



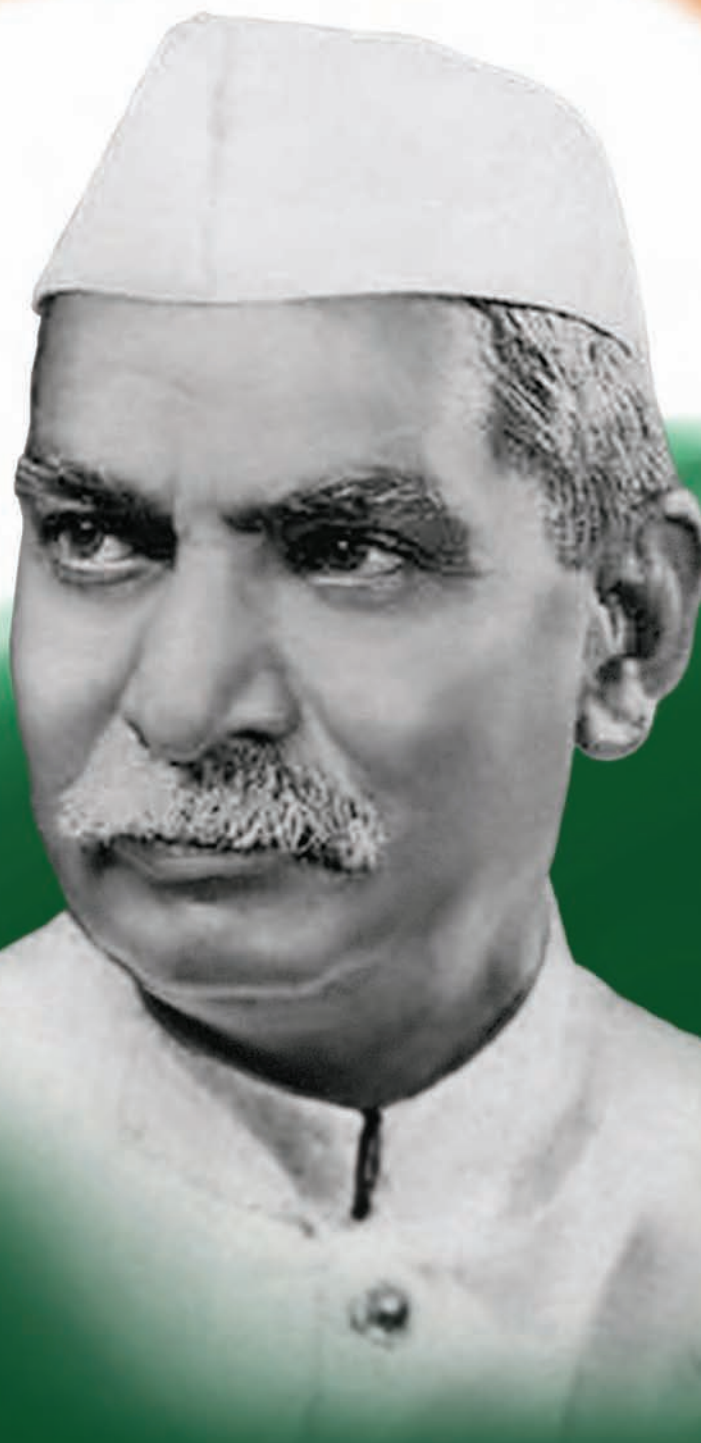
THE CHARTERED ACCOUNTANT JOURNAL

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

“Whether we are men in the professions—Chartered Accountants, Engineers, Lawyers and the like—or... sons of toil destined to work on the fields or in the factories, all of us must realise that the nation’s advance ultimately depends on our character and on the sincerity and devotion with which we carry out the tasks allotted to us... The Government and the public are, therefore, alike interested in the maintenance of the independence and integrity of the accountancy profession...”

Dr Rajendra Prasad
First President of India

(At the inauguration of ICAI Headquarters in April 1954)



Paradigm Shift in Taxation of Services in India

Service tax, which made a modest beginning in the year 1994, has metamorphosed into a full fledged indirect tax making its presence felt in the economy with the service sector being the dominant sector in terms of the contribution to gross domestic production of the country. As per the Advance estimates released by the Central Statistics Office, the service sector is expected to realise a growth rate of 9.4% in 2011-12 over and above 9.3% growth achieved in 2010-11. The success story of service tax, imposed on the recommendations of the Dr. Raja Chelliah Committee constituted for tax reforms in 1994-95, has been remarkable, considering that its collections grew exponentially from ₹410 crore in the year 1994-95 to ₹71015.87 crore in the year 2010-11. The basic objective of service tax is broadening the tax base, augmentation of revenue and larger participation of citizens in the economic development of the nation.

Depending on the socio-economic compulsions, different countries evolved a taxation system on services adopting either a comprehensive approach or a selective approach. While most of the developed countries tax all the services with very few and limited exemptions, some of the developing countries tax select services only. India adopted a selective approach to taxation of services. To start with, service tax was levied on three services namely, telephones, general insurance and stock brokers. The baton then passed on to successive Finance Ministers who widened the service tax net every year thereby increasing the total number to more than 120 services.

The selective system of taxing services, though appropriate in the year 1994-95, started becoming complex with definitions of more than 100 services leading to classification and interpretational disputes. Further, this system was also not in line with the eventual objective of the Government of ushering in a system of goods and service taxation in India. By this time, the once nascent and utopian idea of taxing all services except the ones covered in a small negative list gained sufficient momentum with the Government finally deciding to put it in "black and white" in the Union Budget 2012-13. Thus, Year 2012-13 became a witness to an archetypal shift in taxation of services in India from the existing system of subjecting to tax only services of specified descriptions to taxing all services, except those specified in the negative list. The selective approach has made way for the comprehensive approach.

Relying on this new reform to act as a catalyst, the Government is hopeful of surpassing the target of service tax collections set for the current year viz., ₹1,24,000 crore. However, the negative list of services is not merely a revenue garnering measure since it aims to widen the tax base of services and simultaneously seeks to simplify the law. The introduction of negative list as also the enhancement of standard rate of service tax from 10% to 12% are *inter alia* the specific amendments in the Budget 2012-13 to recalibrate the tax effort on indirect taxes to achieve fiscal consolidation in short term.

The introduction of negative list with effect from 1st July, 2012 necessitated the need of making consequential amendments in the service tax law. CBEC has done exemplary work in coming out with a flurry of notifications during the presentation of Union Budget 2012-13 and subsequently in June 2012 for putting into effect the negative list regime. However, the anteriority, which should form part of the new law, has been given a go by.

Large scale amendments have been made in Service Tax Rules, 1994, Point of Taxation Rules, 2011, CENVAT Credit Rules, 2004 to harmonise the existing provisions of these rules with the new dispensation. Except that the taxing of advances has been continued. Service tax exemptions and abatements have also been revamped pursuant to the implementation of negative list regime to enable revenue collection in difficult areas. Exemptions given hitherto vide different notifications have been clubbed together in a mega exemption notification with appropriate changes, wherever required. Likewise, abatement have also been reviewed in light of the new system and grouped together in one separate notification.

Another landmark amendment is the introduction of Place of Provision of Service Rules, 2012 to determine the place where a service will be deemed to be provided. So far, the Export and Import Rules – determining the place of provision of services somewhat indirectly – were confined to define the circumstances in which a provision of service would constitute import or export. The rules will primarily benefit the service providers involved in cross-border services. The reference to amendments made vide Finance Act, 2012 will be incomplete without mentioning the withdrawal of benefit of paying service tax on receipt basis in case of services rendered by Chartered Accountants. However, members whose value of taxable services does not exceed ₹50 lakh in the previous year can still pay service tax on receipt basis during the current year.

Bringing all services under taxation would not be simple as services are intangible and are provided by organised as well as unorganised service providers including retailers who are scattered across the country. Further, there are several services, which are of intermediate nature. The low level of tax awareness of service providers, administrators and consultants added to frequent changes seen in this law may also pose difficulties to all stakeholders.

As the gamut of service tax expands there would be a great need for professionals to advise and assist the assesseees. A chartered accountant with his training and experience is well-equipped to position himself in the dynamic role as an advisor and facilitator for due compliance of service tax law.

This issue of the journal mainly covers the nitty-gritty of the new service tax regime for the information of the readers.

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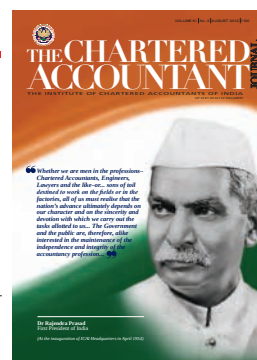
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CA. Jaydeep Narendra Shah, President, ICAI

Dear friends,

Today, our Government is using contemporary communication technology to make its transport system more robust. Defence research of our nation suggests using nanotechnology to provide solution to environmental problems, especially in waste management, water conservation and solar power generation. Acclaimed cultural anthropologist Margaret Mead had warned: *We won't have a society if we destroy the environment*, therefore, sources of non-conventional energy, like wind and sun, must be harnessed with caution.

Of late, our Government has invested in research and information management for environment sector as part of its global commitment to environmental conservation. It understands that economic development will be sustainable only if it is pursued in a manner which protects the environment. We will have to attain an environmental integrity to have sustainable development, and key to this aim should be *to bring a better quality of life...without wrecking the environment entirely in the attempt*, as expressed by acclaimed biologist E. O. Wilson.

In our capacity, we, being at the helm of accountancy profession, have taken several green initiatives. At times, I just want to agree with what a sportsman had said: *...every time I have some moment on seashore, or in the mountains, or sometimes in a quiet forest, I think*

this is why the environment has to be preserved. We have to preserve it to save ourselves. Our profession understands its social responsibility, let me proclaim. We are taking measures for ecological conservation. E-diary project that cuts on consumption of paper is one of such measures. We aim to become a green institution as early as possible.

Before I update you with some of the significant developments *vis-à-vis* our accountancy profession over the last one month, I would like to place on record my sincere congratulations and wishes for *Shri Pranab Mukherjee* on becoming the President of our nation. He has really been a friend, philosopher and guide to our profession, extending all possible support and help to the profession during his tenure as Union Finance Minister of India.

International Initiatives

International Conference of Internal Auditors in USA:

My Central Council colleagues CA. Rajkumar S. Adukia & CA. P. Rajendra Kumar represented the ICAI in the Institute of Internal Auditors International Conference held recently in Boston (Massachusetts, USA). The occasion provided an opportunity to our Institute to network and exchange information on practice of internal auditing in the larger interest of the profession. More than 2,500 international participants attended this conference which focused on change and change management.

IIAS International Congress in Mexico: My Central Council colleagues CA. Naveen N. D. Gupta and CA. Sumantra Guha attended the 2012 International Congress of International Institute of Administrative Sciences (IIAS) held recently in Mérida (Mexico). Researchers and government officials across all continents participated in the congress that focused chiefly on *Socio-Economic Priorities and Public Administration*.

IFRSs Conference in Germany: My Central Council colleague CA. Pankaj I. Jain, along with ICAI Technical Director Dr. Avinash Chander, participated in the International Financial Reporting Standards (IFRSs) Conference held in Frankfurt (Germany). The conference provided an understanding of rationale behind the IFRSs, an insight into the future of financial reporting, besides technical update on financial instruments and perspective on bank preparer and regulators.

IIN Conference in Dublin: ICAI Vice-President CA. Subodh Kumar Agrawal represented us at the IIN Conference held recently in Dublin. The Conference provided its participants an opportunity to share their

ideas and initiatives with regard to the development of accountancy profession and its stakeholders. During the visit, he also met Mr. Pat Costello, CEO of Chartered Accountants Ireland.

IPSASB Chairman Visits ICAI: International Public Sector Accounting Standards Board (IPSASB) Chairman Mr. Andreas Bergmann was at the ICAI in New Delhi recently to meet us and the Ministry of Finance Joint Secretary (Budget) Dr. Rajat Bhargava, and discuss adoption and international convergence to IPSASs. ICAI Vice-President CA. Subodh Kumar Agrawal and my Central Council colleagues CA. J. Venkateswarlu, CA. Manoj Fadnis, CA. Bhavna Doshi, CA. Naveen N. D. Gupta and CA. M. Devraja Reddy were also present on the occasion.

Initiatives for Government Offices/Officials

Vice-Chancellors Meet of MHRD: Ministry of Human Resource Development (MHRD), Department of Higher Education organised a *Meeting of the Vice-Chancellors* of deemed universities recently in Delhi on twin issues of common engineering test and implementation of ICAI Accounting Standards for higher educational institutions. The meeting was presided over by the Union HRD and Communication & Information Technology Minister Shri Kapil Sibal. Shri Sibal asked the participating Vice-Chancellors to adapt the report of the Department of Higher Education on implementation of Accounting Standards in educational institutions as prepared by ICAI, so as to bring in more transparency in the system. Director, Board of Studies of the ICAI, Shri Vijay Kapur represented the Institute in the meeting.

Technical Empowerment in Madhya Pradesh: We had formed the Expert Group to recommend suitable changes in the extant datasheet of public enterprises survey to accommodate the Revised Schedule VI under the Companies Act 1956, and conducted its three meetings. In this regard, we successfully conducted the second training programme in Bhopal recently, which was inaugurated by Shri K. P. Singh, Principal Secretary, Public Undertakings Department, Government of Madhya Pradesh. ICAI past-President and my Central Council colleague CA. Amarjit Chopra and DPE Director Shri Umesh Dongre were among the dignitaries present during the programme. Large number of officials from various state-level public enterprises attended the programme.

Workshop for Nominee Directors in Tamil Nadu: We recently successfully conducted a workshop on *Role and Responsibilities of Nominee Directors on the Board of Government Companies* for Nominee Directors of Finance (BPE) Department of the Govt. of Tamil Nadu. I, along with Tamil Nadu Principal Secretary to

Finance Department Thiru K Shanmugam, inaugurated the Workshop. ICAI past-President CA. Amarjit Chopra besides my other Central Council colleagues CA. Nilesh S. Vikamsey and CA. S. Santhanakrishnan conducted the training. Another Central Council member CA. Rajendra Kumar P. coordinated the workshop. Thiru K Shanmugam, while appreciating our efforts in training, said that the workshop would help their senior officials in keeping pace with the professional development while discharging their corporate governance responsibilities.

Training Programme for ESIC: We recently organised a training programme for the senior officials of ESIC (Employees' State Insurance Corporation, on *Accounting Basis Reforms in ESIC*, in New Delhi, where the C&AG Director General of Western Region, Shri K P Sasidharan, was the Chief Guest. My Central Council colleague CA. Anuj Goyal, National Training Academy (NTA) Joint Director Shri M. K. Arya and ESIC Director General Dr. C. S. Kedar among others were also present in this well-appreciated programme. Eminent faculties from the profession took sessions on transitional issues from cash to accrual accounting, restructuring of chart of accounts and uniform format of accounts in accrual-based accounting system and accounting standards.

26th GASAB Meeting in ICAI: The 26th meeting of the Government Accounting Standards Advisory Board (GASAB) was held at ICAI in New Delhi recently. The meeting was chaired by the GASAB Chairman Shri J.N. Gupta, who is Deputy C&AG of India. I, along with the ICAI Technical Director Dr. Avinash Chander, participated in the meeting, which was also attended by the officials from various departments/ministries including Controller General of Accounts, Controller General of Defence Accounts, Ministry of Railways, Ministry of Finance, National Council for Applied Economic Research, The Institute of Cost Accountants of India, Department of Telecommunications, Department of Post, Finance Department of Government of Bihar, Finance Department of Government of Rajasthan, etc. Department of Post informed that their pilot project *Implementation of Accrual Accounting* had been successfully completed with technical assistance and vital collaboration with ICAI. Other significant items that were deliberated included finalisation of the *Preface to Indian Government Accounting Standards (IGAS)* and *Indian Government Financial Reporting Standards (IGFRS)*, paper on identification and classification of assets for the purpose of disclosure in the Finance Accounts under the cash basis of accounting and the finalisation of *Discussion Paper on IGFRS 7: Events After the Reporting Date*. Our suggestions on the aforesaid items were quite appreciated and accepted too.

Meetings with Government Offices/Officials

Meeting with Cooperatives Ministers of Jharkhand and Bihar: Recently my Central Council colleague CA Vijay K. Garg met with the Cooperatives Minister of Jharkhand, Shri Hazi Hussain Ansari. They discussed the issues related to cooperatives and further initiatives that we could take in our professional capacity to bring in reforms in these sectors. CA. Garg also met the Cooperatives Minister of Bihar, Shri Ramadhar Singh, to discuss issues pertaining to taxation of cooperative societies and organisation of joint programmes in that regard.

Meeting with Haryana Principal Secretary (Finance):

My Central Council colleague and ICAI past-President CA. Amarjit Chopra among other ICAI officials participated in a meeting with Shri Sanjeev Kaushal, Financial Commissioner & Principal Secretary, Finance & Planning Department, Govt. of Haryana, recently at the Haryana Civil Secretariat in Chandigarh. Special Secretary (Finance) from Govt. of Haryana, Shri Yashpal, was also present at the meeting. They discussed rationalisation of tax structure and reduction of leakages of revenue, while highlighting ICAI initiatives in capacity-building for various State Governments and programmes recently being organised for ESIC, public enterprises department and Finance Department of the Government of Tamil Nadu. Shri Kaushal expressed their requirement for assistance in expenditure control and strengthening of public finance structure in the state, widening of the tax base, taxation system of the state, etc., while stressing greater share of responsibility for our membership in State Governments. He has appreciated the Institute for taking such initiatives.

Meeting of MCA Committee on Investors: We had organised a well-attended India Corporate and Investors Meet in February this year in Chennai. In a follow-up meeting taken recently by the Union Corporate Affairs Minister Dr. M. Veerappa Moily, a need was felt to translate the learning from this event into a roadmap which will make such events meaningful and effective in future. Certain action points have been identified for developing a strong and vibrant capital market in India to facilitate wider participation of common investors. Later, the Ministry also constituted a Committee under my Chairmanship to develop a 20-point summary of annual report, financial literacy, colour coding of financial products, effective investor grievance redressal mechanism, etc. This committee will have representatives of other professional institutions too including SEBI, RBI, IMC, ICSI and ICAI (erstwhile ICWAI). I am pleased to inform our stakeholders that the first meeting of this Committee was recently held at our headquarters.

NACAS Meeting at ICAI: A meeting of the National Advisory Committee on Accounting Standards (NACAS) was held recently at our premises in New Delhi, where various issues including revision of the existing Accounting Standards (AS) 10, *Accounting for Tangible Fixed Assets*, were considered. NACAS made certain suggestions to the ICAI which are being considered at present; the revised Standard would be finalised shortly. We also considered whether an option is available in respect of short-term monetary items in the paragraph 46 and 46A of AS 11, *The Effects of Changes in Foreign Exchange Rates*; at present, option is available for long-term foreign currency items. NACAS finalised its views on this issue for consideration of the Union Ministry of Corporate Affairs.

Initiatives on Social Responsibility

Orienting Media Professionals in Mumbai: We recently organised a successful orientation programme for media professionals in Mumbai, attended by 25 professionals comprising editors, correspondents, reporters, etc., from print and visual media including *The Times of India*, *Economic Times*, *CNBC TV18*, *The Hindu Business Line*, *Bloomberg UTV*, etc. It aimed at updating media professionals on evolution of accountancy/financial services sector, financial management and regulatory policies, and financial matters/policies. ICAI past-Presidents CA. Kamlesh Vikamsey and CA. Amarjit Chopra, among others, shared their wisdom with the participants.

Joint Workshop with FIU-IND on Money-Laundering:

We, along with the Financial Intelligence Unit – India (FIU-IND), recently organised a successful joint-workshop on *Addressing the risk of Money Laundering and Terrorist Financing* in Mumbai. FIU-IND, a central national agency set up in 2004, is responsible for receiving, processing, analysing and disseminating information relating to suspect financial transactions. The workshop was attended by 50 participants from the ranks of CFO, Director (Finance) and Compliance Officer from insurance, banking, financial services, allied sectors, etc. I along with my Central Council colleague and past-President CA. Amarjit Chopra shared our viewpoint with other participants. FIU-IND Additional Directors Shri Amitav and Shri Anand Jha, Enforcement Directorate Additional Director Shri Anuj Gogia, NABARD Chief General Manager (Supervision) Shri Venkateshwar Rao, RBI General Manager Shri Thomas Mathew also spoke on the occasion.

Initiatives for Profession

ICAI Foundation Day Celebrated: With strong foundations in professional excellence, independence

and integrity, our Institute celebrated its 64th Foundation Day on 1st July, 2012, as 'CA Day'. Celebrations started with the hoisting of the Institute's flag at the ICAI headquarters where I, along with the ICAI Vice-President CA. Subodh Kumar Agrawal and ICAI Secretary Shri T. Karthikeyan addressed the gathering. A grand function was organised at The Ashok, New Delhi, where we took stock of our growth and our services to our membership and other stakeholders in particular and our nation in general. Chief Guest ICAI past-President CA. Ved Jain delivered a special address on *Recent Issue in Direct Taxes*. I shared my vision for the profession along with the initiatives being taken by the Institute in the interest of our membership as well as our nation. A brief report on this function has been included elsewhere in this issue of the Journal.

Webcast on CPC & E-filing: To resolve issues associated with e-filing of returns and establishment of CPC which remain unsolved due to a communication gap between taxpayers and tax collector, we, in coordination with the Income Tax Department, recently organised a successful Live Webcast on *CPC & E-filing- Issues/Resolutions and the Way Forward*. The Webcast was addressed by Mr. K. Krishna Rao, CIT, CPC, Mr. R.K. Mishra, Addl. CIT, CPC, Mr. Satish Goel, Addl. CIT, E-filing, Mr. Ashish Abrol, Addl. DIT (Systems), and CA. Ravishankar P., Centre Operations Head -ITDCPC Project. I, along with my Central Council colleagues CA. Sanjay 'Voice of CA' Agarwal, CA. Dhinal A. Shah and CA. M. Devaraja Reddy put forward the views of our members before the CPC officials. In all, the webcast was viewed by 12,539 members. A complete recording of the webcast along with the presentation as made by CPC officials is hosted on our website. I am sure, this webcast will add to the efficiency of our members.

Initiatives for Students

ICON 2012 – International Conference in Nagpur:

I am really happy to share with you that we recently organised the International Conference (ICON 2012) for CA Students on *Interact to Innovate* in Nagpur, which was jointly hosted by Nagpur Branch of WICASA and WIRC of the ICAI. Its inaugural session was attended by Union Corporate Affairs Minister Dr. M. Veerappa Moily as Chief Guest, and former Rajya Sabha Deputy Chairman CA. K. Rahman Khan as Guest of Honour. I, along with the ICAI Vice-President CA. Subodh Kumar Agrawal and my Central Council colleague CA. Nilesh S. Vikamsey also addressed the participants. Various technical sessions of the Conference were chaired by my Central Council colleagues CA. Manoj Fadnis and CA. Shivaji B. Zaware, the management consultant Special Dr Suresh Chari, and Director, Board of Studies Shri

Vijay Kapur. Technical sessions strategically focused on relevant issues including financial reporting, taxation, accountability and corporate governance, and legal, technical and communication skills, among others. Special session on the theme of the Conference, *Interact to Innovate*, was delivered by my Central Council colleague CA. Charanjot Singh Nanda. Chief Guest of the valedictory session was the Vice Chancellor of Datta Meghe Institute of Medical Sciences, Nagpur, Dr. Vedprakash Mishra.

All-India Conference in Baroda: An All-India Conference for CA students on *Tamso Ma Jyotir Gamaya – Lead Me, From Darkness to Light* was organised recently in Baroda, which was inaugurated by the Chief Guest Dr. Anand Gokani and myself as the Guest of Honour. As many as 1,227 students attended the conference. My Central Council colleague CA. Nilesh S. Vikamsey, who chaired the first Technical Session, addressed the inaugural session. Among others, taxation expert CA. (Dr.) Girish Ahuja and my Central Council colleague CA. Atul Bheda also chaired the technical sessions. Central Council colleague CA. Charanjot Singh Nanda explained the theme of the Conference.

National Conventions in Vasai, Ludhiana, Hyderabad, Ghaziabad and Jaipur:

- A successful National Convention was organised recently at Vasai, which was inaugurated by ICAI past-President CA. T. N. Manoharan, a Padma Shri awardee, and my Central Council colleague CA. Nilesh Vikamsey. As many as 450 students attended the convention. ICAI past-Presidents CA. N. P. Sarda and CA. Uttam Prakash Agarwal, and my Central Council colleagues CA. Madhukar Hiregange and CA. Amarjit Chopra also attended the Conference.
- National Convention on *Evolution Through Innovation–Be The Change You Wish To See In The World* was successfully organised in Ludhiana, which was inaugurated by Shri Sharanjit Singh Dhillon, PWD Minister, Government of Punjab, and attended by about 800 students. I along with my Central Council colleague and past-President CA. Amarjit Chopra were the Guests of Honour. Central Council colleagues CA. Vinod Jain and CA. Charanjot Singh Nanda were also present on the occasion.
- I recently inaugurated a National Convention on *Jigyasa–A Quest for Knowledge* in Hyderabad, which was attended by more than 2000 students. My Central Council colleagues CA. Nilesh Vikamsey, CA. Madhukar Hiregange, CA. J. Venkateshwarlu and CA. M. Devaraja Reddy also attended the Conference.
- National Convention on *Emerging Trends–Challenges*

& *Opportunities* was successfully organised in Ghaziabad. I, along with ICAI Past President CA. Amarjit Chopra and my other Central Council colleagues CA. Anuj Goyal and CA. Charanjot Singh Nanda, among others, attended the Conference.

- National Convention on *CA Profession – Changing Dimensions* was organised in Jaipur, which was inaugurated by Dr. Jitendra Singh, Minister of Energy, Government of Rajasthan, as Chief Guest. My Central Council colleagues CA. Nilesh S. Vikamsey and CA. Madhukar N. Hiregange were Guests of Honour. It was attended by about 1,650 students. ICAI past-President CA. Sunil Goyal chaired a technical session and ICAI past-President CA. T. N. Manoharan, a Padma Shri awardee, addressed a special session.

Job Fair for Small- & Medium-Sized Firms and Enterprises: In a unique endeavour to provide quality accounting, finance, tax, audit and management consultancy personnel to small- and medium-sized enterprises and CA firms, we successfully organised a job fair for chartered accountants recently at nine centres across the nation. In all, 37 recruiting entities comprising 45 interview teams participated in the fair to recruit our members. Highest salary offered was ₹6 lakh.

Campus Placement during August-September 2012: We will organise the next campus placement programme for our newly-qualified chartered accountants during August-September 2012 at 18 centres across the nation. Detailed announcement in this regard is available at our website. I would like to appeal to our members to spread the information on the programme and make it a grand success.

CA Final Results Declared: Results of the Chartered Accountants Final Examination held in May 2012 have been declared with 16.38% candidates as passed in Both Group category, whereas 25.32% and 29.62% candidates have been declared as passed in Group I and Group II categories respectively. I would congratulate all the successful candidates especially Abhishek Gupta from Kolkata, Divyang Bhandari from Chennai and Shruti Sodhani from Bangalore who got first, second and third rank respectively in the final examination. Results of the CPT (Common Proficiency Test) conducted on 17th June, 2012, have also been declared with a pass percentage of 37.56. Female candidates have taken lead from their male counterpart by a margin of 2%, i.e. 40.04 against 37.56%. It is quite satisfying to note that more and more female candidates are successfully joining our profession.

Though CA Day celebrations commence on 1st July every year, the ICAI Council with the assistance of its employees constantly celebrates the profession by expediting its innovative endeavours towards empowerment of accountancy profession. And, I understand that responsibility and innovation go hand-in-hand if we want high productivity in a field.

Spirit of innovation and creativity has to be respected. Creators must be credited for their creation. It is our responsibility and their rights. Philosopher-scientist Albert Einstein voiced his concerns: *Few people are capable of expressing with equanimity opinions which differ from the prejudices of their social environment.* When people innovate, their effort must be respected. Agenda of intellectual property rights (IPRs) has become extremely important due to competitiveness. IPRs are legal rights resulting from intellectual activity in industrial, scientific, literary and artistic fields. Agencies across the globe are figuring out better ways to safeguard the IPRs of creators. Our Government has been acting tough for the enforcement of IPRs, and probably such endeavours have inspired a substantial increase in the share of exports of goods & services in national GDP over the last decade. Our Government wants an effective management of IPRs to enable innovators to make profits and spur innovation. Ultimately, there will be better transparency and accountability in the system. Nobel (Peace) Laureate German philosopher Albert Schweitzer offers: *Man must cease attributing his problems to his environment, and learn again to exercise his will - his personal responsibility in the realm of faith and morals.* To discourage the plague of misconduct and tendency of usurping others' rights, we basically need a responsible self. Since foundation of our profession lies on the stringent *code of ethics*, we vow to put in our best to promote ethics beyond profession too. We declare our solidarity with the Government's mission to protect the rights of innovators. We have always been with our nation in all its noble endeavours.

Happy *Independence Day* and *Id-ul-Fitr* to you all!

Best wishes



CA. Jaydeep Narendra Shah

President, ICAI

New Delhi, July 24, 2012

International Conference of CA Students in Nagpur



MCA Minister Lights Lamp to Inaugurate

Union Corporate Affairs Minister Dr. M. Veerappa Moily lights the lamp in the august presence of MP (Rajya Sabha) and former Rajya Sabha Deputy Chairman CA. K. Rahman Khan, ICAI President CA. Jaydeep Narendra Shah, Vice-President CA. Subodh Kumar Agrawal, Central Council member CA. S. B. Zaware, and WIRC Chairman CA. Durgesh Kabra, among others at the inauguration of the International Conference for CA Students in Nagpur (July 13, 2012)



Presenting Memento to CA. Rahman Khan

Vice-President CA. Subodh Kumar Agrawal presents a memento to MP (Rajya Sabha) and former Rajya Sabha Deputy Chairman CA. K. Rahman Khan, as the ICAI President CA. Jaydeep Narendra Shah and Central Council member CA. Nilesh S. Vikamsey and WIRC Chairman CA. Durgesh Kabra, among others, look on (July 13, 2012)



Paying Respect to ICAI Motto

Union Corporate Affairs Minister Dr. M. Veerappa Moily, MP (Rajya Sabha) and former Rajya Sabha Deputy Chairman CA. K. Rahman Khan, ICAI President CA. Jaydeep Narendra Shah, Vice-President CA. Subodh Kumar Agrawal, Central Council member CA. Nilesh S. Vikamsey, and WIRC Chairman CA. Durgesh Kabra, among others (July 13, 2012)



Sharing the Joy Together

ICAI President CA. Jaydeep Narendra Shah and his better-half Smt. Harsha Jaydeep Shah share lighter moments with Union Corporate Affairs Minister Dr. M. Veerappa Moily, MP (Rajya Sabha) and former Rajya Sabha Deputy Chairman CA. K. Rahman Khan and ICAI Vice-President CA. Subodh Kumar Agrawal (July 13, 2012)



25th All India Students' Conference in Baroda

Chief Guest Dr. Anand Gokani lights the lamp in the august presence of ICAI President CA. Jaydeep Narendra Shah, Central Council member CA. Nilesh S. Vikamsey and WIRC Chairman CA. Durgesh Kabra, among others (July 6, 2012)



MBF Residential Programme in Hyderabad

ICAI President CA. Jaydeep Narendra Shah along with Course Coordinator Shri A. P. Kar and participants of the programme (July 20, 2012)



Paying Respect to the Legend

ICAI President CA. Jaydeep Narendra Shah, Vice-President CA. Subodh Kumar Agrawal, past-Presidents CA. Ved Jain and CA. G. Ramaswamy, Central Council members CA. M. Devaraja Reddy, CA. Sanjay 'Voice of CA' Agrawal, and ICAI Secretary Shri T. Karthikeyan after offering tribute to First ICAI President Shri G. P. Kapadia at the headquarters (July 1, 2012)



Poojan for Laying Foundation Stone at Bharuch

ICAI President CA. Jaydeep Narendra Shah along with Central Council members CA. Dhinal Shah, WIRC Chairman CA. Durgesh Kabra and Branch Chairman CA. Rahuldeo Patel, among others just before invoking the almighty on the occasion (July 11, 2012)



Workshop on Cooperative & NPO Sector in Dibrugarh

ICAI Vice-President CA. Subodh Kumar Agrawal along with chartered accountant participants of the workshop (July 5, 2012)



CA Day Function in New Delhi

ICAI President CA. Jaydeep Narendra Shah along with Vice-President CA. Subodh Kumar Agrawal, Chief Guest and ICAI past-President CA. Ved Jain, and ICAI Secretary Shri T. Karthikeyan at CA Day Celebrations Function held in New Delhi (July 1, 2012)



Visit to RIL Plant at Jamnagar

ICAI Vice-President CA. Subodh Kumar Agrawal along with officers including Shri Vinod K. Jain from the Accounts section of Jamnagar Manufacturing Division of Reliance Industries Limited, Gujarat (June 22, 2012)



Workshop on Professional Opportunities at Tinsukia

ICAI Vice-President CA. Subodh Kumar Agrawal shares the enthusiasm of Tinsukia CPE Chapter Convener CA. Tarun Paul and Guwahati Branch Chairman CA. Naveen Garg, among other participants, during a workshop on professional opportunities in Co-operatives & NPO Sectors (July 5, 2012)



IPSASB Chairman Meets MCA Secretary

ICAI President CA. Jaydeep Narendra Shah accompanies IPSASB Chairman Andreas Bergmann in a meeting with MCA Secretary Shri Naved Masood in New Delhi, while ICAI Vice-President CA. Subodh Kumar Agrawal, and Central Council member CA. Manoj Fadnis, and Secretary Shri T. Karthikeyan were also present (July 2, 2012)



Workshop for Govt. Nominee Directors

Tamil Nadu Principal Secretary to Finance Department Thiru K. Shanmugam lights the lamp to inaugurate the Workshop on *Role and Responsibilities of Nominee Directors on the Board of Government Companies* in Chennai, while ICAI President CA. Jaydeep Narendra Shah, Central Council members CA. Amarjit Chopra, past-President, CA. Nilesh S. Vikamsey and CA. Rajendra Kumar P. look on intently (June 26, 2012)



Meeting with CEO, Chartered Accountants Ireland

ICAI Vice-President CA. Subodh Kumar Agrawal meets CEO of Chartered Accountants Ireland Mr. Pat Costello during the International Innovation Network Conference in Dublin, Ireland (July 17, 2012)



ICAI-ICAA Joint Workshop

ICAI Vice-President CA. Subodh Kumar Agarwal Vice President along with NACAAS Chairman and past-President CA. Mukund M. Chitale, past-President CA. Amarjit Chopra, ICAA International Affairs Director Mr. Bill Palmer, Central Council members CA. Bhavna Doshi and CA Nilesh S. Vikamsey, and WIRC Chairman CA. Durgesh Kabra at the inauguration of the workshop on Enhancing Corporate Governance in Mumbai (July 10, 2012)



Tax Awareness Programme in Anand

Chief Guest ICAI President CA. Jaydeep Narendra Shah along with Central Council members CA. Mahesh P. Sarda and CA. Dhinal Ashvinbhai Shah, among other participants of the programme, at Anand Branch of WIRC (July 11, 2011)



AP State-Level CA Conference in Vijayawada

ICAI Vice-President CA. Subodh Kumar Agrawal released the Souvenir in the presence of Central Council member CA. M. Devaraja Reddy, SIRC Chairman CA. K. Viswanth, Branch Chairman CA. Kunda Rama Narayana, among others, during the Conference organised by Vijayawada Branch (July 7, 2012)



CPE National Conference in Hyderabad

Andhra Pradesh High Court Chief Justice V. Eswaraiah lights lamp to open the Conference in the august presence of ICAI President CA. Jaydeep Narendra Shah, and immediate past-President CA. G. Ramaswamy and Central Council members CA. J. Venkateswarlu and CA. M. Devaraja Reddy, among others at Jnanowala National Conference (June 17, 2012)



Certificate Course on Forex & Treasury Management

ICAI President CA. Jaydeep Narendra Shah addresses during the inauguration, while Vice-President CA. Subodh Kumar Agrawal, Central Council members CA. Vinod Jain and CA. Sanjay 'Voice of CA' Agrawal, and faculty CA. Rajiv Singh relish moments at the dais in New Delhi (July 1, 2012)



IPSASB Visits ICAI

ICAI President CA. Jaydeep Narendra Shah presents memento to IPSASB Chairman Andreas Bergmann at the Institute headquarters, while ICAI Vice-President CA. Subodh Kumar Agrawal, and Central Council members CA. Bhavna Doshi, CA. Manoj Fadnis, CA. M. Devaraja Reddy, CA. J. Venkateswarlu and CA. Naveen N. D. Gupta (July 3, 2012)



Webcast on CPC and e-Filing

ICAI President CA. Jaydeep Narendra Shah addresses in the presence of Shri Krishna Rao, Commissioner of Income Tax, CPC, and Central Council members CA. M. Devaraja Reddy and CA. Sanjay 'Voice of CA' Agrawal, among others at ICAI headquarters (July 4, 2012)



SAFA Board Meeting in Colombo

ICAI President CA. Jaydeep Narendra Shah, Vice-President CA. Subodh Kumar Agrawal, and Central Council member CA. Pankaj Tyagee along with SAFA President Muhammad Rafi and other members of the Board (June 21, 2012)

July 2012 Issue of The Chartered Accountant Journal was Worth Preserving

It is my privilege to be a member of this great Institute from the year 1970. Our Institute is widely recognised globally by just 63 years of its age, 1st July, 2012 and will also be appreciated by all sections of people in coming years; the reason is very simple in complex climate of economy across the Globe. To understand this One needs to read our Journal (The Chartered Accountant). The CA. Day special issue of the Journal as on 1st July, 2012 is worth reading, preserving and knowledge enhancing, as it carries many things unknown to me even.

The Editorial titled "The legacy of Integrity, Independence & Excellence Continues" was very well written and conceptualised and so was the President's Message. Messages from leaders of Indian polity in the 'Leader Speak' was also worth reading. All the features and articles including those from Padma Shri awardee CA. T. N. Manoharan, IFAC President Goran Tidstrom, Dy. CAG Shri Ajit Patnaik, Competition Commission Chairman Shri Ashok Chawla were worth reading word by word. The Sections like Down The Memory Lane, Did You Know, and Nostalgia brought to us wealth of rare facts, which generally lie buried in our chronicles. I sincerely appreciate the works of the Editorial Board of ICAI for bringing out a good Issue on the occasion of CA DAY – 1st July, 2012. Waiting for the next CA day 1st July, 2013 and on wards.

CA. Subhashchandra Podder,
Kolkata

The July 2012 Special Issue of the journal is a collector's copy and is truly worth preserving for important references about Indian accountancy profession since 1949. It was knowledge enhancing to read the In-Conversation section wherein interviews of Minister of Corporate Affairs Dr. M. Veerappa Moily and former Deputy Chairman of Rajya Sabha CA. K. Rahaman Khan were published. The issue very well captured the past, the present and the Future of the Accountancy profession in India besides presenting the global perspectives of the accountancy profession. The 'Down the Memory lane' section, and particularly the feature 'Debates in the constituent Assembly and then, in Parliament of India' was a revelation. Kudos to the Editorial Board for the excellent work done.

CA. S. Jain

The CA DAY issue of The Chartered Accountant journal (July 2012) was very well packed with information and knowledge about various facets of Indian accountancy profession. Amid a sea of information, I found the section 'Relections: What it Means to be an Accountant' as most interesting with write-ups penned by seasoned

and veteran professionals like Past President CA. V. B. Haribhakti, CA. H. M. Talati, and CA. Narain Prasad. The section 'World View and Vision on Profession', which carried scholarly write-ups from leading personalities from India and abroad, was also treasure trove of knowledge. Keep up the good work.

CA. J. Agrawal

Accounting Articles were Good to Read

I read with interest the referred article titled 'Accounting for Foreign Currency Forwards' in the June 2012 issue of the CA Journal and found the same to be extremely informative. The said article has managed put a very complex subject, in simple language which can be understood by all.

Further, the article on three dimensional accounting system published in the Journal for the month of May 2012, was also well written and conceptualised. I found the concept to be unique and quite useful and if this concept is adopted in future, we may very well see the financial books capturing the other aspects of the transactions which are not normally reflected in the books.

CA. TPA Narayanan, Vadodara

Corrigendum

With reference to 'Did You know - The ICAI Flag' published on page 162 of July 2012 issue of this journal, readers please note that the Council of the Institute of Chartered Accountants of India considered the logo in its meeting held on 8th and 9th November, 1949 instead of 15th August, 1950 as inadvertently mentioned in the write-up.

Editor

For the Attention of Readers

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

Write to Editor

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

Ethical Issues in Question-Answer Form

Q. Whether a member in practice is permitted to have his name published in Telephone Directory?

A. Yes, a member in practice is permitted to have his name published in the telephone directory subject to certain conditions. Para (c) under Clause (6) of Part I of the First Schedule to the Act, appearing in the Code of Ethics, 2009 provides for publication of Name or Firm Name by Chartered Accountants in the Telephone or other Directories published by Telephone Authorities or Private Bodies.

The Council has held that it would not be proper for a Chartered Accountant to have entries made in a Telephone Directory either by making a special request or by means of an additional payment. The Council has also considered the question of permitting entries in respect of chartered accountants and their firms under specified groups in telephone/trade directories brought out by Government and non-Government agencies. It has decided to permit such entries subject to the following restrictions:

1. The entry should appear in the section/category of "Chartered Accountants".
2. The member/firm should belong to the town/city in respect of which the directory is being published.
3. The entry should be in normal type of letters. Entry in bolder type or abnormal type of letters or in a box is not permissible.
4. The order of the entries should be alphabetical and logical.
5. The entry should not appear in a manner giving the impression of publicity/advertisement. Entry should not be given in a manner which gives prominence to it as compared to other entries.
6. The payment, if any, for the entry should not be unreasonable.
7. The entries should not be restricted and should be open to all the chartered accountants/firms of chartered accountants in the particular city/town in respect whereof the directory is published.
8. Subject to the above conditions, the members can also include their names in trade directories which are published and/or otherwise available such as electronic media e.g. Internet, telephone services like "Ask Me Services", etc.

Q. Whether a member in practice can respond to Tenders, Advertisements and Circulars?

A. Yes, it is permitted as per proviso (ii) to clause (6) of part-I of the First Schedule to the Act.

Q. Can a member in practice indicate in a book or an article, authored /contributed/published by

him, his association with any firm of Chartered Accountants?

A. No, as per Para (e) under Clause (6) of Part I of First Schedule to the Act as appearing in the Code of Ethics, 2009 a member is not permitted to indicate in a book or an article, authored/contributed/published by him, the association with any firm of Chartered Accountants.

Q. Whether the word "Chartered Accountants" and name of city after the name of the members of the Institute be mentioned in the articles contributed by such members and published in the Institute's Journal?

A. Yes, under Clause (6) of Part I of the First Schedule to the Act there is no restriction in the Code of Ethics for mentioning the word "Chartered Accountant" and also the name of city in an article contributed by a member in the Institute's Journal as well as in newspapers and other periodicals.

Q. Can a Chartered Accountant in practice solicit professional work by making roving enquiries?

A. No, it is not permissible for a member to address letters or circulars to persons who are likely to require services of a Chartered Accountant. It would tantamount to advertisement (as per para (g) under clause (6) of Part-I of the First Schedule to the Act, of Code of Ethics, 2009).

Q. Can a Chartered Accountant in practice seek professional work from his professional colleagues?

A. Yes, in terms of proviso (i) of Clause (6) of Part-I of the First Schedule to the Act, a member is permitted to apply or request for or to invite or to secure professional work from another Chartered Accountant in practice.

The issue of advertisement or a circular by a Chartered Accountant, seeking work from professional colleagues on any basis whatsoever is violation of Clause (6) of Part I of the First Schedule to the Act. However, classified advertisement in the Journal/ Newsletter of the Institute is permissible in this regard. A member is permitted to issue a classified advertisement in the Journal/Newsletter 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.

* Contributed by the Ethical Standards Board of the ICAI

Q. Whether sponsorship or prizes can be instituted in the name of Chartered Accountants or a firm of Chartered Accountants?

A. Yes, an individual Chartered Accountant or a firm of Chartered Accountants can institute or sponsor prizes, provided that the designation "Chartered Accountant", is not appended to the prize and the Clause (6) of the First Schedule regarding advertisement and publicity is complied with.

Q. Can a Chartered Accountants firm give advertisement in relation to Silver, Diamond, Platinum or Centenary celebration of the firm?

A. Yes, while considering the implications of Clause (6) & (7) of Part I of the First Schedule of the Act in relation to such advertisements and also the need of interpersonal socialisation/relationship of the members through such get-together occasions, the advertisement for Silver, Diamond, Platinum and Centenary celebrations of the firms has been permitted to be published in any newspaper or in the newsletters.

Q. A Chartered Accountants firm issued circulars to the non-clients that a Chartered Accountant who was the former partner in-charge of Taxation of one of the largest accounting firms of the world, had joined them as partner. Can they do it? (Case Study)

A. No, Clause (6) of Part I of the First Schedule to the Act prohibits solicitation of clients or performing work either directly or indirectly by circular, advertisement, personal communication or interview or by any "other means". The issuance of circular to persons who are not clients but may likely requires services of a chartered accountant would tantamount to advertisement since it is solicitation of professional work by making roving enquiries. As per Clause (7) of Part I of the First Schedule to the Act, the usage of the words "one of the largest accounting firms of the World" and the specification of specialisation in "taxation" would also amount to advertisement and, thus, constitute professional misconduct. ■

■ **ICAI NEWS** ■

www.icai.org.in : A Exclusive Website for CA Firms of ICAI



An initiative of Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP) of ICAI.

- **Creating Firm's Website:** In the website www.icai.org.in, the Firms may create their websites as per the norms laid down by the Council of the Institute of Chartered Accountants of India. The website provides a platform for the CA Firms to upload their firms' details and gives them an opportunity to reach out to the members and CA firms practicing worldwide.
 - **Knowledge Resources:** The website has various downloadable software useful for office management and efficient documentation for the members and firms.
 - **Minimum Recommended Scale of Fees:** The website also contains Minimum Recommended Scale of Fees for the Professional Assignments done by the Chartered Accountants,
 - **Forum for Consolidation:** The website also acts as a forum for consolidation of the members and CA Firms by providing for consolidation measures like Networking, Merger and Corporate Form of Practice.
 - **Quick Insight-2012: CA Profession**
CCBCAF & SMP has already released the publication on Quick Insight 2012 during the Chartered Accountants' Day Celebrations on 1st July, 2012 for the Members of ICAI which is available in the aforesaid website.
 - **Online Directory of CA Firm's Websites**
 - **Creates your site yourself in minutes**
 - **Manage your site yourself using CMS tools**
 - **Customize the site yourself**
 - **No hassles of Registering Domains, Web space etc.**
- For any information on the Website, please contact Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI on e-mail: ccbcaf.query@icai.org, Phone No. 011-30110497**
- CA. Pankaj Tyagee**
Chairman,
CCBCAF & SMP, ICAI

ICAI Celebrates Tradition of Professional Excellence on its 64th Foundation Day

Recalling the tradition of professional excellence, independence and integrity that started in 1949, The Institute of Chartered Accountants of India (ICAI) celebrated its 64th Foundation Day on 1st July, 2012 as 'CA Day'. The main function was organised at Convention Hall of Hotel - The Ashok, New Delhi, where the regulator of Accountancy profession in India took stock of its progress, growth and service to the nation in the presence of a large



Lighting the Lamp

gathering of professionals. Past President of the ICAI CA. Ved Jain delivered a special address while the ICAI President CA. Jaydeep Narendra Shah shared various initiatives of the Institute with the stakeholders. ICAI Secretary Shri T. Karthikeyan delivered the welcome address. The Vote of Thanks was given by ICAI Vice President CA. Subodh Kumar Agrawal. Following is a brief report of the function organised to mark the 'CA Day':



Shri T. Karthikeyan

At the outset ICAI Secretary Shri T. Karthikeyan welcomed the large gathering of guests including the Past Presidents, Council Members, office bearers of Regional Councils and the members and students of accountancy profession. In his address he said: "Sixty three years back on 1st July, 1949 the Institute was established and the noble profession of Chartered Accountants came into being with just 1700 members. Over the years, the profession has grown steadily and today we

have a membership strength of 1,97,446 and it is a matter of two to three months when we may cross the mark of two-lakh membership... it is really a matter of pride to all of us to reach this level."



CA. Jaydeep Narendra Shah

In his presidential address, ICAI President CA. Jaydeep Narendra Shah recalled the importance and trust bestowed on the accountancy professionals by the key persons at the helm of the nation when the ICAI was set up by

an act of Parliament even before India became a Republic. He gave an account of the progress made by the Institute in the last 63 years and the coveted status of 'Partner in Nation Building' attained by it.

He said that "When I evaluate and try to see what are the different areas in which our Institute is functioning and the contribution we are making to the various stakeholders, we can evaluate it from five main angles. First is education and training, that is, student related matters. Second is member related matters where on one hand we are updating our members and creating professional opportunities for the members. On the other hand we are regulating the members. Third, is the development of strong infrastructure, fourth, international initiatives and fifth, our various initiatives and support to Central Government, various Central Regulators, State Governments and various State Regulators. These are the five broad areas in which we are functioning and we are really proud of our achievements."

