



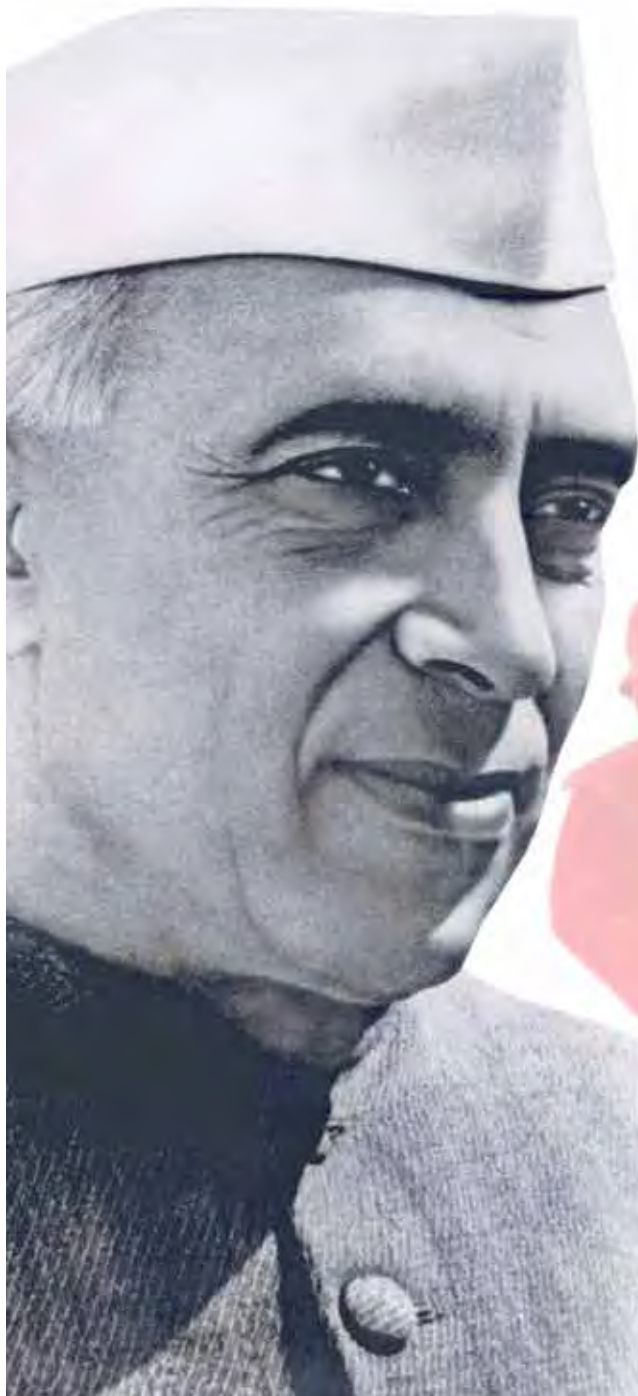
THE CHARTERED ACCOUNTANT JOURNAL

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

VOLUME 61 | No. 5 | NOVEMBER 2012

THE CHARTERED ACCOUNTANT

₹ 100



“Loyal and efficient work in a great cause, even though it may not be immediately recognised, ultimately bears fruit... Citizenship consists in the service of the country... Action to be effective must be directed to clearly conceived ends... Time is not measured by the passing of years but by what one does, what one feels, and what one achieves... Failure comes only when we forget our ideals and objectives and principles... It is ignorance which is always afraid of change.”

Shri Jawaharlal Nehru
First Prime Minister of India
(1889-1964)

Role of Chartered Accountants in Insurance Sector

In spite of a recent temporary slowdown, insurance remains one of the most potent and promising sectors of the Indian industry. Although, India's ranking in the world insurance market dropped by four places, i.e. from 11th in 2010 to 15th in 2011, a reliable projection says that the Indian insurance sector will reach around \$ 400 billion in premium income by 2020. There is little doubt over the immense potential of the insurance business in India in long-run as indicated by a steadily growing economy, increasing insurance penetration and rising income levels of the middle-class. Currently, only about 5% of India's population invests in insurance, and most of them are in tier-1 and tier-2 cities. A vast majority of the population staying in rural and semi-urban areas is still either unaware or unable to reach to insurance due to constrained distribution channels. As such, experts rightly look at the current period of slowdown as *period of consolidation*, because, if we look at the overall penetration of the life insurance industry, we are not far behind. In non-life category, though we lag behind the Asian or global market, there exists a huge potential. We are probably the 8th or 9th largest market in the world in terms of the total premiums collected when measured against the GDP. So, there has been a significant growth in the last 10 years. As such, if there is a period of consolidation, one should not worry too much.

And, with the Government recently proposing to increase the FDI limit to 49% from the existing 26% in insurance sector, this sector is all set to touch newer heights, tapping new opportunities and investments in times to come. This policy reform will flag-off the next phase of development and send a positive signal to foreign insurers who have been 'waiting-in-the-wings' for the FDI cap to increase before they enter the Indian market. According to the insurance regulator IRDA, the sector presently constitutes around 4.5% of the GDP. Throwing it open to foreign participation can help the sector grow at a peg of 11% to 12% per annum. Earlier, this year's Union Budget had already revised the eligibility conditions for tax exemption under Section 80C and 10 (10D) from the previous sum assured from a multiple of five to ten times.

In this backdrop, there exist vast professional opportunities for chartered accountants in this sector. Chartered accountants, known for analytical ability,

excellent technical skill and meticulous working style are most suited to sort out increasing intricacies in this sector, more so if they are armed with the industry-specific ICAI qualification *Diploma in Insurance & Risk Management* (DIRM). They can fit into any role—be it investment advisor, broker, auditor, loss assessor or financial analyst in treasury management.

Chartered accountants can be very effective as advisers to insurance companies and in operations functions and business process reengineering teams. Their services can be crucial in external support services like statutory audit, internal/concurrent audit, IT audit, process audit/consultancy and investment audit. Insurance companies have been advised to have two audit firms on joint-audit for their statutory audit. The IRDA has further stipulated guidelines on appointment of auditors based on the experience of the firms/partners. CA firms are engaged to carry out specific purpose audits like audits to check level of compliance with the authority's regulations, e.g. regulations on investment functions of insurance companies, audit of implementation of investment risk management systems and processes, etc.

The ICAI has been very much alive to the role that CAs can play in insurance sector. On recognising the potential of insurance sector immediately after it opened up for the private players, the Institute constituted a specialised committee on insurance to act as an integrated hub for research, dialogue, inputs in policy formulation in emerging context of financial services in general and insurance sector in particular. The President of the Institute is a part-time member of the IRDA. Additionally, the ICAI has its representation in various important committees/groups constituted by the IRDA for development of the sector.

In the last couple of years, there has been a plethora of changes in the insurance sector and it is likely that innovation and adaptability will continue to remain the buzzword for this industry has been moving forward to tap its full potential. And, chartered accountants can play a vital role in the realisation of that goal.

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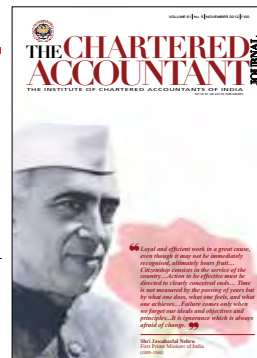


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Smile Please





CA. Jaydeep Narendra Shah, President, ICAI

Dear Friends,

Accountancy profession in India has grown big not because it has come across a multitude of decades, but because it has had a glorious eventful past that we can take pride on while reflecting on its curve of growth. Our first Prime Minister Jawaharlal Nehru had said: *Time is not measured by the passing of years but by what one does, what one feels, and what one achieves.* Since the inception of chartered accountancy in India, we have always referred to our glorious high principles and they have always shown us a way. The profession through its *Code of Ethics* has helped its followers in strictly adhering to the agenda of social responsibility, eventually bolstering the economy of our nation. Quite rightly, Nehru was not ready to call us citizens if we did not present ourselves *in the service of the country*. Therefore, it is important to understand his perspective of citizenship and I am sure we could never fall behind in progress following that. He reminded all professionals in a way when he explained: *Failure comes only when we forget our ideals and objectives and principles.* I find it correct and quite encouraging too. Of course, if we remember our ideals and principles, we can never be unsuccessful eventually.

Jawaharlal Nehru exhausted himself trying to create a polity and economy in his India along the secular and socialist principles. Even today, we cannot deny that we need a vision close to and in line with Nehru's democratic, secular and socialist principles, if we want to grow responsibly. We can all realise the need if we observe our society and nation. We must salute our first Premier for that.

Jawaharlal Nehru was quite timely to understand the importance of science and technology, since he realised the need to economise resources including time, human resource, etc., and said: *It is science alone that can solve the problems of hunger and poverty, of insanitation and illiteracy, of superstition and deadening custom and tradition...Who indeed could afford to ignore science today?...future belongs to science and those who make friends with science.* At our institution too, we have been using technology to save on various resources and to advance the cause of earth and its environment; I firmly believe in our membership that they would join hands to further this cause, in order to make our mother earth a more liveable place for the young. I personally liked the way he supported socialism and warned us: *...forces in a capitalist society, if left unchecked, tend to make the rich richer and the poor poorer.* He was quite concerned for parity in society—a minimised gap among the masses. He never lost touch with the reality of his time.

It is a lesson to be anything but wise not to be oblivious of our reality. I would urge our members to be more responsible citizens, since our nation at present needs all of us to understand our responsibility and, then, to act upon that with our heart and blood.

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

International Initiatives

CAPA Meetings and Member Events in Sri Lanka:

I represented the ICAI at the CAPA (Confederation of Asian and Pacific Accountants) meetings and events recently organised in Sri Lanka. I attended the CAPA meeting while my Central Council Colleague CA. Bhavna Doshi attended the CASL National Conference organised by the CAPA. Attending these meetings helped in projecting ICAI/Indian perspective and also keeping a watch on the activities taking place. It also served as a reference point for member bodies in discussions with government and regulators.

WTO Forum in Geneva: The WTO Public Forum 2012 on *Is Multilateralism in Crisis?* was held recently in Geneva, where my Central Council colleague CA. Jayant Gokhale represented the Institute as our third successive participation, which provided an opportunity to the stakeholders of multilateral trading system to analyse if multilateralism is in a state of crisis, taking into account both the Doha round deadlock and elements of the WTO work program. This Forum gave us a better understanding of the changing global scenario, particularly with regard to services that could arise in the Doha round of trade negotiations. It was interesting that many developing countries as well as the BRICS countries, i.e. Brazil, Russia, India, China and South Africa, were eager to look at fresh paradigms arising out of the changing economic situation. I am happy that our Institute continues to stay ahead on the learning curve using its discerning vision and foresight in handling emerging challenges. I am sure we would be in a position to suitably project the related views on the profession to the Ministry of Commerce, Government of India, and could even take up a leadership role if called upon to do so.

IIA Annual Conference 2012 in London: IIA Annual Conference 2012 was held recently in London where a Central Council colleague represented the ICAI. The theme of the Conference was "The changing regulatory environment and the implications for internal audit". Regulatory reform and a changing business environment mean that risks have shifted. The current scenario has highlighted the importance of effective governance, risk management and control. The Conference provided insights into how internal audit needs to respond to the changing business environment by redefining its value.

Providing IFRS Training in Dubai: ICAI past-President CA. Amarjit Chopra visited Dubai recently to provide training under IFRS Certification Course. The training was delivered where issues involved in the first-time adoption of IFRS based on case-study problems were covered. It is significant that the ICAI should deliver training sessions on IFRS in Middle East countries where most of our foreign members are based, helping them to understand the issues involved in the adoption of IFRS.

International Fiscal Association's 66th Annual Congress in Boston: The International Fiscal Association's 66th Annual Congress was held in Boston, USA recently, wherein my Central Council Colleague CA. Mahesh P. Sarda and another Council member represented the ICAI. The Association is the world's

only non-governmental and non-sectoral organisation dealing with the fiscal (tax) matters. Based in Rotterdam, it provides, in conjunction with the activities of each country branch, a blend of comprehensive research on international taxation and the development of programmes and initiatives of current practical importance.

Collaboration of ICAI and CPA Ireland in London: The British CPA Society of the Institute of Certified Public Accountants in Ireland (CPA), in collaboration with the UK (London) Chapter of ICAI, recently co-hosted a seminar titled *Where do we stand in globalised accounting? The roadmap, opportunities and challenges* recently, sponsored by the CPA Ireland; this formally launched the collaboration in the UK between CPA Ireland and ICAI by the mutual recognition agreement that is in place between both Institutes. The speaker, IASB member CA. Prabhakar Kalavacherla, delivered an engaging presentation which was well-received by participants from both the institutes. The seminar was attended by a host of dignitaries including John Devaney, CPA Council member and Chairman, British CPA Society, and CA. Ajay Agrawal, Chairman UK (London) Chapter of the ICAI.

24th Annual International Seminar 2012 by Abu Dhabi Chapter Scheduled: I, along with one of my Central Council Colleagues would be attending the 24th Annual International Seminar 2012, 1st GCC Seminar, to be organised by the Abu Dhabi Chapter of ICAI in November 2012. The Seminar on *Waves of Change: Oceans of Opportunity* would bring together a galaxy of experts and leaders, i.e., industry-leading CEOs, CFOs, finance and management professionals.

ICAI International Conference Scheduled to be held in Mumbai: We are organising a mega international conference on the theme "Accountancy Profession: Enablers of Economic Growth" on 24th and 25th January, 2013, in Mumbai. The Conference would be an assimilation of learned resources in areas of financial reengineering, Governance, harmonisation of standards; Financial cauldron & learning lessons and SMP context. The Conference would see participation by over 1,500 stakeholders from the Asia Pacific region specifically and would veritably have participation from 'Who's Who' of the accountancy profession.

Initiatives for Profession
Breakthrough in Our Efforts with Regard to Autonomy of Bank Audit: I am glad to communicate that, in a

major breakthrough with regard to the autonomy of bank audit, the Government has agreed to handle the selection of auditors for state-run banks on its own instead of leaving it to the public-sector banks, as a result of our effective advocacy for a need of auditors' appointment by an independent regulator such as RBI instead of some public-sector bank doing that on its own. We had expressed concerns over a possible laxity in the audit followed by lenders and possible overstatement of profits. The Ministry of Finance is expected to issue guidelines in this regard soon. We had been repeatedly representing before the Ministries (of Corporate Affairs and Finance) regarding that practice of management self-selecting auditors in public-sector banks, as that was not ethical given the conflict of interest. The selection of auditor in most state-run banks was being done by the bank management.

Report on Strengthening Capital Market Submitted:

The Ministry of Corporate Affairs had constituted a committee under my chairmanship that has representatives from ICSI, ICAI (erstwhile ICWAI), SEBI, RBI, IMC, etc., with tasks related to developing a 20-point summary of annual report, financial literacy, colour coding of financial products, effective investor grievance redressal mechanism and so on. I am pleased to inform that the committee deliberated all the matters and finalised and submitted their report to the Corporate Affairs Minister Dr. M. Veerappa Moily and Secretary Shri Naved Masood. In line with its terms of references, the Committee has addressed all aspects in the report providing resolution framework on all given action points. I am sure that this report will be useful in taking initiatives to promote a healthy corporate environment for a vibrant capital market.

Study Group on Practising CAs Engaged as Lecturers in Colleges/institutions:

I am happy to inform you that, in order to streamline and render more services by practising chartered accountants engaged as lecturers in colleges and institutions at graduate and postgraduate levels all over the country, I have constituted a study group comprising one of my council colleagues as Convenor and some other members from across the country. The Group will identify the members who are engaged as full-/part-time faculty in colleges/institutions and find out ways and means to streamline and render more services by practicing chartered accountants engaged as lecturers in colleges and institutions for practical subjects like Accounting, Auditing,

Taxation, etc., as expert faculty, which is expected to reduce the gap between theory and practice and make commerce education more meaningful, practical and effective. The Group will also study the rules and regulations of University Grants Commission and All India Council for Technical Education with regards to the appointment of CAs as faculty. I am sure this initiative will prove to be immensely beneficial to our related members in particular and our nation in general.

XBRL Filings: As you all may be aware that the second phase of MCA mandate of filing of financial statements of a certain class of companies has begun from 14th October, 2012. The taxonomy being used for filing for the year commencing on or after 1st of April 2011 is based on the requirements of Revised Schedule VI to the Companies Act, 1956, which became applicable for the financial statements for the financial year commencing on or after 1st of April 2011. This year also, the XBRL filings require certification by the professionals like last year. While I believe that our members would discharge their responsibilities of certification diligently, I appeal to them for being more cautious in view of the recent General Circular No. 33/2012 dated 16th October, 2012 issued by the MCA expressing their concerns over XBRL filings done last year. I am of the firm belief that our members would stand up to the trust reposed by the Government in us.

Visit to Amravati Branch of ICAI: As part of my efforts to go closer to ICAI membership at large, understand their viewpoints and give them first hand information about various initiatives of the ICAI launched for them, I recently visited Amravati Branch of the ICAI to interact with local members and students in separate meetings. In a well-attended meeting, I spoke at length on present challenges before the profession, new opportunities, quality maintenance of attestation function and infrastructure initiatives of the Institute. For students, I spoke about various examination reforms initiated by the ICAI besides stressing the bright career prospects of our students. I also visited the Amravati Branch building whose construction is at an advanced stage.

Visit to Akola Branch of ICAI: I recently visited the Akola Branch of the ICAI to interact with members and students in two separate meetings. At these well-attended meetings, I informed about the various new initiatives taken by the Institute to boost the status and capacities of the members and students, and to help them avail new opportunities to serve the nation. I plan

more such programmes, for these give us opportunities to closely interact with the members across the country and better understand their viewpoints pertaining to the growth of the profession and its members.

CPE Residential Refresher Seminar in Tirupati:

As part of our persistent efforts to keep the members up-to-date on various areas of professional interest, the Continuing Professional Committee of the ICAI recently organised a 3-day CPE Residential Refresher Seminar in Tirupati. Shri K. S. Srinivasa Raju, IAS Joint Executive Officer, Tirumala Tirupati Devasthanam, was the Chief Guest on the occasion. The various topics discussed in the seminar included real estate transactions, preparation & presentation of appeals before the CIT (Appeals) and ITAT, forensic audit, emerging techniques and benefits to auditors, emerging challenges and opportunities for CA, tax risks/issues and implications, etc.

Initiatives for Government Offices/Officials

Suggestions for Central Direct Taxes Advisory Committee meeting:

On a request from Central Direct Taxes Advisory Committee, we have flagged some important matters soon to be discussed during the meeting of CDTAC. I have been invited to take part in this meeting under the Chairmanship of Finance Minister Shri P Chidambaram. Suggestions were called for on measures for developing and encouraging mutual understanding and co-operation between taxpayers and the Income-tax Department and removing administrative and procedural difficulties of general nature. The points of discussion submitted by ICAI were determined keeping the same in mind. It may be noted that apart from other points, ICAI has specifically requested the Honourable Finance Minister to consider the many suggestions to curb the alleged misuse of membership numbers in tax audit reports by the assessee while uploading income-tax returns. We have suggested that Tax audit report digitally signed by the tax auditor may be allowed to be uploaded along with the return of income at the earliest. We have suggested that on the basis of data provided by ICAI, a validation link may be created on the Directorate of Income Tax website, which would enable the Department to verify the details of member who is conducting the audit. In case the membership details so entered do not match with the ICAI Data, the system should not allow the uploading of the return after two attempts. To further strengthen the system, it is suggested that a user ID and a password

may be made available to every practicing member by the Income tax Department, so that the member can view all the tax audit reports uploaded in his name.

Meeting with Member (L&C), CBDT: The Direct Taxes Committee met the Central Board of Direct Taxes member Dr. Sudha Sharma recently to follow up with regard to representations made by us on Review of Form No. 3CD & ITR Forms vis-à-vis requirements of Revised Schedule VI, 'Request to allow uploading of Tax audit report along with income-tax returns and allotment of user id and password to members,' 'Request to clarify the applicability of provisions of Section 44AB to Co-operative Societies carrying on activities in the nature of business,' and 'Suggestions of ICAI on Discussion paper on Tax Accounting Standards (TAS), and 'Guidelines for the empanelment of auditors under Section 142(2A).' The concerns of ICAI were well received and assurance was given that the same will be duly considered.

Meeting with Disinvestment Secretary: I recently had a discussion with the Secretary of Department of Disinvestment from Ministry of Finance, Shri Mohammad Haleem Khan, on matters of interest to Indian accountancy professionals. During the meeting, I also proposed and discussed various ways in which the department can effectively utilise the services of chartered accountants in various related processes and procedures. His response was quite positive.

Training Course for Senior Tax Officials: We are happy to inform that the Institute, in collaboration with the CBEC, is organising a five days Training Course from 29th October, 2012 to 2nd November 2012 for senior service tax officials in New Delhi. The training course is being organised with a view to enable the trainees to have a systematic exposure to understanding modern financial statements and audit techniques to increase the effectiveness of the revenue assessment. The training would primarily be on review and analysis of financial statements with specific focus on indirect taxes. I am sure that this initiative will help in bettering the governance in general and sharpening the skills of the officers in particular.

27th GASAB's Board Meeting at C&AG: 27th meeting of the Government Accounting Standards Advisory Board (GASAB) was held recently at the office of C&AG of India. I being a member of GASAB, attended the meeting along with ICAI Technical Director Dr. Avinash Chander. At the

meeting, a status report on newly created structure of GASAB's secretariat was presented and discussed. It was informed that the Ministry of Finance, at the apex level, has constituted a committee for implementation of accrual accounting in the Government of India, which has asked the GASAB to bring out an advisory on *Asset Accounting* within the framework of present system of accounting followed in the Government to provide guidance to capture assets for disclosure in the financial statements. Accordingly, a task-based group of GASAB prepared a draft advisory on *Asset Accounting*, which was also discussed in the meeting. Draft *IGAS 9: Investment in Equity: Government* and draft *IGFRS 3: Revenue from Exchange Transactions* were discussed in the meeting. Our opinions were well-received and appreciated, and it was agreed in principle that we would be contacted further for input on the subject.

Training Programme on Revised Schedule VI: Department of Public Enterprises (DPE), Union Ministry of Heavy Industries & Public Enterprises & Public Undertaking Department, Government of Himachal Pradesh in collaboration with Committee on Public Finance & Government Accounting (CPF&GA) of the ICAI recently organised a Training Programme on "Revised Schedule VI and its implications" for State Level Public Enterprises (SLPEs) Himachal Pradesh in Shimla. This programme being the third in the series was aimed at developing the skills and refining the capabilities of the officers to handle the issues concerning Revised Schedule VI. The prominent dignitaries present on the occasion included Dr. Sharat Kumar, Economic Advisor, DPE, Past President of the ICAI CA. Amarjit Chopra, Chairman, CPF&GA, CA. Bhagwan Das Gupta, faculty, Shri Subhasish Panda, IAS, Spl. Secretary (Finance)-cum-Director Public Finance & Public Enterprises to the Government of Himachal Pradesh, and Shri Ashok Sharma, Project Coordinator, H.P. State Electronics Development Corporation Ltd. CA. Amarjit Chopra, Chairman, CPF&GA, addressed the participants on *Overview of Revised Schedule VI along with comparison with old Schedule VI*. A large number of officials of State Level Public Enterprises attended the Programme.

We are progressing rapidly. However, discrimination still exists all over the world with regard to colour, race, continent and religion of human beings. We must consciously refrain from having such tendencies in us. I would like to quote the remarkable response

of the martial arts instructor-philosopher Bruce Lee in response to the acceptance of a regional recognition: *You know what I want to think of myself? As a human being, because I mean, I don't want to sound like 'as Confucius says', but under the sky, under the heaven, man, there is but one family. It just so happened, man, that people are different. Loving our identity should not be at the cost of others' respect and identity. He rightly says: all types of knowledge ultimately lead to self-knowledge. If we are educated, we must have a mindset with a vision of an equal world—a world that could give equal opportunity and treatment to all. We being evolved individuals of our society cannot do away with our responsibilities.*

Here, I would like to recall an anecdote from the life of a great Italian Renaissance painter called Michelangelo. Once, while painting frescos in the Sistine Chapel, he was lying on his back in a posture that caused pain on a high scaffold, carefully outlining a figure in an obscure corner of a ceiling. A friend asked him why he was taking such pains with a figure which could hardly be seen by anyone, and, *after all, who will know whether it is perfect or not.* Michelangelo replied: *I will.* This illustrates the attitude of a dedicated and responsible perfectionist, which is worth taking note of, particularly when we being at advantage are expected to contribute more. It is also worth taking note of because we are regarded as the trustees of professional excellence in the service of the nation. Let us resolve to proactively pursue perfection with dedication and be satisfied with nothing less. We cannot expect the world to be perfect; however, we may look within and exact the best from ourselves. We can at least try to add to the efforts towards transforming our world into a better and equal world. Only then, can we justify the trust bestowed on us and the compliments given to us by the founding fathers of our nation and a host of leaders throughout since then.

Let us act with diligence and bring in support for the people at disadvantage.

Best wishes



CA. Jaydeep Narendra Shah

President, ICAI

New Delhi, October 23, 2012



Come Forward, Decide and Vote

Dear Professional Colleagues,

As you are aware, forthcoming elections to the Central and 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, i.e. Ahmedabad, Bangalore, Chennai, Delhi/New Delhi, Gurgaon, Hyderabad, Jaipur, Kolkata, Mumbai and Pune, and, at all other places on 8th December, 2012, where polling booths have been set up. It is a great opportunity for us to elect the representatives who will serve the Institute and work for the development of accountancy profession for their term of three years.

Friends, right to vote is sacred and an onerous responsibility that you owe to your parental Institute. Hence, exercising your franchise must be a priority for you and you must cast your vote positively. Your vote is your voice. It's your opportunity to be heard, to hold elected representatives accountable for their decisions and to have a say in important issues that affect our profession.

Voting is linked to *personal efficacy* – a sense of agency or power. It gives us a sense of satisfaction that we have voiced our opinion. By casting our vote for a candidate who in our opinion can represent us in the Central Council and in the Regional Council, we are sowing the seeds not only for growth and betterment of the Institute but also for overall development of the profession in India. Larger voter-turnout will help us to elect right set of representatives who will further contribute to our profession with a new mindset. It will be an empowerment for we members to act on the opportunity and become a dynamic member of profession.

Friends, your vote is invaluable, therefore, before casting your vote, be sure that the representative who you are voting for has the ability to represent. It has been observed that many malicious mails have been in circulation giving misleading and biased information for personal gains and mileage. Therefore, it is my sincere appeal to the professional fraternity, not to get swayed by such e-mails/SMSs/phone calls. You must

check the credentials of the candidates and make an informed decision.

We have a very unique system of preferential voting in our elections. It is, therefore, important that you should not select only one candidate of your choice but should select as many candidates as possible marking your preference. I am sure, you will use your professional wisdom without any inducement to vote or not to vote for a particular candidate on the grounds of religion, caste or community.

Your vote is precious, which counts and matters. Do take out your time, make a note in your programme diary that on 7th and 8th December, 2012 that you have to perform an onerous task for the cause of profession, and be a part in deciding and choosing your policy leadership. In my capacity, as the Chief Executive Authority of the Council, I once again appeal to all of you to please come out in large numbers and vote for the elections to the Central and Regional Councils to be held on 7th and 8th December, 2012 wherein polling booths shall remain open from 8.00 A.M. to 8.00 P.M.

The ballot papers to those members who are entitled to vote by post will be sent by Speed Post at their addresses on record of the Institute as on 1-4-2012. I also appeal to such voters, to please take out some time for recording your votes and ensure that after recording your votes, the ballot papers are returned to the returning officer in accordance with the manner explained in the letter forwarding the ballot papers to you.

Thomas Jefferson, first Secretary of State and third President of the United States of America has very rightly said: *Should things go wrong at any time, the people will set them to rights by the peaceable exercise of their elective rights.* I am confident that all of you will exercise your right as you have done in the past for the betterment of profession.

Regards

CA. Jaydeep Narendra Shah
President, ICAI

Classifieds

- 4958** Recently retired (CPSU) FCA, CWA, CS with CoP seeks sub-contract/assignment in Kolkata. E-mail achintyachaudhuri@gmail.com. Mobile: 9800044081.
- 4959** Pune based CA firm established in 1985 having four whole time partners willing to work on assignment/sub-contract/partnership/retainership basis and also invites proposal from reputed CA firms for merger on mutually beneficial terms. Contact: 9422517877/020-24210031 E-mail: brijeshdattaji@bdcca.com.
- 4960** Lucknow based partnership firm is looking for partners for opening new branch offices in UP and Uttarakhand. Interested person may please contact: manojpandey_ca@yahoo.co.in
- 4961** Lucknow based 25 years CA firm invites proposals for partnership from members holding full/part time CoP. Persons retired from Government jobs would be preferred. Interested contact CA S. N. Gupta at 09415101759, shivnarainabha@yahoo.co.in
- 4962** Invitation of Expression of Interest (EOI) for merger of CA Firms in major Indian cities with seven or lower number of partners. Sole proprietor firms with more than five years in business may also apply. Mutually beneficially terms, status quo on pre-merger revenue/costs; CAG/RBI empanelled firms with CISA/DISA qualifications preferred. Please reply to cafirmconsolidation@gmail.com with contact name, telephone, firm name and address before December 10, 2012.
- 4963** A CA firm requires CA for office at Mumbai who can independently handle professional works related to finance, audit, taxation, etc. Contact: jaidurgashjoshi@rediffmail.com; 9827013103.
- 4964** Delhi based 24 years CA firm having POP in major metros, Invites members/sole practicing members 3-7 years exp, Interested in partnering the practice on joint sourcing/sharing. nwadhwa64@yahoo.co.in, +919958411111.
- 4965** FCA with 24 years experience in industry in insurance, mutual fund, micro finance, real estate etc. now practicing in the heart of Bangalore City invites proposals for professional work in the nature of assignment/sub-contract/networking/opening a branch of an all India firm/merger. Please contact: abdur.rahman@icai.org
- 4966** S. Madhavan and Associates, a newly started Chennai based firm seeks professional work. E-Mail: madhavan.ca2008@gmail.com; contact: 9865691436
- 4967** Delhi based CA firm requires experienced Chartered Accountants, having good taxation, audit experience. Practicing professionals wishing to merge their practice are also welcome. Contact: + 91-9958343661. E-mail id: ca.recruitment12@gmail.com
- 4968** Nagpur based CA firm having qualified staff invites professional work in audit, taxation and management consultancy. Please contact us CA. R. D. Agarwal (9766063322, 9371626440).

National Conference on Challenges & Changes in CA Profession Cuttack, Odisha (1st & 2nd December, 2012)



Day One (December 1, 2012)

- Inaugural Session
- Industry
- Direct Tax
- Recent Economical Developments
- Special Reference to FDI

Contact Person

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Conference Chairman
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Day Two (December 2, 2012)

- Service Tax
- Recent Amendments in Companies Act
- Stress Management



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Organised By: **Cuttack Branch of EIRC of ICAI**
Hosted By: **Professional Development Committee of ICAI**
Email : cuttack@icai.org, cuttack.icai@gmail.com

October 2012 Issue Was Informative

It was a learning experience to go through the October 2012 issue, which was systematically packed with professionally relevant knowledge. I was particularly happy to go through the write-up titled 'Mahatma's Tryst with Learning and Accountancy' under 'Did You Know' section, which made me aware a very lesser known fact about Mahatma Gandhi's tryst with accountancy. Further, the rare photographs of Mahatma Gandhi and Gyarah Murti on the Cover Page, together with his highly inspiring quotes, were a fit tribute to the Father of the Nation. The Editorial titled 'Corporate Governance and Role of CAs' was also worth reading and quite knowledge enhancing for Members in Industry. The other articles under 'Accounting,' 'Auditing,' 'Taxation,' 'Industry-Specific,' 'Corporate and Allied Laws,' 'Banking and Finance,' 'Corporate Governance,' and 'Management' were equally informative. Here I would like particularly mention as particularly worth reading the articles titled 'The Wait is Finally Over - Advance Pricing Agreements...' under 'International Taxation' and 'ERP Systems – Overview of their Emergence, Implementation and Way Forward' under 'Information and Technology'.

-CA. Sumit Raheja

Journal Important Part of ICAI Knowledge Initiative

Thanks for the information-packed September 2012 issue of CA Journal. The recent times are challenging. On the brighter side, with the Government nod in FDI for retail and aviation, a host of opportunities also await us. The ICAI has set the tone for several policy reforms including assisting the Government in DTC, GST, IND-AS and several other unique initiatives. Time and again CAs are contributing to India's GDP. Our Institute has recently developed guidelines for financial reporting of Educational institutions across the country. ICAI has also been contributing in developing methodologies for curbing Black Money and even helping in strengthening the country's governance mechanism. The ICAI has also issued recent Guidance Notes on revenue for Rate Regulated Entities (RRE), revenue recognition for real estate transactions and also on carbon credit / emission domain. Such a wide array of services which CAs render, from IFRS to Forensic audit, from ERP implementation to structuring FDI, from Bank audit to Process assurance - is only possible due to tremendous Knowledge Management initiatives by the ICAI. And The Chartered Accountant journal is an important component of that initiative. Truly, ICAI stands for Information, Capacity building, Assurance and Initiatives.

-CA. Arijit Chakraborty, Kolkata

I find the Journal very useful because it helps in updating information. I am a July 2012 CA. It is suggested that for fresh CAs and also for seniors, information about placement avenues ought also to be included in the Journal to make it more comprehensive.

-CA Asheet Jain, Lucknow

I am Proud of my CA fraternity

I am a practicing CA in Ghaziabad. I along with my family wanted to go to Shimla for my holidays. I identified few resorts/holidays in Shimla through Internet but my problem was to confirm the genuineness of these resorts/hotels shown on Internet. I didn't know any local who could help me with this issue by telling the actual position. Then the noble idea came in my mind and on Internet itself I looked for the list of Chartered Accountants in Shimla and called the first name that appeared in the list. I was confident that just by telling him that I am also a CA, he will certainly help me. He proved me right by not only telling me about the detail of the location but he went personally at the location to confirm his statement. Through this letter I want to thank my CA fraternity as a whole, not because a CA helped me but he has proved that relationship in our fraternity is not limited to profession but it goes beyond.

-CA. Anil Agarwal, Ghaziabad

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



ICAI Submits Report to MCA Minister and Secretary

ICAI President CA. Jaydeep Narendra Shah submits *Report of the Committee for Follow-up of Action Points: Relating to Investor Related Issues Identified from ICIM Events to Corporate Affairs Minister Dr. M. Veerappa Moily*. ICAI Secretary Shri T. Karthikeyan among others, can also be seen. (October 10, 2012)



GRI South Asia Conference in New Delhi

ICAI President CA. Jaydeep Narendra Shah shares the dais with Corporate Affairs Minister and Secretary Dr. M. Veerappa Moily and Shri Naved Masood, ICSI President Shri Nesar Ahmad and Global Reporting Initiative Chairman Mr. Herman Mulder during the Conference on *Sustainability Reporting for a Sustainable Economy* (September 26, 2012)



Meeting with Infosys CFO in Bangalore

ICAI President CA. Jaydeep Narendra Shah greets Infosys Chief Finance Officer Shri V. Balakrishnan (October 3, 2012)



Amravati Branch Building Construction in Progress

ICAI President CA. Jaydeep Narendra Shah with his better half Smt. Harsha Shah, Branch Chairman CA. Sanjay D. Lakhota and members of the Branch at the site of Branch building under construction (October 1, 2012)



SAFA Board Meeting in Kathmandu

ICAI President CA. Jaydeep Narendra Shah along with SAFA President Mr. Muhammad Rafi and other representatives of the accounting bodies of SAARC nations at the SAFA Board meeting. (September 14, 2012)



Meeting Disinvestment Secretary from MoF

ICAI President CA. Jaydeep Narendra Shah meets the Secretary of Department of Disinvestment from Ministry of Finance Shri Mohd. Haleem Khan in New Delhi (October 11, 2012)



ICAI Submits Report to MCA Minister and Secretary

ICAI President CA. Jaydeep Narendra Shah submits *Report of the Committee for Follow-up of Action Points: Relating to Investor Related Issues Identified from ICIM Events to Corporate Affairs Secretary Shri Naved Masood*. ICAI Secretary Shri T. Karthikeyan shares the occasion. (October 10, 2012)



SAFA International Seminar in Kathmandu

ICAI Central Council member CA. Bhavna Doshi addresses the participants at International Seminar on *International Taxation and Transfer Pricing* (September 15, 2012)



Akola Branch Building Construction in Progress

ICAI President CA. Jaydeep Narendra Shah with his better half Smt. Harsha Shah and other members of the Branch at the site of its Branch building under construction (October 1, 2012)



Certificate Course on International Taxation in Kolkata

ICAI Central Council member CA. Mahesh P. Sarda along with the participants of the Certificate Course.



Residential CPE Seminar at Tirupati Branch

Tirupati Branch Chairman CA. Chandra Reddy along with other officials of Tirupati and Hyderabad Branches of SIRC share the dais with Shri S. Srinivasulu, IAS (TTD JEO) and TTD Board member Shri G. V. Sreenadha Reddy (October 7-9, 2012)



27th Regional Conference of WIRC in Mumbai

ICAI President CA. Jaydeep Narendra Shah shares the dais with Member of Parliament (Rajya Sabha) CA. K. Rahman Khan during the Conference (August 31-September 1, 2012)



Training on Revised Schedule VI in Bangalore

ICAI past-President CA. Amarjit Chopra at the dais with DPE Joint Director Smt. Rachna Chopra and Deputy Secretary to DPE of Karnataka Shri Mohamed Ahmed Hussein, among others during the training on implications of Revised Schedule VI for State Level Public Enterprises in Karnataka (October 4, 2012)



Training on Revised Schedule VI in Shimla

ICAI past-President CA. Amarjit Chopra shares the dais with DPE Economic Advisor Dr. Sharat Kumar and HP Branch of ICAI Chairman CA. Sachin Doger, among others during the training on Revised Schedule VI and its implications for State Level Public Enterprises in Himachal Pradesh (September 24, 2012)



Meeting with Defence Joint Secretary in New Delhi

ICAI President CA. Jaydeep Narendra Shah and past-President CA. Amarjit Chopra meet Defence Joint Secretary (Naval System) Shri Gyanesh Kumar (September 20, 2012)



Strengthening Ties with CPA Ireland in London

ICAI UK (London) Chapter Chairman Ajay Agrawal along with IASB member CA. Prabhakar Kalavacherla and CPA Ireland Council member and British CPA Society Chairman John Devaney at the seminar *Where do we stand in globalised accounting? The Roadmap, Opportunities and Challenges* (September 27, 2012)



ICAI President Felicitated by Akola Branch

Akola Branch of WIRC of ICAI welcomes and felicitates the ICAI President CA. Jaydeep Narendra Shah (October 1, 2012)

Ethical Issues in Question-Answer Form

Q. Whether a Chartered Accountant in practice can accept a position as auditor, previously held by another Chartered Accountant without first communicating with him in writing?

- A. No, a Chartered Accountant in practice cannot accept a position, as an auditor, previously held by another Chartered Accountant without first communicating with him in writing. It will be in violation of Clause (8) of Part I of First Schedule to the Act.

Q. Whether a Chartered Accountant in practice can accept audit in case the audit fee of the previous auditor remains unpaid.

- A. No, in case the undisputed audit fees for carrying out the statutory audit under the Companies Act, 1956 or various other statutes have not been paid, the incoming auditor should not accept the appointment unless such fees are paid. In respect of other dues, the incoming auditor should in appropriate circumstances, use his influence in favour of his predecessor to have the dispute as regards the fees settled.

The Council has taken the view that the provisions of audit fee made in accounts signed by both the auditor and the auditee shall be considered as 'undisputed' audit fees. In this connection, attention of members is invited to the Council General Guidelines, 2008 dated 8-8-2008, as appearing at pages 313 – 323 of the Code of Ethics, 2009 edition.

Q. Whether posting of a letter under “Certificate of Posting” is sufficient to establish communication with retiring auditor?

- A. No, a mere posting of a letter “Under Certificate of Posting” is not sufficient to establish effective communication with the retiring auditor, unless there is some evidence to show that the letter has in fact reached the person communicated with. Members should therefore communicate with a retiring auditor in such a manner as to

retain in their hands, positive evidence of the delivery of the communication to the addressee. Communication by a letter sent “Registered Acknowledgement due” or by hand against a written acknowledgement, would in the normal course provide such evidence.

Q. Whether a Chartered Accountant who is appointed as tax auditor for conducting special audit under the Income-tax Act by the IT Authorities is required to communicate with statutory auditor?

- A. Yes, Council direction under Clause (8) of Part I of First Schedule to the Act, prescribes that it would be a healthy practice, if a tax auditor appointed for conducting special audit under the Income-tax Act, communicates with the members who have conducted the statutory/tax audit.

Q. Whether it is obligatory for the auditor appointed to conduct a special Audit under Section 233A of the Companies Act, 1956 to communicate with the previous auditor who has conducted the regular audit for the period covered by the special audit.

- A. No, Council direction under Clause (8) of Part I of the First Schedule to the Act prescribes that it is not obligatory for the auditor appointed to conduct a special audit under Section 233A of Companies Act, 1956 to communicate with the previous auditor who has conducted the regular audit for the period covered by the special audit.

Q. Whether communication with previous auditor is necessary in case of appointment as statutory auditor by nationalised and other banks?

- A. Yes, Clause (8) of Part I of the First Schedule to the Act is equally applicable in case of nationalised and other banks and also to Government agencies.

Q. Whether communication by the Incoming auditor is mandatory with the previous

* Contributed by the Ethical Standards Board of the ICAI

auditor in respect of various audit assignments, like the concurrent audit, revenue audit, tax audit and special audits, etc.?

- A. Yes, the requirement for communicating with the previous auditor would apply to all types of audits viz., statutory audit, tax audit, internal audit, concurrent audit or any other kind of audit. The Council has laid down detailed guidelines in this regard and the same are appearing at pages 166 – 168 in the Code of Ethics, 2009 edition.

Q. Whether a Chartered Accountant will be deemed to be guilty of professional misconduct, if he accepts his appointment as an auditor immediately after intimating his appointment over the phone to the previous auditor?

- A. Yes, the member would be held guilty of professional misconduct for the following reasons:
- (a) That he had failed to communicate with the retiring auditor in writing; and
 - (b) That he did not wait for a reasonable length of time for a reply to be received from him.

Q. Whether a Chartered Accountant can accept an appointment as auditor of a company without first ascertaining from it whether the requirement of Section 225 of the Companies Act, 1956 in respect of such appointment have been duly complied with?

- A. No, as per Clause (9) of Part I of the First Schedule to the Act, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956 in respect of such appointment have been duly complied with. In this regard, the Council has laid down detailed guidelines that are appearing in the Code of Ethics, 2009 Edition.

Q. Whether a statutory auditor can be appointed in the adjourned meeting in place

of existing statutory auditor, where no special notice for removal or replacement of the retiring auditor is received at the time of the original meeting?

- A. No, if any annual general meeting is adjourned without appointing an auditor, no special notice for removal or replacement of the retiring auditor received after the adjournment can be taken note of and acted upon by the company, since in terms of Section 190(1) of the Companies Act, 1956, special notice should be given to the Company, at least fourteen clear days before the meeting in which the subject matter of the notice is to be considered, the meeting contemplated in Section 190(1) undoubtedly is the original meeting.

Q. Whether a Chartered Accountant or a firm of Chartered Accountants can charge or offer to charge professional fees based on a percentage of turnovers?

- A. No, in terms of Clause (10) of Part I of First Schedule to the Act, it is not permitted to a Chartered Accountant or a firm of Chartered Accountants to charge fees on a percentage of turnover, except in the circumstances provided under Regulation 192 of the CA Regulations, 1988.

“192. Restriction on fees

No Chartered Accountant in practice shall charge or offer to charge, accept or offer to accept, in respect of any professional work, fees which are based on a percentage of profits, or which are contingent upon the findings, or results of such work:

Provided that:

- (a) in the case of a receiver or a liquidator, the fees may be based on a percentage of the realisation or disbursement of the assets;
- (b) in the case of an auditor or a co-operative society, the fees may be based on a percentage of the paid up capital or the working capital or the gross or net income or profits; and
- (c) in the case of a valuer for the purposes of direct taxes and duties, the fees may be based on a percentage of the value of the property valued.” ■

Legal Decisions¹



Income-tax Act

LD/61/22
CIT, Delhi-IV
Vs.

The Instalment Supply Limited
April 17, 2012 (DEL)
[Assessment Year 1994-95]

Section 32 of the Income-tax Act, 1961 – Depreciation

Terms and conditions mentioned in the agreement may be relevant to allow depreciation but the Court has also to take into account the surrounding circumstances as well as the type and nature of the asset

The Assessing Officer noticed that the assessee had claimed that they had purchased some items/parts of computer systems etc. for ₹40 lacs from HCL and these items/parts were again leased back to the same company. The assessee had claimed that cost of each of the said items, was less than ₹5,000/- and accordingly they were entitled to 100% depreciation as a lessor. The Assessing Officer observed that the transaction was a finance transaction, but had been given colour of a lease transaction. The assessee had advanced ₹40 lacs to HCL and had agreed to receive back this amount along with the interest over a period of six years, but the item/parts were described as a lease property. The Assessing Officer thus rejected the claim of the assessee. The Commissioner (Appeals) affirmed the said decision. On further appeal, the Tribunal has reversed the findings of the Assessing Officer/ Commissioner (Appeals), *inter alia*, on the ground that the conditions of a valid lease were fully satisfied. The assessee had also proved necessary conditions for claiming depreciation which are: (1) that it was owner of the assets leased out; and (2) that the assets were used for business purposes. Further, there was nothing on record to show that the lease transaction entered into by the assessee was sham transaction. Tribunal relied on invoice issued by HCL Hewlett Packard Limited and observed that this invoice had not been taken into consideration. With regard to claim of depreciation, it was observed that when the business of the assessee was leasing, the actual use and the fact how the asset was being used by the lessee, was not relevant.

The Delhi High Court held that the real issue and question involved in the present case is, whether or not the agreement in question was a finance agreement or an operating lease. The aforesaid question cannot be decided by merely looking at the title of the agreement itself or the nomenclature given to the said agreement. The terms and conditions mentioned in the agreement may be relevant but the Court has to also take into account the surrounding circumstances as well as the type and nature of the asset. The two types of transactions i.e. finance agreement and operational lease are different.

In *Association of Leasing and Financial Service Companies Vs. Union of India*, (2011) 2 SCC 352 the Supreme Court has held that finance lease transfers all the risks and rewards incidental to ownership, even though the title may or may not be eventually transferred to the lessee. In the case of “finance lease” the lessee could use the asset for its entire economic life and thereby acquires risks and rewards incidental to the ownership of such assets. In substance, finance lease is a financial loan from the lessor to the lessee. On the other hand an operating lease is a lease other than the finance lease.

In *Sundaram Finance Limited vs. State of Kerala*, AIR 1966 SC 1178 it was observed that where the intention of the appellants in obtaining the hire-purchase and the allied agreements was to secure the return of loans advanced to their customers, and no real sale of the vehicle was intended by the customer to the appellants, the transactions were merely financing transactions.

In view of the aforesaid position, it could be said that the matter has not been examined and considered by the Tribunal from the right perspective, the real issue and controversy had not been examined. The tribunal has not considered the legal position to reach its conclusion. Therefore, an order of remand was to be passed directing the Tribunal to examine the controversy afresh.

LD/61/23
CIT, Jaipur-II
Vs.

The Asian Marketing
April 11, 2012 (RAJ)

Section 40(b) of the Income-tax Act, 1961 – Expenses disallowed – Remuneration, interest, etc. paid to partner by firm

Where amount of remuneration had not been

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

quantified in partnership deed and it mentioned that remuneration would be payable as per norms fixed by relevant provisions of Income-tax Act, Tribunal was justified in holding that remuneration payable to partners was to be allowed

The dispute by the Revenue was that the amount of remuneration paid to the partners of the assessee firm had not been quantified in the partnership deed. So the said expenditure could not be allowed. Tribunal noted that the partnership deed mentions that remuneration would be payable as per norms fixed by the relevant provisions of the Income-tax Act. Thus, the Tribunal concluded that the quantification of the remuneration is apparent from the partnership deed. The requirement in law is that remuneration should have been authorised and the amount of remuneration shall not exceed the amount as mentioned in sub-clause (v) of Section 40(b). The relevant provision has used the word 'authorised' and not the word used 'quantify'. Therefore, the remuneration payable to the partners was to be allowed.

