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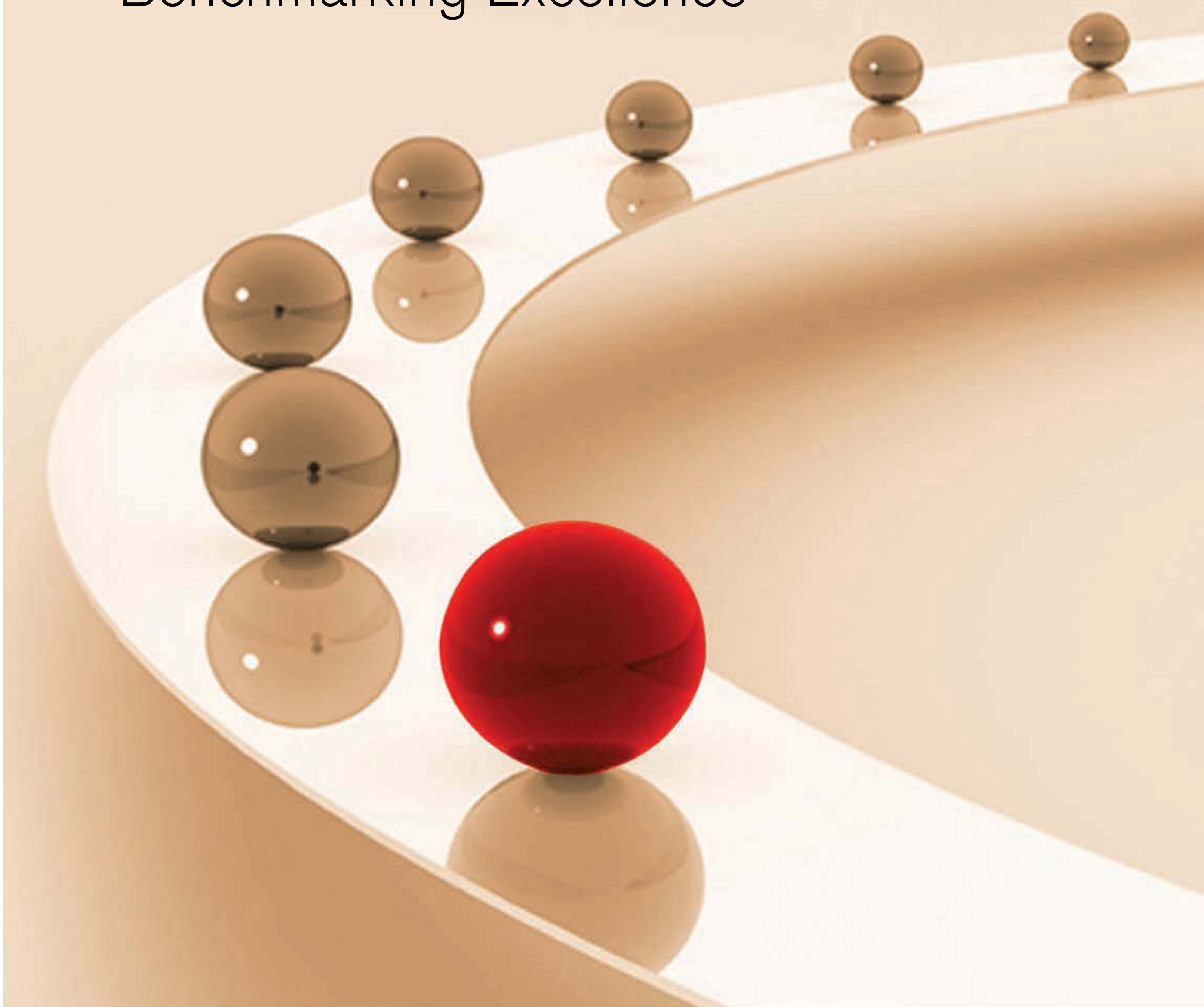
THE CHARTERED ACCOUNTANT JOURNAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

SET UP BY AN ACT OF PARLIAMENT

"Leadership and Influence"
Benchmarking Excellence



MOVING TOWARDS NEW FRONTIERS

Leadership and Influence

With the ICAI's inception in 1949, the founding fathers of our nation had expected the ICAI and the accountancy profession to lead in the realm of fiscal discipline of the country. Over the years, those high expectations of the nation stand fulfilled, with the accountancy profession rightly being regarded as the backbone of financial discipline of the country.

In the position of this leadership and influence, the accountancy profession today contributes to the economic growth of our nation—through both its practitioners' work and its in-industry professionals, who contribute to respective businesses. President of India, Shri Pranab Mukherjee recently directed the ICAI to go ahead and continue to *work with the regulators, and the government to develop and implement high-quality professional standards for financial reporting, auditing and assurance, ethics, public sector financial reporting and accounting education*, since the ICAI has been playing a significant *role in economic development and to uphold public confidence*. Through thought leadership, the ICAI continues to play a key role in the making of economic policies of our nation at various levels.