He also mentioned that the ICAI is the second largest accounting body of the world with more than 1,97,000 members and soon this figure will touch the two lakh mark. Further, he stated that "as far as the number of chartered accountant students is concerned, we are at first position in the world with not even a single accounting body across the world is having around 10 lakh students."

CA. Shah also stated that the ICAI has been very cautious on the member front and is committed to empowering them with different

types of specialised knowledge, not only by organising various CPE programmes but also through 12 post-qualification certificate courses. "Members are getting more opportunities with ICAI having entered into Memoranda of Understanding domestically as well as with various international bodies including Institute of Chartered Accountants of England and Wales, CPA Australia, Institute of Chartered Accountants of Australia and CPA Ireland Institute." He said that he looked at the development of members from two different perspectives – one, empowering the members with knowledge, and second, countering the challenges and converting challenges into opportunities.

The President spoke at length about various challenges that the ICAI successfully encountered to the benefit of the members this year with the active support of the then Finance Minister Mr. Pranab Mukherjee, Minister of Corporate Affairs Dr. M Veerappa Moily, the former Deputy Chairman of Rajya Sabha CA. K Rahman Khan, Chairman of Parliamentary Standing Committee on Finance Mr. Yashwant Sinha, Member of Parliament CA. Piyush Goyal and a host of other top officials and members of the profession from across the nation.



CA. Ved Jain

In his special address as Chief Guest, **ICAI Past President CA. Ved Jain** said: "when we celebrate our Day, it is a day to rejoice; it is a day for celebration. At the same time, it is a day for introspection; it is a day



Audience at CA Day Function

to think what we are doing; it is a day what we need to do in future.” He dwelt at length on how the profession evolved and grew strength by strength, countering all formidable challenges from time to time, what the ICAI is, how it came into existence, what this profession is and what CAs are individually.

While highlighting the strength of the profession he stated that - “We will be 200,000 members in this profession in near future and a big force. No corporate or business entity of some worth can exist without chartered accountants.” He also added “our future generations, down the line, when they will celebrate ICAI’s 100th birthday, should be more proud of the profession than what we are today, and that can happen when all of these three categories – the Institute, the profession and each one of us continue to work in the manner in which our predecessors have worked.”

CA. Ved Jain said the biggest strength of the ICAI as an institution lies in the product it brings out, and the product is a chartered accountant. “The education and training has to be perfect, adapted to the new environment, adapted to the new technology, adapted to the new expectations from the industry and Government, and in that direction, strong efforts are required; hard decisions are required where we make sure that we do not compromise on our education and training...”

“There has to be constant upgradation in the education of the chartered accountant and the technology with which we are providing it. There has to be a constant thinking on how we can make ourselves ready for future. We need to appraise ourselves what we are doing today,” he said.

He also said that accountancy profession is set for a phenomenal growth in the future. “The way the Indian economy is growing, the way the requirement of the corporate houses, business entities and the government is growing, I am reasonably sure that down the line in the next 10 years, the demand of the accountants will be phenomenal. One estimate

about taxation may lead you to visualise where we will be after 10 years. Income tax collection in India during the year 2001-02 was just ₹64,000 crore. In the year 2011-12, it was ₹5,70,000 crore. I believe it is nine times in a period of 10 years and visualise what will be the picture in the year 2021-22. If I apply the same yardstick, it will be 54 lakh crore, and mind it, out of this ₹5,70,000 crore, more than 90% of the tax, goes through our (CAs) offices only.”

He advised Indian chartered accountants to “make two plans – short term and long term. What I have done for this institution which has given me so much, and what is my agenda for the next year.” “We should review ourselves on three bases – what I have done for my Institute, what I have done for my profession and what I have done for myself.”

CA. Ved Jain also spoke at length on ‘Recent Issues in Direct Taxes.’



CA. Subodh Kumar Agarwal

ICAI Vice President CA. Subodh Kumar Agarwal proposed vote of thanks. He said the sapling which was planted 63 years back has blossomed admirably but only sky is the limit for future. “From traditional bean-counters we now metamorphosed into multi-dimensional professionals with the role of CA fast shifting from back room to board room and a CA is no longer a statistician but a strategist.”

He also informed the gathering about the surge in female students and members associated with the ICAI. “If you look at the data of the Indian economy or country, 37% of females in India are uneducated. But if you look at our profession, the female CA members are growing very fast.

He said the ICAI is preparing well for the future and has come up with a vision document in this regard. He sought members’ inputs on the ICAI vision document. ■

Legal Decisions¹



Income-tax Act

LD/61/1

CIT

Vs.

Cargil Global Trading I.P. Ltd.

May 10, 2012 (SC)

[Assessment Years 2004-05 & 2005-06]

Section 2(28A) read with section 37(1) and section 195 of Income-tax Act, 1961 - Interest

Bills of exchange were discounted by assessee from a Singapore financial company, which on discounting bills immediately remits discounted amount to assessee; thereafter, it was obligations of said company to release amounts of those buyers to whom goods were exported and bills were drawn by assessee, such discounted charges could not be held to be payment of interest

The respondent assessee was in the export business. CFSA, the assessee's associate company in Singapore underwrite or otherwise acquire, own, hold, sell or exchange securities or investments of any kind including negotiable instruments, commercial paper etc. Accordingly, as a part of its aforesaid business, it draws, makes, accepts, endorses, discounts, executes and issues promissory notes, BE, etc. Further CFSA does not have a permanent establishment (PE) in terms of Articles 5 of the India Singapore Treaty.

On the exports made by the assessee to its best buyers outside India, the assessee drew bills of exchange on those buyers located outside India. These bills of exchange were discounted by the assessee from CFSA who on discounting the bills immediately remitted the discounted amount to the assessee. Thereafter, it was the obligations/headaches of CFSA to release the amounts of those buyers to whom the goods were exported and bills were drawn by the assessee. It was the said discounted charges which were claimed by the assessee as expenses under section 37(1). The discounting facilities were offered by the CFSA to the assessee after charging its aforesaid discounted commission.

According to the Assessing Officer, the aforesaid discounted charges by the assessee to CFSA were 'interest' within the meaning of section 2 (28A) on payment of which TDS was required to be deducted by the assessee.

The Delhi Court held that before any amount paid is construed as interest, it has to be established that the same is payable in respect of any money borrowed or debt incurred. The discount charges paid were not in respect of any debt incurred or money borrowed. Instead, the assessee had merely discounted the sale consideration respectively on sale of goods.

For such cases of immediate discounting the net payment made to the supplier was in the nature of a price paid for the bill. Such payment could not technically be held as including any interest and therefore, no tax was required to be deducted at source from such payment by the bank.

The Supreme Court dismissed the Special Leave Petitions filed by the Department against the order of the High Court.

Note: The judgment and order dated 17-02-2011 in ITA No.331/2011 of the High Court of Delhi, upheld.

LD/61/2

Maral Overseas Ltd.

Vs.

Additional CIT, Range 5, Indore

March 28, 2012 (ITAT-Indore-SB)

[Assessment Years 2001-02 & 2002-03]

Section 10B of the Income-tax Act, 1961 – Export Oriented Undertaking (EOU)

Where assessee EOU had not availed section 10B deduction for first three years of operation and it was entitled to said deduction for five years up to assessment year 1999-2000, in view of amendment extending benefit up to 10 years available from assessment year 1999-2000 onwards, assessee would be entitled to benefit for total period of 10 years

The assessee is a company engaged in the manufacture and mainly export of cotton yarn, grey & finished knitted cotton fabrics & readymade garments. In the first year of operation of original unit, there was loss. As per provisions of section 10B(3), the assessee company exercised its option not to avail exemption under section 10B, for assessment years 1992-93, 1993-94 and 1994-95. As such, the first year of its claim under section 10B was assessment year 1995-96 and the same was admissible up to assessment year 1999-2000 only since the assessee was entitled for deduction only for five consecutive years out of eight years. The assessee went ahead further and claimed

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

exemption under section 10B for assessment year 2000-01 and assessment year 2001-02 also. As per the Assessing Officer, the assessee company exceeded its claim beyond permissible limit of 5 consecutive years out of eight years.

However, the Commissioner (Appeals) allowed assessee's claim after observing that section 10B was amended with effect from 1-4-1999, thereby extending the period of exemption from 5 years to 10 years and accordingly benefit of 10 year exemption is available from assessment year 1999-2000 onwards as the assessee had not exhausted benefit of 5 years exemption on the basis of relevant and operative provisions.

The Indore Special Bench of Tribunal held that with effect from 1.4.2001, the entire section 10B has been substituted by the Finance Act, 2000, sub-section (1) of which provides for deduction of profits for 100% EOU for a period of 10 consecutive years beginning with the assessment year relevant to the previous year in which the undertaking starts its production.

This substitution lays down the clear intention of the legislature to provide the benefit of extended period of ten years to all the units, existing or new. When this amendment was brought into effect, the appellant was still eligible for exemption under section 10B for two assessment years and as such qualified for exemption for the unexpired period of ten years.

The first proviso to the newly substituted section 10B(1) categorically allows exemption to the existing units for the unexpired period of ten years. Even the Explanatory note relating to the said enactment states that an undertaking set up before 31.03.2000 shall be entitled to the deduction for a period of ten years. Though this amendment is effective from 01.04.2001, it specifically allows exemption to existing unit for a period of ten years.

In the assessee's case, the amended law became applicable during the period in which the assessee was otherwise eligible for claiming deduction under section 10B under the pre amended law. Thus, as a necessary corollary and applying the amended law, the assessee was clearly eligible for deduction under section 10B for the extended period.

As the period of ten years from the year of start of manufacture has not expired as on the date when the amended provision came into force, the assessee is entitled to the benefit of tax holiday for the remaining period of ten years.

Section 10B of the Income-tax Act, 1961 – Export Oriented Undertaking (EOU)

Export incentives received by 100 per cent EOU is eligible for deduction under section 10B

The export entitlement was allotted by the competent authority in respect of export undertaken by the assessee during the year. The assessee off-loaded the entitlement which was unusable and bought quota/entitlements which was required for procuring the required material necessary for its production purpose. Similarly, special import licence was allotted to the assessee by the designated authority as per Export Import Policy And Procedure 1997 – 2002. Income arising out of sale of export entitlement and special import licence was assessed as income from business. However, on such business income, the assessee is entitled to claim of deduction under section 10B in respect of such income.

The assessee was in receipt of export entitlement of ₹1.65 crores and special import licence of ₹4.47 lacs. The Assessing Officer declined the claim of deduction by holding that such income was not derived from 100% export oriented undertaking, therefore, not eligible for claim of deduction under section 10B(1) read with section 10B(4). The Commissioner (Appeals), by following the order of the Tribunal in the assessee's own case, held that the assessee was eligible for exemption in respect of export entitlement and special import licence as the income of EOU eligible for exemption under section 10B.

The Tribunal held that the provisions of sub-section (4) of section 10B mandate that deduction under that section shall be computed by apportioning the profits of the business of the undertaking in the ratio of export turnover by the total turnover. Thus, even though sub-section (1) of section 10B refers to profits and gains as are derived by a 100% EOU, the manner of determining such eligible profits has been statutorily defined in sub-section (4) of that section. Both sub-sections (1) and (4) are to be read together while computing the eligible deduction under section 10B. Sub-section (4) of section 10B provides specific formula for computing the profits derived by the undertaking from export. As per the formula so laid down, the entire profits of the business are to be determined which are further multiplied by the ratio of export turnover to the total turnover of the business.

Section 10B(1) allows deduction in respect of profits and gains as are derived by a 100% EOU. Section 10B(4) lays down special formula for computing the

profits derived by the undertaking from export. The formula is as under:-

$$\text{Profit of the business of the Undertaking} \times \frac{\text{Export turnover}}{\text{Total turnover of business carried out by the undertaking}}$$

Thus, sub-section (4) of section 10B stipulated that deduction under that section shall be computed by apportioning the profits of the business of the undertaking in the ratio of turnover to the total turnover. Thus, notwithstanding the fact that sub-section (1) of section 10B refers the profits and gains as are derived by a 100% EOU, yet the manner of determining such eligible profits has been statutorily defined in sub-section (4) of section 10B of the Act. As per the formula stated above, the entire profits of the business are to be taken which are multiplied by the ratio of the export turnover to the total turnover of the business. Sub-section (4) does not require an assessee to establish a direct nexus with the business of the undertaking and once an income forms part of the business of the undertaking, the same would be included in the profits of the business of the undertaking. Thus, once an income forms part of the business of the eligible undertaking, there is no further mandate in the provisions of section 10B to exclude the same from the eligible profits. The mode of determining the eligible deduction under section 10B is similar to the provisions of section 80HHC inasmuch as both the sections mandates determination of eligible profits as per the formula contained therein. The only difference is that section 80HHC contains a further mandate in terms of *Explanation* (baa) for exclusion of certain income from the "profits of the business" which is, however, conspicuous by its absence in section 10B. On the basis of the aforesaid distinction, sub-section (4) of section 10A/10B is a complete code providing the mechanism for computing the "profits of the business" eligible for deduction under section 10B. Once an income forms part of the business of the income of the eligible undertaking of the assessee, the same cannot be excluded from the eligible profits for the purpose of computing deduction under section 10B. As per the computation made by the Assessing Officer himself, there is no dispute that both these incomes have been treated by the Assessing Officer as business income.

In view of the above discussion, the assessee is eligible for claim of deduction on export incentive received by it in terms of provisions of section 10B(1) read with section 10B(4).

Section 10B of the Income-tax Act, 1961 – Export Oriented Undertaking (EOU)

An undertaking means a unit/business which has a separate and independent existence distinct from other units/business having independent infrastructure, separate plant and machinery being set up with substantial capital investment and having an identifiable output and profits attributable thereto

The expression "undertaking" has not been defined under section 10B but has been explained by the Courts. The Supreme Court in the case of *Textile Machinery Corporation Limited v. CIT*, 107 ITR 195 held that the true test is whether the unit claiming deduction is a new and identifiable undertaking separate and distinct from the existing business. It was further held that manufacture or production of articles yielding additional profit attributable to the new outlay of capital is a separate and distinct unit is the heart of the matter, to earn benefit from the exemption of tax liability.

Section 10B does not stipulate for issue of separate approval for each unit from the competent authority. The only requirement under the said section is that the undertaking should be approved.

Where fresh permission was granted for a new unit where the competent authority extended the benefit available to 100% export oriented unit for substantial extension of the existing undertaking, same would be entitled to section 10B exemption.

The manner of granting approval/licence for new unit is not relevant and even the endorsement on the existing licence/approval would be sufficient for considering the unit as distinct and separate undertaking, where the assessee fulfilled all the conditions, namely,

- (a) Business has separate and independent existence, separate and distinct from other units/business
- (b) Employment of independent infrastructure and separate plant and machinery etc.
- (c) Substantial capital investment
- (d) New employees and
- (e) Identifiable output (even though same product) and profits thereto can be determined.

An EOU will not disentitle the assessee from claiming deduction under section 10B in respect of two new units where these units were set up in a newly constructed building by installing, new plant and machinery, new power plant and new manufacturing facilities which resulted into increased turnover by almost double, recruitment of new manpower/employees, manufacturing of new identifiable and

marketed products, maintenance of separate books of account for each unit, obtaining separate approvals for new spinning units and permission for enhanced capacity. It is pertinent to mention here that new, separate and independent units were set up which were distinct from other existing unit eligible for deduction under section 10B.

LD/61/3

**North Eastern Electric Power Corporation Employees
Provident Fund Trust (NEEPCO EPF Trust)**

Vs.

Union of India

December 16, 2011 (Gauhati)

[Assessment Years 1995-96 to 1998-99]

Section 239 read with Section 119 of Income-tax Act, 1961 – Refunds – Time Limits to Claim

As all income generated by a recognised employees provident fund, was not chargeable to income-tax, it was not required to submit or file any return of income-tax, however, in order to claim refund of TDS erroneously deducted by financial institutions in which funds were invested, petitioner-Trust filed returns; belated filing of return can be no ground for denying refund

The income of the petitioner recognised employees PF Trust, was exempted from payment of income-tax under section 10(25)(ii) and it was not required to file return. The funds of the petitioner-Trust were invested as per the instructions of the Government of India in various financial institutions. These financial institutions deducted the income-tax at source from the incomes earned from such fixed deposits. In order to claim refund of the said TDS erroneously deducted by the financial institutions, the petitioner-Trust filed the returns.

The Assessing Officer passed the order that the return had been filed beyond the time-limit and hence they were invalid. He rejected the application for the TDS refunds. On filing an application under section 119, before the Chief Commissioner, concerned officer instructed the petitioner to submit comprehensive note to establish on record that it was prevented by reasonable cause from filing of return within the statutory time-limit. The petitioner-Trust submitted that the delay in filing the returns to the office of the CCIT was caused by the bifurcation of employer company with consequential bifurcation of the PF fund, stabilisation of computerised system, delay in audit of the account, non-issue of IT

exemption certificate under section 10(25) by the income-tax authorities, etc. After much delay, the Commissioner by his order refused to condone the delay in filing the return on ground that it was not a case of genuine hardship as envisaged under section 119(2)(b).

The writ petition filed by the assessee was opposed by the respondent, on the ground that under section 239(2)(c), the claim of refund can be allowed only if such claim is made within one year from the last date of assessment year for which such claim is made. As the petitioner-Trust had failed to comply with section 239(2)(c), the Commissioner had rightly disallowed the claim of refund.

The question to be decided then was, whether the revenue authorities could take the shelter of technicalities to deny refund of the income-tax deductions made at source, which did not legitimately belong to them.

The Gauhati High Court held that the petitioner-Trust, in this case, was being deprived of a sum of ₹9 lakh which it could not be blamed at all. It had no liability whatsoever to pay this amount to the Revenue. Yet, the revenue had refused to refund the same by taking some hyper-technical view of the matter. If the petitioner-Trust was being deprived of a sum of ₹9 lakh which legitimately belonged to it due to perverse view taken by the revenue, there was no rational to say that no genuine hardship is being caused to the assessee. The revenue was acting like a small-time trader, and was in danger of being accused as interested in enriching itself unjustly at the expense of a citizen. This was another form of State extortion from a helpless taxpayer. The revenue also did not dispute that the petitioner-Trust had no liability whatsoever to it to pay the aforesaid amount. Therefore, it was to be concluded that the revenue had not properly applied its mind to the facts of the case and had in the process completely overlooked the provisions of section 119(1)(b). The attitude of the revenue, to say the least, was in defiance of logic or of accepted moral standards that no sensible person could have arrived at. True, no specific or express provision is engrafted in this section to deal with refund of TDS erroneously deducted when there is no due from the assessee. But then, this is precisely the reason, for enacting section 119(1)(b). This is in the nature of an inherent power granted to the Central Board of Direct Taxes to entrust any income-tax authority other than a Commissioner (Appeals) to admit an application or claim for exemption, refund even belatedly and dispose of the same in

accordance with law. The Parliament was obviously not unmindful of the possibility of future occurrence of innumerable situations which are likely to cause genuine hardships to citizens in course of collection of revenue such as the one herein but which could not be foreseen by it at the time of enacting the legislation, and it is apparently with view to meet such exigencies that section 119(1)(b) was engrafted. Section 119(1)(b) is the appropriate provision to deal with case of this nature.

The petitioner was entitled to condonation of the delay in filing the claim for refund. Resultantly, the respondent authorities should refund the amount along with interest.

LD/61/4

CIT

Vs.

Nalwa Sons Investment Ltd.

May 4, 2012 (SC)

[Assessment Year 2001-02]

Section 271(1)(c), read with section 115JB of the Income-tax Act, 1961 – Penalty – For Concealment of Income

Where assessment as per normal procedure was not acted upon on contrary, it is deemed income assessed under section 115JB which has become basis of assessment as it was higher of two and tax is paid as a result of which concealment did not lead to tax evasion at all no penal consequences would follow

Judgment of the Supreme Court in *CIT v. Gold Coin Health Care Limited* clarifies that even if there are losses in a particular year, penalty can be imposed as even in that situation there can be a tax evasion. As per section 271(1)(c), the penalty can be imposed when any person has concealed the particulars of his income or furnished incorrect particulars of the income. Once this condition is satisfied, quantum of penalty is to be levied as per clause (3) of section 271(1)(c) which stipulates that the penalty shall not exceed three times “the amount of tax sought to be evaded”. The expression “the amount of tax sought to be evaded” is clarified and explained in *Explanation 4* thereto, as per which it has to have the effect of reducing the loss declared in the return or converting that loss into income.

Whether furnishing of such wrong particulars had any effect on the amount of tax sought to be evaded
Under the scheme of the Act, the total income of the

assessee is first computed under the normal provisions of the Act and tax payable on such total income is compared with the prescribed percentage of the ‘book profits’ computed under section 115JB. The higher of the two amounts is regarded as total income and tax is payable with reference to such total income. If the tax payable under the normal provisions is higher, such amount is the total income of the assessee, otherwise, ‘book profits’ are deemed as the total income of the appellant in terms of section 115JB.

The income of the assessee-company computed as per the normal procedure was less than the income determined by legal fiction namely ‘book profits’ under section 115JB. On the basis of normal provision, the income was assessed in the negative i.e. at a loss of ₹37 crores. On the other hand, assessment under section 115JB resulted in calculation of profits at ₹4 crores.

The Delhi Court held that judgment in the case of *Gold Coins (Supra)*, obviously, does not deal with such a situation. What is held by the Supreme Court in that case is that even if in the income tax return filed by the assessee losses are shown, penalty can still be imposed in a case where on setting off the concealed income against any loss incurred by the assessee under other head of income or brought forward from earlier years, the total income is reduced to a figure lower than the concealed income or even a minus figure. The court was of the opinion that the tax sought to be evaded will mean the tax chargeable not as if it were the total income. Once, this rationale is applied to *Explanation 4* given by the Supreme Court, in the present case, it will be difficult to sustain the penalty proceedings. Reason is simple. No doubt, there was concealment but that had its repercussions only when the assessment was done under the normal procedure. The assessment as per the normal procedure was, however, not acted upon. On the contrary, it is the deemed income assessed under section 115JB which has become the basis of assessment as it was higher of the two. Tax is thus paid on the income assessed under section 115JB. Hence, when the computation was made under section 115JB, the aforesaid concealment had no role to play and was totally irrelevant. Therefore, the concealment did not lead to tax evasion at all.

The Supreme Court dismissed the Special Leave Petitions filed by the Department against the order of the High Court.

Note: The judgment and order dated 26-08-2010 in ITA No.1420/2009 of the High Court of Delhi, upheld.

Circulars/Notifications

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



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

A. NOTIFICATIONS

1. Provisions of DTAA with the Kingdom of 'Norway' to be given effect to in Union of India

w.e.f. 1-4-2012

In exercise of the powers conferred by Section 90 of the Income-tax Act, 1961, the Central Government has, through this notification, notified that all the provisions of the Agreement between the Republic of India and the Kingdom of Norway for the avoidance of double taxation and the prevention of fiscal evasion shall be given effect to in the Union of India, in respect of income and on capital arising in any fiscal year beginning on or after 01-4-2012.

[Notification No. 24/2012, dated- 19-06-2012]

2. Amendment in Rule 12 and release of New Form ITR-5 & ITR-6

In exercise of the powers conferred by Section 295 of the Income-tax Act, 1961, the Central Board of Direct Taxes has through this notification, notified Income Tax (7th Amendment) Rules, 2012, which shall come into force from the date of its publication in the Official Gazette.

The said amendment rules have amended Rule 12 which deals with Return of income to provide for the following:

- a) Proviso to Rule 12(1)(a) provides that provision of furnishing return of income in form ITR-1 is not applicable to person "being an individual, who is a resident" and has (i) assets (including financial interest in any entity) located outside India; or (ii) signing authority in any account located outside India. The words "being an individual, who is a resident" have been substituted with the words "other than not ordinarily resident in India within the meaning of Section 6(6)".

Accordingly, it has been clarified that an individual who is a resident and ordinarily resident cannot file return in Form ITR-1 if he has assets (including financial interest in any entity) outside India or signing authority in any account located outside India.

- b) Similar amendment has also been made in clause (ca) of sub-rule (3) which deals with furnishing of return in Form ITR-4S, by an individual or HUF, whose income is computed on presumptive basis under Section 44AD and 44AE.
- c) Further, an amendment has been made in Clause (aa) of the proviso to Rule 12(3) requiring such individuals and HUFs who are Resident and ordinarily resident having assets (including financial interest in any entity) outside India or signing authority in any account located outside India, to furnish the return of income for the Assessment year 2012-13 and subsequent years electronically under digital signatures or transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V.
- d) Form ITR-5 & ITR-6 are being substituted with the new Forms ITR-5 & ITR-6.

[Notification No. 25/2012, dated 02-07-2012]

3. DTAA -Agreement for exchange of information with respect to taxes with Jersey

In exercise of the powers conferred by Section 90 of the Income-tax Act, 1961, the Central Government has, through this notification, notified that all the provisions of the Agreement between the Government of Republic of India and the Government of Jersey for exchange of information with respect to taxes, shall be given effect to in the Union of India w.e.f. 8th May, 2012.

[Notification no. 26/2012, dated 10-7-2012]

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

B. CIRCULARS**1. Assessing Officers are authorised in certain cases to rectify/reconcile disputed arrear demand**

In exercise of the powers vested under Section 119(2)(b) of the Income-tax Act, 1961, the Central Board of Direct Taxes, in consideration of genuine hardship being faced by the assessee, issued an instruction to authorise the Assessing Officers to make appropriate corrections in the figures of disputed arrear demands after due verification/ reconciliation and after examining the same on merits, whether by way of rectification or otherwise, irrespective of the fact that the period of limitation of four years as provided under Section 154(7) of the Act has elapsed.

As per the said circular, the Assessing Officer has been authorised to:

- a) Verify the claims of assessee on merits where any refund has been adjusted by CPC against the figure of arrear demand uploaded by the AO but disputed by the assessee;
- b) Issue refund of excess amount, if any, so adjusted by CPC due to inaccurate figures of arrear demand uploaded by the AO, after due verification of claims on merits;
- c) Upload amended figure of arrear demand on the Financial Accounting System (FAS) portal of Centralised Processing Center (CPC), wherever balance of outstanding arrear demand is still remaining after aforesaid correction/ reconciliation;
- d) Make suitable correction in the figure of arrear demand in his records and upload the correct figure of arrear demand on CPC portal, where the assessee disputes and requests for correction of the figures of arrear demand, whether uploaded on CPC or not and lying in the records of the AO;

It has been further clarified that the aforesaid instructions would apply only to the cases where the figures of arrear demand is to be reconciled/ corrected, whether such arrear demand has been uploaded by the AO on the Financial Accounting System (FAS) of CPC or it is still in the records of the Assessing Officer.

[Circular No. 4/2012, dated 20-6-2012]

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

C. ORDERS**1. Form 49C to be filed in "paper mode" for F.Y. 2011-12 on or before 30-9-2012**

Section 285 of Income-tax Act and Rule 114DA of Income-tax Rules read with Circular No. 5 of 2012, dated 6-2-2012, prescribes that specified categories of assessee having a (Liaison Office in India) shall electronically file Form 49C, within 60 days from the end of financial year. The due date for filing Form 49C for the financial year 2011-12 was prescribed as 30th May, 2012. Considering the fact that appropriate facility for allowing the electronic filing of this form was not operationalised due to technical difficulties, the Board in exercise of powers conferred under Section 119 of the Income-tax Act, 1961 has extended the due date of filing Form 49C for the financial year 2011-12, up to 30th September, 2012.

Further, as per the order, for the F.Y. 2011-12, Form 49C can be filed in 'paper mode' instead of filing it electronic mode and be sent to the address mentioned therein the order by 'Registered Post' or 'Speed Post'.

[Order [F. NO.225/124/2012/ITA.II], dated 20-6-2012]

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

D. PRESS RELEASES**1. Setting Up of Tax Kiosks and Use of Mobile Vans in CCIT (CCA) Region**

As the last date for filing of return for individuals and HUFs taxpayers is approaching, being a taxpayer friendly initiative, the Department has decided to set up Tax Kiosks at various places within CCIT regions and use of mobile vans. Department has trained Tax Return Preparers (TRPs) to assist individuals and HUFs in preparing their returns of income. The Tax Kiosk would be a temporary structure set up for one to two days in a residential area such as apartment blocks in association with RWAs, large offices and other central locations of the cities, which would be manned by TRPs who would handle queries of taxpayers relating to return filing, PAN applications, refund status and also assist the taxpayers in preparing their returns of income.

Further, the press release indicates that mobile vans may be used for reaching out to the taxpayers during the return filing season manned by TRPs and activities

suggested for Tax Kiosks may be undertaken through these vans also.

[Press Release [F.No. RC/TRP-1(1)/2011-12], dated 19-6-2012]

2. Draft Guidelines regarding implementation of General Anti Avoidance Rules (GAAR)

The Committee constituted to give recommendations for formulating the guidelines for proper implementation of GAAR Provisions under the Direct Tax Code Bill, 2010 and to suggest safeguards to these provisions to curb the abuse thereof, have submitted their recommendations. The recommendations regarding guidelines/circulars have been made in light of the final provisions relating to GAAR in the Finance Act, 2012. After exhaustive deliberations and broad based discussions with the officers, representatives of FII's, members of the advisory committee and others stake holders, the Committee has made recommendations which would need to be split between Circulars and the Rules. The draft guidelines give recommendations on setting up of approving panel, circulars on GAAR, Clarity regarding retrospective/prospective operations of the GAAR provisions, Interplay between Specific Anti-Avoidance Rules (SAAR) and General Anti-Avoidance Rules (GAAR) and so on. The Guidelines also provide illustrative cases where GAAR provisions will be considered applicable or not applicable.

[Press Release, dated 28-06-2012]

3. Net direct tax collections during April-June, 2012

Gross direct tax collection during April-June of the F.Y. 2012-13 was up by 6.77% at ₹1,11,182 crore as against ₹1,04,135 crore in the same period last year. While gross collection of corporate taxes showed an increase of 3.48%, gross collection of personal income tax was up by 13%. Net direct tax collections was up by 47.16% and stood at ₹84,273 crore, as compared to ₹57,267 crore in the same period in the last fiscal.

Growth in wealth tax was (-) 3.03% (₹32 crore against ₹33 crore), while growth in securities transaction tax (STT) was (-) 0.52% (₹952 crore against ₹957 crore).

[Press Release No. 402/92/2006-MC (13 of 2012), dated 09-07-2012]

4. Deductors to comply with their obligations to ensure correct credit to persons from whose income tax is deducted at source

All deductors other than Government deductors must

file their quarterly TDS statement for the quarter ending 30th June 2012, on or before 15th July, 2012 and Government deductors must file their statement on or before 30th July, 2012. While submitting quarterly statements, deductors have to choose correct form, quote correct PAN against all entries and ensure that correct CIN/BIN is quoted in the TDS statements. As per Rule 37BA of Income Tax Rules, 1962 credit for TDS is given to the deductees on the basis of TDS statement furnished by the deductor. Non-quoting of PAN or TAN in TDS statements or delay in filing of TDS statements may lead to levy of penalty.

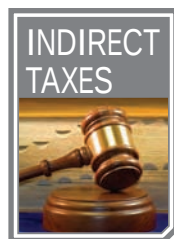
Filing of TDS statement with correct PAN and CIN/BIN is important because under Rule 37BA of Income Tax Rules, 1962 credit for tax deducted at source is given to the deductees on the basis of TDS statement furnished to the Income-tax Department by the deductor. Filing of TDS statements with incorrect PAN or other details of the deductee would, therefore, cause inconvenience to the deductees (taxpayer).

In case the income is assessable in the hands of a person other than the person from whose income tax has been deducted at source, the deductee in such case is required to file a declaration with the deductor that credit for the TDS shall be given to the other person and not to the deductee. The declaration must contain the name, address, PAN of the person to whom credit is to be given and reasons for giving credit to such person. The deductor is required to report the tax deduction in the name of such other person and also issue the TDS certificate in the name of the person in whose name credit is shown in the TDS statement.

TDS certificates other than salary income (Form 16A) for the quarter ending 30th June, 2012 should be issued on or before 30th July, 2012.

[Press Release, dated 10-07-2012]

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



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

A. SERVICE TAX

1. Amendment of Service Tax Provisions

Pursuant to the negative list becoming effective from 1st July, 2012, various consequential amendments have been made in service

tax provisions which will also be put into effect from 1st July, 2012. The various amendments are given hereunder:

i. Exemptions from levy of service tax on 39 Services

In addition to the 17 services listed as Negative lists of services by Section 66D of Finance Act, 2012, additional 39 services had been notified to be exempt from payment of service tax vide mega exemption Notification No. 12/2012-ST dated 17-03-2012. This Notification has been rescinded by Notification No. 25/2012 dated 20-06-2012. Further, the new notification provides the exemptions to 39 services covered in earlier Notification with certain amendments.

[Notification No. 25/2012-ST dated 20-06-2012]

ii. Abatement in respect of taxable services

The Central Government had granted abatement to 11 services vide Notification No. 13/2012 ST dated 17-03-2012. This Notification has been rescinded by Notification No. 26/2012 dated 20-06-2012. The new notification has amended the abatements given to 11 services covered in earlier Notification and extended the abatement to a new service viz. construction of complex, building, civil structure or a part thereof.

[Notification No. 26/2012-ST dated 20-06-2012]

iii. Exemption to services provided for official use of Foreign Diplomatic Mission

All taxable services provided by any person, for the official use of a foreign diplomatic mission or consular post in India or for personal use or for the use of the family members of diplomatic agents or career consular officers posted therein, have been exempted from whole of service tax leviable thereon subject to fulfillment of various conditions specified therein.

[Notification No. 27/2012-ST dated 20-06-2012]

iv. Place of Provision of Service Rules, 2012

The Place of Provision of Service Rules, 2012 have been notified vide Notification No. 28/2012 ST dated 20-06-2012 in place of Export of Service Rules, 2005 & Taxation of Service (Provided from Outside India & Received in India) Rules, 2006. The rules have been become effective from 01-07-2012.

[Notification No. 28/2012-ST dated 20-06-2012]

v. Exemption of property tax paid from "Renting of Immovable Property Services"

The Central Government has granted exemption of property tax paid from "Renting of Immovable

Property Services". Hence, the property tax levied and collected by the local bodies would be excluded for calculation of value of taxable services of "renting of immovable property". It has further been clarified that property tax shall be excluded proportionate to the period of renting of immovable property.

[Notification No. 29/2012-ST dated 20-06-2012]

vi. Reverse Charge Mechanism for service tax modified

Notification No. 15/2012-ST dated 17-03-2012 which provided for reverse charge mechanism has been replaced by a new Notification No. 30/2012 dated 20-06-2012. The new notification provides reverse charge mechanism for 10 services and also specifies percentages of service tax payable by service provider and receiver. In the case of three notified services, both service provider and receiver would be liable to pay service tax.

[Notification No. 30/2012 dated 20-06-2012]

vii. Exemption to GTA services availed by exporter of goods

Services of goods transport agency (GTA) availed by the exporter of goods for export of goods has been exempted from payment of service tax vide Notification No. 31/2012-ST dated 20-06-2012. This notification has been issued in supersession of Notification No. 18/2009-ST dated 07-07-2009. The condition and procedure for availing exemption has been laid down in the new notification.

[Notification No. 31/2012 dated 20-06-2012]

viii. Exemption to services provided by Technology Business Incubator (TBI) & Science & Technology Entrepreneurship Park (STEP)

All taxable services provided by Technology Business Incubator (TBI) and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board (NSTEDB) have been exempted from whole of service tax leviable thereon vide Notification No. 32/2012 dated 20-06-2012 subject to condition that information as required in Format-I and Format-II is furnished to concern Assistant/Deputy Commissioner by 30th June of each financial year. This notification has been issued in supersession of Notification No. 9/2007-ST dated 01-03-2007.

[Notification No. 32/2012 dated 20-06-2012]

ix. Threshold exemption limit of Rs. 10 lakh granted to service provider modified

The Central Government has issued *Notification No. 33/2012 dated 20-06-2012*, in supersession of *Notification No. 6/2005-ST dated 01-03-2005*, which has exempted taxable service of aggregate value not exceeding ₹10 lakh in any financial year from the whole of the service tax leviable thereon subject to the fulfillment of conditions specified in the notification.

However, the above exemption will not apply to taxable services provided by a person under a brand name or trade name, whether registered or not, of another person and further to value of taxable services in respect of which service tax is required to be paid under reverse charge mechanism.

[*Notification No. 33/2012 dated 20-06-2012*]

x. Existing Notifications rescinded to harmonise the provision of negative list of services

The Central Government has rescinded 81 existing Notifications in view of the implementation of taxation of services based on negative list of services w.e.f. 1st July, 2012.

[*Notification No.34/2012-ST dated 20-06-2012*]

xi. Withdrawal of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007

The Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 have been rescinded w.e.f. 1st July, 2012.

[*Notification No.35/2012-ST dated 20-06-2012*]

xii. Amendment to Service Tax Rules, 1994

Service Tax Rules, 1994 have been amended vide *Notification No.36/2012-ST dated 20-06-2012* to harmonise the provisions thereof with the new regime of service taxation. Further, various terms such as goods carriage, legal service, life insurance business, person liable to pay service tax, place of provision etc. have been defined for the purpose of Service Tax Rules, 1994.

[*Notification No.36/2012-ST dated 20-06-2012*]

xiii. Amendments in Point of Taxation Rules, 2011 (POTR)

Following changes have been made in POTR

- i. The words “provided or to be provided” have been substituted by words “provided or agreed to be provided”.
- ii. Definitions of 'associated enterprises' and 'taxable service' have been omitted.
- iii. As against existing five services notified under “continuous supply of services”

vide *Notification No. 28/2011-ST dated 01-04-2011*, only two services namely, “telecommunication services” & “service portion in execution of a works contract”.

[*Notification No.37/2012-ST & 38/2012-ST both dated 20-06-2012*]

xiv. Rebate of duty/tax paid on inputs/input services used in providing services exported in terms of Rule 6A of the Service Tax Rules, 1994

The condition and procedure for granting rebate of duty paid on excisable inputs or service tax and cess paid on all input services used in providing service exported in terms of Rule 6A of the Service Tax Rules, 1994, to any country other than Nepal & Bhutan have been notified by the CBEC.

[*Notification No.39/2012-ST dated 20-06-2012*]

xv. Exemption to services received by a unit in SEZ or developer of SEZ

The condition and procedure for granting exemption from whole of service tax to the services provided in relation to the authorised operations in a SEZ and received by developer/unit of SEZ has been modified through *Notification No.40/2012-ST dated 20-06-2012* in supersession of *Notification No.17/2011-ST sdated 01-03-2011*.

[*Notification No.40/2012-ST dated 20-06-2012*]

2. Education Cesses on service tax applicable even post introduction of negative list

The CBEC has clarified that education cess and secondary and higher education cess on service tax would continue to be applicable even post introduction of taxation of services based on negative list.

[*Circular No. 160/11/2012 ST & Order No. 2/2012 ST dated 29-06-2012*]

3. Service tax rebate for “specified services” received by exporters of goods

Notification No. 41/2012 ST dated 20-06-2012 has been issued which grants rebate (given in the form of refund) for all taxable services used for the export of goods, other than excisable goods. For excisable goods, the eligible services are the taxable services used for export of excisable goods beyond the place of removal. However, the services covered by the exclusion clause of the definition of ‘input service’ under rule 2(l) of CENVAT Credit Rules, 2004 will not be eligible for such exemption.

The rates of refund specified in the 'Schedule of Rates' have been enhanced in the new notification. The old *Notification No. 52/2011 dated 30-12-2011* granting such exemption has been rescinded. The Notification will be effective from 1st July, 2012.

[Notification No. 41/2012-ST dated 29-06-2012]

4. Service tax exemption to exporters on commission paid to foreign commission agent

With effect from 1st July, 2012, service tax paid on commission paid to foreign commission agent has been exempted to the extent of 10% of the FOB value of export of goods on the fulfillment of terms and condition defined in the Notification.

[Notification No. 42/2012-ST dated 29-06-2012]

5. Rail travel in AC coaches and transport of goods by rail exempted from service tax

The following services provided by India Railways have been exempted from service tax till 30th September, 2012:

- (i) Transportation of passengers, with or without accompanied belongings, in first class; or an air conditioned coach
- (ii) Transportation of goods

[Notification No. 43/2012 ST dated 02-07-2012]

6. New accounting codes specified for payment of service tax under the negative list approach

With effect from 1st July, 2012, for payment of service tax under negative list based approach, a new Minor Head - 'All taxable Services' has been allotted as under:

Name of Services	Accounting codes			
	Tax collection	Other Receipts (interest on delayed payment of service tax)	Penalties	Deduct refunds (for use by the Revenue/ Commissionerates while allowing refund of tax)
All Taxable Services	00441089	00441090	00441093	00441094

The following may further be noted:

- (i) service specific accounting codes will also continue to operate, side by side, for accounting of service tax pertaining to the past period (meaning, for the period prior to 01-07-2012);
- (ii) primary education Cess on all taxable services will be booked under 00440298 and Secondary and Higher Education Cess on all taxable services will be booked under 00440426.

[Circular No. 161/12/2012 ST dated 06-07-2012]

7. Determination of POT for works contracts in progression on 1st July, 2012

CBEC has clarified the following issues relating to point of taxation arising out of the amendments made vide the Budget, 2012 and subsequent amendments made effective from 01-07-2012:

- (a) Point of taxation and the applicable rate for continuous supply of services at the time of change in rates effective from 01-04-2012;
- (b) Applicability of the revised rule 2A of the Service Tax (Determination of Value) Rules, 2006 to ongoing works contracts for determination of value when the value was being determined under the erstwhile Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007; and
- (c) Applicability of partial reverse charge provisions in respect of specified services.

[Circular No. 162/13/2012 ST dated 06-07-2012]

8. No service tax on remittances from abroad

CBEC has clarified that service tax is not leviable on the amount of foreign currency remitted to India from overseas as definition of 'service' under Section 65B(44) specifically excludes transactions in money. Further, service tax would also not be leviable on the fee or conversion fee chargeable for sending such money as the company conducting the remittances and the person sending the money are located outside India. Such services are deemed to be provided outside India in terms of the Place of Provision of Services Rules, 2012.

[Circular No. 163/14/2012 ST dated 10-07-2012]

9. No service tax on audit fees collected by Comptroller & Auditor General (CAG)

CBEC has clarified that audit fees collected by Comptroller & Auditor General (CAG) for conducting audit of corporations is not liable to service tax under

the category of “Practicing Chartered Accountant’s Services”.

CBEC has further clarified that the services of CAG are also not covered under the category of “Business Support Services” since the audit activity undertaken by CAG is not an outsourced function but is carried out in statutory fulfillment of duties.

[Circular No. 159/10/2012 ST dated 19-06-2012]

B. CENTRAL EXCISE

1. Amendments in CENVAT Credit Rules, 2004 (CCR, 2004)

Following amendments have been made in CENVAT Credit Rules, 2004:

- i. *Notification No. 5/2006 CE (NT) dated 14-03-2006* prescribing, procedures, safeguards a condition and limitations for refund of CENVAT Credit under Rule 5 of CCR, 2004 has been rescinded. In its place, a new *Notification No. 27/2012-CE(NT) dated 18-06-2012* has been issued to prescribe the procedures, safeguards etc. for the refund of such credit with appropriate amendments.

[Notification No. 27/2012-CE (N.T.) dated 18-06-2012]

- ii. Pursuant to the negative list becoming effective from 01-07-2012, consequential amendments have been made in the definitions of capital goods, input service, output service etc. Other related amendments in rule 3 to 8 have also been made to harmonise the provisions of CCR with the negative list.

[Notification No. 28/2012-CE (N.T.) dated 20-06-2012]



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

A. Revision in format for Annual return on Foreign Liabilities and Assets reporting by Indian Companies

A.P. (DIR Series) Circular No.133 dated 20th June, 2012

RBI had vide *A. P. (DIR Series) Circular No.45 dated 15th March, 2011* mandated all the Indian companies which have received FDI and/or made FDI abroad (i.e. overseas investment) in the previous year(s) including the current year to submit the annual return on Foreign Liabilities and Assets (FLA) with RBI by 15th July of every year.

RBI has revised the form for the Annual Return on FLA which is now required to be filled-in and validated in soft form (in .xls) and sent by e-mail at fla@rbi.org.in by 15th July every year. The revised form for Annual Return in excel is available at RBI website www.rbi.org.

For detail, refer circular available on RBI website at: <http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=7287&Mode=0>

B. Reporting Platform for OTC Foreign Exchange and Interest Rate Derivatives

FMD.MSRG.No.69/02.05.002/2011-12 dated 22nd June, 2012

RBI vide circular FMD.MSRG.No.67/02.05.002/2011-12 dated 9th March, 2012, had advised that all inter-bank OTC foreign exchange derivatives transactions should be reported on a platform to be developed by the Clearing Corporation of India Limited (CCIL). The CCIL has since completed development of the platform for reporting of USD-INR forwards, FX swaps and FCY-INR options and accordingly it has been decided that the platform should be operationalised with effect from 9th July, 2012. Refer circular available on RBI website at <http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=7290&Mode=0> for salient features of the reporting requirement.

Reporting of other inter-bank OTC foreign exchange derivatives and all/selective trades in OTC foreign exchange and interest rate derivatives between the AD category-I banks/market makers (banks/PDs) and their clients on CCIL's reporting platform will be introduced in a phase-wise manner to be advised in due course.

C. External Commercial Borrowings (ECB)

1. Repayment of Rupee loans

A.P. (DIR Series) Circular No. 134 dated 25th June, 2012 and Press Release 2011-2012/2057 dated 25th June, 2012

RBI has now allowed Indian companies in the manufacturing and infrastructure sector to avail ECBs for repayment of Rupee loan(s) availed from the domestic banking system and/or for fresh Rupee capital expenditure, under the approval route, subject to the following conditions:

- (i) Such companies shall be a consistent foreign exchange earner during the past three financial years;
- (ii) Such companies are not in the default list/caution list of the RBI; and

- (iii) Such ECBs shall only be utilised for repayment of the Rupee loan(s) availed of for 'capital expenditure' incurred earlier and are still outstanding in the books of the domestic banking system and/or for fresh Rupee capital expenditure.

The overall ceiling for such ECBs shall be \$10 (ten) billion. The maximum permissible ECB that can be availed of by an individual company shall be limited to 50% of the average annual export earnings realised during the past three financial years. The ECBs shall be allowed to companies based on the foreign exchange earnings and its ability to service the ECB.

Authorised Dealer should ensure that the foreign exchange for repayment of ECB is not accessed from Indian markets and the liability arising out of ECB is extinguished only out of the foreign exchange earnings of the borrowing company.

2. Rationalisation of Form-83 for obtaining Loan Registration Number (LRN)

A. P. (DIR Series) Circular No. 136 dated 26th June, 2012

Form-83 for obtaining Loan Registration Number (LRN) submitted to the RBI has been rationalised to reflect the liberalisation and rationalisation measures carried out over a period of time. Accordingly, borrowers desirous of obtaining LRN with effect from 1st July, 2012 are required to submit Form-83 in the revised format (Annex I).

The revised form and the circular are available on RBI website at: <http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=7299&Mode=0>

D. Foreign investment in India by SEBI registered Foreign Institutional Investors (FIIs) and Qualified Foreign Investors (QFIs)

A.P. (DIR Series) Circular No. 135 25th June, 2012 and Press Release 2011-2012/2057 dated 25th June, 2012

Investments in Government Securities

Presently, FIIs are allowed to (i) invest in non-convertible debentures/bonds issued by Indian companies in the infrastructure sector and non-convertible debentures/bonds issued by Non-Banking Financial Companies categorised as 'Infrastructure Finance Companies' (IFCs) by the RBI within the overall limit of \$ 25 billion; and (ii) invest in Government securities within an overall limit of \$ 15 billion.

The said limit of \$ 15 billion for FII investment in Government securities is enhanced by \$ 5 billion to \$ 20 billion.

The residual maturity of the instrument at the time of first purchase by FIIs and SEBI registered eligible non-resident investors in IDFs and foreign Central Banks is kept at least three years for a sub-limit of \$ 10 billion. Accordingly, the existing and new sub limits and attendant conditions are as under:

Existing position		New position		Remarks
Sub limit	Conditions	Sub limit	Conditions	
\$ 10 billion	No conditions	\$ 10 billion	No conditions	No change
\$ 5 billion	Residual maturity of at least five years	\$ 10 billion (existing sub limit of \$ 5 billion plus the enhancement of \$ 5 billion)	Residual maturity of the instrument at the time of first purchase by FIIs to be at least three years	Increase in sub limit and change in conditions

Further, RBI has allowed long term investors like Sovereign Wealth Funds (SWFs), Multilateral agencies, endowment funds, insurance funds, pension funds and foreign Central Banks to be registered with SEBI to invest in Government securities within this enhanced limit of \$ 20 billion.