The High Court of Rajasthan held that the question of payment of remuneration is a question of fact and finding of the Tribunal in this regard was based on partnership deed. There is a concurrent finding of fact recorded by Appellate Authority as well as Appellate Tribunal, which cannot be interfered with by this Court.

LD/61/24

Orient Green Power Pte. Ltd, In Re
August 14, 2012 (AAR)

Section 45, read with Sections 47 and 48 of the Income-tax Act, 1961 – Capital Gains – Chargeable as

Where applicant company failed to demonstrate that transfer of shares of an Indian group company to another Indian group company was authorised by Articles of Association and was effected in the mode prescribed by the Articles of Association and meeting requirements of Section 82 of Companies Act, matter was to be left to Assessing authority for deciding question of taxability

The applicant OGPL, a Singapore company, holds 99.61% of the share capital in Indian company, OGPL. OGPL-Singapore also holds 49.75% of the share capital in another Indian company BWFL. The balance 56.25% shares in BWFL India is held by OGPL India. According to OGPL-Singapore, it has transferred its 49.75% shares held in BWFL India, to OGPL India without consideration. The transaction is

evidenced by a memorandum of gift dated 30.01.2010. Before the coming into force of Section 56(2) (viiia) of the Income-tax Act, the transaction was not taxable under the Act in terms of Section 45, read with Section 48, since the transfer was one without consideration. The transaction which was a gift, was also exempted from the operation of Section 45, by virtue of Section 47(iii). The OGPL-Singapore has approached the Authority for a Ruling on the relevant questions raised in the application.

The Authority for Advance Rulings ruled that shares dealt with are shares of a public limited company governed by the Companies Act, 1956. It is claimed that, what can be called an oral gift, was made by one corporation to another corporation. Such a form of transfer appears to be strange, unless it be one which has been set up for some purpose. That purpose, according to the Revenue, is for avoiding the payment of tax and to get out of the clutches of Section 56(2) (viiia) which came into effect on 1.6.2001. It cannot be said that this submission on behalf of the Revenue is far-fetched. This submission, in any event made it necessary for the applicant to demonstrate before this authority that the transfer was authorised by the Articles of Association and was effected in the mode prescribed by the Articles of Association and meeting the requirements of Section 82 of the Companies Act.

This Authority has the jurisdiction not only to consider the law but also to consider the facts. The ruling is to be given at the instance of an applicant, on a transaction. Here, it is a concluded transaction, according to the applicant. While therefore, considering the question of giving the ruling, this Authority has also the right, nay, the duty, to consider the reality of the transaction and the genuineness of the transaction, in addition to its validity. When such transactions are entered into involving assets, substantially worth, it behoves the applicant before this Authority, to establish to the hilt, the factum, the genuineness and the validity of the transaction, of the right to enter into the transaction and the bona fides of the transaction especially when the Revenue has challenged the genuineness of the transaction itself. In the light of the pleas raised by the Revenue and the circumstances obtaining, a proper enquiry into the question of the genuineness and validity of the transaction is necessary. The Assessing Authority under the Act would be in a better position to go into and decide these questions. In view of the failure of the applicant to show that the alleged transfer in question was effected in the manner prescribed by its Articles

of Association, it would not be proper to accept the assertions in the application and in the submissions about the genuineness and validity of the transaction. There may be a resolution of the Board of Directors authorising such a transaction and the question would be whether they have the right to pass such a resolution, in the light of Articles of Association and whether their resolution has been given effect to in the manner prescribed by the Articles of Association.

LD/61/25

CIT

Vs.

Dynamic Consultants Pvt. Ltd.

[Assessment Years 2004-05 to 2006-07]

Section 45 read with Section 28(i) of the Income-tax Act, 1961 – Capital Gains – Chargeable as

Where number of shares held by assessee NBFC were meager, purchased out of surplus fund, transactions were not frequent, assessee was not maintaining a separate heads in books of accounts as shares were held and treated as investment, shares could not be held as stock in trade and income from sale of them should be treated as capital gains

The company was an NBFC. The Assessing Officer treated ₹24,77,878, on sale of 12 shares as business income instead of short term capital gain. The Assessing Officer observed that the transactions were regularly entered into and the sale and purchase was not occasional but continuous; the assessee did not maintain separate books of accounts for investments

and regular business; and lastly the assessee had taken into account the diminution in value of investments in the books of accounts in the assessment years 2004-05 to 2006-07. The first appellate authority held that income from sale of shares held for less than 6 months should be treated as trading/business income. Shares, which had been held for more than 6 months should be treated as "investment" and short term capital gain. The Tribunal treated the gain was short term capital gains.

The High Court of Delhi held that five shares had been purchased in the last financial year and the average period of holding in the shares in question was more than four months. There were 12 shares and the transactions were not frequent. The purchases were out of surplus funds. Their main business was not trading in shares but was an occasional independent activity. The assessee had also pointed out that the short-term transactions were the result of either a mistake, or wrong information. The assessee was not maintaining a separate heads in the books of accounts for shares held as stock in trade or investment, as the shares were held and treated as investment. Further, the number of transactions, 19 in all in one year cannot be considered as continuous and regular. The provision for diminution in value was as per the Accounting Standard 13 regarding Accounting of Investments. The Assessing officer ignored several other aspects and questions which have been raised and noticed and form the basis of finding recorded by the Tribunal. The order by the Tribunal therefore does not require any interference.

LD/61/26

CIT

Vs.

Vinay Mittal

April 27, 2012(DEL)

[Assessment Years 2007-08]

Section 45 read with Section 28(i) of the Income-tax Act, 1961 – Capital Gains – Chargeable as

Where total number shares is substantial but transactions in question are only seven in number and period of holding was not insignificant, same may be treated by assessee as an investment portfolio and not a trading portfolio

The assessee was an employee and was in service of a company. He had salaried income. The assessee had also made purchases and had sold securities. He was maintaining two separate portfolios, i.e., investment



portfolio and trading portfolio. While assessee claimed that the shares in question formed part of the investment portfolio and were not part of the trading portfolio, the Assessing Officer sought to levy tax on sale purchase of securities as business income.

The Delhi High Court held that as far as seven shares/transactions which are subject matter of short term capital gains are concerned it is noticeable that in four cases, the shares were held for a period of more than 7 months, 8 months, 8.5 months and 11 months. In three cases shares were held for 2.4 months, 2.5 months and 4 months. Quantum or total number shares is substantial, but the transactions in question are only seven in number and the period of holding as mentioned above cannot be treated as insignificant and small. Quantum or total number may not be determinative but in a given case keeping in view period of holding may indicate intention to make investment. The same may be treated by the assessee as an investment portfolio and not a trading portfolio. The Tribunal has mentioned that the assessee has received substantial dividend income of more than ₹19 lakhs and ₹27 lakhs in the preceding two assessment years. The Assessing Officer was influenced to a large extent of the fact that the assessee had earned huge profits during the year in question from the sale of the said shares. This can happen even in case of investment portfolio because when investment is liquidated to earn gains and change their portfolio. Element of uncertainty and risk is always there when a person deals in securities but this factor cannot be determinative factor whether the assessee is trading in shares or is an investor. Some investors do take risk. The Assessing Officer without specifically dealing with the transactions has recorded that during the financial year 2006-07, the assessee had indulged in frequent and regular trade in securities.

He has not mentioned whether the assessee had indulged in frequent transactions in the previous period or subsequently.

In the earlier assessment years, transactions in the investment portfolio by the assessee were accepted by the Assessing Officer. Merely because the assessee had sold the said shares in the relevant year and made substantial gains and could not show basically the objective for acquiring the shares was not as an investor but as a trade. The ratio of sales and purchase may be relevant in a particular case but when an assessee liquidates any investment, the said ratio will always be in favour of sales. Thus, the income would be capital gains and not business income.



LD/61/27
CIT-Central – III
Vs.

Cello Plast
July 27, 2012 (BOM)

[Assessment Years 2006-07]

Section 54EC of the Income-tax Act, 1961 – Capital Gains - Investment in certain bonds

In order to avail deduction, six months provided for investing in bonds may be reasonably extended in view of non availability of bonds

On 22-3-2006, the respondent sold its factory building earning a long term capital gain. To avail of the exemption under Section 54EC, the respondent had to invest the sale proceeds in the REC bonds within six months from the date of the sale of the factory building, i.e., on or before 21-9-2006. REC bonds were not available during 4-8-2006 to 22-1-2007. The respondent purchased the REC bonds only on 31-1-2007. The question was whether despite the same, the respondent was entitled to the benefit of Section 54EC in the facts and circumstances of the case.

The Bombay High Court held that REC bonds could not be purchased as they were not available throughout the period of six months commencing from the date of the sale of the factory by the respondents and even thereafter till the extended date of 31-12-2006 under the CBDT Circular. That the bonds were available for a limited time during this period between 1-7-2006 to 31-8-2008, makes no difference. The respondents had time till 21-9-2006, to invest in these bonds to avail the benefit under Section 54EC. Section 54EC entitles a person to avail of the right conferred



thereby at any time during the period of six months from the date of sale of the asset. The respondents cannot be deprived of this right conferred by the Act for no fault of theirs.

Therefore, in the present facts, the six months provided for investing in bonds may be reasonably extended in view of the non availability of bonds till 22-1-2007.

A person cannot be expected to make the investment on the first possible date on which the bonds were made available after the expiry of the six months period or any extended date prescribed by the CBDT. During the period the bonds were unavailable a person is likely to invest the amount elsewhere. To expect or require him not to do so would be unjust for reasons too obvious to state. He cannot then be expected at a day's notice to break the investment and transfer the same to the bonds stipulated in Section 54EC.

The respondents admittedly invested in the bonds on 31-1-2007 i.e. within nine days of their being available once again from 22-1-2007. Considering that the bonds were not available for a long period, an extension of merely nine days is extremely reasonable in the present facts.

It cannot be contended that the respondent in any case could have purchase the bonds of the National Highway Authority which was an alternative mode of investment provided for availing the benefit of Section 54EC.

The statute itself provides that the assessee, who is subject to long terms capital gain tax, can avail of exemption under Section 54EC if he invests in bonds of either the National Highway Authority of India or the Rural Electrification Corporation Limited. The choice of investing in one of the two organisations is with the respondent and the appellant revenue contrary

to the statue cannot force the respondent to invest only in the bonds of one in preference to the other. The choice of which bonds to purchase is entirely with the respondent and in case the bonds of respondent's choice are not available as is proved in the present case, the time to invest in the bonds get automatically extended till the bonds are available in the market and the assessee can purchase the same.

LD/61/28

Castleton Investment Limited, In re
August 14, 2012 (AAR)

Section 115JB of the Income-tax Act, 1961 – Special provision for payment of tax by certain companies

Section 115JB applies not only to domestic companies, but also to a foreign company

On a reading of this sub-section, which is said to prevail over the other provisions of the Act, what emerges is that a company has to pay tax as provided for in this sub-section if the tax payable by it as otherwise determined under the Act, is less than the minimum prescribed herein. It also provides the rate at which the tax is to be paid. This section does not need any aid from tools of interpretation for its understanding. It is plain and clear.

Section 115JB on its wording makes no distinction between a resident company and a non-resident company. *Prima facie*, it applies to all companies. The definition of a company in Section 2(17) means an Indian company or any company incorporated by or under the laws of a country outside India. In other words, by definition, a company means a non-resident company as well.

When Section 115JB was inserted by clause (49) of the Finance Act, 2000, the notes on the clauses explaining the Finance Bill, 2000, did not indicate that Section 115JB proposed to be introduced with effect from 1.4.2001, was confined in its operation to domestic companies only. Amendments were made to Section 115JB by the Finance Act of 2006 which came into effect from 1.4.2007. Additions and reductions of amounts to and from 'book profit' as explained in *Explanation I* were made. Dealing with deductions, in the proviso, clause (ii) was modified by showing the amount of income to which any of the provisions of "Section 10 (other than the provisions contained in clause 38 thereof)" were introduced, thus, taking out income from long term capital assets from the reckoning. Simultaneously, the proviso to Section 10(38) was also inserted bringing income from long

term capital gains in for the purpose of Section 115JB while calculating the book profit.

Both Section 10(38) and Section 115JB refer to a company. Company as per definition in the Act, takes in an Indian company and a foreign company. As far as a company is concerned, the proviso exhorts that the income by way of long-term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under Section 115JB of the Act. Section 115JB by its wording, overrides Section 10(38) and Section 115JB(1) of the Act, leads to the position that as far as a company is concerned, its total income has to be computed based on its book profit in juxtaposition to the prescription in Section 115JB of the Act. Thus, as far as a company is concerned, Section 10(38) and Section 115JB are to some extent interlinked, though Section 115JB would override Section 10(38) itself. If by an interpretative process one were to come to the conclusion that Section 115JB is confined in its operation to resident companies, one has also logically to say that Section 10(38) will also operate only in respect of a resident company.

Surely, there is no need to restrict or warrant for restricting the operation of these two sections in the Act in the absence of any compelling circumstance. In this context, with great respect, it appears that the reasoning in the Ruling in XYZ, *In Re* 234 ITR 335 is impressive.

Section 115JB overrides Section 34 to 48 of the Act. So by reading Section 115JB as confined in its operation to domestic companies alone, one may be doing violence to the special scheme of taxation adopted for taxing certain companies. Unless there are compelling reasons no such interpretation is justified. There is no compelling reason to jettison the scheme of taxation adopted by the Act by reading down Section 115JB as confined in its application to domestic companies alone. And thus Section 115JB(1) would equally apply to a foreign company.

Section 112 of the Income-tax Act, 1961 – Capital Gains - Tax on long term capital gains

If income gets taxed under Income-tax Act, obviously, Section 112(1) would also be attracted; issue whether it may not get taxed under Income-tax Act in view of DTAC is another question

Section 112(1) would be attracted when the income of an assessee includes income chargeable under the head capital gains under the Act. In the instant case the income of the applicant would be capital gains. Once it is, Section 112 is attracted. If the income gets taxed

under the Act, obviously, Section 112(1) would also be attracted. Issue that it may not get taxed under the Act in view of the DTAC is another question.

LD/61/29

Inductotherm (India) Pvt. Ltd.

Vs.

M. Gopalan, Dy. CIT

August 6, 2012 (GUJ)

[Assessment Years 2002-03]

Section 143 read with Section 147 of the Income-tax Act, 1961 – Assessment

Even in case of reopening of an assessment which was previously accepted under Section 143(1) without scrutiny, Assessing Officer would have power to reopen assessment, provided he had some tangible material on basis of which he could form a reason to believe that income chargeable to tax had escaped assessment

It is undoubtedly true that proviso to Section 143(2) prescribes a time limit within which notice could be issued. It is equally well settled that notice is mandatory and in absence of notice under Section 143(2) within the time permitted, scrutiny assessment under Section 143(3) cannot be framed. However, merely because no such notice was issued, to contend that the assessment cannot be reopened, is not backed by any statutory provisions.

The return filed by the petitioner was not taken in scrutiny. No assessment, thus, took place. The Assessing Officer without any assessment, merely issued an intimation under Section 143(1) accepting such return. In that view of the matter, it cannot be stated that the Assessing Officer formed any opinion with respect to any of the aspects arising in such return. In such a case, scope for reopening such assessment under Section 147 as compared to an assessment which was previously framed under Section 143(3) of the Act, whether beyond or within four years from the end of the relevant assessment year, is substantially wider.

The Apex Court in case of *Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers P. Ltd.* [2007] 291 ITR 500 (SC) noticed such distinction and noted that the scheme of Sections 143(1) and 143(3) is entirely different. It was noticed that after 1.4.1989, the provisions contained in Section 143 underwent substantial changes. It was noticed that the intimation under Section 143(1) is given without prejudice to the provisions of Section 143(3) and though technically the intimation would be deemed to be demand notice

under Section 156, that did not per se preclude the right of the Assessing Officer to proceed under Section 143(2)(a) of the Act. The Apex Court observed that the word “intimation” as substituted for assessment carried different concepts. It was observed that while making an assessment, the Assessing Officer is free to make any addition after granting an opportunity to the assessee. The Apex Court observed that under the first proviso to the newly substituted Section 143(1), with effect from June 1, 1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an intimation under Section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him.

It is significant that the acknowledgment is not done by any Assessing Officer, but mostly by ministerial staff. Can it be said that any assessment is done by them? The reply is an emphatic no. The intimation under Section 143(1)(a) was deemed to be a notice of demand under Section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under Section 143(1)(a), the question of change of opinion, as contended, does not arise.

Despite such difference in the scheme between a return which is accepted under Section 143(1) as compared to a return of which scrutiny assessment under Section 143(3) is framed, the basic requirement of Section 147 that the Assessing Officer has reason



to believe that income chargeable to tax has escaped assessment is not done away with. Section 147 permits the Assessing Officer to assess, re-assess the income or re-compute the loss or depreciation if he has reason to believe that any income chargeable to tax has escaped assessment for any assessment year. This power to reopen assessment is available in either case, namely, while a return has been either accepted under Section 143(1) or a scrutiny assessment has been framed under Section 143(3) of the Act. A common requirement in both of cases is that the Assessing Officer should have reason to believe that any income chargeable to tax has escaped assessment.

In *Rajesh Jhaveri's* (supra), the Apex Court observed that phrase "reason to believe" mean cause or justification. If the Assessing Officer has cause or justification to know or subjective satisfaction that income had escaped assessment, it can be stated to have reason to believe that income chargeable to tax had escaped assessment.

It would, thus, emerge that even in case of reopening of an assessment which was previously accepted under Section 143(1) without scrutiny, the Assessing Officer

would have power to reopen the assessment, provided he had some tangible material on the basis of which he could form a reason to believe that income chargeable to tax had escaped assessment.

Even for reopening of an assessment which was accepted previously under Section 143(1) without scrutiny, the Assessing Officer should have reason to believe that income chargeable to tax has escaped assessment. For mere verification of the claim, power for reopening of assessment could not be exercised. The Assessing Officer in guise of power to reopen an assessment, cannot seek to undertake a fishing or roving inquiry and seek to verify the claims as if it were a scrutiny assessment.

The Assessing Officer had some material at his command to form a belief that income chargeable to tax had escaped assessment. In respect of the claim of deduction under Section 80HHC, the Assessing Officer was of the opinion that the Central as well as the State Sales Tax and other income in the net profit would not qualify for deduction under Section 80HHC. The Assessing Officer further noted that the assessee had debited warranty expenses of ₹ 1,43,48,347 to the P & L

Account, out of which an amount of ₹1,05,48,633 was incurred during the financial year under consideration. He was, therefore, of the opinion that remaining amount of ₹37,99,714 was not allowable expenditure.

The Gujarat High Court held that such reason would permit the Assessing Officer to reopen the assessment. The Assessing Officer has found that a claim not arising during the year under consideration was made. He desires to disallow such a claim. Thus, it could not be stated that the ground was not germane.

In view of the above discussion, the notice for reopening was not invalid or lacked jurisdiction.

LD/61/30
CIT, Central-II, Mumbai
Vs.
Virendra & Co.
July 20, 2012 (Bom)
[Assessment Years 1986-87]

Section 145 of the Income-tax Act, 1961 – Method of Accounting

Generation of scrap in ship-breaking is determined by type of vessel; generation of non ferrous scrap declared in line with that of other years, is to be accepted

The assessee carried on business of ship breaking. It claimed that scrap generated and sold from the breaking of ships was in the aggregate of 7144 metric tons and out of which 0.81% i.e. 57.95 metric tons was non ferrous metal. The Assessing officer relying upon the scrap generated by the three other ship breaking units held that the non ferrous metal which was generated and sold was 2% of the total recovery of scrap i.e. 142.88 metric tons. Consequently, the Assessing Officer concluded that the excess non ferrous metal generated an undisclosed income of ₹21.08 lacs. The Commissioner (Appeals) upheld the order of the Assessing officer. The Tribunal held that there cannot be any standard measure of generation of scrap while carrying out the activity of ship breaking. It depends upon the type of the vessel being broken. The Tribunal also held that the cases of other ship breakers being relied upon by the Assessing officer to conclude that generation of non ferrous scrap is in excess of 2% cannot be relied upon as the same was never put to the assessee so as to enable the assessee to deal with the same.

The Bombay High Court held that the Tribunal on the basis of the evidence before it has come to the conclusion that 0.81 % of the total recovery being attributed to non ferrous scrap generated during the



course of ship breaking by the assessee was correct. The assessee had maintained excise record and its books were audited and the department does not challenge the purchases and sales reflected in the assessee's books of accounts. It is important to note that between 0.90% to 1.40% of non ferrous scrap being generated out of the total scrap on the activity of ship breaking has been accepted by the department upto the Assessment Year 1990- 91. Even for subsequent assessment years 1992-93 to 1996-97, generation of non ferrous scrap at 0.81% had been accepted by the department.

LD/61/31
CIT-IV, New Delhi
Vs.
Usha International Limited
September 21, 2012 (DEL-FB)

Section 147 of the Income-tax Act, 1961 – Income Escaping Assessment

In case return of income is processed under Section 143(1) and no scrutiny assessment is undertaken, there can be no change of opinion and reassessment proceedings can be validly initiated while in case an issue or query is raised and answered by the assessee in original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order, such cases will be hit by principle of - change of opinion and reassessment proceedings will be invalid

The Full Bench of High Court held that for reopening an assessment made under Section 143(3), the following conditions are required to be satisfied:-

- (i) The Assessing Officer must form a tentative or *prima facie* opinion on the basis of material that there is under-assessment or escapement of income;

- (ii) He must record the *prima facie* opinion into writing;
- (iii) The opinion formed is subjective but the reasons recorded or the information available on record must show that the opinion is not a mere suspicion.
- (iv) Reasons recorded and/or the documents available on record must show a nexus or that in fact they are germane and relevant to the subjective opinion formed by the Assessing Officer regarding escapement of income.
- (v) In cases where the first proviso applies, there is an additional requirement that there should be failure or omission on the part of the assessee in disclosing full and true material facts. *Explanation* to the section stipulates that mere production of books of accounts or other documents from which the Assessing Officer could have, with due diligence, inferred material facts, does not amount to —full and true disclosure of material facts. (The proviso is not applicable where reasons to believe for issue of notice are recorded and notice is issued within four years from the end of assessment year.)

They deal with the term and facets of the term - change of opinion. The expression - change of opinion postulates formation of opinion and then a change thereof. In the context of Section 147 it implies that the Assessing Officer should have formed an opinion at the first instance, i.e., in the proceedings under Section 143(3) and now by initiation of the reassessment proceeding, the Assessing Officer proposes or wants to take a different view.

The word 'opinion' is derived from the latin word 'opinari' which means 'to believe', 'to think'. The word 'opinion' as per the *Black's Law Dictionary* means a statement by a Judge or a court of a decision reached by him incorporating cause tried or argued before them, expounding the law as applied to the case and, detailing the reasons upon which the judgment is based. *Advanced Law Lexicon* by P. Ramanatha Aiyar (3rd Edition) explains the term 'opinion' to mean - something more than mere retaining of gossip or hearsay; it means judgment or belief, that is, a belief or a conviction resulting from what one thinks on a particular question... An opinion is a conviction based on testimony..... they are as a result of reading, experience and reflection.

In the context of assessment proceedings, it means formation of belief by an Assessing Officer resulting from what he thinks on a particular question. It is a

result of understanding, experience and reflection to use the words in Law Lexicon by P. Ramanatha Aiyar. Question of change of opinion arise when an Assessing Officer forms an opinion and decides not to make an addition or holds that the assessee is correct and accepts his position or stand.

It is, therefore, clear from the various legal precedents that: (1) Reassessment proceedings can be validly initiated in case return of income is processed under Section 143(1) and no scrutiny assessment is undertaken. In such cases there is no change of opinion; (2) Reassessment proceedings will be invalid in case the assessment order itself records that the issue was raised and is decided in favour of the assessee. Reassessment proceedings in the said cases will be hit by principle of - change of opinion; (3) Reassessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order. In such situations it should be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject the stand of the assessee. He forms an opinion. The reassessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reasons.

In the second and third situation, the Revenue is not without remedy. In case the assessment order is erroneous and prejudicial to the interest of the Revenue, they are entitled to and can invoke power under Section 263 of the Act. Thus, where an Assessing Officer incorrectly or erroneously applies law or

comes to a wrong conclusion and income chargeable to tax has escaped assessment, resort to Section 263 of the Act is available and should be resorted to. But initiation of reassessment proceedings will be invalid on the ground of change of opinion.

Here a distinction must be drawn between erroneous application/interpretation/ understanding of law and cases where fresh or new factual information comes to the knowledge of the Assessing Officer subsequent to the passing of the assessment order. If new facts, material or information comes to the knowledge of the Assessing Officer, which was not on record and available at the time of the assessment order, the principle of —change of opinion will not apply. The reason is that - opinion is formed on facts. Opinion formed or based on wrong and incorrect facts or which are belied and untrue do not get protection and cover under the principle of - change of opinion. Factual information or material which was incorrect or was not available with the Assessing Officer at the time of original assessment would justify initiation of reassessment proceedings. The requirement in such cases is that the information or material available should relate to material facts. The expression 'material facts' means those facts which if taken into account would have an adverse affect on the assessee by a higher assessment of income than the one actually made. They should be proximate and not have remote bearing on the assessment. The omission to disclose may be deliberate or inadvertent. The question of concealment is not relevant and is not a precondition which confers jurisdiction to reopen the assessment.

Correct material facts can be ascertained from the assessment records also and it is not necessary that the same may come from a third person or source, i.e., from source other than the assessment records. However, in such cases, the onus will be on the Revenue to show that the assessee had stated incorrect and wrong material facts resulting in the Assessing Officer proceeding on the basis of facts, which are incorrect and wrong. The reasons recorded and the documents on record are of paramount importance and will have to be examined to determine whether the stand of the Revenue is correct.

The second category will be a case of change of opinion and cannot be reopened for the reason that the assessee, as required, has placed on record primary factual material but on the basis of legal understanding, the Assessing Officer has taken a particular legal view. However, as stated above, an erroneous decision, which is also prejudicial to the interest of the Revenue,



can be made subject matter of adjudication under Section 263 of the Act.

The reasons recorded or the documents available must show nexus that in fact they are germane and relevant to the subjective opinion formed by the Assessing Officer regarding escapement of income. At the same time, it is not the requirement that the Assessing Officer should have finally ascertained escapement of income by recording conclusive findings. The final ascertainment takes place when the final or reassessment order is passed. It is enough if the Assessing Officer can show tentatively or *prima facie* on the basis of the reasons recorded and with reference to the documents available on record that income has escaped assessment.

It cannot be said that even if the Assessing Officer did not examine a particular subject matter, entry or claim/deduction and therefore had not formed any opinion, it must be presumed that he must have formed an opinion. This is not what was argued by the assessee or held and decided. There cannot be deemed formation of opinion even when the particular subject matter, entry or claim/deduction is not examined.

Distinction between disclosure/declaration of material facts made by the assessee and the effect thereof and the principle of change of opinion is apparent and recognised. Failure to make full and true disclosure of material facts is a precondition which should be satisfied if the reopening is after four years of the end of the assessment year. The explanation stipulates that mere production of books of accounts and other documents, from which the Assessing Officer could have with due diligence inferred facts does not amount to full and true disclosure. Thus, in cases of reopening after 4 years as per the proviso, conduct of the assessee and disclosures made by him are relevant. However, when the proviso is not applicable, the said precondition is not applicable. This additional requirement is not to be satisfied when re-assessment proceedings are initiated within four years of the end of the assessment year. The sequitor is that when the proviso does not apply, the re-assessment proceedings cannot be declared invalid on the ground that the full and true disclosure of material facts was made. In such cases, re-assessment proceedings can be declared invalid when there is a change of opinion. As a matter of abundant caution we clarify that failure to state true and correct facts can vitiate and make the principle of change of opinion inapplicable. This does not require reference to and the proviso is not invoked. The difference is this; when proviso applies the condition stated therein must be satisfied and in other cases it is not a prerequisite or condition precedent but the defence/plea of change of opinion shall not be available and will be rejected.

Thus, if a subject matter, entry or claim/deduction is not examined by an Assessing Officer, it cannot be presumed that he must have examined the claim/deduction or the entry, and therefore, it is the case of - change of opinion. When at the first instance, in the original assessment proceedings, no opinion is formed, principle of —change of opinion cannot and does not apply. There is a difference between change of opinion and failure or omission of the Assessing Officer to form an opinion on a subject matter, entry, claim, deduction. When the Assessing Officer fails to examine a subject matter, entry, claim

or deduction, he forms no opinion. It is a case of no opinion.

Whether or not the Assessing Officer had applied his mind and examined the subject matter, claim etc. depends upon factual matrix of each case. The Assessing Officer can examine a claim or subject matter even without raising a written query. There can be cases where an aspect or question is too apparent or obvious to hold that the Assessing Officer did not examine a particular subject matter, claim etc. The stand and stance of the assessee and the Assessing Officer in such cases are relevant.

Section 114 of the Indian Evidence Act is a general provision dealing with presumption of facts, inferences drawn from facts, patterns drawn from experience and observations based upon habits of the society, human action, usages and ordinary course of human affairs and conduct. The presumption is no evidence or proof. It only shows on whom the burden of proof lies. Section 114 is permissive and not a mandatory provision. Nine situations by way of illustrations are stated. These are by way of example or guidelines. As a permissive provision it enables the Judge to support his judgment but there is no scope of presumption when facts are known. As observed by the Supreme Court in *Suresh Budharmal Kalyani vs. State of Maharashtra*, [1998] 7 SCC 337, a presumption can be drawn only from facts and not from other presumptions by a process of probable and logical reasoning. Presumption of facts under Section 114 is rebuttable. The presumption raised under illustration (e) to Section 114 of the Evidence Act, means that when official act is proved to have been done, it will be presumed to have been regularly done but it does not raise any presumption that an act was done for which there is no evidence or proof.

The statute does not require that the information must be extraneous to the record. It is enough if the material, on the basis of which the reassessment proceedings are sought to be initiated, came to the notice of the Income-tax Officer subsequent to the original assessment. If the Income-tax Officer had considered and formed an opinion on the said material in the original assessment itself, then he would be powerless to start the proceedings for the reassessment. Where, however, the Income-tax Officer had not considered the material and subsequently come by the material from the record itself, such a case would fall within the scope of Section 147(b) of the Act.

It was observed by the Supreme Court in *CIT vs. Kelvinator of India*, (2010) 2 SCC 723 that amended

provisions are wider. What is important and relevant is that the principle of - change of opinion was equally applicable under the unamended provisions.

There may be cases where the Assessing Officer does not and may not raise any written query but still the Assessing Officer in the first round/ original proceedings may have examined the subject matter, claim etc, because the aspect or question may be too apparent and obvious. To hold that the assessing officer in the first round did not examine the question or subject matter and form an opinion, would be contrary and opposed to normal human conduct. Such cases have to be examined individually. Some matters may require examination of the assessment order or queries raised by the Assessing Officer and answers given by the assessee but in others cases, a deeper scrutiny or examination may be necessary.

The stand of the Revenue and the assessee would be relevant. Several aspects including papers filed and submitted with the return and during the original proceedings are relevant and material. Sometimes application of mind and formation of opinion can be ascertained and gathered even when no specific question or query in writing had been raised by the Assessing Officer. The aspects and questions examined during the course of assessment proceedings itself may indicate that the Assessing Officer must have applied his mind on the entry, claim or deduction etc. It may be apparent and obvious to hold that the Assessing Officer would not have gone into the said question or applied his mind. However, this would depend upon the facts and circumstances of each case.

LD/61/32

CIT, Chennai

Vs.

High Energy Batteries (India) Ltd.

April 17, 2012 (MAD)

[Assessment Years 1995-96 to 1997-98]

Section 147 of Income-tax Act, 1961 - Income Escaping Assessment

In absence of any material to pronounce on genuineness of transaction, mere fact that what had been purchased had been leased out to vendor or that vendor had undertaken to pay hire charges on behalf of assessee to hire purchase company, per se, cannot lead to a conclusion that transaction is a sham one

The assessee had purchased machinery on 10.03.1995 from a sister concern for ₹250 lakhs. The assessee had paid a sum of ₹50 lakhs and the balance of ₹200

Committee on Financial Markets and Investors' Protection

INVITING RESOURCE PERSONS FOR CONDUCTING INVESTOR AWARENESS PROGRAMMES

Introduction

The Committee on Financial Markets and Investors' Protection (CFM&IP) is one of the Non-Standing Committees of the Institute of Chartered Accountants of India. The functions of the Committee include preparing suggestions on various Regulations / Circulars relating to Financial Markets for submission to the Government/Regulators.

We are pleased and proud to state that the Institute of Chartered Accountants of India has been designated as the nodal authority by the Ministry of Corporate Affairs, Government of India to organize **Investor Awareness Programmes** throughout India in the district headquarters and big cities through the Institute's network of Regional Councils and Branches during the year 2012-13. The Ministry also desired that to conduct Investor Awareness Programmes in the smaller towns' services of Resource Persons may be availed.

Resource Persons

The Committee invites proposals from Chartered Accountants, Bankers, Capital Market experts, MBAs from reputed Institutes, Professors and Lecturers having knowledge and flair of capital market and public speaking skills for acting as Resource Persons to conduct the Investor Awareness Programmes in smaller towns other than district headquarters. You can send your resume along with the names of the towns where programmes are proposed to be conducted at cfmip_rp@icai.org

The Scheme

The resource persons have to plan and organise Investor Awareness Programmes of two hours duration in small towns (other than district headquarters) at their own initiative. Arranging venue, assembling **at least 50 participants per programme and disseminating financial literacy will be their key responsibilities. For this, MCA will reimburse Rs. 5,000/- per programme inclusive of TA/DA, honorarium and other costs or actual expenses whichever is less.**

**Committee on Financial Markets and
Investors' Protection**
ICAI Bhawan

Administrative Block, Third Floor,
A-29, Sector 62,
NOIDA - 201 309
Phone: 0120 - 3045945/905
E-mail: cfmip_rp@icai.org

Guidelines

The Guidelines for conducting such programmes by resource persons are as follows:

1. Programmes can be conducted at small towns, cities, blocks and taluka/tehsils but not in villages.
2. Programme should be of 2 hours.
3. The target audience for the programme should be household investors, businessmen, housewives, students (higher secondary, graduate, post graduate and MBA students), persons working in Govt. department/private jobs etc.
4. Maximum Four (4) programmes can be conducted in the same town, taluka, tehsils, block etc. Please ensure a gap of 20 days with different venues once the programme is conducted in the same town, taluka, tehsils, block etc.
5. Number of participants should be at least 50. While conducting an IAP in a school premises, majority of participants i.e. atleast 25 participants should be non-students that may include teachers, staff members, students' parents and general public. Photographs should clearly show the strength of non-students participants.
6. Venue should be selected at a place where adequate number of prospective investors may be the target participants.
7. Pamphlet/ Booklet/ Reading Material with important points covered in the talk should be circulated. Material in Hindi or regional language can also be distributed. Soft copy of reading material will be provided by the ICAI.
8. Please send the programme details like (place, date, venue, target audience) atleast 5 days in advance for approval at cfmip_rp@icai.org.
9. Topics to be covered may be restricted to the contents of booklets sent to you.
10. The following documents are required to be submitted within 15 days of conduct of programme to enable us to process reimbursement:
 - At least 4 Photographs giving coverage of maximum participants with banner and faculty while the programme is in progress.
 - Attendance sheet containing name, address and mobile nos. of the participants. Signatures of participants are must on the attendance sheet so provided.
 - Brief Report covering aspects of Topics covered and feedback of participants.
 - A duly signed undertaking by Resource Person that the programme has been conducted at informed time and place. In case programme has been conducted at some organization, management/degree collage, school etc. then such undertaking has to be countersigned by organization head/principal also.
 - Statement of expenses duly certified by the recourse person along with original bills if any.
11. Programmes should not be used for publicity of any organization/firm/company or any investment product.
12. A resource person can conduct a maximum of 10 programmes in a month subject to total number of 60 programmes till 31st March, 2013.

lakhs was financed by Wipro Finance. As far as this transaction was concerned, a perusal of the same showed that the records were available before the Assessing Authority at the earliest of the transactions which related to the assessment year 1995-96 and there was nothing on record to show that the transaction had not gone through between the assessee and Wipro Finance. The only ground on which the Revenue seeks to question this agreement is the minutes of the meeting of the Board of Directors of the sister concern where there was a reference to the sale of the machinery to meet the financial needs of the said company. The monthly payment by the assessee to Wipro Finance Limited was to be met by the rental dues payable by the sister concern to Wipro Finance, being made to meet the monthly payment of the assessee company to Wipro Finance. The Revenue laid stress on this aspect of the sister concern making payment to Wipro Finance of the rental dues as by way of satisfaction of the assessee's commitments under the hire purchase agreement.

The Madras High Court held that as far as this aspect is concerned, there was no material in the agreement between the assessee and Wipro Finance and between the assessee and sister concern, by which one may say that the lessee the sister concern had undertaken under the said agreement the responsibility of meeting the liabilities of the assessee company to Wipro Finance. In fact, the lessee company had undertaken to pay the lease rentals on the due date as specified and that the last payment was to be made by the assessee. A copy of the instalments paid by the assessee to Wipro Finance for the assessment year 1996-97 also figures in as one of the documents filed before this Court. Leaving this aspect aside, even assuming that the lessee company had undertaken such responsibility to meet the liability of the assessee company to pay the hire purchase amount to Wipro Finance, this circumstance would not in any manner, lead to the inference that the agreement was a sham one, for, it is a matter of pure commercial understanding between two parties under the agreement to decide as to the modalities of lease rental payment. In the light of the above, there was no material other than what had been mentioned above and considered by the Officer at the original assessment as placed by the assessee, to come to a definite conclusion on the character of the transaction as had been alleged by the Revenue. Given the freedom to enter into agreements with parties and guided by commercial considerations, even to invoke the theory of tax evasion, the Revenue must

have sufficient material to draw an inference of what had been shown as an understanding on an agreement between the parties, is not, in fact, so.

In the absence of any material to pronounce on the genuineness of the transaction herein, the mere fact that what had been purchased had been leased out to the vendor or that vendor had undertaken to pay the hire charges on behalf of the assessee to the hire purchase company, *per se*, cannot lead to a conclusion that the transaction is a sham one. Therefore, the Tribunal was right in holding that the re-opening of assessment by the assessing officer was bad in law.

LD/61/33

CIT-Central, Cochin

Vs.

P.D. Abrahm alias Appachan

February 10, 2012 (KER)

[Block Period 1988-89 to 1997-98]

**Section 158BFA of Income-tax Act, 1961 -
Block assessment in search cases - Levy of
interest and penalty in certain cases**

Section 158BFA(2) provides for mandatory penalty in respect of tax assessed on undisclosed income other than undisclosed income admitted without further contest and on which tax is paid based on return filed by assessee against notice issued under Section 158BC(a)

Penalty under Section 158BFA is the general Rule in the event of assessment of undisclosed income under Section 158BC and exclusion from penalty is an exception covered by the first proviso to the main section, which is subject to the second proviso thereto. What is clear from the first proviso is that if, pursuant to the notice issued under Section 158BC(a) assessee files return, remits tax and does not proceed to contest the undisclosed income returned based on which assessment is made, there is no scope for any penalty. However, the second proviso is an exception to the first proviso which makes it clear that if any undisclosed income is assessed over and above the undisclosed income returned by the assessee in the return filed pursuant to notice issued under Section 158BC(a), penalty is to be levied on such excess income assessed. The main provision gives a limited discretion to the Assessing Officer to levy penalty ranging from a minimum amount, which is equal to the amount of tax payable in respect of undisclosed income and the maximum is three times of such tax. In other words, unlike under Section 271(1)(c), which provides for penalty for concealment of income,

Section 158BFA(2) provides for mandatory penalty in respect of tax assessed on undisclosed income other than undisclosed income admitted without further contest and on which tax is paid based on return filed by the assessee against notice issued under Section 158BC(a).

Section 158BC of Income-tax Act, 1961 - Block assessment in search cases - Procedure for

There is no justification for doubting entries found in seized records pertaining to expenditure while accepting income found recorded therein

The assessee-film producer was engaged in unaccounted business and accounts seized pertain to clandestine transactions showing unaccounted receipts and unaccounted expenditure. The assessee himself has voluntarily declared undisclosed income of ₹43 lakhs over the income returned for the block period.

The Assessing Officer has considered the claim of the assessee that film directors were paid profit share of various films directed by them for the assessee. Moreover, details of payments were also available in the seized records. However, the Assessing Officer declined to believe assessee's claim for the reason that there was no written agreement between the assessee and the film directors for profit sharing over and above the agreed consideration paid to them and the cost reimbursed for the production of the film. Further the Assessing Officer heavily relied on the denial made by the film directors against receipt of payments.

The High Court of Kerala held that there is no justification for doubting the entries found in the seized records pertaining to expend while accepting the income found recorded therein. When the Department relies on the seized records for estimating undisclosed income, there is no reason why the expenditure stated therein should be disbelieved merely because there is no written agreement and that payments were not made through cheques or demand drafts. Even when unaccounted income is determined from business carried on clandestinely or not, the statute does not authorise assessment of anything other than "undisclosed income" which has to be arrived at after allowing expenditure incurred by the assessee whether it be accounted in the regular books or not. What is clear from the clandestine records seized from the assessee is that both the film producer and the film directors were engaged in collections and payments outside the regular books of accounts and that is the only reason why there is no written

agreement between them in regard to profit sharing and the payments are consciously not made through cheques or demand drafts. The Assessing Officer has also stated that the purpose of payments is not seen recorded in the seized records. This unrealistic stand is justified in the context of the business carried on by the assessee because between the film producer and the film directors income seen recorded and payments seen made should be taken as relating to business and nothing else. The mere fact that film directors have not confirmed receipt of payment in cash from the assessee also is not a ground for treating the payments as bogus or not genuine. There is nothing to doubt the genuineness of the payments because assessee himself explained that the film directors are entitled to share profits in respect of successful movies, and the Department has not established that such practice is not there in the film industry. Since, in principle, the order of the Tribunal that entries relating to payments to film directors found in the seized records should be accepted. There was also no justification to interfere with the findings of the Tribunal with regard to the payments made to the Directors though not recorded by the assessee or the payees in the regular books of accounts.

Section 80-IA, read with Section 158BC of Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertakings engaged in infrastructure developments, etc.

No deduction under Section 80-IA can be claimed for first time in computation of undisclosed income in assessment under Section 158BC

The assessee has not made any claim in the regular returns filed. The block assessment happened to be completed 6 to 7 years after the relevant years to which the assessee's claim for deduction under Section 80-IA relates. The revenue submitted that the Department cannot verify the genuineness of the

claim with reference to Form 10CCB, if the same is furnished, 10 years after the closure of the relevant assessment years, pursuant to remand order issued by the Tribunal.

The Kerala High Court held that in order to consider claim of deduction under Section 80-IA a statutory audit report in form No.10CCB is mandatory as required under the above provision of the Act. The requirement of an audit report in form 10CCB is for the Department to verify the factual position with reference to the data contained therein, which has contemporary relevance. A claim of deduction under Section 80-IA is admissible only in regular assessment that too if it is claimed along with the return accompanied by audit report in form 10CCB. In fact, if the assessee has not furnished audit report along with the return, the Assessing Officer is not required to consider the claim. No deduction can be claimed for the first time in the computation of undisclosed income in the assessment under Section 158BC.

LD/61/34
CIT, Dehradun
Vs.

Dehradun Club Ltd.
October 14, 2011 (Uttarakhand)
[Assessment Year 1988-89]

Section 234B, read with Sections 143 and 156 of Income-tax Act, 1961 - Interest - For defaults in payment of Advance tax

If assessment order does not specify charging of interest, then it could not be charged or levied under Section 156

While completing the assessment, the assessing officer had not issued any direction in respect of charging interest under Section 243B. However, while pursuing the assessment order, a notice of demand was issued under Section 156 demanding interest under Section 243B on the ground that the assessee had failed to pay advance tax within the stipulated period as specified under Section 209.

The assessee contended that the interest under Section 234B could not be charged since there was no order to that effect in the assessment order. The application of the assessee was rejected by the Assessing Officer.

The Uttarakhand High Court held that a perusal of Sections 143(3) and 156 clearly indicates that the tax, interest, penalty, or fine is payable in consequence of an order passed under the Act, namely, the assessment order. There has to be a specific order passed by the



assessing officer charging interest and, only thereafter, a notice of demand levying interest could be issued.

The language of the aforesaid provision mandates that the Income Tax Officer shall by an order in writing make an assessment of the total income or loss of the assessee and determine the same payable by the assessee on the basis of such assessment.

A notice of demand is somewhat like a decree in a civil suit, which must follow the order. When the judgment in a civil suit does not specify any amount to be recovered, the decree could not contain such amount. Similarly, when the assessment order under Section 143(3) does not indicate that interest would be leviable, the notice of demand under Section 156 levying interest would be wholly illegal since interest is payable in consequence of an order passed as is clear from Section 156. Consequently, the notice of demand cannot go beyond the assessment order and the assessee cannot be served with any such notice demanding interest. There is another aspect of the matter. The assessee must know that he has been charged with interest under a particular section of the

Act. That must be specified in the assessment order and, only thereafter, a notice of demand under Section 156 could be issued.

In the light of the aforesaid, it was to be held that if the assessment order does not specify charging of interest, then it cannot be charged or levied under Section 156.

LD/61/35

CIT-II, Kanpur

Vs.

Deep Awadh Hotels (P.) Ltd.

August 3, 2011 (ALL)

Section 234B of Income-tax Act, 1961- Interest - For defaults in payment of Advance tax

If assessment order or computation sheets do not provide for interest, it cannot be charged in demand notice

There is no force in the argument that even if assessment order or computation sheets do not provide for interest, since interest is mandatory, it can be charged in the demand notice, which is signed by the Assessing Officer.

Even if any provision of law is mandatory and provides for charging of tax or interest, such charge by the assessing officer should be specific and clear and assessee must be made to know that the assessing officer has applied its mind and has ordered charging of interest. The mandatory nature of charging of interest and the actual charging of interest by application of mind and the mention of the proviso of law under which such interest is charged are two different things. Therefore, interest under Section 234B cannot be charged in such cases.

LD/61/36

CIT-II

Vs.

Sarin Chemical Laboratory

May 18, 2012 (ALL)

[Assessment Years 1991-92]

Section 234B of Income-tax Act, 1961 – Interest - Chargeable as

In absence of any mention of charging of interest in assessment order, interest cannot be charged by issuing a notice of demand

The assessee contended that the interest could not be charged under Sections 234A, 234B and 234C in the absence of any order to this effect in the assessment order. The CIT(A) took the view that no appeal is provided against charge of interest but the Assessing Officer may levy the interest while giving effect to the appellate order. The Tribunal accepted the contention of the assessee that the Assessing Officer has failed to mention in the assessment order for charging of any interest and therefore, interest could not be charged from the assessee.

Following the view taken in CIT-II, *Kanpur vs. Deep Awadh Hotels P. Ltd.* (decided on 3.8.2011) (LD/61/35 above), the Allahabad High Court held that held that in the absence of any mention of charging of interest in the assessment order, interest cannot be charged by issuing a notice of demand, the contrary argument cannot be accepted.

LD/61/37

Price Waterhouse Coopers Pvt. Ltd.

Vs.