Having quite conscientiously taken a lead in resolving the most urgent important contemporary issues of our nation that include convergence of the Indian accounting standards with IFRS, smooth and effective implementation of the new Companies Act 2013 and XBRL revolution, it has been spearheading a revolution in the upcoming knowledge society of the country. Coming up to the nation's expectations, the accountancy profession in India has been involved in bringing an effective corporate governance mechanism in the interests of all stakeholders. And to sharpen its leadership edge, the ICAI has been training accountancy professionals to proactively and most effectively cater to all the needs of modern day business and economy.

While shifting the focus back to equity and transparency, the Indian economy once again is taking a turn. As such, accountancy profession needs to respond to this shift and push in the agenda of innovation and performance. It has sufficient resources required for the desired transformation; all it needs is an efficient use of these resources. With the change in expectations, scope and mandate of finance leadership, the industry is now fast recognising the advantages of chartered accountants' expertise and experience, especially their invaluable ethical-technical combo mindset. They are increasingly looking up to CAs in the profile of financial leaders.

Therefore, at the moment, it becomes an absolute requirement for the accountancy profession that its members rise to the occasion. The accountancy profession today needs to change the tangent of its action plan in order to brave the demands and capitalise on the opportunities of the changing global economy. In the face of a troubled business environment, chartered accountants will have to take the help of the advanced IT and learn to contribute to the organisational strategy and operations.

When Dr. APJ Abdul Kalam called the accountancy profession of India a *partner in national development*, it was time for recognition or the profession as well as for others to recognise the profession with a changed perspective. The CA profession in India is changing its shape. New competencies are being added to the profiles of chartered accountants through various ICAI post-qualification certificate courses. Today, the accountancy profession is spearheading both reforms in Government's accountancy as well as policy-making processes of the national economy.

In this backdrop, the ICAI has indeed come a long way. Despite the challenges coming to the fore in the form of contemporary issues in IFRS, XBRL, e-commerce, Companies Act, 2013, Direct Tax Code and Goods and Service Tax, the accountancy profession is set on the path to a bright future in India. New challenges will keep coming, but the ICAI with its Vision 2021 and its preparation and consolidation, is determined to transform India into a developed economy. ■

-Editorial Board ICAI – *Partner in Nation Building*

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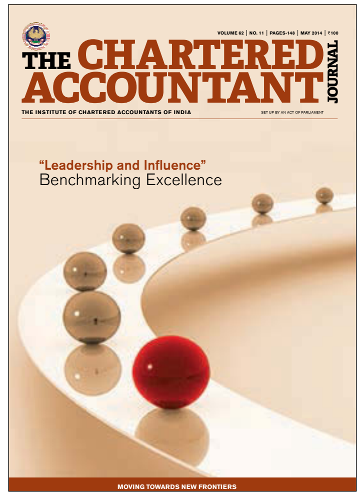

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From the President

CA. K. Raghu, President, ICAI

> As endorsed by the founding fathers of our nation, we have been successfully assuming the mantle of leadership and influence in the fiscal discipline of the country as partners in nation building since the ICAI's inception in 1949. My aim is to augment that exalted position of leadership, particularly through our role as regulator and facilitator to government, professional fraternity and society at large.

Dear Professionals,

If your actions inspire others to dream more, learn more, do more and become more, you are a leader. I not only subscribe to these words of wisdom by former American President John Quincy Adams personally but also endorse the same for all of you collectively. It is with this frame of mind that I have put our professional *'Leadership and Influence'* high on my agenda for this year while marching towards new frontiers. The need of the hour is to hold the element of 'Leadership and Influence' very high while exploring new professional horizons and paradigms with our time-tested tradition of professional excellence, ethics and integrity in the service to our nation.

Peter F. Drucker says: *Management is doing things right; leadership is doing the right things.* While we know how to do the things right with dedication and integrity, we also need to be in leadership roles in order to do things right in the best interest of national and world economy. "Chartered Accountants: Partners in National Development" — These words of acknowledgement and recognition used by our visionary former President of India, Dr. A. P. J. Abdul Kalam for Indian Chartered Accountant fraternity amply sum up the great role, power and potential of the Accountancy profession in the country.

Leadership, Our Way!

As endorsed by the founding fathers of our nation, we have been successfully assuming the mantle of leadership and influence in the fiscal discipline of the country as partners in nation building since the ICAI's inception in 1949. My aim is to augment that exalted position of leadership, particularly through our role as regulator and facilitator to the government, professional fraternity and society at large. To this effect, our Disciplinary Committee, Ethical Standards Board, Financial Reporting Review Board and Peer Review Board are putting extra efforts to fulfil the ever increasing expectations of our stakeholders.