Investments in Infrastructure Debt

- The conditions for the limit of \$ 22 billion including the sub-limit of \$ 5 billion with one year lock-in/residual maturity requirement and \$ 10 billion for non-resident investment in IDFs (which are all within the overall limit of \$ 25 billion for investment in infrastructure corporate bonds) have been changed as under:
 - The lock-in period for investments under this limit has been uniformly reduced to one year;
 - The residual maturity of the instrument at the time of first purchase by an FII/eligible IDF investor would be at least 15 months.
- Further, QFIs are allowed to invest in units of Mutual Funds debt schemes upto a limit of \$ 3 billion within the overall limit of \$ 25 billion for

FII investment in non-convertible debentures/bonds issued by Indian companies in the infrastructure sector.

It has now been decided to allow QFIs to invest in MF schemes that hold at least 25% of their assets (either in debt or equity or both) in the infrastructure sector under the current \$ 3 billion sub-limit for investment in mutual funds related to infrastructure.

E. Foreign Investment in India - Sector Specific conditions

A.P. (DIR Series) Circular No. 137 dated 28th June, 2012

In order to bring uniformity in the sectoral classification position for Foreign Direct Investments as notified by the Department of Industrial Policy and Promotion, Ministry of Commerce & Industry, Government of India under the Consolidated FDI Policy Circular with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 Regulation, RBI has suitably revised the position on Annex A and Annex B of Schedule 1 to the said Regulations.

The revised annexure and circulars are available at: <http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=7305&Mode=0>

F. Buyback/Prepayment of Foreign Currency Convertible Bonds (FCCBs)

A. P. (DIR Series) Circular No.1 dated 5th July, 2012.

RBI has decided to continue the scheme of buyback of FCCBs subject to certain modifications. Accordingly, henceforth proposals from Indian companies for buyback of FCCBs will be considered under the approval route subject to:

- The buyback value of the FCCBs shall be at a minimum discount of 5% on the accreted value.
- In case the Indian company is planning to raise a foreign currency borrowing for buyback of the FCCBs, all FEMA rules/regulations relating to foreign currency borrowing shall be complied with.
- All terms and conditions as stipulated in paragraph 5 of A.P. (DIR Series) Circular No. 39 dated 8th December, 2008 will continue to be applicable.
- This facility shall come into force with immediate effect and the entire process of buyback should be completed by 31st March, 2013 after which the scheme lapses.

The existing requirement of submission of ECB 2 return will continue as hitherto. Further, on completion of the buyback, a report giving details of buyback, such as, the outstanding amount of FCCBs, accreted value of FCCBs bought back, rate at which FCCBs bought back, amount involved, and source/s of funds may be submitted, through the designated AD Category - I bank, to the RBI.



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

MCA (www.mca.gov.in)

1. Imposition of fee on certain e-forms by MCA

The MCA has issued General Circular No. 14/2012 dated 21-06-2012 which will be effective from 22nd July 2012 imposing fees on certain e-forms filed with ROC, RD or MCA(HQ) under MCA-21 where at present no fee is prescribed as under :

S. No.	Form No./Particulars of the Form	Applicable fee
1.	Form 1 of Investor Education protection Fund Rules - Statement of amounts credited to Investor Education and Protection Fund.	As per Schedule X to the Act
2.	Form 23B – Information by statutory auditor to the Registrar of Companies pursuant to Section 224(1)(a) of the Companies Act, 1956.	As per Schedule X to the Act
3.	Form 24A – Application to RD for appointment of auditors under Section 224(3) and others	As per Companies (Fee on Application) Rules, 1999
4.	Form 36 – Receiver's or manager's abstract of receipts and payments (charge related form)	As per Schedule X to the Act

S. No.	Form No./Particulars of the Form	Applicable fee
5.	Form 61 – Application to RoC – compounding of offences under Section 621A, application for extension of Annual General Meeting upto three months under Section 166 of the Act, application for extension of time for preparation of annual accounts upto 18 months under Section 220 of the Act and others	(a) As per Companies (Fee on Application) Rules, 1999
6.	Form 62 - form for submission of misc. documents under Companies (Court) Rules, 1959 – Form Nos. 154/157/158.	As per Schedule X to the Act.
7.	Form 65 – application to the central government (HQ) – application pursuant to rule 2 of the Companies (Application for Extension of Time or Exemption under Sub-section (8) of Section 58A) Rules, 1979, information and explanation on reservations and qualification contained in the cost audit report by a company and others	As per Companies (Fee on Application) Rules, 1999

One may refer to the above citation for further details.

2. Notice under Investor Education and Protection Fund Rules

The MCA has issued Notice on 21-06-2012 stating that under that Investor Education and Protection Fund (Uploading of information regarding unpaid and unclaimed amounts lying with companies) Rules,

2012, it has mandated every company to file eForm 5-INV containing the information of unclaimed and unpaid amounts as referred to in sub-section (2) of Section 205C of the Companies Act, 1956. This information is required to be filed every year within a period of 90 days after the holding of Annual General Meeting or the date on which it should have been held as per the provisions of Section 166 of the Act, and every year thereafter till completion of the seven years' period. The information is to be filed in Form 5- INV as per the above mentioned rules and thereafter an excel sheet containing detailed investor wise details is to be filed separately. The eForm, the excel template and detailed steps are provided in the IEPF application link on the portal www.iepf.gov.in. For financial year ended on 31st March 2011, it is provided that the eForm should be filed latest by 31st July 2012. One may refer to the above citation for further details.

3. Changes to Name Availability Guidelines

The MCA has issued Notice on 21-06-2012 on the above subject with a view of providing better services to its stakeholders and ensuring correctness of names approved through online mode (*i.e.* through STP mode without backend processing by RoC user), verification of such names by the RoC user on a real time basis for immediate action. Filing of incorporation documents in respect of such names shall not be allowed as per below timelines:

- If name is approved on or before 11.00 AM of any working day then incorporation documents shall not be filed before 7.00 PM of the same working day.
- If name is approved after 11.00 AM of any working day or at any time on holiday/non-working day then incorporation documents shall not be filed before 7.00 PM of the next working day.

During verification, if the RoC user finds that the approved name ought not to have been allotted, the same shall be liable to be withdrawn by giving an opportunity of being heard to the applicant. One may refer to the above citation for further details.

4. Cost audit report in XBRL mode

The MCA has issued Circular No. 52/17/CAB-2011 dated 29-06-2012 in relation to filing of cost audit report (Form-I) and compliance report (Form-A) in the eXtensible Business Reporting Language (XBRL) mode and now the Cost Audit Reports and

Compliance Reports shall be submitted with the Central Government in XBRL mode on/after 31st July, 2012. One may refer to the above citation for further details.

5. Extension of time in filing of annual return by LLPs

The MCA has issued Circular No. 15/2012 dated 29-06-2012 notifying referring to its earlier circular whereby the time for filing the annual return by LLPs (*i.e.* Form 11) was extended up to 31-07-2012. It is now clarified that in order to have a better understanding of the circular, it is clarified that the time limit of 60 days shall be read as 122 days for filing of Form 11 by LLPs in respect of the financial year ending on 31-03-2012. This circular shall be effective from 30-06-2012. One may refer to the above citation for further details.

6. Filing of Balance Sheet and Profit and Loss Account in XBRL

The MCA has issued General Circular Nos. 16/2012 dated 06-07-2012 stating that currently certain select class of companies are required to submit their balance sheet and profit & loss account and other documents as required under Section 220 of Companies Act, 1956 with the Registrar of Companies for the financial year ending on or after 31st March, 2011. It has now been decided to mandate the following select class of companies to submit their balance sheet and profit & loss account in XBRL mode for the financial year commencing on or after 1-4-2011:

- a) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
- b) all companies having paid up capital of ₹5 crore and above; or
- c) all companies having turnover of ₹100 and above; or
- d) all companies who were required to file their financial statements for FY 2010-11, using XBRL mode.

However, banking companies, insurance companies, power companies and Non-Banking Financial Companies (NBFCs) are exempted from XBRL filing till further orders. It is clarified that the applicable taxonomy as per Schedule VI to the Companies Act, 1956 has already been placed on the MCA's website www.mca.gov.in. The business rules, validation tools, etc. required for preparing the financial statements in XBRL format, as per the Revised Schedule-VI and Accounting Standards, are under preparation and would soon be made available

by the Ministry. The actual date for enabling XBRL filing will be intimated separately. All companies referred to above will be allowed to submit their financial statements in XBRL mode without any additional fee/penalty upto 15th November, 2012. One may refer to the above citation for further details.

7. Certain applications/petitions to CLB no more required as delegated to Regional Director

The MCA has issued Notification No. [F No 1/1/2003-CL.V] dated 11-07-2012 amending the Company Law Board (Fees on Application and Petitions) Rules, 1991 whereby with effect from 12th August 2012 certain applications/petitions to CLB are no more required as the same are delegated to the office of the Regional Director and which are in relation to the following applications/petitions:

- a) Application/petition for confirming alteration in memorandum of association as to change of place of the registered office from one State to another or with respect to objects of a company (Section 17(2))
- b) Application/petition for extension of time for filing documents for registration of alteration (Section 18(4))
- c) Application/petition Application for revival of order made under Section 17 (Section 19)
- d) Application/petition for extension of time or condonation of delay in filing the particulars of a charge or modification of a charge or intimation of payment or satisfaction of a charge with the Registrar of Companies (Section 141(1/3))
- e) Application/petition for order as to whether the Rights conferred are being abused to secure needless publicity for defamatory matter and to order company's costs to be paid in whole or in part by the requisitionists (Section 188(5))

One may refer to the above citation for further details.

8. Delegation of powers of central government to Regional Director

The MCA has issued Notification No. F No 1/1/2003-CL.V dated 10-07-2012 delegating certain powers to the Regional Director in relation to applications under Sections 17, 18, 19, 22, 224(3/4/7(a)), 141, 188, 297(1) proviso, 394-A, 400, 439(5 proviso 2/6), 496(1) (a), 508(1)(a), 551(1), 555(7(b)/9(a) proviso), 610(1)

proviso and 627. This notification shall be effective from 12th August 2012. One may refer to the above citation for further details.

9. Delegation of powers of central government to Registrar of Companies

The MCA has issued Notification No. F No 1/1/2003-CL.V dated 10-07-2012 delegating certain powers to the Regional Director in relation to applications under Sections 21, 25, 31(1) proviso, 108(1D) and 572. This notification shall be effective from 12th August 2012. One may refer to the above citation for further details.

10. LLP (Winding up and Dissolution) Rules, 2012

The MCA has issued Notification dated 28-05-2012 and 10-07-2012 on the above subject notifying the Limited Liability Partnership (Winding up and Dissolution) Rules, 2012 superseding the earlier Limited Liability Partnership (Winding up and Dissolution) Rules, 2010. The Rules cover the whole gamut of winding-up regulations apart from the various forms for the purpose. One may refer to the above citation for further details.

11. New forms for Petitions

The MCA has issued Notification No. [F.No. 1/1/2003-CLV] dated 28-05-2012 and 10-07-2012 amending the Companies (Central Government's) General Rules and Forms, 1956 to notify Petitions under Sections 17/18/19/141/188 of the Companies Act, 1956. The form notified for the purpose is form 24AAA (Form for filing Petitions to Central Government – Regional Director). For this purpose, rules 4BBB, 6C, 6D, 6E, 6F. One may refer to the above citation for further details.

SEBI (www.sebi.gov.in)

1. Redressal of complaints against SEs and depositories through SCORES

The SEBI has issued Circular No. CIR/MRD/ICC/16/2012 dated 15-06-2012 stating that it had commenced processing of complaints through SEBI Complaints Redress System (SCORES) and that the complaints received by SEBI against SEs and depositories shall be electronically sent through SCORES. One can view the pending complaints at <http://scores.gov.in/admin> and submit the Action Taken Report (ATR) along with supporting documents electronically in SCORES and that updation of action taken shall not be possible with physical ATRs. Hence, submission of physical ATR shall not be accepted for complaints lodged in SCORES. SEBI has now advised that SEs and depositories shall do the following in this regard :

- o indicate a contact person in case of SCORES, who is an employee heading the complaint services division/cell/department. Contact details (*i.e.* phone no., email id, postal address) of the said contact person be made widely available for e.g. on the websites of SEs/ Depositories.
- o address/redress the complaints within a period of 15 days upon receipt of complaint on SCORES. In case additional information is

required from the complainant, the same shall be sought within seven days of receipt on SCORES. In such case, the period of 15 days will be counted upon the receipt of additional information.

- o maintain a monthly record of the complaints which are not addressed/redressed within 15 days from the date of receipt of the complaint/information, alongwith the reason for such pendency.
- o Upload/update the ATR on the SCORES. Failure to do so shall be considered as non-redressal of the complaint and the complaint shall be shown as pending.

One may refer to the above citation for further details.

2. Ownership and governance norms for market infrastructure institutions

The SEBI has issued Notification No. LAD-NRO/GN/2012-13/07/13546 dated 20-06-2012 notifying the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, (SECC) to regulate recognition, ownership and governance in stock exchanges and clearing corporations. The procedural aspects involved in implementing the SECC Regulations including detailed compensation norms for key management personnel of stock exchanges and clearing corporations, statutory committees for clearing corporations etc., will be separately issued by way of a Circular. One may refer to the above citation for further details.

3. SEBI clarification on guidelines for business continuity plan and disaster recovery

The SEBI has issued Circular No. CIR/MRD/DMS/17/2012 dated 22-06-2012 in relation to the broad guidelines it had earlier issued for Business Continuity Plan (BCP) and Disaster Recovery (DR) for Stock Exchanges and Depositories. In view of guidance and clarifications sought by the Stock Exchanges and Depositories, SEBI has clarified and modified the guidelines as under :

- o Apart from DRS, stock exchanges should have a Near Site (NS) to ensure zero data loss whereas, the depositories should also ensure zero data loss by adopting a suitable mechanism.
- o Exchanges/Depositories should have Recovery Time Objective (RTO) and Recovery Point Objective (RPO) not more than 4 hours and 30 minutes, respectively.
- o Stock Exchanges/Depositories/Clearing Houses

or Clearing Corporations of Stock Exchanges should also demonstrate their preparedness to handle any issue which may arise due to trading halts in stock exchanges and/or failure or stoppages at other Stock Exchanges/Depositories/Clearing Corporations.

One may refer to the above citation for further details.

4. Decisions taken at SEBI board meeting held on 25th June 2012

The SEBI has issued Press Release No. PR No. 67/2012 dated 26-06-2012 in relation to the SEBI Board meeting held on 26th June 2012 at which the following decisions were taken :

- a) **E-voting by shareholders:** Electronic voting will be mandatory for all listed companies for businesses transacted through postal ballot. Initially, the mandate would be top 500 listed companies at BSE/NSE based on market capitalisation with an option to choose any one of the agency which is currently providing the e-voting platform. Other companies would be included in phased manner.
- b) **Dealing with audit reports:** To enhance the quality of financial reporting, SEBI has decided to put in place a mechanism by creating Qualified Audit Report Review Committee (QARC). Listed companies will be then required to submit their annual audit report to stock exchanges which will do an initial scrutiny and based on materiality refer these reports to SEBI/QARC. Where the qualifications are significant and explanation given by Company is unsatisfactory would be referred to ICAI-FRRB (Institute of Chartered Accountants of India-Financial Reporting Review Board) and SEBI may mandate restatement of the accounts of the entity and require the entity to inform the shareholders by making an announcement to stock exchanges if ICAI-FRRB opines that the qualification is justified.
- c) **Amendments to SEBI (ICDR) Regulations, 2009 on minimum public shareholding/minimum subscription requirements in infrastructure sector:** Henceforth, minimum subscription requirement for an IPO shall not be less than 90% of the offer, subject to an allotment of minimum 25% or 10%, as the case may be, of the securities offered to the public.

d) **Review of offer for sale (OFS) and institutional placement programme (IPP)**

mechanism: Promoters can sell their shares using OFS or IPP with a gap of two week within the cooling period of ± 12 (earlier 12 weeks). Modification or cancelation of bids not allowable during last 60 minutes from closure of the bid (earlier 30 minutes). Institutional investors will have an option of bidding with ad hoc margin of a lower percentage (earlier 100% upfront cash margin). Indicative price would now have to be given an hour before the bidding close (earlier only once the book was fully subscribed). Compulsory announcement of floor price has been abandoned - if sellers want to disclose the floor price, they can do so a day before the sale of shares starts (earlier two days prior). The minimum size of offer for OFS and IPP shall now be ₹25 crore and issue size may be lower than ₹25 crore to achieve minimum public shareholding in single tranche. (earlier offer size had to be higher of 1% of market capitalisation or ₹25 crore).

One may refer to the above citation for further details.

5. Reduction and prescription of time-line for registration and transfer of equity and debt securities

The SEBI has issued Circular No. CIR/MIRSD/8/2012 dated 05-07-2012 stating that the listing agreement for equity shares prescribed under the Securities Contracts (Regulation) Act, 1956 *inter alia* specifies a period of one month for registering transfer of shares from the date of lodgment. Now, with a view to expedite the transfer process in the interest of the investors, it has been decided, in consultation with Registrars Association of India (RAIN), stock exchanges and market participants to reduce the time-line for registering the transfer of shares/debt securities to 15 days. Consequently, all the recognised stock exchanges are directed to amend clauses 3(c) and 12A(3) of the listing agreement for equity shares, clauses 3(c) and 14(b) of the SME equity listing agreement, incorporate time-line of 15 days for transfer of debt securities and the provision for compensation of the opportunity losses caused during the period of delay in transfer, in the

listing agreement for debt securities, on the lines of the existing provisions in the listing agreement for equity shares and to amend any other clauses as applicable in the listing agreements. One may refer to the above citation for further details.

6. Review of Regulatory Compliance and Periodic Reporting

The SEBI has issued Circular No. CIR/MIRSD/7/2012 dated 05-06-2012 in relation to registrars to an issue and share transfer agents who are required to furnish quarterly report in electronic form in the prescribed format. Now, in order to strengthen the compliance mechanism and the role of the boards of registrars to an issue and share transfer agents, it has been decided to review the norms and format for periodic reporting. The revised format as given in the Annexure to the above circular includes the status of regulatory compliance and investor grievances redressal. The boards of registrars to an issue and share transfer agents shall, henceforth, review the report and record their observations on (i) the deficiencies and non-compliances, and (ii) corrective measures initiated to avoid such instances in future. With effect from half year ending 30th September, 2012, the compliance officer of the registrar to an issue and share transfer agent shall send the report in the revised format to SEBI at rta@sebi.gov.in on half yearly basis within three months of the expiry of the half year. Also, currently, the registrars to an issue and share transfer agents are required to report the changes in their status or constitution. The same information has now been incorporated in the revised format of the report. One may refer to the above citation for further details.

RBI (www.rbi.gov.in)

1. Guidelines on white label ATMs (WLAs) in India by non-bank entities

The RBI has issued Circular No. DPSS.CO.PD. No. 2298/02.10.002/2011-2012 dated 20-06-2012 stating that in terms of existing rules/regulations, only banks are permitted by the RBI to set up Automated Teller Machines (ATMs) as extended delivery channels. Now, with a view to expand the reach of ATMs, it has been decided to permit non-bank entities incorporated in India under the Companies Act, 1956 to set up, own and operate ATMs in India. Non-bank entities that intend setting up, owning and operating ATMs, would be christened "White Label ATM Operators" (WLAO) and such ATMs would be called "White Label ATMs" (WLAs). They will provide the banking services to

the customers of banks in India, based on the cards (debit/credit/prepaid) issued by banks. The WLAO's role would be confined to acquisition of transactions of all banks' customers and hence they would need to establish technical connectivity with the existing authorised shared ATM Network Operators/Card Payment Network Operators.

Non-bank entities would be permitted to set up WLAs in India after obtaining authorisation from RBI under the Payment and Settlement Systems (PSS) Act 2007. The general guidelines for any non-bank entity to seek authorisation under the PSS Act for operating a payment system may be obtained from <http://rbidocs.rbi.org.in/rdocs/Publications/PDFs/86707.pdf>. Non-bank entities intending to set up WLAs under these guidelines may approach RBI for seeking specific authorisation, within four months from the date of issuance of these guidelines, beyond which the authorisation seeking window will be closed. Such non-bank entities should have a minimum net worth of ₹100 crore as per the latest financial year's audited balance sheet, which is to be maintained at all times. One may refer to the above circular for the specific criteria and guidelines subject to which prospective WLA operators will be authorised to operate WLAs (Annex – A), the roles and responsibilities of the stakeholders WLAO, sponsor banks, network operators) and general conditions (Annex – B) and the additional information to be sought from the WLAO while submitting the application for authorisation (Annex –C). One may refer to the above citation for further details.

2. Updated versions of NBFC notifications/circulars/clarifications in latest master circulars

The RBI has issued Circulars dated 02-07-2012 in relation to following directions on NBFCs so as to have all current instructions on the subject at one place:

- Non-Banking Financial (Non - Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007
- Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007
- Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998
- Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1977.

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

Accounting Treatment of Liability for Unbilled Work-in-Progress in the Books of Executing Agency

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 government company (hereinafter referred to as 'the company') was set up as a special purpose vehicle for executing the infrastructure development and related projects in a state with quality and speed. The projects are identified by the Government and these projects are entrusted for execution to the company.
2. For executing the projects, the company engages the services of various contractors who are required to use their own men, materials and machines and the company does not supply any of these. The querist has also clarified that the company has not received the projects from the Government in the capacity of a contractor, rather to the Government has entrusted the work in the capacity of executing agency through Memorandum of Understanding (M o U) (copy of which has been supplied by the querist for the perusal of the Committee). Hence, the projects have not been sub-contracted by the company. Further, as per the querist, the ownership interest relating to contract assets and liabilities vest with the Government. The company is not raising any bill for the work executed by it.
3. The financing for the projects undertaken and executed is through budgetary allocation in the state budget and through borrowings from banks and financial institutions against state government guarantee.
4. The company is charging development fees at certain pre-fixed percentage of the development expenditure incurred, to the Government towards the services rendered.
5. As per agreed terms of contract, the contractor raises running account (R.A.) bills on the company for the work done by him and final bill is raised after completion of the project. The billing period generally falls into two or more financial years, i.e., the bill covers part period of current financial year and part period of following or earlier financial year(s).
6. The querist has stated that the company is providing for the liability towards work executed upto the financial year-end based on bills received till finalisation of accounts. However, on the basis of advice from the Comptroller and Auditor General of India (CAG), the company started providing for work executed till financial year-end towards the works for which bills have not been received on the basis of estimated value worked out by the engineering department of the company. Many times, this resulted in excess booking of work-in-progress and liability and excess deduction and payment of tax at source.
7. This matter was deliberated in a meeting of Audit Committee of the company. The Audit Committee is of the opinion that there is no need to provide for any liability towards unbilled work-in-progress on estimated value basis on the following grounds:
 - (i) As the materials and labour belong to the contractor, the company has no right title, interest or ownership in the said unbilled work-in-progress.
 - (ii) In case of destruction of such work-in-progress, the contractor will claim the compensation towards unbilled portion and the company will claim towards billed and booked portion of work. Insurance company will settle claim proportionately.

- (iii) Under the provisions of the Indian Contract Act, 1872, Transfer of Property Act, 1882 and Sale of Goods Act, 1930, ownership of the unbilled work-in-progress does not get transferred to the company. Only upon its billing, the ownership will get transferred to the company and till that time, the ownership is that of the contractor and not of the company.
- (iv) Since materials belong to the contractor and the company is not raising any sales bills, matching principle has no application and consequently, question of showing the unbilled work-in-progress under 'Current Assets' and liability towards the contractors under 'Current Liabilities' as well as showing corresponding figures in the profit and loss account does not arise.
- (v) Contractor will show the unbilled work-in-progress in his balance sheet as his current asset and if the company also provides for the same on estimate basis as its assets, it will amount to showing the same asset twice under two ownerships.

B. Query

- 8. Based on the above facts, the querist has sought the opinion of the Expert Advisory Committee as to whether or not the company should recognise liability in respect of unbilled work-in-progress.

C. Points considered by the Committee

- 9. The Committee notes that the basic issue raised by the querist is related to accounting for liability in respect of unbilled portion of work-in-progress in the books of the company with respect to a project which has been entrusted to it in the capacity of executing agency. Therefore, the Committee has examined only this issue and has not examined any other issue that may arise from the Facts of the Case, such as, propriety of using estimated value worked out by the engineering department of the company for recognising work-in-progress, accounting for arrangement between the company and the Government including treatment of development fees received by the company, accounting treatment in the books of Government, etc. At the outset,

the Committee notes that in paragraph 2 above, it has been stated by the querist that the ownership interest relating to the contract assets and liabilities vest with the Government. However, in paragraph 7 (iii), it has been mentioned that the ownership of the unbilled work-in-progress of the contract will get transferred to the company. Thus, there is a contradiction in the Facts of the Case. However, on a perusal of the MoU between the company and the Government and other facts of the query, it appears to the Committee that the ownership interest relating to contract assets and liabilities vest with the Government. Further, the Committee wishes to point out that its opinion is expressed purely from the accounting point of view.

- 10. The Committee notes from the Facts of the Case that the company in the extant case is acting merely as an execution agency of the Government, for which it is getting a development fee for rendering its services. The Committee further notes that the terms 'Asset' and 'Liability' are defined in paragraphs 49(a) and 49(b) respectively of the 'Framework for the Preparation and Presentation of Financial Statements', issued by the Institute of Chartered Accountants of India, as follows:

“(a) An *asset* is a resource controlled by the enterprise as a result of past events from which future economic benefits are expected to flow to the enterprise.”

“(b) A *liability* is a present obligation of the enterprise arising from past events, the settlement of which is expected to result in an outflow from the enterprise of resources embodying economic benefits.”

The Committee notes that in the extant case, the future economic benefits from the project assets are not expected to flow to the company. On completion of the project, the assets would be taken over by the Government. Further, the Committee notes from the MoU between the company and the Government that the project assets are not funded by the company. In substance, they are funded by the Government. Accordingly, the liabilities which arise during the transactions are those of the Government and not that of the company. Thus, all the significant risks and rewards relating to the ownership of project assets and liabilities vest with the Government. Insofar as the company is

concerned, the Committee is of the view that the project assets and project liabilities do not meet the definitions of 'Asset' and 'Liability' respectively and as such, the project assets and liabilities of the said business should also not be recorded in the books of account of the company.

11. On the basis of the above, the Committee is of the view that the liability for work-in-progress and the corresponding asset, viz., the work-in-progress (billed or un-billed) in respect of the project, if any, would also not be recognised in the books of account of the company.

D. Opinion

12. On the basis of the above, the Committee is of the opinion that the company should not recognise liability in respect of unbilled work in-progress under construction contract as the company is merely an executing agency of the Government and all the project assets and liabilities are of the Government and not of the company, as discussed in paragraphs 10 and 11 above.

1	The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute.
2	The Opinion is based on the facts supplied and in the specific circumstances of the querist. The Committee finalised the Opinion on 04.04.2012. 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 .

■

Analysis of “Service” and Negative List



In the earlier system, only the services specified in clause (105) of Section 65 of the Finance Act, 1994 were taxed under the charging Section 66. In the new system, all services, other than the services specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another would be taxed under Section 66B. The paradigm shift in the service tax law with the introduction of the definition of “service” and introduction of the negative list would require substantial efforts to understand and advise. Large scale changes are possible as one goes through the education guide issued in this regard as it raises many issues, while solving some doubts. In this article, we have discussed the important aspects as well as few possible issues which could/would arise in regard to the definition of service as well as the negative list.

What is Service?

Earlier there was no definition of service. Now, ‘service’ has been defined in clause (44) of the proposed Section 65B and means –

- any activity
- for consideration
- carried out by a person for another
- and includes a declared service.

The said definition further provides that ‘Service’ does not include –

- any activity that constitutes only a transfer in title of goods or immovable property by way of sale, gift or in any other manner
- a transfer, delivery or supply of goods which is deemed to be a sale of goods within the meaning of clause (29A) of article 366 of the Constitution
- a transaction only in money or actionable claim
- any service provided by an employee to an



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- employer in the course of the employment.
- fees payable to a court or a tribunal set up under a law for the time being in force

On a perusal of the above statutory definition, the service tax would be applicable ON ANY ACTIVITY done for a consideration other than the specific exclusions.

What would be the Taxable Services?

Earlier, the activities which were specified in sub clauses of Section 65(105) were taxable services. If a particular activity was not specified, it was not a taxable service. Now, the taxable services would be the following:

- Services satisfying definition of service
- Specified declared services
- Exclusions from the negative list of services

Negative List

W.e.f. 01.07.2012 there is a sea change in the way services are to be taxed. Taxation would be based on what is popularly known as “Negative List of Services”. This is a comprehensive method of taxation normally adopted by advanced/developed countries. This method does not differentiate between the organised and unorganised sector and covers all the service providers. Developing countries where the economy has not developed/ population not literate, avoid this method of taxation to avoid the disputes due to large scale non compliance on account of ignorance.

We analyse the negative list of services as under:

1. Services Provided by Government or Local Authority:

Most of the services provided by the Central or State Government or Local authorities are in the negative list except the following:

- Services provided by the Department of Posts by way of speed post, express parcel post, life insurance and agency services carried out on payment of commission on non government business;
- Services in relation to a vessel or an aircraft inside or outside the precincts of a port or an airport;
- Transport of goods and/or passengers;
- Support services, other than those covered by clauses (a) to (c) above, to business entities.

What is the meaning of Government?

‘Government’ has not been defined in the Act, the

definition of ‘Government’ as contained in the General Clause Act, 1897 would be applicable as per which ‘Government’ includes both Central and State Governments. Further as per the General Clause Act 1897, State includes Union Territory. ‘Government’ would also include various departments and offices of the Central or State Government or the U.T. Administrations which carry out their functions in the name and by order of the President of India or the Governor of a State.

What is meant by Local Authority?

Local authority is defined in 65B and means the following:-

- A Panchayat as referred to in clause (d) of article 243 of the Constitution
- A Municipality as referred to in clause (e) of article 243P of the Constitution
- A Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund
- A Cantonment Board as defined in Section 3 of the Cantonments Act, 2006
- A regional council or a district council constituted under the Sixth Schedule to the Constitution
- A development board constituted under article 371 of the Constitution, or
- A regional council constituted under article 371A of the Constitution.

What is meant by Support Services?

Support services have been defined in Section 65B of the Act as ‘infrastructural, operational, administrative, logistic marketing or any other support of any kind comprising functions that entities, carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and would include advertisement and promotion, construction or works contract, renting of movable or immovable property, security, testing and analysis’. Thus, services which are provided by Government in terms of their sovereign right to business entities are not support services e.g. grant of mining or licensing rights.

Whether subsidy granted by Government for setting up of business is taxable?

Subsidy granted by business is generally in the nature of open offer to large public. Any person fulfilling the conditions of the subsidy may be granted the subsidy.

There is no counter obligation to the Government by the business receiving the subsidy. Complying with the conditions of the subsidy is merely for the purpose of gaining own business advantage. There are no services rendered to Government which can be made liable to tax.

Whether CFTRI (Central Food technological Research Institute) undertaking testing and analysis services for prelaunch of edible items is covered by support services?

It is the statutory obligation of the CFTRI to carry out the testing of edible items before launch in the market. The activity performed by CFTRI is not outsourced to them by business entity and is not covered by the first limb of the definition of the support services. However, testing and analysis is specifically covered by the inclusive part of the definition and accordingly is in the nature of support service.

2. Services Provided by Reserve Bank of India:

All services provided by the Reserve Bank of India are in the negative list. Services provided to the Reserve Bank of India are not in the negative list and would be taxable unless otherwise covered in any other entry in the negative list.

3. Services by a Foreign Diplomatic Mission Located in India:

Any service that is provided by a diplomatic mission of any country located in India is in the negative list. This entry does not cover services, if any, provided by any office or establishment of an international organisation.

4. Services Relating to Agriculture or Agriculture Produce:

The services relating to agriculture that are specified in the negative list are services relating to

- agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
- supply of farm labor;
- processes carried out at the agricultural farm including tending, pruning, cutting, harvesting, drying cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter essential characteristics of agricultural produce but makes it only marketable for the primary market;

- renting of agro machinery or vacant land with or without a structure incidental to its use;
- loading, unloading, packing, storage and warehousing of agricultural produce;
- agricultural extension services;
- services provided by any Agricultural Produce Marketing Committee or Board or services provided by commission agent for sale or purchase of agricultural produce;

Further, the activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture alongwith forestry also are included in the definition of agriculture. The plantation crops like coffee, tea are also covered in agricultural produce.

What is the meaning of 'agriculture'?

'Agriculture' has been defined in the Act as cultivation of plants and rearing or breeding of animals and other species of life forms for foods, fibre, fuel, raw materials or other similar products but does not include rearing of horses.

What is agricultural produce?

Agricultural produce means any produce of agriculture on which either no processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market. It also includes specified processes in the definition like *tending, pruning, grading, sorting* etc. which may be carried out at the farm or elsewhere as long as they do not alter the essential characteristics.

For example: Potato chips or tomato ketchup are manufactured through processes which alter the essential characteristic of farm produce (potatoes and tomatoes in this case) therefore, it does not qualify as agricultural produce.

Whether letting of shed for storage of agricultural produce is also covered?

Yes. In terms of the specified services relating to agriculture 'leasing' of vacant land with or without structure incidental to its use' is covered in the negative list.

Whether agriculture operations carried out in rural area are only covered under negative list?

No. There is no condition that the agriculture activities should be performed in rural area only.

W.e.f. 01-07-2012 there is a sea change in the way services are to be taxed. Taxation would be based on what is popularly known as “Negative List of Services”. This is a comprehensive method of taxation normally adopted by advanced/developed countries. This method does not differentiate between the organised and unorganised sector and covers all the service providers.

Whether activities of horticulture, animal husbandry or dairying etc are covered by the agriculture operations?

Yes. These activities are also in the nature of agriculture only. Animal husbandry and dairying are specifically used in the definition of agriculture.

Whether activities of fishing are also covered under agriculture as the activities are not carried out on the land?

Yes. There is no requirement that the activities should be performed on land only.

5. Trading of Goods:

Transfer of title of goods is one of the essential conditions for a transaction to come under the ambit of trading of goods. However, the services supporting or ancillary to the trading of goods would not come under the above item of Negative List.

What is covered?

- Futures contracts would be covered as these are contracts which involve transfer of title in goods on a future date at a pre-determined price.
- In commodity futures, actual delivery of goods does not normally take place and the purchaser under a futures contract normally offsets all obligations or closes out by selling an equal quantity of goods of the same description under another contract for delivery on the same date. There are, therefore, two contracts of sale/purchase involved which would fall in the category of trading of goods.

What is not covered?

- Activities of a commission agent or a clearing and forwarding agent who sell goods on behalf of another for a commission would not be included in trading of goods.
- Auxiliary services relating to future contracts or

commodity futures would not be covered in the negative list entry relating to trading of goods.

Whether service tax is applicable when there is a right to use the goods given by X to Y in exchange for a consideration?

No, as it is a transfer of right to use goods. This is specifically liable to VAT. There is no service involved in the same.

Whether the lump sum single contract for sale of goods followed by installation is covered in negative list?

When it is a single contract, a view is possible that the installation charges collected could be treated as a part of the composite contract, the dominant nature of which is to make a sale of goods. However, the entry of “service portion of works contract” in declared services would cover such transactions.

6. Processes Amounting to Manufacture or Production of Goods:

The phrase ‘processes amounting to manufacture or production of goods’ has been defined in Section 65B of the Act as a process on which duties of excise are leviable under Section 3 of the Central Excise Act, 1944 (1 of 1944) or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act.

This entry, therefore, covers manufacturing activity carried out on contract or job work basis provided duties of excise are leviable on such processes under the Central Excise Act, 1944 or any of the State Acts.

Whether processing of goods resulting in manufacture of goods that are exempted or nil duty is covered?

The manufacture of excisable goods is covered in negative list irrespective of whether leviable to a rate of duty or exempted from such duty by exemption notification. It would also cover the excisable goods, which are at “nil” rate of duty.

Whether the process undertaken by a job worker not amounting to manufacture but used by principal in manufacturing of goods subject to ‘Nil’ rate of duty is covered in negative list?

Service tax would be levied on processes, not amounting to manufacture or production of goods carried out by a person for another for consideration. But there is an

exemption under notification no.12/2012-ST dated 17-3-2012 for the intermediate production process as job work, where appropriate duty is paid by manufacturer. Appropriate rate of duty **would not** include 'Nil' rate of duty or duty wholly exempt. It could be liable.

Whether the coverage in negative list is available in case where the manufactured excisable goods resulting from process are returned to another processor and not to the principal manufacturer?

The returning of the goods to the principal manufacturer is constructive when the same are sent to another processor as per the direction of the principal. Therefore, the benefit would be available.

7. Selling of Space or Time Slots for Advertisements Other Than Advertisements Broadcast by Radio or Television:

When is Sale of space and time Taxable?

Taxable	Non-taxable
Sale of space or time for advertisement to be broadcast on radio or television.	Sale of space for advertisement in print media.
Sale of time slot by a broadcasting organisation.	Sale of space for advertisement in bill boards, public places, buildings, conveyances, cell phones, automated teller machines, internet.
	Aerial advertising

Whether sale of space or time sold to advertisement agency on lump sum basis would be covered by the negative list entry?

Any sale of space or time for advertisement purpose is covered under the negative list entry. There is no condition in the definition that the sale of space or time should be directly made to the advertiser. Bulk selling of space or time to advertisement agency for a specified period which in turn sells it to different advertisers on piecemeal basis would also be covered by the negative list entry and exempted from service tax. However, it does not include broadcasting on TV or radio.

An advertiser approaches advertisement agency to undertake advertisement activities for its company for the entire year for a contractual amount. Scope of



work includes advertisement consultancy, choosing of different advertising medium, preparation of advertisement and display on mediums, purchase of space or time for display of advertisement on public places Could this be covered in negative list entry?

Composite contract is given to advertisement agency for handling entire advertisement activity for the year on lump sum basis. This would be a case of bundled services taxability which has to be determined in terms of the principles laid down in Section 66F of the Act. Here the dominant nature of the transaction needs to be determined in order to check if it could be chargeable to service tax. Here the following two services are bundled, namely, taxable service of advertising agency services in relation to design, conceptualisation, preparation of advertisement and non taxable service of display in public spaces. In the opinion of the paper writer, the dominant nature would be the services which are being offered by advertising agency related to creativity including designing, planning, preparation and display of the advertisement would be only the incidental activity.. Therefore the contract would be liable to service tax.

Would services provided by advertisement agencies relating to preparation of advertisements be covered in the negative list entry relating to sale of space for advertisements?

No. Services provided by advertisement agencies relating to making or preparation of advertisements would not be covered in this negative list entry and would thus be taxable. This would also not cover commissions received by advertisement agencies

from the broadcasting or publishing companies for facilitating business, which may also include some portion for the preparation of advertisement.

How would the Service Tax liability be determined when an advertisement agency raises separate bill towards its commission and sale of space charges?

Charges received by advertisement agency towards its commission are not covered by the negative list entry. Consideration received towards sale of space or time slots for advertisements other than advertisements broadcast by radio or television would not be liable to service tax if contracted and amount invoiced separately.

Whether the sale of space in a private circulation magazine is taxable?

Sale of space or time on any medium except broadcasting by TV or radio is covered by the negative list entry. Accordingly, sale of space in private circulation magazine is not liable to service tax.

What would be the taxability of space allowed in buses and public transport system to run display of advertisement?

Comments: Not liable to service tax as per discussion in previous question.

Whether advertisement in a movie is covered under the entry “sale of space or time for advertisement”?

Advertisement in a movie may not be said to be a sale of space or time for advertisement as it is not a sale of space or time for advertisement on radio or television.

Whether purchase of slots from broadcaster and sold to advertising agency is liable to service tax?

Broadcasting is not covered under the negative list entry. Accordingly, it would be liable to service tax.

Whether advertisement service rendered to Government departments is exempted from service tax?

There is no exemption on the advertisement services provided to government department. It is liable to service tax.

Whether canvassing advertisements for publishing on a commission basis is liable to service tax?

Canvassing refers to selling or reselling of space. It

is not covered by the negative list and is liable to service tax.

Whether the agency commission paid by print media to advertising agency is taxable?

Sale of space or time in print media is not liable to service tax. However, commission or discount received by the advertisement agency is not in the nature of sale of space or time. It is liable to service tax.

Whether printing and publishing of yellow pages or business directory is liable to service tax?

Printing and publishing of yellow pages and business directory is not in the nature of sale of space or time for advertisement and hence are liable to service tax.

8. Access to a Road or a Bridge on Payment of Toll Charges:

What are the services which are covered?

The negative list entry covers access to a road or a bridge on payment of toll charges. The access to National highways or state highways, which are also roads, is hence, covered in this entry.

Whether services provided in relation to collecting toll charges are liable to service tax?

Where a toll collecting agency is engaged for collecting the above mentioned toll charges, then the collecting agency would be liable to pay service tax on its charges.

9. Betting, Gambling or Lottery:

“Betting or gambling” has been defined in Section 65B of the Act as ‘putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring’. The State Government levy a betting tax on such activities.

Whether payment for admission to horse race as a spectator is covered under this entry?

This entry seeks to cover the amount which is involved in the betting. Therefore, the amount collected by the Club from the viewer is not covered since it does not pertain to betting. However, the same gets excluded from the levy of service tax net because this transaction is covered under the entry relating to “admission to

entertainment event or access to amusement facility". Since, horse race is a sporting event, it gets excluded.

Suppose 'Mr. X' bets an amount of ₹5000/- on a horse in a race event. The race club has only paid betting tax to the State Government on ₹3000/- and ₹1000/- is charged for the entry into the race and balance transferred to a common pool account from which the prize amount is awarded. Whether entire amount is covered by this entry?

This entry reads as "services by way of betting, gambling or lottery". Mr. X with the consciousness of risk and hope has bet an amount of ₹5000/- and therefore in the opinion of the paper writer, the entire amount is covered by the subject entry irrespective on what amount the betting tax is paid to the state government.

Mr. Y, member of the Horse racing Club has sponsored certain amount for a particular race in the club. Is the amount paid by Mr. Y covered under this entry?

No, the betting or gambling has been defined under

the Finance Act. The amount paid by the member is not with the 'consciousness of risk and hope of gain and the outcome of game' which is primary requisite to be covered under this entry. Since the amount sponsored by Mr. Y does not have this attribute, it falls into the definition of service and hence service tax is applicable.

Whether any support services rendered by the Club and certain amount collected from the members would be covered by this entry?

Any amount received by club for rendering support services does not have the attribute of consciousness of risk and hope of gain on the outcome of game and therefore, is liable to service tax.

Whether auxiliary services used to provide betting/gambling services are liable to service tax?

Auxiliary services that are used for organising or promoting betting or gambling events, which are not betting per se or a part thereof are not covered in the negative list. They could be liable to service tax.

10. Entry to Entertainment Events and Access to Amusement Facilities:

What is 'Entertainment event'?

'Entertainment event' has been defined in Section 65B of the Act 'as an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, such as exhibition of cinematographic films, circus, concerts, sporting events, fairs, pageants, award functions, dance performances, musical performances, theatrical performances including cultural programs, drama, ballets or any such event or program.

What is amusement facility?

'Amusement facility' has been defined in the Act as 'a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other place but does not include a place within such facility where other services are provided'.

X Ltd wishes to display its products in a musical event conducted by Z Ltd. The company has brought the admission rights for the entry to the event and displayed its products. Is the income received by Z Ltd covered under this entry?

No, the entry to the event is covered only when it is for fun, recreation, pastime or enjoyment. If the person



This article is the collation of the provisions with a little analysis. A conservative approach, in the opinion of the author, is the preferred method of going forward as the **onus of classification which hitherto was on the revenue has shifted to the assessee with exemption to be claimed by the person carrying on the activity.** It should be kept in mind that the tax payer claiming an exemption has to prove that he/she is entitled for the exemption.

has any other motive, it would be liable to service tax. Since X Ltd. has taken admission rights for promoting its products, this is in the nature of business and not covered under this entry.

Mr. H goes to an amusement park by paying the entry fee of ₹50/-. The park has various amusement facilities for which separate fee is charged. Whether the amount received by park is chargeable to service tax?

Yes. The amount is not covered by the entry. The fee only gives admission to the park but not the access to the amusement facility. Therefore, the entry fee of ₹50/- is liable to service tax.

Mr. A goes to an amusement park by paying the entry fee of ₹500/-. The park has various amusement facilities for which ₹300/- is collected at the entry itself. Whether the entire amount received by park is chargeable to service tax?

Since ₹300/- is giving an access to amusement facility, it would be covered by this entry. However, the amount of ₹200/- is collected only for admission to the park and not for accessing any amusement facility. Therefore, ₹200/- would not be liable.

Z Ltd owns and manages a resort wherein the property has facilities for convention center, amusement facilities, accommodation services and others. A family books the entire resort for 5 days for conducting marriage. The family has unlimited access to amusement facilities and also uses the convention center and accommodation services. Whether the entire amount received by Z Ltd. is liable?

Yes, it is liable as the amount received by Z Ltd. is not for the access to amusement facilities. Therefore, by applying the principles of classification as provided

under Section 66F, the said amount would not be covered under this entry since the essential character of service is to hire convention centre.

11. Transmission or Distribution of Electricity:

An 'electricity transmission or distribution utility' has also been defined in Section 65B of the act to mean the following:

- the Central Electricity Authority
- a State Electricity Board
- the Central Transmission Utility (CTU)
- a State Transmission Utility (STU) notified under the Electricity Act, 2003 (36 of 2003)
- a distribution or transmission licensee licensed under the said Act
- any other entity entrusted with such function by the Central or State Government

Whether the 'generation' of electricity for a consideration is chargeable to service tax?

Electricity is specified "goods" in the First Schedule of Central Excise Tariff Act, 1985. It has been held in the case of *CMS(I) Operations & Maintenance Co. P. Ltd. v. CCE, Pondicherry - 2007 (7) S.T.R. 369 (Tri.-Chennai)* that generation of electricity amounts to process of manufacture. Therefore, would not be liable to service tax.

Whether the charges collected by a developer for distribution of electricity within a residential complex are covered in this entry?

Charges collected by a developer of a housing society for distribution of electricity within a residential complex are not covered in the Negative List. They would be liable to service tax.

12. Specified Services Relating to Education:

The following services relating to education are specified in the negative list –

- pre-school education and education up to higher secondary school or equivalent
- education as a part of a prescribed curriculum for obtaining a qualification recognised by any law for the time being in force;
- education as a part of an approved vocational education course

What are the courses which would qualify as approved vocational education courses?

Approved vocational education courses have been specified in Section 65B of the Act. These are –



- a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961 (52 of 1961)
- a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Ministry of Labour and Employment, Government of India
- a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India.

Whether services provided by international schools are also covered?

Yes. Services provided by international schools are not liable as they are equivalent to the 12th standard.

Are services provided by way of education as a part of a prescribed curriculum for obtaining a qualification recognised by a foreign law covered in the negative list entry?

No. To be covered in the negative list, a course should be recognised by an Indian law.

Whether services provided by Boarding schools are covered in this entry?

Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled services if the charges for education and lodging and boarding are inseparable. Their taxability would be determined in terms of the principles laid down in Section 66F of the Act. Such services in the case of boarding schools are bundled in the ordinary course of business. Therefore, the bundle of services would be treated as consisting entirely of education service. But the other dominant service of providing residential dwelling is also covered in a separate entry of the negative list. Therefore, the entire bundle is a negative list service.

Are private tuitions covered in the entry relating to education?

There is an ambiguity as the tuition covers parts of the curriculum and is an education. However Education guide issued by CBEC in this regard provides that private tuitions would be covered in the entry and that the private tutors can avail the benefit of threshold exemption. Thus, this could lead to disputes.

If a course in a college leads to dual qualification only one of which is recognised by law, would the service provided by the college by way of such education be covered in this entry?

Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately. Service in respect of each qualification would, therefore, be assessed separately. If an artificial bundle of service is created by clubbing two courses together, only one of which leads to a qualification recognised by law, then by application of the rule of determination of taxability of a service which is not bundled in the ordinary course of business contained in Section 66F of the Act, it is liable to be treated as a course which attracts the highest liability of service tax.

Are services of conducting admission tests for colleges exempt?

Yes, in case the educational institutions are providing qualification recognised by law for the time being in force.

Whether providing vocational training in the field of biotechnology through computer is covered under this entry?

The entry provides exemption for an approved vocational training. The approved vocational education course is defined. If the service is covered under the approved list the same would not be taxable. Otherwise, it is subjected to service tax.

Whether the value pertaining to building fee, capitation fee and others collected at the time of admission into the institution is covered under this entry?

No, the services provided by an educational institution in relation to admission are exempt where the educational services provided by the institution are also exempt. Therefore, all the fees mentioned above would be excluded only if the educational services provided by the institution are also in the negative list.

13. Services by Way of Renting of Residential Dwelling for Use as Residence:

‘Renting’ has been defined in Section 65B as “allowing, permitting or granting access, entry, occupation, usage or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes

letting, leasing, licensing or other similar arrangements in respect of immovable property’.