CIT, Kolkata-I

September 25, 2012 (SC)

[Assessment Year 2000-2001]

Section 271(1)(c) of the Income-tax Act, 1961 – Penalty – For Concealment of Income

Tax Audit Report filed along with return

unequivocally stated that provision for payment was not allowable under Section 40A(7), however, assessee made a computation error in its return of income and failed to add it back and thus it could be held that assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars and, hence, penalty could not be imposed

The assessee, an accounting firm, filed Audit Report with return stating that ₹23,70,306 was liabilities provided for payment of gratuity during the year. This provision was not allowable under Section 40A(7) and was required to be added back. However, the same had not been added by the assessee in its computation, thereby leading to underassessment of income by ₹23,70,306. The Assessing Officer saddled the assessee with penalty at 300% on the tax sought to be evaded by the assessee by furnishing inaccurate particulars.

The assessee had filed an affidavit in which it was stated that the assessee is engaged in Multidisciplinary Management Consulting Services and in the relevant year it employed around 1000 employees. It had separate accounts department which maintains day to day accounts, pay rolls etc. It was stated in the affidavit that perhaps there was some confusion because the person preparing the return was unaware of the fact that the services of some employees had been taken over upon acquisition of a business, but they were not members of an approved gratuity fund unlike other employees of the assessee. Under these circumstances, the tax return was finalised and filled in by a named person who was not a Chartered Accountant and was a common resource.

It is further stated in the affidavit that the return was signed by a director of the assessee who proceeded on the basis that the return was correctly drawn up and so did not notice the discrepancy between the Tax Audit Report and the return of income.

The Supreme Court held that the facts of the case were rather peculiar and somewhat unique. The assessee is undoubtedly a reputed firm and has great expertise available with it. Notwithstanding this, it is possible that even the assessee could make a "silly" mistake.

The fact that the Tax Audit Report was filed along with the return and it unequivocally stated that the provision for payment was not allowable under Section 40A(7) indicated that the assessee made a

computation error in its return of income. Apart from the fact that the assessee did not notice the error, it was not even noticed by the Assessing Officer who framed the assessment order. In that sense, even the Assessing Officer seems to have made a mistake in overlooking the contents of the Tax Audit Report.

The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There was also no question of the assessee furnishing any inaccurate particulars. It appeared that all that had happened in the present case was that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This could only be described as a human error which every body is prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful could not be doubted, but the absence of due care, in a case such as the present, would not mean that the assessee was guilty of either furnishing inaccurate particulars or attempting to conceal its income.

Given the peculiar facts of this case, the imposition of penalty on the assessee was not justified. It was to be concluded that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars. Therefore, no penalty could be imposed on the assessee.

was employed an Enforcement Officer. The petitioner sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from Banks and other financial institutions. Further, he had also sought for the details of gifts stated to have accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that had come up for consideration was whether the abovementioned information sought for qualifies to be "personal information" as defined in clause (j) of Section 8(1).

The Supreme Court held that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. were qualified to be personal information as defined in clause (j) of Section 8(1). The performance of an employee/officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of this has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

The petitioner in the instant case had not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act.

The petitioner had not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, the petition was to be dismissed. ■



Right to Information Act

LD/61/38

Girish Ramchandra Deshpande
Vs.

Central Information Commissioner
October 3, 2012 (SC)

Section 8 of the Right to Information Act, 2005 - Exemption from disclosure of information

Office memos issued to an employee, show cause notices and orders of censure/punishment, etc. and details disclosed by him in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) unless involves a larger public interest

The petitioner had submitted an application before the Regional Provident Fund Commissioner calling for various details relating to third respondent, who

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. Notified Cost Inflation Index for Financial Year 2012-2013

In exercise of the powers conferred by clause (v) of the *Explanation* to Section 48 of the Income-tax Act, 1961, the Central Government has, through this notification, notified Cost Inflation Index for Financial Year 2012-13 to be “852”.

[Notification No. 38/2012, dated- 17-9-2012]

2. Tax Residency Certificate-Insertion of Rule 21AB and Form Nos. 10FA & 10FB

Sections 90 and 90A have been amended by the Finance Act, 2012 to provide that the non-resident to whom the agreement referred to in Section 90(1) and Section 90A(1) applies, shall be allowed to claim the relief under such agreement if a Certificate obtained by him from the Government of that country or specified territory is furnished, containing such particulars as may be prescribed, declaring his residence of the country outside India or the specified territory outside India, as the case may be.

Accordingly, the Central Board of Direct Taxes has, through this notification inserted a new Rule 21AB which provides for the prescribed particulars which the Certificate for claiming relief under an agreement referred to in Sections 90 and 90A should contain. Such certificate should be duly verified by the Government of the Country or the specified territory of which the non-resident claims to be a resident for the purposes of tax.

In addition, the CBDT has notified Form No. 10FA for an assessee, who is a resident in India, to make an application to Assessing officer for obtaining a certificate of residence for the purposes of an agreement referred to in Section 90 and 90A. It has also notified

Form No. 10FB which provides the format of such certificate of residence.

[Notification No. 39/2012, dated-17-9-2012]

3. Investment in Debt Instruments of Infrastructure Finance Companies to qualify as a mode of investment under Section 11(5)(xii) - Amendment in Rule 17C of the Income Tax Rules, 1962 - Income Tax (13th Amendment) Rules, 2012

In exercise of the powers conferred by Section 295 of the Income-tax Act, 1961, the Central Government has, through this notification, inserted a new clause (viii) in Rule 17C of the Income Tax Rules, 1962 to provide that investment in debt instruments issued by infrastructure finance company registered with Reserve Bank of India is also a prescribed mode of investment or deposits by a charitable/religious trusts under Section 11(5)(xii) of the Income-tax Act, 1961.

[Notification No. 40/2012, dated 20-9-2012]

4. Insertion of Rule 112F - Income Tax (14th Amendment) Rules, 2012

The Finance Act, 2012 amended Sections 153A and 153C to provide that the Central Government may specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessment or reassessment of the total income for six assessment years immediately preceding the assessment year in which search is initiated under Section 132 or requisition is made under Section 132A. Accordingly, in exercise of the powers conferred by Section 153A and 153C the Central Government has, through this notification inserted a new Rule 112F which shall come into force from the 1st July, 2012.

The said rule provides that the Assessing Officer is not required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, in the following cases:

- i) where as a result of a search under Section 132(1)

of the Act or a requisition made under Section 132A of the Act, a person is found to be in possession of any money, bullion, jewellery or other valuable articles or things, whether or not he is the actual owner of the same, AND

- ii) where, such search is conducted or such requisition is made in the territorial area of an assembly or parliamentary constituency in respect of which a notification has been issued under Section 30 read with Section 56 of the Representation of the People Act, 1951, or where the assets so seized or requisitioned are connected in any manner to the ongoing election in an assembly or parliamentary constituency.

Further, proviso to this Rule states that this rule is not applicable to cases where such search under Section 132 or such requisition under Section 132A has taken place after the hours of poll so notified. The second proviso further provides that the said rule shall not be applicable to cases where any assessment or reassessment has abated under Section 153A and 153C of the Income-tax Act, 1961.

[Notification No. 42/2012, dated 4-10-2012]

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. Approval of Loan agreements/Long term infrastructure bonds and rate of interest for the purpose of Section 194LC of Income-tax Act, 1961

The Finance Act, 2012 had inserted Section 194LC in Income-tax Act to provide for lower rate of tax deduction at source @ 5% on gross interest payments to a non-corporate non-resident or to a foreign company on borrowings made in foreign currency, subject to approval of the Central Government, by way of loan agreement or through Long term infrastructure bonds during the period from 1-7-2012 to 30-6-2015. The new section further provides, the interest to the extent the same does not exceed the interest calculated at the rate approved by the Central Government, taking into consideration the terms of the loan or the bond and its repayment, will be subject to tax at a concessional rate of 5%.

With a view to lower the avoidable compliance burden to follow a mechanism involving approval in each and every case, the Central Board of Direct Taxes has through this circular conveyed approval of the Central Government, for the purposes of Section 194LC in respect of loan agreements and issue of

long-term infrastructure bond by Indian Companies subject to satisfaction of certain conditions. In view of the above, any loan agreement or bond issue, which satisfies the conditions so mentioned in this circular would be treated as approved by the Central Government for the purposes of Section 194LC.

The circular has further clarified that in case of other long term Infrastructure Bonds where the Indian company received subscription of such Bonds in foreign currency and such bond issue is not covered under ECB regulations, the approval for the purpose of Section 194LC shall be on case to case basis for which application has to be given in writing to Member (IT), CBDT with the relevant details of the purpose, period and rate of interest.

[Circular No. 7/2012, dated 21-8-2012 & Press Release dated 21-9-2012]

The detailed text of the conditions to be satisfied may be downloaded from the link below:

http://law.incometaxindia.gov.in/DIT/File_opener.aspx?page=CIR&schT=&csId=a185baa6-4d94-4375-8761-86e306a2bcdf&crn=&yr=ALL&sch=&title=Taxmann%20-%20Direct%20Tax%20Laws

2. Deduction of tax at source from salaries under Section 192 during the Financial year 2012-2013

The Central Board of Direct Taxes has through this circular, provided the rates for deduction of income-tax from the payment of income chargeable under the head "Salaries" during the financial year 2012-2013 and explained certain related provisions of the Income-tax Act, 1961 and Income-tax Rules, 1962.

[Circular No. 8/2012 dated 5-10-2012]

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

C. PRESS RELEASE

1. Rajiv Gandhi Equity Savings Scheme (RGESS) – Finance Minister approves the operational Features-

The Finance Act, 2012 inserted a new Section 80CCF which provided for a deduction from total income in respect of investment made under notified equity savings scheme. This press release reveals that the Hon'ble Finance Minister has approved the new tax saving scheme namely "Rajiv Gandhi Equity Saving Scheme (RGESS)" exclusively for the first time retail investors in Securities Market. This scheme would provide tax benefits to new investors who invest up to ₹ 50,000 and whose annual income is below ₹ 10 lakh.

The investor would get a 50% deduction of the amount invested from the taxable income for that year. The salient features of the scheme regarding eligibility, mode and manner of investments, lock in period, etc. have been given in the Press release which may be downloaded from the link below:

http://law.incometaxindia.gov.in/DIT/File_opener.aspx?page=CIR&schT=&csId=84b915e5-4283-4d35-88bc-98f7d636b7ce&crn=&yr=ALL&sch=&title=Taxmann%20-%20Direct%20Tax%20Laws

[Press release, dated 21-9-2012]

2. Comments from stakeholders and general public invited on Expert Committee's draft report on retrospective amendments relating to taxation of non-residents on indirect transfer

Taking into consideration the consultations and written representations from a number of stakeholders including tax advisory firms comprising accountants and lawyers, chambers of commerce and industry, foreign investor associations and individual industry representatives, the Expert Committee on General Anti-Avoidance Rules (GAAR) has submitted its draft report on retrospective amendments relating to taxation of non-residents on indirect transfer. The draft report of the said Committee has been uploaded on the Finance Ministry website (www.finmin.nic.in) and Income-tax Department website (www.incometaxindia.gov.in) for comments/suggestions from stakeholders and the general public. It has been mentioned that the views of the Government on the recommendations of the Expert Committee will be formed after receipt of their final report.

[Press Release, dated 9-10-2012]

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. ST-3 for the half year ended September 2012 to cover only the period between April - June, 2012

As per rule 7 of the Service Tax Rules, 1994, every assessee has to submit a half yearly return by the 25th of the month following the particular half-year.

However, a proviso has been inserted in Rule 7(2) to provide that the return in 'ST - 3' to be submitted by 25th October, 2012 (for the half year ended September 2012) would cover the period between 1st April to 30th June, 2012 only. Implementation of negative list w.e.f 1st July, 2012 seems to have necessitated such an amendment.

[Notification No.47/2012 ST dated 28-9-2012]

2. Due date for filing ST-3 Return for the period April-June 2012 extended by one month

Due date for filing of service tax returns in Form ST-3 for the period 1st April, 2012 to 30th June 2012 has been extended by one month from 25th October, 2012 to 25th November, 2012.

The due date has been extended as ACES will start releasing the return in Form ST-3 in a quarterly format, shortly before the due date of 25th October, 2012. This will result in all the assessee attempting to file their returns in a short time period, which may result in problems in the computer network and delay and inconvenience to the assessee.

[Order No.3/2012 dated 15-10-2012]

The text of the above notifications/circular is available at www.cbec.gov.in



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

A. External Commercial Borrowings (ECB) Policy

1. Repayment of rupee loans and/or fresh rupee capital expenditure – \$ 10 billion scheme

A.P. (DIR Series) Circular No. 26 dated 11th September, 2012.

Hitherto, the maximum permissible ECB that can be availed of by an individual company under the scheme is limited to 50% of the average annual export earnings realised during the past three financial years.

It has now been decided:

- to enhance the maximum permissible limit of ECB that can be availed of to 75% of the average foreign exchange earnings realised during the immediate past three financial years or 50% of the highest foreign exchange earnings realised in any of the immediate past three financial years, whichever is higher;
- in case of Special Purpose Vehicles (SPVs), which have completed at least one year of existence

from the date of incorporation and do not have sufficient track record/past performance for three financial years, the maximum permissible ECB that can be availed of shall be limited to 50% of the annual export earnings realised during the past financial year; and

- (c) the maximum ECB that can be availed by an individual company or group, as a whole, under this scheme will be restricted to \$ 3 billion.

2. Bridge Finance for infrastructure sector

A.P. (DIR Series) Circular No. 27 dated 11th September, 2012

The Indian companies in the infrastructure sector are allowed to import capital goods by availing of short term credit (including buyers'/suppliers' credit) in the nature of 'bridge finance', under the approval route, subject to specified conditions. It has now been decided to allow refinancing of such bridge finance (if in the nature of buyers'/suppliers' credit) availed of, with an ECB under the automatic route subject to the following conditions:

- The buyer's/supplier's credit is refinanced through an ECB before the maximum permissible period of trade credit;
- The Authorised Dealer evidences the import of capital goods by verifying the Bill of Entry;
- The buyer's/supplier's credit availed of is compliant with the extant guidelines on trade credit and the goods imported conform to the Directorate General of Foreign Trade policy on imports; and
- The proposed ECB is compliant with all the other extant guidelines relating to availment of ECB.

The borrower is, therefore, required to approach the RBI under the approval route only at the time of availing of bridge finance which will be examined subject to conditions that the bridge finance shall be replaced with a long term ECB and the long term ECB shall comply with all the extant ECB norms.

The designated AD - Category I bank shall monitor the end-use of funds and banks in India will not be permitted to provide any form of guarantees for the ECB.

3. Review of all-in-cost ceiling

A.P. (DIR Series) Circular No. 40 dated 9th October, 2012.

It has been decided to continue the all-in-cost ceiling as specified in A.P. (DIR Series) Circular No. 99 dated 30th March, 2012 until further review.

B. Trade Credits for Import into India

1. A. P. (DIR Series) Circular No. 28 dated 11th September, 2012

RBI has allowed companies in the infrastructure sector (as defined under the extant guidelines on ECB) to avail of trade credit up to a maximum period of five years for import of capital goods as classified by Directorate General of Foreign Trade subject to the following conditions: -

- The trade credit must be *abinitio* contracted for a period not less than fifteen months and should not be in the nature of short-term roll overs; and
- AD banks are not permitted to issue Letters of Credit/guarantees/Letter of Undertaking (LoU)/Letter of Comfort (LoC) in favour of overseas supplier, bank and financial institution for the extended period beyond three years.

The all-in-cost ceilings of trade credit will be as under:

Maturity period	All-in-cost ceilings over six months LIBOR*
Up to one year	350 Basis Points
More than one year and up to three years	
More than three years and up to five years	

* For the respective currency of credit or applicable benchmark.

The all-in-cost ceilings include arranger fee, upfront fee, management fee, handling/processing charges, out of pocket and legal expenses, if any.



2. A.P. (DIR Series) Circular No. 39 dated 9th October, 2012

It has been decided to continue all-in-cost ceiling as specified in the above A.P. (DIR Series) Circular No. 28 dated 11th September, 2012 for trade credits for imports into India until further review.

C. Overseas Direct Investments by Indian Party - Rationalisation

A.P. (DIR Series) Circular No. 29 dated 12th September, 2012

RBI, vide A.P. (DIR Series) Circular No.96 dated 28th March, 2012 allowed Indian party to submit Annual Performance Report (APR) in Form ODI Part III in respect of Joint Venture (JV)/Wholly Owned Subsidiary (WOS) based on unaudited annual accounts of the JV/WOS where the law of the host country does not mandatorily require auditing of the books of accounts of JV/WOS provided:

- (i) The Statutory Auditors of the Indian party certifies that 'The un-audited annual accounts of the JV/WOS reflect the true and fair picture of the affairs of the JV/WOS'; and
- (ii) That the un-audited annual accounts of the JV/WOS has been adopted and ratified by the Board of the Indian party.

The above exemption granted for submission of APR based on the un-audited accounts of the JV/WOS subject to above specified conditions shall continue.

D. Comprehensive Guidelines on Over the Counter (OTC) Foreign Exchange Derivatives – Cost Reduction Structures

A.P. (DIR Series) Circular No. 30 dated 12th September, 2012.

Under the extant instructions, use of cost reduction structures, i.e., cross currency option and foreign currency–INR option have been permitted to hedge exchange rate risk arising out of trade transactions and the ECBs.

RBI has now permitted the use of cost reduction structures for hedging the exchange rate risk arising out of foreign currency loans availed of domestically against FCNR (B) deposits.

E. Establishment of Liaison Office (LO)/Branch Office (BO) / Project Office (PO) in India by Foreign Entities

1. Clarification - A. P. (DIR Series) Circular No. 31 dated 17th September, 2012

RBI has clarified that permission to establish offices,



in India by foreign Non-Government Organisations/ Non-Profit Organisations/Foreign Government Bodies/Departments, by whatever name called, is under the Government Route as specified in A. P. (DIR Series) Circular No. 23 dated 30th December, 2009 issued by RBI.

Accordingly, such entities are required to apply to the RBI for prior permission to establish an office in India, whether Project Office or otherwise.

2. Reporting requirements - A.P. (DIR Series) Circular No. 35 dated 25th September, 2012

In addition to the existing reporting requirements, all the new entities setting up LO/BO/PO shall also:

- (i) submit a report containing information in the prescribed format within five working days of the LO/BO/PO becoming functional, to the Director General Police (DGP) of the state concerned in which LO/BO/PO has established its office; if there are more than one office of such a foreign entity, in such cases to each of the DGP concerned of the state where it has established office in India;
- (ii) a copy of the report in the prescribed format shall also be filed with the DGP concerned on annual basis along with a copy of the Annual Activity Certificate/Annual report required to be submitted by LO/BO/PO concerned, as the case may be.
- (iii) a copy of report thus filed as above shall also be filed with AD by LO/BO/PO concerned.

The existing LO/BO/PO shall henceforth report the information in the prescribed format along with the copy of Annual Activity Certificate/Annual report to DGP of state concerned and also file a copy of the same with AD bank.

Please refer the circular for the format prescribed at:

<http://rbidocs.rbi.org.in/rdocs/Notification/PDFs/AP36FDI092612.pdf>

F. Amendment to the Foreign Direct Investment (FDI) Policy

1. FDI in Single-Brand Product Retail Trading (SBRT)

Press Note No.4 (2012 Series) issued by the Department of Industrial Policy & Promotion (DIPP) dated 20th September, 2012 and A.P. (DIR Series) Circular No. 32 dated 21st September, 2012

The Government of India (GOI) has made following amendments in respect of FDI policy relating to SBRT:

Sr. No.	Present position	Amended position
1.	FDI in SBRT is permitted by the foreign investor who is owner of the brand.	FDI in SBRT is permitted by only one non-resident entity, whether owner of the brand or otherwise for the specific brand, through a legally tenable agreement, with the brand owner for undertaking SBRT in respect of the specific brand for which approval is being sought. The onus for ensuring compliance with this condition shall rest with the Indian entity carrying out SBRT in India. The investing entity shall provide evidence to this effect at the time of seeking approval, including a copy of the licensing franchise/sub-licence agreement, specifically indicating compliance with the above condition.
2.	In respect of proposals involving FDI beyond 51%, it is mandatory to source at least 30% of the value of products sold from Indian 'small industries (as defined in FDI policy)/village and cottage industries, artisans and craftsmen.	In respect of proposals involving FDI in SBPRT beyond 51%, sourcing of 30% of the value of goods purchased needs to be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors.

Sr. No.	Present position	Amended position
	The compliance of this condition will be ensured through self-certification by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts, which the company will be required to maintain.	The quantum of domestic sourcing will be self-certified by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts which the company will be required to maintain. This procurement requirement would have to be met, in the first instance, as an average of five years' total value of the goods purchased, beginning 1 st April of the year during which the first tranche of FDI is received. hereafter, it would have to be met on an annual basis. For the purpose of ascertaining the sourcing requirement, the relevant entity would be the company, incorporated in India, which is the recipient of FDI for the purpose of carrying out SBRT.
3.	No such condition	Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of SBRT.

2. FDI in Multi-Brand Retail Trading (MBRT)

Press Note No.5 (2012 Series) issued by DIPP dated 20th September, 2012 and A.P. (DIR Series) Circular No. 32 dated 21st September, 2012

Hitherto the FDI was prohibited in retail trading except in SBRT, in which FDI, up to 100%, is permitted, under the Government route subject to specified conditions.

GOI has reviewed the extant FDI policy and decided to permit FDI upto 51%, under the Government route, in MBRT subject to the conditions specified in the aforesaid Press Note No. 5 issued by DIPP.

Please refer the relevant Press Note issued by DIPP and the Circular issued by RBI in this regard for detailed terms conditions:

http://dipp.nic.in/English/acts_rules/Press_Notes/pn5_2012.pdf

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/32APDI210912.pdf>

3. FDI in Civil Aviation Sector

Press Note No.6 (2012 Series) issued by DIPP dated 20th September, 2012 and A.P. (DIR Series) Circular No. 32 dated 21st September, 2012

GOI has reviewed the FDI policy relating to Air Transport services and permitted foreign airlines to invest, in the capital of Indian companies, operating scheduled and non scheduled air transport services, up to the limit of 49% of their paid-up capital, under the Government approval route subject to the terms and conditions mentioned in the aforesaid Press Note No.6 issued by DIPP.

The said amendment is not applicable to Air India.

Please refer the relevant Press Note issued by DIPP and the Circular issued by RBI in this regard for detailed terms conditions:

http://dipp.nic.in/English/acts_rules/Press_Notes/pn6_2012.pdf

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/32APDI210912.pdf>

4. FDI in Broadcasting Sector

Press Note No.7 (2012 Series) issued by DIPP dated 20th September, 2012 and A.P. (DIR Series) Circular No. 32 dated 21st September, 2012

The GOI has reviewed the FDI policy for companies operating in Broadcasting Sector and decided to amend the foreign investment limits, in companies engaged in providing broadcasting carriage services

in following manner subject to terms and conditions as may be specified by the Ministry of Information and Broadcasting from time to time:

- (i) Teleports (setting up up-linking HUBs/ Teleports); Direct to Home (DTH); Cable Networks (MSOs operating at National or State or District level and undertaking upgradation of networks towards digitalisation and addressability): Increase in the FDI limit from 49% to 74%, subject to
 - a) FDI up to 49% being permitted under the automatic route; and
 - b) FDI beyond 49% and up to 74% being permitted under the Government route.
- (ii) Mobile TV: FDI up to 74% permitted, subject to:
 - a) FDI up to 49% being permitted under the automatic route; and
 - b) FDI beyond 49% and up to 74% being permitted under the Government route.

The FDI limit, in companies engaged in the aforesaid activities shall include, in addition to FDI, investment by Foreign Institutional Investors, Non-Resident Indians, Foreign Currency Convertible Bonds, American Depository Receipts, Global Depository Receipts and convertible preference shares held by foreign entities.

Please refer the relevant Press Note issued by DIPP and the Circular issued by RBI in this regard for detailed terms conditions:

http://dipp.nic.in/English/acts_rules/Press_Notes/pn7_2012.pdf

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/32APDI210912.pdf>

5. FDI in Power Exchanges

Press Note No.8 (2012 Series) issued by DIPP dated 20th September, 2012 and A.P. (DIR Series) Circular No. 32 dated 21st September, 2012

As per existing FDI policy, FDI up to 100% under the automatic route, is permitted in the power sector (except atomic energy). This includes generation, transmission and distribution of electricity, as well as power trading, subject to the provisions of the Electricity Act, 2003. Extant policy, however, does not provide any specific allowance for foreign investment in power exchanges.

The GOI has now reviewed the position in this regard and decided to permit foreign investment, up to 49% under Government route, in Power Exchanges, registered under the Central Electricity Regulatory



Commission (Power Market) Regulations, 2010, subject to the terms and conditions specified in the aforesaid Press Note No.8 issued by DIPP.

Please refer the relevant Press Note issued by DIPP and the Circular issued by RBI in this regard for detailed terms conditions:

http://dipp.nic.in/English/acts_rules/Press_Notes/pn8_2012.pdf

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/32APDI210912.pdf>

G. Clarification on Import of gold

A.P. (DIR Series) Circular No. 34 dated 24th September, 2012

RBI has clarified that Suppliers' and Buyers' credit (trade credit) including the usance period of Letters of Credit opened for import of gold in any form including jewellery made of gold/precious metals or/and studded with diamonds/semi precious/precious stones should not exceed 90 days, from the date of shipment.

H. Pricing guidelines for allotment of shares to person resident outside India under Memorandum of Association (MoA) of an Indian company

A.P. (DIR Series) Circular No. 36 dated 26th September, 2012

In case of non-residents (including NRIs) making investment in an Indian company in compliance with the provisions of the Companies Act, 1956, by way of subscription to MoA, the RBI has permitted that such investments may be made at face value subject to their eligibility to invest under the FDI Policy.

I. Setting up of step down operating subsidiaries by Non-Banking Finance Companies (NBFCs)

Press Note No.9 (2012 Series) issued by the DIPP dated 3rd October, 2012

Presently in terms of FDI Policy only 100% foreign owned NBFCs with a minimum capitalisation of \$50 million are allowed to set up step down subsidiaries for specific NBFC activities, without any restriction on the number of operating subsidiaries



and without bringing in additional capital. The GOI has now reviewed the present policy and decided to permit NBFCs having foreign investment above 75% and below 100% with a minimum capitalisation of \$ 50 million to set up step down subsidiaries with other conditions remaining same.



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

MCA (www.mca.gov.in) **1. Revision in Forms 23AC and 23ACA**

The MCA has issued Notification No. F.No.17/160/2012-clv dated 21-9-2012 revising form 23AC (Form relating to filing balance sheet and other documents with the RoC) and form 23ACA (Form for filing profit and loss account and other documents with the RoC). These new forms will be effective from 30-9-2012.

2. Reforming the regulatory environment for doing business in India – committee constituted

The MCA has issued General Circular No. 26/2012 dated 23-8-2012 stating that it has formed a committee as above under the Chairmanship of M. Damodaran pursuant to a report of the World Bank and the International Finance Corporation, entitled “Doing Business 2012: Doing business in a very Transparent World”, where India has been ranked at a low of 132 amongst a sample of 183 countries. Although, there is a seven point improvement over 2010 ranking of 139, India continues to lag behind even the BRIC and SAARC countries on most of the parameters. So as to ease business environment which would mandate extensive examination of regulations in different areas of root functioning such as financial reforms, governance reforms, liberalised policy

framework, process reforms, etc. and hence there is a need to conduct an in-depth study into the entire gamut of regulatory framework and come out with a detailed roadmap for improving the climate of business in India in a time bound manner. Such an exercise needs to be undertaken for periodical improvement in the ranking, leading to a situation where India gradually moves towards upward position with almost zero hassles. In achieving this, the committee will get support from the Indian Institute of Corporate Affairs (IICA) which will render the necessary secretarial assistance and logistic support and the committee shall submit its report to the MCA not later than six months from the date of holding of its first meeting. The committee shall elicit opinions about the policy action initiatives required and the changes in the statute required for meeting the objective of conducive business environment, hold wide consultations with all the stakeholders in the corporate sector, academics and members of public, issue questionnaires and invite written comments through public advertisements and take such other steps as may be considered necessary to suggest a comprehensive policy framework to enable regulatory environment for doing business in India.

3. Filing of balance sheet and profit & loss account in non-XBRL format – date extended

The MCA has issued General Circular No. 30/2012 on 28-9-2012 further extending the date of annual filing of forms 23AC and 23ACA in non-XBRL format without any additional fee or penalty. All companies which are required to file non-XBRL e-forms 23-AC and 23-ACA as per revised schedule VI will now be allowed to file their financial statements without any additional fee/penalty as under:

- Company holding AGM or whose due date for holding AGM is on or before 20-9-2012, the



Commencement of 5th Batch of Certificate Course on Master* in Business Finance (MBF)

at Delhi, Mumbai and Hyderabad from January 2013
(Registrations Started)

About the Course

The Committee on Management Accounting (CMA) of ICAI will conduct 5th 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 and Advanced Financial Analysis

Paper II - Capital Structuring, Fund Raising and Investment Management

LEVEL II

Paper III - Capital and Financial Markets Management

Paper IV - Forex, Treasury and Risk Management

LEVEL III

Paper V - Valuations, Merger & Acquisitions, and Principles of Management

Paper IV - Banking, Risk management and Business Strategy

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).

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/ 9310542607
E-mail: cma@icai.org

Important Links

Course Contents: <http://220.227.161.86/27949cma17544.pdf>

Online Payment: <http://www.icai.org/ccm.html?progid=107>

Registration Form: http://220.227.161.86/24921mbf_batch3_registration_form.xls

Committee on Management Accounting
The Institute of Chartered Accountants of India

* Master indicates level of expertise and not a post graduate degree.

time limit will be 3-11-2012 or due date of filing, whichever is later.

- Company holding AGM or whose due date for holding AGM is on or after 21-9-2012, the time limit will be 22-11-2012 or due date of filing, whichever is later.

4. Filing of form 23B by statutory auditor for the accounting year 2012-13

The MCA has issued General Circular No. 31/2012 on 28-09-2012 referring to fees imposed for filing of 23-B as per schedule X of the Companies Act, 1956. So as to ensure smooth filing of the forms 23-AC (non-XBRL) and 23-ACA (non-XBRL), with the approval of the competent authority, the filing of e-form 23-B is extended without any additional fees till 23-12-2012 or due date of filing, whichever is later.

5. Amendment to Companies (Issue of Indian Depository Receipts) Rules, 2004

The MCA has issued Notification on 1-10-2012 amending the Companies (Issue of Indian Depository Receipts) Rules, 2004 and now as per the amended rule 10(i), a holder of IDRs may transfer the IDRs, or may ask the domestic depository to redeem them or, any person may seek reissuance of IDRs by conversion of underlying equity shares, subject to the provisions of the Foreign Exchange Management Act, 1999, Securities and Exchange Board of India Act, 1992, or the rules, regulations or guidelines issued under these Acts, or other law for the time being in force.

SEBI (www.sebi.gov.in)

1. Amendment to Mutual Fund Regulations

The SEBI has issued Notification No. LAD-NRO/GN/2012-13/17/21502 dtd. 26-9-2012 issuing the SEBI (Mutual Funds) (Second Amendment) Regulations, 2012 amending the SEBI (Mutual Funds) Regulations, 1996 mandating some additional requirements on mutual funds (MF) and on asset management companies (AMC). Some of the amendments are, (a) Net asset value (NAV) of the scheme shall be calculated on daily basis and published in at least two daily newspapers having circulation all over India, (b) exit load charged, if any, after the commencement of these regulations shall be credited to the scheme, (c) AMC may charge the scheme with investment and advisory fees which shall be fully disclosed in the offer document, (d) in case of a fund of funds scheme, the total expenses of the scheme including weighted average of charges levied

by the underlying schemes shall not exceed 2.50% of the daily net assets of the scheme, (e) A MF and AMC shall within one month from the close of each half year, that is on 31st March and on 30th September, host a soft copy of its unaudited financial results on their website, (f) A MF and an AMC, shall publish an advertisement disclosing the hosting of such financial results on their website, in at least one english daily newspaper having nationwide circulation and in a newspaper having wide circulation published in the language of the region where the head office of the MF is situated. Amendment is also made to limitation on costs or expenses that may be charged to the scheme like brokerage and transaction costs which are incurred for the purpose of execution of trade and is included in the cost of investment, and in relation to other expenses. One may refer to the above citation for further details and the detailed amendment.

RBI (www.rbi.gov.in)

1. Amendment to NBFC Factors Directions

The RBI has issued Notification No. DNBS (PD) CC. No.303/Factor/22.10.91/2012-2013 dated 14-9-2012 amending the NBFC – Factors (Reserve Bank) Directions, 2012 which were earlier issued on 23-7-2012. This notification is issued to make enabling amendments to the NBFC (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007, the NBFC (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 and the NBFC Auditor's Report (Reserve Bank) Directions, 2008. The enabling amendments are to provide definitions in the respective Directions on 'Non-Banking Financial Company - Factor' which means an NBFC as defined in clause (f) of Section 45-I of the RBI Act, 1934 having financial assets in the factoring business at least to the extent of 75% of its total assets and its income derived from factoring business is not less than 75% of its gross income and has been granted a certificate of registration under sub-section (1) of Section 3 of the Factoring Regulation Act, 2011. It is also clarified that for an NBFC-Factor, the certificate of registration will indicate the requirement of holding the certificate of registration under Section 3 of the Factoring Regulation Act. The certificate will also indicate the percentage of factoring assets and income, and that the company fulfils all conditions stipulated under the Factoring Regulation Act to be classified as an NBFC-Factor. ■

Disclosure requirements for defined benefit plans in case of group administration plans and Accounting for provident fund contribution in case of provident fund trust run by the holding company

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

A. Facts of the Case

1. A company (hereinafter referred to as 'the company') is a wholly owned subsidiary of a listed public sector undertaking (hereinafter referred to as 'the holding company'). The company was incorporated in the year 2002 under the Companies Act, 1956. The main objective of the company is to acquire, establish and operate electrical systems etc. for distribution and supply of electrical energy, to undertake works on behalf of others and to act as engineers/consultants amongst others.
2. The querist has stated that all the personnel of the company are employees on the rolls of the holding company and are under deputation to the company on secondment basis. Every month actual share of employees related expenses of the company, like salary, provident fund (PF) contribution, etc. are being debited to the company by the holding company, for payments and accounting purpose. Other employee benefits like retirement benefits are allocated at the year end and accordingly accounted for in the accounts of the company, payable to the holding company. The holding company has constituted separate trusts for administering and managing employee benefits towards gratuity and provident fund.
3. The querist has further stated that the holding company gets the actuarial valuation done, at the year end, for all of its employees together, including

those deputed to its subsidiary companies. In other words, no separate valuation report is obtained for the employees of subsidiary companies. Therefore, identifying employee liability and corresponding plan assets attributable to the personnel on deputation to its subsidiaries is not possible. However, the amount being proportionate share of expenses (for the year under consideration) is determined by the actuary and allocated to the subsidiary companies for accounting purpose. Therefore, the company and the auditor of the company rely upon the allocated figure for recognising expenses in the profit and loss account of the company. As a corollary, all the other information required to be disclosed as per paragraphs 119 and 120 of Accounting Standard (AS) 15, 'Employee Benefits' (revised 2005), since not available, is not disclosed in the Notes on Accounts. The expenses on account of long term defined benefits included for actuarial valuation are gratuity, leave encashment, post retirement medical benefits, transfer/travelling allowance on retirement/death, long service awards to employees, farewell gift on retirement and economic rehabilitation scheme.

4. In the case of provident fund, however, the accounting is done on the basis of actual contribution, although the holding company in its financial statements admits it as a defined benefit. The company is of the view that actuarial valuation is not required for provident fund liability. Further, the holding company (sponsor employer) is not making disclosures in its financials as required by paragraphs 119 and 120 of AS 15 in

the case of provident fund, unlike in the case of other defined benefits.

Auditor's view point

Disclosures made by the company:

➤ Accounting policy

"The liabilities towards employee benefits are ascertained by the holding company i.e. Limited on actuarial valuation. The company provides for such employee benefits as apportioned by the holding company."

➤ Notes on Accounts

"All the employees of the company are on secondment from the holding company, i.e.... Ltd."

"Employees' remuneration and benefits include ₹ (Previous year ₹) in respect of gratuity, leave encashment, post retirement medical benefits, transfer traveling allowance on retirement/death, long service awards to employees, farewell gift on retirement and economic rehabilitation scheme as apportioned by the holding company i.e. Limited on actuarial valuation, being defined benefits, at the year end. Therefore, disclosures in compliance of AS 15 are not being made as the same are being done by the holding company."

Company's view on the above accounting policy

5. The company's management is of the view that, as all the employees of the company are on secondment from the holding company and the defined plans are that of the holding company, by following paragraph 35 of AS 15, the other group enterprises are allowed to recognise, in their separate financial statements, a cost equal to their contribution payable for the period which the company is doing. Hence, no separate disclosure of details is required in the separate financials of the company. Accordingly, the disclosure requirements spelt out in paragraphs 119 and 120 of AS 15 are not applicable to other group enterprises.
6. In the case of PF, the contribution is made to the PF trust at statutorily specified rate. The company has accounted for the expenses on actual contribution basis. Actuarial valuation is required only for the purpose of statutory interest rate guarantee as per AS 15 which is being undertaken by the holding company. Further actuarial valuation, in order to determine sufficiency of assets for meeting obligation etc. is not required, as that is the industrial practice all across the country.

7. The auditor of the company is of the view that, in accordance with AS 15, various enterprises under common control are permitted to share risks on defined benefit plans and accordingly can follow a system of recognising expenses in the accounts of group enterprises, a cost equal to their contribution to the sponsoring employer (which is the holding company in this case). However, unlike in paragraph 30 of AS 15 (that deals with similar situations in case of multi employer plans, where the employee costs can be treated as defined contribution, even if they are defined benefit), paragraph 35 of AS 15 does not specify whether similar accounting treatment of deeming the defined benefits as defined contribution is possible or not. Where employee benefits are defined contributions, disclosures under paragraphs 119 and 120 of AS 15 are not necessary. So long as items dealt with under paragraph 35 of AS 15 are defined benefits, disclosures as per paragraphs 119 and 120 of AS 15 are also necessary. Therefore, the position of the company, that disclosures are not required as the holding company is disclosing the same, is not in compliance with AS 15.

8. Further, the auditor of the company is of the view that provident fund contribution in the case of the company is also a defined benefit plan as the management is responsible for ensuring the statutory benefits to employees by managing the funds through the company run trusts. Therefore, carrying out actuarial valuation and making provisions based on such actuarial valuation is necessary to comply with AS 15. The company has instead accounted for the same on the basis of actual contribution only. This is not in compliance with AS 15.

B. Query

9. In the above background, the querist has sought the opinion of the Expert Advisory Committee on the following issues:
 - (i) Whether the position of the company that it is not liable to make complete disclosures in its separate financial statements, in view of the fact that the same have been done by the holding company, is correct.
 - (ii) Whether the company's policy of accounting for the provident fund based on actual contribution instead of actuarial valuation basis (and not

making disclosures even in its parent's financials, as a defined benefit, as required in paragraphs 119 and 120 of AS 15) is correct.

C. Points considered by the Committee

10. The Committee notes that the basic issues raised by the querist are related to the disclosure requirements for defined benefit plans as per paragraphs 119 and 120 of AS 15 in the financial statements of the subsidiary company when the same are being made in the financial statements of the holding company; and accounting for the provident fund based on actual contribution instead of actuarial valuation basis and its disclosures in the financial statements of the company. Therefore, the Committee has examined only these issues and has not examined any other issue that may arise from the Facts of the Case, such as, recognition and measurement of employees related expenses other than contribution to PF, accounting in the financial statements of the holding company, statutory obligations relating to employee benefits arising under various laws and statutes, etc.

11. At the outset, the Committee notes from the Facts of the Case that *all the employees* of the subsidiary company have been sent by the holding company on secondment basis. In order to determine the nature of relationship between such employees with the subsidiary company, the Committee notes Issue No. 1 of 'ASB Guidance on Implementing AS 15, Employee Benefits (revised 2005)', issued by the Accounting Standards Board of the ICAI, which provide as follows:

"1. What are the kinds of employees covered in the revised AS 15 and whether a formal employer-employee relationship is necessary or not, for benefits to be covered under the Standard?"

The Standard does not define the term "employee". Paragraph 6 of the Standard states that 'an employee may provide services to an enterprise on a full-time, part-time, permanent, casual or temporary basis and the term would also include the whole-time directors and other management personnel. The Standard is applicable to all forms of employer-employee relationships. There is no requirement for a formal employer-employee relationship. Several factors need to be considered to determine the nature of relationship ..."

In view of above, the Committee is of the view that though the holding company is the legal employer of the employee but in substance the employees are rendering service to the subsidiary company, hence, the latter should be considered as the employer of such employees.

12. As regards the disclosure requirements for defined benefit plans, the Committee notes the following paragraphs of AS 15, notified under the Companies (Accounting Standards) Rules, 2006:

"33. Multi-employer plans are distinct from group administration plans. A group administration plan is merely an aggregation of single employer plans combined to allow participating employers to pool their assets for investment purposes and reduce investment management and administration costs, but the claims of different employers are segregated for the sole benefit of their own employees. Group administration plans pose no particular accounting problems because information is readily available to treat them in the same way as any other single employer plan and because such plans do not expose the participating enterprises to actuarial risks associated with the current and former employees of other enterprises. The definitions in this Standard require an enterprise to classify a group administration plan as a defined contribution plan or a defined benefit plan in accordance with the terms of the plan (including any obligation that goes beyond the formal terms).

34. Defined benefit plans that share risks between various enterprises under common control, for example, a parent and its subsidiaries, are not multi-employer plans.

35. In respect of such a plan, if there is a contractual agreement or stated policy for charging the net defined benefit cost for the plan as a whole to individual group enterprises, the enterprise recognises, in its separate financial statements, the net defined benefit cost so charged. If there is no such agreement or policy, the net defined benefit cost is recognised in the separate financial statements of the group enterprise that is legally the sponsoring employer for the plan. The other group enterprises

recognise, in their separate financial statements, a cost equal to their contribution payable for the period.”

From the above-reproduced paragraphs of AS 15, the Committee is of the view that the multi-employer and group administration plans are completely different from each other. In case of group administration plan, it is merely an aggregation of individual employer plans and therefore, the Standard itself states that the accounting related information is readily available with the participating enterprises as any other single employer. Further, the Committee notes from the Facts of the Case that in the extant case, the holding company gets the actuarial valuation done, at the year-end, for all of its employees, including those deputed to its subsidiary companies. The amount being proportionate share of expenses (for the year under consideration) is determined by the actuary and allocated to the subsidiary companies for accounting purpose. It is assumed that amount allocated is derived considering current service cost plus increase or decrease in total defined benefit obligation arising on account of other reasons like the actuarial gains and losses on entire obligation (irrespective of whether the obligation relates to period during which employee was with service with subsidiary or not). This indicates that there is a contractual agreement or stated policy based on which the proportionate share of expenses is being allocated to the subsidiary company. Further, since there is a common scheme for the employees of the holding company and the subsidiary company, keeping in view the Facts of the Case, it appears to the Committee that in substance, the holding company is running a group administration plan. The Committee is further of the view that the existence of such contractual agreement or stated policy through which the current service costs and obligations of defined benefit plans for employees of subsidiary company are being allocated to it clearly provides a basis for allocating the assets and obligation of the plan too. The Committee is also of the view that in case there is no such contractual agreement or stated policy to bear entire obligation relating to that employee, as per paragraph 35 of AS 15, the net defined benefit cost should be recognised in the financial statements of the enterprise which is legally the sponsor employer (holding company in the extant case) for the plan and the other group enterprises (subsidiary company in the extant case) should recognise a cost equal to their contribution payable for the period.

13. With regard to accounting for contribution being made to provident fund trust, administered by the holding company, the Committee notes paragraphs 25 to 27 of AS 15 and Issue No. 9 of ‘ASB Guidance on Implementing AS 15, Employee Benefits (revised 2005)’, issued by the Accounting Standards Board of the ICAI, which provide as follows:

AS 15

“25. Post-employment benefit plans are classified as either defined contribution plans or defined benefit plans, depending on the economic substance of the plan as derived from its principal terms and conditions. Under defined contribution plans:

- (a) the enterprise’s obligation is limited to the amount that it agrees to contribute to the fund. Thus, the amount of the post-employment benefits received by the employee is determined by the amount of contributions paid by an enterprise (and also by the employee) to a post-employment benefit plan or to an insurance company, together with investment returns arising from the contributions; and
- (b) in consequence, actuarial risk (that benefits will be less than expected) and investment risk (that assets invested will be insufficient to meet expected benefits) fall on the employee.

26. Examples of cases where an enterprise’s obligation is not limited to the amount that it agrees to contribute to the fund are when the enterprise has an obligation through:

- (a) a plan benefit formula that is not linked solely to the amount of contributions; or
- (b) a guarantee, either indirectly through a plan or directly, of a specified return on contributions; or
- (c) informal practices that give rise to an obligation, for example, an obligation may arise where an enterprise has a history of increasing benefits for former employees to keep pace with inflation even where there is no legal obligation to do so.

27. Under defined benefit plans:

- (a) the enterprise's obligation is to provide the agreed benefits to current and former employees; and
- (b) actuarial risk (that benefits will cost more than expected) and investment risk fall, in substance, on the enterprise. If actuarial or investment experience are worse than expected, the enterprise's obligation may be increased."

ASB Guidance on Implementing AS 15, Employee Benefits (revised 2005)

"9. Whether a provident fund which guarantees a specified rate of return is a defined benefit plan or a defined contribution plan.

Section 17 of the Employees Provident Funds (EPF) Act, 1952 empowers the Government to exempt any establishment from the provisions of the Employees' Provident Scheme, 1952 provided that the rules of the provident fund set up by the establishment are not less favourable than those specified in section 6 of the EPF Act and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under the Act. The rules of the provident funds set up by such establishments (referred to as exempt provident funds) generally provide for the deficiency in the rate of interest on the contributions based on its return on investment as compared to the rate declared for Employees' Provident Fund by the Government under paragraph 60 of the Employees' Provident Fund Scheme, 1952 to be met by the employer. Such provision in the rules of the provident fund would tantamount to a guarantee of a specified rate of return. As per AS 15, where in terms of any plan the enterprise's obligation is to provide the agreed benefits to current and former employees and the actuarial risk (that benefits will cost more than expected) and investment risk fall, in substance, on the enterprise, the plan would be a defined benefit plan. Accordingly, provident funds set up by employers which require interest shortfall to be met by the employer would be in effect defined benefit plans in accordance with the requirements of paragraph 26(b) of AS 15."

From the above, the Committee is of the view that in the extant case, the actuarial risk (that benefits will cost more than expected) and investment risk of provident fund, in substance, falls on the employer, and as such, the provident fund plan would be a defined benefit plan. Accounting for such a benefit by the subsidiary should be as suggested in paragraph 12 above.

D. Opinion

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

- (i) The contention of the company that it is not liable to make complete disclosures in its separate financial statements, in view of the fact that the same have been done by the holding company, is not correct. Refer to paragraph 12 above.
- (ii) The provident fund plan in the extant case should be accounted for as a defined benefit plan as discussed in paragraph 13 above. For appropriateness of company's accounting policy, refer paragraphs 12 and 13 above.

1	The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute.
2	The Opinion is based on the facts supplied and in the specific circumstances of the querist. The Committee finalised the Opinion on 06.02.2012. 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 thirty volumes. A CD of Compendium of Opinions containing thirty 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 .

Carbon Credits – An Accounting Perspective



Over the last century, the surface temperature of the earth on an average increased by close to 1°C. This phenomenon has been termed as “Global Warming”. As per Kyoto protocol, 36 countries have committed to reduction of Green House Gases (GHG) produced by them by 2012 from the 1990 levels. Carbon credits are certificates issued to countries that reduce their emission of GHG which causes global warming. There is currently no authoritative guidance either from the International Accounting Standards Board (IASB) or Financial Accounting Standards Board (FASB) in the US for the accounting of carbon emissions and credits, although the boards have issued some guidance in the past. India is one of the countries that have credits for emitting less carbon. India and China have surplus credits to offer countries that are in deficit. China alone accounts for more than one third of the total supply of CERs in the world which makes it the world’s largest source of carbon credits through CDM, with India coming next with approximately 25% of the projects under CDM. Exchanges like the Chicago Climate Exchange, EU Climate Exchange (EUCX), and Multi Commodity Exchange of India (MCX) have developed trading platforms for carbon credits. An attempt has been made in the article to explain the concept of carbon credits, creation and accounting aspects.