Further, taking our leadership role forward, we have intensified our mutual interactions with Ministry of Corporate Affairs, Ministry of Finance, Ministry of Human Resource Development, Reserve Bank of India, Securities and Exchange Board of India and Insurance Regulatory and Development Authority besides a host of other government departments.

These initiatives are a part of our special drive to augment the society's trust in us and establish our professional leadership, thought leadership and ethical leadership & influence in all the emerging fiscal arenas with global orientation. In the current scenario, I foresee a plethora of opportunities in the garb of emerging challenges for the profession. Let me share with you some immediate avenues where we can leave a mark of our leadership and influence...

Convergence with IFRS Offers a Big Opportunity

I am sure you will agree with me that understanding the immense benefits of convergence to IFRS and its implications is one of the most important business imperatives today. You will appreciate that this convergence will bring us a golden opportunity to comprehensively reassess financial reporting and *a clean sheet of paper* approach to financial policies and processes, while helping our economy at large, including our industry and investors. Our capital markets will be more robust, and there will be a new flow of foreign investments into our country.

Weighing these and many more benefits of convergence, we recently have finalised a new roadmap for implementation of the Indian Accounting Standards (Ind AS) converged with the IFRS and submitted the same to the MCA for its consideration. The new Companies Act, 2013 has also introduced various new provisions, including the requirement to prepare Consolidated Financial Statements, which would also facilitate implementation of Ind AS converged with IFRS.

This scenario opens a big window of global opportunity for us as Chartered Accountants. Post-convergence, services of IFRS-trained Indian accounting professionals will be in great demand globally.

Impact of Companies Act, 2013

Further, in the new Companies Act, 2013, a host of opportunities have emerged for us. We welcome the provisions of the new Act for the potential it holds and particularly for bringing more transparency and accountability to our economy. In view of the changing economic environment, this Act is a great achievement as it intends to improve the governance and regulation in the companies. While we commend it, we also have our fair share of concerns. I would like touch upon some very important issues here...

(1) Fraud Reporting: The new Act provides that if an auditor of a company, in the course of the performance of his duties as an auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government. It is felt that the provisions thereof are apparently quite onerous from the statutory auditors' perspective.

(2) Rotation of Auditor: 'Rotation of Auditors', a nascent concept across the world, has now been rightly restricted only to a certain class of companies, leaving close to 90% of the companies outside the scope of Rotation of Auditors.

(3) Number of Audits: On the issue of the cap of 20 companies that can be audited, we firmly believe that limiting the number of companies that can be audited by an auditor is not advisable. With technological advancements, CAs will be able to cater to the audit needs of a much larger number of companies. A representation in this regard has been submitted by us to the MCA.

(4) NFRA: We welcome the development that NFRA (National Financial Reporting Authority) provisions, that will give rise to multiplicity of regulators, have been kept on hold. While this gives us time to address our concerns, we are also hoping the MCA to see merit in our regulations and thereby avoid imposing, overlapping regulatory domains and responsibilities. The ICAI must retain its role to monitor accounting/auditing practices since it has already been taking action against its erring members.

Transition to Companies Act, 2013— ICAI as a Facilitator

I feel that though the Companies Act, 2013 is broadly a welcome way forward for India, its implementation and impact pose daunting challenges to professionals, including us. As such, the need of the hour is to take these challenges in our professional stride and leverage them to our advantage. Here, I must assure you that we at the ICAI are completely in sync with the situation and have charted a definitive and time-bound course of action to help our professionals be at the forefront of this transition.

From the President

The first and foremost task before us is to make our members familiar with intricacies, new concepts and procedures introduced for the first time in the law. This is being taken care of through a chain of seminars, teleconferences and new publications besides leveraging technology in the form of e-book, videos, and webcasts to reach maximum audience.

Another challenge is to provide necessary guidance to our members for critical areas like reporting of frauds, rotations of auditors, corporate social responsibility expenditure accounting, cap on number of audits, *etc.* I am pleased to inform that our respective committees have already been activated in this regard. For instance, an expert group has already been formed to examine fraud reporting provisions, identify practical implementation issues and develop appropriate implementation guidance for the auditors at the earliest to help us meet the requirements of Section 143(12) and the related Rules. Further, the secondary impacts of the new law are also being analysed and duly covered in our areas of activities.

Last but not the least, we are also preparing ourselves for the opportunities that will come to us in the form of CSR Audit, Internal Audit, and Independent Directorship for our members, *etc.* All this was discussed threadbare at a special meeting of the Council, and I am sure that with our collective effort and effective collaboration, we will put ourselves in the leadership role on this new professional frontier.