Snap shot on taxability/non-taxability of Renting Transactions:

If	Then
A residential house taken on rent is used only or predominantly for commercial or non-residential use.	The renting transaction is not covered in this negative list entry.
A house is given on rent and the same is used as a hotel or a lodge.	The renting transaction is not covered in this negative list entry because the person taking it on rent is using it for a commercial purpose.
Rooms in a hotel or a lodge are let out whether or not for temporary stay.	The renting transaction is not covered in this negative list entry because a hotel or a lodge is not a residential dwelling.
Government department allots houses to its employees and charges a license fee.	Such service would be covered in the negative list entry relating to services provided by Government and hence non-taxable.
Furnished flats given on rent for temporary stay.	These are in the nature of lodges or guest houses and hence not treatable as a residential dwelling.

Would renting of a residential dwelling partly used as a residence and partly for non residential purpose like an office be covered under this entry?

Renting of a residential dwelling which is for use partly as a residence and partly for non residential purpose like an Office would be a case of bundled services. Taxability of such bundled services has to be determined in terms of the principles laid down in Section 66F of the Act. The taxability would be based on the predominant service.

14. Financial Sector:

The services of loans, advances or deposits are in the list in so far as the consideration is represented by way of interest or discount. Any charges or amounts collected over and above the interest or discount amounts would represent taxable consideration. Some examples:

- Fixed deposits or saving deposits or any other such deposits in a bank for which return is received by way of interest.
- Providing a loan or over draft facility for a credit limit facility in consideration for payment of interest.
- Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.
- Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.

The Invoice discounting is covered only to the extent of consideration it is represented by way of discount. Any charges or amounts collected over and above the interest or discount amounts would represent taxable consideration. Services provided by banks or authorised dealers of foreign exchange by way of sale of foreign exchange to general public are not covered in Negative List.

15. Service Relating to Transportation of Passengers:

The following services relating to transportation of passengers, with or without accompanied belongings, have been specified in the negative list. Services by:

- a stage carriage;
- railways in a class other than (i) first class; or (ii) an AC coach;
- metro, monorail or tramway;
- inland waterways;
- public transport, other than predominantly for tourism purpose, in a vessel between places located in India ; and
- metered cabs, radio taxis or auto rickshaws.

The various other equivalent modes of transport not specified herein could be cause of dispute as the above list is not complete within each segment.

Are services by way of giving on hire of motor vehicles to state transport undertakings covered in this negative list entry?

Services by way of giving on hire of motor vehicles to state transport undertakings are not covered in the negative list. However such services provided by way of hire of motor vehicle meant to carry more than 12 passengers to a State transport undertaking is exempt.

Would services by contract carriages which get permission or temporary permits to ply as stage carriages be taxable?

Specific exemption is available to services of transport passengers by a contract carriage for transportation of passengers, excluding tourism, conducted tours, charter or hire.

16. Service Relating to Transportation of Goods:

The following services provided in relation to transportation of goods are specified in the negative list:-

- by road except the services of (i) a goods transportation agency; or (ii) a courier agency
- by aircraft or vessel from a place outside India upto the customs station of clearance in India; or
- By inland waterways. (Services provided as agents for inland waterways are not covered in the negative list.)

Are GTA services excluded?

All services provided by goods transport agency are excluded from the negative list. However, there are separate exemptions available to the services provided by the goods transport agency. These are services by way of transportation of –

- fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
- goods where gross amount charged on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or
- Goods where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty.

The provisions relating to reverse charge, i.e. service tax is liable to be paid by the consignor or consignee in specified cases, are applicable even after the introduction of negative list.

Whether all kinds of transportation of goods are covered in negative list?

Nature of service relating to transportation of goods	Covered in the negative list?
By railways	No
By air within the country or abroad	No
By a vessel in the coastal waters	No
By a vessel on a national waterway	Yes
Services provided by a GTA	No

Whether transportation service provided by the truck owner and truck operator to end user directly is liable to service tax?

Service provided by truck owner directly to end user is covered by the negative list entry and is not liable to service tax.

17. Funeral, Burial, Crematorium or Mortuary Services Including Transportation of the Deceased:

This entry exempts services in relation to cremation etc. of dead.

Break of Cenvat Chain

It is important to note that there is no corresponding exclusion from service tax levy to the auxiliary services or to the service providers who are rendering services to such service providers who are rendering services covered in negative list. This leads to a break in tax chain. It adds to cascading effect, which was the very thing that was sought to be avoided.

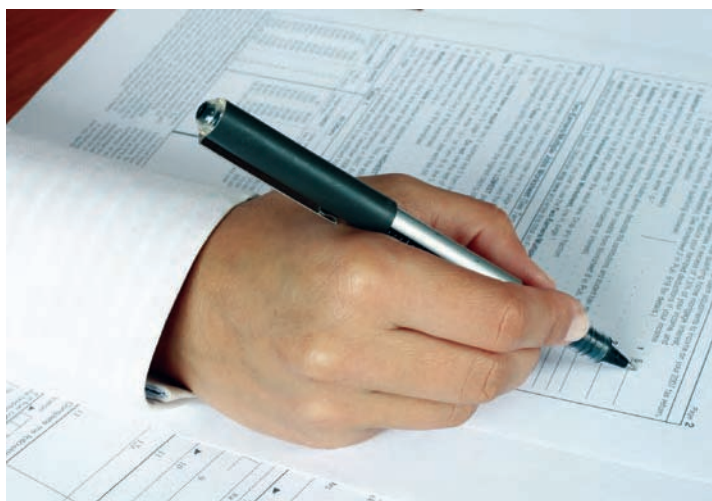
An option could be given to such input service providers who are rendering services to negative list service providers to go for a cenvat credits refund w.r.t. the services provided by them to recipients whose services are covered in negative list.

Conclusion

This article is the collation of the provisions with a little analysis. A conservative approach, in the opinion of the author, is the preferred method of going forward as the *onus of classification which hitherto was on the revenue has shifted* to the assessee with exemption to be claimed by the person carrying on the activity. It should be kept in mind that the tax payer claiming an exemption has to prove that he/she is entitled for the exemption. Further the settled position of law that exemptions are to be read strictly and only procedural condition of the exemption notification could be overlooked would be equally applicable to the negative list. Also being an Indirect tax, the opportunity to collect the service tax not charged [earlier] at a later point of time is normally not possible due to closing of books as well as the possible denial of credit. It maybe remembered that the interest rate is 18% and penalty could be equal to the tax demand.

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Exemptions and Negative List under New Service Tax Regime



The Finance Act, 2012 has completely revamped the service tax regime by replacing the present method of taxing individual services by taxing all services with a Negative List of services not liable to tax. Under the new service tax regime, all services will be liable to tax except those which are specifically mentioned in the exemption notification and the Negative List. Here, the author has attempted to explain the basic concepts and principles of interpretation of exemption provisions and notifications, while discussing some of the specific issues arising out of the Negative List and the mega exemption notification. The author has discussed few items of general importance from the Negative List and the exemption notification in the present article. Read on...

Introduction

The Finance Act, 2012 which received the assent of the President on 28-5-2012 has completely revamped the service tax regime. It has replaced the present method of taxing the individual services by taxing all services with a Negative List of services not liable to tax, and also a mega exemption list. Under the new service tax regime, all services will be liable to tax except those which are specifically mentioned in the exemption notification and the Negative List. Besides the basic concepts and principles of interpretation of exemption provisions and notifications, some of the specific issues arising out of Negative List and the mega exemption notification have also been discussed.

General Principles of Interpreting Exemption Provision

It is now well settled that an exemption provision/notification being an exception to taxation has to be construed strictly. Eligibility criteria mentioned in the notification/provision should be interpreted strictly and an exemption will be



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granted only if an assessee fulfills the eligibility criteria. The Supreme Court of India in *CCE Vs Hari Chand Shri Gopal and others 2010 (260) ELT 3* held: *An exemption notification has to be interpreted in the light of the words employed by it and not on any other basis. A person who claims exemption or concession must establish clearly that he is covered by the provisions concerned, and in case of doubt or ambiguity the benefit of it must go to the State.*

Further, the Supreme Court in *Associated Cement Companies Ltd Vs State of Bihar and others 2004 (7) SCC 642* held that once the exemption became applicable, no rule or principle required that to be construed strictly. It was held that liberal and strict construction of an exemption provision was to be invoked at different stages of interpreting it.

It could be seen that in many cases, the exemption notification stipulates the conditions to be fulfilled by an assessee. The question whether such conditions are mandatory or directory has been the subject matter of litigation. The courts held that the substantive conditions were to be held as mandatory and the procedural conditions should be treated as directory. Though at an abstract level, the above description is easy to understand, the practical application of the principle is fraught with difficulties. What are the tests to be applied to find out whether a condition is substantive or procedural, have not been clearly laid down in the judgments? In most of the cases, it is decided on the perception of the court rather than on application of any well-settled criterion for differentiating substantive and procedural conditions. In practice, this could cause a serious difficulty. Therefore, assessee must endeavor their best to fulfill all conditions so that their exemption claim will not be denied on some hyper technical grounds.

It may so happen that it may be impossible for assessee to fulfill certain conditions mentioned in the notification. In such cases, the principle of interpretation that is adopted is that those conditions are not applicable to those particular assessee. In *Commissioner of Customs Vs Malwa Industries Ltd (235) ELT 214*, the Supreme Court held that the requirement of use in the same factory by the manufacturer would not apply to the claim for exemption of CVD in case of imports. As per the notification no. 4/2006. CE, excise duty was exempt if the item manufactured is used in the same factory in which inputs are used. In the case of an importer, the department denied the exemption on the ground that the imported item was manufactured in a factory abroad which is different from the factory of use in India. The Supreme Court negated this contention and held that such a condition could not be applied to the

importers, and that a notification was to be interpreted in a reasonable manner.

Operation of Exemption (*whether prospective or retrospective*)

Most of the time, the exemption notification itself would specifically state the date from which it becomes effective. But sometimes, a question may arise whether the exemption notification can be said to be clarificatory in nature. It is well settled that if an exemption notification is held to be clarificatory, it operates retrospectively. The Courts have laid down the following tests to find out whether a notification is clarificatory:

- When there was any ambiguity in the earlier notification and the subsequent notification has been issued to remove that ambiguity.
- When one notification is withdrawn and it is replaced by another notification on almost all identical items within a short interval, the notification can be said to be clarificatory [*W.P.I.L. Ltd Vs CCE 2005 (181) ELT 359 (SC)*].

Simultaneous Existence of Two Notifications

Sometimes it might happen that the Government issues two notifications, both of which may be applicable to assessee. The question that would arise for consideration is, which one of the notifications is to be applied. Of course, there is no doubt that assessee cannot claim the benefit of both the notifications. This issue was resolved by the Supreme Court in *Collector of Central Excise Vs Indian Petro Chemicals (92) ELT 13* and *H.C.L Ltd Vs Collector of Customs (130) ELT 405* by holding that assessee have an option to claim the benefit of the notification which is more beneficial to them. The department cannot force the assessee to opt for a notification of department's choice.

Equality

Sometimes, an argument is advanced that another person has been given the exemption and on that ground the assessee

It is a well-settled principle that a notification has to be interpreted on its own wordings. Neither the exemption can be given nor can it be denied on the supposed intention of the Government in issuing the notification. The only relevant criterion is whether the conditions mentioned in the notification are satisfied or not.

also should be given the exemption even though he may not be eligible on a strict interpretation of the notification. The Supreme Court in *Faridabad CT Scan Center v D.G Health services* 95 ELT 161 and *Collector of Customs Vs Maestro Motors Ltd* 174 ELT 289 held that merely because in some other cases exemption has been granted, that itself cannot be a ground for allowing the benefit of notification in a case where exemption is not available. It is important to note that a wrong interpretation of notification cannot create a vested right in favour of third party. It is well settled that two wrongs do not make one right. It is also to be noted that the issue is one of the interpretation of exemption notification where strict rules of interpretation should be applied.

Addition of Conditions

It is a well-settled principle that a notification has to be interpreted on its own wordings. Neither the exemption can be given nor can it be denied on the supposed intention of the Government in issuing the notification. The only relevant criterion is whether the conditions mentioned in the notification are satisfied or not. The exemption is often being denied on the ground that the intention of the Government is not to exempt under particular circumstances even though the notification does not contain any such riders. The Supreme Court in *Gujarat State Fertilizers Company Vs CCE (91) ELT 3* held that the department cannot add a condition to the notification.

Taxes Covered in Notification

Exemption of taxes that are not specifically mentioned in the notification cannot be claimed on the principles of analogy. The Supreme Court in *Modi Industries Ltd Vs Union of India* (25) ELT 849 held that an exemption given to basic custom duty could not be extended to special and auxiliary custom duty. It is also to be noted that the exemption notification covers only present taxes that are levied and not the future taxes. For instance, an exemption notification exempting all taxes levied under a particular sales tax enactment cannot be construed to include turnover tax that was levied later.

Benefit of Doubt

As a natural corollary to the principles of strict construction, the benefit of doubt should go to the revenue and not to the assessee. This principle has been laid down by Supreme Court in *Harichand Shri Gopal's case* (260) ELT 3.

Specific Inclusion and Exclusion

When the notification specifically includes or excludes a particular item, there would not be any difficulty in finding

out whether the exemption is available or not. But when the item is not specifically mentioned either for inclusion or exclusion a doubt always arises. One of the contentions that are normally canvassed before the Court is that if a particular item is not expressly excluded, it is deemed to be included. The question would arise in interpreting the notification which uses certain expression wherein it is not clear from a plain reading whether a particular item is included and, at the same time, notification specifically excludes certain other items. Under such circumstances, a person may contend that since the items are not specifically excluded, it is deemed to be included and, hence, the exemption should be granted. This contention was negated by Supreme Court in *Collector of Customs Vs Perfect Machine Tools Co Ltd* (96) ELT 214.

Summary of Principles of Interpretation of Exemption Notification

- The substantial conditions have to be construed strictly and the procedural conditions have to be construed liberally.
- Assessee has an option to choose a notification which is more beneficial to them when there are two or more notifications applicable to them.
- The department cannot add any condition on presumed legislative intent or intent of the Government.
- Notifications apply only to the taxes specifically mentioned and not to other taxes and future taxes. In case of doubt, it should be resolved in favour of the revenue.
- Notifications removing ambiguity or restoring the exemption within a short interval are generally clarificatory in nature and therefore, retrospective in operation.
- That an item is specifically not covered in exclusion clause does not necessarily mean that it is included.
- The benefit of notification cannot be claimed on the basis of equality and prevention of hostile discrimination.

Negative List

Whether the principles stated above would apply to a Negative List mentioned in Section 66D of the Finance Act, 1994 is a matter of debate. Negative List is a new concept and, therefore, there are no precedents dealing with the interpretation of Negative List. One view would be that there is no essential difference between the exemption and a Negative List. Therefore, the principles of interpretation of exemption notification would apply with equal force even to the Negative List. The other view

would be that the Negative List is an exception to charge itself and it cannot be equated with exemptions. Therefore, the Negative List has to be interpreted keeping the above factor in view. Being an exception to the charge, it has to be interpreted in the same manner as that of the charging section, and one should lean toward an interpretation which is in favour of the assessee. In other words, the Negative List is to be interpreted in such a way that the exclusions provided therein are effectuated and not whittled down by an unduly narrow and strict construction. It is a matter of debate and the Courts have to evolve a new principle of interpretation regarding the Negative List.

Negative List under Finance Act, 1994

Section 66D of the Finance Act, 1994 sets out the various services that are not liable to be taxed in the sense that they do not fall under the charging Section 66B. Section 66B of the Act levies a tax on all services other than those services specified in the Negative List. Therefore, the charge under Section 66D of the Act is not attracted at all to the services specified in the Negative List. Here, we present only those services mentioned in the Negative List that have an impact on business. Readers may go through Section 66D of the Act for the services that are specified therein.

The services rendered by the Government are generally not liable to service tax. But the services of speed post, express parcel post, life insurance and agency services provided to any person other than the Government, services in relation to aircraft or the vessel inside or outside the precincts of a port or an airport, transportation of goods or passengers and support services provided to business entity are liable to service tax. These services are excluded in the Negative List. It may be stated here that, as per notification no. 30/2012 ST dated 20-6-12, which would come into force with effect from 1-7-2012, the service recipient is liable to pay service tax in respect of services provided by way of support services by government or local authority. It has been made clear in the notification that renting of immovable property and services mentioned in Section 66D (i) to (iii) will not be covered by reverse charge mechanism. Hence, this notification does not cover the taxable services rendered by government other than the support services. Therefore, in respect of any other taxable services rendered by the government, the liability would be on the government department itself and not on the service recipient.

One of the services listed in the Negative List is renting or leasing an agro machinery or vacant land with or without a structure incidental to its use, if such services relate to agriculture or agricultural produce. The expressions *Agro Machinery* has not been defined in the Act. Therefore,

one has to apply the commercial parlance test to find out whether the machinery is *agro machinery* or not. It should be noted that the list includes services relating to agricultural or agricultural produce. The expression *relating to* is very wide in its connotation. Therefore, any machinery which would satisfy the test of being *agro machinery* if it is used even indirectly with reference to agriculture or agricultural produce, would not be leviable to service tax. Normally, any machinery which is used for, cultivating, harvesting can be categorised as agricultural machinery.

One of the services listed in the Negative List is trading of goods. Trading normally means buying and selling of goods. In the present electronic age when many goods can be downloaded electronically, whether the down loading of various goods through an intermediary would be trading of goods is an interesting issue. For instance, "A" may be producer of recorded music. He may grant a right to "B" to distribute such recorded music to various customers through internet. In such a case the question is whether "B" is trading in goods or providing services. One way of resolving such issues would be to see whether a person carrying out a particular activity is paying VAT/CST or duties of customs on such activities and if the answer is yes, it can be said that he is a trader in goods. It is very likely that a number of litigations may crop up on the interpretation of expression "trading of goods".

Another service that is listed in the Negative List is service by way of renting of residential dwelling for use of residents. It is to be noted that what is included is renting of residential dwelling. As per the decided case laws, dwelling means a place of living for an indefinite period. It does not include any place of living for a short and limited period. Therefore, the hotels and motels which provide short term residential accommodation cannot claim that their premises are used for dwelling for residence. But in many large cities, the rooms are given on monthly rent. These buildings are popularly known as *lodges*. Persons stay in such lodges for a fairly long time and it is possible to contend that renting of rooms in such lodges would fall under the expressions renting of *residential dwelling for the use as residents*. Anyhow, renting of rooms in lodges is likely to be exempt under serial no. 18 of Notification no. 25/2012.

Another such service from the Negative List is that of extending deposits, loans and advances. As per the Section 66(D)(n) services by way of extending deposits, loans or advances in so far as the consideration is represented by the way of interest or discount are included in the Negative List. Interest or discount is not defined. In today's world of finance, there are many financial products where the interest is not given directly but through other mechanism. For instance, a debenture may be issued at par and redeemed at

a premium. Of course, premium is likely to be calculated on the basis of the current interest rates. In such a case, whether the premium is interest or not is to be decided. In the opinion of the author, the expression *interest* should not be given an unduly restricted meaning. Any compensation for time value of money should be treated as interest for the purpose of Section 66D(n). Section 66D(p) includes services by way of transportation of goods by road except the services of goods transportation agency or courier agency, in the Negative List.

It is interesting to note that Section 65(26) of the Act defines *goods transport agency* and not *goods transportation agency*. This is perhaps an un-intended error. In any case, the difference in phraseology may not have much significance. Section 65B(26) defines a goods transport agency to mean any person providing services in relation to transportation of goods by road and issues consignment note by whatever name called. It may be noted that before 1-7-2012, the services of carrying goods by road by a goods carriage as defined in the Motor Vehicle Act alone are liable to tax. The goods carriage as defined in Section 65(50a) before its amendment stated that goods carriage has the meaning assigned to it in Section 2(14) of Motor Vehicle Act, 1988. Section 2(14) read with Section 2(28) of Motor Vehicle Act, 1988 excluded vehicles having less than four wheel fitted with engine capacity of not exceeding 25cc. Chapter V of Finance Act, 1994 does not define goods carriage. Section 65(50a) which defines goods carriage is not operational from 1-7-2012. Therefore, a doubt arises as to whether the carriage of goods by three wheelers is liable to service tax. One view of the matter could be that in the absence of a definition of a goods carriage, any vehicle carrying goods would be a goods carriage and services rendered by such vehicle owner would be liable and as per notification no. 15/2012, the service recipient is liable to pay service tax. The other view is that the expression “goods carriage” is a legal and technical expression used in Motor Vehicle Act, 1988 and the same meaning should be given for the purpose of service tax also. No doubt Rule 2(c1a) of Service Tax Rules defines a goods carriage and as per that Rule it has

the same meaning assigned to it in Section 2(14) of Motor Vehicle Act. But, it must be noted that the definition given in the Rule is only for the purpose of Rule and not for any other purpose. In my opinion, the definition of goods carriage in Service Tax Rules, 1994 is relevant only for Rule 2(b), Rule 4B and the meaning given in the Rules cannot be imported into Act. Similarly, notification no. 25/2012 defines goods carriage in an identical manner. Here also, it should be noted that the definition in the notification is only for the purpose of notification. Hence, it is very doubtful whether the definitions given in the Rule and notification no. 25/2012 can be extended to the Act. There is no clarity on the issue. Perhaps it can be said that the Government never had the intention to levy service tax on the owners of tempos and other three wheelers carrying goods as such owners are operating in a very highly un-organised manner. But this can be a very weak argument because there is nothing in the Finance Act or any other provision dealing with service tax which brings out the clear intention of the Government not to levy service tax on carrying of goods by tempos and other three wheelers.

Exemption under Notification No. 25/2012 dated 20-6-12

The Central Government has issued a mega exemption notification no. 25/2012. As stated in the Budget 2012, the basis of levying service tax is changed from service-specific *levy* to *levying tax on all services* except services specified in Negative List and the exemption notification. The exemption notification becomes operative with effect from 1-7-2012. Here, a few exemption issues have been discussed out of 39 services that have been exempted.

One of the services that have been exempted is the healthcare services rendered by a clinical establishment or an authorised medical practitioner or a paramedic. The clinical establishment has been defined to include hospitals, nursing homes, clinics or any institution that offers services or facilities regarding diagnosis, treatment, care for illness, etc. Therefore, the entire medical health care services are exempt. The expression “paramedic” has not been defined and it has to be understood in its normal sense. A paramedic is a person who is not qualified as a medical practitioner but has qualification and training to assist the medical practitioners, injured and other persons who are ill. It includes nurses, ambulance attenders, etc.

The services by a charitable institution registered under Section 12AA of Income-tax Act, 1961 are exempt. Similarly, services received by a charitable institution registered under Section 12AA from non-taxable territory will not be taxed under reverse charge mechanism. There is a lacuna in the way the exemption has been drafted.

Another such service from the Negative List is that of extending deposits, loans and advances. As per **the Section 66D(n) services by way of extending deposits, loans or advances in so far as the consideration is represented by the way of interest or discount are included in the Negative List. Interest or discount is not defined.**

Reference to Section 12AA restricts the scope of institutions covered under the exemption notification. It is well known that the charitable institutions are not only registered under Section 12AA but also under Section 12A, 10(23C), etc. Therefore, notification requires to be amended to cover all charitable institutions which are registered under 12A, 12AA, 10(23C).

Notification no. 25/2012 defines a charitable activity which means the following activities:

Public health activities:

- a. Advancement of religion or spirituality
- b. Advancement of educational programmes or skill development relating to certain specified categories like abandoned or orphaned children, physically or mentally abused persons, persons or person over the age of 65 years residing in rural area
- c. Preservation of environment including watershed or wild life
- d. Advancement of any other object of general public utility upto a value of ₹25 lakh in a financial year provided the total value of such activity had not exceeded 25 lakhs in the preceeding financial year (For the FY 2012-13, the limit is ₹18.5 lakh)

It is to be noted that other charitable activities will not be exempt unless they fall under any other specific exemption or services listed in the Negative List. For instance, preschool and high school education and awarding of a degree recognised by the law are not liable to service tax because they are included in the Negative List. A charitable institution rendering such services will be exempt from payment of service tax not under entry no. 4 of notification no. 25/2012, but by virtue of provisions contained in the Negative List. The question that arises for consideration would be whether in computing the value of activity, the following amounts received should be included or not:

- a. Voluntary contribution
- b. Interest income
- c. Other income not related to the carrying on activity.

In other words, the question is whether only the consideration received for rendering the service should be taken into account or the entire receipts of the charitable institutions should be considered. In my view, only the consideration received for an activity falling under the definition of “taxable service” is to be taken into account. It should not be forgotten that the charge is on the taxable services and therefore, only the consideration received for taxable service should be taken into account in determining the aggregate value of ₹25 lakh. It cannot be said that the

The Central Government has issued a mega exemption notification no. 25/2012. As stated in the Budget 2012, the basis of levying service tax is changed from service-specific levy to levying tax on all services except services specified in Negative List and the exemption notification. The exemption notification becomes operative with effect from 1-7-2012.

donations, interest etc are to be treated as consideration for activity. One more issue that could arise is whether the expression “objects of general public utility” would include medical relief, poor relief, etc. In my opinion it should include all such charitable activities also.

The services provided by an individual or a firm of advocates to any person other than a business entity is exempt. Initially, the notification no. 12/2012 granted exemption only to individual advocates. Now, the exemption has been extended to a firm of advocates also. Notification no. 30/2012 which requires the recipient of service to pay service tax under reverse charge mechanism has specifically included in its scope the legal services received either from an individual advocate or a firm of advocates by a business entity. Therefore, an individual advocate or firms of advocates rendering legal services are out of the clutches of service tax. They need not register themselves, collect and remit the tax.

If an individual lawyer can be relieved of facing the procedural hassles, it is not clear as to why other professionals like chartered accountants, cost accountants, company secretaries should also be not exempt.

Services by way of training or coaching in recreational activities relating to art, culture or sports are also exempt. The use of expression “recreational” creates a problem. If any training or coaching is given to a person to enable him to become a professional in arts, culture or sports, it cannot be said that it is recreational in nature. The practical application of tests to decide whether a particular training or coaching is recreational or professional can create serious disputes between the assessee and the department.

Item No. 14(b) of notification no. 25/2012 exempts single residential unit otherwise as a part of residential complex. Prior to 1-7-2012, the residential complex had been defined to mean a building consisting of more than 12 residential units. This definition has been given a go-by. The notification no. 25/2012 itself defines a residential complex to mean any complex comprising of building or buildings having more than one single residential unit. Therefore, it is to be noted that construction of two or more residential units in a building would be a taxable service indeed.

One issue that arises for consideration is whether the construction of individual houses in a colony or in a gated community would fall under entry no. 14(b) of notification no. 25/2012. An analysis of the definition of a residential complex would show that in order to be a residential complex the following must be satisfied:

- a. It must comprise of building or buildings
- b. It should have more than one single residential unit.

A reasonable interpretation of the definition of “residential complex” would be that the residential unit should be situated in the building itself. In other words, if an apartment complex has more than one residential unit, it would become a residential complex. In the opinion of the author, individual houses built in a colony would not fall under the definition of residential complex. In this connection, the following decisions may kindly be taken note of:

- *In re Harekrishna Developers* 10 STR 357 (Authority for Advance Ruling)
- *Macro Marvel Projects v CCE* 12 STR 603 (Tribunal)

In *Harekrishna Developers’* case, it was held that if there were more than 12 individual houses in a residential colony, it would satisfy the definition of a residential complex. In *Macro Marvel’s* case, it was held otherwise. This conflict of judicial opinion may kindly be kept in mind.

Many individuals construct a house consisting of two or more floors. It is possible that each floor may be capable of living independently. The construction of such houses was not liable to service tax till 30-6-2012. With the change in the definition of residential complex with effect from 1-7-2012, construction of such houses would be taxable service and the contractor would be liable to pay service tax.

Entry no. 15 of notification no. 25/2012 exempts temporary transfer or permitting the use or enjoyment of a copyright covered under Section 13(1) (a) or (b) of the Copyright Act. Prior to 1-7-2012, Copyright services

falling under Section 13(1)(a) of the Copyright Act was not liable to service tax whether it was a temporarily transfer or otherwise. Now, the exemption is restricted to the temporary transfers of such right and not to the permanent transfer thereof. Therefore, with effect from 1-7-2012, the permanent transfer of rights specified in Section 13(1)(a) or (b) of Copyright Act would be liable to service tax.

Item no. 17 of the notification exempts the services by way of collecting or providing news by independent journalists or Press Trust of India or United News Services of India. The services rendered by other organisations would be liable to tax.

Item no. 28 of the notification exempts certain services rendered by un-incorporated body or an entity registered as a society. One of the services that are specified in item no. 28 reads:

(c) Upto an amount of ₹5,000/- per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.

The notification no. 8/2007 dated 1-3-2007 which is in force till 30-6-2012 exempts such services if the total consideration received from an individual member by the said association for providing the said services does not exceed ₹3,000/ per month. As per notification no. 8/2007, if the amount collected per month exceeds ₹3,000/- the entire amount collected would be liable to tax. Under notification no. 25/2012, a more liberal approach is adopted. The government has given a basic exemption of ₹5,000/- per month per member and only excess collected over and above the sum of ₹5,000/- would be liable to pay service tax. This should come as a great relief to many housing societies.

Item no. 33 exempts services by way of slaughtering of bovine animals. The meaning of bovine is given in Random House Dictionary as *of the ox family*. Normally, cattle are referred to as bovine. It is not clear as to why the government has not exempted slaughter of other animals and restricted it only to bovine animals.

Conclusion

It is very likely that many issues would crop up in practical application of the Negative List and the exemption notification. But one must welcome the policy of the Government in taxing all services and exempting the services specified in Negative List and notification no. 25/2012. The readers are advised to go through the Negative List in Section 66D of the Act and list of exemptions in notification no. 25/2012. As stated earlier, full Negative List and the exemption list have not been reproduced in this article due to space constraint. ■

A reasonable interpretation of the definition of “residential complex” would be that the residential unit should be situated in the building itself. In other words, if an apartment complex has more than one residential unit, it would become a residential complex. In the opinion of the author, individual houses built in a colony would not fall under the definition of residential complex.

Impact of Negative List on Credit Mechanism



With introduction of tax on services, in 1994, the service tax credit mechanism was introduced in the year 2002. Cenvat Credit Rules, 2004 was introduced vide notification No. 23/2004-C.E. dated 10-09-2004. Now, the scheme of taxation of services has undergone a sea change and a new scheme of taxation of services based on negative list (Negative list scheme) is made effective from 1st July 2012. Under this scheme, any activity for consideration becomes a service unless specified in the negative list. Later, as expected, along with various other Notifications relating to negative list scheme, amendment to Cenvat Credit Rules, 2004 was also brought in. If one sees the recent amendments made in June 2012, one can only say that the credit mechanism has not been brought up to date. Read on...

Background

Cenvat scheme (earlier known as Modvat scheme) was introduced in the year 1986 to provide for instant credit on inputs to the manufacturers thereby avoiding the cascading effect of taxation of inputs used in the manufacture of the final products. Prior to this scheme, a more restrictive proforma credit scheme was in vogue. Subsequently, from the year 1994, the scheme of credit was extended to capital goods also. These Rules were issued with an objective to streamline the process of payment of duty and to prevent the cascading effect, where duty is levied both on the inputs or capital goods and also on the finished goods. The apex court in *Ichalkaranji Machine Centre's case*¹ observed that credit mechanism is basically a duty-collecting procedure, which aims at allowing relief to a manufacturer on the duty element borne by him in respect of the inputs used by him.

With introduction of tax on services, in 1994, the service tax credit mechanism was introduced in the year 2002. Though this scheme was similar to that of



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¹ 2004 (174) E.L.T. 417 (S.C.)

Cenvat scheme, it was limited only to credit on input service used in providing taxable output services.

Cenvat Credit Rules, 2004 was introduced vide notification No. 23/2004-C.E. dated 10-09-2004 by superseding the earlier credit rules and merging the provisions of earlier separate rules for manufacturers and service providers, to allow cross sectoral credit. Manufacturer and service providers were allowed to avail and utilise credit on inputs, inputs services and capital goods.

Concept of Cenvat Credit

Under the present Cenvat scheme (herein after referred to as Credit Rules) credit of duty paid on inputs and capital goods and service tax paid on input services can be availed by a person who is either a manufacturer or a taxable service provider or engaged in both activities. The credit so availed can be utilised towards payment of duty of excise on goods or service tax on taxable services.

Credit Rules define 'Inputs' to include all materials used in or in relation to manufacture of goods or used for generating electricity for use in manufacture or used for provision of services. However, the definition excludes those goods from the ambit of inputs which are used for construction of factory or laying foundation or structural support to machinery and goods used for personal consumption of employees.

Capital Goods is defined to mean as goods which fall under the chapters 82, 84, 85, 90, and headings 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act. Apart from this, pollution control equipments, spares, parts or accessories of the above goods, tubes and fitting, storage tank are also specifically included. Motor vehicle credit is allowed only on a few vehicles and credit on cars, etc. is available for service providers who use such vehicles like GTA, courier, etc.

Inputs service means services which are used in or in relation to manufacture of final goods or used for provision of service. The definition specifically includes certain services like services used in relation to modernisation, renovation or repairs of a factory or office, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, accounting, auditing, financing,

recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal. Further, services such as construction of building or a factory, services relating to insurance, rent a cab services or servicing of motor vehicles and certain services used for personal consumption of employees are kept out of the ambit of input service.

The Rules prescribe guidelines and conditions on the aspects of availment, utilisation and transfer of credit, documentation on the basis of which credit could be availed. Further, rules also provide for a mechanism to avail and utilise the credit where assessee has both taxable and non taxable activities and where the services/goods are received at a place other than factory or registered premises. Apart from this the Rules provide for mechanism to avail refund of credit on goods/services used for export of goods or services and adjustment of credit in the event when goods are manufactured on job work basis.

Disputes on Cenvat Credit

Due to frequent amendments to the provisions of Cenvat rules and also lack of clarity and simplicity in the language employed, these rules have always been a centre of dispute ranging from eligibility of credit on particular type of goods or services to procedural issues relating to documentation on which credit could be availed.

On the aspect of inputs, in numerous cases, the Supreme Court had taken a broader view on the eligibility of credit on the goods as inputs. However, from recent decisions of Supreme Court² it appears that still there is no clarity on the aspect of what constitutes input. Similarly, on the aspect of inputs service, the High Court and Tribunal have interpreted the definition of input service broadly and have

Scheme of taxation of services has undergone a sea change and a new scheme of taxation of services based on negative list (Negative list scheme) is made effective from 1st July, 2012. Under this scheme, any activity for consideration becomes a service unless **specified in the negative list.**

² Maruti Suzuki case- 2009 (240) E.L.T. 641 (S.C.) and Ramala Sahkari Chini Mills Ltd- 2010 (260) E.L.T. 321 (S.C.)

extended the benefit of input credit on services such as ³catering, transportation to employee, health insurance to employees, and certain employee welfare activities. On the capital goods front also, wide play has been allowed.

However, in the year 2011, the Government made amendments to restrict the scope of input services and take away credit relating to employee welfare activities. In the light of the move towards the negative list and broad basing service tax, smooth flow of tax credit is an absolute necessity which should not be curtailed by restrictive definitions. However, the amendments made to Cenvat Credit Rules recently on 20-6-2012 fail to achieve the desired objective of having seamless credit.

Cenvat Credit and Impact on Negative List

The concept of negative list: Scheme of taxation of services has undergone a sea change and a new scheme of taxation of services based on negative list (Negative list scheme) is made effective from 1st July, 2012. Under this scheme, any activity for consideration becomes a service unless specified in the negative list. Also, certain activities which are merely a transfer of title in goods or immovable property and transactions in money

would not be liable to service tax. Therefore, now each and every activity which qualifies to be service would be liable to service tax unlike the erstwhile positive list scheme where only certain specific services were taxed.

It is interesting to note that the introduction of negative list scheme is seen as a step towards implementation of Goods and Services Tax (GST) under which tax is proposed to be levied on the value addition at each stage by way of set off through a tax credit mechanism. The seamless credit system would definitely play a vital role in implementing effective GST system.

With the negative list scheme already in place, it would be interesting to analyse whether the present set of definitions of input services would be sufficient to allow the business to keep the Cenvat chain moving.

Amendments to Cenvat provisions in light of negative list scheme: As expected, along with various other Notifications relating to negative list scheme, ⁴amendment to Cenvat Credit Rules, 2004 was also brought in. Gist of the important amendment is tabled below:

Amendment to	Summary/impact of amendment								
Capital Goods	Motor vehicle/chassis of motor vehicle would qualify as capital goods for following service providers: <table border="1"> <thead> <tr> <th>Goods transport vehicle</th><th>Passenger transport vehicle</th></tr> </thead> <tbody> <tr> <td>a) renting of motor vehicles</td><td>a) renting of motor vehicles</td></tr> <tr> <td>b) transportation of inputs and capital goods for provision of taxable services</td><td>b) Transportation of passengers</td></tr> <tr> <td>c) Courier agency services</td><td>c) services of imparting motor driving skills</td></tr> </tbody> </table> The old scheme of restricting credit on motor vehicles to specified service providers continued. Error in earlier amendment rectified by including dumpers and tippers.	Goods transport vehicle	Passenger transport vehicle	a) renting of motor vehicles	a) renting of motor vehicles	b) transportation of inputs and capital goods for provision of taxable services	b) Transportation of passengers	c) Courier agency services	c) services of imparting motor driving skills
Goods transport vehicle	Passenger transport vehicle								
a) renting of motor vehicles	a) renting of motor vehicles								
b) transportation of inputs and capital goods for provision of taxable services	b) Transportation of passengers								
c) Courier agency services	c) services of imparting motor driving skills								
Inputs	The old scheme of restriction on credit on goods used for construction activity other than by construction/works contract service provider has been continued. The present rule provide as given below: ► Goods used for construction or execution of works contract of a building or a civil structure or a part thereof. ► Goods used for laying of foundation or making of structures for support of capital goods, In other words, goods used for construction of structure other than civil structure which is not used as support structure for capital goods would qualify as inputs.								

³ Stanzen Toyotetsu India (P) Ltd- 2011 (23) S.T.R. 444 (Kar.), Toyota Kirloskar Motor Pvt. Ltd- 2011 (24) S.T.R. 645 (Kar.), Ultratech Cement Ltd. - 2010 (20) S.T.R. 577 (Bom.)z

⁴ Refer Notification No.28/2012 CE NT dt. 20.06.2012

Amendment to	Summary/impact of amendment
Input service	Earlier restriction on restriction relating to credit on construction related activities continued. The amended rules provide that, service portion in the activity of : ► construction services or service portion in execution of works contract of a building or a civil structure or part of such building or civil structure or in laying of foundation or making of structures for support of capital goods, would not qualify to be input service except for the service provider providing such services. Only relief is that services in relation to construction such as (architect, valuator etc.) are not covered under the restriction. Restriction on availment of credit on renting of motor vehicle, insurance/repair/servicing of motor vehicles, other than by manufacturer or specified service provider continued.
Output service	► Any service provided by a provider of service located in the taxable territory but shall not include a service, ■ services specified in negative list (section 66D), ■ where the whole of service tax is liable to be paid by the recipient of service
Exempted service	► Non taxable services. Means services covered under negative list or services on which no tax could be levied. ► taxable services exempted fully or exempted portion of partially exempt services ► but does not include service which qualify to be export in terms of Rule 6A of Service Tax Rules, 1994
Utilisation of credit [Rule 3(4)]	Cenvat credit cannot be utilised for payment of service tax as on reverse charge as a recipient of service.
Refund of credit	New rule 5B introduced to allow refund of credit on inputs and inputs service to provider of service(s) on which the recipient of service would be liable to pay service tax.

If one sees the recent amendments made in June 2012 as set out above, one can only say that it is unfortunate that the credit mechanism has not been brought up to date.

Restrictive definitions in credit mechanism: After its amendment in the year 2011 wherein the phrase ‘activities relating to business such as’ was removed, the present definition of input service, appears to be more restrictive. Apart from the services used for providing output service or in relation to manufacture, certain specific services are covered under inclusive part and a list of services is placed in exclusion part. In the backdrop of introduction of negative list to tax each and every activity which qualifies as service, the cascading effect of taxation would certainly go up, where definition of input service is not broad based.

It must be understood that a dynamic business environment does not wait for credit mechanisms to be put into place post facto, a proactive step is needed from the Government. Similarly, government officials

determining what is an input service or input or capital goods should make way for the businessman to define what his necessities are. Therefore, it is essential that the wordings “activities relating to business” should be brought back.

Take for instance, where the company provides accommodation to their staff in a guest house or undertakes air travel for official purposes, whether such services would be eligible as input services is being hotly contested. Credit on such services is being denied on the ground that the same neither has any

Similar to the erstwhile scheme, under negative list scheme also, exemption and abatements (partial exemption) are provided to certain category of services. Abatements are provided in respect of services such as supply of food by hotel, transport of passenger, renting of hotels or inns, etc.

nexus with manufacturing activity nor is specified in the inclusion list. If such is the case, tax paid on these services would definitely get added to the cost of the final product or services, thereby defeating the very purpose of credit mechanism. The above instance is only a simple example and the assessee is facing numerous instances on a day to day basis.

The discussion paper which was issued prior to introduction of negative list, mentioned with examples about breakage of credit chain resulting in increase in cost of the product under the erstwhile scheme of service tax. However, introduction of negative list, without amending the credit provisions to expand the scope definition of input service/inputs or capital goods, would go against the concept and the basis on which this scheme was issued. The new scheme would only be revenue multiplying tool rather than an economic policy moving towards implementation of GST.

Impact of exemptions, abatement and reverse charge mechanism on credit scheme: Similar to the erstwhile scheme, under negative list scheme also, exemption and abatements (partial exemption) are provided to certain category of services. Abatements are provided in respect of services such as supply of food by hotel, transport of passenger, renting of hotels or inns, etc. Some of the abatements are with conditions of not availing credit on inputs, input services and capital goods. However, in certain cases, the exemption is subject to non availment of credit on inputs and capital goods.

Similar to exemption, under first type of abatement scheme (where no credit is allowed), there is complete breakage of credit chain. Under second set of abatement scheme, where credit is allowed only on input services, the assessee availing credit, cannot avail entire amount of service tax paid on input service but would be allowed to avail credit only to the extent of taxable portion based on the service. This is because, exempt services has been defined to include the exempt portion of the services which are partially exempt and applying Rule 6, credit is restricted on proportionate basis.

Because of the abatements/exemption, there is a breakdown in Cenvat chain resulting in cascading effect on the prices of goods and services used by the ultimate consumers.

Artificial barriers which are created under present set of provisions: The present set of provisions is being

interpreted to create artificial barriers on availment or utilisation of credit. For instance on one hand construction activities get taxed but on the other hand the recipient of such services is not able to avail credit of huge taxes paid on such construction activities.

Similarly, in case of credit availed by branch offices and transfer of such credit in terms of Rule 7, recent amendment restricts the transfer of credit either on the basis of utilisation of service or on turnover basis.

It is time that the executive realised that Cenvat is nothing but excise duty. That is how it has been defined under Section 2A of the Central Excise Act, 1944.

Utilisation of Cenvat is nothing but payment of duty. Till recently there was a specific provision, restricting payment of service tax on GTA services by way of utilisation of credit. Now, provisions of rules are amended not to allow utilisation of credit for payment of service tax as a recipient. Though, this amendment would certainly help to contest the past periods, it again restricts the scope of credit. In the case of *Arvind Fashions Ltd*⁵, the High Court has already held that utilisation of credit for payment of import of service is permissible in a case prior to 19-4-2006 when the import rules came on the statute book. There is no reason why the same argument cannot be used for the period after 19-4-2006 also. Realising this, the government should have allowed credit. Unfortunately, the amendment made on 20-6-2012 effective 1-7-2012, debars credit from being utilised for payment of service tax on imported services and the government announces another refund mechanism. As a whole, it appears that the introduction of negative list scheme sans the amendments in the CENVAT Credit Rules to broaden the scope of the credit may not achieve the desired objective of rationalising the tax system.

Conclusion

These are but a few issues and only when the negative list is operationalised would the trade and industry know how it would work. Frequent tinkering with the rules has already lead the Supreme Court to frown upon this practice (see *Maruti Suzuki Ltd Vs. CCE 2009 (240) ELT 641*). It is hoped that the Government stops making unnecessary amendments and focuses on putting in place a credit mechanism which is transparent, simple and without artificial barriers and which allows smooth flow of credit chain along with smooth transition to GST regime. ■

⁵ 2011 TIOL 748 HC

Reverse Charge under Service Tax (Post Union Budget 2012 Scenario)

Section 66B is the charging section for purpose of levy of service tax. Notification 30/2012-ST dated 20th June, 2012 has been issued which supersedes Notification 36/2004-ST dated 31st December, 2004 for the purpose of determining the service tax payable by recipient of service and in some specific cases by both the provider and recipient of the service. In the case of certain services notified as specified service, including Insurance Agent's services, Goods Transport Agency (Transportation by Road), Sponsorship Service, etc. the service recipient becomes the person liable to pay service tax to the Government. The services including Hiring or renting of motor vehicle designed to carry passengers, Manpower supply, and Works contract, when provided by individual or firm or partnership or Hindu Undivided Family (HUF) or proprietary or partnership firm including (Association of Persons) AOP, both service provider and service recipient are made liable to pay service tax to the extent specified. The reverse charge provisions will come into force w.e.f 1st July, 2012. Read on...



Existing Provisions

“Reverse charge” of service tax as it is called was encapsulated under Rule 2(1)(d) of the Service Tax Rules, 1994 read with Section 68(2) of the Finance Act, 1994.

The following services were notified as specified services, where the service recipient was made the person liable to pay service tax to the Government:

- Telecommunication service
- General insurance business
- Insurance Auxiliary Service
- Service received by a person in India (Section 66A)
- Goods Transport Agency Service (person who pays the freight)
- Distribution of Mutual Funds
- Sponsorship Service

New Provisions

Section 66B is the charging section for purpose of levy of service tax. Notification 30/2012-ST dated 20th June, 2012 has been issued which supersedes Notification 36/2004-ST dated 31st December, 2004 for the purpose of determining the service tax payable by recipient of service and in some specific cases by both the provider and recipient of the service. In the case of the following services notified as specified services, the service recipient becomes the person liable to pay service tax to the Government

- o Insurance Agent's services
- o Goods Transport Agency (Transportation by Road)
- o Sponsorship Service



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- o Services by Arbitral Tribunal to Business Entity
- o Legal services by Individual Advocate or firm of Advocates to Business Entity
- o Support Services(excluding Renting of immovable property ; and services by the department of Posts; in relation to Aircraft or vessel inside or outside the precincts of a port or airport; transport of goods or passengers specified in sub-clauses (i) to (iii) of clause (a) of Section 66D of the Finance Act, 1994), by Government or local authority to Business Entity
- o Service received by person located in taxable territory from person located in a non-taxable territory

The following services when provided by individual or firm or partnership or Hindu Undivided Family (HUF) or proprietary or partnership firm including (Association of Persons) AOP, both service provider and service recipient are made liable to pay service tax to the extent specified:

- o Hiring or renting of motor vehicle designed to carry passengers
- o Manpower supply
- o Works contract

The reverse charge provisions will come into force w.e.f. 1st July, 2012 and the individual detail in respect of each of the aforementioned categories will be as follows:

I. Reverse Charge

A. Insurance Agent

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient
1	Service by an insurance agent to a person carrying on insurance business	Nil	100%

B. Sponsorship Service

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient
1	Sponsorship Services	Nil	100%

C. Services by Arbitral Tribunal or Advocate

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient (Business Entity)
1	Services by Arbitral Tribunal or Individual Advocate or firm of Advocates by way of legal services	Nil	100%

Note: *Services by Arbitral Tribunal or Individual Advocate provided to any person other than business entity or a business entity with a turnover up to ₹10 lakh in the preceding financial year are exempted by way of Notification No. 25/2012-ST dated 20th June, 2012.*

Section 65 B (17) defines "business entity" to mean any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.

D. Goods Transport Agency

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient
1	Services in respect of transportation of goods	Nil	100%

Note 1: Provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (c) any co-operative society established by or under any law;
- (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

- (e) any body corporate established, by or under any law; or
- (f) any partnership firm whether registered or not under any law including association of persons;

Note 2: Person who pays or is liable to pay for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

Note 3: Furthermore, vide Notification No. 25/2012-ST, dated 20th June, 2012, service tax has been exempted, in relation to services provided by a goods transport agency, for the transportation of fruits, vegetables, eggs, milk, food grains or pulses. Besides, goods where the gross amount charged on a consignment in a single goods carriage does not exceed ₹1,500 or goods for a single consignee does not exceed ₹750 are also exempt.

It is clarified as per Notification 26/2012, ST that service tax is payable only on 25 % of freight. Such liability on 25 % of freight amount shall be discharged in full by the service recipient.

