. Social Networking Site _____ made stock market debut on Friday 18 May, 2012. (8)
5. Microsoft's upcoming Windows 8 series featuring an upgraded _____ computing service - marks a "rebirth" of its operating systems. (5)
7. The Central Board of Excise and Custom (CBEC) is set to issue a

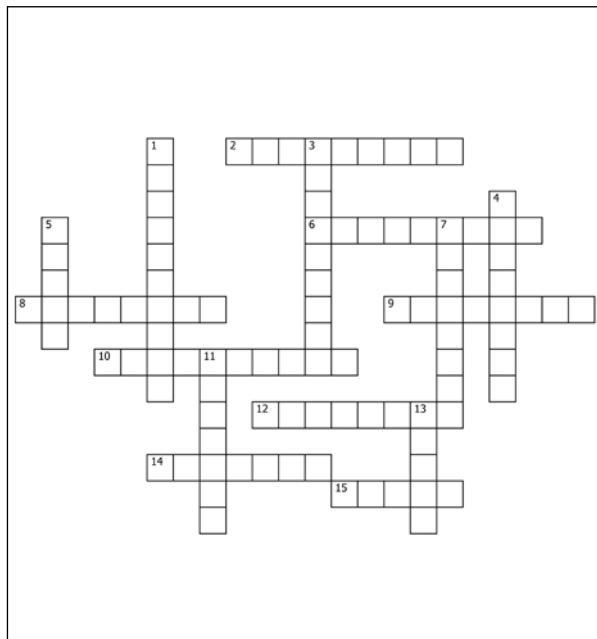


SOLUTION CROSSWORD 071



1 The teacher told Jack that his paper about his cat was the same as his brother's. She asked if he copied it. "No teacher," Jack explained, "It's the same cat!"

2 **Wife:** (standing in front of mirror) I am fat, old, wrinkled and no longer pretty. Will you still give me a compliment?
Funny Husband: Your eye sight is still excellent!



new methodology to ease refund of service tax for _____ exports. (8)

11. Deduction under Section 36(1) (viii) of the Income-tax Act, 1961 can be claimed for creating and maintaining _____ reserve in the aforesaid section out of the profits of providing long term finance for development of infrastructure facilities in India. (7)
13. In the Revised Schedule VI, _____ payable is a payable if it is in respect of the amount due on account of goods purchased or services received in the normal course of business. (5)

NOTE: Members can claim one hour – CPE Credit – Unstructured Learning for attempting this crossword by filling the details in the self-declaration form to be submitted to your regional office annually to avail CPE hours credit for Unstructured Learning activities under the activity 'Providing Solutions to Questionnaires/puzzles available on Web/Professional Journals'. There is no need to individually send this crossword in hard copy or email.