Concerns on Proposed Definition of 'Accountant' in DTC 2013

While I am happy to note new professional horizons having emerged in newer realms of India's knowledge economy, I am concerned at the proposed limiting of our scope in the recently released draft Direct Tax Code (DTC), 2013. Please note that all of us in the Council are very much aware and alive to the deep anxiety, apprehension and dismay gripping our fraternity following questionable dilution of the term 'accountant' in the DTC, 2013, which opens the hitherto exclusive and specialised tax audit practice and some other certifications to certain other professionals too. We strongly oppose the relevant *Clause 88 & 320(2)* of this draft as these defy the very logic and trust with which tax audit was put in the CAs' domain under Section 44AB of the present Act.

Audit reports, specifically Tax Audits, Transfer Pricing Audit, Report as per Section 115JB/115JC and the like demand deep understanding and knowledge of accounting and relevant laws of compliance, which can be catered to only by the CAs, given their high-quality training, expertise, special aptitude, long experience and professional panache. CAs have been very ably and deftly doing these assignments for years, as can be vouched by the authorities themselves. It is a fact that various provisions in the Income-tax Act, 1961 under which Chartered Accountants have been given the responsibilities to undertake audit and certification of accounts of various entities have the emphasis on "audit" of the relevant accounts which is the exclusive domain of Chartered Accountants.

Through a representation to the Ministry of Finance, we have placed on record our concerns not only for the profession, but for the country as a whole since issuance of audit certificates by persons having limited knowledge of audit of accounts will not only be professionally incorrect and but will raise many concerns including causing huge revenue leakages. Rest assured, we are taking our concerns to the highest level of Indian polity to make the government to see the merit of our stand on the issue.

Flexi Working Portal for Women Members

I am happy to inform you that taking our special drive for the empowerment of Women CAs for this year forward, we have recently launched a Flexi Working Portal for women members (http://womenportal.icai.org/). It will provide them a platform where they can explore suitable opportunities with option for part time jobs, jobs with flexi-hours or jobs with work-from-home facility. It will also help industry to tap talent pool which might not be accessible otherwise in the normal course.

I request you to post your job requirement(s) having the option to work part-time or flexi-hours on this portal. I may emphasise that providing part-time/flexi hours option will be very cost effective to our practicing members especially SMPs who look for additional human resources during peak audit season like corporate audit, bank audit, tax audit, etc. I also request to all our women members looking for such flexi working opportunities to post their resume on the portal at the earliest.

From the President

Taking Chairmen of Regional Councils and Branches Along

I believe in the power of 'us' and in the collective pursuit of continuous improvement, not only because these lead to performance gains but also effectually unify a professional community as remotely spread and diverse as ours. It is in that spirit that I hold the leaders of our regional councils and branches in high esteem. As such, converting that spirit into productive action, over the last month I personally met the chairmen of all our five regional councils and 147 branches.

I utilised the occasions to not only learn from and draw on their experiences and vision but also orient them with the broad ICAI Vision, Mission and our Action Plan for 2014-15. The idea was to take them firmly along on the illustrious ongoing journey of our profession and the ICAI. I am highly satisfied with these meetings which provided me great inputs that will be help me steer our profession on the path of glory more effectively.

Success of ICAI Knowledge Gateway and Mobile App

I am happy to share with you that our path-breaking recent initiatives—'ICAI Knowledge Gateway' and 'ICAI Mobile Application' have received an overwhelming response from our stakeholders. More than 45,000 users have so far visited the Knowledge Gateway while about 89,000 users have downloaded the ICAI Mobile Application, and the count goes on. An overwhelming majority of our Mobile App respondents have given it five and four star ratings respectively.

CRET Set for Reforms in CA Curriculum

My vision is that accountancy profession and its enabling force–accountancy education, need to constantly go hand in hand with academic, technological and economic advancements globally. I have always believed that the ICAI needs to be vigilant to this need of the hour, and do a periodic review of the CA education and training schemes. As such, we have recently constituted CRET (Committee on Review of Education and Training). I am sure this will go a long way in benchmarking our CA education with the best in the world.

Three Non-Standing Committees Formed

I would like to re-emphasise that I see our alma mater ICAI more as a 'facilitator' than a regulator. As such, in line with my Action Plan for this year, we have set the ball rolling to make ICAI and its enabling base more robust in terms of 'Human Resource', 'Infrastructure' and 'Technology'. Three specialised and focused non-standing committees—'HR Transformation Committee', 'Infrastructure Development Committee' and 'Technology Development Committee' have been formed to take ICAI capabilities and competence to the next level of excellence. These will aim to set and follow high standards of responsive and responsible Human Resources of the ICAI, broaden and strengthen the infrastructure base for the profession, and put members and students on a new technology roadmap. I invite your valuable suggestions on these initiatives.