E. Support Services provided by Government or Local Authority

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient (Business Entity)
1	Support Services by Government or Local Authority excluding Renting of immovable property and services by department of posts; in relation to Aircraft or vessel, transportation of goods or passengers as specified in clause (a) Section 67D (i) to (iii) of the Finance Act, 1994,	Nil	100%

Local Authority – Section 65(B) (31)

- a Panchayat as referred to in clause (d) of Article 243 of the Constitution;
- a Municipality as referred to in clause (e) of Article 243P of the Constitution;
- a Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund; (41 of 2006.)
- a Cantonment Board as defined in Section 3 of the Cantonments Act, 2006;
- a regional council or a district council constituted under the Sixth Schedule to the Constitution;
- a development board constituted under Article 371 of the Constitution; or
- a regional council constituted under Article 371A of the Constitution;

Support Services – Section 65(B) (49)

(49) "support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis;

Examples of Support Services provided by Local Authority/Government/Development Board — Marketing Support by Silk Board, Coir Board, Coffee Boards

F. Service recipient located in Taxable Territory, service provider located outside Taxable Territory (formerly 66A)

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient
1	Import of Services by service recipient in taxable territory	Nil	100%

Taxable Territory [Section 65(B) (52)]

"Taxable territory" means the territory to which the provisions of this Chapter apply;

India [Section 65(B) (27)]

"India" means,-

- the territory of the Union as referred to in clauses (2) and (3) of article 1 of the Constitution;
- its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976; (80 of 1976.)
- the seabed and the subsoil underlying the territorial waters;
- the air space above its territory and territorial waters; and
- the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

II. Joint Charge of Service Tax (partial reverse charge)

Joint charge is applicable to specified services where the service provider is an individual, HUF or a partnership firm, whether registered or not, including association of persons and the recipient is an entity registered as a body corporate. The three services and the portion of tax payable are as follows:

G. Hiring or Renting of Motor Vehicle

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient
1	Hiring of motor vehicle		
	(i) With Abatement (60% - Notification No. 26/2012-ST dated June 20, 2012)	NIL	100%
	(ii) Without Abatement	60%	40%

Note: In case, the aforesaid services are provided by a Company, to any person, who is not engaged in the similar

line of business, the person responsible to pay tax shall be the service provider.

Illustration

Case – 1 (Abated value): A (an individual) provides services to PQR Private Ltd. , in relation to renting of motor vehicles, designed to carry passengers and charges ₹100 .

Service tax liability on abated value: ₹5* = $(100 \times 40\% \times 12.36\%)$

In this case, PQR Private Ltd would be required to deposit ₹5*, as service recipient.

Case – 2 (Total value): A (an individual) provides services to PQR Private Ltd , in relation to the renting of motor vehicles, designed to carry passengers and charges ₹100 for the same. Further, the service provider also charges ₹7* = $(100 \times 60\% \times 12.36\%)$, as service tax on the face of the invoice**.

In this case, PQR Private Ltd would be required to discharge ₹5* = $(100 \times 40\% \times 12.36\%)$, as service recipient

* (Rounding off as per Section 37D of the Central Excise Act)

** It has been clarified that as per clause (iv) of sub-rule (1) of rule 4A of the Service Tax Rules, 1994 "the service tax payable thereon has to be indicated. The service tax payable would include service tax payable by the service provider".

H. Supply of Manpower in any manner

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient
1	Supply of manpower in any manner	25%	75%

Note: The above concept is not applicable in case, the aforesaid service is provided by a Company i.e., Company would have to pay entire tax of 100% and recipient would not be required to pay...

Illustration

A (an individual) provides services to PQR Private Ltd, in relation to supply of manpower and charges ₹100.

Liability to be discharged by the service provider: ₹3* = (100*25%*12.36%).

Liability to be discharged by the service recipient: ₹9* = (100*75%*12.36%).

(Rounding off as per Section 37D of the Central Excise Act)

I. Works Contract

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient
1	Services in execution of works contract	50%	50%

Note: The above concept is not applicable in case, the aforesaid service is provided by a Company i.e., Company would have to pay entire tax of 100% and recipient would not be required to pay.

Illustration

A (an individual) provides services to PQR Private Ltd, in relation to works contract (original) and charges ₹200.

Service tax liability: ₹10* = (200*40%*12.36%) (Alternate Rule)

Liability to be discharged by the service provider: ₹5* = (50% of 10)

Liability to be discharged by the service recipient: ₹5* = (50% of 10)

* (Rounding off as per Section 37D of the Central Excise Act)

Valuation of Works Contract [Notification 24/2012-ST dated 6th June, 2012]

Alternate Rule

Description of Service	% of service tax payable on total amount charged for contract
Original Works	40%
Maintenance or repair or reconditioning or servicing of any goods	70%
Other works contract – Completion and Finishing Services	60%

III. Some points pertaining to Reverse Charge mechanism:

1. Specifically with respect to Jammu and Kashmir the following may arise with regard to taxability under the Finance Act, 1994:

- Services Provided in J&K?
- Services Provided from J&K?
- Service Provider and Service Recipient in J&K, while movable property or immovable property located in taxable territory.
- Services provider located outside taxable territory and service recipient located in taxable territory

The TRU of the Ministry of Finance, Department of Revenue letter of 16th March, 2012 at para C.2 states that the place of supply rules will determine whether a service is being provided in J&K. Moreover, where the service provider is located in J&K but the service is being provided in taxable territory in terms of the rules, the tax will be collected from the service receiver.

2. Payment of Service Tax

Point of Taxation Rules, 2011 (Rule 7) as amended with effect from 17th March, 2012 states that:

- Point of taxation shall be when payment is made to service provider
- In case of Associated Enterprises as defined in Section 92C of the Income Tax Act, 1961 it shall be the date of debit in the books of account or the date of making the payment whichever is earlier
- If payment is not made within six months, point of taxation to be date of invoice
 - Whether interest is payable for the six months when payment is not made?
 - Whether service tax has to be discharged by cash or can CENVAT Credit be utilised to pay service tax on reverse charge?

It appears that in a case where payment is not made as stipulated interest will have to be paid under Rule 14 of the Cenvat Credit Rules (CCR) read with Section 75 of the Finance Act. As regards use of cenvat credit in respect of reverse charge in terms of Rule 9(1) (e) of the CCR, the Challan evidencing such payment is the appropriate document. Explanation below sub-rule (4) of Rule 3 of CCR specifically bars use of cenvat credit where the person liable



to pay tax is the service recipient. Also Rule 2(p) of the CCR excludes from the definition of output service, the service where the whole of the service tax is liable to be paid by the recipient of service. Hence, it is not possible to utilise the CENVAT credit for reverse charge payments and the same has to be made by way of cash payment if input credit has to be taken in respect of the same for use in payment of tax or duty on output services or excise duty for clearance of excisable goods.

3. Is there a requirement to have in place a provision similar to erstwhile Section 66A of the Finance Act in relation to taxable service provided by a person in a non-taxable territory and received by a person located in taxable territory?

Under the new scheme of taxation of services, service tax has to be paid by the person so charged but the levy is with respect to the place where the service is performed. In this connection, the expression “taxable territory” has been introduced and services are taxable only if the same are provided in the taxable territory. At the same time place of service is with reference to the location of the service receiver. If the location of the receiver is in the taxable territory then the same is taxable. While the consideration for the service could flow from a third party as well, what has to be established is as to who is liable to pay the consideration. Therefore, the services performed outside India for a client or customer in India including an establishment etc. as defined under Section 65B(44) will be taxable and the tax will have to be paid by the recipient.

4. ST Notification No. 33/2012- dated 20th June, 2012 exempts taxable services of aggregate value not exceeding ₹10 lakh in any financial year from the whole of the service

tax leviable thereon under Section 66B of the said Finance Act. The question arises whether the small service provider could avail the benefit of the exemption in relation to payment of tax on joint charge basis.

The above notification incorporates a non obstante clause as follows:-

Noting contained in this notification shall apply to:

- (i)
- (ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of Section 68 of the said Finance Act read with Service Tax Rules, 1994

Section 68(2) has a Proviso which states as under: Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider

It has been clarified that the liability of the service provider and the service recipient are different and independent of each other. In the case of small service provider claiming exemption he shall not be obliged to pay tax. However, the service recipient shall have to pay service tax which he is required to pay under the partial reverse charge mechanism.

5. When should the payment of tax under partial reverse charge be made?

This will be governed by the Point of taxation Rules, 2011. For the service provider it shall be the invoice or date of receipt of payment. For the service recipient in terms of the said rules, it shall be the date when payment is made for the service.

6. Refund of cenvat credit to service providers taxed on reverse charge basis

Rule 5B has been introduced in the Cenvat Credit Rules to provide for refund upon the service provider being unable to utilise the cenvat credit availed on inputs and input services for payment of service tax on such output services subject to certain safeguards that are to be prescribed. ■

Service Tax Rate

When we talk about any 'rate', we expect a one word answer, and immediate visualisation in our mind is a number – either absolute number say ₹20,000/- per unit or a percentage, say 10% of the total value of a given parameter or some combination thereof. Thus, when I was asked to write an article on service tax rate, in the first flash of thought all I could think was that the present rate of service tax is 12.36% and it has been changed over the period of time in the past 18 years from 5% to 8% to 10.2% to 12.24% to 12.36% to 10.3% to again 12.36%. And yes, alternate rates of service tax are also there for services of air travel agents, life insurance, sale or purchase of foreign currency, and promotion of games of chance. Apart from this, composition rate or abated values of services have been provided for Works Contract and some other services. Though there could be a little discussion on the percentages of abated values, but an article cannot be this small and in fact, this cannot be the subject matter of an article. Then I started expanding my thought process and realised that actually I would want to say a lot on the tax rate. The key of discussion is not the rate itself, the discussion is that in case of change in the service tax rate from a given cut-off period, what should be the rate of service tax for the transactions which are in the process of execution before and after that cut-off date. As in the past 17 years, this point has not been dealt very clearly in the law, different views and interpretations were used to take a view. I have mentioned 17 years here, because from the last year, i.e., from 01-04-2011, Point of Taxation Rules, 2011 have taken care of this aspect and have defined the parameters to determine as to which rate would apply for a transaction across the cut-off date of change in the rate.



Let us start from the beginning. It was in the year 2003 that the rate of service tax changed for the first time from 5% to 8%. In this regard, the CBEC Circular 56/5/2003-ST, dated 25-04-2003 said that, "if payments are received after the Finance Bill 2003 was passed, the rate of tax applicable would be 5% so long as the billing has been made prior to the date of passing of the Finance Bill. If the billing is made subsequent to the date of passing of the Finance Bill, the service tax would be applicable at the enhanced rate of 8%." Thus, the tax rate position was simple and clear but it was not annexed with the 'time of provision of service', the two parameters used were the date of billing and the date of payment.

Though the above position was followed by the assesseees and accepted by the Department in most of the cases, the South Zonal Bench of the Bangalore Tribunal, in case of *Art Leasing Ltd. Vs. CCE*, took a view, that the relevant date for determining service tax liability was taxable event which was 'rendition of service' and thus held that in case of hire purchase agreement, it was the date of agreement, with reference to which taxability (with an extended interpretation, it may be construed as the rate of tax also) needs to be determined, and that the date of receipt of consideration,



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i.e., 'installment' was not relevant therefore. It was thus held that for all Hire Purchase Contracts entered prior to 14-05-2003, the appellant rightly remitted Service tax at the rate of 5%, where the contention of revenue was that the appellant was required to remit Service tax @ 8% as the hire purchase instalments were received after 14-05-2003. The difference in the view of the Department and the view taken by the Tribunal reflects that the legal position with respect to applicable rate of tax across the change date was not settled and was susceptible to dispute.

Next time, when the service tax rate(s) were changed in the years 2004, 2006, 2007 and 2009, there was no communication from the Department on how the rate should be applied for a transaction across the cut-off date. The confusion prevailed on this account and different assesseees took different views – some opted for the rate applicable on the date of invoice; some opted for the rate applicable on the date of receipt of payment and some opted for the rate applicable on the date of rendition of service.

Also, there was another aspect of this position, which was not exactly related to the rate but the fundamental issue involved therein was similar – that the service which was not taxable prior to a given cut-off date and partially performed before the said date, where the billing and the payment for that service happens after the date that service became taxable – should the tax be applicable on the value of service pertaining to the period before the change date? This was taken care of vide proviso to Rule 6(1) of the Service Tax Rules, 1994, which stated that, "notwithstanding the time of receipt of payment towards the value of services, no service tax shall be payable for the part or whole of the value of services, which is attributable to services provided during the period when such services were not taxable." This proviso recognised that for the purpose of taxation, the 'time of rendition of service' is relevant. In other words, from this proviso, it may be inferred that the taxable event was recognised as 'the rendition of service', and the service tax was to be applied accordingly. However, this philosophy was not reflected or conveyed by the Government with reference to the application of service tax rate in case of change in the rate across a given date.

Finally, the above confusion was taken care of in the year 2011, vide the Point of Taxation (POT) Rules, 2011, which in the rule 4 thereof, specifically provided parameters to determine the applicable rate of service

With the rule 4 of the POT Rules, effective from 1st April, 2011, the law relating to the tax rate seems to be perfectly in place, and a not so good part is that with the rule 5 of the POT Rules, the law relating to **taxation of newly taxable services has been modified to change a well defined tax position into a loosely defined one.**

tax across the change date and also took care of the change date of the abated value of a given service. The rule provides a combination of three parameters to determine the applicable rate of service tax with reference to the time period before or after the change date, that is – (i) the date of provision (or rendition) of service; (ii) the date of billing; and (iii) the date of payment. In simple terms, it may be said that if any two of the three incidents happen in a given period, the tax rate in that period would be applicable. The notable part is that the parameters are so selected as to consider the overall scheme of service taxation and are not limited to the date of 'rendition of service' only, and sounds scientifically thought over.

But an interesting turn has taken place in case of taxation of services which are made newly taxable across a change date. The taxation of such services which was earlier to be done with reference to the proviso to Rule 6(1) of the Service Tax Rules discussed above is to be done with reference to rule 5 of the POT Rules effective from 01-04-2011. The rules say that in case payment is received and the invoice is issued before the change date or within the stipulated time, tax is not payable to the extent of such payment. Accordingly, the taxability which was earlier annexed to the 'time of provision or rendition of service' has now been annexed to the date of billing and the receipt of charges for the service, without any reference to the date of rendition of service. The criteria sounds simple to apply, however, it does not gel with the overall scheme of service taxation.

The good part is that with the rule 4 of the POT Rules, effective from 1st April, 2011, the law relating to the tax rate seems to be perfectly in place, and a not so good part is that with the rule 5 of the POT Rules, the law relating to taxation of newly taxable services has been modified to change a well defined tax position into a loosely defined one. ■

Place of Provision of Service Rules, 2012 – An Overview



The new law of service tax which, for the first time, defined ‘service’, including the ‘declared service’, as any activity carried out by a person for another for consideration, has brought in several new legal concepts for the purpose of the taxing statute. One such concept is the dissemination of the concept of the ‘Place of Provision of Service’. In terms of Section 66C of the Act, the ‘Place of Provision of Service Rules, 2012’ (the PoPSR) have been issued vide Notification No. 28/2012-ST dated 20-06-2012 and with this the earlier Export of Service Rules, 2005 and the Taxation of Services (Provided From Outside India and Received in India) Rules, 2006 have been repealed. The PoPSR specifies the manner of determination of the place where a service shall be deemed to be provided in terms of Section 66C of the Finance Act, 2012 read with Section 94 (hhh) of the Act. Read on to get an insight into the concept...

Introduction

The law of service tax has undergone a paradigm shift from the system of taxing specified services to the system based on the concept of ‘Negative List’. Under the new system effective from 01-07-2012, all services except those specified in the ‘Negative List’ and services exempted under the Mega Notification No. 25/2012-ST, dated 20-06-2012 are liable to service tax in addition to the ‘Declared Services’ as specified under Section 66E read with 65B(44) of the Finance Act, 1994 (the Act).

The new law of service tax which, for the first time, defined ‘service’, including the ‘declared service’, as any activity carried out by a person for another for consideration, has brought in several new legal concepts for the purpose of the taxing statute. One such concept is the dissemination of the concept of the ‘Place of Provision of Service’. In terms of Section 66C of the Act, the ‘Place of Provision of Service Rules, 2012’ (the PoPSR) have been issued



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vide Notification No. 28/2012-ST dated 20-06-2012 and with this the earlier Export of Service Rules, 2005 and the Taxation of Services (Provided From Outside India and Received in India) Rules, 2006 have been repealed. The PoPSR specifies the manner of determination of the place where a service shall be deemed to be provided in terms of Section 66C of the Finance Act, 2012 read with Section 94 (hhh) of the Act. Section 66B of the Act provides *inter alia* that a service is taxable only when it is provided or agreed to be provided in the taxable territory and thereby brings into play the place of provision of service. The PoPSR is based on the fundamental concept that as indirect tax, service tax is a consumption based tax which is taxable in the jurisdiction of its place of consumption. Taxable territory is defined to include India excluding J&K; whereas non-taxable territory is defined as the territory other than taxable territory.

Analysis of the Rules

Under the new enactment, the incidence of taxation is very much dependent on the determination of the location of the service provider and service receiver. In that, one has to enquire sequentially:

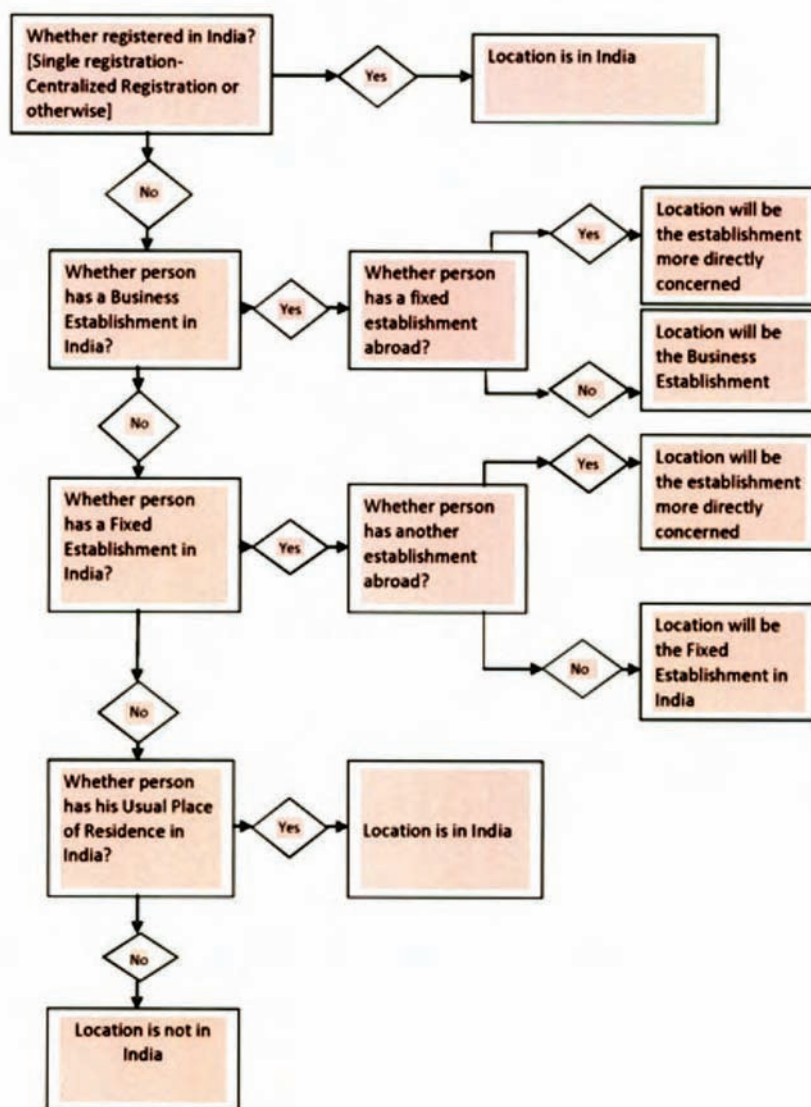
- A. the premises for which registration, whether centralised or otherwise, has been obtained by the service provider and receiver;
- B. where the service provider or receiver is not covered by 'A' above:
 - (i) the location of his business establishment; or
 - (ii) where services are provided or received at a place other than the business establishment i.e., a fixed establishment elsewhere, the location of such establishment;
 - (iii) where services are provided or received at more than one establishment, whether business or fixed, the establishment most

directly concerned with the provision or use of the service; and

- (iv) in absence of such places, the usual place of residence of the service provider or receiver.

It is important to note that in the case of a service receiver, the place relevant for determining the location is the place where the service is 'used' or 'consumed'. For proper understanding of the terms 'business establishment', 'fixed establishment', 'establishment most directly concerned with the supply' one has to refer to the departmental 'guidance note' where such terms have been explained at length.

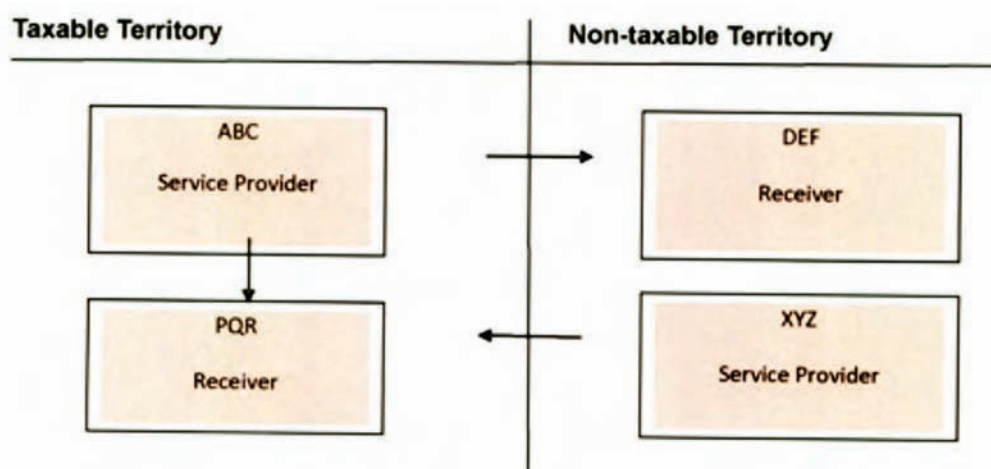
Determination of location can be illustrated by way of the following flow chart:



For the purpose of the PoPSR, Rule 2 thereof defines some important terms like 'continuous journey', 'intermediary', 'leg of journey', 'location of the service provider', 'location of the service receiver', 'means of transport', 'banking company', 'non-banking financial company', 'online information and database access or retrieval services', 'telecommunication service' etc. Of all the definitions, the definitions of 'location of the service provider' and 'location of the service receiver' are most important and bring in the concept of 'usual place of residence in case of a body corporate', 'business establishment', 'fixed establishment' and 'establishment most directly concerned with the provision of service'.

According to Rule 3 of the PoPSR, the general rule is that the place of provision of a service shall be the location of the recipient of service; in absence of which and subject to rules 4 to 12 of the PoPSR, the place of provision of service shall be the location of the service provider.

Summing up, it is the provider of service who is normally liable to pay the tax except where he is stationed outside the taxable territory and the place of provision is in the taxable territory. However, if the provider of service is stationed outside the taxable territory, it is the receiver of service in the taxable territory who will be liable. This is illustrated below:



Applicability of the PoPSR Rules is tabulated below:

Rule of the PoPSR	Applicable to	Summary of the Rule
Rule 4	specified performance based services	Covers services provided in respect of goods that are required to be made physically available to the provider of service or his agent by the recipient of service, services requiring physical presence of the receiver of service, being an individual or his agent, services provided electronically from a remote location. But does not cover services in respect of goods that are temporarily imported in India for repairs, reconditioning or reengineering for re-export subject to conditions to be specified. Place of provision is the place where the services are actually performed.
Rule 5	services relating to immovable property	Covers services provided directly in relation to immovable property including services provided by experts and estate agents, provision of hotel accommodation by a hotel, inn guest house, club by whatever name called and includes grant of right to use immovable property, service for carrying out or co-ordination of construction work, including services by architects or interior decorators. Place of provision is the place where the immovable property is situated or intended to be located.

Rule of the PoPSR	Applicable to	Summary of the Rule
Rule 6	services relating to events	Covers services relating to events by way of admission to or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event or a celebration, conference, fair, exhibition or similar events and of services ancillary to such admission. Place of provision is the place where the event is actually held.
Rule 7	Services covered by Rules 4, 5 or 6 of the PoPSR provided at more than one location	Where any service referred to in Rules 4, 5 or 6 of the PoPSR is provided at more than one location, including a location in the taxable territory, the place of provision shall be the taxable territory where the greatest proportion of the service is provided.
Rule 8	where the provider and recipient of service are located in taxable territory	Place of provision of service shall be the location of the recipient of service.
Rule 9	certain specified services	The rule covers services by a banking company or a financial institution or a NBFC to account holders; online information and database access or retrieval services, intermediary services and service consisting of hiring of means of transport up to one month. Place of provision of service shall be the location of the service provider.
Rule 10	goods transportation services other than service by mail or courier.	Place of provision of service shall be the destination of the goods except in case of a goods transportation agency service where the place of provision shall be the location of the person liable to pay tax.
Rule 11	passenger transportation service	Place of provision of service shall be the place where the passenger embarks on the conveyance for a continuous journey.
Rule 12	service provided on board a conveyance	Covers all services on board a passenger transport conveyance. Place of provision of service shall be the first scheduled point of departure of that conveyance for the journey.

As a protective measure, Rule 14 of the PoPSR provides that where the provision of a service is prima facie determinable in terms of more than one of the above rules deserving equal consideration, the place of provision of service shall be determined in accordance with the rule that occurs later among the applicable rules.

Conclusion

The PoPSR, apart from its general applicability in the determination of the jurisdiction of the taxability of a service may be found to be useful for service provider operating from multiple locations within India and also for those engaged in cross border services and services in relation to SEZ. The PoPSR are not

stand alone rules and have to be read in harmony with relevant statutory provisions; for example Rule 6 covers services relating to events by way of admission to entertainment event whereas the Negative List of services under Section 66D includes under clause (j) admission to entertainment events or access to amusement facilities. Therefore, application of this rule would demand very careful analysis of the facts and legal provisions by the tax payer. On the other hand, its undesirable use by the revenue cannot be ruled out also.

Note: The assessee wishing to claim any benefit under the new rules whether, or not, available earlier may be advised to seek written confirmation from the revenue. ■

Service Tax on Hotel Industry



Taxes in relation to the supply/services of food in hotel industry has always been a contentious issue whether under VAT or under Service tax. Further, even accommodation services provided have been a contentious issue under Luxury tax and now we have an overlapping tax in the nature of service tax. As far as service tax is concerned the same has been applicable to the hotel industry since very long in relation to the banqueting service and related catering services. Slowly and steadily the services of air conditioned restaurants serving liquor were brought to tax and so were accommodation services in a hotel where declared room tariff exceeds ₹1,000/- per day. After 1-7-2012, we would practically have all services provided by a hotel under the ambit of the extended definition of services and would perhaps have very less services as excluded or exempt. Further, the valuation in respect of services provided by a hotel and the Cenvat Credit Rules relating thereto have also undergone a sea change as made effective from 1-7-2012. This article is an attempt to touch upon the history and understand the provisions as applicable from 1-7-2012.



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1. **Whether a contract for supply of food in a hotel is a contract for sale of food or is a composite contract for sale and services? Whether the same can be taxed under the Sales Tax laws in the country and if yes on what value?**

Before we try and analyse the taxation of services in a hotel, it is pertinent to try and understand the history of contract for supply of food in a hotel from the perspective of the Sales tax (VAT) laws in India.

It may be noted that the levy on the composite charges of food and services has been a matter

of litigation under the Sales Tax regime for years. The Supreme Court case in *Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi*¹ is a landmark on this subject. States have been proceeding on the basis that Associated Hotels of India² case was applicable only to supply of food or drink by an hotelier to a person lodged in the hotel and that tax was leviable on the sale of foodstuffs by a restaurant. But over-ruling the decision of the Delhi High Court, the Supreme Court has held in the above case that service of meals whether in a hotel or restaurant does not constitute a sale of food for the purpose of levy of sales tax but must be regarded as the rendering of a service in the satisfaction of a human need or ministering to the bodily want of human beings. It would not make any difference whether the visitor to the restaurant is charged for the meal as a whole or according to each dish separately. This led to the amendment in article 366(29A) of the Constitution, whereby the 46th amendment included within its scope "the supply, by way of or as part of any service, of food or any drink for cash, deferred payment or other valuable consideration" as a deemed sale. Post this amendment VAT is being paid on the sale of food in hotel.

The question that now arose was on what value of the consideration should VAT be paid. The 5 member bench of the Supreme Court in the case of *K. Damodarasamy Naidu & Sons Ltd. Vs. State of TN*³ interestingly held that the entire value should be deemed to be the consideration towards the sale. While delivering its judgement, the Hon. Supreme Court observed as under:

"In our view, therefore the price that the customer pays for the supply of goods in a restaurant cannot be split up as suggested by learned counsel. The supply of food by the restaurant owner to the customer though it may be a part of service that he renders by providing good furniture, furnishing and fixtures, linen, crockery and cutlery, music, a dance floor, and a floor show, is what is the subject of levy. The patron of fancy restaurant who orders a plate of cheese sandwiches whose price is shown to be ₹50/- on the bill of fare knows very well that the innate cost of the bread, butter, mustard and cheese in the plate is very much less, but he orders it all the same. He pays ₹50/- for its supply and

it is on ₹50/- that the restaurant owner must be taxed."

2. If the contract for supply of food in a restaurant is a sale contract; can it also be deemed to be a "service" and accordingly service tax can be levied on it?

Taxation of services in relation to sale of food provided by a restaurant which are air conditioned and also serve liquor has been introduced from 1-5-2011. Even prior to that the services of a hotel in relation to letting of any mandap (defined to mean any immovable property) for any "official, social or business function" with or without catering was covered under service tax. The clarification by the TRU in its letter dated 28-2-2011 while trying to impose tax on restaurants, interestingly tries to clarify that the tax is supposed to be on the services element and should not be confused with the sale of food. The levy is intended to be confined to the value of services contained in the composite contract and shall not cover either the meal portion in the composite contract or mere sale of food by way of pick-up or home delivery, as also goods sold at MRP. A 70% abatement on this service, which is, inter-alia, meant to separate such portion of the bill as relates to the deemed sale of meals and beverages was provided for from 1-5-2011.

The view of the TRU as above, can be supported from the Supreme Court judgement in the case of *BSNL vs. UOI*⁴ wherein the Hon. Supreme Court has held that "Of the three types of composite contracts i.e. a works contract, hire purchase contract and catering contract, splitting of the service and supply has been constitutionally permitted in case of works contract and catering contract and no other composite contract has been permitted to split." Even the educational guide issued by the CBEC recently, which elucidates the provisions effective from 1-7-2012, tries to elaborate on this aspect considering the fact that the service portion in food has been deemed to be a service and has been a "declared service" by deeming fiction.

However it may be noted that all the issues that have arisen till date are with respect to the composite services of "catering" and not in relation to supply of goods in a hotel. In fact the Supreme

¹ A.I.R. 1978 S.C. 1591

² 1966 17 STC 555 P H

³ 2000 (117) STC 001 SC

⁴ 2006 (3) STR 260 (SC)

Court in the landmark judgement of *Tamil Nadu Kalyan Mandapam Assn. Vs. UOI*⁴ has observed that “In case of Catering contracts service element is more weighty, visible and predominant and it cannot be considered as a case of sale of food and drink as in restaurant”. Although this judgement didn’t comment on whether sale of food in a restaurant is a service or otherwise since this was not the matter before the Hon. Supreme court; the view that no service tax can be levied on sale of food in a restaurant carries good weightage in terms of the fact that when the entire consideration is towards “sale of food”, there is no scope to vivisect and make part of it taxable under service tax.

3. Presuming, that Service Tax is leviable on the element of service component in food, is it possible to take deduction of the food component separately and tax the element of service under Service Tax?

While various cases under the category of “Outdoor catering” have laid down that it is possible to take deduction of material component as per notification 12/2003, the Delhi CESTAT in the case of *Sayaji Hotels*⁵ has held that in case of a composite contract of a “Mandap keeper” the hotel cannot artificially divide the contract and levy service tax merely on the value of services so identified. In essence, the Delhi CESTAT rejected the theory of splitting between the value of services and goods and held that the only option the appellant had was to pay tax on the abated value as provided for in notification 1/2006 dated 1-3-2006. Whether this position would be open to challenge or not before 1-7-2012 is a different question, but surely after the rescinding of notification 12/2003; post 1-7-2012, the service tax in relation to food contracts would have to be paid on the abated value as provided

for or on the entire value of the contract. It may be noted that the new scheme of law doesn’t provide for an option for claiming deduction of goods as it provides for “Works Contract” under Rule 2A of the Valuation Rules.

4. Can service tax be levied in case of “Accommodation Services provided by a Hotel” and is it not an overlapping with another State subject, viz.”Luxury Tax”?

Short term accommodation provided for less than three continuous months (this condition has been removed from 1-7-2012) had been made taxable from 1-5-2011 if declared tariff is more than ₹1,000/- per day. An abatement of 50% has been provided under this category.

Here again, it may be noted that there is a levy of “Luxury Tax” on hotel accommodation in most of the states. The issue of double taxation would arise here as well albeit the case would be a little different than that above. The luxury tax is being levied by the states under the taxation entry 62 of List II of Constitution providing for taxes on ‘luxuries’ which contemplates, and takes within its sweep, a tax on goods and articles in their aspect and character as luxuries and does not include ‘services’ or ‘activities’. The luxury tax for accommodation hence has been held as constitutional in *Express Hotels’ case*⁶. Hence what is contemplated under service tax is the aspect of the services in providing hotel accommodation and hence is on a different footing as compared to Luxury tax.

5. What would be the major impact on service tax in relation to the Hotel Industry especially after 1-7-2012?

The major impact and changes in the provisions relating to the Hotel industry can be tabulated as under:

	Provision	Prior to 1-7-2012	Post 1-7-2012
1.	Taxability of		
	Food supplied in Restaurants serving liquor and being Air conditioned	Taxable	Taxable
	Accommodation in a Hotel for declared tariff of more than ₹1,000/- per day	Taxable for period for less than continuous three months	Taxable without any exclusion of period

⁵ [2011] 24 STR 177

⁶ [1989] 74 STC 157

	Provision	Prior to 1-7-2012	Post 1-7-2012
	Mandap Keepers' Service, Outdoor catering Service	Taxable	Taxable
	Laundry Services (i.e. 'Dry cleaning' as well as 'wet cleaning'), Telephone services, No Show charges, cancellation charges, etc.	Not taxable unless specifically defined	Taxable in view of the expanded definition of services
	Sale of space/time for advertisement other than by radio/television broadcast	Taxable	Exempt
2.	Valuation		
	Food supplied in Restaurants serving liquor and being Air conditioned	Taxable value : 30%	Taxable value : 40%
	Accommodation in a Hotel for declared tariff of more than ₹ 1,000/- per day	Taxable value : 50%	Taxable value : 60%
	Supply of food as a part of function for renting	Taxable value: 60%	Taxable value: 70%
	Any other Service (excluding Banking and Financial Services)	Taxable value: 100%	Taxable value: 100%
3.	CENVAT credit	Not eligible in case abatement option was availed	Generally - Input services and Capital Goods credit eligible and credit in relation to inputs eligible other than those specified in chapter 1 to 22 of CETA.

6. Classification in case of Bundled Services

- In case of an event, which is a mix of various overlapping services, the service which gives the most pre-dominant colour would be the category under which the same should be taxed as per the new Section 66F of the Finance Act, 1994 as made applicable from 1-7-2012.
- For e.g.
 - a) In case of 2N/3D package for accommodation with meals; the pre-dominant category would be accommodation even if the customer has food in the same restaurant like other walk-in customers. Hence, the hotel needs to charge service tax on 60% value of the total consideration.
 - b) In case of a Residential conference or a marriage; where a package has been designed for say three days including conference facilities, food, accommodation; since the pre-dominant

intention is arranging of a function, the correct classification would be "Mandap keeper" and hence the hotel needs to charge service tax on 70% value of the total consideration.

Conclusion

The new definition of service; coupled with issues in interpreting the exclusions and exemptions is going to be a challenge for every service provider. Additionally, the responsibility to pay tax in case of new categories for reverse charge mechanism and even the joint mechanism - casting responsibility to pay tax on payment to contractors as well - would pose immense challenge before the industry in complying with the law. The only positive take away of all the amendments post 1-7-2012, is the eligibility to avail CENVAT credit to a great extent which was hitherto not available. ■

Service Tax on Construction Activities



The scope of service tax on construction activities has been enlarged with effect from 01-07-2012 because many services which were hitherto outside the tax net, have become taxable with the exception of construction, erection, commissioning or installation of original works pertaining to low-cost houses as mentioned above. On the other hand, CENVAT Credit in respect of “input services” and “capital goods” has been allowed to builders with effect from 01-07-2012. The Valuation of Works Contract Services under substituted Rule 2A of Valuation Rules, 2006 will affect adversely the specified service providers in specific cases. Read on...



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Before dealing with the issue of Service Tax on Construction Activities under Taxation of Services by Negative List approach which has come into effect with effect from 01-07-2012, it is worthwhile to specify here that Service Tax was leviable on construction activities under the following three categories of services until 30-06-2012:

- a) Commercial or Industrial Construction Services with effect from 10-09-2004
- b) Construction of Complex Services with effect from 16-06-2005
- c) Works Contract Services with effect from 01-06-2007.

However, with effect from 01-07-2012 all activities related to construction fall within the purview of following “Declared Services” under **Section 66E** of the Act:

66E(b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

66E (h) Service portion in the execution of a works contract.

With effect from 01-07-2012, the following definition of “Works Contract” as given in Section 65B (54) of the Act is applicable:

“works contract” means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

A perusal of above definition reveals that scope of works contract has increased immensely. The most striking feature of the above definition is that it applies to both movable and immovable properties.

Exemption to certain Construction Activities

Certain construction activities have been exempted by virtue of entry no. 12, 13 & 14 of Notification No. 25/2012 dated 20-06-2012 with effect from 01-07-2012. Entry No. 12, *inter alia*, grants exemption to services provided to the Government, a Local Authority or a Governmental Authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession, a historical monument, archaeological site, a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment. Services covered by this entry are exempted only if these services are provided to the Government or Local Authority or Governmental Authority.

Entry No. 13, *inter alia*, grants exemption to services provided by way of construction, erection,

commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a road, bridge, tunnel, or terminal for road transportation for use by general public, a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana. In order to avail exemption under entry no. 13 the status of service recipient is insignificant-be it Government, a Local Authority or a Governmental Authority or any other person.

Entry No. 14 *inter alia*, grants exemption to Services by way of construction, erection, commissioning, or installation of original works pertaining to an airport, port or railways, including monorail or metro, a single residential unit otherwise than as a part of a residential complex, Low-cost houses upto a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the ‘Scheme of Affordable Housing in Partnership’ framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India. The scope of exemption granted vide entry no. 14 is restricted because it does not cover completion, fitting out, repair, maintenance, renovation or alternation of original works pertaining to any of the specified structures, immovable properties, machineries or equipments.

In addition, exemption has also been provided with effect from 01-07-2012 vide Entry No. 29(h) of Notification No. 25/2012 to sub-contractor providing services by way of works contractor to another contractor providing works contract services which are exempt. This exemption was also available until 30-06-2012 vide Circular No. 147/16/2011 dated 21-10-2011.

Illustrative list of services in relation to Construction Activities which have become taxable with effect from 01-07-2012 onwards

1. Construction of Boundary Wall.
2. Construction of Parking Area.
3. Services in respect of Cutting of Plots and Development of colonies received by builders.
4. Construction of Residential Complex of units ranging between 2-12 units (more than one unit).
5. Construction of Private Roads.
6. Construction Services provided to Non-Commercial Organisation in respect of buildings which are used for other than Religious Purpose.

7. Services provided in respect of Construction of hospitals to any person other than Government or Governmental Authority or Local Authorities.
8. Services provided in respect of Construction of buildings to be used for the purpose of Education to any person other than Government or Governmental Authority or Local authorities.

Valuation of service portion in execution of a works contract with effect from 01-07-2012

Substituted Rule 2A(i) of Service Tax (Determination of Value) Rules, 2006, inter alia, provides that the value of service portion in the execution of a works contract is the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract. Alternatively, under foregoing Rule 2A (ii), the aforementioned value will be determined as under:

S. No.	Purpose of the Works Contract	Percentage of total amount deemed as Value of service portion of the Works Contract
(A)	Execution of Original Works	40%
(B)	Maintenance or Repair or Reconditioning or Restoration or Servicing of any Goods	70%
(C)	Any purpose other than (A) & (B) above, including Maintenance, Repair, Completion and Finishing Services [such as Glazing, Plastering, Floor and Wall Tiling, Installation of Electrical Fittings] of an immovable property	60%

Bonanza for Builders in the form of Additional CENVAT Credit

According to Notification No 26/2012 dated 20-06-2012 with effect from 01-07-2012 in respect of Construction of a complex, building, civil structure or a part thereof which is intended for sale to a buyer,

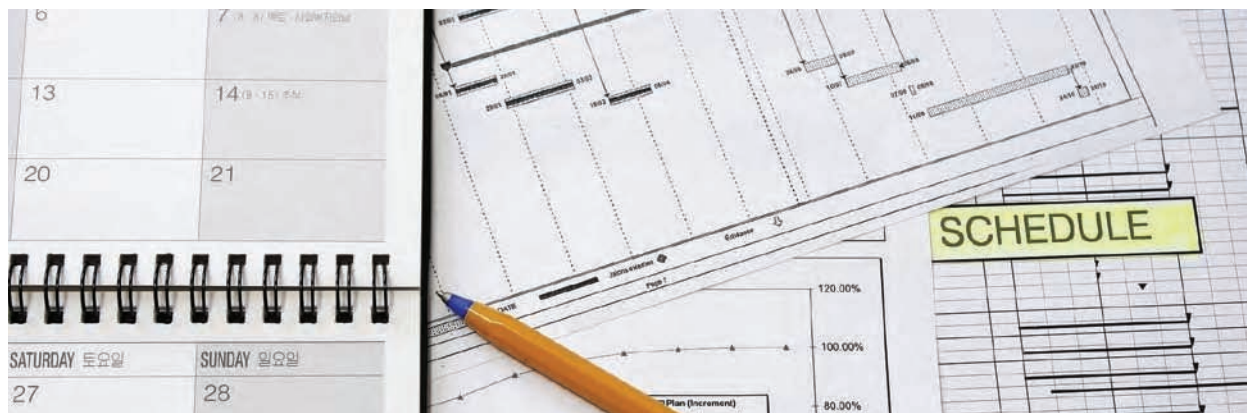
According to Notification No 26/2012 dated 20-06-2012 with effect from 01-07-2012 in respect of Construction of a complex, building, civil structure or a part thereof which is intended for sale to a buyer, wholly or partly, service tax is payable on the 25% of the amount charged by such service provider subject to the condition that CENVAT Credit on "inputs" used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004.

wholly or partly, service tax is payable on the 25% of the amount charged by such service provider subject to the condition that CENVAT Credit on "inputs" used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. In other words, Department has given bonanza to builders by allowing them to avail and utilise CENVAT Credit in respect of "input services" and "capital goods" while discharging their service tax liability in respect of above-mentioned Construction Services with effect from 01-07-2012. In contrast, there was a total prohibition on availing any kind of CENVAT Credit until 30-06-2012 in respect of above Construction Services. Looking from another angle, with effect from 01-07-2012 the service tax liability of the builders has been significantly reduced because they are required to discharge their service tax liability only on the 25% of the total amount charged which can be either completely set off or significantly reduced by availability of CENVAT Credit in respect of input services and Capital Goods.

Conclusion

The scope of service tax on construction activities has been enlarged with effect from 01-07-2012 because many services which were hitherto outside the tax net, have become taxable with the exception of construction, erection, commissioning or installation of original works pertaining to low-cost houses as mentioned above. On the other hand, CENVAT Credit in respect of "input services" and "capital goods" has been allowed to builders with effect from 01-07-2012. The Valuation of Works Contract Services under substituted Rule 2A of Valuation Rules, 2006 will affect adversely the specified service providers in specific cases. ■

Distinctive Features of Schedule VI (Revised)



Schedule VI to the Companies Act 1956 was replaced by the Ministry of Corporate Affairs by a new (Revised) schedule. There are many distinctive features of the new schedule. The first distinctive feature is recognition to accounting standards in preparation and presentation of financial statements. The second distinctive feature is a move in the direction of converging with/adopting IFRS. In the new Schedule VI, presentation of assets and liabilities is to be made strictly on the basis of permanency. It specifically requires a company to present the debit balance of Statement of Profit and Loss as a negative figure under sub-head 'Surplus' within the main head 'Reserves and Surplus'. The final figure under the head 'Reserves and Surplus' is required to be shown under that head only, even if the final figure is negative. All the features described will have their effects prominently displayed in the first set of financial statements prepared after coming into force of new Schedule VI. An attempt has been made in this article to bring out the important features and their impact that needs to be considered while preparing and presenting the financial statements for the first time under the Revised Schedule VI.

Schedule VI to the Companies Act 1956 was replaced by the Ministry of Corporate Affairs on 28th February, 2011. However, its application was postponed for a year and now is set to come into effect for the accounting period beginning on or after 1st April 2011. In common parlance this schedule is referred to as 'revised'. But it is in fact replacement of old schedule as the relevant notification clearly states "...the Central Government hereby replace the existing Schedule VI to the said Act by the following Schedule..." Even when one studies the new schedule, it is amply clear that its disclosure and presentation requirements for many items are different from the current schedule.

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Recognition to Accounting Standards

The first distinctive feature of the new Schedule VI is much needed recognition to accounting standards in preparation

and presentation of financial statements. It can be safely stated that now onwards, accounting standards prescribed under the Companies (Accounting Standard) Rules 2006 (notified AS) will prevail over the new schedule if the presentation and disclosure requirements of any item specified therein are at variance with the prescribed accounting standards. This is demonstratively brought out in the opening Para of the new schedule.

That due recognition to accounting standards is given in the new schedule can be ensured by the following assertions made therein:

- Requirements of Schedule VI shall stand modified to conform to any treatment or disclosure as stated in notified AS.
- Disclosures required by notified AS to be made in the notes to accounts or by way of additional statements unless required to be disclosed on the face of the financial statements. In fact, disclosure requirements of Schedule VI are in addition to and not in substitution of disclosure requirements of notified AS.
- Terms used in the schedule are as per the applicable notified AS.
- Line items, sub-line items and subtotals are to be added or substituted in any item of the Balance Sheet, Statement of Profit & Loss and Notes to Accounts to comply with notified AS (including any change therein at later stage).

At present there are 28 notified ASs (AS-1 to AS-7 and AS9- to AS-29). With exception of AS-3 (Cash Flow Statements), AS-17 (Segment Reporting) and AS-25 (Interim Financial Reporting), notified standards apply to all companies, whether public or private. While the two standards AS-3 and AS-17 do not apply to small and medium sized companies (SMCs) as defined in the extant rules, AS-25 applies to listed companies. Apart from this, partial relaxation has been given to SMCs from presentation and disclosure requirements of standards AS-15 (Employee Benefits), AS-19 (Leases), AS-20 (Earnings per Share), AS-28 (Impairment of Assets) and AS-29 (Provisions, Contingent Liabilities and Contingent Assets).

In these standards there are many disclosure requirements that are not found in the new schedule. These disclosures will have to be now made as the schedule specifically requires such disclosure.

An illustrative list of typical disclosures required by notified AS but not included in the new Schedule VI could be under:

- Cost Formula used in measuring inventories (AS-2)
- Separation of investments maturing in 90 days from acquisition date from other investments for classification as cash equivalents on the Balance Sheet date (AS-3)
- In case of revaluation of fixed assets, method of

valuation used, the nature of indices used, whether an external valuer was involved etc. (AS-10)

- A narrative description of the basis used to determine the overall expected rate of return on assets, including the effect of the major categories of plan assets relating to employee benefit (AS-15)
- Reasons to presume that useful life of an intangible asset will exceed ten years when an intangible asset is amortised over more than 10 years (AS -26)

With notified accounting standards effectively getting precedence over requirements of new Schedule VI, companies will not be at liberty now to bypass any unsuitable presentation and disclosure requirement of notified AS in preparing and presenting financial statements.

The new schedule has given much needed support to the auditors to enforce compliance with accounting standards by the corporate entities. At the same time, auditors will have added responsibility to ensure such compliance. It will not be exaggerated to state that users of financial statements would like the audited statements to clearly reflect professional judgement of the auditors on all material issues in presentation and disclosures.

As regards private limited companies (and to some extent unlisted public companies also) are concerned, the responsibility of the auditors for compliance with notified AS will be much more. It is a known fact that most often, financial statements of such companies are prepared with active help of the auditors (unlike the case where the statements are prepared by the management independently). In a few cases, the auditors themselves have to prepare a 'presentable' set of financial statements from the accounting software generated statements.

In all such cases, management fully relies on the auditors about preparation, presentation and disclosure. Therefore, the auditors of such companies will have greater responsibility to ensure compliance with notified AS in preparation and presentation of the financial statements and disclosures to be made therein.

All in all, this feature of recognition to accounting standards will certainly engage the attention of management and the auditors in days to come. It is also going to throw surprising results in the first year. It goes without saying

All in all, this feature of recognition to accounting standards will certainly engage the attention of management and the auditors in days to come. **It is also going to throw surprising results in the first year. It goes without saying that financial statements under new Schedule VI will be more transparent.**

that financial statements under new Schedule VI will be more transparent.

Moving Near IFRS

The second distinctive feature of the new schedule is a move (a small one but significant) in the direction of converging with/adopting IFRS.