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Scientists have identified the cause as increase in greenhouse gas emissions, depletion of forests, fossil fuel and industrial emissions. Global warming has the dooming effects of melting the polar ice caps, thermal expansion of water leading to an increase in the average sea levels, depletion of the ozone cover and natural calamities like the ones caused by the El Nino system leading to incessant flooding, forest fires, droughts, etc. Sea levels have risen by 20 cm over the last 130 years and are expected to rise by 1ft to 5ft in the next 100 to 300 years, which could send parts of countries like Bangladesh, Maldives, Egypt, Kiribati, Tuvalu or even cities like Shanghai, Tokyo, Mumbai, Amsterdam, London and New York under water.

The United Nations Framework Convention on Climate Change (UNFCCC) has adopted a protocol in 1997 at the summit in Kyoto, Japan. This came into effect on 16th February 2005. As of March 2012, 191 member nations have ratified the protocol with the exception of United States which is the world's largest emitter of green house gasses. As per this protocol, 36 countries have committed to reduction of Green House Gases (GHG) produced by them by 5.2% by 2012 from the 1990 levels. The national targets, however, vary from 8% for the EU, 7% for US, 6% for Japan, 0% Russia, while others like Australia and Iceland are permitted to increase the emissions. The protocol provides for various mechanisms to control climate changes, like Clean Development Mechanism (CDM), Joint Implementation ((JI), International Emission Trading (IET).

Kyoto Protocol: How does it Work

Clean Development Mechanism (CDM): It is a project based mechanism. The credits are generated by developing emission reduction projects, or from afforestation projects in non-Annex 1 nations (developing nations). This mechanism creates new CERs which is not the case in the other two mechanisms. This, when acquired, increases the amount of eligible emissions for the Annexure 1 nations (developed nations). As a result CDM, projects must meet detailed requirements and follow the exact steps for validation, registration and verification for emission reductions. The CDM allows industrialised countries with a greenhouse gas reduction commitment to invest in emission reducing projects in developing countries as such an investment in their own countries is costly, the investment may be made in a developing country where the cost of GHG reduction project is usually much lower.

Joint Implementation (JI): This is also a project based mechanism by which a developed country with a higher GHG reduction cost invests in a project that reduces emissions or enhances the removal of carbon footprint in another developed country which has lower costs and receives credits. No new credits get created in JI; it only gets redistributed from one developed country member party to the next.

International Emissions Trading (IET): Under this mechanism, Annex 1 party may acquire or transfer Emission Reduction Units (ERU) from another party. Countries can trade in the international carbon credit

Due to the lack of any mandatory guidance on for the accounting of carbon emissions and credits, there are currently divergent accounting practices in vogue. Differences exist on the accounting for the development of the projects under CDM mechanism, generation of CERs, timing of recognition, sales and inventory valuation, etc. Currently carbon related transactions can be accounted with reference to IAS 2 (Inventories), IAS 20 (Government Grants), IAS 37 (Provisions) IAS 38 (Intangible Assets) and IAS 39 (Financial Instruments).

market to cover their shortfall in allowances. Entities in developed countries exceeding the emission limits set for them, can buy credits from entities that generate them as a result of lesser emissions.

India's Advantage

Carbon credits are certificates issued to countries that reduce their emission of GHG which cause global warming. Carbon credits are measured in units of Certified Emission Reductions (CERs). Each CER is equivalent to one tonne of carbon dioxide (CO₂) reduction. China, Brazil and India are potential beneficiaries from the newly found source of revenue. For the purpose of the protocol, a total of 36 countries have been listed in Annexure – A, which are industrialised countries who have to meet their emission reduction targets by buying GHG emission reductions in Non Annexure-1 countries of which India is a part. We need to consider only CDM as we are not in Annexure-1 for considering JI or a buyer of CERs under IET.

India is one of the countries that have credits for emitting less carbon. India and China have surplus credits to offer countries that are in deficit. China alone accounts for more than one third of the total supply of CERs in the world, which makes it the world's largest source of carbon credits through CDM, with India coming next with approximately 25% of the projects under CDM. The major projects that aid in the issuance of CERs are hydroelectric power plants, wind energy, bio mass and congregation projects. These credits are called "Carbon Offset Credits"; the other form is "Carbon Reduction Credits". These credits are gained through afforestation which traps the carbon emissions.

In total, 1.67 billion CERs will be generated from projects created in the period 2009-2012. At the current rate of € 9 per CER, this translates to approximately € 15 billion of opportunity for countries like China, India and Brazil. In May 2010, a World Bank report on carbon trading put the market in the world at approximately € 100 billion, which is mostly from Europe and Japan. It is expected that this will increase manifold, if US becomes a part of the Kyoto Protocol and is included in Annexure 1 therein. As of 2010, there were 520 registered CDM projects out of the total 2313 projects registered by the UNFCCC. The projects have potential to generate 43 million CERs annually.

The markets for carbon credits are basically of two types:

1. Compliance
2. Voluntary (mainly US)

Compliance markets have set a “cap and trade” system whereby the total annual emissions for an industry or country are capped by law, and carbon credits can be traded between businesses or sold in trading markets. Those producers who exceed their emission reductions can trade their credits to others in the market place who have not reached their emission goals. Voluntary markets exist for businesses or individuals to lower

Statistics of CDM Projects and CERs Issued as of 2011

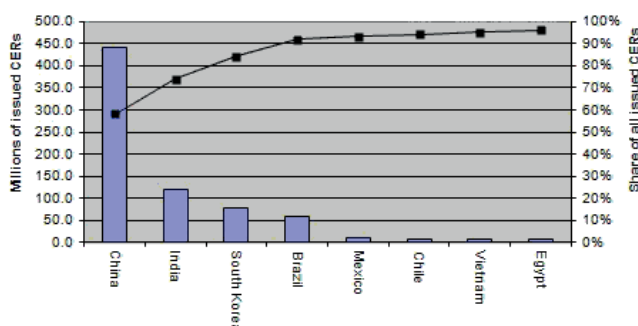
CDM project with CERs issued

CDM projects in the pipeline	CDM project with CERs issued		
Type (rejected projects excluded)	Projects	Issued kCERs	Issuance success
Afforestation			
Agriculture			
Biomass energy	158	20255	83%
Cement	9	1850	55%
CO ₂ usage	1	10	31%
Coal bed/mine methane	19	9059	49%
Energy distribution	1	316	83%
EE households	2	28	60%
EE industry	29	1690	82%
EE own generation	87	33408	79%
EE service	1	6	63%
EE supply side	9	1094	97%
Fossil fuel switch	37	23395	58%
Fugitive	4	8386	116%
Geothermal	5	2002	62%
HFCs	19	351820	106%
Hydro	359	58679	87%
Landfill gas	76	19642	42%
Methane avoidance	96	8167	49%
N ₂ O	35	171055	134%
PFCs and SF ₆	4	976	73%
Reforestation			
Solar	5	107	108%
Tidal			
Transport	2	359	47%
Wind	266	46532	86%
Total	1224	758837	96.2%

Source: www.cdmpipeline.org

Trading of CERs

The CERs are given by the CDM executive board to projects in developing countries to certify that they have reduced the GHG by one tonne of CO₂ per year. The project so certified by the board is monitored to check if the reduction as envisaged is actually taking place before award of the credits. Exchanges like the Chicago Climate Exchange, EU Climate Exchange (EUCX), and Multi Commodity Exchange of India (MCX) have developed to trading platforms for carbon credits.



their “carbon footprint” by voluntarily purchasing carbon credits from an investment fund or company that has aggregated credits from individual projects that reduce emissions. Compliance markets are mainly due to the Kyoto Protocol, a cap and trade system that resulted from the international Framework Convention on Climate Change

Accounting Aspects

There is currently no authoritative guidance either from the International Accounting Standards Board

(IASB) or Financial Accounting Standards Board (FASB) in the US for the accounting of carbon emissions and credits, although the boards have issued some guidance in the past. In 2004 IASB has issued IFRIC 3- Emission Rights, to provide guidance on this aspect, but was soon withdrawn in June 2005 due to criticism on account of potential volatility arising from recognising changes in value of the allowances and movement of provisions for emissions in the income statement. Similarly in the US, Emerging Issues Task Force (EITF) sought to provide guidance on this aspect under EITF 03-14, but the same was also dropped from the agenda. In 2007, the two boards have again taken up a joint project to address emissions accounting but is again paused currently and a decision is likely to be taken in the coming months. Due to the lack of any mandatory guidance on this there are currently divergent accounting practices in vogue. Differences exist on the accounting for the development of the projects under CDM mechanism, generation of CERs, timing of recognition, sales and inventory valuation, etc. Currently, carbon related transactions can be accounted with reference to IAS 2 (Inventories), IAS 20 (Government Grants), IAS 37 (Provisions) IAS 38 (Intangible Assets) and IAS 39 (Financial Instruments).

Carbon credits are an entitlement to emit CO₂ in the future, they could also be sold in an active market, and to this extent they provide future economic benefits to the entity that holds them. Carbon credits can be classified as Intangible assets. It is to be noted that unlike other intangible assets like patents, trademarks, etc. the carbon credits are not created by the entities; they are created by the regulators and offered to or acquired by the corporations. Credits can be acquired either

from a regulatory body or purchased in an auction or in an exchange where the credits are traded. There is a further complexity to the accounting of the carbon credits, which is should they be treated as Intangible assets or inventory, they possess both the characteristics of being assets and inventory. For a corporation that has to comply with the emission standards, it is required to buy the credits and extinguish them. The accounting practices are divergent and regulators across the world accept either treatment. The use of intangible assets treatment is supported by the erstwhile IFRIC 3 and is widely used under both IFRS and USGAAP.

A brief look of the IFRIC 3 – Emission Rights (though currently withdrawn) can provide a guidance of what the IASBs position was in this regard. It provides for accounting CERs as intangible assets, the allowances that are free of charge are government grants, which will be initially recorded at fair value with a corresponding entry to deferred credit. The deferred credit is amortised over a period of time to the income statement. Allowances are derecognised on their sale or surrender to the government for emissions in excess of the target set for reduction. Companies which have an emission related liabilities have to create a provision based on IAS 37 (Provisions, Contingent Liabilities and Contingent Assets).

There are two possible methods of valuation of carbon credits: the “cost” and the “fair value” method. Any credit purchased either in market or auction is to be recognised at cost or nominal value in case received as a government grant; however, credits may also be offered by the regulators free of cost as a result of the corporation’s use of clean technology and emission reductions. This may be recognised as a government grant. However, a question arises as to whether it is really a government grant. Also the classification in the balance sheet as a short term or a long term asset creates further complications.

The amounts received from the sale of CERs should not be treated as revenue but should be taken to other income, as the sale of CERs is only ancillary and not the main revenue generating activity of the company. The management has to decide whether carbon credits should be treated as inventories or intangible assets as per their judgement. In case they are classified as intangible assets, they will be of finite life in the sense that their utility will be only till the end of the compliance period. Also these should be subject to impairment testing.

Liability for Emitters: There have been questions as to how to measure the liability in case of emissions

There are two possible methods of valuation of carbon credits: the “cost” and the “fair value” method. Any credit purchased either in market or auction is to be recognised at cost or nominal value in case received as a government grant; however, credits may also be offered by the regulators free of cost as a result of the corporation’s use of clean technology and emission reductions. This may be recognised as a government grant. However, a question arises as to whether it is really **a government grant. Also the classification in the balance sheet as a short term or a long term asset creates further complications.**

There have been questions as to how to measure the liability in case of emissions by companies beyond the permissible limit set. Though there is no standard guidance on this, it would be prudent for companies to create a provision as emissions occur as a charge to the income statement. The liability has to be measured based on the best estimate of the expenditure that would be required to settle the obligation. Emitters may in fact start creating a provision, once the emissions exceed the allowances that they already hold.

by companies beyond the permissible limit set. Though there is no standard guidance on this, it would be prudent for companies to create a provision as emissions occur as a charge to the income statement. The liability has to be measured based on the best estimate of the expenditure that would be required to settle the obligation. Emitters may in fact start creating a provision once the emissions exceed the allowances that they already hold.

Yet another development in the carbon market has been the use of forward contracts and derivatives by the producers of CERs to hedge their price. This has been more so in the recent years as the price of CERs has been on a downward trend for the last four years to reach its lowest point in 2011. There are also questions on the accounting of these types of instruments as any guidance is lacking. These contracts may be derivatives and have to be accounted for accordingly.

Guidance Note – Accounting for Carbon credits issued by ICAI

The ED provides for the timing of recognition of CERs as assets. It mentions that when a company executes a project after successful registration under CDM, CERs will be generated as the entity meets its emission targets, however, they cannot be recognised, at this stage as they at best represent contingent assets until the verification process is complete and cannot be recognised as per AS 29 – *Provisions, Contingent Liabilities and Contingent Assets*. After the verification and approval by UNFCCC, the CERs are resources controlled by the entity and can be expected to give rise to cash and cash equivalents and hence are assets.

CERs should not be recognised as assets before they are credited to the entity by UNFCCC, as they are not unconditionally available to the generating entity.

The GN also touches upon the valuation of the inventories of CERs so held. Costs incurred in producing these inventories may comprise research and development costs for the clean technology implemented, project design costs, fees paid to the agencies like DOE, national authority, UNFCCC for approval. CER certification costs and operating costs to run the CDM project. However, as per AS 26 R&D, costs prior to certification may not be included in the cost of these as these are costs incurred before the asset came into existence, also costs like project design and don't result in the CERs coming into existence and cannot be inventorised, hence as per the guidance only the cost of certification by UNFCCC which brings the CERs into existence can be taken as the cost of producing the inventories.

Once the cost is ascertained following the guidance as per AS2- Valuation of Inventories, the CERs have to be carried as a part of the inventory at the lower of "cost" or "net realizable value".

Revenue Recognition

Sale proceeds of CERs are to be recognised as per AS 9 – Revenue Recognition, on fulfillment of the conditions specified as per para 11 on transfer of the CERs to the buyer and the seller retains no control over them and there is no uncertainty on the amount of consideration receivable. Gujarat Fluoro Chemicals Ltd, which is a leading player in carbon credits, accounts for revenue from the credits on delivery or sale of rights to the credits. Also the carbon credits are classified as inventories and included in the current assets.

The income tax department has found a new avenue of raising the tax collections in carbon credits. As per information with the department, about 200 companies large and small, are engaged in trading carbon credits. Income from sale of CERs needs to be accounted under the head income from Business & Profession or as a capital gain. However, most companies record the income under the head "Income from other sources". However, with the implementation of the Direct Taxes Code from 2012 **the position will be clarified as the income from the CERs will have to be treated as business income.**

Taxation Aspects

VAT: CERs are considered as goods when read in the context of the landmark judgement of the Supreme Court in *Tata Consultancy Services Vs State of Andhra Pradesh [2004] 271 ITR 401*. Although this is a case involving computer software, it can be extended to CERs; the same position was reiterated by the SC again in the case of *BSNL v. UOI [2006] 152 Taxman 135/ 282 ITR. 273/ 145 STC 1*. The court has held out the following points in the TCS case as attributes for being classified goods. “A “goods” may be tangible property or an intangible one. It would become goods provided it has the attributes thereof having regard to (a) its utility; (b) capable of being bought and sold' and (c) capable of being transmitted, transferred, delivered, stored and possessed. If a software, whether customised or non-customised, satisfies these attributes, the same would be goods”.

The Delhi VAT commissionerate, as per a ruling in 2010, has mentioned that CERs (carbon credits) are certificates having a market value and there are people willing to buy and sell the certificates. So the intrinsic value coupled with the free transferability makes it a marketable commodity and, therefore, covered under Section 2(1) of the Delhi VAT Act 2004. Here again, reference was made to the ruling by the apex court in the TCS case and held that all the three attributes specified in the judgement have been fulfilled, thus making CERs goods. The CERs have been added in entry 3 of the IIIrd schedule of the DVAT Act 2004 at 4% rate.

However, as majority of the carbon credits are sold to overseas buyers, VAT will not be applicable on them; they should in essence qualify as export of goods.

Income Tax: The income tax department has found a new avenue of raising the tax collections in carbon credits. As per information with the department, about 200 companies large and small, are engaged in trading carbon credits. Income from sale of CERs needs to be accounted under the head income from Business & Profession or as a capital gain. However, most companies record the income under the head “Income from other sources”. As such there is no established guideline in this regard. However, with the implementation of the Direct Taxes Code from 2012, the position will be clarified as the income from the CERs will have to be treated as business income. Clause 33(2)(xi) of the DTC explicitly mentions income from carbon credits to be treated as business

income by mentioning “*the gross earnings referred in 32(3) shall be the aggregate of the following(xi) any consideration accrued or received on transfer of carbon credits*” also the word carbon credit has been defined in Chapter XIX, Clause 314 (46).

The Future of Carbon Markets

It is clear that the market for carbon credits is growing and is expected to fetch revenues to Indian companies that have embarked on CDM mechanism projects. However, there may be turbulence in the future due to the fall in the global CER prices, the Euro zone crisis, increase in the number of projects under CDM by the UNFCCC thereby leading to an increase in the supply of CERs. There is also a lower possibility of the developed countries agreeing to binding commitments after the first commitment period that ends in December 2012. It will become all the more difficult post 2012 to forecast the market for carbon credits. A recent report by Fitch Ratings in November 2011 has also predicted a decline in the revenues from carbon credits to Indian companies' post 2012.

Only time will decide what happens in the future for the carbon market that has seen a spectacular growth in the past few years. The end of the first compliance period in 2012 and further negotiations between the countries will pave the way for the carbon market. Some analysts predict that the price of CER to be € 79 by 2020 as the region struggles to reach its target, but that appears to be a distant proposition with the current prices lingering around €3 to €4. Others point that the EU which is facing an economic crisis may take a very hard stand in the future. The US may also enter into some form of trading scheme or voluntary compliance increasing the demand for the CERs. One thing that is certain is that India has made its mark in the carbon market and any growth in this space will be advantage India. ■

References:

1. *Carbon Accounting Challenges: Are you ready – Deloitte center for Energy Solutions- April 2011.*
2. *Trading Carbon Offsets- A Caribbean Tale - Chinyere Nwaogwugwu, Ecological Technologies Limited; Jamaica. 2010.*
3. *Guidance Note on Accounting for Carbon Credits – Institute of Chartered Accountants of India Chartered Accountant Journal– March 2012.*

PPP Audit: A Contribution to Societal Wellbeing



As the stakes in Public Private Partnerships (PPP) are getting higher and higher combined with the urge to reap maximum benefits and profits, it is seen that certain malpractices have also started creeping in the process by vested interests. So it is becoming indispensable to assure quality, standards of service, and viable developments through these arrangements, keeping cost considerations on the forefront. Audit is the only tool which acts as deterrent against wrong doings. The most important factor that is considered to conduct the audit of PPP projects, is to ensure the value for money aspects of transactions involved. The main purpose of the audit, and based on which the scope could be defined, would thus be to provide a reasonable assurance to all stakeholders including the government, legislatures, and the public, that the PPP arrangement subjected to the audit has yielded value for money and that public interests have been adequately protected. Government as well as private sector organisations are depending on IT applications for internal operations and for other purposes. While automated systems provide advantages over manual, they also present the risk of fraud and misstatements. So it is very necessary to conduct proper PPP audit with automated approach & applications. Read on to know more...



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Responsibility for providing of public services and infrastructure like transport, power, urban infrastructure, tourism and railways has been the exclusive domain of the Government. However, because of increasing population pressures, urbanisation requirements, advancement, modernisation, other developmental trends and needs, the government's ability to adequately address the public needs through traditional means has been severely constrained. If government wants to channelise rapid economic development and sustained growth in the nation, there is a need to create durable and high quality infrastructure supported well by technological innovation, skilled workforce and excellent project management. It is always difficult

for government to bring all these elements together as and when required. This has made Government's across the world to find a reasonable solution to this problem, with the help of private sector to further public investments and provide public services through Public Private Partnerships.

There is wide difference with regard to understanding amongst stakeholders as to what involves a Public Private Partnership (PPP). Some believe and contend that PPP is when there is a project of public benefit being channelised through private investment, while others contend that PPPs include all forms of interactions between the public sector and the private sector, from consultations or policy dialogue and collaboration, to private provision of assets and services. Usually, the basic and primary feature of a PPP is that, it is a contract or an arrangement between a government organisation and a private organisation which involves provision of public infrastructure, or public services through the private sector, with substantial risk transfer to meet government or social needs, and rewarding / remunerating the private sector based on outputs, appear to be the common elements used in defining PPPs across countries.

Public Private Partnerships normally result from the joining hands of public and private sector entities, each with its own set of prescriptions and goals, to give momentum to overall development for the benefit of the community. The basic intention behind encouragement of PPP in various arenas, is to use the capabilities of the private sector, to complete projects of utmost infrastructural developments on time and to budget for the welfare of the community, without having to compromise or dilute the social motive and giving reasonable benefits to private partner. In most of PPP projects, the public sector retains its responsibility to provide goods and services to the public at large,

at affordable rates, without compromising on quality and standards of service. Both the partners, public and private, are able to reap the maximum benefits out of this arrangement by allowing balanced sharing of risks and benefits, transparency and accountability, in all transactions relating to the award and management of the contract.

According to the Secretariat for the Committee on Infrastructure, Government of India, a "Public Private Partnership (PPP) Project means a project based on a contract or concession agreement between a Government or statutory entity on the one side and a private sector company on the other side, for delivering an infrastructure service on payment of user charges". As per World Bank, a public-private partnership (PPP) involves the private sector in aspects of the provision of infrastructure assets or of new or existing infrastructure services that have traditionally been provided by the government. In another definition, Republic of Ireland states PPP as an arrangement between the public and private sectors (consistent with a broad range of possible partnership structures) with a clear agreement on shared objectives, for the delivery of public infrastructure and/or public services by the private sector, that would otherwise have been provided through traditional public sector procurement.

A particular arrangement or project may constitute a PPP, where the following key characteristics are present:

- Shared responsibility for the provision of the infrastructure or services with a significant level of risk being taken by the private sector, for example, in infrastructure projects, linking design and construction with one or all of the finance, operate and maintain elements;
- Long-term commitment by the public sector to the provision of quality public services to consumers, through contractual arrangements with private sector operators;
- Better value for money and optimal allocation of risk, for example, by exploiting private sector competencies (managerial, technical, financial and innovation) over the project's lifetime and by promoting the cross-transfer of skills between the public and private partners.

Types of PPP

Usually, PPPs are categorised into two types — Institutionalised PPPs and Contractual PPPs. Institutional PPPs are joint ventures (JV), between public and private sector stakeholders, to carry out

PPP audit itself is a very critical process which involves checking and covering wide areas and **aspects to finally draw a conclusion and put a tab** over misstatements and misappropriations. It covers various aspects like the data, records, analysis and the decision process of the government department/**public sector agency to prefer the PPP route to** execute the project instead of undertaking it directly. **It also includes documents and files leading to the** formulation, appraisal and approval of the project.

PPP projects by sharing the risks and to provide public services on long term basis. Bangalore airport is a good example of institutional PPP. This airport is being developed through a joint venture of the Airports Authority of India (AAI), Karnataka State Industrial Investment and Development Corporation Ltd. (KSIIDC) and private promoters (Siemens, Zurich Airport, Larsen & Toubro). On the other hand, contractual PPP's fall under the concession model, in which case a facility is given by the public sector unit concerned to a private sector partner which usually designs, constructs and operates the PPP project for a given period of time. In some cases, the operation of a facility may be contracted out to another private party. Under both the categories, the users pay for the facility availed and such charges accrue to the JV or the private sector partner.

Usually, the Following PPP Models are Adopted:

Build, Operate & Transfer (BOT): Under this category, the private partner is responsible to design, build, operate (during the contracted period) and transfer back the facility to the public sector. The finance for the project is the responsibility of private sector partner. Along with this, it also carries the responsibility to construct and maintain it. The Public sector will either pay a rent for using the facility or allow it to collect revenue from the users. The national highway projects contracted out by NHA under PPP mode is an example. Other examples that include major BOT PPP initiatives are, the 'Trivandrum City road improvement project' and the 'Vizhinjam International Container Transshipment project'.

Lease, Operate & Transfer (LOT): In this PPP, a facility which already exists and is under operation, is leased to the private sector partner for effective and efficient operation, subject to the terms and conditions decided by mutual agreement. After the end of the lease period, the asset will be transferred back to the government at the end of the contract. Example includes leasing an educational institution or a hospital to the private sector along with the staff and all facilities, by entrusting the management and control.

Build, Own and Operate (BOO): In this PPP model, the facility is built, operated and completely owned by the private party during the period of contract. This will result in the transfer of most of the risks related to planning, design, construction and operation of the

project to the private partner. The public sector partner will, however, contract to 'purchase' the goods and services produced by the project on mutually agreed terms and conditions. Examples of this type of PPP include the Gangavaram Port in Andhra Pradesh, which is being developed on the build-own-operate and transfer (BOOT) mode.

Design, Build, Finance & Operate: These are other variations of PPP and as the name highlights, the private party undertakes the entire responsibility for the design, construction, finance, and operation or operation and maintenance of the project for the period of concession. These are also referred to as "Concessions". The private participant to the project will recover its investment and return on investments (ROI) through the concessions granted or through annuity payments, etc. by the public sector partner. It may be noted that, most of the project risks related to the design, financing and construction would stand transferred to the private partner. The public sector may provide guarantees to financing agencies, help with the acquisition of land and assist to obtain statutory and environmental clearances and approvals and also assure a reasonable return as per established norms or industry practice, etc., throughout the period of concession.

Operation Concessions: In this type of PPP arrangement, the private sector partner is responsible for design, financing and construction, and thus gets the right to collect and keep in full or part, the project revenue over a specified period called 'Concession Period'. At the end of concession period, it may be renewed or the facility again rests in the hands of public partner. Examples include road projects, toll bridges, and four lane-six lane projects

Need for PPP Audit

As the stakes in the PPP are getting higher and higher, combined with the urge to reap maximum benefits and profits with more such partnership projects, it is seen that certain malpractices have also started creeping in the process by vested interests. So, it is also becoming indispensable to assure quality, standards of service, and viable developments through these arrangements, keeping cost considerations on the forefront. Audit is the only tool which acts as a deterrent against wrong doings. Fear of audit keeps a check on malpractices in not just government departments but also with other organisations. The most important factor that

is considered to conduct the audit of PPP projects is to ensure the value for money aspects of such transactions. The main purpose of the audit, and based on which the scope could be defined, would thus be to provide a reasonable assurance to all stakeholders, including the government, legislatures, and the public, that the PPP arrangement subjected to the audit has yielded value for money and that public interests have been adequately protected. Government as well as private sector organisations are depending on IT applications for internal operations and for other purposes. While automated systems provide advantages over manual, they also present the risk of fraud and misstatements. So, it is very necessary to conduct proper PPP audit with automated approach and applications.

Aspects Covered under PPP Audits

PPP audit itself is a very critical process, which involves checking and covering wide areas and aspects to finally draw a conclusion and put a tab over misstatements and misappropriations. It covers scrutinising the under mentioned aspects:

- The data, records, analysis and the decision process of the government department/public sector agency, who prefer the PPP route to execute the project instead of undertaking it directly.
- Documents and files leading to the formulation, appraisal and approval of the project.
- The process of identifying the private sector partner, requests for proposals, bidding and tendering process of the contract with due diligence to fairness, transparency and objectivity.
- In-depth analysis of the project documents including the shareholders' agreement, concession agreement, operation and maintenance agreement, etc., total project cost, financing arrangements (including cash flow, ROI/ERR/DCF), justification for the viability gap funding, contract period, etc.

The scope of PPP audit normally includes monitoring actual volume of demand (viz., traffic, usages) and revenue generation (including from commercial developments) against the projected flow and the arrangements to monitor the trend periodically, checking the quality of systems to verify the accuracy and reliability of reporting the results, assessing the economy issue by keeping a tab on cost of operations and avoiding flooding of costs, revenue sharing arrangements, readjusting the contract period

in case the Rate of Return (ROR) is higher than what was projected, maintaining quality and consistency of service at affordable cost to the users at large, etc. Scope of PPP audit also includes checking of accounting documents, records maintained, bills and other related data's of constructions and arrangements, safeguarding public interest and value for money considerations, checking escrow accounts, operation and maintenance of assets and revenue generation & sharing models, Quality and standards of the service, customer protection, dispute resolution and asset transfer arrangements, etc.

In PPP arrangements, even though the assets under the PPP will be under the control of the private sector partner, the concession agreements will normally provide for submission of reports and accounts through the Independent Auditor (to be appointed from the panels maintained by the government), with contractual and professional responsibility to ensure the accuracy of reports. There will always be one or more representatives of the government/public sector partner Public Private Partnerships (PPP) in Infrastructure Projects on the Board of Directors/ Management Committee or equivalent body of the PPP entity and that they will be privy to major decisions will also be helpful to public auditor. Hence, the public auditor must verify all such documents supposed to be in the possession of the public sector partner. That includes Board agenda and minutes and other related papers.

PPP Audit Process

Audit of PPP projects requires a combination of skills and expertise; the audit methodology has also to be innovative. Since there are different types and categories of PPPs as mentioned earlier, the approach of auditor should be to accurately target such divergent PPP arrangements. For instance, a Joint Venture Company (JVC) constituted for the purpose of an airport development, will have a totally different composition and contracts arrangements than another partnership set up for a highway development, with a consortium of contracting companies carrying out the activity as an enterprise of their own. The focus of social sector PPPs (running schools, hospitals) will vary in their content and form to a significant measure from the PPPs set up for, say, road or port development. Nevertheless, most basic features will be common for all PPP arrangements, which will help public auditors to converge their approach to audit.

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The methodology for PPP audit will, therefore, have to be devised to suit the requirements of the individual projects under scrutiny. However, the under mentioned common steps and approaches apply to all PPP audits:

- Detailed review/checking of project documents starting from the initial stage to the formulation and approval stage of PPP.
- Verifying all the contracts and agreements entered into between the parties and scrutinising legal and contractual obligations created.
- Feasibility study of entire PPP approach for the project.
- In-depth analysis of Grant of concessions, testing revenue generation using quantitative techniques.
- Assessment of the transparency and integrity of the bidding process.
- Financial audit to ascertain the justification for the viability gap funding / annuity payments.
- Audit of the construction and engineering to verify quality, innovations, economy and efficiency.
- Quality & compliance test, where necessary, to ensure that agreed standards have been maintained.
- Surprise & normal survey on test check basis, to conform to the accuracy of demands and revenue collections against projections.
- Checking of Customer satisfaction level with the facility generated.
- Checking actual revenue generation and sharing model.
- Safeguarding the value of public money by asset valuation.

When auditing PPP arrangements, one should follow sequential approach. This is one of the most logical approaches to PPP, as it covers the various aspects of the partnership arrangement sequentially, as they occur in actual practice. In this regard, the first stage will be to analyse the project formulation and approval process.

Audit of Project Formulation and Approval

Generally, the following documents would be generated for the project formulation and approval i.e., Strategic Plan, Feasibility Report, Detailed Project Report, Shareholders' Agreement, State Support Agreement, Operation, Maintenance and Development (OMD) Agreement, Concession Agreement, Technical Operation Agreement, Lease Agreement, Substitution Agreements, Independent Auditor's Agreement, Escrow Account Agreement & Other subsidiary Agreements. Checking all these agreements to understand, review approval & feasibility of the arrangement is necessary. Auditor should check that the strategic plan identifies the need & justification for the project.

Auditor should see that the feasibility reports conform to the approved specifications as well as review and analyse the cost estimates to check their transparency. Reviewing expected cash flow to check whether they justify the total capital cost, and feasible and timely abatement of the funding for the project is also a crucial part of this audit procedure. Assessing that ROI has been worked out correctly taking into account the most optimal formulation. Lastly, the auditor checks whether the established procedures for project approval are correctly followed.

Review of Concession Period

The second important step in PPP audit, is review of the concession granted to the concessionaire in terms of the quantum and the period of the concession. Concession amounts to the delegation and transfer of the governmental authority for recovery of user charges/tariff to the private participant possibly under monopolistic conditions, with sharing of risks and contingent liabilities by the public sector participant. Hence, the critical issue before the auditors is to verify the reasonableness of the concessions granted, including the magnitude and the period of the concession.

The auditors may apply the undermentioned criteria, among others, during the course of their audit of the Concession Agreements, like identifying how the concessionaire was selected? Was competitive bidding process adopted, as required? Were all project parameters such as concession period, toll rates, price indexation, technical parameters, etc. clearly stated upfront to make the process transparent and to ensure full and complete disclosures to the prospective bidders? Were the bidders clearly advised to indicate the grant requirements for the project, so as to avoid

future disputes? Were they also required to specify clearly the percentage of revenue they would be willing to share with the government agency? Are the provisions in the Agreement regarding the grant of the concession clear and specific, without giving room for unintended gains to and claims by the private partner? Are the language and the clauses of the Agreement worded clearly and unambiguously? All this inquiry leads the auditor to make suitable conclusions about concession agreement and their viability.

Checking of risk allocation

As brought out earlier, a major characteristic of the PPP arrangement is the balanced and fair allocation of risks between the partners. The underlying principle of risk allocation is that they are allocated to the parties that are best suited to manage them. The public auditors may test the risk allocations of the project under scrutiny based on the following criteria, among others. Auditor checks the concession Agreement & sees to it that the project risks are shifted to parties in a balanced manner. He scrutinises financial risk and revenue risk associated with the project and ascertains as to who bears the risk and to what extent. Auditor checks the guarantees and assurances granted by the government/public sector partner, and ensures that these are well defined and quantifiable

Auditor reviews as to whether the contingent liabilities arising from such assurances are transparent and limited. Whether the conditions, subject to which they could be invoked, realistic and specific? Are there clear and acceptable substitution clauses to face such eventualities? He also checks who will bear the risk which will arise, if there is an unexpected change of government policy or a sudden economic downturn? What are the conditions which rule them? Are these conditions justified? What is the extent of the risk of the private partner failing in his obligations? What are the remedial actions that can be taken in such circumstances? This exercise helps the auditor to understand the overall risk associated with the project and its allocation between parties to the project.

Audit of Financial Risks

An important aspect to be verified during the audit is the transfer of financial risk. Public auditors must assess whether the entire risk was transferred to the private participant, and if not, what percentage risk is retained by the public sector partner. For checking financial risk, auditor should verify whether any

guarantees were given by the government and if so, the conditions, subject to which they could be invoked. Auditor should check both the financial closure date given in the Agreement and the actual date of closure, to ensure whether the financial closure was done within the sanctioned time or has there been any delay. Where delay is found, he should check whether such delay in financial closure resulted in any change of the assumptions underlying the project such as escalation of project cost, demand and revenue projections, etc.? Was any extension sought by the private participant? If so, was the penalty stipulated in the Agreement levied? Auditor should also check all the financing arrangement to assure that the terms of lending by the financing agencies were reasonable. In some instances, he may discover that there was a huge gap between the rates of interest levied at the RBI / prime lending rates and that of leading banks from where finance has been procured. In such cases, the auditors should verify the actual loan receipts and interest payments, to ensure that the cost of financing the project is real and not disproportionate. It should also be checked that the schedule for the release of the sanctioned loans should match with the established milestones for the completion of the work from time to time. Along with other things, auditors must also check the performance bond furnished by the private sector partner thoroughly and verify its adequacy, validity, appropriateness and the mode of releasing them.

Audit of Viability Gap Funding (VGF)

One of the most important steps is checking viability gap funding. Grants from government may be payable for the project either as viability gap funding (VGF) or as annuity during the construction and/or operation of the project. It is essential for the auditors to assess carefully the actual funding gap by analysing the total capital cost, revenue generation based on projected demand, tariff/toll structure and capping (if imposed), rate of return and cash flow. The Central/State Governments provide viability gap funding up to percent of the project cost in deserving cases. As per government scheme for PPPs, the infrastructure projects which are economically justified, but fall short of financial viability due to long gestation period, inability to raise the user charges to commercial levels etc. are granted financial support of up to 20% of the capital costs. Additionally, the sponsoring ministry or the State Government concerned could give grants of up to another 20% of the total capital cost. These are, however, subject to certain terms and conditions like

the private participant should have been selected on the basis of competitive bidding and would hold at least 51% of the shareholding of the PPP unit. Further, the project agreements must follow the “best practices” to safeguard “value for public money” and user interests.

Audit of Tariff/Toll/User charges

In most of PPP projects, the user charges for the facility created under the PPP arrangement may be subject to regulations by independent authorities or may be notified under the relevant statute by the state authorities concerned. For example, the toll charges to be levied for a national highway may be notified by the Ministry of Road Transport & Highways or the port charges may be fixed by the Tariff Authority for Major Ports (TAMP). In the case of electricity, the State Electricity Regulatory Commission (SERC) is the empowered agency to fix the tariff. These features leave an element of uncertainty regarding the tariff or user charges to be levied in the future for the infrastructure facilities to be created under the PPP projects; whereas the Concession Agreements usually provide for the rate of return on investments on the basis of certain norms of tariff or formulae. So, the auditors should carefully look for any possible ambiguities and pitfalls in the fixation of tariffs and user charges, which could be recovered by the private partners as per the terms of the contracts and for this purpose, they should undertake a close scrutiny of the contract conditions. The return on investment for the participants should not, in actual practice, exceed the norm established by the government in each case. In case there are no such norms or standards, the financial returns as per the industry norm may be ascertained and applied.

Audit of Total Project Cost

One of the critical and significant steps in PPP audit is review of project cost. Total Project Cost (TPC) is of immense importance to the contracting arrangements between the partners to a PPP. For example, TPC determines the cost of construction, operation and management of the project, debt-equity mix, influences the user charge, viability of the project, financing pattern, financial rate of return (FRR) and economic rate of return (ERR). TPC could also be adversely impacted by concessionaire’s risk perceptions in terms of attitude of the government authorities and degree of absolutism in the terms and conditions incorporated in the bid documents as to those aspects which can be precisely predicted and measured upfront. It is,

An important aspect to be verified during the audit is the transfer of financial risk. Public auditors must assess whether the entire risk was transferred to the private participant, and if not, what percentage risk is retained by the public sector partner. For checking financial risk, auditor should verify whether any guarantees were given by the government and if so, the conditions subject to which they could be invoked.

therefore, very important for the public auditors to closely examine the TPC to see that it includes only essential items, its composition conforms to the accounting standards, and is not flooded up intentionally. Usually, public auditors are familiar with the audit criteria to analyse capital expenditures and to review project cost.

Audit of Bidding and Evaluation

A major task to be carried out during the audit of PPP projects, is the critical evaluation of the process followed by the government agency to select the private participant. Public auditors must verify the procedures followed in this regard from the beginning itself, to provide assurance to stake holders about the integrity and transparency of the selection process. The basic postulate of PPP is that it should secure value for public money by ensuring transparency in the procedures followed and by ensuring adequate competition.

Audit of Construction of the Project

In PPPs, as the construction risk is transferred to the private participant who is responsible for the design, construction, specification and quality of the facility, the auditor’s main focus has to be to scrutinise the quality of end product. So, usually the independent auditors are appointed on behalf of public sector partner to monitor the project activities, and to act on their behalf to accord sanctions and to coordinate the construction, technical and commercial activities. The independent auditors are responsible to ensure the timely completion of the project by watching the milestones, quality of construction and adherence to the standards and specifications of the project by the implementing partner. Independent auditor performs several quality tests, mandatory tests and monitors the construction activities and reports to the public sector

partner periodically. At this stage, auditor tries to check whether construction work has been done properly following all agreed guidelines and mandatory requirements of the projects. For this, he checks all necessary documents along with the test reports of the independent auditor. On the basis of his audit and checking of various assertions related to construction, he reports the discrepancies and qualifications in the final report.

Audit of Monitoring of the Project Construction Activities

Audit of project construction activities involves checking the compliances and expenditure related data to ensure they are proper and reasonable, and are not escalated. Auditor test checks legality of all the revenue expenses and incomes generated, and reports to the public sector partner. Auditor also checks that the independent auditor so appointed is proper and he is performing his functions and responsibilities properly. For this, he reviews the periodical reports submitted by independent auditor. Auditor verifies terms and conditions of appointments of the Independent Auditor and reviews that the fees payable to them are reasonable, since such payments would add to the TPC. More importantly, it must be seen as to whether proper guidelines and directions were issued to them for discharging their duties and that they have been made fully accountable for their tasks. Any other system deficiencies observed in the monitoring systems of the project construction and related activities, should also be subjected to audit comments.

Audit of Commercial Development

When PPP projects come into play in a particular area, it leads to a holistic development of the place as several other projects and facilities develop along with them like gas & service stations, duty free shops, restaurants, hotels & recreation centers. These commercial openings which develop under and with the main project provides huge direct and indirect benefit to the project partners. So, usually it is seen that Concession Agreements allow the private participant to exploit these commercial openings and raise revenue, which must go to abate the Total Project Cost and thus reduce the burden of toll/user charges on the consumers. In public audit, care must be taken to list out the commercial facilities granted to the consortium and to examine that the cost incurred for such developments are conforming to their earning capacity and comment on any hidden benefits to the partners

concerned. Though the nature of the commercial development in each project may vary depending on the facility, location and other factors, the following criteria may be used in auditing such windfall benefits to the partners, with appropriate modifications as necessary. So, the auditor should scrutinise all aspects related to expenditure and potential revenue generation through these commercial developments within the projects, and check for its viability and sharing propositions.

Audit of Operation, Maintenance & Development and the Collection of Revenue

In almost all PPPs, the risk of the Operation, Maintenance and Development is present and handled by the private partner, as private partner has the best capacities and capabilities to manage it efficiently. In certain concessionaire agreements where the private party operates and maintains the facility till the concession period, usually when such period expires, the government reissues the licenses to the same or another party who then becomes responsible for fresh investments and maintenance work related to the facility. Auditor should check the terms and conditions of the concession with regard to maintenance and operations of the project. For this, he should review TPC, cost of O&M, taxes and levies, ROI, and the user charges. He should also get a cash flow prepared and get that verified and scrutinised with data available during public audit. The scrutiny will enable the auditor to assess the reasonableness and the justification for the user charges, and the concession period arrived at for contracting. The quarterly and annual statements of accounts and traffic/user charge information and other data to be provided by the private sector partner, should be verified during the audit for accuracy and faithfulness. The verifications provided by the independent auditor may be used as supporting documents for audit evidence. Public

One of the most important steps is checking viability gap funding. Grants from government may be payable for the project either as viability gap funding (VGF) or as annuity during the construction and/or operation of the project. It is essential for the auditors to assess carefully the actual funding gap by analysing the total capital cost, revenue generation based on projected demand, tariff/toll structure and capping (if imposed), rate of return and cash flow.

auditors could also seek clarifications and assurances from these functionaries in case of doubts.

Auditing Public Private Partnerships for Value for Money Evaluation

As far as PPP Audit is concerned, not just the project should be value for money for private & public partners, but it should also be a win-win situation from the user's point of view. So, the public auditors should not only safeguard the interest of public partners but also secure the user's view point. The auditor should check whether the contract provides for sharing of profits on reasonable basis and whether there is transparent system with regard to sharing of information on the performance and in the discharge of the partner's obligations to the public participant, as also to the users at large. As customer is the king, the customer satisfaction is of utmost importance. So, the public auditor should enquire to extract best of information on this crucial issue. Auditor should check that PPP has brought in technological excellence, innovation, affordable and reliable services at the user's hands. Auditor should verify that customer satisfaction has been maintained and a grievance redressal mechanism is in place, and is functioning effectively to create the PPP Project as a value for money equity for its users.

Audit of Valuation of Assets

Last and most challenging step before finalisation of audit report, involves verification of the value of the assets and infrastructure facilities which existed at the time of handing over the site/facilities to the successful bidder for the construction of the project and operation and maintenance. It involves verification of size and value of land allotted, cost of facilities transferred, and other assets provided. The value of the land handed over and brought into account is to be verified carefully since in many PPP arrangements, the value of the land and facilities transferred would become the government's share capital in the JVC to be formed. Valuation of the other assets transferred to the private partner is also very important and the auditors should verify the basis and reasonableness of such transfers. The auditor not only verifies the value of assets, but also takes into consideration the conditions for estimation of the residual value in the event of termination of the contract or at the conclusion of the concession period. An auditor also verifies the value of assets constructed by the private participant from the records available. The valuations and depreciation calculated now are

of utmost significance as they would be of substantial concern in the event of termination of the contracts at future point of time. Valuation exercise becomes critical as currently there is no specific accounting guidance under the Indian accounting standards for PPP arrangements because of which, the task of valuation of assets and accounting for replacement and maintenance expenditure becomes a bit complex and inconsistent. The Comptroller and Auditor General of India has published guidelines and ICAI has published exposure draft for PPP audit which is a handful resource. The Guidelines have been primarily framed for use by the Indian Audit & Accounts Department in conducting such audits.

Audit Findings & Reporting

Finally, the audit report is prepared by the public auditor which highlights the achievements and end results. Major findings and critical issues are discussed in special conferences and meeting arranged after completion of audit. All the relevant findings and conclusions reported in the audit report expected to be taken for discussion because of their nature, are expected to be supported by the necessary evidences, so that further clarifications and other deliberations can be demanded in this regard. Later on, proper opportunity is provided to the PPP partner, to respond to the audit conclusions and their responses are recorded. Audit findings are accompanied with audit recommendations, which help to decide the future course of actions and steps to be taken with regard to PPP partnership in existence.

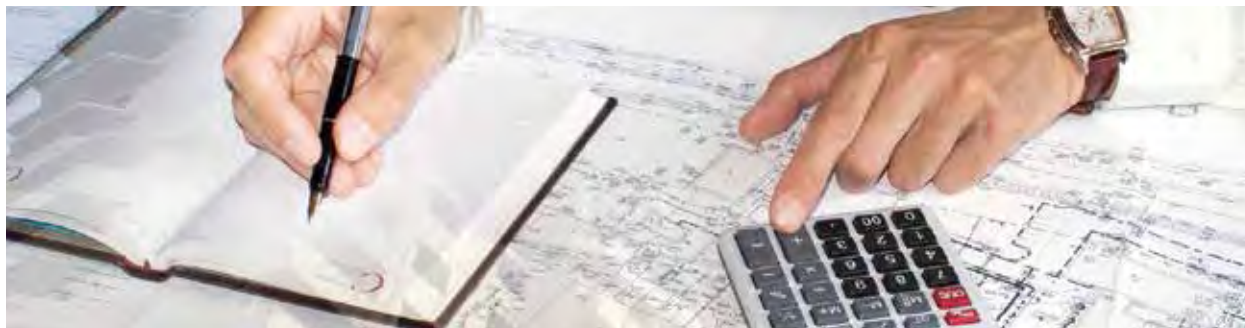
Conclusion

Public private partnerships are the need of the hour and it is also important that they are monitored to ensure that their benefits accrue to the end users properly, for whom they have been taken up to provide for the best of the infrastructural and other needs. PPP audit is the only tool available to safeguard such a crucial objective in present times. ■

References

http://en.wikipedia.org/wiki/Public_Private_Partnership_in_India
<http://infrastructure.gov.in/pdf/PPP-PROJECT.pdf>
http://www.pppinindia.com/pdf/ppp_definition_approach_paper.pdf
http://www.pppinindia.com/pdf/scheme_Guidelines_Financial_Support_PPP_Infrastructure-english.pdf
http://www.pppinindia.com/pdf/scheme_Guidelines_Financial_Support_PPP_Infrastructure-english.pdf

Alternate Minimum Tax (AMT) on Non-Corporate Taxpayers is Contrary to Policy of Limiting Tax Exemptions



Under the existing provisions of Section 115JB of the Income-tax Act, 1961 (the Act), a company is to pay AMT of eighteen and a half per cent of its book profit in case tax on its total income computed under the provisions of the Act is less than the AMT liability. Book profit for this purpose is computed by making certain adjustments to the profit disclosed in the profit and loss account prepared by the company in accordance with the Schedule VI of the Companies Act, 1956. The scheme of Alternate Minimum Tax (also referred to as MAT in popular use) which is presently leviable in the cases of Companies vide Section 115JB of the Act is extended to other taxpayers (over prescribed threshold limit) vide clauses 47 to 57 and 57, 82 to 84 of the Finance Bill, 2012. Before considering the new scheme relating to AMT, it would be appropriate to consider the exiting provisions of AMT and the philosophy behind this tax.