ICAI Network gets Bigger

I am delighted to let you know that expanding the reach of accountancy profession in India, we have set up two more branches in the Southern India Regional Council of ICAI at Anantapur and Kurnool, which fall in the state of Andhra Pradesh. I am sure these branches will give our profession's network an added strength.

By the time you will be reading this, you must already be celebrating *Spring* and *May Day*. Let me congratulate all of you on that, which is celebrated on 1st May every year by many nations to honour labour, and by many others to welcome the Spring season that brings bright sun and happy sky to us. Seasons change for good of all. Likewise, we too should keep changing in tune with times for the good of our society and nation at large. In fact, I would like you to be 'persons of all seasons' and 'leaders of change'. Let's imbibe the spirit of a professionally relevant saying: *A leader is one who knows the way, goes the way, and shows the way*.

With warm personal regards,

K. Raghu

CA. K. Raghu
President, ICAI
New Delhi, April 23, 2014

Reader's Write

Welcome Change in Journal

I am happy to see the welcome change in the content selection & quality and the overall look and feel of our journal in the last few months. Both March and April 2014 issues of the journal, which focused on refreshing themes of 'Moving Towards New Frontiers' and 'Women CA Empowerment', were very informative and thought provoking. Particularly, the editorials and President's messages of these issues, complimented the good overall content and presentation. All the articles presented under the new themes were worth preserving for long term reference. I eagerly wait for more such good work in the forthcoming issues of the journal too.

-CA. S. Gulati

President's Messages are Inspiring and Motivating

The president's message of April 2014 issue of the journal, which covered various aspects of the profession, was really motivating to the members and students at large. The ICAI's new initiative regarding its women members is a welcome sign. However, I think that the rate of campus recruitment needs to widely enhanced.

-CA. S. N. Babugovindaraj

It was indeed a pleasure reading through president's views and actions undertaken by the ICAI in March and April 2014 issues of the journal. I request the ICAI to also look into the matter concerning some students who are dropping out of Chartered Accountancy course and strengthen the student counseling mechanism in this regard. I appreciate and welcome the recent upgrading of journal content, look and feel. Keep up the good show.

-CA. Anurag Sureka

Cloud Campus Initiative is Welcome

I welcome the change in look and feel and content selection of the journal. Particularly, the message from the president was indeed inspiring and prompted me to write this letter. Any 'change' needs buy-in & unflinching commitment right at the top. Given our President's commitment to take personal interest in technology led innovations, I sincerely hope that the 'Cloud Campus' dream for CA students soon becomes a reality, obviating the need to attend private coaching classes. I used to work (2006-2008) for a global leader in custom e-learning solutions in a senior position. I was responsible for managing a portal hosting 160 business simulations accessed by leading universities worldwide. In this course, I used to wish then that if ICAI could also come up with a cloud campus since as a student I never attended private coaching classes but always wished if ICAI could offer comprehensive on-site/online coaching. I look forward to fulfillment of that wish now.

-CA. Jaishankar M. Talreja

Let's Think of Saving Paper

As the time goes by, we have seen the hard copy and print material are getting reduced. As such, I feel it will be good if the journal is sent by email to all the members and only to those who wish to have hard copy should get the hard copy to save paper.

-CA. Arvind V. shah

Corrigendum:

Readers please note that the author of April 2014 issue article titled *'Guarantee by Holding Company to Banks with Regard to Its Subsidiary Company,'* Sanjay Lalit, is not a Chartered Accountant but a Chartered Secretary. The error is regretted.

EDITOR

For the Attention of Readers

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

Write to Editor

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

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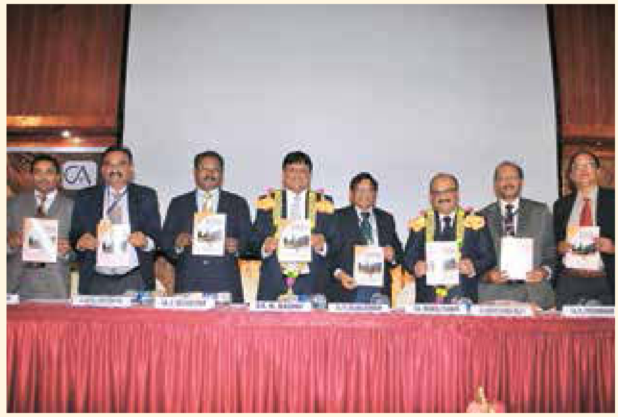
Photographs