The first indicator of this move is:

- New schedule has removed the popular concept of 'Schedule' in presentation of financial statements. It has been replaced by the concept 'Note'.
- Each item in the financial statements is to be cross referenced to related information in the notes to accounts.

This is in line with requirements of IndAS-1 'Presentation of Financial Statements' (corresponding to IAS-1 of IASB).

The second indicator of this move is explanation about 'notes to accounts'. The explanation has been virtually imported from the definition of this term given in IndAS-1/IAS-1. Similar is the case for the explanations for the terms current assets and current liabilities. The explanations have been virtually imported from the explanation of these terms given in IndAS-1/IAS-1.

The third indicator is the information to be provided for each class of share capital. Out of 12 disclosures [clauses (a) to (l) of Para 6A of General Instructions for Preparation of Balance Sheet] to be made about share capital, 7 disclosures [clauses (a) to (f) and clause (h) of the said Para] have been imported almost verbatim from IndAS-1/IAS-1.

Next indicator is the format of newly introduced (earlier schedule did not provide for such format) Statement of Profit and Loss including the heading of the statement, sequencing of items, separation of results of continuing and discontinuing operations, etc.

It may be mentioned here that IndAS -1 IndAS - 105 (corresponding to IFRS 5 of IASB) 'Non Current Assets Held For Sale and Discontinued Operations' requires an entity to disclose separately results of discontinued operations including related tax expense.

Yet another indicator is presentation of allocations and appropriation of profit after tax under the sub-head 'Surplus' in the head 'Reserves and Surplus'. So far we were conversant with presenting these items 'below the line' in

the Profit and Loss Account. IndAS-1 (IAS 1) requires an entity to include these items as part of Statement of Changes in Equity or Notes. New Schedule VI has recognised this presentation as allocations and distributions have been moved under the head 'Reserves and Surplus' which is part of main head 'Shareholders' Funds' on the liability side of the Balance Sheet.

All these indicators can be considered as a part of the move to familiarise companies (and auditors also) with (yet to be notified) Ind-ASs (and IFRSs) for smooth transition to them later on.

Adherence to Permanency in Presentation of Financial Position

In the Revised Schedule VI, presentation of assets and liabilities is to be made strictly on the basis of permanency. When one looks at the sequence of items arranged on both sides of the balance sheet, this feature is clearly brought out.

On the Equity and Liability side, presentation of permanency is sought to be achieved in the following sequence:

- Shareholders' Funds
- Share Application Money pending allotment
- Non-Current Liabilities
- Current Liabilities

Shareholders' Funds are permanent source for the company (buyback is an exceptional phenomenon). Share Application Money is to be ultimately converted into share capital hence permanent source of funds. Non-Current Liabilities are for long to very long term maturity and therefore are semi-permanent source of funds. Current Liabilities are temporary source of funds.

On the Assets side, presentation of permanency is sought to be achieved in the following sequence:

- Non-current Assets
- Current Assets

Investment in all Non-Current Assets is for long to very long term maturity and therefore almost permanent in nature. A plot of land purchased by a company establishing a manufacturing plant is a permanent investment. Same is the nature of investment in intangible assets. All current assets are temporary investments.

The schedule goes a step further and requires balance of all term liabilities (say term loan from a bank) outstanding on the reporting date to be bifurcated between that maturing for payment within 12 months and others maturing afterwards and requires former to be presented as current liabilities and later as non-current liabilities. Same is the case with loans granted by the company where balance receivable within 12 months of the reporting date to be presented as current assets and balance receivable afterwards as non-current assets. Same analogy is to be applied for investments.

In the Revised Schedule VI, presentation of assets and liabilities is to be made strictly on the basis of permanency. When one looks at the sequence of items arranged on both sides of the balance sheet, this feature is clearly brought out.

This feature of adherence to permanency in presentation is going to bring out the real picture of asset/liability matching. A user of financial statement with a little effort is going to know whether the fundamental financing principle of long term source for long term use and short term source for short term use is followed by the company or not. In fact, if one prepares a fund flow statement from the financial statements prepared in the format of Revised Schedule VI, he will immediately come to know whether this principle has been followed by the company.

Incidentally, the presentation format of the new Schedule VI, to a great extent, would make the task of bankers easy in assessing working capital requirement of a company.

So far the phase 'asset/liability mismatch' is used mostly in relation to the financial position of a bank or financial institution. It will not be surprising that this phrase is used by bankers themselves, as lenders, while evaluating financial position of a company.

Slowly but surely (and knowingly or unknowingly) this presentation is bound to bring financial discipline in the near future in corporate entities.

Negative Figures in Balance Sheet – Its Impact

So far we were not accustomed to presenting a negative figure in the Balance Sheet with the exception of the figure of net current assets which could be negative in a few cases in a vertically presented Balance Sheet. The debit balance of profit and loss account was placed on the asset side of the Balance Sheet as per the earlier schedule.

But the new schedule specifically requires a company to present the debit balance of Statement of Profit and Loss as a negative figure under sub-head 'Surplus' within the main head 'Reserves and Surplus'. Final figure under the head 'Reserves and Surplus' is required to be shown under that head only even if the final figure is negative.

Mere thought of a negative figure (on the liability side) in the Balance Sheet evokes primarily adverse opinion about the health of the company. When that figure is with respect to profits of the company and ultimately its net-worth, any appearance of such negative figure (even if small one) is bound to catch immediate attention of the users of financial statements. Analysts, lenders, creditors, employees, government and other stakeholders are bound to look at the financial statements of the company with suspicion leading to their intense scrutiny.

In a case where the sum total under the head 'Shareholders' Funds' is negative i.e. net-worth fully eroded, any reader of the financial statements would immediately know that the business of the company is carried out only with the help of outside debt. This will certainly have a serious impact on the business standing of the company. Its operational efficiency, credit worthiness, repaying capacity, all will come under question, though the company may have valid

reasons to believe (and to prove also) that the negative net-worth is only a temporary phenomenon. Figure of a small negative net-worth, that too temporary, will require a lot of explaining by the company at a different forum.

Effect of negative 'surplus' will be felt both by an established company as well as a newly formed company. A newly formed company is going to be affected because of absence of the head 'Miscellaneous Expenses to the Extent Not Written Off' on the asset side of the Balance Sheet format prescribed in the new schedule. Under the earlier schedule, newly formed companies were showing preliminary expenses other such expenditure under that head. Such expenses were periodically written off to the profits of the company in subsequent period.

This freedom is now no more available. As stated, there is no such head in the new schedule. In fact a company will require charging off all such expenses as revenue expenditure in the year of its incurrence. There is every possibility that the company may post losses in the very first year of its existence solely because of such write off though it may not have commenced business. Needless to say the loss will not qualify for carry forward under the provisions of Income Tax Act 1961.

Other Features

Some of the known features which are already being brought out by professional fraternity are listed as under:

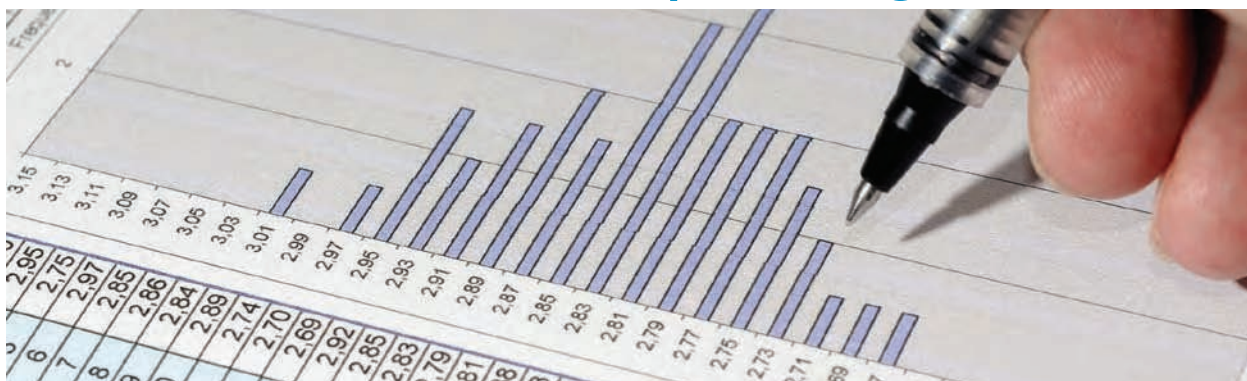
- Specified format of Statement of Profit and Loss as against no such format in the old Schedule.
- Rounding off related to turnover
- Disclosure of continuing default in repayment of loans and interest.
- Removal of disclosure about managerial remuneration.
- Removal of redundant disclosures like quantitative information.

In the new Schedule VI, figures of previous period have also to be presented in the new format for financial statements as well as notes to accounts. Therefore, the exercise is already underway by the corporate entities and auditors to regroup the figures of previous period to confirm to the new format. This process of regrouping itself will bring out many distinctive features.

Conclusion

One thing is very clear. There is going to be great excitement when the first set of financial statements under Revised Schedule VI is published. Surely many surprises may greet us then. All the features described above will have their effects prominently displayed in the first set of financial statements prepared after coming into force of Revised Schedule VI. ■

The IAASB and Enhancing the Value of Auditor Reporting



The completion of the International Auditing and Assurance Standards Board's (IAASB) Clarity Project at the end of 2008 established a strong basis for a single, global auditing language, both for the private and public sectors. The sovereign debt and global financial crises have further heightened the importance of a single set of globally recognised standards. It has also brought into sharp focus the importance of continuous improvement in standards as business environments and users' needs evolve. The IAASB has continued to work towards the global adoption and implementation of the clarified International Standards on Auditing (ISAs); India is among the 80, and growing, countries worldwide that now use, or are committed to using, the clarified ISAs for national audits. The IAASB has committed to move rapidly over the next two years on a top-priority project to lay a solid foundation for the future of auditor reporting and to enhance the communicative value and relevance of the auditor's report. Read on...



Prof. Arnold Schilder

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The sovereign debt and global financial crises have further heightened the importance of a single set of globally recognised standards. It has also brought into sharp focus the importance of continuous improvement in standards as business environments and users' needs evolve. In this context the IAASB has heard, and indeed embraced, the call from stakeholders in virtually all quarters of the world to re-examine and, to an extent re-invent, the auditor's report — the auditor's primary means of communication with an entity's stakeholders.

As a result, the IAASB has committed to move rapidly over the next two years on a top-priority project to lay a solid foundation for the future of auditor reporting and to enhance the communicative value and relevance of the auditor's report.

What is the issue? Users of audited financial statements want to know more about individual audits

and to gain further insights into the audited entity and its financial statements. And while the auditor's opinion is valued, many perceive that the auditor's report could be more informative. Change, therefore, is essential. A quality audit should be accompanied by an informative auditor's report that delivers value to the entity's stakeholders. Importantly, the auditor's report should better explain what an auditor does and enable the auditor to shine light on key matters based on the auditor's work. However, there are many complex issues. For example, management is ordinarily expected to be the first source of information about an entity, but some believe auditors should contribute by providing their independent view about matters such as key risks.

Nevertheless, now is the time for decisive action to ensure there is continued confidence in the value that an audit provides, and the IAASB is committed in the public interest to deliver meaningful improvements to auditor reporting as quickly as possible.

At its June 2012 meeting, the IAASB achieved a key milestone in its work on auditor reporting with the unanimous approval of a new consultation document that sets out the indicative direction of the IAASB's future standard-setting proposals to improve how, and what, auditors report in accordance with International Standards on Auditing. Featured in the consultation is an illustrative improved auditor's report, the IAASB's rationale for the suggested improvements, together with discussion of their potential value and impediments, and questions on which feedback is sought.

At the heart of the suggested improvements is the need for transparency on matters specific to the audited financial statements and the audit that was performed, including the auditor's efforts in key areas. A new section in the auditor's report addressing "Auditor

The consultation document, entitled *Invitation to Comment: Improving the Auditor's Report*, has **been released on the IAASB website. It reflects the** progress the IAASB has made in its deliberations to date, based on what it has learned from its research and earlier consultation in 2011, and from its ongoing dialogue with stakeholders. The IAASB is consulting now on its suggested improvements to the auditor report to better understand whether it will achieve the value that users seek.

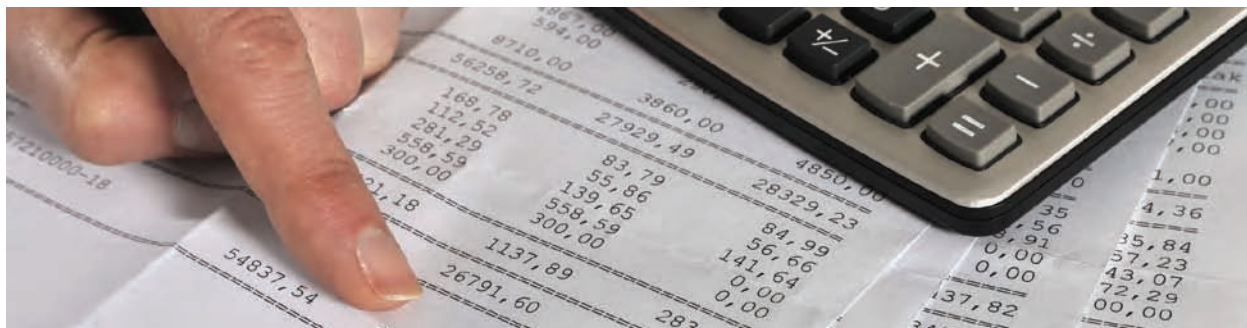
Commentary" is envisaged to be the mechanism where auditors could call attention to matters that are, in the auditor's judgment, likely to be most important to users' understanding of the audited financial statements or the audit. There are also suggested improvements in regard to new statements regarding going concern and other information in documents containing the audited financial statements, aimed at making more explicit the auditor's work effort and findings in these areas. Further suggested improvements include new disclosures regarding the responsibilities of the auditor and key features of the audit itself, and enhancement to the format of the report. IAASB's work will involve exploring new ways in which auditor reporting could accommodate evolving national reporting regimes and entities of different types and sizes.

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Early engagement with global stakeholders on key issues will be critical to the success of IAASB work on this topic, and I encourage all stakeholders to respond to this consultation document. While the IAASB also plans roundtables later in 2012 — including a roundtable in Kuala Lumpur on 8th October, 2102 — and other outreach activities, it is critical that the IAASB hear from a wide range of stakeholders at this stage in order for the Board's future standard-setting proposals to develop in a way that will best serve the public interest. ■

At its June 2012 meeting, the IAASB achieved a key milestone in its work on auditor reporting with the unanimous approval of a new consultation document that sets out the indicative direction of the IAASB's future standard-setting proposals to improve how, and what, auditors report in accordance with International Standards on Auditing. Featured in the consultation is an illustrative improved auditor's report, the IAASB's rationale for the suggested improvements, together with discussion of their potential value and impediments, and questions on which feedback is sought.

IAASB Explores Way to Improve Value of Auditor's Report for Stakeholders



An auditor's report is the mouthpiece of the auditor. An auditor's report is as dynamic as the audit profession itself. Designing an audit report that would match the changing landscape of the global business environment, growing complexities of financial reporting, and the changing face and geographical spread of the stakeholders and their information needs and demands, has always been high on the agenda of the auditing standard setters across the globe. Although, the auditor's opinion on the financial statements was and still remains the most important and critical information that is contained in the auditor's report, over the period, a number of other information, such as the responsibility of the management vis-a-vis auditors, has been integrated with the audit reports, primarily with the aim of reducing the expectation gap. The Revised International Standard on Auditing (ISA) 700, *Forming an Opinion and Reporting on Financial Statements*, issued by the International Auditing and Assurance Standards Board under the Clarity Project was issued on these considerations.

The financial crises of 2008, which took down with it the banking and housing finance behemoths like the Lehman Brothers, Bear Stearns, Fannie Mae and the recent European sovereign debt crises, however, again threw up the fact that the audit report probably again needed a relook vis a vis expectations of the various stakeholders. The stakeholders have emphasised on the need for the auditors to "provide greater transparency about significant matters in the financial statements as also the conduct of the individual audit". The institutional investors and the analysts, particularly, have indicated that they were looking up to the auditors to assist them in demystifying the increasingly complex financial statements. They also want information on areas of auditor's work efforts, particularly, the most subjective matters within the financial statements.

Accordingly, this time, the focus of the standard setters in revising the format of the audit report would be more on "meaningful change" "rather than incremental change over time".

As a part of its project to identify improvements that may be required to the contents of an audit report so that it, and as a corollary, the audit itself, continues to retain its value among the various stakeholders, the International Auditing and Assurance Standards Board has recently issued an Invitation to Comment (consultation paper), *Improving the Auditor's Report*. Through this consultation paper, the IAASB is proposing certain important changes to the auditor's report. The proposed changes to the contents are based on a general agreement in the IAASB that at a macro level, the users of the auditor's report look for the following information:

- Matters that are, in the auditor's judgement, likely to be most important to user's understanding of the audited financial statements or the audit of public interest entities

(Contributed by Auditing and Assurance Standards Board Secretariat of the ICAI)

- Auditor's conclusion on appropriateness of management's use of going concern assumption
- Auditor's statement on existence of any material inconsistencies between audited financial statements and other information

Accordingly, the IAASB is envisaging the following new sections in the auditor's report.

Going Concern

The IAASB is proposing that the auditor's report, having regard to the financial reporting framework, would contain along with appropriate caveats:

- A conclusion regarding the appropriateness of management's use of the going concern assumption; and
- A statement regarding whether, based on the audit work performed, material uncertainties related to events or conditions that may cast significant doubt on the entity's ability to continue as a going concern have been identified.

This would be supported by a description of the management's responsibilities with respect to going concern.

Auditor Commentary

The section on Auditor Commentary would contain those audit matters that in the auditor's judgement, are likely to be most important to user's understanding of the financial statements such as:

- Areas of significant management judgement (e.g., in relation to the entity's accounting practices, including accounting policies, accounting estimates, and financial statement disclosures).
- Significant or unusual transactions (e.g., significant related party transactions or restatements).
- Matters of audit significance, including areas of significant auditor judgement in conducting the audit, for example:
 - o Difficult or contentious matters noted during the audit, or other audit matters that would typically be discussed with an engagement quality control reviewer or Those Charged with Governance ; and
 - o Other issues of significance related to the audit scope or strategy.

With the introduction of the section on Auditor's Commentary, the IAASB envisages doing away with the concept of Emphasis of Matter and Other Matter paragraphs, as enunciated in the Standard on Auditing (SA) 706, *Emphasis*

of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report, issued by IAASB.

Other Information

Presently, the ISA 720, *The Auditor's Responsibility in Relation to Other Information in Documents Containing Audited Financial Statements*, requires the auditors to read the other information contained in the document containing audited financial statements to identify material inconsistencies, if any, with the audited financial statements. However, the Standard does not envisage any explicit statement in the auditor's report with respect to this aspect. As per the IAASB's current proposal, the auditor's report would now contain an explicit statement to the effect whether, based on reading the other information, the auditor has identified material inconsistencies between the other information (to be clearly identified) and the audited financial statements. This, however, would need to be followed by a disclaimer that the auditor has not audited the other information as part of audit of financial statements.

Other Proposals to Enhance Transparency about the Audit

The Consultation Paper contains several other proposals aimed at enhancing the transparency about the audit using the auditor's report. These are as follows:

Disclosure of the Name of the Engagement Partner

The extant ISA 700, issued by IAASB, requires that the audit report can be signed in the name of the audit firm or the engagement partner, or both, as appropriate in a particular jurisdiction. While in India, requirement to give the name of the engagement partner on the audit report dates long back, in many jurisdictions abroad, the audit reports are signed in the name of the audit firms only. In other words, there is no disclosure with respect to the name of the engagement partner. IAASB is now proposing that the audit reports now also disclose the name of the engagement partner so as to instill a greater sense of personal accountability.

As a part of its project to identify improvements that may be required to the contents of an audit report so that it, and as a corollary, the audit itself, continues to retain its value among the various stakeholders, the International Auditing and Assurance Standards Board has recently issued an Invitation to Comment (consultation paper), *Improving the Auditor's Report*.

Through this consultation paper, the IAASB is proposing certain important changes to the auditor's report.

Statement of Compliance with Ethical Requirements

Independence and objectivity are the foundations for the value that the stakeholders see in an audit and helps them draw an added measure of comfort from the auditor and auditor's work. Accordingly, the IAASB is proposing, that in all cases, including where the format of the audit report has been prescribed by a national law or regulation, the auditor give a statement in the auditor's report regarding auditor's compliance with the ethical requirements.

Involvement of Other Auditors

It is not unusual in an audit engagement, particularly, where the auditor is auditing the financial statements of the parent entity, that the financial statements of all or some of the subsidiaries are audited by different auditors. The extant ISA 600, *Special Considerations — Audits of Group Financial Statements (Including the Work of Component Auditors)*, is based on the principal of sole responsibility of the parent auditor (the group auditor). Accordingly, it does not permit reference to the fact that the principal (group) auditor has also used the work of other (component) auditors in his work. On the other hand, the corresponding Indian auditing standard has a carve out, permitting the principal auditor to clearly bring out on the extent of other auditors' involvement on the face of the audit report. Similarly, the attest standard issued by the American Institute of Certified Public Accountants also provides an option to the principal auditor to make such disclosures in the audit report. This option has also been included, albeit as a mandate, in the proposed auditing standard issued by the Public Companies Accounting Oversight Board, USA.

IAASB is now exploring the possibility of inclusion of disclosure in respect of involvement of other auditors in the audit since it feels that this is a matter of audit significance. The disclosure could include amount of work performed by other auditors, whether affiliated or not, as also auditor's responsibility particularly in cases of group audit.

Auditor's Responsibility

On suggestions from the auditors, regulators and preparers of financial statements, the IAASB is envisaging enhanced description of the auditors' responsibilities so as to bring in greater transparency about the audit process and understanding of the role of the auditor and nature of the audit work. Accordingly, IAASB suggests that the description of auditor's responsibility include an explanation of the concept of risk-based audit, responsibilities in relation to specific and critical matters such as fraud, internal controls, accounting policies and estimates, evaluating the overall presentation, structure and content of financial statement disclosures, group audits and communications with those charged with governance.

Responsibilities of Management and Those Charged with Governance

IAASB is also envisaging enhanced description of the responsibility of the management and those charged with governance since the users' understanding of the auditors' responsibilities is influenced by their understanding of the responsibilities of the management and those charged with governance with respect to the financial statements.

Re-sequencing of Elements of Auditor's Report

In addition, IAASB is evaluating the possibility of making some structural changes to the auditor's report through placement of the auditor's opinion and other entity's specific information in the auditor's report.

Sl.	Existing ISA 700	Proposed
01.	Title	Title
02.	Addressee	Opinion
03.	Management's responsibility for financial statements	Basis for Opinion
04.	Auditor's responsibility	Going Concern
05.	Opinion	Auditor Commentary
06.	Report on other legal and regulatory requirements	Other Information
07.	Auditor's signatures	Respective Responsibilities of Management, Those Charged with Governance and the Auditor
08.		Report on Other Legal and Regulatory Requirements
09.		Auditor's signatures

Comments Invited

The full text of the Invitation to Comment is available on URL <http://www.ifac.org/publications-resources/improving-auditor-s-report>. The last date for sending comments is 7th October 2012. Comments can be submitted through the link <https://www.ifac.org/login?return=publications-resources%2Fsubmit-comment%3Fexposure-draft%3D18332>. ■

Constituting Agency Permanent Establishment



This article is in continuation to the article under this column published in June 2012 issue of this journal. In that article, we analysed basic concepts of Agency Permanent Establishment (agency PE) and, specifically, various principles/tests to ascertain as to when a 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; and whether such an agent, is an independent agent acting in its ordinary course of his business or is a 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 specified activities. If such an agent is found to undertake any of the specified activities, the foreign enterprise would have an agency PE. These aspects pertaining to dependent agent PE have been discussed in this article.

1 Basic Concepts – Constituting Agency PE

As per provisions of the Income-tax Act, 1961, following conditions are required to be satisfied for a business connection in nature of an Agency PE to arise in India:

(A) An agent, (other than an independent agent), undertakes business activity on behalf of a foreign enterprise;

AND

(B) Such an agent has and habitually exercises authority to conclude

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

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 the nature of agency PE in India.

The 2010 OECD Model Convention ('the OECD MC') postulates presence of only 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 2011 United Nations Model Convention ('the UNMC'), 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). However, condition (D) has not been prescribed under the UNMC.

2 Analysis of the Three Conditions With Reference to Model Commentaries and Judicial Precedents

2.1 Authority to conclude contracts:

A dependent agent having authority to conclude contracts in the name of the foreign enterprise constitutes dependent agent PE. If the agent is only participating in negotiations and not concluding the contract *per se*, following factors may be relevant to ascertain whether the agent has *authority to conclude contracts*:

- Exact functions performed on behalf of the enterprise;
- Formal or implied powers to negotiate

up to a point of actually concluding contracts;

- Undertaking substantial negotiation;
- Creation of bonafide belief in eyes of third party as acting on behalf of the authorisation given by the foreign enterprise and hence, creates an obligation on it to respect the terms of the contract.

Thus, the authority to conclude the contract need not be explicit. Even an implied authority to conclude contracts would be relevant while determining Agency PE. Further, in certain situations, an authority could also be inferred, even if the agent concludes the contracts that are not in the name of the foreign enterprise.

However, the above factors are not, by themselves, determinative. All the facts and surrounding circumstances should be taken into account while determining whether the agent has authority to conclude contracts on behalf of the foreign enterprise.

Further, it is essential that the authority relates to the core business operations of the foreign enterprise, and not just internal or incidental operations.

It should be noted that mere existence of authority to conclude contracts may not lead to dependent agent PE unless the agent is actually engaged and concludes contracts on behalf of the foreign enterprise. Further, mere one-off contract or a single contract concluded by the agent may not lead to a dependent agent PE.

Signing of the Contract:

It is not necessary that contracts are signed by the agent. A person who is authorised to negotiate all elements and details of the contract in a way binding on the enterprise can be said to exercise the authority even if the contracts are signed by any other person in India or outside India.

Place of signing of the contract:

The place of signing of the contract is not relevant. The facts and circumstances should confirm that the agent has performed the core or substantial part of the activities on behalf of

the foreign enterprise in India with a binding power on the foreign enterprise.

2.1.1 *Model commentaries on authority to conclude contracts:*

The OECD MC and UNMC states that:

- The phrase “authority to conclude contracts in the name of the enterprise” does not confine the application of the paragraph to an agent who enters into contracts literally in the name of the enterprise; the paragraph applies equally to an agent who concludes contracts which are binding on the enterprise even if those contracts are not actually in the name of the enterprise.
- The authority to conclude contracts must cover contracts relating to operations which constitute the proper business of the enterprise. It would be irrelevant, for instance, if the agent had authority to conclude contracts, in the name of the enterprise, which belonged to internal operations of the foreign enterprise.
- A person who is authorised to negotiate all elements and details of a contract in a way binding on the enterprise can be said to exercise this authority “in that State”, even if the contract is signed by another person in the State in which the enterprise is situated or if the first person has not formally been given a power of representation.
- Mere fact that a person has attended or even participated in negotiations

With regard to OECD MC, India is of the view that the mere fact that a person has attended or participated in negotiations in a State between an enterprise and **a client, can in certain circumstances, be sufficient**, by itself, to conclude that the person has exercised in that State an authority to conclude contracts in the name of the enterprise. India is also of the view that a person, who is authorised to negotiate the essential elements of the contract, and not necessarily all the elements and details of the contract, on behalf of a foreign resident, can be said to exercise the authority to conclude contracts.

in a State between an enterprise and a client will not be sufficient, by itself, to conclude that the person has exercised in that State an authority to conclude contracts in the name of the enterprise. The fact that a person has attended or even participated in such negotiations could, however, be a relevant factor in determining the exact functions performed by that person on behalf of the enterprise.

- The “authority to conclude contracts” must be **habitually** exercised and should not be merely transitory. The extent and frequency of activity for determining whether the agent is “habitually exercising” contracting authority will depend on the nature of the contracts and the business of the principal.
- The UNMC additionally states that a person who is authorised to negotiate all the essential elements of the contract, though not “all elements and details of a contract”, would be considered as person exercising the authority, whether or not that person’s involvement in the negotiation also extends to other non-essential aspects.

2.1.2 *India’s position on the OECD MC:*

With regard to OECD MC, India is of the view that the mere fact that a person has attended or participated in negotiations in a State between an enterprise and a client, can in certain circumstances, be sufficient, by itself, to conclude that the person has exercised in that State an authority to conclude contracts in the name of the enterprise. India is also of the view that a person, who is authorised to negotiate the essential elements of the contract, and not necessarily all the elements and details of the contract, on behalf of a foreign resident, can be said to exercise the authority to conclude contracts.

2.1.3 *Important Indian jurisprudence on authority to conclude contracts*

2.1.3.1 *Authority to conclude contracts*

- *Morgan Stanley and Co. Inc. (292 ITR 416) (SC)*

In the landmark ruling, the Supreme Court held that Indian subsidiary

rendering BPO services to foreign client of the US parent company for reconciliation, research etc. does not result in agency PE of the parent company as the Indian subsidiary did not have any authority to conclude contracts on behalf of the parent company.

- *Al Nisr (239 ITR 879) (AAR)*

Al Nisr was a partnership tax that was resident in the United Arab Emirates. It was engaged in publishing, printing and distributing newspapers, magazines and other publications in the United Arab Emirates, and had appointed an Indian company as its sole advertisement representative for soliciting advertisement orders and collecting fees from Indian customers on behalf of Al Nisr. The Indian company was not authorised to enter into any contract on behalf of Al Nisr or to bind Al Nisr in any way. The Indian company was also required to inform all prospective Indian advertisers that all orders were subject to acceptance by Al Nisr under its standard terms and conditions.

Al Nisr argued that, as it was entitled to decline an order solicited by the Indian company, it was evident that the Indian company lacked the authority to conclude contracts on its behalf. The tax authorities, however, contended that Al Nisr's right to reject any advertisement order was "ineffective and meaningless".

Al Nisr successfully responded to this argument by demonstrating the possible reasons for the rejection of orders, for example, certain adverts were prohibited under the law of the United Arab Emirates. The AAR, therefore, held that Al Nisr's arrangement with the Indian company did not give rise to a dependent agency PE in India.

- *Dun and Bradstreet Espana S.A (272 ITR 99) (AAR)*

Dun and Bradstreet Espana ("D & B") was tax resident in Spain. It was a part of the Dun and Bradstreet group ("D & B group"). The D & B group had a

database covering 79 million business entities worldwide. As one of the products, the D & B group provided business information reports (BIRs) in electronic and hardcopy formats that were relevant for various customers in making credit, marketing and purchasing decisions.

The D & B group had subsidiaries and associates in various countries, including India. The subsidiaries and associates were engaged in the business of compiling and selling BIRs in their local markets and to other associated companies worldwide. The subsidiaries and associates compiled information regarding their jurisdiction and uploaded this onto their servers and the D & B group's central server. The servers were situated in a server farm in the United States.

As and when Indian customers placed orders with D & B India for BIRs in respect of Spanish companies, D & B India downloaded, printed and delivered the BIRs from D & B's server. D & B India was not allowed to: (1) make additional copies of the said BIRs; (2) reproduce the BIRs in any way; or (3) sell the BIRs to any customers other than the Indian customers, at whose requests the BIRs were downloaded.

The copyright in a BIR vested with the subsidiary or the associate company that had prepared the BIR. The Indian customers were only permitted to use the BIRs for their own purposes. Copyright in a BIR concerning a Spanish company was neither licensed nor assigned to D & B India or to the Indian customers. D & B India, however, was free to determine the price to be charged by it to the Indian customer. On the other hand, D & B charged a pre-determined price to D & B India. [32]

The AAR observed that D & B had neither authorised D & B India to conclude contracts on its behalf nor had D & B India exercised any such authority. [33] D & B India was carrying on its own business and it was

not controlled or instructed by D & B. D & B India obtained BIRs from D & B on its own account and charged its own price to the Indian customers. In view of this, the AAR held that D & B India could not be regarded as a dependent agent PE of D & B under 5(4) of the India-Spain Income and Capital Tax Treaty (1993).

- *Daimler Chrysler AG (272 ITR 99) (AAR)*

Daimler Chrysler AG ("DCAG"), Daimler Chrysler AG ("DCAG") had sold to the Indian subsidiary raw materials and parts and completely knocked-down kits (parts/CKD). DCAG had also directly sold completely built-up (CBU) cars to Indian customers, in respect of which the Indian subsidiary had rendered certain assistance services.

Based on the facts of the case, ITAT held that mere sale of raw materials and/or components could not give rise to a business connection and, even if it did, no income accrued to DCAG, as all of the activities relating to the sales were carried out by DCAG outside India. ITAT further held that the tax authorities could not establish that the Indian subsidiary was actively engaged in negotiating and concluding contracts on behalf of DCAG. Accordingly, the ITAT held that the limited role played by the Indian subsidiary could not give rise to DCAG's dependent agency PE in India.

- *Western Union Financial Services Inc. (104 ITD 34) (Delhi)*

Western Union, a tax resident of the United States, was engaged in the business of providing money transfer services. In order to facilitate money transfers from foreign countries to India, Western Union had entered into agency agreements with the following four types of agents in India: (1) the Department of Posts (part of the Government of India); (2) commercial banks; (3) non-banking financial companies; and (4) tour operators and

paid commission for providing money transmission services.

Based on the facts, the ITAT observed that the agents did not have authority to conclude contracts on behalf of Western Union. The ITAT rejected the arguments of the tax authorities that (a) as the agents were allowed to appoint sub-agents in India, this amounted to an authority to conclude contracts on behalf of Western Union; and (b) because the agents appointed sub-agents, the agents had habitually exercised such an authority and held that the arrangements between Western Union and the Indian agents did not give rise to a dependent agency PE.

- *Aramex International Logistics (P.) Ltd (22 Taxmann.com 74) (AAR)*

Based on the facts of the case, AAR held that the wholly owned subsidiary (AIPL) of Aramex group amounts to agency PE as

- AIPL secures orders in India wholly for the Aramex group;
- AIPL also has the right to conclude and concludes contracts for the group for its Express shipment business; and
- AIPL is an essential part of the business of the group.

2.1.3.2 Habitual exercise of the authority

The mere authority to conclude contracts on the principal's behalf is not adequate to constitute a dependent agency PE. Rather, the agent must habitually exercise such authority.

- *Salil Shah (2010-TII-199-ITAT-MUM-NRI) (Mum)*

The taxpayer was an individual who was a tax resident of Thailand. The taxpayer had invested in the shares of Indian companies. In the relevant tax year, the taxpayer had disposed of some of the shares and realised capital gains. The transactions were carried out through a stock-broking house. The taxpayer had given a general power of attorney to his father, including the power to transact in respect of the shares, etc.

The OECD or UN models do not specify that mere securing of orders constitutes an agency PE.

However, in terms of the provisions of the Act as well as several tax treaties entered by India, a dependent agent who habitually secures orders in India, wholly or almost wholly for a foreign enterprise or for foreign enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that foreign enterprise, constitutes an agency PE.

In course of the tax assessment proceedings, the tax authorities argued that the taxpayer's income from the sale of the shares was of the nature of "business income" and not capital gains. The tax authorities also argued that the power of attorney gave rise to a dependent agent PE in India in terms of article 5(4) of the India-Thailand Income Tax Treaty (1985).

In this context, the ITAT observed that the taxpayer's father had not exercised the authority, which the taxpayer had granted through the power of attorney, except for signing a few cheques. The ITAT held that the mere fact that the taxpayer had given a power of attorney to his father could not give rise to a dependent agent PE in India.

2.1.3.3 Implied authority to conclude contracts

This authority need not be explicit and could be even implied.

- *Amadeus Global Travel Distribution S.A. 113 TTJ 767 (Delhi)*
Amadeus Global Travel Distribution ("Amadeus Global"), which was tax resident in Spain, had developed a fully automatic computerised reservation system (CRS). The CRS was capable of performing comprehensive information search, communications, reservations, ticketing, distribution and related functions on a worldwide basis for the travel industry. Airlines from all over the world had entered into participating carriers agreements (PCAs) with Amadeus Global in respect of displaying their information and/or

products, etc. through the CRS. The airlines compensated Amadeus Global on the basis of "net bookings" made through the CRS.

In order to promote the CRS in India, Amadeus Global had entered into a distribution agreement with an unrelated Indian company ("Amadeus India"). Amadeus India was responsible for seeking subscribers, i.e. travel agents and entering into contracts with them in India. Amadeus Global paid Amadeus India a distribution fee per net segment processed through the CRS by a subscriber located in India.

Amadeus Global provided computers to subscribers and/or travel agents in India free, through Amadeus India to access the CRS in the travel agents' offices. The subscribers' systems were connected to Amadeus India's computer, through which the information requests were channelled to Amadeus Global's mainframe computer system in Germany.

The ITAT observed, inter alia, that

- Amadeus Global made use of the services of Amadeus India to promote the use of the CRS in India.
- Amadeus India was authorised by Amadeus Global to enter into contracts with the subscribers. Amadeus Global bound itself in respect of bookings made by the travel agents using the CRS. Accordingly, what could have been done directly by Amadeus Global was realised through the services of Amadeus India. Consequently, Amadeus India should be treated as an agent of Amadeus Global in India.
- Although Amadeus Global had denied that its arrangement with Amadeus India was an agency relationship, this was not conclusive if a de facto agency relationship existed between Amadeus India and Amadeus Global.

- Under the agreement with Amadeus Global, Amadeus India was responsible for entering into contracts with subscribers (travel agents) in India. Though Amadeus Global was not a party to the agreements between Amadeus India and the subscribers, Amadeus Global had ensured that the subscribers were authorised to use the CRS. The reservations and ticketing carried out via the CRS were honoured by the participating airlines, in respect of which the airlines compensated Amadeus Global. Accordingly, Amadeus India could be regarded as having, and having exercised, an authority to conclude contracts on behalf of Amadeus Global.

In the ITAT's view, the phrase "authority to conclude contracts on behalf of the enterprise" for the purposes of article 5(4) of the India-Spain tax treaty was not confined to an agent who had entered into contract literally in the name of the enterprise. The provision equally applied to an agent who concluded contracts that were, even though not in name of the foreign enterprise (principal), binding on the foreign enterprise.

- Galileo International (19 SOT 257) (Delhi)*
Based on fact pattern similar to Amadeus, the ITAT held that the phrase "authority to conclude contracts on behalf of the enterprise" in the India-United States tax treaty was not limited to an agent who had entered into contract literally in the name of the enterprise. This provision also applied to an agent who had concluded contracts that were binding on the enterprise, even if those contracts were not actually in the name of the enterprise.

2.2 **Habitually maintains stock of goods or merchandise:**

A dependent agent who habitually maintains

a stock of goods or merchandise from which he regularly delivers goods or merchandise is considered as dependent agent PE of the foreign enterprise.

2.2.1 **Model commentaries on habitual maintenance of stock of goods or merchandise:**

The criterion of habitual maintenance of stock of goods or merchandise is absent in OECD MC. The UNMC on this condition states as under:

If all the sales-related activities take place outside the State and only delivery, by an agent, takes place there, such a situation would not lead to a permanent establishment. However, if sales-related activities (for example, advertising or promotion) are also conducted in that State on behalf of the resident (whether or not by the enterprise itself or by its dependent agents) and have contributed to the sale of such goods or merchandise, a permanent establishment may exist.

2.2.2 **India's position on the OECD MC:**

Since the criterion of maintenance of stock is absent in the OECD MC, India has merely stated its intention to treat an agent who maintains stock of goods or merchandise from which he delivers goods or merchandise on behalf of the foreign enterprise as a dependent agent PE.

2.2.3 **Important jurisprudence on habitual maintenance of stock of goods or merchandise:**

Though there are many case laws which have analysed the issue of PE arising out of maintenance and or delivery of stock in/from warehouse etc. situated in India by the foreign enterprise, these case laws are in the context of fixed place PE and not on Agency PE.

2.3 **Habitually secures orders:**

The OECD or UN models do not specify that mere securing of orders constitutes an agency PE. However, in terms of the provisions of the Act as well as several tax treaties entered by India, a dependent agent who habitually secures orders in India, wholly or almost wholly for a foreign enterprise or for foreign enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that foreign enterprise, constitutes an agency PE.

Ordinary meaning of the term “securing orders”

As may be noted, there is not much guidance on interpretation of the term "securing orders" as used in the tax treaty. Hence, having regard to the principles of tax treaty interpretation, the term would need to be given its ordinary or natural meaning. Ordinary meaning of "securing" could mean safety and certainty of order. Securing order therefore could mean either obtaining an order or where there is a certainty to obtain an order. Therefore, those activities of a service provider or agent that result in ensuring or making certain that the foreign principal gets an order for sale or supply of goods could fall within the scope of this provision.

While it would be difficult to lay down terms which can be considered in securing orders, following illustrative activities may not be, *per se*, regarded as resulting in orders being secured:

- Carrying out market research;
- Updating the customer about the products in which the principal engaged in;
- Providing details of the personnel of the principal who could be approached for placing an order;
- Collecting the customers' requirement/specifications etc.

Meaning accorded by Klaus Vogel

It may be noted that Klaus Vogel in his **Commentary on Double Taxation Conventions** (page no. 155 - 157) appears to take a fairly narrow interpretation of the term. The author seems to suggest that mere soliciting orders could be sufficient for the agency PE rule to apply as per observations given below.

"...a permanent establishment is created by an agent who habitually secures orders wholly or almost wholly for the enterprise itself; or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it, viz. a dependent exclusive order-securing agent. These result in a considerable extension of the permanent

establishment concept, since here the employees of a foreign enterprise or persons acting on behalf of a specific enterprise or group of enterprises would already be deemed to constitute a permanent establishment merely by soliciting orders for such enterprise or group of enterprises. One condition however is that the orders involved, rather than being isolated ones, must be secured with a certain regularity... Such rules undermine the permanent establishment concept and, as a result, virtually every transaction beyond a simple shipment of goods may lead to a permanent establishment. The term 'permanent establishment' is thus completely deprived of its original contents. Fortunately, international treaty practice has at least so far refrained from adopting similar arrangements which could have undesirable effects on cross-frontier business relations."

Interpretation of the term under the India-USA tax treaty

The India USA tax treaty has similar language as far as securing of orders by a dependent agent is concerned. The protocol to the said tax treaty has given the following criteria for determining whether an agent is habitually securing orders for the foreign enterprise:

- such person frequently accepts orders for goods or merchandise on behalf of the enterprise;

In case, the agent in spite of being dependent agent undertakes activities which are preparatory or auxiliary in nature, the same may not constitute Agency PE for the foreign enterprise. The Supreme Court in the case of **Morgan Stanley and Co. Inc. (supra)**, made significant observations stating that **carrying out of back office operations by the Indian subsidiary for the US parent would be preparatory or auxiliary activities and hence, may not result in formation of PE for the US parent company engaged in front office operations.**

- substantially all of such person's sales related activities in the contracting state consist of activities for the enterprise;
- such person habitually represents to persons offering to buy goods or merchandise that acceptance of an order by such person constitutes the agreement of the enterprise to supply goods or merchandise under the terms and conditions specified in the order; and
- the enterprise takes actions that give purchasers the basis for a reasonable belief that such person has authority to bind the enterprise.

Issues arising from the different interpretation

The important question that arises is whether the interpretation of the term in India-USA tax treaty can be considered for interpreting the term used in another tax treaty/the Act or the term "securing orders" would need to be accorded its ordinary meaning.

As noted above, currently no jurisprudence has been developed on this issue. However it may be said that while at a conceptual/theoretical level one may try to make a distinction between soliciting v securing orders, in practice, it may be a line which will be difficult to draw and chances of the same blurring does exist.

2.3.1 Model commentaries on securing orders:

The criterion of securing orders is absent in OECD MC and UMMC.

2.3.2 India's position on the OECD MC:

There is no specific mention of India's intention on this aspect in the commentaries on the OECD MC.

2.3.3 Important jurisprudence on securing orders:

Delhi ITAT in the case of *Rolls Royce PLC vs DDIT* (113 TTJ 446) held that even if the Indian company being dependent agent of the foreign enterprise had no authority to conclude contracts, it still habitually secured orders for the foreign enterprise in India. Hence, as the dependent agent habitually secured orders wholly for the foreign enterprise, it constituted agency PE of the foreign enterprise.

3

Exclusion to the Agency PE – Activities are Preparatory or Auxiliary in Nature

In case, the agent in spite of being dependent agent undertakes activities which are preparatory or auxiliary in nature, the same may not constitute Agency PE for the foreign enterprise.

The Supreme Court in the case of *Morgan Stanley and Co. Inc.* (supra), made significant observations stating that carrying out of back office operations by the Indian subsidiary for the US parent would be preparatory or auxiliary activities and hence, may not result in formation of PE for the US parent company engaged in front office operations.

Further, the Delhi High Court in the case of *U.A.E. Exchange Centre Limited* (313 ITR 94) (Delhi) applied the above principle of Supreme Court and held that as the activities carried out by the Indian liaison office were in the nature of preparatory or auxiliary character, the foreign enterprise did not constitute PE in India.

In *Rolls Royce Plc*, (supra), the Delhi Bench of the Tribunal held that a foreign company availing support services from an Indian subsidiary had a PE in India. It was further held that the operations carried out in India cannot be regarded as preparatory or auxiliary functions because they were essential and significant part of the activity of the enterprise as a whole.

4

Concluding Thoughts

Dependent agent PE has emerged as one of the most complex issues in domestic tax and international tax law. In the 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 constitutes PE in India. The same would be dependent on a mixture of facts, documentation and conduct of parties involved.

Once it is concluded that agency PE exists, the next question which arises for consideration is the amount of profits to be attributed to the PE. These aspects related to attribution of profits will be covered in another article. ■

AIF Regulations: Paving the Way for a Variety of Collective Investment Devices



The Securities and Exchange Board of India (SEBI) has brought an all-in regulation that covers all private collective investment devices under one omnibus regulation. Thus, other than mutual funds (whether public or private) and public collective investment schemes, all other collective investment devices come into the fold of the new SEBI (Alternative Investment Funds) Regulations, 2012 (AIF Regulations). It is now possible to have a hedge fund, or a real estate fund, or a gold fund, or an art fund, or any other fund with any other focus, as long as the minimal conditions of the AIF Regulations are complied with. The conditions are not very stringent – broadly, there is a registration requirement, minimum corpus requirement and a minimum investment that every investor must make. If these conditions are satisfied, not only can an AIF raise capital from investors by floating units, it can also leverage itself subject to the leverage conditions specified in the AIF Regulations. Of course, it cannot raise public deposits, as the prohibition of Section 45S of the Reserve Bank of India Act, 1934 (RBI Act) will apply to all unincorporated entities. If the alternative investment fund (AIF) is a company, in any case, the provisions of Section 58A of the Companies Act, 1956 will continue to apply. There are no limits as to the extent of leverage too. This article analyses several significant aspects of the AIFs.



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Of course, Alternative Investment Funds may raise subscriptions only by private placement, but they may reach out to as many as 1,000 investors. Connecting with 1,000 investors, by a so-called private placement, provides a sufficient marketing potential for AIFs who may set up branches, franchisees, and so on, and reach out to a wide base of investors. Notably, the limit on number of investors is not for the AIF, but for a scheme of AIF – thereby allowing AIFs sufficient liberty to keep expanding the family of investors by floating multiple schemes.

The Regulations will have a variety of far reaching implications:

- (a) It will bring harmony in regulations of venture capital funds, private equity funds, etc;
- (b) It will enable several variety of funds that were not possible in the past – for example, social capital funds, or real estate funds, or hedge funds for that matter; and
- (c) It will possibly give SEBI some more space for regulating the nearly-illicit schemes where money is collected from investors with tall talks of making fanciful returns – ultimately someone packs up everything and vanishes.

The Regulations are generally speaking very flexible, and amount to a very modest regulation. The AIF Regulations only lay down the standards as to how the corpus of the AIF (being different for different categories of AIF) shall be invested. The AIF Regulations do not monitor the investments made by the AIF such as monitoring the selection criteria of investee companies, time of investment, pricing, etc. For example:

- (a) No basis for determination of price per unit of an AIF has been set;
- (b) No eligibility criteria for an investor in an AIF has been laid down, i.e. whether it is impertinent for the investor to be a high net worth person, even though practically that may be the case;
- (c) No requirement to register the manager of an AIF. An investment advisor is not a mandatory requirement.

Defining Features of an AIF

Note that the stance of the AIF Regulations is regulatory and prohibitive – no AIF can carry on the business of an AIF in India without being registered with SEBI. Therefore, while the AIF Regulations bring legitimacy and regulatory approval for collective investment devices, at the same time, they proscribe any form of an unregistered collective investment vehicle. Therefore, it becomes important to understand what exactly the scope of coverage of the AIF Regulations is.