The concept

The concept of Alternate Minimum Tax (AMT) was brought in the Act by the Finance Act, 1987 when a new Section 115J was inserted in the Act for levy of minimum tax on book profits of certain companies. The reason behind such a tax was explained in the CBDT's Circular No.495 dated 22-9-1987 as under:-

"36.1 It is an accepted canon of taxation to levy tax on the basis of ability to pay. However, as a result of various tax concessions and incentives, certain companies making huge profits and also declaring substantial dividends, have been managing their affairs in such a way as to avoid payment of income-tax.

36.2 Accordingly, as a measure of equity, Section 115J has been introduced by the Finance Act, 1987. By virtue of the new provisions, in the case of a company, whose total income as computed under the provisions of the Income-tax Act is less than 30% of the book profit computed under the



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section, the total income chargeable to tax will be 30% of the book profit as computed. For the purposes of Section 115J, book profits will be the net profit as shown in the profit and loss account prepared in accordance with the provisions of the Sixth Schedule to the Companies Act, 1956, after certain adjustments”.

Later developments

Section 115J had a short life and was operative for only three assessment years namely Assessment Years 1988-1989, 1989-1990 and 1990-1991. It was made in-operative by Section 32 of the Finance Act, 1990. The reason given in the FM's budget speech for the discontinuance of this tax was as under:-

“In view of the package of measures for rationalising the tax structure, including discontinuance of certain investment incentives, having the effect of increasing the taxable income base, there is no necessity of retaining the provisions of Section 115J on the statute book. Accordingly, Section 115J has been amended so as to provide that its provisions shall not apply to A.Y. 1991-92 and subsequent years”.

Freedom from AMT only for short time - AMT Reintroduction in the form of Section 115JA

Freedom from AMT was short lived. Vide Section 39 of the Finance (No.2) Act, 1996; a new Section 115JA was inserted in the Act from 01-4-1997 under the caption “Deemed income relating to certain companies”. The reason for re-introducing the levy of AMT has been explained in CBDT's Circular No.762 dated 18-2-1998 thus:-

“Alternative minimum tax on companies – 46.1 In recent times, the number of zero-tax companies and companies paying marginal tax has grown. Studies have shown that inspite of the fact that companies have earned substantial book profits and have paid handsome dividends, no tax has been paid by them to the exchequer.

46.2 The Finance (No.2) Act, 1996, inserted a new Section 115JA of the Income-tax Act (w.e.f. 1-4-1997) so as to levy a minimum tax on companies, who are having book profits and paying dividends but not paying any taxes. The scheme envisages the payment of a minimum tax by deeming 30% of the book profits computed under the Companies Act, as taxable income, in a case where the total income as computed under the provisions of the Income-tax Act is less than 30% of the book profit.

AMT was brought in the Income-tax Act by the Finance Act, 1987 by way of insertion of a new Section 115J for levy **of minimum tax on book profits of certain companies.**

Where the total income as computed under the normal provisions of the Income-tax Act is more than 30% of the book profit, tax shall be charged on the same”.

This provision remained in force upto 31-3-2001 and was succeeded by a new Section 115JB by the Finance Act, 2000 w.e.f. 01-4-2001 after Section 115JA ceased to exist from 31-3-2001.

Present Law concerning AMT – Section 115JB

Thus, the present section for AMT is Section 115JB. The Finance Act, 2011 amended sub-section(1) of Section 115JB, with effect from 1-4-2012, that is, assessment year 2012-13, to provide as follows:

- (a) where tax payable on the total income of a company, computed as per the normal provisions of the Act is less than 18.5% of book profit, the book profit shall be deemed as total income of the company; and
- (b) on the book profit deemed as total income of the company, tax shall be payable at 18.5% (plus applicable surcharge and education cess).

Over the years the MAT rate has undergone changes and the current position is as follows:-

Assessment year	Limit	Rate of tax
2001-02 to 2006-07	7.5% of book profit	7.5%
2007-08 to 2009-10	10% of book profit	10%
2010-11	15% of book profit	15%
2011-12	18% of book profit	18%
2012-13	18.5% of book profit	18.5%

The new section is on the same lines as its predecessors. It also provides for taxation of ‘book profit’ as shown in the profit and loss account for the relevant previous year prepared in accordance with the provisions of Parts-II & III of Schedule VI to the Companies Act, 1956 at the rate of 10% (from 1-4-2007 – earlier it was 7.5%) if the income-tax payable on the total income as computed under the Act in respect of any previous year is less than 10% of the book profit.

Extension of provisions of AMT to Limited Liability Partnerships (LLPs)

The Finance Act, 2011 inserted a new Chapter in the Act, namely, Chapter XII-BA (Special Provisions relating to certain Limited Liability Partnerships) consisting of Sections 115JC to 115JF, w.e.f. 1-4-2012, that is, assessment year 2012-13. It levies a special tax (MAT as imposed in case of companies) on certain Limited Liability Partnerships.

The Memorandum explains:

“An LLP being treated as a firm for taxation, has the following tax advantages over a company it is not subject to MAT.... It is not subject to DDT.... it is not subject to surcharge. In order to preserve the tax base vis-à-vis profit linked deductions, it is proposed to insert a new Chapter ... containing special provisions relating to certain limited liability partnerships”.

AMT payable by LLP would be 18.5% of the adjusted total income, where tax payable in case of such LLP is computed under the provisions of the Act (excluding Section 115JC) and is less than 18.5% of adjusted total income.

Objectives of AMT as explained by judicial forums

- (A) Authority for Advance Ruling has also explained the purpose behind Section 115JA in *AAR Petition No.14 of 1997, In Re* (1998) 234 ITR 335 (AAR) and has said that the purpose behind the introduction of Section 115JA is to tax ‘zero-tax companies’. A number of companies with huge profits were avoiding payment of tax by adjusting their profits against various allowances, which are permitted under the Income-tax Act. To circumvent this strategy, Section 115JA has been inserted.
- (B) The provisions of Section 115J, were brought in the statute book in an effort to tax what is commonly known as ‘zero tax companies’. These are companies which have in fact, large profits in their books but, for the purpose of the Income Tax Act, by virtue of various deductions which have been claimed, very small or no taxable income is disclosed. It is an effort to bring such type of companies within the taxable net. [National

Section 115J had a short life and was operative for **only three assessment years.**

Thermal Power Corporation Ltd. Vs. UIO (1991) 192 ITR 187(Del)]

- (C) Section 115J was introduced in the assessment year 1988-89 to take care of the phenomenon of prosperous zero tax companies which had continued inspite of the enactment of Section 80VA. There were companies which were paying no income-tax though they had profits and were declaring dividends. A minimum corporate tax was sought to be imposed on prosperous companies. [V.V. Trans. Investment (P) Ltd. Vs. CIT (1999) 9 DTC 589(SC): (1999) 237 ITR 777 (SC), Vijay Spinning Mills Ltd. Vs. Deputy CIT (2000) 17 DTC 298(Hyd-Trib): (2000) 73 ITR 344 (Hyd-Trib), CIT Vs. Modi Tea & Industries (P) Ltd. (2000) 15 DTC 453 (Gau-HC): (2000) 154 Taxation 387 (Gau)]
- (D) Legislature by Section 115J restricted or curtailed or limited tax concessions to the extent as provided in Section 115J so that assessee can pay some tax. This is not unreasonable so as to make Section 115J violative of article 14 or 19 of the Constitution. [Karimtharuvi Tea Estates Ltd & Anr V. Deputy CIT & Ors (2001) 19 DTC 334 (Ker-HC): (2001) 247 ITR 22(Ker)]

Objective to retrieve tax foregone

The foregoing discussion concerning AMT provisions concerning companies and LLPs indicates that the objective behind such provisions is to take back some part of the tax benefits given by way of exemptions, deductions and concessions. This raises the issue as to why give some benefits which are to be taken back by involved provisions? This aspect would be considered in a later discussion.

Extension of AMT to non-corporate sectors other than LLPs

The AMT provisions are extended to non-corporate sector (These already stand extended to LLPs). The objective behind such extension as mentioned in the Explanatory Memorandum to the Finance Act, 2012 is to “widen the tax base vis-à-vis profit linked deductions”. For this purpose, “it is proposed to amend provisions regarding AMT contained in Chapter XII-BA in the Income-tax Act to provide that a person other than a company, who has claimed deduction under any section (other than section 80P) included in Chapter VI-A under the heading “C- Deductions in respect of certain incomes” or under Section 10AA, shall be liable to pay AMT”.

The present section for AMT is Section 115JB and was
inserted by Finance Act, 2000.

Amendments

As per amendments, where the regular income-tax payable for a previous year by a person (other than a company) is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of such person and he shall be liable to pay income-tax on such total income at the rate of eighteen and one-half per cent.

For the purpose of the above,

- (i) “adjusted total income” shall be the total income before giving effect to provisions of Chapter XII-BA as increased by the deductions claimed under any section (other than Section 80P) included in Chapter VI-A under the heading “C- Deductions in respect of certain incomes” and deduction claimed under Section 10AA;
- (ii) “alternate minimum tax” shall be the amount of tax computed on adjusted total income at a rate of eighteen and a half per cent; and
- (iii) “regular income-tax” shall be the income-tax payable for a previous year by a person other than a company on his total income in accordance with the provisions of the Act other than the provisions of Chapter XII-BA.

Exemption from AMT

It is provided in the new clauses that AMT under Chapter XII-BA would not be leviable to an individual or a Hindu Undivided Family or an association of persons or a Body of Individuals (whether incorporated or not) or an artificial juridical person referred to in Section 2(31)(vii) if the adjusted total income of such person does not exceed ₹ 20 lakh.

Credit for AMT paid

It is provided that the credit for tax (tax credit) paid by a person on account of AMT under Chapter XII-BA shall be allowed to the extent of the excess of the AMT paid over the regular income-tax. This tax credit shall be allowed to be carried forward up to the tenth assessment year immediately succeeding the assessment year for which such credit becomes allowable. It shall be allowed to be set off for an assessment year in which

the regular income-tax exceeds the AMT to the extent of the excess of the regular income-tax over the AMT.

Consequential amendments in other sections

Consequential amendments are made to the provisions of Section 140A relating to self-assessment, Section 234A relating to interest for defaults in furnishing return of income, Section 234B relating to interest for defaults in payment of advance tax and Section 234C relating to interest for deferment of advance tax.

Effective date of applicability of new provisions

These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.

Appraisal of the new provisions

The grounds given for bringing new provisions concerning AMT in the Income-tax Act, it is said with utmost respect are, *prima facie*, uncalled for. No study has been done regarding the extent the tax base would be widened and in regard to the extent of revenue gain because of AMT concerning non-corporate taxpayers. It looks ironical that on one hand the coverage of tax incentive provisions (referred to as tax preferences in later discussion) is being extended year-after-year and consequently revenue loss because of these is getting increased for various years and then to retrieve the loss because of these new provisions like AMT are being brought in the IT law to lessen the impact of loss of revenue because of tax preferences. In this process, the Income-tax Act is getting long and complicated.

The Government since the year 2006-07 is placing before the Parliament, a Tax Expenditure Statement which shows loss of revenue consequent to tax preferences, namely, exemption, deduction and tax subsidy benefits to preferred taxpayers. Such taxpayers are Corporations, Firms, Association of Persons (AoPs), Body of Individuals (BoIs) and Individuals. Because of these, the effective rate of tax gets reduced. For example for the financial year 2010-11, the statutory rate of tax for Companies' was 33.21%. As against this, the effective rate, after consideration of tax preferences got reduced to following figures:

In case of	Effective rate
Public Sector Companies	22.28%
Private Companies	24.61%

Similar is the position in regard to Firms, AoPs, BoIs and Individual. Their position in the 'Statement of Revenue Foregone' - March, 2013 for two years is as under:

(Figures are in crore)

Category of taxpayers	Revenue in 2 FYs (Actual) 2010-11	Foregone (Projected) 2011-12
(i) Firms/AoPs/BoIs	6,173	6,622
(ii) Individuals	30,653	35,698

In the case of individuals, the single largest benefit relates to deduction under Section 80C (₹24,359 and ₹28,371 crore respectively for 2010-11 and 2011-12). Obviously, as far as individuals are concerned, by sector 80C benefit, to them, some other objectives are being served and hence AMT provisions may not be appropriate in such cases. The foregoing figures concerning revenue loss concerning non-corporate assessee because of tax preferences show that consequent to extension of coverage of tax preferences, the tax expenditure is increasing. The issue then is whether it would be more appropriate to reduce the number of tax preferences instead of finding new measures to bring back the loss of revenue consequent to these.

Change in policy concerning tax preferences is needed rather than measures like AMT

(A) In the matter of exemptions, deductions and concessions (tax preferences) under the Act, there has always been a mismatch between the policies announced and in their implementation. The cherished desires of the various Finance Ministers had been to free the Income-tax law from these but such avowed desires have not been fulfilled. Rather, each year's Finance Act adds more new provisions giving tax benefits despite the pious desire to eliminate as many of them as possible. Even the Tax Economists and Fiscal experts have been of the same view.

(B) *Views of Tax Economists and Fiscal expert concerning tax benefits*

Economists and Fiscal experts and committees and commissions on income-tax appointed from time to time too have been critical of such benefits and have generally been in favour of their elimination or at least minimisation of such benefits. An important one to voice against this has been the Advisory Group ('AG' for short) set up under the Chairmanship of Shri Partha Sarathi

Shome (who later became Advisor to the Finance Minister, Shri P. Chidambaram) appointed by the Planning Commission, *inter alia*, "to reform" the direct taxes and Kelkar Task Panel appointed by the Government of India.

(C) In the context of widening of the tax base, the only suggestion made by the AG related to elimination of the incentive provisions in the Act in a phased manner. It expressed the view that the following sections should be eliminated:

- (i) Section 80CCC – Deduction in respect of contribution to certain pension funds.
- (ii) Section 88 – Rebates on insurance, provident funds, etc.
- (iv) Section 80L – Deduction in respect of interest on certain securities, dividends, etc.
- (v) Section 10(15) – Total exemption in respect of certain incomes like interest on relief bonds, capital investment bonds, etc.

(D) Few other suggestions by AG were:

- (i) Incentives provided by Sections 80D (deduction relating to medical insurance), 80DD (deduction for maintenance (including medical treatment) of handicapped dependents (s), 80DDB (deduction for medical treatment etc.) should be given in the form of tax credit only at the rate of 10% rather than by way of outright deduction (not accepted as such).
- (ii) Since capital gains are taxed after adjustment for inflation, the roll over provisions under Sections 54, 54B, 54D, 54EA and 54EB need to be omitted. (These sections relate to exemption of capital gains, if the investment is made in the specified manner mentioned in these sections) (not accepted as such).
- (iii) Incentive for external borrowings should be removed. This suggestion was implemented by the Finance Act, 2001.
- (iv) Sections 10(8), 10(8B) and 10(9) of the Income-tax Act providing for exemption of foreign income and remuneration received by a consultant either from a foreign government or an international organisation subject to

AMT provisions concerning companies and LLPs indicates that the objective behind such provisions **is to take back some part of the tax benefits given by way of exemptions, deductions and concessions.**

certain conditions should go. The group felt no justification for continuing such benefits. (These sections are still in the Income-tax Act, 1961)

- (v) Incentives for foreign earnings provided under Sections 10A and 10B should be eliminated on the lines of Sections 80HHC, 80HHE, etc. [These sections have not been eliminated but Section 10AA (concerning tax benefit to units established in SEZs), 10BA (for benefit in respect of certain articles or things) and 10C (for tax benefit in respect of industrial undertakings in NER) have been added w.e.f. 1-4-2001, 1-4-2000 and 1-4-1999 respectively by later Finance Acts. Further, the operation of Sections 10A, 10AA & 10B have been extended from time to time.]
- (vi) Incentives provided by Sections 80-IA and 80-IB should be eliminated by withdrawing these provisions. (These Sections are continuing in the Act)
- (vii) Deduction upto ₹1,50,000 allowed by the Finance Act, 2001 concerning interest on borrowed capital for constructing a house for self-residence should be discontinued. (This has not been done)

AG's general observations regarding incentives

Regarding incentives, the group made sweeping recommendations on the issue whether 'incentives' should be there in a tax system or not. Their continuance was opposed on the grounds that these:

- (i) entail considerable revenue cost, which goes waste;
- (ii) lead to shifting of tax burdens;
- (iii) introduce complexity;
- (iv) create problems for the tax administration;
- (v) being discretionary in nature, the benefit becomes uneven and paves way for corruption;
- (vi) approval condition inherent in the system affects transparency.

Dr. Kelkar Panel's recommendations

This panel gave two reports concerning its recommendations. Very briefly, important suggestions in the two reports are:

(A) First Report

- (i) The income based deduction under Section 80D be subject to a ceiling of ₹15,000. (Not accepted)

AMT provisions are extended to non-corporate sector **other than LLPs by Finance Act, 2012.**

- (ii) The benefit of deduction under Section 80DDB should be withdrawn in so far as it relates to the general category of taxpayers. (Section continues both for general category and senior citizen category of taxpayers)
- (iii) The income based deduction under Section 80E for repayment of educational expenses will continue to be allowed. However, on grounds of equity, the same should be allowed as a tax rebate at the rate of 20% subject to maximum of ₹4,000. (No change on the lines recommended has been made in the section)
- (iv) The tax rebate schemes under Section 88 for saving be eliminated. (This has been done)
- (v) The rebate under Section 88B for senior citizens be eliminated in view of the enhanced exemption limit for them. (Section 88B has been omitted by the Finance Act, 2005. Higher exemption limit has been prescribed for senior citizens)
- (vi) The income based deduction under Section 80L for interest income and dividends will be eliminated. (This section has been omitted by the Finance Act, 2005)
- (vii) The exemption under Section 10 in respect of interest income from bonds, securities, debentures, etc. will be eliminated. [Section 10(15) still continues in the Income-tax Act, 1961]
- (viii) The deduction for mortgage interest in respect of loans for acquiring a owner occupied dwelling will be reduced to ₹50,000. (The limit has been raised to ₹1,50,000.)
- (ix) The tax incentive under Sections 10A and 10BV of the Income-tax Act must be eliminated for all taxpayers other than those engaged in manufacturing computer software. (These are continuing.)

(B) Second Report

- (i) Exemptions, including those available under Sections 10A, 10B, 80-IA and 80-IB of the Income-tax Act should be removed. However, exemptions relating to housing loans, and those available to senior citizens

- and women should remain unchanged. (This has been partially accepted)
- (ii) Standard deduction for salaried employees be removed. [This recommendation, most unfair to salaried assessee (fixed income group assessee denying them employment related expenses) has been promptly accepted.]
 - (iii) Savings incentives be rationalised into a single EET system, where contributions and accumulations are tax exempt but withdrawals are taxed as ordinary income. Savings of upto ₹1, 00,000 a year would be eligible for deduction. Consequently, tax benefits like those under Section 80L would go ('E' in the EET denotes an exemption or relief under 'T' the point at which tax becomes payable) (Partially accepted)
 - (iv) Exemption of Dividend from tax was recommended and promptly accepted.

Kelkar Panel's observations for recommendation

Obviously, the suggestions could not bring about much needed reform in income-tax law. The suggestions made took only a truncated view of the reform process as the task force approached the problem of reforms with a pre-set mind in regard to certain areas like changing the tax brackets and removing the exemptions. There had been no consistency in making the recommendations. The first Kelkar Task Force had recommended removal of all exemptions. In the second report, it said that all tax benefits/exemptions barring those relating to housing, senior citizens and women taxpayers be removed. Actually, the report is based on the assumption that the loss of ₹11,000 crore in tax revenues, consequent to its recommendations, shall be made up by better compliance by the taxpayers. However, little did the panel realise that recommendations like, elimination of standard deduction for salaried taxpayers, would send wrong signals and affect voluntary compliance as it would be seen as being unfair to a vast majority of employee taxpayers, who have been, by and large, discharging their tax obligations honestly – may be because of their status being of 'captive' assesseees.

On the report of the Task Forces, Shri Jaswant Singh, FM, candidly admitted, while presenting the budget for the year 2003-2004 that:

“There is need to, eventually, move away from an exemption and discretion based system to a different, more current order. That is the ideal that the Task Forces, particularly in respect of direct taxes have

Tax provisions like AMT (MAT) distort the tax system and unnecessary make it complex.

suggested; a radically new approach to taxation. This ideal is difficult to achieve in one leap, and I can scarcely cross the existing conceptual chasm in two. We cannot ignore the commitments made, or wish them away. That is why I choose to bridge the divide. We will, therefore, stay with the basics of the present system of taxation, but we will, indeed have already accepted, most of the suggestions made by the Task Forces designed to eliminate procedural complexities, reduce paper work, simplify tax administration and to enhance efficiency, also integrate such tax proposals as the system can, at present, absorb, with one overriding thought”.

Despite such observations, he introduced nearly ten incentive provisions while presenting the budget for the year 2003-2004. Other Finance Ministers acted in similar ways by later years' Finance Acts.

CBDT's Thinking

The CBDT in its letter F.N. 149/24/2006(TPL)(Pt) (date not mentioned) solicited comments regarding removal or continuance of 162 exemptions and deductions in the Income-tax Act. It has been said in this communication that the Government is committed to simplify the tax laws, minimise the distortions within the tax structure and broaden the tax base. In this context, tax incentives in the form of various exemptions and deductions are being reviewed. Government is keen to involve all stakeholders in this exercise. Accordingly, existing exemptions and deductions under the Income-tax Act, 1961 were listed and comments with supporting rationale for their removal or continuance were to be sent by e-mail by 5th July, 2006.

No decision has been reached on this proposal though nearly six years have passed since the communication was issued by the CBDT and responses received.

Concluding comments

The foregoing account, regarding tax exemptions, shows that even though the Government has accepted its commitment for removing tax benefits, nothing substantial has been done in this regard. Various recommendations made regarding elimination or

minimisation of exemptions has not been implemented. Rather, their number has increased from year to year. Each year's Finance Act gives a new set of such benefits while those withdrawn or discontinued are minimal. Because of the system of tax incentive, occasionally, tax reform and other socially desirable objectives get extricably mixed up with the Government's budget policies and do not receive due attention. Similarly, when cuts are thought of for affecting economy in expenditure, attention is concentrated mainly on direct outlays. The fact that budget receipts could be increased by curtailing some of the reliefs and exemptions is generally lost sight of. In the matter of allocation also, the direct spending programmes compete for revenues left after all the tax incentives have been taken care of.

- (a) Many a times, investment decisions get distorted because of tax incentives and reliefs. These also fail to take into account the effects of inflation. Direct subsidies and grants in many cases constitute income in the hands of the beneficiaries, who are required to pay tax to the government on such receipts. This situation does not arise in the case of tax benefits.
- (b) Tax incentives and exemptions distort the tax provisions. A tax system has to be, as far as possible, as simple (and certain) as possible and impose minimum restraints on economic growth at the same time foster maximum economic stability. The incentives also go against the concept of neutrality in a tax system. Differential rates, special depreciation and investment allowances, preferences to particular trade, industry or economic activity, forms of investment, savings, all go against the concept of neutrality.
- (c) Tax provisions like AMT (MAT) distort the tax system and unnecessarily make it complex. The solution to this problem lies not in trying to retrieve the loss of revenue through provisions like AMT (MAT), but to design the tax system in a manner that tax preferences are reduced to minimum.
- (d) The Government policy regarding removal or continuance of exemptions and deductions has been made clear by its communication F.No. 149/124/2006 TPL(Pt) where their continuance in a big way does not seem to have been favoured. The demerits of these have also been recognised and highlighted in the context of new provisions concerning Investment Linked Incentives for specified businesses regarding which it has been said in the Explanatory Memorandum to the Finance Act, 2009 that profit linked exemptions/

deductions are (i) inefficient (ii) inequitable (iii) impose higher compliance and administrative burden (iv) result in revenue loss (v) increase litigation and (vi) lead to competitive demand for similar tax benefits. Further, these benefits encourage diversion of profits from the taxed sector to exempt/untaxed sector. The account given in the Explanatory Memorandum (*supra*) clearly brings out the demerits of such benefits. Hence, a firm mixed policy regarding these is necessary and once announced the same should be strictly adhered to.

- (e) Also, where high powered bodies, committees, commissions are appointed, there recommendations should be given due attention and not accepted or rejected in what may appear to be a 'casual' approach or ad hoc decisions. Where recommendations are found to be not acceptable, proper and adequate reasons should be given for the same.
- (f) It is regrettable that even in the DTC 2010, no well planned and concerted strategy has been followed regarding tax preferences. Sub-chapter IV of chapter III of the DTC corresponds to Chapter VIA of the present act wherein important provisions relating to tax references are contained. Almost all incentives provisions in the Income-tax Act, 1961 like deductions for savings, life insurance premiums, health insurance, tuition fees, interest on loan taken for house property, deduction for interest on loan for higher education, medical treatment deduction of contribution or donations to certain funds, etc. find place in the DTC. No well organised thought out and considered policy regarding tax preferences has been followed in drafting even the second draft of DTC i.e. DTC 2010 – DTC 2009, having been found deplorable. Obviously, provisions like 115JB and those enacted for non-corporate assesseees by the Finance Act, 2012 will have to be incorporated in the DTC 2010 also because of umpteen incentive provisions and because of such situations the objectives for which DTC is being enacted namely (i) reduction of complexity to reduce compliance cost (ii) minimising exemptions and removal of ambiguity by rewriting the Code will not be achieved. Because such provisions enacted by Finance Act, 2012 concerning AMT provisions and others, the DTC 2010 will only be a rewritten version of Income-tax Act, 1961 thus in the process defeating the very objectives of DTC. Hence, such provisions need to be reconsidered and withdrawn. ■

Online Issue of Form 16A & Form 16



Central Board of Direct Taxes (CBDT) via circular No 3/2011 dated 13-5-2011 had made it compulsory for some of the assesseees to issue Form 16A generated through TIN website for TDS deducted on or after 1-4-2011. Now CBDT via circular No.01/2012 dated 9-4-12 has made it compulsory for all types of Deductors including Government deductors who deposit TDS in Central Government account through book entry, to issue TDS certificates generated online through TIN website for the TDS deducted on or after 1-4-2012. Read on to know more...



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Overview

- Getting proper credit of TDS claimed in the return of income will be a thing of past. This is so because CBDT has taken steps to ensure that proper credit of TDS deducted is made available. In this regard, steps have been taken through circular No. 3/2011 dated 13-5-2011 and circular No. 1/2012 dated 9-4-12, whereby issue of FORM 16A generated from TIN system has been made compulsory. By this step, a Deductor will be able to issue TDS certificate to only those Deductors whose details have been entered correctly and there is no mismatch.
- This process is going to benefit the government and the Deductors in various forms.

- Benefit for government will be that cases leading to fraud refund, wrong credit of TDS, untimely processing of return under Section 143(1) etc. will come to an end, as credit will only be allowed on the basic amount reflected in a deductee 26AS statement.
- From Deductor's point of view, this is a very important benefit in the light of the recent amendments made by the Finance Bill 2012 on TDS provisions. As per the budget proposals, furnishing of wrong information will lead to heavy penalty. But now, since every Deductor needs to issue TDS certificate generated online, any error in return will be noticed well in advance and a Deductor can file a correction statement before being called to do so by the Revenue.

Scenario before Issue of the Circulars

TDS certificates were issued manually by the Deductor on the basis of information available with them, irrespective of the facts that the same had been uploaded with the TIN network in correct manner or not. In many cases, wrong PAN were uploaded by the Deductor and when same was brought to their knowledge by the deductee, Deductor usually Corrected the PAN no. on the TDS certificate or used to issue the new TDS certificate by correcting the PAN. The Deductor in this case generally did not get his TDS return for that particular period revised so that due credit is been reflected in deductee account. The best example here to quote would be the Banking sector where TDS was deducted in large numbers and a number of mistakes were very many.

When Deductee approached the department to take credit he/she used to face a problem as TDS was not reflected and the same required verification by the revenue.

Now all the assesseees have to compulsorily issue **TDS certificates online. This will help to bridge the gap of improper credit being reflected in deductee account and also to track the deductors who used to deduct the TDS but were not getting the same deposited in government account, and also to prevent fraud relating to TDS wrong credit.**

By the help of the two circulars discussed in this article, CBDT will definitely move towards transparent working of the Revenue. These steps will not only help the government but also the assesseees at large as they will be able to get the due credit of their hard earned money and that too in due course of time.

Scenario after Issue of the Circulars

Now all the assesseees have to compulsorily issue TDS certificates online. This will help to bridge the gap of improper credit being reflected in deductee account and also to track the deductors who used to deduct the TDS but were not getting the same deposited in government account, and also to prevent fraud relating to TDS wrong credit.

Circular No 3/2011 dated 13-5-2011

By this circular, CBDT has made it compulsory for the corporate assessee with special reference to banking company to issue the FORM 16A downloaded from TIN website for the TDS deducted on or after 1-4-2011. This circular was optional for the other types of assesseees and they were allowed to issue TDS certificates manually.

Circular No 1/2012 dated 9-4-2012

By this circular, CBDT has now covered all types of assesseees who were given rebate from issue of TDS certificates online. Just like the last circular covered banking company specifically, this circular covered Government department.

Procedure to Obtain Certificates

Step 1: Registration of TAN at tin.nsdl.com

Pre-requisites for Registration

1. Acknowledgement slip for any quarter return previously filed (whether 26Q/24Q)
2. User ID (need to check availability)
3. Password
4. Hint Question – need to be selected from the list available
5. Answer to Hint question

On successful registration, a TAN registration No. is generated. Do save this number as this acts as password for various types of files downloaded from TIN website.

Step 2: Making Request for Form 16A/FORM 16
Pre requisites for giving request for Form 16A

1. Copy/detail of any challan of the period for which certificates required.
2. Three unique PAN Nos and amount uploaded against each PAN. There may be cases where only one PAN had been uploaded. In that case, just fill same PAN and amount in all three boxes provided.

After one gets logged in his/her account, select the option TDS certificate. Fill the required information like quarter, financial year, challan details, PAN No and amount deducted details.

On successful data matching, a Request No. will be generated. System will automatically send the file containing all TDS certificates to registered email ID or alternatively, the same can be downloaded from download section.

The file downloaded is a password protected file. The password to open this file is the 12 digit TAN

registration No. generated at time of registration.

This file generated is required to be converted in Form 16A through a special utility that can be downloaded from Home page of one account. Each Form 16A/ Form 16 generated contains a unique six digit number. This number can be used by deductee to verify the TDS certificate in his possession by visiting his/her 26AS statement. The Form 16A downloaded can be digitally signed also.

***Note:** Form 16A are required to be issued within 15 days of filing of TDS return. So kindly check the date of issue when digitally signing the certificates.*

Summary

By the help of the above two circulars discussed in this article, CBDT will definitely move towards transparent working of the Revenue. These steps will not only help the government but also the assesseees at large as they will be able to get the due credit of their hard earned money and that too in due course of time. ■

Sick Industrial Companies in India: Some Legal and Conceptual Issues



The aim of this article is to suggest a better measure for sickness in industrial companies in India. This is necessary as the existing government policy for tackling the problem of industrial sickness appears to be not effective in controlling the growing incidence of industrial sickness in India. Definition given in the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) cannot capture the initial stage of sickness, when appropriate remedial measures could have turned around a sick company. Measures suggested in this article may help to get early symptoms of sickness following which, possible remedial measures could be taken by the management of the company and its lending banks.

Introduction

Incidence of industrial sickness is pervasive to all segments of economy ruled by the market force. Sickness in industrial companies in India is thus not an exception. In this article, the issue of sickness in Indian manufacturing companies with specific reference to the SICA which was enacted to meet the problems of industrial sickness in India and the government policy related to it is discussed. The objective is to analyse the weakness of the existing policy, so that a better policy for handling this problem can be formulated.

Industrial Sickness and the Government Policy

Unlike what happens in a market driven economy, where firms with unsatisfactory performance level are allowed either to restructure or to exit, the Government of India in the pre-liberalised regime usually discouraged such a market driven solution to the problem of industrial sickness. Partly, this was due to the basic limitations of the government policy that had a so called socialist tilt, which discouraged the *laissez-faire* solution. But largely, this was due to the political pressure from the organised labour unions that did not allow the government to develop an exit policy with respect to a non-viable unit. At the early stage, the idea was to takeover the loss making private sector firms and continue to run them under the auspices of the government. Some of them were reconstructed but, in most of the cases, status of



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performance did not change. These loss making public sector enterprises were often funded from the budgetary allocation of the government on a continued basis, ignoring and overruling the basic criterion of long term viability. The central government and the Reserve Bank of India allowed banks to grant concessional credit for the poorly performing firms. The government also set up a financial institution (Industrial Reconstruction Corporation of India) in 1971, with the avowed objective of financing the sick companies and acting as a principal reconstruction agency. All these steps which thwart a market driven solution to the problem of industrial sickness, however, failed to produce desired results. The root of the problem was that the economic efficiency and the viability were never considered a serious issue while promoting and nurturing a sick unit. This was partly due to the political populism, but largely it was due to lack of the right kind of vision for running the units. Result was drainage of funds from the public exchequer.

The SICA, BIFR and Reorientation of the Policy

By mid 1980s, the government started relaxing the control over the industries, thanks to the reorientation of the government policy in this regard. Industrial climate started changing slowly. Nevertheless, many of the industries could not cope with such a changing climate. They became morbid and ultimately many of them had to wind up the business. Sickness became a familiar phenomenon in Indian industries. The Government of India could not escape this reality. Since 1980's, as the economy was opening up, the symptoms of sickness were surfacing. The initial reaction was to take over such industries under government management so that the social cost of sickness could be minimised. Gradually, however, nationalisation as a solution was agreed to be ineffective. At the same time, in the absence of proper bankruptcy laws and exit policy for labour, restructuring through market driven forces was also found to be inoperative in the country. Ultimately, wisdom that prevailed was of intervening in the process as the facilitator of revival. The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) was the outcome of such an endeavour. In order to operationalise the provisions of SICA, Central Government constituted in 1987 the Board for Industrial and Financial Reconstruction (BIFR) which was conceived as the main agency for restructuring and rehabilitating the sick industrial companies. The main objective of the Act, as laid down in SICA, was to detect sickness following

certain predetermined norms and to suggest remedial measures after going through proper hearing of the individual cases. The Act also empowers the BIFR to formulate effective steps for either restructuring or rehabilitation or exit by recommending for winding-up. SICA was thus a retreat for the earlier policy of providing outright state support for running the sick units. At the same time, it did not empower the BIFR to wind up a company. Under the existing law, the BIFR can go through the financial statements of a company, to assess whether the unit can be declared as a sick industrial company. It also assesses the strength of a proposed rehabilitation package, so that a scheme for revival of the company can be worked out. In case such a package is offered and the BIFR finds it viable, the company would get a path for revival through government intervention. But, unlike what was the practice in the pre-SICA regime, when the government used to bail out a company by offering funds from its exchequer, under the new regime, the government does not take such steps. Again, exit by winding up, which was never conceived as a solution for the sick units in the pre-SICA regime, was incorporated as a logical possibility under the present dispensation. BIFR could not, however, tackle the problems of industrial sickness effectively. Main reasons are: (a) SICA defines industrial sickness only to capture the reality of terminal sickness when it has reached a stage of moribundity. The SICA definition thus fails to capture the initial stage of sickness when appropriate remedial measures could have turned around the company; (b) The BIFR is not adequately manned to handle the problems of terminally sick companies; (c) Rate of disposal of case in the BIFR is very slow; (d) The provisions of SICA keep a wide scope for utilising them by the sick companies as a protective shield for getting immunity from the repayment obligation to its creditors. Result is, increase in the magnitude of sickness in Indian industries.

Intensity and Severity of Sickness

The intensity of sickness (IS) is defined as a ratio of accumulated losses to networth. For calculating severity of sickness index of various states, other factors have been considered, namely sick industrial units as a percentage of total units of a state (U) and number of workers as a percentage of total factory workers of a state (W). Thus, severity of sickness index of a state is $(IS \times U \times W)$. Statewise distribution of number of cases registered with BIFR as sick industrial company as reflected from the BIFR data is given in Table 1.

Table 1: State-wise Distribution of Cases Registered with BIFR as on 6-8-2010¹

States	No. of Units Registered (1)	Total No. of Factories (2)	Net Worth (₹ Crore) (3)	Accumulated Losses (₹ Crore) (4)	Intensity of Sickness (5) (4 ÷ 3)	No. of Workers (6)	Total No. of Factory Workers (7)	No. of Workers/ Sick Unit (8) (6 ÷ 1)	Severity of Sickness Index (9)
Haryana	158	4707	743.31	1548.09	2.08	38366	400895	243	0.007
Himachal Pradesh	49	1160	148.22	217.8	1.47	9297	72095	190	0.008
Jammu & Kashmir	6	672	12.3	63.15	5.13	411	42219	69	0.001
Punjab	276	10178	2365.71	4553.82	1.92	54050	435386	196	0.006
Rajasthan	228	6337	3016.98	4353.19	1.44	53880	278541	236	0.010
Uttar Pradesh	360	10717	4887.76	8667.33	1.77	176919	589695	491	0.018
Chandigarh	11	294	35.23	42.18	1.20	1661	8209	151	0.009
NCT Delhi	371	3198	7975.26	15878.25	1.99	90380	146920	244	0.142
Uttaranchal	44	1474	245.05	354.16	1.45	7498	97687	170	0.003
Andhra Pradesh	528	16741	5223.81	10021.23	1.92	219450	862414	416	0.015
Karnataka	299	8443	2929.16	5709.33	1.95	119121	567836	398	0.014
Kerala	150	5584	981.79	2366	2.41	51688	308641	345	0.011
Tamil Nadu	540	21042	3792.54	8378.13	2.21	165830	1283478	307	0.007
Pondicherry	17	703	53.34	117.83	2.21	2310	40494	136	0.003
Assam	19	1859	771.52	1728.88	2.24	16818	113132	885	0.003
Bihar	52	1783	817.9	1974.9	2.41	15966	62319	307	0.018
Jharkhand	46	1615	1749.78	5190.43	2.97	258518	289898	5620	0.075
Manipur	3	69	3.44	12.1	3.52	192	2442	64	0.012
Meghalaya	4	90	126.41	154.34	1.22	889	4574	222	0.011
Nagaland	4	104	56.69	194.35	3.43	1326	2494	332	0.070
Orissa	73	1822	1023.18	1747.58	1.71	28954	145276	397	0.014
Tripura	2	340	5.95	20.84	3.50	1414	20696	707	0.001
West Bengal	412	5987	10028.05	18705.6	1.87	620737	732237	1507	0.109
Goa	30	522	278.36	711.47	2.56	3984	37617	133	0.016
Gujarat	557	15107	8773.4	18140.03	2.07	226099	797443	406	0.022
Madhya Pradesh	252	3165	2059.64	5784.24	2.81	81013	194046	321	0.093
Chhatisgarh	29	1854	423.85	690.47	1.63	3852	118228	133	0.001
Maharashtra	1157	18304	18123.32	34716.27	1.92	348377	953097	301	0.044
Dadra & Nagar Haveli	11	1014	111.48	146.77	1.32	1423	67469	129	0.001
Grand Total (all India)	5688	144885	76763.43	152188.76	1.98	2600423	8675478	457	0.023

¹ Source: BIFR website www.bifr.nic.in

Incidence of industrial sickness is pervasive to all segments of economy ruled by the market force.

As the data indicates, Maharashtra accounts for the higher percentage of units registered under the BIFR followed by Gujarat, Tamil Nadu and Andhra Pradesh. Intensity of sickness is the highest in Jammu & Kashmir. Severity of sickness index is the highest in the state of Delhi. In terms of the number of workers involved per unit of sick industrial units, Jharkhand tops the list with 5,620 workers per sick unit. Considering both the factors, one may conclude that the severity of the problem is most pronounced in Jharkhand, Madhya Pradesh, Bihar and Goa followed by West Bengal, Maharashtra and Gujarat, although this is not reflected in the number of cases registered with the BIFR.

Slow Pace of Disposal at BIFR and its Consequences

Table 2 furnishes the relevant information in regard to the rate of disposal of cases at BIFR. Number of pending cases was 303 at the end of 1987, i.e. the year when the BIFR started its operation. By the end of 2005, the cumulative number of pending cases increased to 2,147. The number decreased to 1,039 by the end of 2009, mainly due to declining number of cases referred to BIFR for registration. This is largely due to the poor rate of disposal shown in the last column of Table 2. Some companies take advantage of this weakness of the BIFR. Knowing that the time taken for deciding on sickness of a case is quite long, by the time a case is rejected as non-maintainable, audited accounts for the next financial year are prepared in a desired manner and on the basis of it, a fresh reference is made with a view to get protection under Section 22 of SICA and deny the obligation to its creditors with impunity for one more year. Audited statements, as known, are prepared only on the basis of certain standard norms. These are, of course, maintained by every company. But then, there are cases where the accounts do maintain the standard norms, but utilise certain universally approved provisions of the accounting system in manipulating the statement of accounts in the desired way. Technically speaking, the BIFR can hardly consider these cases as non-maintainable,

thanks to window dressing and no irregularities can be found from the statement of accounts per se. Even if the case is again rejected as non-maintainable, the company can prefer an appeal under Section 25 of SICA to the Appellate Authority for Industrial and Financial Reconstruction (AAIFR), the appellate body of the BIFR. So long as the adjudication of AAIFR is not received, the company can go on enjoying the protection under Section 22 of SICA. One thus understands that the basic purpose of SICA – that of either restructuring for revival or for winding up through liquidation has largely been defeated. By suitably utilising the provisions of SICA, a company can block with impunity a considerable sum of loan capital as none performing. The creditors can hardly get a relief and the defaulters can hardly be penalised. It is because of the way the provisions of SICA have been formulated. It thus appears that SICA has been converted to a useful weapon in the hands of the ill-motivated promoters and management of industrial companies, to safeguard their own interest at the cost of the interest of the creditors and general shareholders.

Table 2: Year-wise Rate of Disposal of Cases at BIFR upto 2009²

Year	Cases Registered	Cases Disposed	Cumulative Pending Cases		Average	Disposal Rate (%)
			Beginning of the Year	End of the Year		
1987	311	8	0	303	152	5
1988	298	42	303	559	431	10
1989	202	109	559	652	606	18
1990	151	91	652	712	682	13
1991	155	80	712	787	750	11
1992	177	83	787	881	834	10
1993	152	138	881	895	888	16
1994	193	165	895	923	909	18
1995	115	121	923	917	920	13
1996	97	206	917	808	863	24
1997	233	138	808	903	856	16
1998	370	111	903	1162	1033	11
1999	413	148	1162	1427	1295	11
2000	429	343	1427	1513	1470	23
2001	463	296	1513	1680	1597	19
2002	559	374	1680	1865	1773	21
2003	430	339	1865	1956	1911	18
2004	399	155	1956	2200	2078	7
2005	180	287	2200	2093	2147	13
2006	118	472	2093	1739	1916	25
2007	78	371	1739	1446	1593	23
2008	57	287	1446	1216	1331	22
2009	64	418	1216	862	1039	40

¹ Source: BIFR website www.bifr.nic.in (as on December 2009)

Weakness in the Definition of Sickness in SICA

In other countries, particularly in the developed countries of the world, there is hardly any rigidity in defining sickness, as it happens to be in India. Filing for the bankruptcy is voluntary. It may file for the bankruptcy when it fails to repay its loan obligations to the creditors. A firm may file for the bankruptcy; a restructuring of the company can also be envisaged. In order to operationalise any of such schemes, various committees are appointed by the Bankruptcy Court to look after the interest of the stakeholders, particularly the major creditors. Bankruptcy court is, of course, empowered to sanction a restructuring plan, even if it is not approved by the creditors and other concerned parties. But then, the creditors have ample scope for entering into the process, even when a company is in the process of filing for bankruptcy or for restructuring. In India, the procedure is different. The provisions for seeking bankruptcy (in the form of liquidation) or for restructuring, are very much there in Indian legal framework; but then, a company can maintain the *status quo* as well by utilising the provisions under the SICA. Thus, it may be held that the existing bankruptcy laws in India are not foolproof. As mentioned, SICA was enacted in 1985 and in accordance with SICA, 'sick industrial company' means a company (being a company registered for not less than five years) which has at the end of any financial year, accumulated losses equal to or exceeding its entire net worth. In 2002, Companies Act was amended to include National Company Law Tribunal (NCLT) to take up the job of handling the problem of industrial sickness in India. In terms of Section 2 (46 AA) of Companies (Second Amendment) Act, 2002, 'sick industrial company' is an industrial company which has: (i) the accumulated losses in any financial year equal to 50 per cent or more of its average net worth during four years immediately preceding such financial year; or (ii) failed to repay its debts within any three consecutive quarters of demand made in writing for its repayment by a creditor or creditors of such company. NCLT, has, however, not been operationalised. Be that as it may, an examination of the above definitions suggests that regulatory authorities in India have, by and large,

The economic efficiency and the viability were never considered a serious issue while promoting and nurturing a sick unit.

The intensity of sickness (IS) is defined as a ratio of accumulated losses to networth.

defined industrial sickness only to capture the reality of terminal sickness. Since the signs of disease usually precede the moribundity, intervention for revamping the unit should have been taken at the stage when the unit was morbid. A definition that identifies sickness when the company is in the terminal stage of sickness, fails to capture the right type of strategy to turnaround the company at the right time. This problem cannot be addressed properly, unless the issue of sickness is given reconsideration.

Better Measure for Industrial Sickness

The *sine qua non* of industrial sickness is that production fails to maintain cost – effectiveness, as a result of which the firm or a group of firms cannot maintain competitive efficiency. As the firm fails to meet the sunk cost, it has to close its operation. Those who cannot survive are to face the reality of getting sick unless they take up turnaround management. In order to adapt turnaround management, the firm should get a signal that there is some threat to the existing business. Whether this is reflected in the financial data of the company is the basic issue which, as we understand, has not been addressed properly in the existing literature of industrial sickness. The financial ratios based on which various models following ALTMAN's model were developed, were selected on the basis of a *priori* considerations. These ratios do not have macro foundation. Moreover, the financial ratios used in the various models are so complicated that it becomes difficult to operationalise them in the Indian context. The existing models, thus, may not provide a robust set of financial ratios for analysing firm level sickness. Keeping in view of these shortcomings, two empirical models have been developed considering company level (micro) financial ratios, which have macro foundation and proper mapping with the macro indicators. These ratios can be culled easily from the balance sheet and profit and loss account of a company even by a lay person, without having much knowledge of the financial statement of a company. The first model is based on multiple discriminant analysis, based on which a Z score has been worked out. Based on this Z score, one would be able to classify an Indian manufacturing company as either 'healthy' or 'sick'.

SICA has been converted to a useful weapon in the hands of the ill-motivated promoters and management of industrial companies to safeguard their own interest at the cost of the interest of the creditors and general shareholders.

The other model (predictive model) based on binary logistic regression analysis, would be appropriate in the Indian context for reasonably predicting probability of an Indian manufacturing company becoming sick or otherwise in future. We have checked the validity of these two models by considering a panel data of another 50 'healthy' companies and 50 'sick' companies and found them robust.

The Discriminant Model

The discriminant function derived as $Z = 0.728 X_1 + 0.084 X_2 + 0.305 X_3 + 0.900 X_4$

The model shows cut-off discriminant score of 0.432342. Companies exceeding the score are sick and companies falling short of the score are healthy. The model correctly classifies 97% before one year, 95% before two years, 93% before three years, 90% before four years and 86% before five years of original grouped companies.