Orientation Programme for Branch Chairmen

SIRC : Kodaikanal

Programme Inaugurated: ICAI President CA. K. Raghu and Vice-President CA. Manoj Fadnis along with Central Council members CA. M. Devaraja Reddy and CA. Babu Abraham Kallivayalil, and SIRC Chairman CA. P. V. Rajarajeswaran and past-Chairman CA. D. Prasanna Kumar, among others, on the occasion (27th March, 2014)



Releasing Action Plan 2014-15: ICAI President CA. K. Raghu and Vice-President CA. Manoj Fadnis along with SIRC Chairman CA. P. V. Rajarajeswaran and Madurai Branch Chairman CA. G. Selvakumar, among others, during the release (27th March, 2014)

WIRC : Mumbai

Showing Women Power with Pride: ICAI President CA. K. Raghu and Vice-President CA. Manoj Fadnis along with Central Council member CA. Prafulla Chhajed and WIRC Chairman CA. Anil Bhandari, among others, along with women members of the Region (24th March, 2014)

WIRC Chairman Presents Memento to ICAI President: WIRC Chairman CA. Anil Bhandari presents memento to ICAI President CA. K. Raghu, while the ICAI Vice-President CA. Manoj Fadnis fondly looks on (24th March, 2014)

CIRC : Mount Abu

Sharing Dais with Chairmen of CIRC Branches: ICAI President CA. K. Raghu and Vice-President CA. Manoj Fadnis share the dais with ICAI past-President CA. Uttam Prakash Agarwal and Central Council members CA. Anuj Goyal, CA. Shyam Lal Agarwal and CA. Mukesh Singh Kushwah, and Chairmen of CIRC Branches, among others, during the Orientation Programme (19th - 20th April, 2014)

Inaugurating Orientation Programme: ICAI President CA. K. Raghu lights the lamp to inaugurate the Programme, while ICAI Vice-President CA. Manoj Fadnis along with Central Council colleagues CA. Anuj Goyal and CA. Mukesh Singh Kushwah, among others, share the moments (19th - 20th April, 2014)

Photographs

Orientation Programme for Branch Chairmen

EIRC : Kolkata

Addressing the Participants: ICAI President CA. K. Raghu addresses the audience, while ICAI Vice-President CA. Manoj Fadnis along with ICAI past-President CA. Subodh Kumar Agrawal and Central Council members CA. Sumantra Guha, CA. Abhijit Bandyopadhyay and CA. Babu Abraham Kallivayalil, and EIRC Chairman CA. Subhash Chandra Saraf, among others, share the dais (26th March, 2014)

Sharing Space with Members and Students: ICAI President CA. K. Raghu feels at home in the company of members and students of EIRC while ICAI Council member CA. Babu Abraham Kallivayalil and EIRC Chairman CA. Subhash Chandra Saraf, among others, are also present (26th March, 2014)

Sharing Dais with Chairmen of EIRC Branches: ICAI President CA. K. Raghu shares the dais with Central Council member CA. Sumantra Guha, EIRC Chairman CA. Subhash Chandra Saraf and EIRC past-Chairman CA. Ranjeet Kumar Agarwal, and Chairmen of EIRC Branches, among others (26th March, 2014)

NIRC : Parwanoo

Sharing Dais with Chairmen of NIRC Branches: ICAI President CA. K. Raghu and Vice-President CA. Manoj Fadnis share the dais with Chairmen of NIRC Branches, along with their Central Council colleagues CA. Sanjay Agarwal, CA. Sanjiv Kumar Choundhary, CA. Vijay Kumar Gupta and CA. Atul Kumar Gupta, and NIRC Chairman CA. Radhey Shyam Bansal, among others, during the Programme (29th -30th March, 2014)

NIRC Chairman Presents Memento to ICAI President: NIRC Chairman CA. Radhey Shyam Bansal presents memento to ICAI President CA. K Raghu during the Orientation Programme, while the ICAI Vice-President CA. Manoj Fadnis looks on (29th -30th March, 2014)

Sharing Space with Members: ICAI President CA. K. Raghu and Vice-President CA. Manoj Fadnis share space with members and Chairmen of NIRC Branches, along with their Central Council colleagues CA. Sanjay Agarwal, CA. Sanjiv Kumar Choudhary, CA. Vijay Kumar Gupta and CA. Atul Kumar Gupta, and NIRC Chairman CA. Radhey Shyam Bansal, among others (29th -30th March, 2014)

Photographs

Women's Flexi Portal Launched

ICAI President CA. K. Raghu displays the launched *Portal* for women members, in the presence of Vice-President CA. Manoj Fadnis and many Central Council members, among others (21st April, 2014)

Visit to Belgaum Branch

ICAI President CA. K. Raghu addresses, in the presence of ICAI Vice-President CA. Manoj Fadnis along with Central Council members CA. M. Devaraja Reddy and Branch Chairman CA. Sanjay S. Mudnur share the on (23rd February, 2014)