While AIFs are defined in Regulation 2(1)(b)¹ of the AIF Regulations, it is unclear on the characteristics which make a vehicle an AIF. However, from the language of the AIF Regulations, and with a bit of

intuition, the following defining features of an AIF may be deduced:

- (a) It is an investment vehicle. The idea of the vehicle should be investment of money and not ownership of property, carrying on of a business or activity other than investment activity, such as charity, public welfare schemes, etc. The essential meaning of “investment” is outlay of money with an objective of generating a rate of return, other than by carrying on a substantive activity. For example, buying land, carrying out construction thereon and then selling apartments is not an investment activity, but buying a property and holding it for the purpose of capital appreciation is an investment activity. Lot of contrived confusions may arise as to whether NGOs, social welfare funds, etc. are covered by the AIF Regulations. We take up a few:
 - (i) Two or more persons pool money to own a property. Their purpose is not investment of money – that is, realise returns from the property, but to beneficially enjoy the property. This is not an AIF.
 - (ii) Two or more persons pool money to run a business, other than investment business. This is certainly not covered by the AIF Regulations.
 - (iii) A trust set up in India receives contributions either domestically or from non-residents, to be spent on charity, social welfare schemes, etc. This is certainly not covered by the AIF Regulations.
- (b) There is segregation between ownership of money and management of money. The essential idea of the AIF Regulations is investors handing over their money to be managed by a fund manager. If the beneficiaries are managing their own money, even though under a collective banner, there is no AIF.

A defining feature of an AIF is that it is an investment vehicle. The idea of the vehicle should be investment of money and not ownership of property, carrying on of a business or activity other than investment activity, such as charity, public welfare schemes, etc.

¹ The Regulation 2(1) (b) of the AIF Regulations define an AIF as any investment pooling vehicle (established or incorporated in form of a trust, or a company, or a limited liability partnership, or a body corporate) which collects investment from domestic or foreign investors and invests such investments in accordance with a pre-determined investment policy for the investor's benefit.

An AIF is a collective vehicle. Central to the concept of AIFs under the AIF Regulations is the “pooling” of money. That is to say, once money is commingled into a common fund, the assets held by the fund cannot be identified against any particular investor. In other words, it is a commingled pool of money that collectively makes investment.

- (c) The contributions are pooled not in form of ownership capital. For example, every company does essentially pool shareholders’ funds. But every company cannot be called an AIF. So, a company will become an AIF only where the company pools money from persons other than its own shareholders. Even money pooled by issue of bonds or debentures cannot be said to be pooling of money. In the same manner, if an LLP invites capital from its own partners, such pooling of money is not covered by the AIF Regulations. Sometimes, there may be questions about whether issue of bonds by a trust may result into a collective investment device – the *prima facie* answer should be no, as the returns on the bonds are not based on performance of the pooled fund. The answer, however, may be different if the instrument is labelled as a bond, but it effectively transfers the returns generated from the pooled funds by linking the bond returns to pool returns.
- (d) It is a managed vehicle. The AIF Regulations, unfortunately, are very clear on this issue, but this may be a very contentious point. The idea of collective investment devices is that a group of persons provide funds to be “managed” by a manager. The meaning of “managing” is that the manager uses discretion in allocating the funds into investments, and often makes investment decisions, disinvestment decisions, and so on. Whether or not the fund is actively managed, and whether the fund makes a schematic investment or goes by a formula are different questions, but the idea of “managing” is an element of discretion on the manager. A merely co-ownership device or non-discretionary passive investments will not be said to be AIFs under the AIF Regulations.
- (e) It is a collective vehicle. Central to the concept of AIFs under the AIF Regulations is the “pooling” of money. That is to say, once money is commingled into a common fund, the assets held by the fund cannot be identified against any particular investor. In other words, it is a commingled pool of money that collectively makes investment.
- (f) It is a private vehicle. Post these AIF Regulations, one understands that, that borderline of distinction between collective investment schemes covered by the SEBI (Collective Investment Schemes) Regulations, 1999, and the AIF Regulations will be that the former may invite public subscriptions, while the latter may only privately source their money. The number of investors may be large – as many as 1000. It is a curious question as to what is private placement. In the history of corporate India, the practice of inviting subscriptions from thousands of investors, and still calling it private placement, used to exist several years ago – which prompted a proviso to be inserted in Section 67 (2) of the Companies Act to provide that subscriptions from more than 50 persons will be deemed to be a public offer. The generic meaning of private placement will be taken on the same lines as in Section 67 of the Companies Act – something that is not calculated to result into an invitation to subscribe being available to a person other than the one to whom the issuer makes. That is, as long as the AIF makes an offer, and the offer may be accepted only by the person to whom it is made, it is a private placement. Obviously, no public advertisement, circular or marketing literature may be circulated for a private placement.
- (g) It must have a certain constitutional form – that is, a company, body corporate, LLP, or trust. The

Category I AIFs are those that invest in start-ups or early stage ventures, SMEs or infrastructure or sectors or areas which are considered socially and economically relevant for the country. The idea clearly seems to be that the Category I AIF shall have a developmental focus rather than pure commercial motive.

definition is not correctly worded – the way the definition reads, it amounts to saying that an AIF is an AIF only if it is a company, a body corporate, an LLP or a trust. For instance, if an individual raises funds to be pooled and collectively managed, it is possible to contend that this is not covered by the AIF Regulations. Such a view defeats the purpose of the AIF Regulations, but unfortunately, this is how the language is worded. Another significant point is the erroneous use of language “established in form of a trust”. Securities regulations have consistently been misunderstanding the notion of a trust – a trust is not “established”. It is quite common for people to have a wrong notion that a trust is formed by signing a trust deed or by registering a trust. Trust is not a form of organisation – hence, question of establishing a trust does not arise at all. Trust is the name of relation between a fiduciary and a beneficiary. If property is transferred to a fiduciary, to be held for the benefit of beneficiaries, that holding of property with an obligation attached to it is what is called a trust. In that sense, every AIF, irrespective of whether it is a company, or LLP, or any other body corporate, is a trust – since in addition to ownership capital, such entity will pool money which it holds on behalf of the unit holders.

- (h) There is no *de minimis* exemption based on the number of investors. Notably, even the US Dodd Frank Act provides exemptions for vehicles that pool money from small number of investors - 14 in the case of Dodd Frank. The AIF Regulations do not contain any exemption – so, technically, even if money is held on behalf of two or more persons, to be invested, there will be an AIF. Of course, money held on behalf of a single investor cannot be said to be an AIF at all, as there is no pooling there. This, however, may be considered as a restriction to carry on an activity of an AIF without registering the AIF with SEBI.
- (i) There is no *de minimis* exemption based on the size of investment. In other words, irrespective of how small a fund is, it will still incur the prohibition of the AIF Regulations. Note that the AIF Regulations lay down minimum sizes – ₹20 crore for each scheme. But that does not mean where the size of the fund is less than ₹20 crore, it does not require registration².

Figure 1 shows the decision-criteria in terms of a flow-chart as to whether a vehicle will be taken as an AIF. Note that if the vehicle in question is taken to be an AIF, it has to mandatorily register with SEBI and has to comply with all the Regulations.

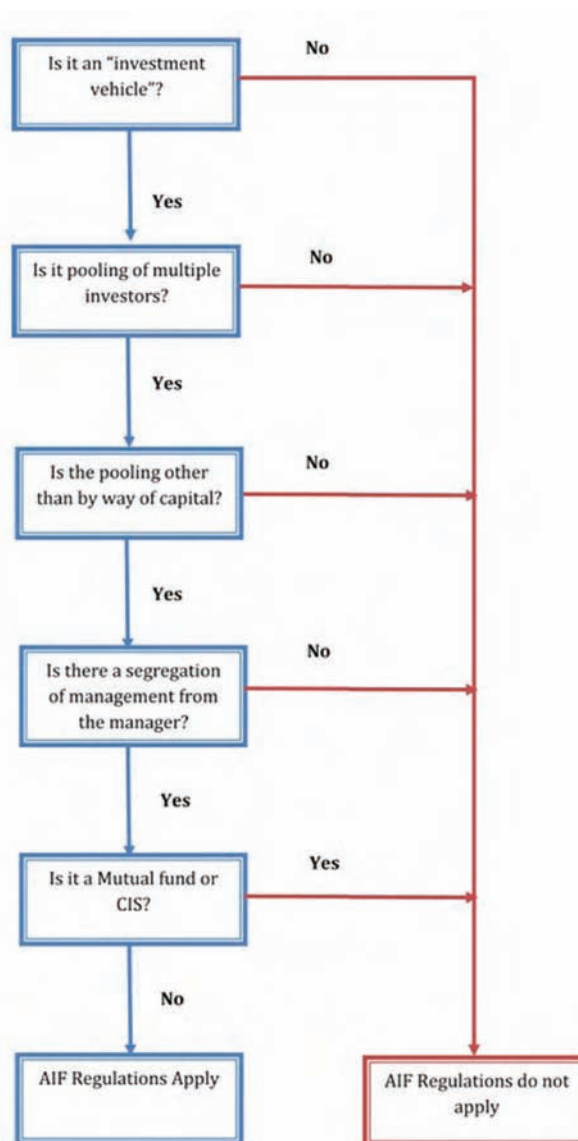


Figure 1: Decision criteria for AIFs

The Three Categories of AIFs

The theme that runs across the AIF Regulations is the three different types of AIFs. This seems to be quite a

² Regulation 3 of the AIF Regulations makes it clear that no fund can privately pool investment unless registered as an AIF under the AIF Regulation. Regulation 3 reads as “no entity or person shall act as an Alternative Investment Fund unless it has obtained a certificate of registration from the Board:.....”.

novel and commendable idea of a regulation trying not to paint everything with a single brush.

Category I AIFs are those that invest in start-ups or early stage ventures, SMEs or infrastructure or sectors or areas which are considered socially and economically relevant for the country. The idea clearly seems to be that the Category I AIF shall have a developmental focus rather than pure commercial motive. These funds will be recognised by the investment category – there are, presently, four categories listed in the AIF Regulations and there is a scope for the government or SEBI notifying more categories. The four strategies listed are – (a) venture capital funds, (b) social venture funds, (c) SME funds, and (d) infrastructure funds. These funds can borrow only for temporary funding requirements.

Category III AIFs are those that invest in derivatives, complex or structured products and, without limitation, employ leverage – that is, apart from investors' unit capital, these funds may borrow other than for temporary liquidity purposes. As funds intending to earn higher returns by leveraging

the investors' capital may like to keep the liberty of borrowing. Typically, real estate funds, venture capital funds (not falling under Category I), hedge funds, etc. may opt for a Category III registration. It may, however, be noted that the regulatory restrictions and conditions for Category III AIFs are the most stringent. Therefore, where leverage is not a concern, such funds can conveniently opt for a Category II registration.

Category II AIFs consist of all other AIFs, not covered under Category I and Category III. *Category II* cannot have either *economic leverage* or actual leverage. Economic leverage comes by exposure on derivatives – where the upfront investment required may only be a fraction of the actual underlying exposure. Thus, Category II funds cannot engage in derivatives investments. These funds can borrow only for temporary funding requirements.

Pass Through Tax Treatment

An innocuous language in the Regulations may actually be containing something that may have far reaching consequences. Explanation below Reg 3 (4) (a) says that only Category I funds shall be treated as venture capital funds for the purpose of Section 10 (23FB) of the Income-tax Act, 1961. It may be recalled that vide Finance Act 2012, the list of sectors in which venture capital funds may make investments, listed in Section 10 (23FB), to get a pass through tax treatment, was abolished, such that the returns of any venture capital fund were made tax free in the hands of the fund.

The Regulations now seemingly curtail that benefit and limit it only to Category I AIFs. This is almost like amending the Income-tax Act through the AIF Regulations, which, actually, in the scheme of delegated legislation in India, is simply not permitted. However, this point will certainly need clarity from SEBI.

Where Can AIFs Raise Money From?

The Regulations seem to provide that the AIFs may raise capital from domestic or international investors. This, however, has to depend on the provisions of the foreign direct investment (FDI) policy of the Government. It is expected that the FDI policy will permit FDI into Category I AIFs, and to a certain extent with sectoral restrictions (such as no foreign investment in real estate sector subject to exceptions, etc.), in Category II AIFs as well.

In the definition of "units", the Regulations make a reference to partnership interest. A partnership interest, for example, in an LLP, cannot be taken to be a unit,



Explanation below Reg 3 (4) (a) says that only Category I funds shall be treated as venture capital funds for the purpose of Section 10 (23FB) of the Income-tax Act, 1961. It may be recalled that vide Finance Act 2012, the list of sectors in which venture capital funds may make investments, listed in Section 10 (23FB), to get a pass through tax treatment, was abolished, such that the returns of any venture capital fund were made tax free in the hands of the fund.

How Will Hedge Funds Work?

Therefore it would be easy to envisage any of the popular hedge fund strategies – equities long and short, macro, event-based, or special situations, or arbitrage, etc. There is no bar on performance-based fees – another feature of hedge funds. In fact, investors may be given to participate in the OTC derivatives market also through AIFs.

In the UK, the Financial Services Authority, though have no set regulations, issues circulars and guidelines from time to time for regulation of hedge funds.

However, in India until now, hedge funds were completely unregulated. The AIF Regulations at least seem to bring the same under the eyes of the regulators with SEBI as a watchdog. Once brought within the purview of the AIF Regulations, it is possible that the threshold of regulations of hedge funds rises.

How Will Real Estate Funds Work?

One of the biggest needs of the hour is REITs or other real estate funds in India. There are real estate mutual funds in the country, but there no funds that invest in income-earning properties or those that finance construction of properties.

A key element of the REIT structure is tax transparency of the fund. Under Indian tax laws, there are no specific pass-through rules. In fact, a combined reading of Section 10(23FB) of the Income-tax Act, 1961 with its Section 115O implies that pass-through status will not be given to funds in general. In absence of pass-through status, an AIFs is likely to be taxed at either corporate level, or in representative capacity – either of which may not be tax efficient. Barring

taxation issues, which are, though, critical, it is now possible to have real estate funds also in operation.

A draft of SEBI (Real Estate Investment Trust), 2008 has been pending before SEBI which proposed to regulate REITs in India. However, it may be interesting to see if SEBI separates a real estate fund (that typically will function as a REIT) from the purview of the AIF Regulations or regulates a real estate fund and a REIT separately.

Will Investors be Better Protected?

India as a nation has been having plenty of collective investment schemes in different shades of grey – they often take investors for a ride. There have been schemes for joint-ownership of plantations, land, animals, gold, and so on. Sometimes, entities have been issuing preference shares, debentures or similar instruments without realising the regulatory implications.

Question is, will the AIF Regulations make it any better from investors' viewpoint? The answer lies in implementation. We have not had the problem of lack of law in the country. It is essentially implementation. Quite often, regulators are unclear as to who would regulate a particular activity. Hence, while frauds mushroom under the eye of the regulators, they keep watching as if helpless. One good thing with the AIF Regulations will be a clarity as to who will regulate – so it is SEBI now. ■

³ See Sections 401 to 416 of the Dodd Frank Act.

ICAI's MoUs with Various Indian Varsities



ICAI - Indira Gandhi National Open University Joint Education Programme



The Institute of Chartered Accountants of India (ICAI) and Indira Gandhi National Open University (IGNOU) entered into Memorandum of Understanding (MOU) to offer B.Com with major in Accountancy and Finance and M.Com with specialisation in Finance and Taxation for all those students who have registered for the Chartered Accountancy course and Members of the Institute.

1. Bachelor of Commerce with Major in Accountancy and Finance (B.Com A&F)

Bachelor of Commerce with Major in Accountancy and Finance is designed with an objective to develop skills and competencies of the students in the field of Accountancy and Finance. This programme comprises of 96 credits, out of which 32 credits are from IGNOU and 64 credits are part of Chartered Accountancy Course (First Stage). Once a student passes Chartered Accountancy First stage, automatic credit transfer is given in this B.Com (A&F) programme for all of those Chartered Accountancy First stage courses.

Course Structure

PART A: Courses of Common Proficiency Test (CPT) offered by ICAI Courses already passed by students as part of CPT or PE-I or Foundation and automatic credit transfer given to all the students admitted in B.Com (A & F).

1. Fundamentals of Accounting
2. Mercantile law
3. General Economics
4. Quantitative Aptitude

PART B: Courses offered by IGNOU. To be studied by all students

5. Foundation Course in English 1
- Foundation Course in English 2

OR

- Foundation Course in Hindi 1
- Foundation Course in Hindi 2

6. English for Practical Purposes

OR

- Prayojan Mulak Hindi

7. Foundation Course in Humanities and Social Sciences

OR

- Foundation Course in Science and Technology

PART B: Courses offered by IGNOU. To be studied by all students

8. Business Environment
- Export Procedures and Documentation

PART C: Courses of Professional Competence Course (PCC) offered by ICAI. These Courses can be passed as part of Chartered Accountancy First Stage and students get credit transfer in this B.Com (A & F) Programme.

9. Advanced Accounting
10. Auditing and Assurance
11. Law, Ethics & Communication
12. Cost Accounting & Financial Management
13. Taxation
14. Information Technology and Strategic Management

Eligibility for Admission

Students who are currently pursuing Chartered Accountancy First Stage (IPCC/PCC) as well as those who have already completed (IPCC/PCC/PEII/Intermediate) of Chartered Accountancy are eligible to seek admission to this programme. Similarly, all those students who have passed Chartered Accountancy under the earlier schemes are also allowed to join this programme.

Fee Structure

₹4,800/-.

Duration of the Programme

Minimum period is three years and a maximum period is six years.

Note

For the students who have already completed the Chartered Accountancy First Stage (Intermediate/PE-II/PCC/IPCC), the minimum period of study shall be proportionately reduced. Thus, such students can complete this programme within a minimum period of one year and a maximum period of four years.

2. Master of Commerce in Finance and Taxation M.Com (F & T)

Master of Commerce in Finance and Taxation is designed with an objective of developing skills and competencies of the students in the field of Accountancy, Finance and Taxation. This M.Com (F & T) programme comprises 13 courses, out of which 5 courses are offered by IGNOU and remaining 8 courses are part of Chartered Accountancy Final Course. He/she receives credit transfer for those eight courses in this programme. This scheme facilitates the student to obtain dual degree simultaneously. When a student passes Chartered Accountancy final, he/she becomes the member of Chartered Accountancy and at the same time he/she is also qualified to receive this M.Com degree by completing only five more courses from IGNOU.

Course Structure

PART A: Courses offered by IGNOU	
1.	Organisation Theory and Behaviour
2.	Research Methodology and Statistical Analysis
3.	Business Environment
4.	Marketing Management
5.	International Business Finance
PART B: Courses to be studied as part of Chartered Accountancy Final Stage offered by ICAI	
6.	Financial Reporting
7.	Strategic Financial Management
8.	Advanced Auditing and Professional Ethics
9.	Corporate and Allied Laws

PART B: Courses to be studied as part of Chartered Accountancy Final Stage offered by ICAI	
(Section A – Company Law; Section B- Allied Laws)	
10.	Advanced Management Accounting
11.	Information Systems Control and Audit
12.	Direct Tax Laws
13.	Indirect Tax Laws
(Section A – Central Excise; Section B – Service Tax & VAT; Section C- Customs)	

Eligibility for Admission

Students who are currently pursuing Chartered Accountancy Final Course as well as those who have already completed Chartered Accountancy are eligible to seek admission to this programme. Similarly, those students who have passed Chartered Accountancy under the earlier schemes are also allowed to join this programme.

Fee Structure

₹6,000.

Duration of the Programme

Minimum period is two years and a maximum period is five years.

Note:

For the students who have already completed the Chartered Accountancy Final Stage, the minimum period of study shall be proportionately reduced. Thus, such students can complete this programme within a minimum period of one year and a maximum period of four years. ■



ICAI - Bharathiar University Joint Education Programme



Bharathiar University (BU) & The Institute of Chartered Accountants of India (ICAI) entered into a Memorandum of Understanding to offer Undergraduate & Postgraduate courses viz B.B.A., B.Com, M.Com & M.B.A for all those students who have registered for the Chartered Accountancy course and Members of the Institute.

Course structure

Course – B.Com

Duration – Three years

Course Fees – ₹18,000/- (Three Installments)

Eligibility

- A pass at the entry level examination of the Chartered Accountancy course of ICAI (or)
- A pass at the Intermediate stage (IPCC/PCC/

PEII) of Chartered Accountancy Course of the ICAI.

Subjects

Exempted Papers	Non-Exempted Papers
• Principles of Accountancy	• Business Communication
• Mercantile Law	• Principles of Management
• Business Statistics	• Marketing Management
• General Economics	
• Financial Accounting	

Exempted Papers	Non-Exempted Papers
• Cost Accounting	
• Financial Management	
• Corporate Accounting	
• Auditing	
• Taxation	
• Information Technology	
• Training/Project	

Course – B.B.A.

Duration – Three years

Course Fees – ₹ 15, 000/- (Two installments)

Eligibility

- A pass at the entry level examination of the Chartered Accountancy course of ICAI (or)
- A pass at the Intermediate stage (IPCC/PCC/PEII) of Chartered Accountancy Course of the ICAI.

Subjects

Exempted Papers	Non-Exempted Papers
• Principles of Accountancy	• Business Communication
• Mercantile Law	• Management Process & Organisational Behaviour
• General Economics	• Human Resource Management
• Business Statistics & Mathematics	• Marketing Management
• Auditing	• Business Environment
• Financial Accounting	
• Company Law	
• Cost Accounting	
• Financial Management	
• Taxation	

Course – M.Com.

Duration – Two years

Course Fees – ₹ 15, 000/- (Two Installments)

Eligibility

- a. A graduate from a recognised university or a pass in the Final examination of the CA course of the ICAI. (or)
- b. A successful completion of BBA/B.Com through ICAI, offered by the Bharathiar University. (or)

- c. CA. students undergoing articleship and who have successfully completed graduation.

Subjects

Exempted Papers	Non-Exempted Papers
• Financial Management	• Marketing Management
• Corporate Accounting	• Human Resource Management
• Auditing	• Business Environment
• Company Law	
• Cost & Management Accounting	
• Information Technology in Business	
• Taxation	

Course – M.B.A.

Duration – Two years

Course Fees – ₹ 35, 000/- (Two Installments)

Eligibility

- a. A graduate from a recognised university or a pass in the Final examination of the ICAI. (or)
- b. Successful completion of BBA/B.Com through ICAI, offered by the Bharathiar University. (or)
- c. CA students undergoing articleship and who have successfully completed graduation.

Subjects

Exempted Papers	Non-Exempted Papers
• Financial Accounting	• Principles of Management & Organisational Behaviour
• Cost Accounting	• Marketing Management
• Corporate Accounting	• Human Resource Management
• Auditing	• Business Environment
• Business Law	• Project Report
• Company Law	
• Taxation	
• Financial Management	
• Management Accounting	
• Information Technology	

For further details visit the Official Website of the Respective University or follow the “students” icon on the Homepage of ICAI website www.icai.org.

To be contd.....

RBI Bats for Producers' Price Index

Reserve Bank of India has said the policymakers should develop a producers' price index, or PPI, which measures the selling price of goods and service to make a better assessment of inflation and, in turn, help monetary policy management. The Governor of RBI D Subbarao, while highlighting the flaws in the current wholesale price index, or WPI, which is more popular measure and interprets inflation, has made out a strong case for looking at new measures such as the PPI. "In its present structure, the WPI does not capture the price movement of services... it is a hybrid of consumer and producer price quotes," said Subbarao at a function to mark the sixth national Statistics Day at RBI headquarters in Mumbai.

(Source: <http://www.economictimes.com>)

e-Filing of Tax Returns a Must for Those Earning over ₹10 lakh a Year

People will have to file you income-tax returns electronically if their earnings exceed ₹10 lakh in a financial year. Also, a resident individual or a Hindu Undivided Family will now have to file returns electronically if any assets (including financial interest in any entity) are held outside India. These are latest set of mandatory e-filing requirements put out by the CBDT.

(Source: <http://www.business-standard.com/india/>)

Rail Travel, Transport Escape Service Tax, Yet Again

Travel and transportation by rail will be free from service tax for another three months at least. The negative list regime came into effect from 1st July, but Dr. Manmohan Singh, who now holds the Finance portfolio also – refrained from adding an effected 3.6% servicetaxlevyonrailtransportofsuchcorecommodities as coal, cement and steel. Dr. Singh also gave the middle and upper middle class segments a breather by not levying the service tax on air-conditioned rail travel. Dr. Singh putting off the levy is the eighth deferment of service tax levy on rail transportation since 2009. The Government would have mopped up ₹3,000 crore from the service tax levy on the freight segment and around ₹300 crore from passenger side.

(Source: <http://www.thehindubusinessline.com/>)

Customs Department Unveils New Website

The customs department has started a website to provide an easy access

to information of duty and regulatory requirements for import. The website is based on "Interactive Customs Tariff" application as part of the ongoing trade facilitative measures. The purpose of the application is to enhance public access to information on duty payment and other regulatory requirements for clearance of goods, when imported into India. The application is designed to show various customs and other applicable duties. It helps the importers in calculation of actual effective duty applicable by taking into account the various exemption notifications. It also provides alerts related to anti-dumping duties and MRP based abatements and displays Compulsory Compliance Requirements (CCRs). India has also developed an Authorized Economic Operator (AEO) Programme consistent with World Customs Organisation (WCO) SAFE Framework of Standards. The trade supply chain has become extremely complicated and vulnerable to external threats which led to an urgent need to have a system that ensures end to end supply chain security while ensuring faster release of goods.

(Source: Press Information Bureau)

Income Tax Department Bid to Reach Out to Youths

The Income Tax (I-T) department is making conscious efforts to shed its image of an 'inspector and tax collector' to a more friendly service provider and facilitator of tax related issues. In a bid for image makeover the 150-year-old department has initiated steps to reach out to the youth- especially the students from the prestigious schools and colleges- and interact with them as confidence building measures. The Chief Commissioner of Income Tax, Indore Surendra Mishra said, "The department has in its action plan for the current fiscal, has given a mandate to the field officers to interact with the younger generation once in a quarter. The motive for the activity was three-fold- to motivate, inform, win confidence, guide, educate and interact with the younger generations and make them aware about tax laws and working of the department.

Secondly, we are also looking towards confidence building so that they know the process and are not shy to meet the officers. Above all, the idea was to develop bright enlightened tax payers." He said that department had undertaken a series of interactions with the students of the Indian Institute of Management, Indore (IMM-I), prominent business and management schools, aspiring law students and Chartered Accountants (CAs) and top schools.

(Source: www.timesofindia.com)

IASB Looks to Amend IFRS for SMEs

The International Accounting Standards Board has issued a request for information seeking suggestions on what amendments need to be made to International Financial Reporting Standards for Small and Medium-sized Entities. The objective is to seek public views on whether there is a need to make any amendments to the IFRS for SMEs and, if so, what amendments should be made. The deadline for responses is 30th November, 2012. When the IASB originally issued IFRS for SMEs in July 2009, the board said it would assess the first two years' experience that entities have had in implementing the stripped-down set of standards. The IASB also said that, after the initial review, it expected to consider amendments to IFRS for SMEs approximately once every three years. The IASB's SME Implementation Group worked closely with IASB staff to develop the request for information. The SMEIG approved and submitted its final draft to the IASB for review with a recommendation for issuing the Request for Information. The IASB plans to publish its final revisions to IFRS for SMEs in either the second half of 2013 or the first half of 2014, with a target date of 2015 for the effective date of any revisions.

(Source: <http://www.accountingtoday.com/>)

IAASB Sets Three-Year Strategy

The International Auditing and Assurance Standards Board have released its strategy through 2014, with the main goal of enhancing auditor reporting standards. Other priorities in the IAASB's Strategy and Work Program 2012–2014 include supporting global financial stability; enhancing the relevance and quality of assurance and related services in today's world; and facilitating the adoption and implementation of the IAASB's standards. The Board which operates under the auspices of the International Federation of Accountants, also plans to continue work on other key initiatives related to audit quality, disclosures, review engagements, and assurance engagements, including assurance on greenhouse gas statements. In addition, the IAASB said it would continue to monitor the adoption and implementation of International Standards on Auditing globally and focus on standards and initiatives relevant to small and mid-sized entities. It will also explore appropriate actions stemming from the global financial crisis relating to banking and fair values.

(Source: <http://www.accountingtoday.com/news/>)

Internal Controls Improved Since Sarbanes-Oxley

A decade since the enactment of the Sarbanes-Oxley

Act of 2002, the majority of executives and other professionals agree in a new survey that internal control over financial reporting structure in their organisations has significantly or moderately improved since compliance with the legislation became a requirement. The top benefit of SOX, according to the survey respondents, is "enhanced understanding of control design and control operating effectiveness" (44%), followed closely by "internal audit's ability to perform more traditional audits" (43%). Sarbanes-Oxley has had its share of controversy in the past, but nearly 70% of respondents as per the survey reported that the internal control over financial reporting structure in their organisations has improved since compliance with Sarbanes-Oxley Section 404 became a requirement. The survey found that many companies are still focused on reducing the number of key controls, streamlining the total population of controls, narrowing the overall assessment scope, decreasing the number of manual controls and increasing the number of automated controls. Companies, regardless of their size or year of compliance, plan to maintain their current level of spending on compliance in the upcoming fiscal year – a possible indicator that organizations have the compliance process well-managed and under control. A majority of large organisations 9 (73%) leverage their SOX compliance efforts to drive continuous improvement in business processes that affect financial reporting, and a significant majority of organisations that are beyond their fourth year of compliance (69%) do so.

(Source: <http://www.accountingtoday.com/>)

Accounting Salaries Remain Stable as per a New Salary Survey by The Institute of Management Accountants

While the average reported salary of management accountants declined slightly last year, their average total compensation with bonuses increased, according to a new salary survey from the Institute of Management Accountants.

Consistent with prior years, the survey reveals that holding one or more professional certifications, such as the CMA or the CPA, has a positive impact on earning power. Certification especially impacted younger professionals in the 19-to-29-year-old age group, who earned more in salary and in total compensation than their noncertified peers. IMA's Annual Salary Survey contains data segmented by compensation and degrees, organisation structure, industry, household income, geography, and management level.

(Source: <http://www.accountingtoday.com/news/>)

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals/Newspapers received during June - July 2012 for the reference of Faculty/Students & Members of the Institute.

1 ACCOUNTING

Capital Allocation Effects of Financial Reporting Regulation and Enforcement by Roland Konigsgruber. *European Accounting Review*, Vol.21/2, 2012, pp.283-296.

Do Accounting Standards Matter to Financial Analysts? An Empirical Analysis of the Effect of Cross-listing from Different Accounting Standards Regimes on Analyst Following and Forecast Error by Abed Al-Nasser Abdallah, etc. *The International Journal of Accounting*, Vol.47, 2012, pp.168-197.

Economic Consequences of Accounting Enforcement Reforms: The Case of Germany by Jorgen Ernstberger, etc. *European Accounting Review*, Vol.21/2, 2012, pp.217-251.

Enforcement of Accounting Standards in Europe: Capital-Market-Based Evidence for the two-tier Mechanism in Germany by Jorg-Markus Hitz, etc. *European Accounting Review*, Vol.21/2, 2012, pp.253-281.

2 AUDITING

The Audit Reporting Debate: Seemingly Intractable Problems and Feasible Solutions by Ann Vanstraelen etc. *European Accounting Review*, Vol.21/2, 2012, pp. 193-215.

Client Importance & Audit Partner Independence by wuchun Chi etc. *Journal of Account. Public Policy*, Vol.31, 2012, pp. 320-336.

The Effect of Audit Committee Characteristics on Intellectual Capital Disclosure by Jing Li. *The British Accounting Review*, Vol.44, 2012, pp. 98-110.

Effective Cost Audit by V.R. Kedia & Mihir P. Turakhia. *The Management Accountant*, June 2012, pp.691-92 + 694.

3 ECONOMICS

An Approach to Twelfth Five Year Plan: The UGCs Roadmap by K. Viyyanna Rao. *University News*, July 02-08, 2012, pp. 1-3 +7.

FDI Companies in India – A Review by Jeelan Basha V. *The Management Accountant*, June 2012, pp.665-667.

4 EDUCATION

Educational Social Responsibility: A catalytic Role to Social Transformation by L. N. Bhagat. *University News*, July 02-08, 2012, pp. 4-7.

Internationalisation of Higher Education: The Indian Scenario by K. B. Powar. *University News*, June 18-24, pp. 1-6.

5 INVESTMENT

Amendments to the Equity Listing Agreement – Formats for Disclosure of Financial Results. *Company Law Journal*, vol.2, 2012, pp.66-73.

The Dangers of Financial Derivatives by Christopher Esposito. *Internal Auditor*, June 2012, pp.60-65.

6 MANAGEMENT

Enterprises Governance – Best Practices in SAFA region by Khawaja Amjad Saeed. *The Management Accountant*, June 2012, pp.676-684.

Ethics & Profit Go Together: A Study with CSR Initiatives of Tata Steel Ltd. By Rahul Nath. *The Management Accountant*, June 2012, pp.685-690.

Managing Risks: A New Framework by R.S. Kaplan & Anette Mikes. *Harvard Business Review*, June 2012, pp.48-53.

7 TAXATION & FINANCE

Are Multinational Corporate Tax Rules as Important as Tax Rates ? by N. Lee & Charles Swenson. *The International Journal of Accounting*, Vol.47, 2012, pp. 155-167.

In Pursuit of Knowledge: Levy of VAT or Service Tax on Transfer of Right to use by J.S. Uppal. *AIFTP Journal*, June 2012, pp.30-37.

Tax Planning, Corporate Governance & Equity Value by N.S.A. Wahab & Kevin Holland. *The British Accounting Review*, Vol.44, 2012, pp. 111-124. ■

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

Elections to the Twenty Second Council and Twenty First Regional Councils

4th July, 2012

The next elections to the Council and the Regional Councils of the Institute of Chartered Accountants of India are scheduled to be held on 7th and 8th December, 2012 in cities having more than 2500 members and on 8th December, 2012 at all other places in terms of the provisions of Rule 21 of the Chartered Accountants (Election to the Council) Rules, 2006 specified by the Central Government. According to the provisions of clause (3) of Schedule 2 to Rule 6 of the aforesaid Rules, a notice is required to be published giving the voters in cities, having more than one polling booth located at different addresses, an opportunity

to exercise their option to vote at a particular polling booth within that city.

Accordingly, an Announcement for Option for a particular Polling booth in cities/towns like Mumbai, Kolkata and New Delhi having more than one polling booth located at different addresses has been hosted on the Website of the Institute. For full details kindly visit the Institute's Website www.icaai.org.

(T. Karthikeyan)
Secretary and Returning Officer

Examination: Notification - CPT



TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA
NOTIFICATION

4th July, 2012

No.13-CA (EXAM)/CPT/ December/2012: In pursuance of Regulation 22 of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify that the **Common Proficiency Test (Paper- Pencil Mode)** will be held on Sunday, **16th December, 2012** in two sessions as below, at the following centres provided that sufficient number of candidates offer themselves

to appear from each centre.

[This Common Proficiency Test will be conducted as per provisions of Regulation 25 D (3) of the Chartered Accountants Regulations, 1988 and the syllabus as published in the pages 291-293 of the Journal 'The Chartered Accountant' August 2006 issue and pages 12-13 of Chartered Accountants Students' Newsletter August 2006 issue.]

First Session (i.e. Morning Session)	10.30 AM to 12.30 PM (IST) Section - A Fundamentals of Accounting Section - B Mercantile Laws
Second Session (i.e. Afternoon Session)	2.00 PM to 4.00 PM (IST) Section - C General Economics Section - D Quantitative Aptitude

EXAMINATION CENTRES (IN INDIA):

1	AGRA	39	DHANBAD	77	LUCKNOW
2	AHMEDABAD	40	DUNDLOD	78	LUDHIANA
3	AHMEDNAGAR	41	DURG	79	MADURAI
4	AJMER	42	ERNAKULAM	80	MANGALORE
5	AKOLA	43	ERODE	81	MATHURA
6	ALAPPUZHA	44	FARIDABAD	82	MEERUT
7	ALIGARH	45	GANDHIDHAM	83	MORADABAD
8	ALLAHABAD	46	GHAZIABAD	84	MUMBAI
9	ALWAR	47	GOA	85	MUZAFFARNAGAR
10	AMBALA	48	GORAKHPUR	86	MYSORE
11	AMRAVATI	49	GUNTUR	87	NAGPUR
12	AMRITSAR	50	GURGAON	88	NANDED
13	ANAND	51	GUWAHATI	89	NASHIK
14	ASANSOL	52	GWALIOR	90	NELLORE
15	AURANGABAD	53	HISAR	91	NOIDA
16	BANGALORE	54	HUBLI	92	PALGHAT
17	BAREILLY	55	HYDERABAD	93	PALI MARWAR
18	BATHINDA	56	INDORE	94	PANIPAT
19	BEAWAR	57	JABALPUR	95	PANVEL
20	BELGAUM	58	JAIPUR	96	PATNA
21	BELLARY	59	JALANDHAR	97	PATIALA
22	BERHAMPORE	60	JALGAON	98	PIMPRI-CHINCHWAD
23	BHAGALPUR	61	JAMMU	99	PONDICHERRY
24	BHARAUCH	62	JAMNAGAR	100	PUNE
25	BHAVNAGAR	63	JAMSHEDPUR	101	RAIPUR
26	BHIWANI	64	JODHPUR	102	RAJAMAHENDRAVARAM
27	BHILWARA	65	KAKINADA	103	RAJKOT
28	BHOPAL	66	KANPUR	104	RANCHI
29	BHUBANESWAR	67	KARNAL	105	RATLAM
30	BHUJ	68	KISHANGARH	106	REWARI
31	BIKANER	69	KOLLAM	107	ROHTAK
32	BILASPUR	70	KOLHAPUR	108	ROURKELA
33	CHANDIGARH	71	KOLKATA	109	SAHARANPUR
34	CHENNAI	72	KOTA	110	SALEM
35	COIMBATORE	73	KOTTAYAM	111	SAMBALPUR
36	CUTTACK	74	KOZHIKODE	112	SANGLI
37	DEHRADUN	75	KUMBAKONAM	113	SATARA
38	DELHI/NEW DELHI	76	LATUR	114	SHIMLA

115	SIKAR	124	THANE	133	UDUPI
116	SILIGURI	125	THIRUVANANTHAPURAM	134	UJJAIN
117	SIRSA	126	THRISSUR	135	VADODARA
118	SIVAKASI	127	TINSUKIA	136	VAPI
119	SOLAPUR	128	TIRUCHIRAPALLI	137	VARANASI
120	SONEPAT	129	TIRUPATI	138	VELLORE
121	SRI GANGANAGAR	130	TIRUPUR	139	VIJAYAWADA
122	SURAT	131	TUTICORIN	140	VISAKHAPATNAM
123	SURENDRANAGAR	132	UDAIPUR	141	YAMUNA NAGAR

Overseas Centres :- (1) Abu Dhabi (2) Dubai (3) Bahrain (4) Doha (5) Kathmandu

The Council reserves the right to withdraw any centre at any stage without assigning any reason.

Applications for admission to Common Proficiency Test is required to be made in the relevant prescribed form as contained in the Information Brochure, which may be obtained from the **Additional Secretary (Examinations)**, The Institute of Chartered Accountants of India, ICAI Bhawan, Indraprastha Marg, New Delhi – 110 002 on payment of ₹1000/- (₹500/- towards examination fee and ₹500/- towards cost of application form and Information brochure) per application form. The fee for candidates opting for Abu Dhabi, Dubai, Doha and Bahrain centres will be US \$160 (US \$ 150 towards examination fee and US \$ 10 towards cost of application form and information brochure) or its equivalent Indian Currency. The fee for the candidates opting for Kathmandu centre are required to remit INR.1350/- (INR 850/- towards examination fee and INR 500/- towards the cost of application form and information brochure) or its equivalent foreign Currency. Since the cost of Information brochure containing Common Proficiency Test application form includes the examination fee, no separate fee is required to be remitted at the time of submitting the filled in application form. The Information brochure containing Common Proficiency Test application form will also be available in the Regional and Branch Offices of the Institute and can be obtained there from on cash payment on or from **8th October, 2012**.

Common Proficiency Test application forms duly filled in may be sent so as to reach the **Additional Secretary (Examinations)** at New Delhi not later than **26th October, 2012**. Applications received after **26th October, 2012** shall not be entertained under

any circumstances. Applications duly filled in will be received by hand delivery at the offices of Institute at New Delhi and at the Decentralised Offices of the Institute at Mumbai, Chennai, Kolkata, Kanpur, Ahmedabad, Bangalore, Hyderabad, Jaipur and Pune upto **26th October, 2012**. Candidates residing in these cities are advised to take advantage of this facility. **It may be noted that there is no provision for acceptance of application forms after 26th October, 2012 with late fee.**

The candidates who fill up the examination application form online at <http://icaiaexam.icaai.org> from **8th October, 2012 (10.00 hrs) to 26th October, 2012 (17.30 hrs)** and remit the fee online by using either VISA or MASTER Credit/ Debit Card **shall not be charged ₹500/-** (i.e. cost of application form fee) in order to popularize filling-in of application form online.

Common Proficiency Test (CPT) is open only to those students who are already registered with the Institute of Chartered Accountants of India for the said course on or before 5th October, 2012 and fulfill the requisite eligibility conditions.

QUESTION PAPER BOOKLET LANGUAGE:

Common Proficiency Test will be an objective type multiple choice questions based examination. Candidates will be allowed to opt for Hindi medium Question Paper Booklet for answering the questions. Detailed information will be found given in the Information brochure.

(G. SOMASEKHAR)
ADDITIONAL SECRETARY (EXAMINATIONS)

Examinations: Notifications - PCE/IPCE/Final/MAC/CMC/TMC/IRM/ITL&WTO

TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA
NOTIFICATION

 4th July, 2012

No. 13-CA (EXAM)/N/2012: In pursuance of Regulation 22 of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify that the Professional Competence Examination (PCE), Integrated Professional Competence Examination (IPCE) and Final examinations will be held on the dates given below at the following centres provided that sufficient number of candidates offer themselves to appear from each centre.

Similarly Post Qualification Courses viz: Management Accountancy Course (MAC) Part – I, Corporate Management Course (CMC) Part – I, Tax Management Course (TMC) Part – I, Insurance and Risk Management (IRM) and International Trade Laws and World Trade Organisation (ITL & WTO) examinations will also be held on the dates given below at the following centres (centres in India only) in terms of provisions as contained in Schedule “C”, “D”, “E”, “G” and “H” of the Chartered Accountants Regulations, 1988 respectively, provided that sufficient number of candidates offer themselves to appear from each centre.

PROFESSIONAL COMPETENCE EXAMINATION (PCE)

[As per syllabus contained in the scheme notified by the Council under Regulation 28 C (3) of the Chartered Accountants Regulations, 1988]

Group-I:	2nd, 15th & 4th November 2012
Group-II:	6th, 8th & 17th November 2012

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION (IPCE)

[As per syllabus contained in the scheme notified by the Council under Regulation 28 E (3) of the Chartered Accountants Regulations, 1988]

Group-I:	2nd, 4th, 6th & 8th November 2012
Group-II:	10th, 15th & 17th November 2012

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

FINAL EXAMINATION

[As per syllabus contained in the scheme notified by the Council under Regulation 31 (ii) of the Chartered Accountants Regulations, 1988.]

Group -I:	1st, 3rd, 5th & 7th November 2012
Group -II:	9th, 11th, 16th & 18th November 2012

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

MANAGEMENT ACCOUNTANCY COURSE (MAC) PART - I, CORPORATE MANAGEMENT COURSE (CMC) PART – I, TAX MANAGEMENT COURSE (TMC) PART – I EXAMINATIONS

[As per provision contained in Schedules C, D, E respectively of Chartered Accountants Regulations, 1988]

Group-I:	9th & 11th November 2012
Group-II:	16th & 18th November 2012

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

INSURANCE AND RISK MANAGEMENT (IRM) EXAMINATION

[As per provisions contained in “Schedule G” of Chartered Accountants Regulations, 1988]

Modules I to IV	9th, 11th, 16th & 18th November 2012
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(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

INTERNATIONAL TRADE LAWS AND WORLD TRADE ORGANISATION (ITL&WTO) EXAMINATION

[As per provisions contained in “Schedule H” of Chartered Accountants Regulations, 1988]

Group A	2nd, 4th & 6th November 2012
Group B	8th, 10th & 15th November 2012

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

EXAMINATION CENTRES: (FOR ALL EXAMINATIONS)
CITIES IN INDIA

1	AGRA	39	DURG	77	MADURAI
2	AHMEDABAD	40	ERNAKULAM	78	MANGALORE
3	AHMEDNAGAR	41	ERODE	79	MATHURA
4	AJMER	42	FARIDABAD	80	MEERUT
5	AKOLA	43	GANDHIDHAM	81	MORADABAD
6	ALAPPUZHA	44	GHAZIABAD	82	MUMBAI
7	ALIGARH	45	GOA	83	MUZAFFARNAGAR
8	ALLAHABAD	46	GORAKHPUR	84	MYSORE
9	ALWAR	47	GUNTUR	85	NAGPUR
10	AMBALA	48	GURGAON	86	NANDED
11	AMRAVATI	49	GUWAHATI	87	NASHIK
12	AMRITSAR	50	GWALIOR	88	NELLORE
13	ANAND	51	HISAR	89	NOIDA
14	ASANSOL	52	HUBLI	90	PALGHAT
15	AURANGABAD	53	HYDERABAD	91	PALI MARWAR
16	BANGALORE	54	INDORE	92	PANIPAT
17	BAREILLY	55	JABALPUR	93	PANVEL
18	BATHINDA	56	JAIPUR	94	PATNA
19	BEAWAR	57	JALANDHAR	95	PATIALA
20	BELGAUM	58	JALGAON	96	PIMPRI-CHINCHWAD
21	BELLARY	59	JAMMU	97	PONDICHERRY
22	BERHAMPORE	60	JAMNAGAR	98	PUNE
23	BHARAUCH	61	JAMSHEDPUR	99	RAIPUR
24	BHAVNAGAR	62	JODHPUR	100	RAJAMAHENDRAVARAM
25	BHILWARA	63	KAKINADA	101	RAJKOT
26	BHIWANI	64	KANPUR	102	RANCHI
27	BHOPAL	65	KARNAL	103	RATLAM
28	BHUBANESWAR	66	KISHANGARH	104	REWARI
29	BHUJ	67	KOLLAM	105	ROHTAK
30	BIKANER	68	KOLHAPUR	106	ROURKELA
31	BILASPUR	69	KOLKATA	107	SAHARANPUR
32	CHANDIGARH	70	KOTA	108	SALEM
33	CHENNAI	71	KOTTAYAM	109	SAMBALPUR
34	COIMBATORE	72	KOZHIKODE	110	SANGLI
35	CUTTACK	73	KUMBAKONAM	111	SATARA
36	DEHRADUN	74	LATUR	112	SHIMLA
37	DELHI/NEW DELHI	75	LUCKNOW	113	SIKAR
38	DHANBAD	76	LUDHIANA	114	SILIGURI

115	SIRSA	123	THRISSUR	131	UJJAIN
116	SOLAPUR	124	TINSUKIA	132	VADODARA
117	SONEPAT	125	TIRUCHIRAPALLI	133	VAPI
118	SRI GANGANAGAR	126	TIRUPATI	134	VARANASI
119	SURAT	127	TIRUPUR	135	VELLORE
120	SURENDRANAGAR	128	TUTICORIN	136	VIJAYAWADA
121	THANE	129	UDAIPUR	137	VISAKHAPATNAM
122	THIRUVANANTHAPURAM	130	UDUPI	138	YAMUNA NAGAR

OVERSEAS CENTRES: (FOR PROFESSIONAL COMPETENCE EXAMINATION (PCE), INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION (IPCE) AND FINAL EXAMINATIONS ONLY)

1) ABU DHABI	2) DUBAI	3) KATHMANDU	4) MUSCAT
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Payment of fees for the examinations should be made by Demand Draft only. The Demand Drafts may be of any Scheduled Bank and should be drawn in favour of **The Secretary, The Institute of Chartered Accountants of India, payable at New Delhi only.**

The Council reserves the right to withdraw any centre at any stage without assigning any reason.

Applications for admission to these examinations are required to be made either online at <http://icaiaexam.icaai.org> free of cost (i.e. ₹500/- for PCC, IPCC & Final candidates for the cost of application form shall not be charged if applications are filled in online) or in the relevant prescribed form, copies of which may be obtained from the **Additional Secretary (Examinations), The Institute of Chartered Accountants of India, 'ICAI BHAWAN',** Indraprastha Marg, New Delhi – 110 002 on payment of ₹500/- per application form in respect of Professional Competence Course, Integrated Professional Competence Course and Final Examination candidates. The cost of Examination application forms for Management Accountancy Course (MAC) Part – I, Corporate Management Course (CMC) Part – I, Tax Management Course (TMC) Part – I, Insurance and Risk Management (IRM) examination is ₹100/- per application form. The forms shall also be made available in the Regional and Branch Offices of the Institute and can be obtained there from on cash payment on or from **6th August, 2012.**

Applications together with the prescribed fee by Demand Draft of any Scheduled Bank may be sent so as to reach the Additional Secretary (Examinations)

at New Delhi not later than **27th August, 2012.** However, applications will also be received direct by Delhi Office after **27th August, 2012** and upto **3rd September, 2012** with late fee of ₹500/-. Applications received after **3rd September, 2012** shall not be entertained under any circumstances. Applications for the students' examinations only duly filled in will also be received by hand delivery at the office of Institute at New Delhi and at the Decentralised Offices of the Institute at Mumbai, Chennai, Kolkata, Kanpur, Delhi, Ahmedabad, Bangalore, Hyderabad, Jaipur and Pune upto **3rd September, 2012.** Candidates residing in these cities are advised to take advantage of this facility.