The Predictive Model

$$P(\text{Healthy}) = \frac{1}{1 + e^{-Z}},$$

where, $Z = 9.5909 - 46.9134X_1 - 15.5178X_2 + 126X_3 - 14.3800X_4$

With probability of 0.72, 97% of the companies have been found to be correctly classified into their respective predetermined group. Variables are:

X1 = Power and fuel/total income

X2 = Current liabilities and provisions/total assets

X3 = Other fixed costs/total assets

X4 = Total borrowings/total assets

Finding signals of sickness is important for studying the problem of industrial sickness. If a unit is found to **have symptoms of sickness or morbidity, one would try to recognise the problem in terms of certain basic financial indicators.**



One will find from the above that the models are very simple and user-friendly. Even a lay man can use the models. What he has to do is to find out three items, namely, current liabilities and provisions; total borrowings and total assets from the balance sheet of a company and three items, namely, power and fuel, other fixed cost comprising of selling and distribution expenses and commissions; and total income from the profit and loss account of a company. If the Z score from the discriminant model is found to be more than 0.43, the company could be safely classified as sick and if the value of P (Healthy) is above 0.7, it could be safely concluded that the probability of that company remaining healthy is bright.

Conclusion

Finding signals of sickness is important for studying the problem of industrial sickness. If a unit is found to have symptoms of sickness or morbidity, one would try to recognise the problem in terms of certain basic financial indicators. Following this, one can suggest the possible remedial measures for turnaround. Definition of sickness given in the SICA cannot capture the initial stage of sickness when appropriate remedial measures could have turned around a sick industrial company. Alternative measures of sickness thus assume importance. The discriminant model as worked out, will help the management of a company to know about its status of health. If the Z score is nearer to 0.43, management may take up the turnaround management. Again, success of implementing remedial measures for turnaround would be known from the predictive model. If the value of P (Healthy) is more than 0.50, the management of a company can safely invest for its turnaround. ■

Consumer Protection Laws – An Appraisal

“Customer is the most important visitor to our premises. He is not an interruption on our work. He is the purpose of it. We are not doing him a favour by serving him. He is doing a favour by giving us an opportunity to do so.” – Mahatma Gandhi



Consumer is the king in the market because it is he who gives value to a product or service, but in the Indian scenario, he is the subject of exploitation. In this context, this article examines the important provisions of consumer protection laws, their effectiveness and the role of professionals.



Naresh Kumar

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Introduction

Consumer is the king in the market, because it is he who gives value to a product or service. Unless the consumer buys a product or service, it has no value and no market. Realising the importance of the consumer, the former US President John F. Kennedy introduced the concept of consumer rights for the first time in the US Congress on 15th March, 1962. Since then, all over the world, every year 15th March is celebrated as the “Consumers Right Day”. In India, 24th December is celebrated as the ‘National Consumer Day’ when the Consumer Protection Bill was passed by both Houses of Parliament and got the President’s assent. In this context, an attempt is made to analyse the effectiveness of important consumer protection laws in India and make a few suggestions for improving their effectiveness.

Consumers’ Rights and Responsibilities

The universal rights of a consumer are:

- Right to safety – to be protected against sale of spurious or hazardous goods and services.
- Right to information – to know the quality, quantity, potency, purity, standard, weight and price of goods

and services being paid for, to prevent unfair trade practices.

- Right to choice – to be assured, whenever possible access to a variety of goods and services at competitive prices.
- Right to be heard – to be heard and be assured that consumers' interest will receive due consideration at appropriate forum.
- Right to seek redressal – to seek legal redressal against unfair or restricted practices or exploitation.
- Right to consumer education – to have access to consumer education.

The responsibilities of consumer are:

- Obtain proper receipt/cash memo for purchases made and guarantee/warranty card duly stamped and signed by the seller, wherever applicable.
- Obtain full information regarding quality, maximum retail price, guarantee, warrantee and after-sale services, before making any purchases.
- Read terms and conditions carefully. There is difference between guarantee and warrantee. In case of guarantee, a consumer has the right to get replacement or money back, if the product or service is defective or deficient. On the other hand, in case of warrantee, the consumer has the right to get the defective parts repaired.
- Be careful, about false and/or misleading advertisement offering discounts and free gifts.
- Purchase goods having quality marks like ISI, Agmark, etc., as and where available for safety and quality.
- Raise voice against defective goods and deficient services and make a complaint to seller/manufacturer/dispute redressal machinery.

Important Consumer Protection Laws

A. The Consumer Protection Act, 1986

The Consumer Protection Act, 1986 is one of the most important milestones in the area of consumer protection movement in the country. The Seminal Act provides for better protection of the interests of consumers in respect of all goods and services, excluding goods for resale or for commercial purposes and services rendered free

of charge and under a contract for personal services. The Act covers public, private, joint and cooperative sectors. It seeks to redress the grievances of consumer in respect of defective goods, deficiency in services and unfair trade practices in a time bound through three-tier quasi-judicial consumer dispute redressal machinery at the National, State and District levels. The provisions of the Act are compensatory in nature. The Act also provides for setting up of the Consumer Protection Councils at the Centre, State and District levels, to act as advisory bodies for the promotion and protection of Consumer Rights.

Presently, there are 629 District Forums, 35 State Commissions and the National Commission. They have so far disposed about 32 lakh cases, with a disposal rate of 90%. National Commission has also started holding Circuit Bench sittings in different parts of the country.

The consumer can approach Consumer Disputes Redressal Forum against sale of defective goods or deficient services or adoption of unfair or restrictive trade practices. The jurisdiction of Consumer Forum depends upon the cost of the goods or services or the compensation asked for where the cause of action arose or where the opposite party works or resides.

The Consumer Protection Act provides for a three-tier structure like civil courts. At the lowest level is the Consumer Disputes Redressal Forum, dealing with complaints for less than ₹20 lakh. At the middle level, there is State Commission dealing with complaints for ₹20 lakh up to ₹1 crore and also hear appeals against the orders of the Forums. The National Consumer Disputes Redressal Commission deals with cases for more than ₹1 crore and hears appeals against the orders of the State Commission. These bodies are manned by judges.

The Consumer Protection Act mandates settlement of all cases within 90 to 150 days and award of punitive damages in appropriate circumstances.

B. Competition Act, 2002

The Competition Act, 2002, aims at promoting and sustaining free and fair market practices by restricting anti-competitive agreements and abuse of dominance across various sectors. The Act provides for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers.

Competition is the key for better quality, wider choices and fair prices. The Competition Commission

The Consumer Protection Act is one of the most important milestones in the area of consumer protection movement in the country.

The Consumer Protection Act mandates settlement of all cases within 90 to 150 days and award of punitive damages in appropriate circumstances, however it remains on paper.

of India (CCI), simply stated, deals with the following anti-competitive agreements and business practices:

- fixing prices to avoid competition;
- limiting production and/or supply or distort competition;
- allocating markets to minimise competition;
- bid rigging or collusive bidding;
- conditional purchase/sale (tie-in arrangement);
- exclusive supply/distribution arrangement;
- resale price maintenance;
- refusal to deal to limit competition;
- abuse of market power.

Any enterprise, consumer, consumer association or trade association can file complaint/information about anti-competitive agreements and business practices before the CCI. The CCI also has the power to examine on its own motion to examine anti-competitive trade practices.

C. Food Safety and Standards Act, 2006

The Food Safety and Standards (FSS) Act, 2006, provides for better and stricter regime to check adulteration of food and beverages. The Central Government has also notified the FSS (Food Product Standards and Food Additives) Regulations, 2011 for the enforcement of the Act.

The main objects of the FSS Act include protecting the public from poisonous and harmful foods; preventing the sale of sub-standard foods; and safeguarding the interests of consumers by eliminating fraudulent practices.

The FSS Act, which came into effect throughout the country on 05-08-2011, has repealed other enactments, namely, the Prevention of Food Adulteration Act, 1954, Fruit Products Order, 1955, Solvent Extracted Oil, De-Oiled Meat and Edible Floor (Control) Order, 1967, Meat Food Products Order, 1973, Edible Oils Packaging, 1998, Vegetable Oil Product Order, 1988, Milk and Milk Product Regulations, 2009.

One of the important provisions of the regulation, provides for labeling and disclosing the names of ingredients along with their percentages in food and

soft drinks. Section 24 of the Act puts restriction, on misleading or deceiving advertisement and unfair trade practices, promoting the sale, supply, use and consumption of articles of food or adopt any unfair or deceptive practice or information which –

- a) falsely represents standards, quality, quantity or grade-composition;
- b) makes a false or misleading representation about usefulness; and
- c) gives guarantee of the efficiency without adequate scientific justification thereof.

All persons/manufacturers/dealers/importers of food items, are required to comply with the above provisions of the law while advertising or disseminating information through direct or indirect promotional activity.

The Food Safety and Standards Authority of India (FSSAI) set up under the Act, functions under administrative control of the Ministry of Health and Family Welfare, Government of India. It is a single reference point for all matters relating to food safety and standards, by moving from multi-level, multi departmental control to single line of command. The functions of FSSAI include laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of sale and wholesome food for human consumption.



The Competition Act aims at promoting and sustaining free and fair market practices by restricting anti-competitive agreements and abuse of dominance across various sectors.

The consumer satisfaction level is low due to **delays in deciding the cases and difficulties in** implementation of the orders. In the present state of affairs, justice delayed and denied.

The Act provides penalty on manufacturers of adulterated food items including fine of ₹1 lakh to ₹10 lakh, to be adjudicated by an officer of the rank of sub-divisional magistrate. In case of unsafe food, the sentence can extend from six months to seven years' imprisonment, depending on the nature of the offence. In the event of death caused due to adulteration, the maximum punishment will be life term and fine up to ₹10 lakh. The punishment will be doubled in case of subsequent offences.

The Act also provides that government will also pay compensation of ₹5 lakh in case of death, ₹3 lakh in case of grievous injury and ₹1 lakh in case of minor injury.

In case of sub-standard, misbranded food or misleading advertisement about food products (not injurious to health) the cases will not go to the court. The offenders would, however, be fined up to ₹10 lakh.

In case food manufacturing and processing units can be fined up to ₹1 lakh if these do not meet the stipulated standards of hygiene.

Under the Act, all traders in food business will have to register themselves with the Food Department of their respective governments and obtain a licence.

D. The Legal Metrology Act, 2009

The Legal Metrology Act has come into force from March 01, 2009, after repealing the Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Enforcement) Act, 1985. The Government has also notified the Legal Metrology (Approval of Models) Rules, 2011; Legal Metrology (Packaged Commodities) Rules, 2011; and Legal Metrology (General) Rules, 2011. The object of the Act is to prescribe the scientific quality, standards and weights for a wide range of food products.

Present Scenario

Ineffective implementation of the Consumer Protection Act

The Consumer Protection Act, the Magna Carta of consumer rights, which lays down that all cases would

be settled in 90 to 150 days, remains on paper. The official estimates reveal the interesting, but conceals the vital aspect. Out of the cases filed so far, the rate of settlement of cases is 91% in the District Forums, 80% in the State Commission and 97% in the National Commission. However, what is concealed is that, within the mandatory time limit, the settlement of cases was only 46% cases in the Consumer Forum and 38% in the State Commission.

Pending Cases as on 31-12-2010

State	No. of cases pending
Uttar Pradesh	1,12,000
Maharashtra	35,700
Haryana	28,400
Rajasthan	26,800
Gujarat	23,300
Madhya Pradesh	16,800
Bihar	14,600
Delhi	12,800
Orissa	11,900
Punjab	10,600

Worst offenders as on March 2010, 2011

Sector	Percentage
Defective products	21.3
Banking	16.8
Telecom	6.8
LPG	5.4
Legal	4.8
Insurance	4.6
Automobile	2.9
Education	2.7
Public distribution	2.6
Power	2.0

The Consumer Forums, conceived as dedicated and speedier alternative to civil courts, are ineffective due to backlog of cases and there are inadequate judges and staff besides woeful infrastructure. The experience of the functioning of 627 District Forums, 35 State Commissions and the National Commission under the Consumer Protection Act, 1986 is dismal.

The Forums and Commissions have powers of civil courts, but they rarely exercise. As a result, their orders

are routinely ignored by defaulters and consumers face enormous difficulties in implementation of the orders.

The Centre and States blame each other for the ineffective functioning of consumer forums. According to the states, the Consumer Protection Act being the Central Act, the Centre does not provide adequate funds to run the consumer forums. The Centre, on the other hand, points out that 'consumer affairs' is a state subject. It gives grants, but the states neither use these properly nor supplement the grants with their own funds.

Besides poor infrastructure, the remuneration of judges and members is rather low to attract competent persons to work with commitment. As a result, there are about 156% vacancies for judges and members in Consumer Forums/Commissions.

In most cases, the chairman of the forums and commission approach consumer complaints with a legal mindset. Consequently, advocates dominate the proceedings at the forum and commission and complicate the issues with legal technicalities and procedures.

The consumer satisfaction level is low due to delays in deciding the cases and difficulties in implementation of the orders. In the present state of affairs, justice delayed and denied.

The Competition Commission of India

The CCI has so far decided few cases. Recently, in complaint of Park Place Resident's Welfare Association in Gurgaon against the DLF, the CCI found the DLF guilty of disregarding consumer rights and firming up one-sided sale agreements containing unfair clauses. The penalty was 7% of the average turnover of the company during the last three years. The CCI also directed the DLF to substantially amend its agreement and remove the unfair conditions imposed on the buyers of flats. The DLF appealed against this order and the same is pending before the Competition Appellate Tribunal.

Role of Professionals

Professionals in discharging their professional duties also serve the society. They, having sound knowledge of business laws, practices and procedure, are in an ideal position to protect the rights of consumers. First, they can take up the complaints of consumers before the Forums and Commissions. Second, during their interaction with manufacturers, supplier and users of goods and services, they can impress upon them that it is in the best interest of their business to provide

quality goods and services at fair price. The other important areas include:

- (i) undertaking consumer advocacy by impressing upon trade, industry and commerce that it is the consumer, who imparts value to the goods and services manufactured and sold by them (Annexure-1).
- (ii) persuading companies to provide value for the money spent by the consumer and putting in place prompt and effective grievance handling system to enhance consumer loyalty and satisfaction.
- (iii) emphasising companies to clearly and accurately display of contents and price of all goods and services to ensure transparency. The service providers must disclose all service charges and taxes separately so that consumer can know the real price and other charges. Such price comparison, coupled with ratings on quality parameters, would not only help consumers make an informed choice, but also increase competition among service providers; and
- (iv) interacting with government agencies and consumer associations to amplify the consumer rights by imparting education and training to consumers about their right and how to redress their grievances under the consumer protection laws and regulations.

Suggestions

Following suggestions deserve careful consideration for consumer protection:

1. The Government should improve the functioning of the consumer forums by enhancing financial assistance to the States and union territories for creation and augmentation of their infrastructure, including new buildings and provision of furniture, office equipment, etc. for better working of the forums. There is urgent need for adequate infrastructure, judges and staff to handle the complaints. For this, there should be a clearly defined formula to determine the requirements of funds for efficient working of forums and commissions and equal contribution between the Centre and the states. Moreover, the Centre can use the Consumer Welfare Funds, having ₹130 crore, for paying salaries to the members of forums and commissions.
2. Computerise all the forums throughout the country under the 'Computerisation and Computer Networking of Consumer Forums in the Country (CONFONET)' for better, transparent and easier

functioning to protect consumers from all forms of exploitation.

3. The Consumer Protection Act should achieve the intended object of a simple, yet powerful tool against unscrupulous elements, empower the masses by providing the speedy and simple redressal of consumer disputes. All consumer cases should be decided within 90 to 150 days and in case of delay, reasons should be recorded in the order.

Conclusion

Gone are the days of '*Caveat emptor* - let the buyer beware' when consumer was responsible for protecting his interest by prudently negotiating the deal. In the olden days, the products were less sophisticated and could be inspected and tested before purchase. With globalisation, international trade and commerce offers increasing number of new goods and services, involving high level of technology and sophistication, about which the consumer knows little. The modern goods and services have been posing great challenges to the consumers in identifying right quality of products and services to meet his requirement. Consequently, the scope for defrauding the innocent consumer is also on the rise.

There is a need to strengthen consumer protection laws, subjecting fraudulent and unfair practices to severe punishment. Moreover, individual consumers lack time and efforts to follow the legal remedies. As such, the role of government, professionals and NGOs become important. Professionals, with their training, excellence and professionalism, can play an important role in strengthening the consumer-corporate dynamics equilibrium. In their interaction with the corporate sector in professional capacity, they can make clear the difference between "profit as a yardstick of efficiency" and 'profiteering as tool of exploitation of consumers'.

Ray Krock has rightly remarked: "If you work just for money, you will never make it, but if you love what you are doing and you always put the consumer first, success will be yours". Above all, it is the social responsibility of the business to put the customer at the central stage in their policies and management system. There is need for a paradigm shift in marketing strategy. The real challenge for marketing and brands is how best to harness values at the heart of their business as marketing tools.

It is high time to protect the consumer and ensure quality product at fair price. The laws for protection of consumers' rights are stringent, but

their implementation is lacking. In India, what is really needed is effective implementation of laws and easy, economical, interactive and prompt grievance redressal system for the redressal of consumer grievances.

ANNEXURE-1

The Federation of Indian Chambers of Commerce and Industry in its paper has highlighted the following aspects:

Be a responsible consumer

Consumers share the responsibility for maintaining an ethical marketplace. When doing business with any organisation - be it a store, professional service, or a large corporation - today's consumers should strive to conduct their business, following some basic ethical practices in the following ways:

Education

Know your rights and responsibilities, comparison of shops, read contracts, and ask questions before you buy. Investigate offers that sound too good to be true.

Truthfulness

Don't return used goods under the pretence that they are damaged if they are not. This practice, as well as switching price tags and shoplifting (or failure to report shoplifters), costs all consumers in terms of time and money.

Honesty

Exhibit the same kind of honesty you expect to receive from business firms. If a sales clerk makes a mistake in your favor, point it out as quickly as you would a mistake in the company's favor.

Integrity

Live up to your obligations. Enter agreements in good faith, and pay your bills when they are due. If you can't, inform the merchant and explain why.

Courtesy

Recognise that store employees are individuals. Treat them as you wish to be treated.

Sensibility

Do not make unreasonable demands. Respect the firm's right to limit services and products offered. Do not expect to get something for nothing.

Professionals in discharging their professional duties also serve the society. Professionals, with their training, excellence and professionalism, can play an important role in strengthening the consumer-corporate dynamics equilibrium.

Responsible Business

FACC Charter (Draft)

Member companies will recognise that this Code of Ethics is voluntary and will undertake their business in accordance with the principle of upholding consumer rights.

1. Establish a comprehensive customer service program and train the customer service staff accordingly.
2. Recognition to customer complaints as an opportunity to clear up a misunderstanding or identifying a real problem within the company.
3. Seek to treat each customer fairly, demonstrate sound business practices. Seek to resolve any
4. dispute in a fair and expeditious manner. Inform the consumer of any health, environmental, safety or other hazards posed by the normal use of products or service.
5. Ensure that the company's advertising conveys correct information and says what it means and means what it says.
6. Help a potential customer make a more informed buying decision, by providing detailed information about the company, its product or service in writing - or with a contract.
7. Make truthful and accurate claims to the consumers and strive to be transparent about all aspects of the products or services offered.
8. Uphold the principle of fair trade and be cautious against any conduct which has the intent, capability, or effect of being deceptive towards the consumer. Make efforts to serve customers with honest values, avoiding all devices and schemes which prey on human ignorance or gullibility
9. All Organisations to have the following:
 - Consumer Charter
 - Telephone Helpline
 - Consumer Service Representative ■



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

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PROVIDING AN ANTIVIRUS SOFTWARE AT DISCOUNTED PRICE

Price of the Antivirus software for the Members of ICAI: Rs 750/- + applicable taxes (for 3 years from the date of activation)

The Anti virus software will protect your laptops & desktops and will provide protection against all kinds of Internet or network-based threats. Upon installation, it acts as a shield against viruses, worms, trojans, spywares and other malicious threats. It also provides security against new and unknown threats with the anti virus software's renowned DNAScan® Technology. Its improved Anti-Phishing feature ensures that you do not land on phishing sites when browsing the net. The Parental Control feature allows you to schedule Internet access for your children and its pre-configured restricted browsing ensures that children do not visit adult sites. The PCTuner tool improves the overall efficiency of your system and the PC2Mobile Scan feature scans, detects and removes malwares from your mobile phones. It utilizes minimum system resources, thereby giving complete protection to your system without slowing it down.

For any other query
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Medium Practitioners (CCBCAF&SMP), ICAI
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For Query on technical support & getting a
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Shareholder Activism: Role of Proxy Voting Policy and Advisory Services

A perceptible degree of improvement can be observed in corporate governance practices in almost all countries in the world. The improvement is due largely to statutory regulations. If further improvement is to take place voluntarily among businesses, their shareholders will have to become active and act as responsible owners. This does not happen because shareholders belong to different categories such as punters, proprietors, minority holders, block holders, etc. Capital market provides shareholders with an exit route and, so, they remain passive. Only institutional investors-cum-shareholders can possibly improve corporate governance practices. Two recent developments—rise of proxy advisory firms (institutional investors can access logical recommendations on voting in annual/extraordinary general meetings) and SEBI directive in March 2010 (mutual funds to formulate proxy voting policy and place that in public domain)—are likely to improve these practices in India. This article examines issues involved in shareholder activism and its developments in India in our times. Read on...

Introduction

Corporate governance (CG) issues were relegated to the background by the financial crisis of 2008, though to some extent, they also had contributed to the crisis. Governance mechanism of many large financial institutions was found inadequate. There was no market discipline in these bodies, nor did their share prices reflect their watered-down value and inefficiencies. Their top executives drew excessive salaries, while shareholders lost their wealth. Despite all that, these institutions were too big to fail; and government bailout became the last resort.

Otherwise, CG practices are improving in all countries in a slow and certain manner due to statutory changes; besides, shareholder activism could be another factor. If the ultimate aim of CG movement is to make companies adopt the best CG practices voluntarily, shareholder activism is the most important remedy.

Shareholder Activism

If shareholders discard their apathy and behave like responsible owners, they can keep managers, i.e. their agents who enjoy plenty of autonomy and may work against shareholder interest, in check. There are many reasons why this does not happen always, since not all



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equity shareholders are alike, as their aspirations and approaches differ. Therefore, there is no united front.

Let us look at major types of shareholders.

The Economist having a penchant for colourful terms, suggests that shareholders should be classified as *punters* and *proprietors*. *Punters* are gamblers or speculators, who have nothing to do with CG; they want to maximise returns in the short-run and their aspirations are taken care of by stock markets. They constantly watch fluctuations in share prices and make appropriate moves to make money from them. Stock market acts as an exit route for them. When we say activism, we advocate 'voice' over 'exit'.¹ When capital market functions efficiently, all investors have an incentive to give preference to exit rather than voice option. *Proprietors* are long-term investors who may act as engaged owners, i.e. taking sufficient interest in the affairs of their companies and provide wise overviews. They may voice their concern and take steps to bring about necessary corrective actions. They are not swayed by short-term fluctuations of stock markets, while willing to give time to the management for taking risk and implementing its ideas. Of course, all long-term owners or proprietors are not engaged owners. Ignorance, apathy and blind trust in the management are found in many of them, since they happily abdicate the responsibility of ownership.

The second classification distinguishes between *minority shareholders* and *block holders*. The former get short shrift in CG being at the receiving end, and they lack information and voting power to ensure that their opinions are translated in policy resolutions. They also do not have adequate representation on the Board of Directors. In contrast, *block holders* having the power to vote appoint directors to carry out the desirable changes. Institutional investors (IIs) have become an important entity among *block holders* comprising mutual funds, investment banks, pension funds, financial institutions, trusts and endowments.

When we say shareholder activism, IIs are the principal category of shareholders that matters. Having financial muscles and an understanding in market developments, they employ trained research analysts to make informed investment decisions. They can, therefore, grapple with CG issues and make meaningful interventions in contrast to individual shareholders, which looks like a too-good-to-be-true scenario, since,

except for a few, IIs have mostly shied away from activism. They have their own set of problems and most of them are plainly not interested in CG matters.

Problems with II Activism

1. *Differentiation among IIs*: Among IIs, mutual funds have a different way of working as compared to others. For their open-ended schemes, mutual funds receive and pay out funds on a daily basis and so they find it convenient to invest funds by using stock market price index. Even for their close-ended schemes, mutual funds decide to buy/sell stock on the basis of fluctuations in the stock market index. They have no incentive to look beyond share prices and deal with correcting fundamentals. For diversifying risk, a fund goes for a varied portfolio and avoids holding many shares in one company. Other IIs, particularly life insurance companies and pension funds, have a set, fairly certain payout and so they can commit their funds for a long time in a particular avenue. Trusts and endowments do not have a certain payout. These IIs can therefore take active interest in the governance of investee companies. Shareholder activism thus devolves to these IIs.

2. *Way of working*: IIs encounter a paradox known as '*active investing, passive ownership*'. What it means is that, the work of shuffling investment portfolio on the basis of changing stock price index is on-going. It takes up all their time and so, the investor has little time to think about CG. IIs activism demands the reverse i.e. *passive investing and active ownership* which could leave the IIs with a feeling that, they have not made full use of the opportunities in the stock market to maximise return on investment. Many IIs, and not just mutual funds, follow indexation i.e. choosing a particular stock market index and buying all shares included in it. Any change in the index is faithfully replicated so as to obviate the need for making a judgement. Some IIs even outsource the work of choosing investment portfolio to professional managers who charge fat fees. It would be too much to expect these IIs to get down to messy governance issues. Secondly, as mentioned above, IIs follow the practice of spreading themselves thin for containing risk. So, they are not powerful block holders, always. Received wisdom of maintaining distance between industrial and finance capital, curbs on insider trading have resulted in many restrictions on how much IIs can invest in individual companies.

¹ A. O. Hirschman in his *Exit, Voice and Loyalty: Responses to Decline in Firms, Organisations and States* (1970) states that two responses, voice or exit are possible to any unsatisfactory situation in a firm or system.

3. *Free rider problem:* Many IIs exist today. Which one among them will be the first one to become active on CG front? It will have to spend a lot of time and money in regularising wrong matters. It cannot share these costs with other IIs. Any potential benefit of its intervention will, however, be shared by other IIs. So no II has any incentive for seizing the initiative for CG matters.

4. *Conflict of interest:* Many IIs have multiple relations with corporate clients as insurers, investment advisors, portfolio managers, consultants, etc., and their interest as block holders of equity, might be in direct conflict with their interest in the above categories. Hence, many IIs have traditionally kept a low profile as block holders.

5. *No time or interest:* Many IIs are simply not interested in nor have time for stewardship of investee companies. Consolidated shareholding in both UK and USA shows that 30% of outstanding shares are invested as per indexing, 20% as per various computer algorithms in search of value anomalies in different industries and 30% shareholders rely totally on the advice of their stock brokers who earn more, the more they shuffle their clients' portfolios. None of these groups, i.e. 80% of shareholders, have the long-term, informed engagement with their holdings which can make them activist owners.² Bill Gates Foundation and Warren Buffet are not interested in activism. They are satisfied with returns on investment and expect investee company executives to manage professionally. An occasional nudge to top executives is the most they are willing to supply. They do not believe that they will ever take part in managing investee companies.

The above factors also help us understand why nominee directors of public financial institutions in India did not make much headway for four decades - from 1950 to 1990. In spite of government support and backing of sister institutions, they did not intervene in CG of investee companies. There were a few exceptions, e.g. Swaraj Paul's bid on Escorts in early 1980s, where publicity, media scrutiny led to specific government directives to them and they followed these. The number of these cases was so small that for all practical purposes, the considerable might of public financial institutions remained only on paper.

Two Recent Developments

Firstly, proxy voting advisory firms have appeared on the scene in India. They specialise in carrying out CG research and also propose proxy voting solutions

in the form of specific recommendations. They state whether a particular resolution in a shareholder meeting should be voted for or *against* and give reasons for their recommendations. This is based on their continuing work of marshalling and analysing information and drawing conclusions from it. IIs can outsource the job of voting on particular resolutions in AGM/ EGM to them.

Proxy voting advisory services are new in India. However, in UK and USA, they have helped IIs for long. For example, The Pensions and Investment Research Consultants Ltd. (PIRC) was set up in 1986 in UK by a consortium of public pension funds, to give them advice on governance issues concerning investee companies. PIRC has set out a number of principles of CG. It examines whether individual companies comply with them, discusses its observations with their management and then publishes its views about the line of action that shareholders ought to adopt. Most of the managements take its comments very seriously and modify their actions so as to avoid adverse comments.

The National Association of Pension Funds (NAPF) in UK runs a voting issues service, that provides a report on each forthcoming annual or extraordinary general meeting of companies, proposed resolutions and NAPF's opinion about contentious issues in them. It also gives a checklist showing how far a company met with different best practices of CG. Institutional Investors Advisory Services Ltd. (IIAS) and InGovern Research Services, established in India in 2009, are two proxy voting service firms. InGovern Research Services provides both CG research and proxy voting solutions to its clients. Its research team has developed a Governance Radar with over 400 criteria dealing with major issues such as board of directors and its committees, shareholders rights, disclosure, audit and accounts, operational policies, etc. IIAS had recently targeted some large companies for excessive executive compensation. It criticised a large and well-respected company for not having a succession policy and for taking ad hoc action in this respect. The highlight of the working of both these firms is the specific nature of their comments and recommendations. They are sharp and acute and there already exist instances where the wrong they pointed out was speedily corrected. Thus in their short life span, these advisory firms are already doing fruitful work. Their contribution will be strengthened in future and it will help shareholders, particularly minority shareholders.

² Monks, Robert A.G.: A Review of Corporate Governance in UK Banks and Other Financial Industry Entities: The Role of Institutional Shareholders in Corporate Governance and the Global Financial Crisis, International Perspectives, (ed.s) William Sun, Jim Stewart, David Pollard, Cambridge University Press, Cambridge, 2011.

Both the firms have drawn attention of observers of capital market developments. Significant stakes in both were acquired by informed individuals and organisations. These are early days but a distant future possibility is that, they might develop vested interests and then might not remain impartial or wedded to shareholder interest. With growing popularity, more such firms will be established in future and then unhealthy competition might start among them for getting clients. They might well add one more tangle to the issue of conflict of interest.

The *second* development refers to a SEBI circular dated 15th March, 2010, which obligated mutual funds to disclose their proxy voting policies and also the record of actual voting in investee companies in their portfolio. Annual reports of mutual funds for financial year 2010–11 disclose this information.

Voting policies or guidelines for exercising voting rights as revealed by Indian mutual funds, generally relate to the following matters:

- Share option plans including ESOPs
- Executive compensation, Directors' compensation and election, removal
- Shareholder voting rights
- Anti-takeover proposals
- Debt financing and related party transactions
- Issue of equity without pre-emptive rights and increase in authorised capital
- Alterations in Memorandum of Association
- Restructuring proposals

SBI Mutual Fund has accordingly stated that, on routine matters which do not materially affect interest of unit holders, it will abstain from voting. When it believes that it will be in their best interest, it shall vote for or *against* a resolution. On working of boards of directors, it is *against* fixed retirement age for directors and compulsory minimum stock ownership, against the board having the authority to set its own size or having a fixed tenure. On shareholder proposals, it is *against* any restrictions on shareholders' right to call special meetings, right to act by written consent, to remove directors and issue of preferred stock with superior voting rights. Similarly, it is against anti takeover proposals, mergers and restructuring schemes which entrench existing management. As regards executive compensation, it is *against* stock options and stock incentive plans that result in excessive dilution and against excessive golden parachute plans.

UTI MF has stated that it will vote on issues affecting shareholder interest keeping in mind its equity holding in a particular company, adequacy

of information, impact on its investment, conflict of interest and ultimately, shareholder interest. It has stated candidly that, if the impact on shareholders is not significant, it may not even attend meetings. Reading these policy statements makes for fascinating reading. They reveal all the accumulated wisdom on CG in a clear, distilled form. While voting policies of Indian mutual funds are not as yet in the same class of international IIs for their lucidity and directness, they nonetheless represent a good deal of progress.

To justify the above statement, few proxy guidelines from Glass, Lewis & Co. (2011), an international advisory firm, could be quoted:

1. *Directors' appointment*: Vote against a director who has attended less than 75% board/committee meetings in the last year. Vote against him if he is a CEO of a company where financial statements had to be changed after he had certified them.
2. *Slate elections*: This is a practice of the entire board of directors, not individual directors, getting elected afresh. It is a better practice than that of staggered boards, often kept in the interest of continuity. Vote against the entire slate, if significant issues have been raised against even one of its members.
3. *Ratification of auditors*: If audit fees amount to less than one-half of total fees payable by a company to auditors, do not re-elect them.
4. *Executive compensation*: Vote against an executive compensation package if it does not have a service contract, if the service contract provides for notice period of more than one year. Performance based equity compensation plans for senior executives should be encouraged.
5. *Directors' remuneration*: No retirement benefits need be provided to directors.
6. *Exercise of voting rights*: Simple majority voting structure is preferable and supermajority vote requirements work against shareholder interest.

When we come down from lofty principles to the actual record of voting by mutual funds, a sense of déjà vu becomes prominent. In 99% cases, they have voted *for* the resolutions. However, one does get the feeling that the stage is being set for bigger changes, should the need arise.

Conclusion

Both these developments are going to improve CG practices in the country and help minority shareholders. ■

Foreign Exchange Exposure and Risk Management



Foreign exchange exposure refers to the sensitivity of a firm's cash flows to changes in exchange rates. Firms may face transaction, economic and translation exposures as a result of their global activities. Firms with unbalanced revenue or cost streams, have to come to terms with larger foreign exchange exposure. Experts say that forward and options contracts, investing in local market, geographical diversification and so on, could be able to hedge the firms from such exposures. G. M. Bodnar & R. C. Marston (2000) are of the opinion that foreign exchange exposure is quite low for a majority of firms that have been able to match their foreign currency revenues and costs, leaving them with little net exposure, and that operational hedging, i.e. shifting of production and sourcing abroad to match revenues in foreign currency, succeeds in reducing exposure to a modest level. Read on...



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Companies enter into foreign transactions as it is in today's global world a company requires its raw materials, services, etc., from a foreign country. Other considerations for foreign exchange transactions by a company maybe cheap labour availability, cheaper raw material availability, etc. Any decision of investing capital in a project abroad is based upon considerations of expected risk and return, as it is applicable in other investment decisions. However, the nature of the investment decision in this case, is more complicated because of the disparities in currency exchange rates, tax structure, accounting policies and practices and other factors affecting the risk.

* The author is grateful to the webpage, INVESTOPEDIA – Educating the World about Finance, for the text that appears within quotation marks in his article.

Let us go through some basic terminologies:

Exchange rate

An exchange rate represents the price of one currency expressed in terms of another country's currency. In other words, the rate at which one currency can be exchanged for another. For example, the higher the exchange rate for one dollar in terms of rupee, the lower the relative value of the rupee. It is expressed as \$1 = ₹ 45.

Spot Rate

Currencies can be bought and sold in the spot exchange market for immediate delivery, usually within two working days. The spot price reflects market expectations of future price movements for a security or non-perishable commodity, e.g. gold.

Forward Rate

The forward rate is the price used to determine the price of a futures contract. It accounts for holding costs, appreciation and demand for the good. Forward rate is the currency rate quoted now for delivery at some future date. Forward rate can be higher or lower than the spot rate. If the foreign currency shall be at forward premium, then future price is higher and if the foreign currency is at discount, then future price is lower than the spot price.



"The LIBOR is the world's most widely used benchmark for short-term interest rates. It's important because it is the rate at which the world's most preferred borrowers are able to borrow money. It is also the rate upon which rates for less preferred borrowers are based. For example, a multinational corporation with a very good credit rating may be able to borrow money for one year **at LIBOR plus four or five points.**"

Cross Rate

Cross rate is the price of any currency other than the home currency. It is a direct relationship between two non-home currencies in a foreign exchange market, concerned with or used in transactions in a country to which none of the currencies belong. For example, if an exchange rate between the Euro and the Japanese Yen was quoted in an American newspaper, this would be considered a cross rate in this context, because neither the euro or the yen is the standard currency of the U.S.

LIBOR (London Inter Bank Offered Rate)

"The LIBOR is the world's most widely used benchmark for short-term interest rates. It's important because it is the rate at which the world's most preferred borrowers are able to borrow money. It is also the rate upon which rates for less preferred borrowers are based. For example, a multinational corporation with a very good credit rating may be able to borrow money for one year at LIBOR plus four or five points. The LIBOR is derived from a filtered average of the world's most creditworthy banks' interbank deposit rates for larger loans with maturities between overnight and one full year. Countries that rely on the LIBOR for a reference rate include the United States, Canada, Switzerland and the U.K."

Hedging

To "make an investment to reduce the risk of adverse price movements in an asset is termed as hedging. Normally, a hedge consists of taking an offsetting position in a related security, such as a futures contract." To hedge means to protect oneself against financial loss especially to make a transaction in futures market.

Foreign Exchange Rate Risk

Foreign exchange rate risk is defined as the difference between the real domestic currency value of assets, liabilities or operating income attributed to unanticipated changes in exchange rates. Hence, the risk related to uncertainty associated to the exchange rates between two currencies. This is also known as *currency fluctuation risk*.

For example, a loan has been borrowed by a Indian company in dollars to be repaid back in dollars after a period of one year. If at the end of a year, dollar becomes stronger against Indian rupee, the borrower will have to pay more in rupee terms to the lender. On the other hand, if a dollar gets weaker at the end of a year, the borrower will have to pay less in rupee

terms against dollar and he will have to save additional amount.

There are different exchange laws and restrictions in different countries and not every country has agreement with other countries in such regards. Hence, there are high chances that, in case of default of payment by a foreign borrower, it may not be easy to recover, as it may involve various complicated issues related to taxation of two countries, different laws of two countries and exchange restrictions imposed by the country.

Interest Rate Risk

Usually, the interest rate is fixed at the time of sanctioning of the debt and the same remains constant during the entire term of debt. Such debt instruments are known as *fixed rate debt instruments* (FXR). However, currently the practice of issuing *floating interest rate debt instrument* (FIR) carrying variable rates of interest has become popular. In such instruments, interest is linked to any other variable or benchmark instrument such as *LIBOR*. Interest rate exposes the firm to following risks:

1. Transaction Risk or Transaction Exposure:

“The exchange rate risk associated with the time delay between entering into a contract and settling it. The greater the time difference between the entrance and settlement of the contract, the greater the transaction risk, because there is more time for the two exchange rates to fluctuate.”

“Transaction risk creates difficulties for individuals and corporations dealing in different currencies, as exchange rates can fluctuate significantly over a short period of time. This volatility is usually reduced, or hedged, by entering into currency swaps and other similar securities.”

2. Translation Risk

“The exchange rate risk associated with companies that deal in foreign currencies or list foreign assets on their balance sheets. The greater the proportion of asset, liability and equity classes denominated in a foreign currency, the greater the translation risk.”

“This poses a serious threat for companies conducting business in foreign markets. Exchange rates usually change between quarterly financial statements, causing significant variances between the reported figures. Companies attempt to minimise these transaction risks, by purchasing currency swaps or hedging through futures contracts.”



For accounting purposes, on the date of which the balance sheet of the company is drawn up, the various assets and liabilities expressed in foreign currency have to be recast in the domestic currency. In India, it is done by following *Accounting Standard 11 Accounting for the effects of changes in Foreign Exchange Rates*.

For accounting purposes, on the date of which the balance sheet of the company is drawn up, the various assets and liabilities expressed in foreign currency have to be recast in the domestic currency. In India, it is done by following *Accounting Standard 11 Accounting for the effects of changes in Foreign Exchange Rates*. If the exchange rate that prevailed at the time when such asset or liability came into being and at the date of their eventual recasting into domestic currency has changed, it shall give rise to translation gains or losses. In terms of AS 11, the translation gains or losses are recognised as income or expenses for the period in which they arise, except in respect of liabilities incurred for acquiring fixed assets, in which case, such difference shall be adjusted in the carrying amount of their respective fixed assets. However, the translation gains or losses are simply paper gains or losses, since they do not involve any actual cash inflow or outflow.

3. Economic Risk

Transaction risk relates to a specific transaction, while economic risk refers to the entire investment decision as a whole. The essence of the economic risk is that, significant fluctuations in exchange rates can alter the cost of the firm's inputs as well as the prices of its

outputs and thereby influence its competitive position. Economic risks exist where the inputs of the firm are imported as well as when the firm is exporting its products. On account of economic risks, not only the future cash inflows of the firm shall be distributed, but also its risk shall be adversely affected. This will cause distortions in the firm's capital budgeting analysis. Economic risks are also referred to as the operational risks.

Where efficient markets exist, translation risks are unlikely to affect the share prices of the firm for investor. However, the transaction and economic risks, as they are likely to affect the future profitability of the firm, will affect the share price of the firm and hence its valuations. The firm has to take adequate measures to protect itself against transaction and economic risks.

Techniques for Hedging Exchange Rate Risk

1. Forward Contract

A forward exchange contract is defined as a firm and binding agreement between bank and customer, to buy or sell an agreed amount of currency at a date of exchange, fixed at the time when the contract is made for performance by delivery of and payment for the stated amounts on or between two specified future dates.

Forward contracts are of two types:

- *Fixed forward contract:* When a fixed contract is entered, the performance of the contract will take place at future specified date.
- *Option forward contract:* In this type of contract, the performance of the contract will take place at the option of the customer, i.e. either at a specified final date decided at the time of contract or any time between two specified dates.

2. Swap

"If firms in separate countries have comparative advantages on interest rates, then a swap could benefit both firms. For example, one firm may have a lower fixed interest rate, while another has access to a lower floating interest rate. These firms could swap to take advantage of the lower rates."

Currency Swap

It is "a swap that involves the exchange of principal and interest in one currency for the same in another currency. It is considered to be a foreign exchange transaction and is not required by law to be shown on a company's balance sheet."

Currency swap allows a customer to redominate a loan from one currency to another currency. The redomination from one currency to another currency, is done to lower the borrowing cost for debt and to hedge the exchange risk. Loans of a particular currency can be swapped to another currency with the aid of currency swaps, on the basis of expectations of the future movement of currency and interest rates.

3. Cross Currency Rollover

"The foreign exchange fee arises from the difference in interest rates between the two currencies underlying a transaction. Sometimes, investors can earn a credit if they are purchasing the currency with the higher of the two interest rates. Investors are often required to maintain certain margin positions with their brokers to earn a credit from rollover."

The cross currency rollovers are entered into initially for a period of a six months period, but the same is further extendable to another six months. It is to cover the exchange rate risks on long-term liabilities.

4. Forward Rate Agreement (FRA)

"Typically, for agreements dealing with interest rates, the parties to the contract will exchange a fixed rate for a variable one. The party paying the fixed rate is usually referred to as the borrower, while the party receiving the fixed rate is referred to as the lender."

"For a basic example, assume Company A enters into an FRA with Company B in which Company A will receive a fixed rate of 5% for one year on a principal of \$1 million in three years. In return, Company B will receive the one-year LIBOR rate, determined in three years' time, on the principal amount. The agreement will be settled in cash in three years."

"If, after three years' time, the LIBOR is at 5.5%, the settlement to the agreement will require that Company A pay Company B. This is because the LIBOR is higher than the fixed rate. Mathematically, \$1 million at 5% generates \$50,000 of interest for Company A, while \$1 million at 5.5% generates \$55,000 in interest for Company B. Ignoring present values, the net difference between the two amounts is \$5,000, which is paid to Company B."

5. Interest Rate Swaps

"An agreement between two parties (known as counterparties), where one stream of future interest payments is exchanged for another based on a specified principal amount. Interest rate swaps often exchange a fixed payment for a floating payment, that is linked to

an interest rate (most often the LIBOR). A company will typically use interest rate swaps to limit or manage exposure to fluctuations in interest rates, or to obtain a marginally lower interest rate, than it would have been able to get without the swap."

"Interest rate swaps hedge against advance interest rate movements in future and also create new, low cost borrowing alternatives. This gives rise to arbitrage opportunities, as advantage can be taken of fixed/floating rate disparities."

"Generally speaking, swaps are sought by firms that desire a type of interest rate structure that another firm can provide less expensively. For example, let's say A Limited is seeking to loan funds at a fixed interest rate, but B Limited has access to marginally cheaper fixed-rate funds. B Limited can issue debt to investors at its low fixed rate and then trade the fixed-rate cash flow obligations to A Limited for floating-rate obligations issued by B Limited. Even though B Limited may have a higher floating rate than A Limited, by swapping the interest structures they are best able to obtain, their combined costs are decreased - a benefit that can be shared by both parties."

Internal Techniques of Hedging

1. Leads & Lags

It is "the alteration of normal payment or receipts in a foreign exchange transaction because of an expected change in exchange rates. An expected increase in exchange rates is likely to speed up payments, while an expected decrease in exchange rates will probably slow them down."

"Accelerating the transaction is known as *leads*, while slowing it down is known as *lags*. Leads will result when firms or individuals making payments expect an increase in the foreign-exchange rate, while lags arise when the exchange rate is expected to fall. Leads and lags are used in an attempt to improve profits."

2. Netting and Matching

It is "settling mutual obligations at the net value of a contract as opposed to its gross dollar value." Netting can be bilateral and multilateral.

According to an ICWAI publication on Management of Risk, Financial Management & International Finance, *netting is bilateral when two parties have trade relations with each other and do buying and selling reciprocally. For example, a parent company sells semi-finished goods to its foreign subsidiary and then repurchases the finished product from the latter.*

"Accelerating the transaction is known as *leads*, while slowing it down is known as *lags*. Leads will result **when firms or individuals making payments expect an increase in the foreign-exchange rate**, while lags arise when the exchange rate is expected to fall. Leads and **lags are used in an attempt to improve profits.**"



When a group consists of many companies, netting can be multilateral. *Due to netting, volume of transactions can be reduced because, each company of the group will pay or will be paid only the net amount of its debit or credit.*

3. Price Adjustments

For protecting against the exchange rate risk, sometimes, several clauses of indexation are included by exporters and importers. For instance, a contract may contain a clause whereby, the prices are adjusted in such a manner that fluctuations of exchange rate are absorbed without any visible impact. For example, if the currency value of the exporting country appreciates, the prices of exports are increased to the same extent or vice-versa. Therefore, an exporter receives almost the same amount in local currency. In other words, the exchange rate risk is borne by the foreign buyer.

Sometimes, multi-currency clause is also used. As per this clause, invoicing is done in several currencies and only on maturity, the parties decide on the currency of settlement. For example, a French exporter may like to settle in US dollars if the rate is FFfr5/US\$, or in pound sterling if the dollar rate is FFfr4.8/US\$. ■

Indian Taxpayers *May be Taxed* under Liberal Language of Tax Treaties



Sometimes, situations of jurisdictional double taxation arise due to the domestic tax laws, e.g. provisions of the Income-tax Act, 1961 that follow *residence* rule of taxation, are so comprehensive that they levy tax on the global income of resident taxpayers, irrespective of the source or place of income. While a mechanism to reduce or eliminate this jurisdictional double taxation has been devised under our domestic tax laws by empowering the Government of India to enter into the double taxation avoidance agreements or treaties with the governments of other countries, there has been an ongoing dispute over the issue between taxpayers and tax authorities in India. Read on to know and understand the tricky situation...



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Provisions of the Income-tax Act, 1961 that follow *residence* rule of taxation, are so comprehensive that they levy tax on the global income of resident taxpayers, i.e. income of a resident Indian from whatever source, wherever earned and wherever received, comes under the gamut of domestic tax laws. Such a wide amplitude of domestic tax laws, sometimes gives rise to the situation of jurisdictional double taxation. To understand jurisdictional double taxation, consider a resident Indian who earns income in Singapore and both Singapore and India impose tax on that income—India, because the person is its resident, and Singapore, because the income is sourced there. This is a simple case of jurisdictional double taxation.