Auditorium Construction Commenced at Hubli Branch

ICAI President CA. K. Raghu launches the construction while ICAI Vice-President CA. Manoj Fadnis, Central Council members CA. M. Devaraja Reddy and CA. Babu Abraham Kallivayalil, and Branch Chairman CA. Hitesh Kumar Modi, among others, share the joy (23rd February, 2014)

Visit to Panipat Branch of NIRC

Branch Chairman CA. Manish Jain presents memento to ICAI President CA. K. Raghu, while ICAI Vice-President CA. Manoj Fadnis and NIRC Chairman CA. Radhey Shyam Bansal fondly look on (28th March, 2014)

Visit to Karnal Branch of NIRC

Chairman CA. Neeraj Kumar Garg presents memento to ICAI President CA. K. Raghu; ICAI Vice-President CA. Manoj Fadnis, among others, was also present on the dais (28th March, 2014)

Photographs

Meeting of Quality Review Board

ICAI President CA. K. Raghu and Vice-President CA. Manoj Fadnis along with ICAI past-President CA. Subodh Kumar Agrawal, Central Council members CA. Rajkumar S. Adukia, CA. Charanjot Singh Nanda and Shri Prithvi Haldea, and CBDT ex-Chairman and Quality Review Board Chairman Shri M. C. Joshi, among others (2nd April, 2014)

Conference of Statutory Central Auditors in Bangalore

ICAI President CA. K. Raghu addresses the auditors while Central Council member CA. Shyam Lal Agarwal, RBI Executive Director Shri G. Gopalakrishnan and Shri P. R. Ramesh, among others, share the dais (4th April, 2014)

Regional Chairmen Meet in New Delhi

ICAI President CA. K. Raghu and Vice-President CA. Manoj Fadnis, along with all Regional Council Chairmen— NIRC Chairman CA. Radhey Shyam Bansal, SIRC Chairman CA P.V. Rajarajeswaran, EIRC Chairman CA. Subhash Chandra Saraf, CIRC Chairman CA. Nitesh Agarwal and WIRC Chairman CA. Anil Bhandari, during the meet (16th April, 2014)

Visit to Ahmedabad Branch

ICAI President CA. K. Raghu gets a bouquet from Branch Chairman CA. Aniket Talati, while ICAI Vice-President CA. Manoj Fadnis and Central Council member CA. Dhinal A. Shah, among others, share the moments (18th April, 2014)

Vice-Chancellor of Bharathiyar University Visits ICAI

ICAI President CA. K. Raghu discusses the matter of mutual concerns with the Vice-Chancellor of Bharathiyar University Dr. G. James Pitchai and School of Distance Education Director Dr K. Govindarajulu, while his Central Council colleagues CA. Prafulla Chhajed and CA. M. Devaraja Reddy, among others, are also present. (22nd March, 2014)

26th KSCAA Annual Conference in Bangalore

ICAI President CA. K. Raghu addresses the participants at the Annual Conference of Karnataka State CA Association (KSCAA), while ICAI past-President CA. T. N. Manoharan, KSCAA President CA. C. R. Dhavalagiri and a political leader Ms. Rani Satish, among others, share the dais (28th February, 2014)

Advertisement

Know Your Ethics

Ethical Issues in Question-Answer Form

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

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

(a) in respect of cases where the death of the proprietor concerned occurred on or after 30.8.1998.
Provided such a sale is completed/effected in all respects and the Institute's permission to practice in deceased's proprietary firm name is sought within a year of the death of such proprietor concerned. In respect of these cases, the name of the proprietary firm concerned would be kept in abeyance (i.e. not removed on receipt of information about the death of the
proprietor as is being done at present) only up to a period of one year from the death of proprietor concerned as aforesaid.

(b) in respect of cases where the death of the proprietor concerned occurred on or after 30.8.1998 and there existed a dispute as to the legal heir of the deceased proprietor.
Provided the information as to the existence of the dispute is received by the Institute within a year of the death of the proprietor concerned. In respect of these cases, the name of proprietary firm concerned shall be kept in abeyance till one year from the date of settlement of dispute.

(c) in respect of cases where the death of the proprietor concerned had occurred on or before 29th August, 1998 (irrespective of the time lag between the date of death of the proprietor concerned and the date of sale/transfer of goodwill completed/to be completed). Provided such a sale/transfer is completed/effected and the Institute's permission to practice in the deceased's proprietary firm name is sought for by 28th August, 1999 and also further provided that the firm name concerned is still available with the Institute."