However, application forms duly completed for the Post Qualification Course Examinations i.e. Management Accountancy Course (MAC) Part – I, Corporate Management Course (CMC) Part – I, Tax Management Course (TMC) Part – I, Insurance and Risk Management (IRM) will be received **only** at the New Delhi office of the Institute.

The candidates who fill up the examination application form online at <http://icaiaexam.icaai.org> from 6th August, 2012 to 27th August, 2012 and remit the fee online by using either VISA or MASTER Credit/ Debit Card shall not be charged ₹500/- in case of PCC, IPCC Final examination (i.e. cost of application form fee) in order to popularize filling-in of application form online. The candidates of PCC, IPCC and Final Examinations can continue to fill in application forms online from 28th August 2012 to 3rd September 2012 (during which period late fee of ₹500 will have to be paid by them as well).

The fees payable for the various examinations are as under:

PROFESSIONAL COMPETENCE EXAMINATION (PCE) and INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION (IPCE)	
For Both the Groups / Unit - 9	₹ 1600/-
For one of the Groups / Unit 1 to 8	₹ 1000/-
FINAL EXAMINATION	
For Both the Groups	₹ 2250/-
For one of the Groups	₹ 1250/-

MANAGEMENT ACCOUNTANCY COURSE (MAC) PART - 1, CORPORATE MANAGEMENT COURSE (CMC) PART – I, TAX MANAGEMENT COURSE (TMC) PART – I EXAMINATIONS	
For Both the Groups	₹ 400/-
For one of the Groups	₹ 200/-

INSURANCE & RISK MANAGEMENT (IRM) EXAMINATION	₹ 1000/-
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INTERNATIONAL TRADE LAWS AND WORLD TRADE ORGANISATION (ITL & WTO) EXAMINATION:	
For Both the Groups	₹ 2000/-
For one of the Groups	₹ 1000/-

Candidates of Professional Competence Examination (PCE) / Integrated Professional Competence Examination (IPCE) and Final examination opting for Dubai / Abu Dhabi / Muscat Centre are required to remit, US\$ 350 and US\$ 400 respectively or its equivalent Indian Currency irrespective of whether the candidates appear in a group or in both the groups or in a unit.

Candidates of Professional Competence Examination (PCE) / Integrated Professional Examination (IPCE) and Final Examinations opting for Kathmandu centre are required to remit Indian ₹2250/- and Indian ₹3000/- respectively or its equivalent relevant foreign currency irrespective of whether the candidates appear in a group or in both the groups or in a unit.

OPTION TO ANSWER PAPERS IN HINDI:

Candidates of Professional Competence Examination (PCE)/ Integrated Professional Competence Examination (IPCE) and Final Examinations will be allowed to opt for Hindi medium for answering papers. Detailed information will be found printed in the Information Sheets attached to the relevant application form. However the medium of Examinations will be only English in respect of Management Accountancy Course (MAC) Part – I, Corporate Management Course (CMC) Part – I, Tax Management Course (TMC) Part – I, Insurance and Risk Management (IRM) Examination and International Trade Laws and World Trade Organisation (ITL & WTO) Examinations

(G. SOMASEKHAR)
ADDITIONAL SECRETARY (EXAMS)

Campus Placement Programme

August-September 2012

For Newly Qualified Chartered Accountants

The Committee for Members in Industry of the Institute organises Campus Placement Programme for newly qualified Chartered Accountants at various centres all over India. The scheme has been evolved to provide an opportunity both to employing organisations as well as the young professional aspirants to meet and explore the possibility of taking up positions in Industry.

Invitation to Organisations/CA Firms

Campus Placement Programme will be organized at various centres viz. Ahmedabad, Bangalore, Baroda, Bhubaneswar, Chandigarh, Chennai, Coimbatore, Ernakulam, Hyderabad, Indore, Jaipur, Kanpur, Kolkata, Mumbai, Nagpur, New Delhi, Pune and Vapi. The schedule of programme is given below.

No.	Centre	Dates
1.	Chennai, Hyderabad and Kolkata	13th, 14th, 16th and 17th August, 2012
2.	Jaipur and Pune	16th, 17th and 18th August, 2012
3.	Mumbai and New Delhi	22nd, 23rd, 24th, 25th and 27th August, 2012
4.	Ahmedabad	23rd, 24th and 25th August, 2012
5.	Bangalore	23rd, 24th, 25th and 27th August, 2012
6.	Baroda, Bhubaneswar, Chandigarh, Coimbatore, Ernakulam, Indore, Kanpur Nagpur and Vapi	4th-5th September, 2012

The programme would be organized in the months of August-September, 2012 for the candidates who would be passing in the CA Final examination held in May 2012 and also for others who are eligible.

Organisations/ CA Firms intending to recruit Newly Qualified Chartered Accountants through the scheme given are requested to get in touch with Dr Surinder Pal, Secretary, Committee for Members in Industry, Indraprastha Marg, New Delhi - 110002, Tel. No. (011) 30110430/549 Email: spal@icai.org (or) Mr Ajeet Nath Tiwari, Placement Coordinator at Tel +91(11) 30110450 Email: ajeet@icai.in (or) Ms Priyanka Sharma, Tel. No. (011) 30110548 Email: priyanka.sharma@icai.in log on to www.cmii.icai.org or <http://www.icai.org>



Organised by
Committee for Members in Industry (CMII)
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

Please visit - www.icai.org, www.cmii.icai.org, <http://jobs4cas.icai.org>, <http://icaitv.com>

Billing & Accounting Software

Software on Accounting and Billing on Cash Basis for Chartered Accountants

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

Salient Features

Billing & Accounting software for accounting requirements of Chartered Accountants. This is a complete package to manage the accounting and billing requirements of a CA Firm on Cash System of Accounting. This package provides you the facility to generate bills, receipts, vouchers and clients outstanding, some of the salient features are as follows:

Master Data

- Maintains Accounts of Multiple Firms
- Client Master

Accounting and Billing

- Accounting on Cash Basis i.e. client's ledger will not be part of account books
- Generates Bill with Different Series according to requirements
- Automatic Calculation of Service Tax on billing and receiving
- Multiple Services can be inserted in one bill
- Provision of TDS when receiving payment
- Automatic entry in Professional Receipts account, Service Tax Payable A/c and TDS A/c when feeding and receipt from client
- Provision to write off any outstanding balance in client's account
- Customization of Bill Format
- Bill wise receipt can be maintained
- Different series for each type of voucher can be maintained Billing Reports

- Client's Outstanding (Bill wise / Consolidated)
- Client's Ledger
- Receipt Register (Bill Wise / Service Wise / Monthly)
- Bill List (Full / Pending)
- Service Tax Collection Report
- TDS Register
- TDS Certificate List (Received / Pending)
- Reminder Letter to clients (Pending Bill / Pending TDS Certificates)
- Service Tax Report
- Facility to generate the Client Ledger for period more than 1 year Accounting Reports
- Listings (Cash / Bank Receipt / Payment / Journal)
- Voucher Printing
- Receipts (Cash / Bank)
- Cash Book
- Ledger
- Journal
- Trial Balance
- Balance Sheet
- Profit & Loss Account
- Daily Cash / Bank Report

About the Arrangement

- i. The MDA Softwares Ltd (hereinafter referred to as vendor) will provide initial license for Billing & Accounting software free of cost for 2 financial years i.e. upto 31st March, 2013
- ii. The license renewal charges will be Rs. 1000/- after 31st March, 2013. Statutory taxes on License Renewal shall be extra as applicable.
- iii. The Vendor will provide support which would be free up to 31st March, 2013 and include all upgrades up to Assessment Year 2013-14. Thereafter, support would be provided on payment of renewal charges.
- iv. The Vendor will provide free of cost patches up to two years and till renewed.

Installation Support

The vendor will provide a web form to enable CA firms and members to request for support for Online Installation on "First Come, First Serve" basis.

Downloading the Software:

The Software may be downloaded free of cost from the website of Committee for Capacity Building of CA Firms and Small & Medium Practitioners, www.icaai.org.in on request by members.

Support on use of Software:

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

E-mail : support@mdasoft.in, **Phone:** 09621813973, 09621813874



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

Payroll Software Software on Payroll Management

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

Features of Payroll Software

- **Recruitment Management** – Store and search resumes to Schedule interview. The complete recruitment management process is automated.
- **Time & attendance** – Attendance, integration with time & attendance devices, leave allotment, encashment, applying & approval system.
- **Payroll Management** – Recording attendance, processing salary, arrears, gratuity, loan, medical reimbursements etc.

- **Indian Labor Law Management** – PF, ESI, PT, TDS and all Indian Labor Acts forms
- **HR Communication Management** – An automated tool to update the each transaction with respect to HR activity to the staff and their higher-ups
- **HR Office Management** – An automated emailing & documentation process related to HR activity
- **Employee Information Portal** – A self login portal to have details about salary, leave etc. it allows employee to apply leave etc.

About the Arrangement

1. The Relyon Softech Ltd. (hereinafter referred to as vendor) will provide initial license for Payroll software free of cost for 2 years i.e. up to 31st December, 2013
2. The license renewal charges will be Rs. 1300/- after 31st December, 2013. Statutory taxes on License Renewal shall be extra as applicable.
3. The Vendor will provide support which would be free up to 31st December, 2013 and thereafter, support would be provided on payment of renewal charges.
4. The Vendor will provide free of cost patches up to two years and till renewed.

Installation Support

The vendor will provide a web form to enable CA firms and members to request for support for Online Installation on "First Come, First Serve" basis.

Downloading the Software:

The Software may be downloaded free of cost from the website of Committee for Capacity Building of CA Firms and Small & Medium Practitioners, www.icaai.org.in on request by members.

Support on use of Software:

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

E-mail: info@reylonsoft.com; **Phone:** 1860-425-5570



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

ICAI Awards for Excellence in Financial Reporting: Invitation to Participate in the Competition for the year 2011-12 - Last date for receipt of entries: 30th September, 2012

Objective

To recognise and encourage excellence in preparation and presentation of financial information.

Award Categories of the Competition 'ICAI Awards for Excellence in Financial Reporting' for the year 2011-12

- Category I** : Public Sector Banks
Category II : Private Sector Banks (including Co-operative Banks & Foreign Banks)
Category III : Insurance Sector
Category IV : Financial Services Sector (Other than Banking and Insurance)
Category V : Manufacturing Sector – (Turnover equal to or more than ₹500 crore)
Category VI : Manufacturing Sector – (Turnover less than ₹500 crore)
Category VII : Infrastructure and Construction Sector (Turnover equal to or more than ₹500 crore)
Category VIII : Infrastructure and Construction Sector (Turnover less than ₹500 crore)
Category IX : Service Sector (Other than financial services sector) – (Turnover equal to or more than ₹500 crore)
Category X : Service Sector (Other than financial services sector) (Turnover less than ₹500 crore)
Category XI : Not-for-Profit Sector
Category XII : Local Bodies
Category XIII : Agricultural Sector (includes entities engaged in direct agriculture, horticulture, tea & coffee, plantations, dairies, poultry etc. but excludes entities engaged in food processing etc. which are covered by Manufacturing Sector).

In a case, where an organisation is engaged in more than one business, the dominant source of revenue will determine the category to which the organisation belongs.

Turnover will be determined on the basis of standalone financial accounts.

Awards to be distributed

Hall of Fame to be awarded to the entity that has been winning the first prize under the same category continuously in the last five years. One Gold Shield and one Silver Shield in each category for the best entry and the next best entry, respectively. Plaques to be awarded to the entities who are following better financial reporting practices amongst the enterprises that are left in each category after conferring Hall of Fame, Gold Shield and Silver Shield.

Procedure for Participation

1. There is no fee for participation in the competition.
2. Annual report relating to the financial year ending on any day between April 1, 2011 and March 31, 2012 (both days inclusive) is eligible for participation in this competition.
3. Decisions of the Panel of Judges in all the matters relating to the Competition will be final.
4. Fill in the Entry Form (<http://220.227.161.86/27260research16796a.pdf>) and submit with requisite documents on or before September 30, 2012 to:

The Secretary, Research Committee,
 Technical Directorate,
 The Institute of Chartered Accountants of India,
 ICAI Bhawan, Indraprastha Marg,
 New Delhi – 110 002

For any further information please write to research@icai.org or visit our website www.icai.org.



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.

Floater Benefits	- Sum Insured available in slabs of Rs. 5 lakh, 7 lakh and 10 lakh. - Floater Sum Insured for the entire family of Self, Spouse and dependant Children. - No Health check-up. No entry age barrier.
Parent coverage	- Dependant Parents covered under separate Floater Sum Insured, equivalent to the Sum Insured of the Member family. - No Health check-up. No age limit.
Additional benefits	- Premium discount in lieu of Cumulative Bonus. - Hospital Cash Allowance @0.10% of Sum Insured, for a maximum of 10 days. - Wide Coverage for Pre-existing diseases.

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

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

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

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



Commencement of 4th Batch of Certificate Course on Master* in Business Finance

Delhi - 29th July, 2012
Mumbai - 11th August, 2012
Bangalore and Kolkata - 12th August, 2012

About the Course

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.

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 Management & Analysis
Paper II - Financial Planning, Fund Raising and Investment Management

LEVEL II

Paper III - Capital Markets and Financial Markets
Paper IV - Forex and Treasury Management

LEVEL III

Paper V - Corporate Valuations, Merger and Acquisitions and Reconstruction
Paper IV - Economic Analysis, Banking, Risk management and Business Strategy

Last Date of Registration

Delhi - 28th July, 2012
Mumbai - 10th August, 2012
Bangalore and Kolkata - 11th August, 2012

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 (one week each) residential programmes at Centre of Excellence, 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, ICRA, SIDBI, PE Funds, Senior Chartered Accountants from Industry/ Profession and reputed academicians.

Course Registration

The course registration is on receipt of duly filled in and signed Course Registration form with course fee of Rs. 30,000 (Rs. Thirty Thousands only) vide DD/ Pay Order in favor of "The Secretary, ICAI" payable at Delhi. Course fee can also be paid online through ICAI Payment Portal.

Registration Form Submission

The Registration form with course fee has to be sent at the following address:

The Secretary,
Committee on Management Accounting (CMA)
ICAI Bhawan, Administrative Block, 3rd Floor,
A-29, Sector - 62
Noida (U.P.) - 201 309
Ph: 0120-3045905 / 945 and 9350799912
E-mail: cma@icai.org

Important Links

[Course Contents](http://220.227.161.86/26981MBFCC-coursecontents.pdf) - <http://220.227.161.86/26981MBFCC-coursecontents.pdf>

[Online Payment](http://www.icai.org/cm.html?progid=10) - <http://www.icai.org/cm.html?progid=10>

[Registration Form](http://220.227.161.86/24921mbf_batch3_registration_form.xls) - http://220.227.161.86/24921mbf_batch3_registration_form.xls

CA. Vinod Jain
Chairman,
Committee on Management Accounting
E-mail: vinodjainca@gmail.com
M: 9811040004

Committee on Management Accounting
The Institute of Chartered Accountants of India

* Master indicates level of expertise and not a post graduate degree.



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

Quick Insight 2012

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners of ICAI as a part of its commitment to strengthen the Small & Medium Practitioners has brought out the publication on Quick Insight 2012 for the Members of ICAI

The Quick Insight contains important information pertaining to:

- ☞ Compliance of matters pertaining to the Direct Tax & Indirect Tax
- ☞ Accounting & Auditing Standards
- ☞ Companies Act, 1956, LLP, MCS & other services
- ☞ List of Mandatory Statements
- ☞ Standards on Audit
- ☞ Relevant information for students
- ☞ Relevant information for Members
- ☞ Important websites & E-mail Ids

The details about the Brochure on Quick Insight 2012 can be seen at
<http://www.icaai.org/post.html?post id=8634>

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 June 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 invites 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 August 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 August 2012 in the form of soft copy through mail/CD or in printed format through post giving details of the subject matter.

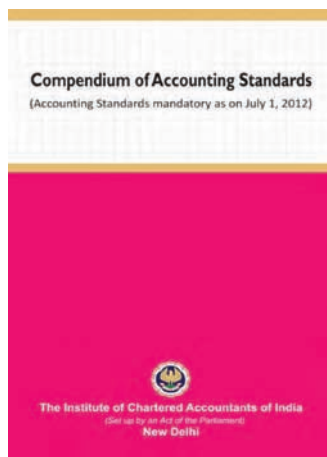
Those desirous may please contact at the following address:

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

New Publications

Compendium of Accounting Standards (2012)

The Accounting Standards Board has issued the revised edition of the Compendium of Accounting Standards containing the mandatory Accounting Standards as on 1st July, 2012. Subsequent to the last edition of the Compendium of Accounting Standards in 2006, some significant developments have taken place, such as notification of Accounting Standards by the Central Government under the Companies Accounting Standards Rules, 2006. As there were some differences between the Accounting Standards notified by the Central Government and Accounting Standards issued by the ICAI, to harmonise the differences, the Council of the ICAI had decided to make changes in the Accounting Standards issued by the ICAI. Accordingly, such changes, for example, inclusion of the consensus portion of certain Accounting Standards Interpretations (ASIs) issued earlier by the ICAI



included as explanation to notified Accounting Standards have been made in this Edition of the Compendium.

Price: ₹600/- (including CD)

Ordering Information

The Compendium can be purchased directly from the Sales Counters at the ICAI's Regional Offices or at the Head Office. To order by post, please send a demand draft for the price of the publication (plus postage charges as per the desired mode of delivery) in favour of "**The Secretary, The Institute of Chartered Accountants of India, New Delhi**", payable at New Delhi to the Postal Sales Department, The Institute of Chartered Accountants of India, ICAI Bhawan, A-29, Sector-62, NOIDA – 201 309, Uttar Pradesh.

Postal Charges:

- Courier (NCR): ₹15/-
- Courier (rest of India): ₹65/-
- Registered Post : ₹68/-
- Unregistered Post : ₹51/-

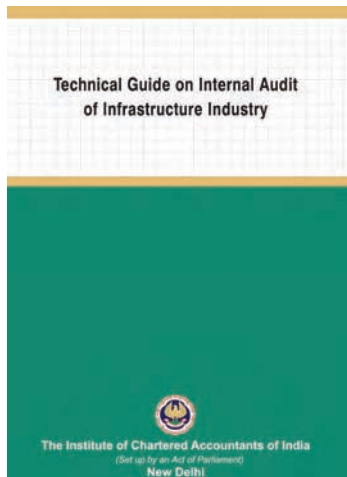
Technical Guide on Internal Audit of Infrastructure Industry

(Pages: 60 + 12 initial pages + 2 cover pages)

Price: ₹ 150/- (including CD)

Infrastructure Industry in India has been witnessing rapid growth in its different sectors due to growing urbanization and increasing rate of foreign investments in this field. The Indian government has taken various initiatives to develop the infrastructure sector. Effective internal audit provides a tool to ease out all

the complexities, ensures that systems and processes are adequate to support the growth and are adapted to the changes in various applicable regulations, thereby ensuring sustained growth and development. The Internal Audit Standards Board of the Institute has issued publication “*Technical Guide on Internal Audit of Infrastructure Industry*”. The Technical Guide gives guidance on the internal audit of the companies engaged in development



of infrastructure facilities on ‘Build operate and Transfer’ basis and has been divided into various chapters.

Significant features of the Technical Guide are:

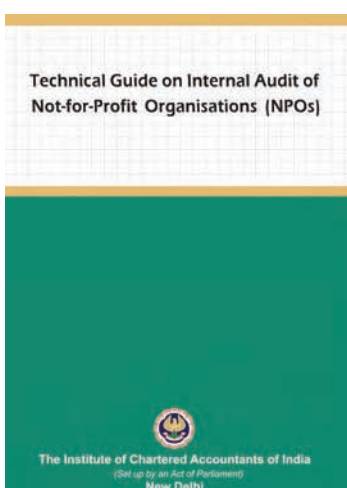
- Brief overview on various aspects of the infrastructure industry in India, such as, receipt of material, storage, material movement, fixed assets, revenue and operating costs, etc.
- Discusses major legislations governing the infrastructure industry.
- Deals with the overall approach of internal audit with reference to Standards on Internal Audit, and the procedures to be undertaken by the internal auditor with regard to peculiar aspects related to infrastructure industry.
- Provides guidance regarding the risks faced by the entity operating in the infrastructure industry.
- Provides guidance regarding major areas of internal audit significance
 - o Operations and Management
 - o Material Handling and Storage
 - o Cash and Bank
 - o Revenue Recognition
- Includes glossary of terms peculiar to infrastructure industry.
- The Guide comes with a CD of the entire Guide to ensure ease of reference and reusability.

Technical Guide on Internal Audit of Not-For-Profit Organisations (NPOs)

(Pages: 161 + 10 initial pages + 2 Cover pages)

Price: ₹ 150/- (including CD)

The not-for-profit sector plays a central role in enriching people through its charitable, social, cultural, educational contribution and in providing support to weaker section of the society. Financial accountability, transparency and good governance are the need of the hour in the NPO



sector. This sector offers challenging and rewarding opportunities to Chartered Accountants in particular. They can play an important role in increasing the standards of resource mobilization, accountability and transparency in Not-for-Profit Sector. In view of the above, the Internal Audit Standards Board has issued this “*Technical Guide on Internal Audit of Not-For-Profit Organisations (NPOs)*” which comprehensively deals with the peculiar aspects of NPO sector, including various regulatory aspects and provides a step-wise approach for internal audit.

Significant features of the Technical Guide are:

- Describes legal framework applicable to Not-For-Profit Organisations (NPOs):
 - o The Indian Trusts Act, 1882
 - o Societies Registration Act, 1860
 - o Religious and Charitable Endowments
 - o Wakf

- o The Sikh Gurudwaras Act, 1925
- o Section 25 of the Companies Act, 1956
- o Non-trading Corporations.
- Explain the taxation aspect and tax deduction for donors.
- Detailed guidance regarding compliance of Foreign Compliance Regulation Act (FCRA), 2010.
- Explains the key aspects related to the sector such as, revenue, expenses, fund accounting, in-kind contribution, etc.
- Describes the Standards on Internal Audit and Accounting Standards applicable to the Not-for-Profit Organisations.
- Deals with the overall approach of internal audit with reference to Standards on Internal Audit, and

the procedures to be undertaken by the internal auditor with regard to peculiar aspects related to it.

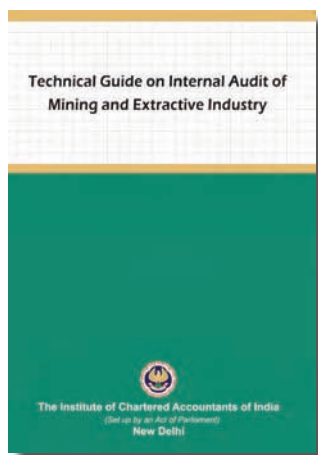
- Provides an insight into major areas of internal audit significance:
 - o Receipts, Donations
 - o Grants
 - o Endowment Funds and Restricted Funds
- Contains an illustrative internal audit checklist regarding knowledge of business, budgeting, internal control, finance, donations and grants received, in-kind contribution, compliances - FCRA 2010.
- The Guide comes with a CD of the entire Guide to ensure ease of reference and reusability.

Technical Guide on Internal Audit of Mining and Extractive Industry

(Pages: 105 + 10 Initial pages+ 2 Cover pages)

Price: ₹ 150/- (including CD)

Mining sector is one of the largest and capital intensive sectors in the country. Globalization, competition of new mineral properties, and environmental regulations and concerns are some of the issues that introduce new layers of complexity for companies operating in mining sector. In view of the above, the Internal Audit Standards Board has issued this “*Technical Guide on Internal Audit of Mining and Extractive Industry*”. This comprehensive publication aims to help the members to understand entire spectrum of operational, conceptual and practical issues related to internal audit in mining sector.



- Explains the technical aspects of the Mining Industry, such as:
 - o Mine Planning and Mine Scheduling
 - o Mine Development
 - o Key activities in mining - mining operations, mineral processing, mineral beneficiation, mine closure, process monitoring, quality management process.
- Provides guidance on regulatory framework applicable to mining industry in detail.
- Explains need and objectives of internal audit of Mining industry.
- Describes the major focus areas of internal audit of mining industry, such as, mine evaluation and assessment, mine planning and scheduling, mine development, mining operations, mineral processing, process monitoring, statutory compliances and industrial relations, etc.
- Includes abbreviations used in the mining and extractive industry.
- The Guide comes with a CD of the entire Guide to ensure ease of reference and reusability.

Ordering information:

The publication(s) can be obtained from the sales counter at the Head Office or at the Regional Offices of the Institute. Copies can also be obtained by post.

To order by post, requisition may be sent to the Post Sales Department of the ICAI at postalsales@icai.org or postalsales@icai.in. Please refer link: <http://www.icai.org/publications.html?bookcid=13>.

Significant features of the Technical Guide are:

- Overview of the history, evaluation, International scenario, industry overview, industry structure, challenges faced by the Mining Industry.

Study Tour on International Taxation to Amsterdam, Netherlands

[19th to 24th August, 2012 (6 days & 5 nights)]



In continuation of July, 2012 announcement from Committee on International Taxation for the Study Tour which will take place from 19th August, 2012 to 24th August, 2012 to Amsterdam, Netherlands, please note the Course Curriculum and the detailed itinerary is available at the following link: http://www.icai.org/post.html?post_id=8605

Most current topics are selected for the short duration course of this study tour to ensure maximization of benefits and to empower members of the profession to render high quality professional services in the field of International Taxation. It will be a great opportunity to update your knowledge on the latest development on the subject. A tailor-made course for the ICAI members group which would cover "Treaty Aspects of International Taxation" is offered.

The International Tax Academy (ITA) of The International Bureau of Fiscal Documentation (IBFD), Amsterdam, Netherlands is a unique centre of expertise offering high-quality information and education on international tax and is the world's foremost authority on cross-border taxation. Tax practitioners from all over the world rely on its high-quality, independent tax research.

ITA of IBFD, Netherlands will provide Certificate of Participation to all the participating members of the course as per their norms.

The cost of the above study tour has been fixed at ₹160000/- per person Ex-New Delhi inclusive of Course session fees, Course Material, economy

class airfare, relevant visa fee, hotel accommodation on twin-sharing basis, meals, applicable taxes and transport arrangements for meetings, sight seeing etc.

Since, the delegation size would be restricted to 30 members; registration would be done on first-cum-first-serve basis.

For registration, the interested members may kindly send the registration form along with Valid Passport, duly filled Visa application Forms which appear at web site: http://www.icai.org/post.html?post_id=8605 relevant enclosures and payment of full amount, as aforesaid, by Demand Draft only drawn in favour of "The Secretary, The Institute of Chartered Accountants of India" payable at New Delhi so as to reach us latest by 4th August, 2012 at below mentioned address:

Study Tour Coordinator

Ashish Bhansali,
Secretary,
Committee on International Taxation,
The Institute of Chartered Accountants of India,
ICAI Bhawan,
Administrative Office Block,
4th Floor, A-29,
Sector-62, Noida (U.P.) - 201309, India,
Telephone Direct - +91 120 3045923
Mobile No. 09310532063
E-mail: citax@icai.org



44TH Regional Conference of SIRC of ICAI

[18th & 19th August 2012 at “Tripuravasini” Bangalore Palace Grounds, Bangalore]

About the Conference: One of the largest conventions of Chartered Accountants with over 4000 members of ICAI congregating at one place for two full days. The two day event will be graced by Union Minister for Corporate Affairs **Dr. Veerappa Moily** and **CA. Rahman Khan**, Member of Parliament & Former Deputy Chairman, Rajya Sabha and eminent personalities, professionals, from across the country, high net worth individuals, decision makers and advisors for business enterprises across the board. The Inaugural Session will be presided by ICAI President **CA. Jayadeep Narendra Shah** while **CA. K Viswanath**, Chairman SIRC of ICAI will lead the Conference. The conference will focus on several topics of current professional and economic interest on both days, interspersed with inspirational and motivational talks by leaders and a grand cultural and entertainment programmes for the delegates.

Event Highlights: Over 4000 delegates from across all the Southern States, and across the country will converge at Bangalore, the “Silicon Valley” and IT

Capital of the Country. The Venue is the “Tripuravasini” a “State of the Art” Exhibition & Convention Centre at Bangalore Palace Grounds, right in the heart of the garden city Bangalore. A gastronomic extravaganza of the delicacies from all the southern states of Karnataka, Tamil Nadu, Andhra Pradesh and Kerala await the delegates.

The topics that are chosen for the two day deliberations are:

- Transfer Pricing of Domestic Transactions
- Pathway Towards Listing of SME's
- Panel Discussion on “Works Contract- Service Tax & VAT”
- Service Tax-Negative List & Special Issues
- Audit & Assurance- Road Map for Restoring Trust & Meeting Expectations
- Important Amendments in Direct Tax Laws
- Panel Discussion on “The Profession-Expectations, Challenges & the Future”
- Indian Economy Vs. Global Economic Scenario
- Cloud Computing – Opportunities & Challenges

Classifieds

4936 Required CA firm for merger. Also required partners/qualified assistants to open branch in India. Retired/lady members can apply. Contact to S. Kanungo, Flat No. 24, Shiela Mansion, Rath Road, Bhubaneswar-751014 or E-mail: ssahoo8998@gmail.com

4937 Mumbai based mid size Firm, requires CA firm for merger, and open Branch office at New Delhi, Varanasi, Raipur, Patna, Dehradun, Bangalore and Hyderabad. Contact: 9821240794, E-mail: jsingh@bom5.vsnl.net.in.

4938 Ahmedabad based CA firm having 27 years of experience invites merger proposals

from firms based in Ahmedabad, Jaipur, Surat and Mumbai. Contact: 9978942299. E-mail - adcahmd1984@yahoo.com

4939 UCC 23 years established Delhi, Gurgaon, Noida based firm invites proposal for opening branch office at Bhubaneswar on paid/partnership basis. Contact Umesh.goyal@uccglobal.in

4940 Chartered Accountant with 30 years of experience seeks to make career with reputed Financial Consultants/CA firms/Industry in India or abroad E-mail: mukego@yahoo.com. Mobile: 9810865944

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.	All India Conference on 'Waves of Change: Ocean of Opportunities'	17 th & 18 th August, 2012	Hotel Mayfair Convention, Bhubaneswar	12	- Revised Schedule VI, - Indian Accounting Standards — in Present Scenario - Recent Issues in Direct Tax with special reference to TDS/TCS - Turmoil in Global Economy –The Indian Perspective - Service Tax – Negative list and Issues thereon - Important provisions on company law, select committee recommendation – a programmatic approach - Value Addition by Small & Medium CA firms in II Tier cities - Motivating CAs	CA. M. Devaraja Reddy Chairman, CPE Committee of ICAI Mob: 09399935799 E-mail: devarajareddy@yahoo.com CA. Rajendra Kumar Das. Chairman, Bhubaneswar Branch Mob: 9437013865, Phone: 06742313612 E-mail: Bhubaneswar@icai.org; dasdas1995@yahoo.com Mr. N. K. Bansal Secretary CPE Committee of ICAI Mob: 09312089135 E-mail: cpehours@icai.in; bansaln@icai.in
2.	One Day Seminar on Auditing - Understanding the Revised Auditing Standards	August, 2012	Siliguri	6	- Common Non-Compliances with Law/Regulations and Reporting Requirement - New Audit Reporting Standards – SA 700, SA 705, SA 706 & SA 720 - Audit Documentation – SA 230 & Risk Assessment and Fraud Risk Considerations – SA 315 - Issues in Tax Audits	Seminar Chairman CA Abhijit Bandyopadhyay, Chairman, Auditing and Assurance Standards Board Mob: 0983105 9999 E-mail: babhijit@deloitte.com Seminar Director CA. Sanjeev Agarwal, Chairman, Siliguri Branch of EIRC of ICAI Mob: 098320 61298 E-mail: casanjeevkunal@gmail.com Seminar Coordinators Siliguri Branch of EIRC of ICAI Phone: 0353 – 2560445 E-mail: siliguri@icai.org Auditing and Assurance Standards Board Secretariat Phone: 0120-3045920 E-mail: aasb@icai.org
3.	Certificate Course On Forensic Accounting and Fraud Detection	24 th August, 2012	Vadodra	20	Forensic Accounting and Fraud Detection	cc.fafd@icai.in/cit@icai.in/01203045961/963
4.	Certificate Course On Forensic Accounting and Fraud Detection	26 th October, 2012	Mumbai	20	Forensic Accounting and Fraud Detection	cc.fafd@icai.in/cit@icai.in/01203045961/963
5.	Certificate Course On Forensic Accounting and Fraud Detection	23 rd November, 2012	Nagpur	20	Forensic Accounting and Fraud Detection	cc.fafd@icai.in/cit@icai.in/01203045961/963

¹ For more details about the forthcoming events please refer to 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
6.	Certificate Course On Forensic Accounting and Fraud Detection	21 st December, 2012	Kolkata	20	Forensic Accounting and Fraud Detection	cc.fafd@icai.in / cit@icai.in /01203045961/963
7.	Certificate Course On Forensic Accounting and Fraud Detection	18 th January, 2013	Chennai	20	Forensic Accounting and Fraud Detection	cc.fafd@icai.in / cit@icai.in /01203045961/963
8.	Certificate Course On Forensic Accounting and Fraud Detection	22 nd February, 2013	Delhi	20	Forensic Accounting and Fraud Detection	cc.fafd@icai.in / cit@icai.in /01203045961/963
9.	Information Technology Workshop on Emerging Opportunities	3 rd August, 2012	Kolkata	6	Emerging Opportunities	cc.fafd@icai.in / cit@icai.in /01203045961/963
10.	Information Technology Workshop on Emerging Opportunities	16 th August, 2012	Nagpur	6	Emerging Opportunities	nagpur@icai.org
11.	Information Technology Workshop on Emerging Opportunities	8 th September, 2012	Guwahati	6	Emerging Opportunities	icai.guwahati@gmail.com
12.	SAP Workshop at Pune	22 th August, 2012	Pune	6	ERP Technologies	punecpe@gmail.com , pune@icai.org /020-24212251/52
13.	Members in Industry Meet	3 rd August 2012	Hyderabad	2	- Changing face of Business- Role of Chartered Accountants - How to become effective CFO/ CEO	Programme Chairman: CA. Rajkumar S. Adukia Chairman Committee for Members in Industry Mob: 09820061049/ 09823061049 E-mail: rajkumarfca@gmail.com Programme Coordinator: Dr. Surinder Pal Secretary Committee for Members in Industry Mob: 9312090638 Phone: 011-30110491
14.	National Workshop 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	Programme Chairman: CA. Rajkumar S. Adukia Chairman Committee for Members in Industry Mob: 09820061049/ 09823061049 E-mail: rajkumarfca@gmail.com Programme Coordinator: Dr. Surinder Pal Secretary Committee for Members in Industry Mob: 9312089136 Phone: 011-30110549

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours	Topics (in brief without details of technical sessions, timings and speakers)	Contact Person
15.	National Round Table for Chief Internal Auditors on Enterprise Risk Management	27 th August, 2012	The Lalit Mumbai, Sahar Airport Road, Andheri (E), Mumbai	3	- Enterprise Risk Management - Process and Experience Sharing - Enterprise Risk Management - Global Practices - A Discussion - Role of Internal Audit in Enterprise Risk Management	Program Chairman CA. Rajkumar S. Adukia, Central Council Member, ICAI and Chairman- IASB & CMII Phone: 0120-3045949 Mob: 09820061049, 09323061049 E-mail: rajkumarsadukia@gmail.com Program Director CA. Deepjee Singhal Member, Internal Audit Standards Board of ICAI Phone: 022-26743675 Mob: 09821049346 E-mail: dasinghal@yahoo.com For Registration, Please Contact: cia@icai.org, amita.bapat@icai.in Phone: 022-39802922
16.	National Conference	10 th & 11 th August, 2012	Pragjyoti ITA Centre for Performing Arts, Machkhowa, Guwahati	12	- Chartered Accountants-Churning Resources for Development - ICAI -The Growth Catalyst. - Tax Planning through HUF, Will & Family Settlement. - Taxation of Subsidies. - Taxable Services. - Cenvat Credit Rules. - Accounting Standards- Recent Developments. - Auditor's Report : Changing Scenario	Guwahati Branch of EIRC of ICAI ICAI Bhawan, 2 nd By lane, Manik Nagar, R G Baruah Road Guwahati – 781005 Phone: 0361-2207660, Visit: www.icaiguwahati.org E-mail : icai.guwahati@gmail.com , guwahati@icai.org
17.	National Tax Seminar	7 th August, 2012	Hotel Jehan Numa Palace, Bhopal	6	- Significant Accounting & Taxation Issues in Real Estate Transactions - Recent Changes in Service Tax & Concept of Negative List - Survey, Search & Seizure	Bhopal Branch of CIRC of ICAI, 148, Zone - II, M. P. Nagar, Bhopal - 462011 Phone: 0755-2558066 Fax: 0755-2571850; E-mail: bhopal@icai.org
18.	Residential Refresher Course	10 th , 11 th & 12 th August, 2012	Hotel Silver Star, Srinagar	9	- Service Tax - Revised Schedule VI - Accounting Standards - 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 Mob: 09313976289 Programme Coordinator: CA. Sudhir Wali Chairman, J & K Branch of NIRC of ICAI Mob: 9419189546 E-mail: sudhirwali@yahoo.co.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
						Program Convenor(s) CA. Deepak Malhotra Mob: 09814124233 E-mail: deepakmalhotras@yahoo.com CA. Altaf Hussain Mir E-mail: miraltafca@yahoo.co.in Mob: 09906880000 For Registration & other details Dr. Sambit Kumar Mishra Secretary CCBCAF & SMP, ICAI E-mail: sambit.mishra@icai.org Phone: 011-30110497
19.	Workshop on Capacity Building Measures of the Practitioners & CA Firms	11 th August, 2012	Shantinath Hall, Ahmedabad Branch of WIRC of ICAI, 123, Sardar Patel Colony, Naranpura, Ahmedabad	6	- Domestic Transfer Pricing and Recent TDS amendments - Professional Practice Management - Need for Change in Perspective – Professional Practice - Taxation of Non-Residents - Taxation of Shares & Securities – Some Issues	Programme Chairman CA. Pankaj Tyagee Chairman, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI E-mail: pankajtyagee@gmail.com Mob: 09313976289 Programme Director CA. Dhinal Ashvinbhai, Shah Central Council Member, ICAI E-mail: dhinal.shah@in.ey.com Mob: 09825029950 Program Co-ordinator CA. Jainik Nautam Vakil Chairman Ahmedabad Branch of WIRC of ICAI Mob: 9825159617 E-mail: jainikca@hotmail.com
20.	Workshop on Capacity Building Measures through IT Tools	11 th August, 2012	ICAI Bhawan, Belgaum	3	- ICAI-XBRL - ICAI Tax Suite - 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 Mob: 09313976289 Program Co-ordinator CA. NITIN S HIREMATH Chairman Belgaum Branch of SIRC of ICAI Mob: 98455-13770 E-mail: nitinhiremath@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
21.	Workshop on Capacity Building Measures of the Practitioners & CA Firms	28 th July, 2012	ICAI Bhawan, Bilaspur (C.G.)	6	- Emerging Issues on Income Tax - Emerging Issues on Service Tax - Capacity Building through IT Tools	Program Chairman CA. Pankaj Tyagee Chairman, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI E-mail: pankajtyagee@gmail.com Mob: 0 9313976289 Program Co-ordinator CA. Govind Madhaw Gupta Chairman Bilaspur Branch of CIRC of ICAI E-mail: gmgupta.ca@gmail.com Mob: 09827156680
22.	Workshop on Capacity Building Measures through IT Tools	25 th August, 2012	ICAI BHAWAN, Calicut	3	- ICAI-XBRL - ICAI Tax Suite - Payroll Software	Program Chairman CA. Pankaj Tyagee Chairman, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI E-mail: pankajtyagee@gmail.com Mob: 0 9313976289 Program Co-ordinator CA. Shaju Sebastian Chairman Calicut Branch of SIRC of ICAI E-mail: shajufca@gmail.com Mob: 09447014026
23.	Workshop on Capacity Building Measures through IT Tools	4 th August, 2012	ICAI BHAWAN, Mangalore	3	- ICAI-XBRL - ICAI Tax Suite - Payroll Software	Program Chairman CA. Pankaj Tyagee Chairman, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI E-mail: pankajtyagee@gmail.com Mob: 0 9313976289 Program Co-ordinator CA. MURALI MOHAN Chairman Mangalore Branch of SIRC of ICAI E-mail: muralimohan@mca.co.in Mob: 098451 02004
24.	Workshop on Capacity Building Measures through IT Tools	11 th August, 2012	ICAI Bhawan Kollam	3	- ICAI-Tax Suite - ICAI-XBRL - Payroll software	Program Chairman CA. Pankaj Tyagee Chairman, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI E-mail: pankajtyagee@gmail.com Mob: 0 9313976289

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. Krishna Kumar. K Chairman Kollam Branch of SIRC of ICAI E-mail: kkumarfca1@gmail.com Mob: 09495114025
25.	Workshop on Capacity Building Measures through IT Tools	4 th August, 2012	ICAI Bhawan Salem	3	• ICAI-Tax Suite • ICAI-XBRL • Payroll software	Program Chairman CA. Pankaj Tyagee Chairman, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI E-mail: pankajtyagee@gmail.com Mob: 0 9313976289 Program Co-ordinator CA. R. GUNASEKARAN Chairman Salem Branch of SIRC of ICAI E-mail: slmguna@yahoo.co.in Mob: 09362109697
26.	Workshop on Capacity Building Measures through IT Tools	4 th August, 2012	ICAI Bhawan Udupi	3	• ICAI-Tax Suite • ICAI-XBRL • Payroll software	Program Chairman CA. Pankaj Tyagee Chairman, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI E-mail: pankajtyagee@gmail.com Mob: 0 9313976289 Program Co-ordinator CA. Ganesh Y Chairman Udupi Branch of SIRC of ICAI E-mail: yganesh_co@yahoo.com Mob: 09845249044
27.	All India Conference on "Ethics: The Key to Professional Excellence"	5 th & 6 th August, 2012	ICAI Bhawan, Near CA Circle, Sector 14, Hiran Mangri, Udaipur	12	1) Around & About the Profession- Creating Effectiveness and Scope 2) FAQ on Ethical Standards 3) Service Tax-How to Ascertain Scope of Negative List 4) Interpretation of deeds and Documents 5) Standards of Audit and Tendering- Minimizing Risk involved 6) Tax Planning through HUF 7) Income Tax Survey-Key Issues & Practical aspects 8) Development Agreements & Capital Gain Tax	CA. Gaurav Vyas, Chairman, Udaipur Branch CA. Deepak Aren, Secretary, Udaipur Branch Phone: 0294-2641515, 2641616 E-mail: udaipur@icai.org
28.	Training Programme for Technical Reviewers Organised By the Financial Reporting Review Board	24 th August, 2012	ICAI Bhawan, Kalali- Tandalja Road, Baroda	6	• Overview of Financial Reporting Review Board & Commonly observed Non-compliances in the General Purpose Financial Statements • Regulatory Compliances – Revised Schedule VI & CARO • Audit Planning & Documentation • Methodology for Sound Review, Case Studies & Query Clarifications –Experience shared by Senior Reviewer	Training Chairman CA. Sanjeev Maheshwari, Chairman, FRRB Mob: 098211 19043, 093211 19043 Training Director CA. Dhinal Shah, Central Council Member and Member, FRRB Mob: 098250 29950

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours	Topics (in brief without details of technical sessions, timings and speakers)	Contact Person
						Host Branch Training Coordinator CA. Pradeep Agrawal, Chairman - Baroda Branch of WIRC of ICAI Mob: 093272 43479, 098985 60967 CA. Nayan Kothari- Secretary- Baroda Branch of WIRC of ICAI Mob: 098244 33445 Host Branch Contact details Baroda Branch of WIRC of ICAI, ICAI Bhawan, Kalali-Tandalja Road, Atladra, Baroda-390012, Gujarat Phone: 0265- 2680593, 2681115, E-mail: baroda@icai.org , www.baroda-icai.org

ICAI NEWS

Important Announcement: Annual Membership & COP Fee

Members are requested to remit the current year's fee for continuance of membership - Associate/Fellow/Certificate of Practice as the case may be by 30th September, 2012 as per following applicable schedule of fees.

Particulars of Fees	Annual membership Fee (Rupees)
Annual membership Fee	
Associate Fee	800
Fellow Fee	2200
Certificate of Practice Fee	2000

Members who are senior citizens *i.e.* have attained the age of 65 years as on 1st April will be required to pay the fees at concessional rates which are as under: -

Fee for Senior Citizen Members

Particulars of Fees	Annual membership Fee (Rupees)
Annual membership Fee	
Associate Fee	600
Fellow Fee	1600
Certificate of Practice Fee	1500

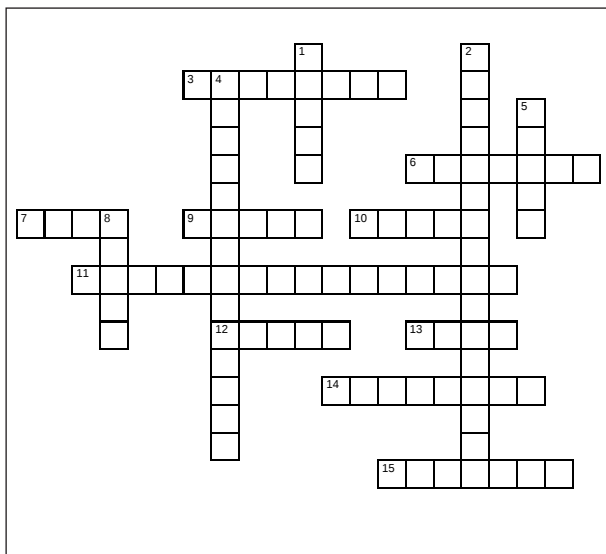
For details about fee for fresh enrollment including COP etc, please refer to announcement hosted on the website at link <http://220.227.161.86/22068announ12483.pdf>

Joint Secretary
M&C-MSS Section

Members can pay their fee on line by clicking online payments link on the homepage of www.icai.org

CROSSWORD

074



ACROSS

3. The Revised Schedule VI specifically requires a company to present the debit balance of Statement of Profit and Loss as a _____ figure under sub-head 'Surplus' within the main head 'Reserves and Surplus'.
6. _____ tax was imposed on the recommendations of Dr. Raja Chelliah Committee.
7. Index 'Residex' is associated with _____ Prices.
9. Incidence of indirect taxes indicates how much burden of indirect taxes will be borne by the producers and how much by the consumers by way of rise in _____.
10. Basic Excise duty is covered under the _____ Schedule of the Central Excise Tariff Act.
11. As per Rule 15 of the Central Excise Rules, 2002, the option of paying duty is available to those manufacturers who manufacture _____.
12. Border/Introduction of Place of Provision of Service Rules, 2012 will primarily benefit the service providers involved in _____ services.

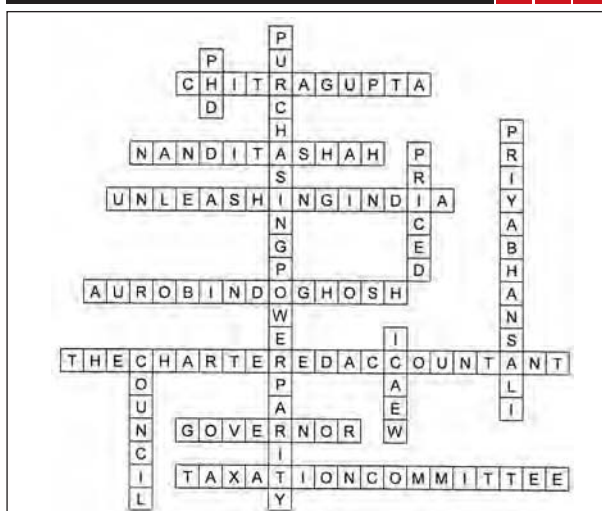
13. Non-Dutiable goods mean that the name of the product is mentioned in the Tariff Act with the _____ Rate.
14. Name of new entity after merger of Air India and Indian Airlines.
15. Excisable goods consumed within the factory for the manufacture of final product is called _____ consumption.

DOWN

1. The excise duty on alcoholic goods manufactured by the manufacturer is payable to _____ Government.
2. A _____ will come under the Specific Rate of Duty.
4. People will have to file their income-tax returns _____ if their earnings exceed ₹ 10 lakh in a financial year.
5. Labelling and relabelling comes under Schedule of Central Excise.
8. The new Share Price Index (in dollar value) of Mumbai Share Market is _____.

NOTE: Members can claim one hour – CPE Credit – Unstructured Learning for attempting this crossword by filling the details in the self-declaration form to be submitted to your regional office annually to avail CPE hours credit for Unstructured Learning activities under the activity 'Providing Solutions to Questionnaires/puzzles available on Web/Professional Journals'. There is no need to individually send this crossword in hard copy or email.

SOLUTION CROSSWORD 073



1 The difference between TRUTH and LIE

TRUTH: Is a debit card Pay 1st and enjoy later.
LIE: Is a credit card Enjoy 1st and pay later.

2 Arguments

A woman has the last word in any argument.
Anything a man says after that is the beginning of a new argument.