While a mechanism has been devised under the Indian domestic tax laws to reduce or eliminate jurisdictional double taxation, by empowering the Government of India to enter into the double taxation avoidance agreements (DTAA or tax treaty) with the Government of other countries, whether the foreign sourced income of an Indian resident should be liable to tax in India or not has been a matter of dispute between taxpayers and the tax authorities.

Section 90(2) of the Act apparently provides that in relation to a taxpayer to whom the tax treaty applies, the provision of Indian domestic tax laws shall apply only to the extent they are more beneficial to the taxpayer. This principle has been affirmed by courts as well, including the Supreme Court. Moreover, it is made clear in the recent pronouncements by the various courts that the option available to the taxpayer to make a choice to be taxed under either the domestic tax laws or the relevant DTAA is not one time exercise. It is not that once the taxpayer has decided to be governed by the provision of the domestic tax laws or of the relevant DTAA in a particular tax year, he cannot choose otherwise in the subsequent years.

If the tax laws of India are so clear to give overriding power to the tax treaties, why are there frequent disputes between taxpayers and authorities on whether a particular foreign income of an Indian resident is taxable in India? One of the reasons contributing to this ever going dispute is the language of the tax treaties, which liberally uses the phrase *may be taxed* to define the taxing rights of a contracting state.

Various Indian courts interpret this *may be taxed* phrase differently that is used in tax treaties.

OECD and UN Model Tax Conventions and Commentaries

India has entered into more than eighty tax treaties with different countries and most of them are based on the OECD Model Tax Convention. OECD Model often uses the language *may be taxed*, while describing the taxing rights of the two jurisdictions.

For example, Article 7 on taxability of business profits states that the profits of an enterprise of a contracting State *shall be taxable* only in that State, unless the enterprise carries on business in the other contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, i.e. through a permanent establishment

situated in other contracting State, the profits of that enterprise *may be taxed* in the other State, but only so much of them as are attributable to that permanent establishment.

Similarly, all other articles of the OECD Model Tax Convention uses the language *may be taxed* or *may also be taxed*, except Articles 8 (Shipping income), 12 (Royalties), 18 (Pensions), 19 (Government services), 20 (Students) and 21 (Other income), which uses the language *shall be taxed*. Clause 13 of Paragraph 1 of the 2010 release of the OECD Commentary on Model Tax Convention explains that the purpose of paragraph 1 of Article 7¹ (Business profits) is to limit the rights of one contracting State to tax the business profits of enterprises of the other contracting State.

OECD commentary on Article 7 states that paragraph 1 of Article 7 restates the generally accepted principle of the double taxation conventions, that an enterprise of one State shall not be taxed in the other State, unless it carries on business in that other State through a permanent establishment situated therein. It is perhaps sufficient to say that it has come to be accepted in international fiscal matters that until an enterprise of one State sets up a permanent establishment in another State, it should not properly be regarded as participating in the economic life of that other State to such an extent that it comes within other State's taxing rights.

Another principle, which is reflected in the second sentence of this paragraph, is that the taxing right of the State where the permanent establishment is situated, does not extend to profits that the enterprise may derive from that State, but only those which are attributable to the permanent establishment.

The commentary on United Nations (UN) Model Tax Convention also put reliance on the OECD commentary for the explanation of paragraph 1 of Article 7² (Business profits). However, it has extended the scope of taxation for the source country, i.e. the country where permanent establishment was established by applying force of attraction rule.

Similarly, in the case of other items of income, for instance dividend, the OECD Model uses a two way approach of *may be taxed* which gives right to tax dividends to both the States, first where income is generated and second, the State of which recipient is resident.

¹ **Article 7(1) of OECD Model Tax Convention:** The profits of an enterprise of a contracting State shall be taxable only in that State unless the enterprise carries on business in the other contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as are attributable to that permanent establishment.

² **Article 7(1) of UN Model Tax Convention:** The profits of an enterprise of a contracting State shall be taxable only in that State unless the enterprise carries on business in the other contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

Article 7 on taxability of business profits states that the profits of an enterprise of a contracting State *shall be taxable only in that State, unless the enterprise carries on business in the other contracting State through a permanent establishment situated therein.*

The UN Model Convention and commentary thereon concerning dividend income, also provides that dividends may be taxed in the State of the beneficiary's residence. It does not, however, provide that dividends may be taxed exclusively in that State and therefore leaves open the possibility of taxation by the State of which the company paying the dividends is resident, that is, the State in which the dividends originates (source country).

Double taxation is eliminated or reduced through a combination of exemption and tax credit in the residence country and reduced withholding tax rates in the source country.

OECD's preliminary remarks in para 2 and 3 of its commentary on Article 11 (Interest), state that if a recipient of interest income is a resident of other country, he will be liable to be taxed twice on that income—first, by the State of source and, then, by the State of which he is a resident. A formula reserving the exclusive taxation of interest to one State, whether the State of the beneficiary's residence or the State of source could not be sure of receiving general approval. Therefore, a compromise solution was adopted. It provides that interest may be taxed in the State of residence, but leaves to the State of source the right to impose a tax if its laws so provide. Its exercise of this right will however be limited by a ceiling which it cannot exceed.

Article 11 of the UN Model Convention reproduces the provisions of Article 11 of the OECD Model with the exception of paragraphs 2 and 4, in which substantive changes have been made. Even the commentary on paragraph 1 and 2 of Article 11 of the UN Model, reproduces the OECD commentaries on those paragraphs. Accordingly, the understanding of the UN Model on the use of *may be taxed* terminology in Article 11 (Interest) is that of the OECD.

Unlike Articles 7 (Business profits), 10 (Dividends) and 11 (Interest) discussed above, which uses *may be taxed* or *may also be taxed* language, Article 12 (Royalties) of the OECD Model Convention

provides that royalties arising in a contracting State and beneficially owned by a resident of the other contracting State ***shall be taxable only*** in that other State.

In its commentary on Article 12, the OECD explains the objective of this language to give exclusive rights to tax royalties only to the State of the beneficial owner's residence. It may however be noted that many OECD member countries including Australia, Czech Republic, Canada, Italy, Japan, Korea, Mexico, New Zealand, Poland, Portugal, the Slovak Republic, Spain and Turkey have recorded reservations about the approval of exclusive residence State taxation. India, as an OECD observer country to OECD, has recorded its disagreements with the text of Model Convention or with an interpretation given in the commentary. On Article 12, India reserves the right to tax royalties and fees for technical services at source.

UN Model on Article 12 (Royalties) substantially differs from the OECD approach. Paragraph 1 of Article 12 of the UN Model provides that royalties arising in a contracting State and paid to a resident of the other contracting State ***may be taxed*** in that other State. Further, the paragraph 2 provides that such royalties may also be taxed in the contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other contracting State, the tax so charged is limited.

As may be seen from the above, it is clear that wherever intention of the OECD is to grant right to tax a particular income to both the contracting States, the language used is *may be taxed* or *may also be taxed*. However, where exclusive rights of taxation are granted to either of the States, the language used is *shall be taxed*; which is further affirmed by the use of the word *only* after *shall be taxed*.

Klaus Vogel

Klaus Vogel, a German expert, points out in his *Double Taxation Conventions* (2007) that Model Conventions use the words *may be taxed* in without using the word *only*. Hence, it refers to the taxation of a particular income in the State of source. However, the issue of taxation of such income in the State of residence remains open. Taxation is left to the State of source, in some cases, the source country has been given the restrictive right of taxation subject to limitation in amount (like Article 10: Dividend and Article 11: Interest).

In that scenario, the effect of double taxation can be mitigated by the State of residence by either exempting the same income in their State or allowing the credit of taxes paid in respect of such income in the source country, depending upon the provisions of the treaty. The phrases *shall be taxable.....* or *may be taxed.....* result in the retention of taxation by a contracting State, whereas the word *only* deprives the other contracting State from its right of taxation over a particular income.

Klaus Vogel's commentary in this regard states that there are two rules of avoidance of double taxation. (1) *Complete distributive rules* apply in case where the word *shall be taxed only.....* is used and it invariably results in exemption. (2) *Open ones rules (may without only)* results in the application of Article 23A or 23B and accordingly either to credit being allowed or exemption being granted.

Apparently, the OECD commentary has construed the words *may be taxed* in a sense that these words do not preclude the country of residence to tax the same income, even if it is taxed in the source country. The tax authorities in India have placed heavy reliance on the abovementioned interpretation of the OECD commentary, to contend that India's right to tax the foreign source income of an Indian resident is not diluted, even if the taxpayer has already been subject to tax in the foreign country.

This view of the Indian tax authorities also draws support from the elimination of double taxation clause of the Indian tax treaties. Their argument rests on the premise that, even if the foreign income is taxed in India, tax treaties provide relief from the double taxation to the taxpayer, either by means of tax credit method or by income elimination method. Whatever be the case, double taxation is avoided and the taxpayer is not at loss.

Departmental Clarification

The CBDT tried to put at rest this controversy by issuing a circular, *Circular No. 91/2008 dated 28th August, 2008*. CBDT clarified that wherever the tax treaties provide that any income of a person resident of India *may be taxed* in the other country, such income shall be first included in his total taxable income and relief from double taxation shall be provided as per the provisions of the concerned DTAA. In other words, the foreign income of Indian resident shall be first subject to tax in India and then relief from double taxation would be granted.

Recently, via the Finance Bill, 2012 the Government has proposed to add Explanation 3 to Section 90 of the Act, to clarify that in case any term used in the DTAA is not defined under the said DTAA or the Act, but is assigned a meaning to it in a notification issued, such meaning shall be deemed to have effect from the date on which the DTAA came into force. Therefore, the terms not defined in the tax treaties and the Act shall be defined by the CBDT. Vide the circular mentioned above, the CBDT has defined the implications of *may be taxed* concept of the tax treaties. However, till the Finance Bill, 2012 is accented to by the President of India, this is only a proposal.

Despite the above circular, taxpayers have claimed that the language *may be taxed* used in tax treaties should be read as *shall be taxed* and the foreign income is not at all includible in the taxable income in India. Even some courts in India have not gone with the interpretation of the tax authorities and the OECD commentary.

Rulings for *May be Taxed* Entails Right to Tax to Only One of Contracting States

- The Supreme Court in *P.V.A.L. Kulandagan Chettiar, 267 ITR 654 (2004)*, though did not interpret the phrase "may be taxed" or analysed the relevance of OECD commentary, held that the right of taxation should be granted to the country with the closer economic relationship to the income. In this case, the taxpayer firm owned an immovable property in Malaysia. During the concerned year, it had earned interest income and capital gain from that immovable property. Taxpayers took a view that the income arising in Malaysia cannot be taxed in India as it had no permanent establishment in India. Tribunal confirmed the order of the CIT (A) stating that the property is situated in Malaysia, hence, capital gain arising on sale of such property cannot be brought to tax in India. The Supreme

The OECD explains the objective of this language to give exclusive rights to tax royalties, only to the State of the beneficial owner's residence. It may however be noted that many OECD member countries including Australia, Czech Republic, Canada, Italy, Japan, Korea, Mexico, New Zealand, Poland, Portugal, the Slovak Republic, Spain and Turkey have recorded reservations about the approval of exclusive residence State taxation.

Court held that the fiscal jurisdiction of a State in respect of taxation of a particular income can be determined either by reason of residence of the taxpayer or by reason of source of income. Article IV of the India-Malaysia DTAA implies that tax liability that arises in respect of a person residing in both the contracting States, has to be determined with reference to his close personal and economic relations with one or the other State. Capital gain arising from the immovable property cannot be brought to tax in India because of closer economic relations between the taxpayer and Malaysia in which the property is located, i.e. State of source. In the absence of permanent establishment in India, there is no nexus between the incomes derived with the State of residence. Consequently, even the business income out of the rubber plantations cannot be taxed in India.

- In *Turquoise Investment & Finance Limited, 2008-TIOL-31-SC-IT (2008)*, the Supreme Court addressed an issue of taxability of dividend income earned from a company in Malaysia and held that dividend income derived by the taxpayer from a company in Malaysia is not liable to be taxed in the hands of the taxpayer in India under any of the provisions of the Income-tax Act of India.
- In the case *R. M. Muthaiah, 202 ITR 508 (1992)*, the Karnataka High Court while dealing with the question of taxability of income from immovable property in Malaysia granted the right to tax the income to the source country i.e. Malaysia to the exclusion of India. Regarding the Article on elimination of double taxation of the India-Malaysia DTAA, the Court opined that Article 22 is attracted only when tax is levied by both countries. In a case where one of the countries is precluded from levying a tax on the income in view of the specific provision in the treaty, the said clause cannot be attracted at all.
- On the same aspect, the Mumbai Tribunal in the case *Pooja Bhatt vs. Dy Commissioner of Income Tax [ITA No. 7000/Mum/2005] (2008)* (unreported), addressed the issue of taxation of foreign income of an Indian resident artist earned from entertainment shows in Canada. Tax authorities rejected the contention of the taxpayer of being taxed in Canada and held that being resident of India, her global income including income earned from performance in Canada is liable to get taxed in India. Order of the tax authorities was upheld by CIT(A).

Recently, via the Finance Bill, 2012, the Government has proposed to add Explanation 3 to Section 90 of the Act to clarify that in case any term used in the DTAA is not defined under the said DTAA or the Act, but is assigned a meaning to it in a notification issued, such meaning shall be deemed to have effect from the date on which the DTAA came in to force.

Aggrieved taxpayer preferred an appeal before the Tribunal. The Tribunal concluded that income derived by the taxpayer from exercise of her activities in Canada is taxable in the source country only, i.e. Canada. To arrive at its conclusion, the Tribunal looked into the scheme of taxation of income contained in Chapter III of the India-Canada DTAA. On an analysis of various Articles contained in Chapter III of the India-Canada DTAA, the Tribunal observed that the scheme of taxation in the treaty is divided in three categories, viz.

- 1) income taxable only in the State of residence;
- 2) income taxable only in the source country; and
- 3) income may be taxed in both the contracting States.

Tribunal concluded that wherever the contracting parties intended to give the taxing right of a particular income to both the countries, they have specifically provided the same in clear terms. Consequently, it cannot be said that the expression *may be taxed* used by the contracting parties gives option to the other contracting State to tax such income. The expression *may be taxed in the other state* permits only the other State, i.e. the State of source, and State of residence is precluded from taxing such income. The Tribunal while rejecting the OECD commentary mentioned that the commentaries are not binding on the Indian courts, since the same are of persuasive value or indicative of contemporaneous thinking. The parties to the agreement, i.e. the Governments of the two States, are always at liberty to deviate from the same.

- In a recent ruling of *Essar Oil Limited, ITA No. 2441/MUM/2007 (2011)*, the Mumbai Tribunal held that the expression *may also be taxed* used in Article 7 of the India-Qatar DTAA, permits only the State of source to tax such income and the State of residence is precluded from taxing such income.

Rulings against *May be Taxed* Entails Right to Tax to Only One of Contracting States

While there are a number of court rulings favouring that *may be taxed* language gives unequivocal rights to one of the contracting States, there are very few rulings against this interpretation:

- The Authority for Advance Rulings (AAR) in the case *S. Mohan 267 ITR 654 (2007)* held that salary income of an Indian resident was liable to taxation in both the countries, i.e. India and Norway, and India should give a credit for the taxes paid by the taxpayer in the other country. In this case, the AAR ruled out that the word *may be taxed* used in the Article 16 (Salary) of the India-Norway DTAA provides the right of taxing the salary income to both the jurisdictions.
- Recently, the Delhi Tribunal in the case *Telecommunications Consultants India Ltd. ITA No. 135 of 2008 (2012)* addressed the issue of taxation of foreign income earned by a public sector undertaking engaged in the business of providing consultancy, design and engineering services in all the fields of telecommunication in India as well as abroad. The taxpayer claimed that the profits of an enterprise of the contracting State shall be taxable only in the State, unless the enterprise carries on business in the other contracting State through a permanent establishment situated therein. Therefore, once the revenue accepts that there is permanent establishment outside India, the same shall be taxable only in the country of source according to Article 7 and residence would not be a determinative criteria. The taxpayer relied on all the cases cited above.

In this aspect, the Delhi Tribunal differentiated the facts of above stated ruling with the facts of present case and held the same to be liable to tax in India. Further, the Delhi Tribunal laid down:

1. The distributive rules on use the words, *shall be taxable only, may be taxed and may also*

be taxed. The words *shall be taxable only* in a contracting State preclude the other contracting State from taxing, thus double taxation is avoided. Whereas, the phrase *may be taxed* does not give the exclusive right to tax to any contracting State. In such a case, the State of residence must give relief, so as to avoid the double taxation.

2. Apropos the above, it was held that the words *may be taxed* provides that the source country would have the right to tax business income to the extent the same is attributable to the permanent establishment in another state. However, providing such right to tax does not exclude the resident State from taxing such income based on its domestic tax laws and under the DTAA.

In arriving at the above conclusion, the Delhi Tribunal has distinguished the various cases relied upon by the taxpayer. The Tribunal held that the mother of all case laws, being relied upon by the taxpayer is the Supreme Court decision of *PVAL Kulandagan Chettiar (supra)*. All subsequent case laws have followed this decision. It is therefore important to examine what the Court has held in the case of *PVAL Kulandagan Chettiar*. The facts of taxpayer's case are completely different set of facts than the decision of *PVAL Kulandagan Chettiar*. In that case, the taxpayer sought a relief under the DTAA between India and Malaysia. The Supreme Court held that it was a case of dual residency. The Supreme Court's conclusion rests on the fact that personal and economic relations of the taxpayer in relation to capital asset were far closer in Malaysia than in India and in these facts, the residence of India became irrelevant. The taxpayer was not having permanent establishment in India in respect of that source of income. On the aspect and scope of the expression *may be taxed*, the Apex court did not express any opinion. Therefore, the incomes derived from rubber plantations of Malaysia were held to be not assessable in India. Similarly, the capital gain arising on the sale of immovable property in Malaysia was held to be not assessable income in India and business income for not having permanent establishment in India.

Conclusion

So, we are confronted with two schools of thoughts regarding the interpretation of language *may be taxed*

The Mumbai Tribunal in the case of *Pooja Bhatt* addressed the issue of taxation of foreign income of an Indian resident artist earned from entertainment shows in Canada. Tax authorities rejected the contention of the taxpayer of being taxed in Canada and held that being resident of India, her global income including income earned from performance in Canada is liable to get taxed in India.

Recently, the Delhi Tribunal in the case *Telecommunications Consultants India Ltd.* addressed the issue of taxation of foreign income earned by a public sector undertaking engaged in the business of providing consultancy, design and engineering services in all the fields of telecommunication in India as well as abroad. The taxpayer claimed that the profits of an enterprise of the contracting State shall be taxable only in the State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein.

used in the tax treaties. One view is that, unless there is a specific mention in the tax treaties that both the countries have right to tax a particular income, only one of the countries should have jurisdiction to levy tax, with the exclusion of the other. The other view is that both countries can levy tax on the same income. However, in such a case, double taxation would be avoided by the State of residence, by allowing tax relief as per the provisions of the relevant tax treaty.

As noted above, even the courts' views are divided on this issue.

The Courts following a favourable view on this issued have unequivocally relied on the Supreme Court's ruling of *PVAL Kulandgam Chettiar (supra)*. The Apex court in the *PVAL Kulandgam Chettiar*, though not directly, dealt with the interpretation of may be taxed language used in the India-Malaysia tax treaty, however, gave some principles in the direction. The recent ruling of the Mumbai Tribunal in the case of *Telecommunication Consultants India Ltd. (supra)* has very clearly interpreted and explained the ratio arising from the *PVAL Kulandgam Chettiar* ruling, which was probably not done by any court before. The Mumbai Tribunal has given an interpretation that *may be* tax does not preclude the residence country from taxing the income generated by its resident from another country. Such an interpretation is close to international approach and confirms to the 2008 circular issued by the CBDT. Since the circulars issued by CBDT are binding on tax authorities, they are bound to follow this. Once the Finance Bill, 2012 becomes applicable, such interpretation given by the CBDT will become the law of the land. Such an interpretation carries more weight and seems to be a better approach. Further, the taxpayer will not lose anything as he will get credit of taxes, if any, paid in the source country. ■

ANNOUNCEMENT



Accountancy Museum of India has shifted from its previous address, i.e. ICAI Bhawan, C-1, Sector-1, Noida, to the Institute's new campus at A-29, Sector-62, Noida; the Museum is functional at its new address. The Museum is on the third floor of the *Auditorium Block* of this campus.

All are welcome!

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Recent Important International Tax Developments - Snapshot



Today, we are living in a dynamic environment and policy changes are happening at a scorching pace. New developments have taken place on the international tax horizon as well, ranging from new judgments providing better insights to the long drawn points of litigation on the international tax scenario to issue of various Circulars/Notifications governing the new provisions introduced vide the Finance Act 2012 ('FA 2012'). In this article, we will briefly focus on the recent developments on the international tax scenario: the introduction of Rules governing the Tax Residency Certificate ('TRC') as well the Circular issues that provides various clarifications in respect of the provisions of the newly introduced Section 194LC in the FA 2012 that provides for a lower withholding rate on the interest payments to a nonresident in respect of borrowings made in foreign currency, if the prescribed conditions are fulfilled.

Lower Withholding Tax Rate on External Commercial Borrowings (ECBs)

In order to help Indian companies raise long term low-cost foreign borrowings, tax incentives were introduced by the FA 2012 by providing for a lower rate of tax and withholding under the Income-tax Act, 1961 ('the Act') in respect of interest on overseas borrowings in foreign currency made by Indian companies, subject to certain prescribed conditions.

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

To clarify on the India-Mauritius Double Taxation Avoidance Agreement (DTAA) controversy, CBDT then issued a Circular in year 2000 stating that the Mauritius TRC issued by the Mauritius Tax Authorities should be **regarded as sufficient evidence of treating a person to be tax resident of Mauritius as well as the beneficial ownership to be in Mauritius and that, such companies were entitled to claim treaty benefits. The validity of such Circular has been upheld in various judgements.**

The section reads as below:

- (1) *“Where any income by way of interest referred to in sub-section (2) is payable to a non-resident, not being a company or to a foreign company by a specified company, the person responsible for making the payment, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct the income-tax thereon at the rate of 5% .*
- 2) *The interest referred to in sub-section (1) shall be the income by way of interest payable by the specified company,—*
- (i) *in respect of monies borrowed by it at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2015 in foreign currency, from a source outside India,—*
- (a) *under a loan agreement; or*
- (b) *by way of issue of long-term infrastructure bonds, as approved by the Central Government in this behalf; and*
- (ii) *to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan or the bond and its repayment.”*

As per the provisions of the section, the interest payments made to a nonresident on foreign currency borrowings from a source outside India, would be subject to a lower tax and withholding rate of 5%, subject to the following conditions:

- ▶ Borrowings should be made between 1st July 2012 and 30th June 2015 by way of:
 - (a) Loan agreement or

(b) Issue of long-term infrastructure bonds, as approved by the Government of India (‘GOI’) in this behalf.

- ▶ The rate of interest in respect of the above shall be as approved by the GOI having regard to the terms of the loan/bond and its repayment.

Automatic Route

Further, the CBDT has issued a Circular¹, enlisting conditions which need to be fulfilled for automatic route approval of the GOI, for the purposes of Section 194LC, with the intent of reducing compliance burden and hardships to the Indian companies.

As per the circular, any loan agreement/bond issue in foreign currency from a source outside India would be treated as approved by GOI on satisfaction of the prescribed conditions.

Conditions to be satisfied in respect of issue of loan agreements:

- ▶ There should be an agreement under which such borrowing has been done (‘Agreement’).
- ▶ The monies borrowed by the Indian company under the Agreement should comply with Indian foreign exchange regulatory laws i.e., the ECB Regulations, either under the automatic route or the approval route.
- ▶ The funds borrowed should comply with the end use restrictions and other conditions laid out by the Reserve Bank of India (RBI) under the ECB Regulations during the entire term of the Agreement.
- ▶ The borrowing company should obtain a Loan Registration Number (LRN) issued by the RBI in respect of the Agreement.
- ▶ No part of the borrowing should have taken place under the Agreement prior to 1st July 2012.
- ▶ It should not be a case where an existing agreement for borrowing in foreign currency is restructured solely for taking benefit of reduced withholding tax rate.

Conditions to be satisfied in respect of issue of long-term infrastructure bonds:

- ▶ The bond issued by the Indian company should be authorised under the ECB Regulations, either under the automatic route or the approval route.
- ▶ The bond issue should obtain the LRN from the RBI.

¹ CBDT circular No.7 of 2012

- ▶ The bonds issued should have original maturity term of three years or more.
- ▶ The bond issue proceeds should be utilised in the 'infrastructure sector' only, which shall have the same meaning as is assigned to it by the RBI under the ECB Regulations.

Further, the circular also prescribes the rate of interest to be charged on such foreign borrowings that can be considered as the approved rate. Accordingly, any rate of interest with an 'all-incost' ceiling specified by the RBI under the ECB Regulations applicable to the borrowing under the Agreement or through a bond issue, as applicable to the tenure of loan/bond would be treated as the approved rate of interest for the purpose of lower withholding tax rate of 5%.

Approval Route

Any long-term infrastructure bond issue which satisfies the other conditions but is not covered under the ECB Regulations would be approved by the GOI on a case-to-case basis. The bond issuer may, in that case, obtain specific approval by making an application to Member (IT), CBDT with relevant details of the purpose, period and rate of interest.

Comments

This Circular provides certainty and clarity to taxpayers who are seeking to avail relief of lower tax and withholding rates on the specified borrowings in foreign currency. The Circular also clarifies that the benefit would not be available where any part of the borrowing has taken place prior to 1st July 2012. While the benefit of Section 194LC is meant to be given to monies borrowed during a specified period (1st July 2012 to 30th June 2015), the Circular seems to restrict benefit to those cases where no part of the borrowing should have taken place under the relevant agreement before 1st July 2012. While it is not very clear, one may need to explore routes of fact specific approval if any of general conditions are not satisfied.

Tax Residency Certificate ('TRC')

To clarify on the India-Mauritius Double Taxation Avoidance Agreement (DTAA) controversy, CBDT then issued a Circular² in year 2000 stating that the Mauritius TRC issued by the Mauritius Tax Authorities

should be regarded as sufficient evidence of treating a person to be tax resident of Mauritius as well as the beneficial ownership to be in Mauritius and that, such companies were entitled to claim treaty benefits. The validity of such Circular has been upheld in various judgements³.

Till recently, there were no specific requirements under the Act to grant tax treaty benefits to a NR taxpayer on the basis of TRC. However, FA 2012 introduced provisions in the Indian Tax Laws requiring nonresidents ('NRs') to furnish a TRC, as obtained from the Government of the country of their residence containing prescribed particulars to avail the benefit of any DTAA. FA 2012 has introduced Sections 90(4) and 90A(4) with mandating furnishing of TRC with prescribed particulars in order to avail treaty benefits.

Section 90(4) reads as below:

"An assessee, not being a resident, to whom an agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate, containing such particulars as may be prescribed, of his being a resident in any country outside India or specified territory outside India, as the case may be, is obtained by him from the Government of that country or specified territory"

Such a mandatory requirement of TRC is introduced in the Act to ensure that DTAA benefits are available only to residents of a particular country and prevent residents of a third state from claiming DTAA benefits. Such practice is in lines with tax laws in various jurisdictions like UK, US, Japan, Spain, China, Mexico, etc.

On 17th September 2012, the CBDT issued a Notification⁴ introducing the Rules prescribing the

The Rules prescribing details to be included in TRC **were long awaited and provide various clarifications.**

The details, as prescribed, include details and **certification about the residential status of the NR from the Government of the country of its residence. The Forms prescribed for residents may provide guidance for enabling the NRs to comply with TRC obligation.**

² Circular No. 789 dated 13th April 2000

³ UOI Vs. Azadi Bachao Andolan (263 ITR 706); Universal International Music BV [2011-TII-22-ITAT-MUM-INTL]; Praxair Pacific Limited, Mauritius [326 ITR 276]; E*Trade Mauritius Ltd Vs. ADIT & Others [324 ITR 1]

⁴ Notification No.39/F.No.142/13/2012-SO (TPL)

format of application and procedure for obtaining TRC.

Date of applicability

Based on the reading of Explanatory Memorandum, Notes to Clauses as also well settled principles of applicability and harmonious reading of law as in force on the first day of assessment year, it is possible to construe that such TRC provisions will apply from AY 2013-14 (i.e. FY 2012-13) for recipient of income. However, the issue on the date of applicability cannot be considered to be free from doubt.

Rules relevant for obtaining TRC by NRs

The NRs are required to obtain a TRC duly verified by the Government of the country of which the NRs claim to be residents for the purposes of tax.



There still remain various issues/practical challenges that may arise while obtaining such TRC so as to **enable obtaining the benefits under the DTAA. It is possible that the Country of Residence (COR) of NR already has prescribed procedure for making application requesting for TRC. The procedure may include standard form in which the taxpayer may need to make the application as also the form in which the tax authorities would issue TRC. The tax authorities of overseas jurisdictions may not be willing to make any deviation from their procedure. What would be the implications in such a scenario or what route would the NR need to resort to in such a scenario?**

The Rules do not specify any standard format in which TRC needs to be obtained by the NRs. The Rules prescribe that TRC obtained by the NR should contain the following information:

- ▶ Name of the taxpayer;
- ▶ Status (individual, company, firm etc.) of the taxpayer;
- ▶ Nationality (in case of individual);
- ▶ Country of incorporation or registration (in case of others);
- ▶ The taxpayer's tax identification number (TIN) in the country of residence. In case TIN is not available, then, a unique number on the basis of which the person is identified by the Government of the country;
- ▶ Residential status for the purposes of tax;
- ▶ Period for which the certificate is applicable; and
- ▶ Address of the taxpayer for the period for which the certificate is applicable.

Rules relevant for furnishing TRC by residents in India

In order to obtain TRC, a resident taxpayer needs to make an application in prescribed Form 10FA to the Tax Authority of India. The Tax Authority, on receipt of such application and being satisfied in this behalf, is required to issue a TRC in respect of such resident taxpayer for which also a separate Form 10FB is prescribed.

In addition to the particulars as stated above in case of the NRs, the resident taxpayers are required to submit the details in the application form about the basis on which the status of being tax resident in India is claimed, the purpose of obtaining TRC, the period for which TRC is requested, the address during the relevant period, and the PAN/TAN number (if applicable). The resident taxpayer also needs to attach documents supporting its claim of being a tax resident of India.

The form of TRC as issued by the Tax Authority confirms tax residence of a person in India. In addition, it provides details of the resident taxpayer's name, status, PAN and address during the period of TRC.

Implications on NR who is the recipient of income

- ▶ TRC though essential is not sufficient for availing benefit of Treaty. The judicial precedents and the Explanatory Memorandum suggest that, it would not prevent the tax department from making further enquiries as to the satisfaction of conditions of treaty. TRC can be ignored if the treaty is abused

for the fraudulent purpose of evasion of tax. The tax department may not be prevented from making enquiries about determining fulfillment of treaty conditions.

- The obligation of obtaining TRC under Section 90(4) may apply to a person who is resident as per ITA and turns a treaty resident of the other country due to tie breaker rule of the applicable DTAA.

Comments

The Rules prescribing details to be included in TRC were long awaited and provide various clarifications. The details, as prescribed, include details and certification about the residential status of the NR from the Government of the country of its residence. The Forms prescribed for residents may provide guidance for enabling the NRs to comply with TRC obligation.

Issues under consideration/Practical challenges:

However, along with such clarifications brought in by such Notification, there still remain various issues/practical challenges that may arise while obtaining such TRC so as to enable obtaining the benefits under the DTAA. Following are the various open issues/practical challenges that may need addressal/clarifications from the tax authorities:

- It is possible that the Country of Residence (COR) of NR already has prescribed procedure for making application requesting for TRC. The procedure may include standard form in which the taxpayer may need to make the application as also the form in which the tax authorities would issue TRC. The tax authorities of overseas jurisdictions may not be willing to make any deviation from their procedure. What would be the implications in such a scenario or what route would the NR need to resort to in such a scenario?
- What would be the implications/safe-guard options available to NR in case TRC is not furnished by the tax authorities of overseas jurisdiction despite application by the payee?
- Mere presence of TRC would not dilute rigor of provisions of Section 206AA and the same would continue to govern irrespective of furnishing of TRC by an NR.
- Can a view be taken that Section 90(4)/90A(4) has no relevance to withholding tax obligation or has Section 90(4) to be interpreted to mean that it applies as equally to withholding tax provisions and the benefit of treaty can be considered by



payer for the purposes of withholding tax only if condition of Section 90(4) is fulfilled?

- The Rules in respect of such TRC provisions were notified on 17th September, 2012 and the date of effect is stated to be 1st April, 2013. Accordingly, whether the same would be applicable for transactions entered on or after 1st April, 2013 or would be applicable during assessment year 2013-2014?

Also, whether such provisions will be applicable to transaction triggering withholding tax liability before such Rules were notified (i.e. TRC provisions will not apply prior to 17th September, 2012) is another grey area.

- How will such provisions governing TRC be applicable in a scenario wherein an entity is treated as a particular form of legal entity in India, whereas the overseas treaty jurisdiction treats the same as a different form of legal entity (eg. A partnership firm)?
- Whether the presence of TRC would dilute the provisions of Section 206AA or whether the same would continue to govern irrespective of furnishing of TRC by an NR, if PAN is not furnished separately.

The above are practical challenges assessee are likely to face and only clarifications from the tax authorities would help address the above issues/practical challenges that may arise while implementing the new provisions governing the TRC. ■

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals/Newspapers received during September- October, 2012 for the reference of Faculty/Students & Members of the Institute.

1 ACCOUNTING

Accounting for aircraft leasing by Aine Carney. *Accountancy Ireland*, October, 2012, pp.36-39.

The Effect of IFRS Adoption & Investor Protection of Earnings Quality Around the World by Muhammad Nurul Houqe, etc. *The International Journal of Accounting*, Vol. 47, 2012, pp. 333-355.

Financial Reporting: Lease Accounting: What Lies Ahead? by Brian O'Callaghan & Goind Ram Khatri. *Accountancy Ireland*, October, 2012, pp.24-25.

Financial Reporting/International- future of IFRS in U.S. remains unclear after SEC report by Ken Tysiac. *Journal of Accountancy*, September, 2012, pp.28-31.

Forensic Accounting: Increased Economic crime requires professional skepticism by Judith Wylie. *Accountancy Ireland*, October, 2012, pp.54-56.

The future of AASB 1031 materiality by Dean Ardern & Rob Mackay. *Charter*, October, 2012, pp.44-45.

Reporting for reporting entities by Jane Meade. *Charter*, September, 2012, pp.44-45.

2 AUDITING

Audit Committee & CEO ethnicity & audit fees: some Malaysian evidence by Shireenjit Johl etc. *The International Journal of Accounting*, Vol. 47, 2012, pp. 302-332.

Audit of smaller entities: a snapshot of special considerations in standards on Auditing by AASB Board. *The Chartered Accountant*, September, 2012, pp.61- 73.

Adding value – a new look audit report by Andrew Stringer. *Charter*, September, 2012, pp.48.

Implementation of Basel III capital regulation in India by Suresh Kumar Agarwal. *The Chartered Accountant*, September, 2012, pp. 99-102.

The Intellectual roots of corporate social Audit by Sujit Kumar Roy. *The Management Accountant*, September, 2012, pp.1024-1031.

Occupy corporate governance by John Lorinc. *CA Magazine*, Oct. 2012, pp.18-23.

Social Audit: How do we analyze it ? by Arindam Ghosh & Asit Gope. *The Management Accountant*, September, 2012, pp.1040-45.

Social audit – a well- Rejeared LIP-Service by Paresh Chattopadhyay. *The Management Accountant*, September, 2012, 1020-1023.

Systems audit of GRC using COBIT 5 by A. Rafeq. *The Chartered Accountant*, September, 2012, pp.103-7.

3 ECONOMICS

Corporate debt restructuring – issues & way forward by K.C. Chakrabarty. *RBI Bulletin*, September, 2012, pp. 1589-98.

Economic & Financial developments in Uttarakhand by Deepak Mohanty. *RBI Bulletin*, September, 2012, pp.1645-54.

Indian payment & settlement: systems responsible innovation & regulation by Duvvuri Subbarao. *RBI Bulletin*, September, 2012, pp. 1577-84.

Institutional analysis to understand the growth of microfinance institutions in West African Economic & monetary union by Arvind Ashta & Ndeye Salimata Fall. *Corporate Governance*, Vol.12/4, 2012, pp.441-459.

Measuring illegal outflows from the Indian Economy: some methodological issues by Arun Kumar. *Eco. & Pol. Weekly*, September, 29, 2012, pp.71-73.

Turmoil in global Economy: the Indian perspectives by Harun R. Khan. *RBI Bulletin*, September, 2012, pp.1613-27.

4 LAW

Cases of oppression & mismanagement by K. S. Ravichandran. *Chartered Secretary*, September, 2012, pp.1127-33.

5 LIBRARY SCIENCE

Collection management of e-books: a Developing country perspective by Abdul Waheed. *World Digital Libraries*, Vol.5/1, pp.37-49.

An efficient approach for e-content management & delivery in DigitalLibrary by A. K. Mandal & Utpal Roy. *World Digital Libraries*, Vol.5/1, pp. 1-10.

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6 MANAGEMENT

Corporate Governance & sustainability Dr. M. Veerappa Moily address at IOD'S. *Quality Times*, September, 2012, pp.8-10.

Corporate social responsibility by Sheila Killian. *Accountancy Ireland*, Oct. 2012, pp. 30-31.

Cost Management in Sri Lanka: A case Study on volume, activity & time as cost drivers by Janek Ratnatunga etc. *The International Journal of Accounting*, Vol. 47, 2012, pp.281-301.

Developments in Management Accounting by Michael Fraser. *Journal*, September, 2012, pp.42-43.

ERM: Where to go from here by Kenneth A. Merchant. *Journal of Accountancy*, Sep. 2012, pp.32-37.

Food Management in India by A. Manoharan & V. Padmanabhan. Facts for You, September, 2012, pp.41-43.

Keeping your cool under pressure by Merge Gupta-Sunderji. *CGA Magazine*, September- October, 2012, pp.12-13.

A New Era of Development: The Changing Role & Responsibility of Business in Developing Countries by Joris-Johann Lenssen & L. N. V. Wassenhove. *Corporate Governance*, Vol.12/4, 2012, pp.403-413.

Novel linkages for development: corporate social responsibility, law & governance: exploring the Nigerian petroleum industry bill by Adaeze Okoye. *Corporate Governance*, Vol.12/4, 2012, pp.460-471.

Re-thinking the role of the corporate sector in international development by Peter Davis. *Corporate Governance*, Vol.12/4, 2012, pp.427-440.

Practice Management: Coping with pressure on fees by Giancarlo Attolini & Paul Thompson. *Accountancy Ireland*, October, 2012, pp.32-35.

7 TAXATION & FINANCE

Deductibility of Advance Payments – section 43B by Pradip Kapasi, etc. *BCAJ*, September, 2012, pp.47-52.

Definition of Service, Charge of Service Tax & Negative List by Rajkamal Shah. *BCAJ*, September, 2012, pp.9-16.

International Taxation: Digest of Recent Important Global Tax Decisions by Mayur B. Nayak, etc. *BCAJ*, September, 2012, pp.53-55.

2012 Tax software survey by Paul Bonner. *Journal of Accountancy*, September, 2012, pp.23-28.

Vat on Builders & developers in the state of Maharashtra – part II by Govind G. Goyal. *BCAJ*, September, 2012, pp. 17-23. ■



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Paying Tax Soon to be a Fundamental Duty

Pay tax not just to relax, as the Income Tax department says, but also to contribute to nation building as part of our soon-to-be fundamental duty.

The finance ministry plans to propose that paying tax be made a fundamental duty, hoping the move will increase compliance in a country where less than 3% pay tax. A cabinet note could be moved soon. "There are various fundamental duties laid down for citizens in the constitution...We are looking at including paying taxes the list in the same way," a finance ministry official said. India's tax-to-GDP ratio, already one of the lowest among its peers, fell to 10.1% in 2011-12 from a high of 11.9% in 2007-08. This is largely blamed on the low tax base perforated by multiple tax exemptions. Tax experts say this is a symbolic gesture aimed at increasing awareness about why paying taxes is necessary, like so many other fundamental duties.

(Source: <http://www.economictimes.com>)

Ministry of Corporate Affairs' Steps for XBRL Filings

MCA has released final version of the MCA XBRL Validation Tool and XBRL Filing Manual V2.0. Final

Validation Tool and subsequent XBRL filings of financial statements for F.Y. 2011-12 have been enabled on MCA website with effect from 14-10-2012. Based on the feedback received from various stakeholders, the C&I taxonomy has been updated. The business rules have also been revised based on the updated taxonomy. For details visit <http://www.mca.gov.in/XBRL/index.html>.

(Source: <http://www.business-standard.com/india/>)

Retrospective Tax Issues Could be Resolved before Budget: FM

In what may provide a further boost to investor sentiments at home and abroad, the Central Government, recently maintained that there was

no reason why addressing issues pertaining to retrospective amendment of income-tax laws should wait till the budget session in February next year. To a query at the Economic Editors Conference in New Delhi on whether a decision on the retrospective tax issue would have to wait till the budget for the next fiscal, Finance Minister P. Chidambaram said: *Once we take a view [on the Shome Committee report], I see no reason why we should wait for the budget session. We should move whatever changes have to be brought about in Parliament*

as early as possible. The Parthasarathi Shome committee was asked to recommend measures to deal with retrospective amendment of income-tax laws and suggest ways of treating taxation cases which involve indirect transfer of Indian assets, of the likes of the Vodafone-Hutchison deal in 2007. Among other things, the Shome panel was also told to examine taxation of non-resident transfer of assets where the underlying asset is located within the country in the context of FIIs (foreign institutional investors) operating in India purely for portfolio investment and all non-resident investors. The committee submitted its final report to the Finance Minister recently.

(Source: <http://www.thehindubusinessline.com/>)

Government Taking Steps to Revisit Direct Taxes Code, says Shome

The Government has initiated a process of taking the direct taxes code (DTC) back to the drawing board again.

Parthasarathi Shome, economist and expert on the issue of taxation has said that a detailed consultation process had begun recently. At an interactive session at the MCC Chamber of Commerce and Industry, Shome said: *The world has changed since the DTC was first mooted. I have suggested to the Finance Minister that we need to go back to the drawing board. The changed dynamics had made it obligatory for the Government to re-consider the whole range of tax and related issues.* The consultations with lawyers, industry and academia have begun. It would require effort, manpower and time, he said without going into the specifics. In August, Union Finance Minister P. Chidambaram had indicated that the DTC required a fresh look.

(Source: <http://www.ndtvprofit.com>)

Nearly 29,000 Tax Defaulters Owe ₹3,770 Crore to Government

Tax defaults by nearly 29,000 taxpayers aggregate to ₹3,770 crore, according to a tax department's analysis of e>Returns filed in 2012-13.

Asking these tax-payers to voluntarily come forward and pay their dues immediately, the Central Board of Direct Taxes (CBDT) said the failure to comply with the advice will attract penal action. "Analysis of e-filed returns filed in the current financial year reveals that nearly 29,000 taxpayers, where committed tax payable was in excess of ₹50,000, have defaulted on the payments aggregating to approximately ₹3,770

crore," CBDT said in a statement. The tax department further said, "It is also brought to the notice of such taxpayers that default in payment of self assessment tax may invite penal consequences". The government has made it mandatory for individuals with income of over Rs 10 lakh to file their tax returns for 2011-12 electronically. Also, most of the companies are required to furnish the returns electronically. The Income Tax Department had received 1.64 crore e-returns in 2011-12 financial year. As on 31st March, 2012, there were 19,684,592 tax payers who had registered for e-filing.

(Source: www.timesofindia.com)

India's Overall Mergers and Acquisitions' Activity Slows Down

India's overall mergers and acquisitions' activity slowed down in the first nine months this year. The value of mergers & acquisition (M&A) deals involving India reached \$26.4 billion, a 24% decline from the first nine months of 2011, due to the absence of mega transactions. Third quarter volume this year totalled \$8.3 billion, up 57% from second quarter of 2012, and a 17% increase from third quarter of 2011, says an analysis by Thomson Reuters. The average M&A deal size for disclosed deals declined to \$74.5 million year-to-date, as compared to \$85.6 million in the same period last year, as majority of India's M&A transactions fell below \$1 billion. Domestic M&A stood at \$9.7 billion, up 50.9% compared to the first nine months of 2011, the highest year-to-date volume since 2010 (\$10.9 billion). The bulk of domestic activity focussed on the financial sector (23%) with \$2.2 billion, up 18% from the first nine months of 2011. Domestic acquisitions in the materials sector reached \$1.9 billion, up 123% from the same period last year.

(Source: <http://www.financialexpress.com/news>)

Government Hopeful of Meeting Tax Targets

The Centre has said it was hopeful of achieving the tax collection targets despite the global economic slowdown and its impact on the domestic economy. The government has fixed direct tax target of ₹ 5.70 lakh crore for the current fiscal, the indirect taxes, comprising customs, excise and service tax collection target at ₹ 5.05 lakh crore. We are hopeful of meeting both, the direct and indirect tax collection targets for the current year, Revenue Secretary Sumit Bose said. Tax

officials are concerned it may not be easy to achieve growth in taxes at a time when manufacturing sector growth has slipped below one per cent and farm sector is also not showing any encouraging signs impacting overall economic activity.

(Source: *Press Trust of India*)

Exempt QFIs from Filing I-T Returns: SEBI to Government

When New Delhi opened the doors some months ago to allow foreign individuals and institutions to directly trade in Indian stocks, it was widely felt that money would rush in with rich investors around the globe waiting in the wings to step in. But it did not happen that way. Now, capital market regulator SEBI has proposed that laws should be tweaked to make it easier for offshore individual investors to put money in listed stocks. After discussing the matter with experts in security market regulations and custodian banks, the regulator has, in a note to the finance ministry, suggested, among other things, that 'qualified foreign investors' - better known as QFIs - should be assured of tax certainty and exempted from filing income-tax returns. "If it's clearly spelt out that the money QFIs make from trading is capital gain and not business income, custodians may be encouraged to withhold tax," said a person familiar with the proposal. For the QFI regime to take off, custodians will have to take the responsibility of deducting 15% tax on short-term capital gains on investments made by QFIs. Custodians do not want to find themselves in a position where the Income Tax department claims 30% tax well after funds have been remitted to a foreign investor who has let the custodian withhold 15% tax.

(Source: <http://www.financialexpress.com/news>)

India Better than China and Russia in Economic Freedom among BRICS

Among BRIC Peers, India ranks better than China and Russia in economic freedom as computed through the Economic Freedom Index or EFI. This index from Heritage Foundation is a measure of how far an economy has gone in the direction of free markets and small government. However, while India has improved its relative competitiveness in education, primary healthcare and infra, it still has a long way to go to improve its institutions and goods market efficiency. But the recent reforms measures freeing foreign investment in retail and aviation could change India's score for the better.

(Source: <http://www.economicstimes.com>)

AICPA Book Urges Firms to Tie Pay to Performance

According to a new book published by the American Institute of CPAs, accounting firms need to fix their flawed compensation policies by linking pay to performance. Firms should be taking a holistic approach to compensation that explicitly ties pay to performance, the book argues. Systems that do reward star employees, ensure they stay in the fold, and make the firm more attractive to talented recruits. Compensation being a firm's largest expenditure makes it critical to make sure the money gets spent productively. Few firms do a good job managing pay policies and over 50% of firm owners are dissatisfied with their current compensation system. Most firms do not have written goals in place that link back to bonus compensation. Using an impromptu rewards system often guarantees haphazard results. A compensation overhaul is not a one- or two-year process, and requires a great deal of one-on-one communication between firm leaders and employees. Some staffers may not accept the changes and will leave the firm. This is the second book on compensation by the authors.

(Source: <http://www.accountingtoday.com/>)

Measurement of the Fair Value of Unquoted Equity Instruments within the Scope of IFRS 9 Financial Instruments

As part of the IFRS Foundation Education Initiative, the IFRS Foundation staff is developing, with the assistance of a valuation expert group, educational material to support IFRS 13 *Fair Value Measurement*. The material will cover the application of the principles in IFRS 13 across a number of topics. These topics will be published in individual chapters as they are completed. The IFRS Foundation staff, very recently, published a draft of the first chapter of this educational material entitled *Measuring the fair value of unquoted equity instruments within the scope of IFRS 9 Financial Instruments*. Comments are not being sought on the draft, which is being made available to allow interested parties to familiarise themselves with the document. The draft will remain on the website until the end of November 2012. The IFRS Foundation intends to publish a final version of the document in December 2012. The content of which will be non-authoritative.

(Source: <http://www.ifrs.org/>)

AICPA Highlights Importance of Succession Planning

According to a new survey by the American Institute of CPAs, nearly 80% of multiple-partner CPA firms

believe succession planning will become a major issue for their firms. The AICPA found that 79% of firms with multiple owners said they expect it to be a significant issue in their business over the next decade. Despite a rough economy that has focused attention on more immediate, bottom-line concerns, more firms are making concrete plans to accommodate the retirement of senior leaders or the sale of practices than four years ago, according to the 2012 PCPS Succession Survey, jointly conducted by the AICPA and the Succession Institute, LLC. There's still a great deal of work to be done, however, particularly at solo practices, only 6% of which have practice continuation agreements to permit the temporary takeover by another sole proprietor in the event of the owner's death or disability. Ownership in a firm is often a CPA's biggest financial asset, so it is essential to establish exit strategies that maximise the value of that stake when retirement looms. One place to start is the Succession Planning Resource Center, a one-stop information clearinghouse for members of AICPA's Private Companies Practice Section. The survey is broken into separate reports for multi-owner firms and sole proprietors (both sole owner firms and true sole practitioners), and includes best practices for succession planning in each category.

(Source: <http://www.accountingtoday.com/>)

IPSASB Publishes Consultation Paper on IPSASs and Government Finance Statistics Reporting Guidelines

The International Public Sector Accounting Standards Board (IPSASB) recently released for comment the Consultation Paper, *IPSASs and Government Finance Statistics Reporting Guidelines*. The Consultation Paper was developed by a task force that includes representation from both the IPSASB and the statistical community, including international organisations such as the International Monetary Fund and Eurostat, and national representatives from Brazil, the United Kingdom, South Africa, and Switzerland. The Consultation Paper aims to help reduce differences between Government Finance Statistics (GFS) reporting guidelines and International Public Sector Accounting Standards (IPSASs). It provides an overview of differences between GFS reporting guidelines and IPSASs, and identifies opportunities to reduce these differences for consideration by either the IPSASB or the statistical community. It also aims to support governments' use of integrated financial information systems that can generate both IPSAS financial statements and GFS

reports. Using a single integrated financial information system can result in significant benefits, including reduction of GFS report preparation time, costs, and effort. Improvements are also likely to the source data for GFS reports, with flow-on benefits in terms of report quality. Use of audited financial reporting data prepared on an accrual basis will substantially improve the data used for the preparation of GFS reports and therefore for policy making. The use of high-quality upstream data is a matter of urgency, considering the issues which led to the sovereign debt crisis. This Consultation Paper shows that there is further scope to reduce differences between IPSASs and GFS reporting guidelines, with benefits to the users of both types of reports. It also proposes practical ways that governments can improve their management of such differences, so as to efficiently generate data for both their IPSAS financial statements and GFS reports from the same integrated financial information system.

(Source: <http://www.ifac.org/news-events/>)

IFAC and the IIRC Sign MoU on Cooperation, Collaboration for IR

In recognition of their shared vision for the evolution of corporate reporting, the International Federation of Accountants (IFAC) and the International Integrated Reporting Council (IIRC) have signed a Memorandum of Understanding (MoU) to promote cooperation, coordination, and alignment in developing an international framework for Integrated Reporting (IR) of sustainable business practices. IR is the means by which companies communicate how value is created and will be preserved over the short, medium, and long term. This information is used principally by investors to support their capital allocation decisions. It involves processes, one result of which is communication, most visibly through a concise "integrated report," about the way in which an organisation's strategy, governance, performance, and prospects lead to the creation and preservation of value. IR represents an evolution in corporate reporting, building on recent developments in financial and non-financial reporting. Through this MoU, IFAC and the IIRC recognise the opportunities that exist to work more closely together to promote, support, and contribute to the realisation of mutual interests.

IFAC represents 167 professional accountancy organisations around the world, while the IIRC's mission is to create an International Integrated Reporting Framework that provides material information from organisations about their strategy,

governance, performance and prospects in a clear, concise and comparable format. The framework aims to include financial, governance, management commentary and sustainability information in corporate reporting. The IIRC hopes to encourage more corporate report preparers to use Integrated Reporting and thereby gain more recognition from both standard-setters and investors. Through signing the new agreement cooperating, IFAC and the IIRC also aim to enhance their respective missions and strategic goals.

(Source: <http://www.ifac.org/>)

IAASB Issues Revised Standard on Review Engagements

In September, the International Auditing and Assurance Standards Board (IAASB) released International Standard on Review Engagements (ISRE) 2400 (Revised), *Engagements to Review Historical Financial Statements*. The revised standard is intended to help meet increasing market demand for assurance services other than audits that meet the needs of small- and medium-sized entities (SMEs) and users of their financial information. It provides a globally accepted benchmark for undertaking review engagements, promotes better clarity for users about the nature of a review and the level of assurance it provides, and should fill an emerging need in jurisdictions that currently do not have national standards addressing reviews of financial statements. The revised standard is effective for reviews of financial statements for periods ending on or after 31st December, 2013.

(Source: <http://www.ifac.org/>)

Tool Helps Audit Committees Evaluate Auditing Firms

The Center for Audit Quality and several corporate governance organisations and companies have created a new online auditor evaluation tool to help the audit committees on corporate boards evaluate their auditing firms. The new tool comes in the form of a PDF file containing a questionnaire. It is intended to assist audit committees in performing an annual evaluation of the external auditor in order to make an informed recommendation to the board whether to retain the auditor. The tool contains sample questions to gauge the quality of services and the sufficiency of resources provided by the auditor, communication and interaction with the auditor, and the auditor's independence, objectivity and professional scepticism. It also provides a sample form for obtaining input from company personnel.

(Source: <http://www.accountingtoday.com/>)

Non-Compliance with Reporting Obligations observed by the Financial Reporting Review Board relating to AS 11 'The Effects of changes in Foreign Exchange Rates'

With a view to apprise the members of the Institute and others concerned about the major non-compliances observed during the review, the Financial Reporting Review Board (FRRB) compiles such non-compliances from time to time and publishes the same in the Journal of the Institute. Continuing the same practice, published below are some of the common non-compliances observed by the Board during the review of general-purpose financial statements of certain enterprises and auditors' reports thereon, in relating to AS 11, 'The Effects of changes in Foreign Exchange Rates':

1. Some enterprises state in their accounting policies that foreign currency transactions relating to purchases and sales of goods and services are translated at the rate prevailing at the time of settlement of the transactions. It is contrary to the requirement of AS 11. It may be noted that as per the paragraph 9 of AS 11, the foreign currency transactions should be recorded by applying the exchange rate prevailing on the date of the transaction, i.e. when purchase or sale have taken place rather than translating the same at the rate prevailing at the time when such transactions are settled.
2. Different enterprises have adopted different accounting policies relating to revenue recognition on export sales or services. Some of them state as follows:
 - Sales include realised exchange fluctuation on exports.
 - Service charges for transportation of shipments of a courier company are recognised as income, when shipments are manifested and represent the amount invoiced, net of service tax, exchange fluctuation and all discounts and allowances.

It was observed that amount of sales/service charges have been adjusted for exchange fluctuation. Considering the definition of 'revenue' as given under paragraph 4.1 of AS 9 and requirements of paragraph 13 and 40(a) of AS 11, it was viewed that foreign exchange gain or loss is independent of sales or services transaction. Accordingly, any gain or loss, arising due to exchange fluctuation should be shown separately in the profit & loss

account instead of adjusting the same against the revenue.

3. The accounting policy on foreign currency transactions and additional disclosures made in pursuance to Part II of Schedule VI to the Companies Act indicate that often the companies are involved in importing raw materials, exporting goods and incur heavy expenditures involving foreign currency. However, neither profit and loss account nor notes to accounts of such enterprises discloses any such gain or loss on account of exchange differences. It was observed that as the company was engaged into foreign currency transactions it should have incurred exchange gain or loss and accordingly, non disclosure of the same is against the requirements of paragraph 40(a) of AS 11. In case, if there is nil effect due to foreign exchange gains in some transactions being set off against the losses of other transactions, then it is viewed that such effect should be disclosed separately by way of notes to accounts rather than omitting the same from the financial statements.
4. While the accounting policies relating to foreign currency transactions of certain enterprises states that "Foreign currency assets and liabilities at the yearend are recognised at the exchange rates prevailing on the balance sheet date", other enterprises states that "Current assets and liabilities denominated in foreign currency as at the Balance sheet date are converted at exchange rate prevailing on balance sheet date except in case of short term loans." It is viewed that as per paragraph 11(a) of AS 11, only assets and liabilities in the nature of monetary items should be converted at the closing exchange rate and not all the foreign currency assets and liabilities which may include non-monetary assets/liabilities as well. Further, it was also observed that the latter accounting policy with regard to short-term loans is also not in line with AS 11. Being monetary items, the short-term loans in foreign currency should also be translated at the exchange rate prevailing on the balance sheet date rather than using any other alternate rate until or unless such rate meet the requirements of paragraph 11(a) of AS 11. ■

Election to the Twenty Second Council and Twenty First Regional Councils

“SINGLE TRANSFERABLE SYSTEM OF VOTING – AN APPRAISAL”

The next elections to the Council and Regional Councils of the Institute will be held on 7th and 8th December, 2012 at Ahmedabad, Bangalore, Chennai, Delhi/New Delhi, Gurgaon, Hyderabad, Jaipur, Kolkata, Mumbai and Pune and on 8th December, 2012 at all other places where polling booths have been set up. The members especially those who are new would, naturally, be interested in knowing how the “single transferable vote” system under which the elections are held operates. The broad details of the system are given below:-

- (1) Each voter has only one vote for election to the Council and one vote for election to the Regional Council. The voter, in order to cast his vote, shall place on his ballot paper the number 1 (in Arabic or Roman numerals, or in words) against the name of the candidate for whom he desires to vote, and may, in addition, place on his ballot paper the number 2, or numbers 2 and 3, or the numbers 2, 3 and 4 and so on opposite the names of other candidates in the order of his preference. A voter has as many preferences as the total number of candidates from that Regional Constituency/Regional Council. However, for the purpose of facilitating the process of election by avoiding fractions, each valid vote is notionally considered to be of the value of 100 so that if a part of the vote has subsequently to be transferred from one candidate to another (next in the order of preference), it does not become necessary to resort to fractions, which would make the counting cumbersome.
- (2) At the time of counting of votes, the covers containing the postal ballot papers are opened and the voting papers are separated. To these are added the voting papers taken out from the ballot boxes used at different polling booths. The ballot papers are, in the first place, examined and invalid papers are rejected and excluded from the process of counting. The total value of the valid votes is then calculated by multiplying the number of such votes by 100, as mentioned

above. This total value is then divided by the number of vacancies increased by one, and the quotient increased by one gives the value that is required for any candidate to get elected. This figure is termed as the “quota”. Thus, if in a constituency, eight members are to be elected and there are 4,500 valid votes, the quota will be:-

$$\frac{4500 \times 100}{8 + 1} + 1 = 50,001$$

In other words, a candidate should get 50,001 votes to get elected. The addition of one to the quotient is explained by the fact that if it is not done, there is a possibility that more candidates may get elected than the number of vacancies.

The First Count

- (3) After working out the “quota”, the votes are sorted out and divided into parcels according to the candidates for whom the first preference is marked on the respective votes. The value of the first preference votes received by each candidate is then worked out and the process is known as the first count.
- (4) All the candidates, the value of whose votes is equal to or greater than the quota, are declared elected. The votes of the candidates who obtain exactly the quota are set aside as there is no question of transfer of any surplus from those votes.

Transfer of Surplus and Subsequent Counts

- (5) Then starts the process of transfer of the surplus values of the votes of those candidates who have secured more than the quota at the first count. Their cases are taken one by one in the strict order of the value of their votes, the largest surplus being dealt with first. In case no candidate obtains the quota in the first count, exclusion of candidates is resorted to (see para 12).

- (6) The votes of the candidate whose surplus is to be transferred are scrutinized and all those votes which are capable of being transferred (viz., on which the next preference is marked for a candidate, who has not already been elected, or if the next preference is marked for an elected candidate, the preference marked next to that and so on) are separated. The remaining votes which are not capable of further transfer are set aside and treated as exhausted.
- (7.1) Before the votes are transferred to the candidates marked next in preference, a new value of each vote is worked out. This value is arrived at by dividing the total surplus of the candidate by the number of votes to be transferred, the remainder being ignored, subject to the condition that the new value does not exceed the original value at which the vote was received by the candidate whose surplus is being transferred (viz., 100 in the case of first preference votes).
- (7.2) Thus, if after the first count, a candidate has a surplus of 2,962 and there are 65 votes in his parcel which are capable of being transferred, each vote will be transferred at the new value of $(2,962 \div 65) 45$. The remainder of 37 [$2962 - (65 \times 45 = 37)$] is treated as loss in value.
- (8) The votes under transfer are then divided into parcels according to the candidates to whom they are to be transferred. The parcels of the transferred votes are also added as sub-parcels to the parcels of original (viz., first preference) votes of the candidates concerned. The total value of the votes going to a particular candidate is obtained by multiplying the new value of each vote by the number of votes going to him and is added to the value of his original votes. The result of the transfer is then struck out and the candidates who obtain at this stage the "quota" are also declared as elected.
- (9) This process of transfer of the surpluses of the elected candidates continues till the required number of candidates are elected or till all the surpluses have been dealt with.
- (10) As already stated, the surpluses are transferred in the strict order of their value, but all surpluses arising at an earlier count are disposed of before the surpluses arising at subsequent counts are taken up.
- (11) In the case of transfer of surplus of a candidate

who was not elected at the first count but only as a result of transfer of some votes to him at a subsequent count, since the surplus arises out of the last sub-parcel of his votes, it is only the last sub-parcel that is scrutinized and the unexhausted votes contained therein which are capable of further transfer are revalued, in the manner stated in para 7.1 and 7.2 above, and then transferred to the candidates marked next in order of preference. If there is no vote in the last sub-parcel which is capable of further transfer, the whole of the surplus is treated as loss in value.

Exclusion of Candidates

- (12) When there is no surplus left for transfer and the number of candidates elected is less than the number of seats, the exclusion of candidates is resorted to. The process of exclusion comprises the transfer of votes (both original and transferred) of the candidate to be excluded to the candidates marked next in order of preference and who have not already been elected or excluded.
- (13) The candidate, the value of whose votes is lowest at the time of exclusion, is first excluded.
- (14) The parcels and the sub-parcels of the votes of the candidates to be excluded are taken up one by one in the order in which they were received and the votes contained in each parcel and sub-parcel which are capable of further transfer are transferred to the candidates marked next in order of preference at the same value at which they were received by him. Each parcel and sub-parcel is dealt with separately. It is only after the parcel and all the sub-parcels have been duly transferred that count is completed.
- (15) If, as a result of transfer of votes of a parcel, or a sub-parcel, any other candidate secures the quota and is elected, the count in progress is completed but no further votes are transferred to the elected candidate from the subsequent sub-parcels. The following example would make it clear. Let us suppose that the votes of candidate "A" who is to be excluded consist of the original parcel and two sub-parcels subsequently transferred to him. Suppose as a result of the transfer of votes contained in the

original parcel, another candidate “B” gets elected. Then the remaining two sub-parcels will be dealt with one by one but no vote there from will be transferred to candidates “B” and such of the votes as would have normally gone to “B” will now be straightaway transferred to the candidates marked next to “B” in the order of preference on the respective votes.

- (16) The process of exclusion continues till the requisite number of candidates has been elected or the number of candidates left in the field (i.e., the continuing candidates) is equal to the number of vacancies still unfilled.
- (17) If, as a result of any exclusion, another candidate gets the quota and is thus elected, no further exclusion is done till the surplus of the elected candidate has been transferred and it becomes necessary thereafter to again resort to exclusion. In other words, a candidate is to be excluded only when there is no surplus to be transferred.
- (18.1) If, at any time during the course of counting of votes, the number of candidates remaining in the field is reduced to the number of vacancies not yet filled, all those candidates are declared

as elected without resorting to any further calculations.

- (18.2) It, therefore, follows that a candidate may be elected even though he does not get the required quota.
- (19) If at a particular time only one vacancy is left unfilled and the value of votes (both original and transferred) of anyone continuing candidate at that time exceeds the total value of votes of all the other candidates left in the field, including the surplus of any candidate not yet transferred, that candidate is declared as elected.
- (20) When only one vacancy remains unfilled and there are only two candidates left in the field and the value of their votes is equal, then the one with lower value at the first count, or, in case of equality of values at the first count, also, the one with the lower value at the earliest count at which they had unequal values, is treated as excluded and the other candidate is declared as elected. In case of equality of votes at all counts, one of them is excluded by draw of lots and the other is declared as elected. ■

ICAI Invites Applications for the Position of Secretary, Technical Director and Director (Taxation)



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Premier professional body set up by an Act of Parliament)
ICAI Bhawan, Indraprastha Marg, Post Box No. 7100, New Delhi 110 002.

ICAI invites applications from highly competent candidates for the positions of **SECRETARY, TECHNICAL DIRECTOR and DIRECTOR (TAXATION)**

ICAI, the second largest accounting body in the world, set up by an Act of Parliament, is looking for a high profile and multi-faceted personality with leadership qualities, excellent communication, interpersonal and motivational skills for the positions of Secretary, Technical Director and Director (Taxation). This is an EXCELLENT opportunity for high calibre professionals to join a world class accounting organisation and make an impact on the national level.

1. SECRETARY (which is a statutory position) **Location:** New Delhi

ROLE

- To act as the Secretary of the Council of ICAI, which is the governing body managing the affairs of ICAI.
- Largely responsible for furthering the Institute's objectives of promotion and regulation of the Accountancy Profession, by being in constant touch with other statutory/regulatory/professional bodies within and outside India and the Governments and the Society at large.
- As a conceptualist, to sustain and further enhance the image of the profession externally with various Government Ministries/Departments like Ministry of Corporate Affairs, Ministry of Finance, Ministry of Commerce and Industry, Office of the C&AG, Ministry of Law and Justice; Regulators such as RBI, SEBI, IRDA, etc., and Apex Industry Associations.
- To be the external face of ICAI with international and regional/sub-regional professional accounting bodies, such as, IFAC, IASB, IAASB, CAPA, SAFA, etc.

PROFILE

- Brilliant academic career, outstanding track record and also flair for taking up multifaceted challenging assignments.
- Currently occupying a top management/managerial position (directly involved in policy making and formulating strategies) reporting only to the Board of Directors / CEO of the organisation concerned.
- Relevant experience: 20 years or more in any renowned/reputed regulatory/professional/ educational body/institution in the Government, Public or Private Sector.

ditional body/institution in the Government, Public or Private Sector.

- Membership of ICAI with a high first class Degree from a renowned University would be an added advantage. [Condition relaxable in exceptional cases].
- 45+ years (relaxable in deserving cases)

2. TECHNICAL DIRECTOR

Location: New Delhi

ROLE

- Technical Director heads the Technical Directorate which provides support to the Accounting Standards Board, Committee for Implementation of Indian Accounting Standards (IFRS), Committee for Accounting Standards for Local Bodies, Research Committee, Expert Advisory Committee and other assignments relating to providing inputs to the accounting pronouncements issued by the Institute.
- The work includes liaising with the relevant international bodies, such as International Accounting Standards Board and the Governmental and Regulatory Authorities, such as Ministry of Corporate Affairs, Reserve Bank of India, Securities and Exchange Board of India, Insurance Regulatory and Development Authority and other such authorities on accounting matters.
- He/She would act as team manager of the Technical Directorate comprising technical and administrative personnel.

PROFILE

- Essential knowledge and skills required for the incumbent would include expert knowledge of the Accounting Standards in India and IFRSs apart from the other pronouncements, such as Guidance Notes, Opinions of Expert Advisory Committee and other technical literature issued by the ICAI.
- The skills required include application of the aforesaid pronouncements in specific situation with a view to advise the relevant Committees/Board and to draft the relevant pronouncements.

- This would require ability to objectively analyse issues involved in various accounting alternatives and perceive their implications in implementation.
- Chartered Accountant or equivalent with experience of application of Accounting Standards in India and or abroad of 15 years.
- 45+ years (relaxable in deserving cases)

3. DIRECTOR (TAXATION)

Location: New Delhi

ROLE

- The incumbent Director would head the Departments supporting the Committees on Direct Taxes, Indirect Taxes and International Taxation and involve himself in all tasks and assignments relating to formulation of ICAI inputs for submission to various authorities.
- The work includes co-ordination with Governmental and Regulatory Authorities, Industry Associations, Chambers of Commerce, Organisation of Certificate Courses, acting as Faculty/Programme Co-ordinators etc. in Seminars/Conferences/Certificate Course Classes etc.

PROFILE

- Expert knowledge of tax laws including international taxation.

- Ability to interpret and analyse tax laws.
- Chartered Accountant with Post qualification experience of about 20 years involving practical exposure and proven academic contribution.
- 45+ years.

Salary payable for the said positions are currently under revision and hence the same is negotiable, which among others, would seek to protect, to the extent feasible, the current salary drawn by the deserving candidates. Contractual arrangement can also be considered in exceptional cases.

For structured application and other details, please visit our website: <http://www.icai.org>. Interested candidates may e-mail their structured format application for Secretary/Technical Director / Director (Taxation) at seniorpositions2012@icai.org or can send through speed post/courier to the Deputy Secretary, HRD (P) at the above address, superscribing on the envelope "Application for the post of Secretary/ Technical Director/Director (Taxation)" within 15 days.

Advt. No. ICAI/Rectt./08/2012



Appeal to All Members to Contribute Towards CABF

Dear Professional Colleagues,

AN APPEAL FOR CONTRIBUTION TO CABF

I am glad to inform you that ICAI is one of the leading professional body of the world which has established a dedicated endowment fund for Chartered Accountants and their families to provide financial assistance and support during exigency and distress. Chartered Accountant Benevolent Fund (CABF) was established in 1962, and set up by CA members benefiting CA fraternity.

CABF provides financial assistance for maintenance, education, medical treatment or any other similar purpose to necessitous persons of our CA fraternity. It provides monthly assistance to a member or family eligible to receive according to the circumstances and need. Financial assistance in lump sum is also given to the members / widows / relatives in case of accidental death/unnatural death of a member aged below 55 years as well as for medical treatment under specified category.

Indeed CABF has done commendable job by extending benefits to members and their family by releasing a sum of ₹7,04,52,612/-. During last year alone a sum of ₹2,09,21,612/- has been granted to 267 beneficiaries. A sum of ₹63,37,112/- also has been tendered to their members during this year towards lump sum grant for meeting their medical expenses.

CABF generates its corpus from grant of life membership contribution received from the members. A member may contribute ₹2500/- and become Life Member of the fund. Thereafter member may pay annual or voluntary contribution towards the fund.

'Ordinary Members' may pay an annual subscription of ₹500/-. Apart from this any member can subscribe for 'Voluntary Contribution' up to any extent. Annual and voluntary contribution can be paid along with annual membership fee. Alternatively it can be paid separately by local cheque/DD favoring 'CABF of ICAI' to the respective Decentralised offices or Regional offices of ICAI.

All subscription and contribution made towards CABF is eligible for deduction under Section 80(G) of Income Tax Act, 1961.

CABF is under terrible need of fund to meet out increasing demand for financial assistance. Fund scarcity restricts us to fulfill needs of our members. Hence, I earnestly appeal you to contribute generously towards the fund the amount of your contribution will highlight your concern and responsibility towards CA fraternity caring family of deceased member. If a sizeable contribution is received it will be displayed and notified in the CA Journal appropriately.

I anticipate and magnanimous contribution from you and hope you will definitely make it.

With regards,

(CA. Jaydeep Narendra Shah)
Chairman, CABF
President, ICAI

Notification : Examination



The Institute of Chartered Accountants of India

[Set up by an Act of Parliament]

ICAI BHAWAN

Post Box No.7112, ICAI BHAWAN, Indraprastha Marg
New Delhi – 110002

TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA

NOTIFICATION

15th October, 2012

No.13-CA(Exam)/N/2012/II: In partial modification of the Institute's Notification No. 13-CA(Exam)/N/2012 dated 4th July, 2012, it is notified for general information that in view of the Election to the Himachal Pradesh State Legislative Assembly, Group – 1, Paper – 2, Business Laws, Ethics and Communications of Integrated Professional Competence Examination and Group – 1, Paper – 3, Law, Ethics and Communication of Professional Competence Examination scheduled to be held on

Sunday, the 4th November, 2012 at Shimla centre stand postponed and the examination in the said papers shall now be held at Shimla centre on Monday, 19th November, 2012 at the same venue and at the same timings i.e. 2.00 PM to 5.00 PM. Admit Cards already issued would remain valid.

(G. Somasekhar)
Additional Secretary (Examinations)

Annual Report and Audited Accounts of the Institute

63rd Annual Report and Audited Accounts of the Institute for the year 2011-2012

The 63rd Annual Report of the Council and the Annual Accounts for the year 2011-2012 have been published in the Gazette of India and have also been hosted on the website of the Institute – www.icai.org. The same has been emailed to the members whose email ids are on the record of the Institute.

In this connection, members who have not furnished their email ids are requested to provide their email

ids to enable the said report being sent to them also. Further, hard copy of the above Report would also be forwarded to those desirous of the same. Accordingly, members desirous of a hard copy of the above Report may write, giving their membership number and complete postal address, to Shri G. Ranganathan, Deputy Secretary [email : councilaffairs@icai.in]

UNOM-ICAI	UNOM-ICAI	UNOM-ICAI	UNOM-ICAI	UNOM-ICAI	UNOM-ICAI	UNOM-ICAI	UNOM-ICAI	UNOM-ICAI	UNOM-ICAI	UNOM-ICAI
	University of Madras Institute of Distance Education Chepauk, Chennai – 600 005		The Institute of Chartered Accountants of India New Delhi							
JOINT EDUCATION PROGRAMME										
AN OPPORTUNITY TO THE STUDENTS OF INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA TO PURSUE COMMERCE AND MANAGEMENT COURSE(S)										
UNDERGRADUATE COURSES					POSTGRADUATE COURSES					
										
Under the distance education mode the above courses are exclusively meant for qualified Chartered Accountants and also for those who are undergoing Chartered Accountancy Course in ICAI. • Exemptions in appearing from certain subjects in UG/PG examinations will be provided both to the qualified Chartered Accountants and for those who have completed their intermediate / PE II / PCC / IPCC / Final programme. • For eligibility, course fee, application and prospectus (Free of cost) you may visit University of Madras Website www.ideunom.ac.in and / or ICAI website www.icai.org. • Admission for the programme will be made up to 30th November 2012 for the Academic year 2012-2013. For those who are getting admission up to 30.11.2012, examination would be conducted during the month of May / June 2013. • The application form can also be downloaded from the University website www.ideunom.ac.in and / or ICAI website www.icai.org under the heading UNOM-ICAI joint education programme. While submitting the filled in application, a Demand Draft in favour of The Director, Institute of Distance Education, University of Madras payable at Chennai should be enclosed as Registration fee.										
		Duly filled in application along with the enclosures can be sent to.... The Co-Ordinator, Centre for Collaborative Professional Programmes, Room No. 101, IDE Building - I Institute of Distance Education University of Madras, Chennai – 600 005 Superscribed on the envelop as "Application for UNOM- ICAI Programme".								
		Last Date for Registration : 30th November 2012 Register Now !! DO NOT LET THE OPPORTUNITY GO BY								
		Date : 10.10.2012 Registrar i/c								
UNOM-ICAI										

Commencement of Certificate Course on Forex and Treasury Management

[at Delhi, Mumbai, Chennai and Kolkata]

CPE
48 hrs

Eligibility

Members of the Institute of Chartered Accountants of India (ICAI) and the Students of the Institute who have passed the CA Final Examination are eligible to pursue this Course.

Faculty

The Faculty members for the course are from IIM's, Premier Universities, Public & Private Sector Banks/ Financial Institutions, Authors, Senior Chartered Accountants from Industry Profession and reputed academicians.

Fee

Rs. 25,000 (Rs. Twenty Five thousand only). The fee can be paid by Online/ Demand Draft/Pay Order/ Multicity Cheque drawn in the favour of "**The Secretary, The Institute of Chartered Accountants of India**" payable at **New Delhi**.

Course Duration

This is approximately 4 months course. There will be **eight classes** which will be held on weekends i.e. Saturday and Sunday from 10 a.m. to 5 p.m.

Registration Form Submission

Secretary, CFMIP
The Institute of Chartered Accountants of India
ICAI Bhawan,
Administrative Block, Third Floor
A-29 Sector 62,
Noida - 201309
Contact No. (0120) 3045945
9650075010/9310542607
E-Mail: fxtm@icai.org

About the Course

The Committee on Financial Markets and Investors' Protection (CFM&IP) is one of the Non-Standing Committees of the ICAI which conducts **Certificate Course on Forex and Treasury Management (FxTM)** for professional development of members in this field. The aim of this Course is to provide a platform to the members to interact with the experts and to understand the recent developments in the field of Forex and Treasury. Moreover the course was designed to enable candidates to understand and conquer the complexities of Forex and Treasury management and to develop skill sets required for making sound financial decisions and the task of managing exposure to Foreign Exchange Movements. The Course also gives an overview of the issues associated with understanding and managing foreign exchange risk and impact of movements in foreign exchange rates on the business of Corporate. The course gives an overview of measuring and managing foreign exchange risks.

It is important to know the intricacies of Forex risk management especially during these times when Indian rupee fluctuations causing a lot of financing strain on the importers of products and services and for organisations having foreign currency loans.

Details and Tentative dates for Fresh Batches

The Committee will be starting new batches of Certificate Course on Forex and Treasury Management at Delhi, Mumbai, Chennai and Kolkata. The tentative dates are as follows:

Sl.No	Place	Tentative date
1.	Delhi	27 th October, 2012
2.	Mumbai	03 rd November, 2012
3.	Chennai	04 th November, 2012
4.	Kolkata	17 th November, 2012

Important Links

Course Contents: http://220.227.161.86/13463course_curriculum_forex.pdf

Registration Form: http://220.227.161.86/18248rform_cftm.pdf

Online Payment: <http://www.icai.org/ccm.html?progid=9>

Registrations for the Course have commenced and registrations will be on first come first served basis in view of limited seats. For any query or further details, please contact at the mentioned numbers or by email.



The Institute of Chartered Accountants of India

6th ICAI's MII Corporate Forum and Awards 2012

The Committee for Members in Industry is organizing 6th ICAI's MII Corporate Forum and Awards 2012 in January 2013 in Mumbai consisting of various concurrent events including ICAI Awards 2012.

ICAI Awards 2012 - would honour the exemplary work of Chartered Accountants in Industry by recognizing those who have demonstrated excellence in their professional life, personal life and are the role models for others in industry. These ICAI Awards 2012 are instituted to acknowledge Chartered Accountants in Industry who:

- **have demonstrated excellence in the way in which they conduct their profession.**
- **are exemplary role models in the industry.**
- **have created value to their company's stakeholders on a sustainable basis.**

It may be mentioned that Shri Rahul Bajaj, Chairman, Bajaj Auto Limited has agreed to be Jury Chairman for the Jury Meeting scheduled to be held on 18th December 2012 from 10:00 AM to 01:00 PM. There shall be eminent Jury Members.

The awards shall be given in various categories. **Applications can be made by** 1. The Chartered Accountant himself. 2. His/ Her Employer. 3. Any other member of ICAI. 4. Others, which the Nomination committee may deem fit.

Please send following documents **latest by 21st November 2012** positively to enable us to consider the same at our end.

1. Two copies of duly filled online nomination form. For filling online nomination form, please visit <http://www.icai.org/nominationcmii2012.html>
2. Two passports sized coloured photographs.
3. Two copies of brief description of the nominee's organization including description of the products, services and overall strategic goals.
4. Two copies of the company's last 5 years annual report and company's organization chart.
5. Two copies of Information on the various evaluation parameters as mentioned.
6. The financials of the company to be provided as of 31st March, 2012. The personal milestone(s) achieved up to 30th September, 2012.
7. Details of membership of other professional/social bodies.
8. Details of other roles eg. Directorship / member of audit committees of other companies etc.

We request you to nominate members of the Institute whom you deem fit for grant of any award of the above said categories.

For complete details, you may kindly visit www.icai.org/forum.

For details contact:

Dr. Surinder Pal, Secretary, CMII

Telephone – 011-30110549/491/430

E-mail: ruchi_gupta@icai, cmii_events@icai.in

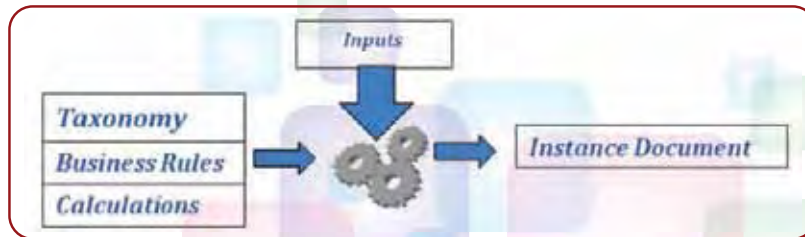
Website: www.icai.org, www.cmii.icai.org

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

ICAI-XBRL Software

SALIENT FEATURES

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



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

About the Arrangement

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

Downloading the software:

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

Technical Support for software:

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

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



Dr. Sambit Kumar Mishra, Secretary
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

Study Tour to Hong Kong (13th to 19th January, 2013)

Study Tour to Hong Kong: An Initiative of Committee for Capacity Building of CA Firms and Small and Medium Practitioners (CCBCAF&SMP), ICAI

With a view to acclimatize the members of the Institute about the best practices in the area of Practitioners and to provide opportunity to participate and interact with the renowned experts of Asian Financial Forum, Hong Kong, the Committee For Capacity Building of CA Firms and Small and Medium Practitioners (CCBCAF & SMP) of Institute of Chartered Accountants of India (ICAI) is now pleased to announce an International Study Tour to Hong Kong for the members on self financing basis.

Asian Financial Forum is an event that brings together some of the most influential members of the global financial and business community to discuss developments and trends in the dynamic markets of Asia.

Asian Financial Forum is organized by HKTDC. A statutory body established in 1966, the Hong Kong Trade Development Council (HKTDC) is the international marketing arm for Hong Kong-based traders, manufacturers and service providers. After the completion of the learning course sessions in Hong Kong, arrangements have also been made to visit the financial institutions in Hong Kong. Sightseeing has been arranged in Macau & Lantau.

Since, the delegation size would be restricted to 30 members; registration for the study tour would be done on first-cum-first-serve basis. For details please visit http://icai.org/post.html?post_id=899

For registration, the interested members may kindly send the registration form along with photocopy of Valid Passport, 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 November 15, 2012 on below mentioned address:

Study Tour Coordinator:

Dr. Sambit Kumar Mishra
Secretary

Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP)
The Institute of Chartered Accountants of India,
ICAI Bhawan,
Indraprastha Marg,
New Delhi-110002

Email: sambit.mishra@icai.org, ccbcaf.event@icai.org
Telephone No: 011- 30110460

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



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

- Brings Business and CA Firms together
- Online Directory of CA Firm's Websites
- 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**

New Publications

COMPENDIUM OF OPINIONS - VOLUME XXX (February 2010 – January 2011)

The Expert Advisory Committee of the Institute of Chartered Accountants of India has published Compendium of Opinions, Volume XXX including a CD of Compendium of Opinions. This Volume of Compendium of Opinions contains opinions finalised by the Expert Advisory Committee during the period February 2010 to January 2011 and the CD contains opinions finalised by the Expert Advisory Committee upto January 2011 as contained in Volume I to Volume XXX.



The subjects of the opinions contained in this volume include:

- Basis of calculation of future cash flows
- Treatment of capital expenditure on assets not owned by the company
- Segment reporting
- Accounting for expenditure during construction period
- Accounting for foreign currency transactions
- Accounting treatment of overlift/underlift quantity of crude oil

- Revenue recognition
- Depreciation accounting
- Treatment of liquidated damages
- Accounting for deferred taxes

The salient features of the CD are as follows:

- User-friendly features with search facility for locating opinions on the desired subject(s).
- Contains around 1200 opinions on diverse subjects related to accounting and/or auditing principles and allied matters, issued by the Committee since its inception.
- Contains Advisory Service Rules, in accordance with which the Committee answers the queries received from the members of the Institute.

The opinions are based on the facts and circumstances of each case as presented to the Committee, and the accounting/auditing principles and practices and the relevant laws applicable on the dates the Committee finalised the respective opinions.

Price: ₹ 175/-

Ordering Information:

The publication can be purchased directly from the sales counters at ICAI's Regional Offices or at Head Office. To order by post, requisition may be sent to the Postal Sales Department of ICAI at postalsales@icai.org or postalsales@icai.in

Forthcoming Events¹

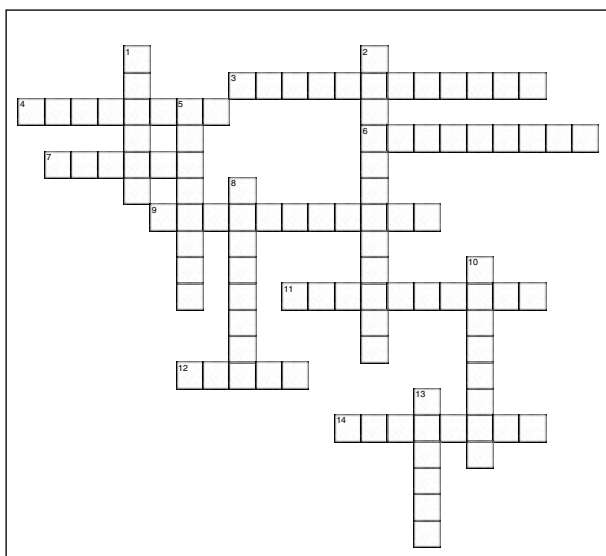
Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
1.	NATIONAL RRC ON CA Profession- Value Addition in spiritual environment	3-5 November, 2012	Chameli Devi Sewa Sadan, Salasar Balaji, Churu, Rajasthan	15
Topics	■ Issues in Direct Taxes ■ Panel Discussion on Paradigm Changes in CA Profession ■ Stress & Life Style Management for the CA Professionals ■ Recent Issues in Service Tax ■ Professional Opportunities in Indirect Taxes ■ Professional Opportunities of Co-operatives & NPO Sectors ■ Taxation & Legal Issues in Charitable Institutions ■ New Professional Opportunities in Co-operative & NPO Sectors ■ Revised Schedule VI ■ Contemporary Issues in Revised Schedule VI ■ Issues on Revised Schedule VI ■ Practical Issues in Revised Schedule VI ■ Capacity Building Through IT Tools ■ ICAI – Tax Suite ■ ICAI- XBRL ■ Payroll Software ■ Billing & Accounting Software			
Contact Person	CA. Sanjay Kumar Goyal, Assistant Secretary, Jaipur Branch of CIRC of ICAI, Email- jaipur@icai.org , Phone: 0141-3044203 Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI, Phone: 011-30110497, E-mail: ccbcf.event@icai.org Dr. Amit Kumar Agrawal, Secretary, CCONPO, ICAI, Phone: 011-30110452, E-mail: congongos@icai.org			
2.	Certificate Course on Forensic Accounting and Fraud Detection	23 rd November, 2012	ICAI Bhawan, Sector 62, Noida	20
Topics	Forensic Accounting & Fraud Detection			
Contact Person	Phone: 0120-3045963 Email: cc.fafd@icai.in			
3.	Workshop on Domestic Transfer Pricing organized by the Committee on International Taxation, ICAI	Sunday 4 th November, 2012 (every Saturday and Sunday) (Tentative)	Mumbai	50
Topics	Domestic Transfer Pricing			
Contact Person	Mr. Ashish Bhansali, Secretary, Committee on International Taxation, ICAI Contact No.: 0120-3045923, 09310532063			
4.	Certificate Course on International Taxation organized by the Committee on International Taxation, ICAI	Saturday 3 rd November, 2012 onwards (every Saturday and Sunday) (Tentative)	Centre of Excellence, Hyderabad	100
Topics	DTAA- Treaties and other International Taxation Topics			
Contact Person	Mr. Ashish Bhansali, Secretary, Committee on International Taxation, ICAI Contact No.: 0120-3045923, 09310532063			
5.	One Day Program on International Taxation organised by the Committee on International Taxation, ICAI	Wednesday 7 th November, 2012	Trivandrum	6
Topics	Transfer Pricing			
Contact Person	CA. S. Padmanabhan, Trivandrum Branch of SIRC of ICAI, Trivandrum, Phone: 0471-2323789, 2328590, 09447964275			
6.	Seminar on International Taxation organized by the Committee on International Taxation, ICAI	Friday 9 th & Saturday 10 th November, 2012	Raipur	12
Topics	International Taxation Topics			
Contact Person	Ms. Sonali Mishra, A-21, 1 st Floor, Mahavir Gaushala Complex, K. K. Road, Maudhapora, Raipur- 492001, Phone: 0771-4030937			
Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
7.	Work Shop on Domestic Transfer Pricing organized by the Committee on International Taxation, ICAI	Saturday 24 th November, 2012 (every Saturday and Sunday) (Tentative)	New Delhi	50
Topics	Domestic Transfer Pricing			
Contact Person	Mr. Ashish Bhansali, Secretary, Committee on International Taxation, ICAI Contact No.: 0120-3045923, 09310532063			

¹ For more details about the forthcoming events please refer the detailed announcements hosted on the ICAI website www.icai.org

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
8.	Workshop on Capacity Building Measure Through IT Tools	8 th November, 2012	ICAI Bhawan, Kottayam	3
Topics	■ Payroll Software ■ ICAI Tax Suite Software ■ ICAI XBRL Software			
Contact Person	Kottayam Branch of SIRC of ICAI, E-mail: kottayam@icai.org , Phone No: 0481-2560057 Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI, E-mail : ccbcaf.event@icai.org , Phone:011-30110497			
9.	Workshop on Capacity Building Measure Through IT Tools	10 th November, 2012	ICAI Bhawan, Pune	3
Topics	■ Payroll Software ■ ICAI Tax Suite Software ■ ICAI XBRL Software			
Contact Person	Pune Branch of WIRC of ICAI, E-mail: pune@icai.org , Phone: 020-24212251 Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI, E-mail : ccbcaf.event@icai.org , Phone:011-30110497			
10.	Workshop on Capacity Building Measure Through IT Tools	17 th November, 2012	ICAI Bhawan, Coimbatore	3
Topics	■ Payroll Software ■ ICAI Tax Suite Software ■ ICAI XBRL Software			
Contact Person	Coimbatore Branch of SIRC Of ICAI, E-mail: coimbatore@icai.org , Phone No.: 0422- 2552872 Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI, E-mail : ccbcaf.event@icai.org , Phone:011-30110497			
11.	Workshop on Capacity Building Measure Through IT Tools	17 th November, 2012	ICAI Bhawan, Palghat	3
Topics	■ Payroll Software ■ ICAI Tax Suite Software ■ ICAI XBRL Software			
Contact Person	Palghat Branch of SIRC Of ICAI, E-mail: Palghat@icai.org , Phone: 0491-2576450 Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI, E-mail : ccbcaf.event@icai.org , Phone:011-30110497			
12.	Workshop on Capacity Building Measure Through IT Tools	24 th November, 2012	ICAI Bhawan, Kakinada	3
Topics	■ Payroll Software ■ ICAI Tax Suite Software ■ ICAI XBRL Software			
Contact Person	Kakinada Branch of SIRC of ICAI, E-mail: kakinada@icai.org , Phone: 0884 – 236 4402 Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI, E-mail : ccbcaf.event@icai.org , Phone:011-30110497			
13.	Workshop on Capacity Building Measure Through IT Tools	24 th November, 2012	ICAI Bhawan, Kumbakonam	3
Topics	■ Payroll Software ■ ICAI Tax Suite Software ■ ICAI XBRL Software			
Contact Person	Kumbakonam Branch of SIRC of ICAI, E-mail: kumbakonam@icai.org Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI, E-mail : ccbcaf.event@icai.org , Phone:011-30110497			
14.	Workshop on Capacity Building Measure Through IT Tools	24 th November, 2012	Goa Museum Hall, Panaji,, Goa	3
Topics	■ Payroll Software ■ ICAI Tax Suite Software ■ ICAI XBRL Software			
Contact Person	Goa Branch of WIRC of ICAI, E-mail: goa@icai.org Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI, E-mail : ccbcaf.event@icai.org , Phone:011-30110497			
15.	Workshop on Advertisement and Publicity Enterprises- Value Additions by Internal Auditors	3 rd November, 2012	ICAI Bhawan, 27, Cuffe Parade, Colaba, Mumbai	6
Topics	■ Relevance of Internal Audit in Advertisement and Publicity Enterprises ■ Laws Governing Transactions in Advertisement and Publicity Enterprises ■ Service Tax Issues for Advertising Agencies ■ Internal Control in Advertisement and Publicity Enterprises ■ Accounting Aspects for Advertisement and Publicity Enterprises ■ Audit of Advertisement and Publicity Enterprises			
Contact Person	Mr. Vijay/Ms. Pallavi, Phone: 022-39802922/23, E-mail: wircevents@yahoo.com CA. Amita Bapat, Mob: 09004213085, Email: cmiipprogramme@gmail.com , amita.bapat@icai.in			
16.	Workshop on Hospitality Industry - Value Additions by Internal Auditors	10 th November, 2012	Mumbai	6
Topics	■ Relevance of Internal Audit in Hospitality Industry ■ Laws Governing Transactions in Hospitality Industry ■ Tax Issues for Hospitality Industry ■ Internal Control in Hospitality Industry ■ Accounting Aspects for Hospitality Industry ■ Audit of Hospitality Industry			
Contact Person	Mr. Vijay/Ms. Pallavi, Phone: 022-39802922/23, E-mail: wircevents@yahoo.com CA. Amita Bapat, Mob: 09004213085, Email: cmiipprogramme@gmail.com , amita.bapat@icai.in			

CROSSWORD

077



ACROSS

3. A _____ cost is the difference in total cost between two alternatives.
4. _____ costing is the application of a technique for planned profit earning.
6. Activity Based Management describes management _____ to satisfy customers and improve profitability.
7. Super variable costing is a method of inventory in which only _____ material costs are included as inventoriable costs.
9. Additional total revenue from one activity is known as _____ revenue.
11. A cost pool is a grouping of _____ cost items.
12. Merrick suggested _____ price rates for rewards to employees.
14. The adjusted allocation rate approach restate all _____ entries in the general ledger and subsidiary ledgers.

DOWN

1. _____ Budgeting explicitly incorporates continuous improvement budget period into budget numbers.
2. _____ means the relationship between actual inputs used and actual outputs produced.
5. _____ is the degree of freedom to make decisions.
8. A _____ price is the price one sub unit charges for another sub unit of the same organisation.
10. The amount of _____ revenue over and above breakeven revenue is margin of safety.
13. A _____ centre is one where the manager is accountable for revenue and costs.

(Matter for Crossword 077 has been contributed by CA. Arun Jain)

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 076



All Is Fair In Business

A shopkeeper was dismayed when a brand new business much like his own opened up next door and erected a huge sign which read 'BEST DEALS.'

He was horrified when another competitor opened up on his right, and announced its arrival with an even larger sign, reading 'LOWEST PRICES.'

The shopkeeper panicked, until he got an idea. He put the biggest sign of all over his own shop. It read: 'MAIN ENTRANCE'