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

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

Q. Can a member act as an Insurance Surveyor?

A. As per Appendix (9) of the Chartered Accountants Regulations,1988, a member of the Institute in practice is generally permitted to act as a Surveyor and Loss Assessor under the Insurance Act, 1938 provided they are otherwise eligible and can perform attest functions.

Q. Whether the members are required to intimate his website address to the Institute?

A. No, members are not required to intimate the Website address to the Institute. However, the Website has to comply with the Guidelines issued by the Institute in this regard.

Q. Can a Concurrent Auditor of a Bank also undertake the assignment of quarterly review of the same bank?

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

Q. Can a member act as a Insurance Agent and arrange business for Insurance company?

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

Q. Can a member or firm advertise his/its services?

A. Yes, in a restricted manner within the provisions

* Contributed by the Ethical Standards Board of the ICAI

Know Your Ethics

of the Advertisement Guidelines issued by the Council on 14th May, 2008.

Q. Can a member holding Certificate of Practice is entitled to own Agricultural land and continue agricultural activity?

A. Yes, member holding Certificate of Practice can own and hold agricultural land and continue agricultural activity.

Q. What are the Fundamental Principles which a Professional Accountant is required to comply?

A. A professional accountant is required to comply with the following fundamental principles:
(a) Integrity
(b) Objectivity
(c) Professional Competence and Due Care
(d) Confidentiality
(e) Professional Behaviour

Q. What is the Conceptual Framework Approach?

A. It is a framework that requires a professional accountant to identify, evaluate and address threats to compliance with the fundamental principles, rather than merely comply with a set of specific rules.

Professional accountants are required to apply this conceptual framework to identify threats to compliance with the fundamental principles, to evaluate their significance and, if such threats are other than clearly insignificant than to apply safeguards to eliminate them or reduce them to an acceptable level such that compliance with the fundamental principles is not compromised.

Q. What are the threats involved while complying with the fundamental principles?

A. Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances. Many threats fall into the following categories:
(a) Self-interest threats
(b) Self-review threats;
(c) Advocacy threats;
(d) Familiarity threats;
(e) Intimidation threats.

Q. What are the available safeguards that may eliminate or reduce the threats at an acceptable level?

A. Safeguards that may eliminate or reduce such threats to an acceptable level fall into two broad categories:
(a) Safeguards created by the profession, legislation or regulation; and
(b) Safeguards in the work environment.

Q. What is Ethical Conflict Resolution?

A. Ethical conflict resolution means to resolve a conflict in the application of Fundamental principles while evaluating compliance with the fundamental principles.

Q. What is a Client Acceptance, Engagement Acceptance and Changes in Professional Appointment?

A. Section 210 of Part - A of the Code of Ethics, 2009 edn. deals with Professional Appointment:
(a) Client Acceptance–Under this a professional accountant in public practice should consider, before accepting a new client relationship, whether acceptance would create any threats to compliance with the fundamental principles.
(b) Engagement Acceptance-A professional accountant in public practice should agree to provide only those services that the professional accountant in public practice is competent to perform.
(c) Changes in Professional Appointment-A professional accountant in public practice who is asked to replace another professional accountant should determine whether there are any reasons, professional or other, for not accepting the engagement, such as circumstances that threaten compliance with the fundamental principles. It shall require direct communication with the existing accountant to establish the facts and circumstances behind the proposed change so that the professional accountant in public practice can decide whether it would be appropriate to accept the engagement.

Under all the 3 circumstances, the significance of any threats should be evaluated. If identified threats are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Where it is not possible to reduce the threats to an acceptable level, a professional accountant in public practice should decline to enter into the client relationship. ■

Advertisement

Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC, MCA, RBI , SEBI and IRDA 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.in**

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

I. NOTIFICATIONS

1. Income-tax (Second Amendment) Rules, 2014 – Amendment in Rule 6AAH

Section 35CCD was inserted by the Finance Act, 2012 to provide a deduction of 150% to a company which in respect of the expenditure incurred on the skill development project notified by the Board in accordance with the guidelines as may be prescribed. The Guidelines for approval of skill development project and conditions subject to which a skill development project is to be notified under Section 35CCD are given in Rule 6AAF and Rule 6AAG respectively. Further, Rule 6AAH provides for the meaning of expressions used in Rule 6AAF and Rule 6AAG.

In exercise of the powers conferred by Section 295 read with Section 35CCD of the Income-tax Act, 1961, the Central Government has widened the meaning of "Training Institute"; to include within its scope, a training institute -

(c) affiliated to, or approved by, or empanelled by, the National Skill Development Agency;

(d) affiliated to, or approved by, or empanelled by, the Central Government and certified by the National Council for Vocational Training as having training standards equivalent to training institutes affiliated to the National Council for Vocational Training; or

(e) affiliated to, or approved by or empanelled by, the State Government and certified by the National Council for Vocational Training or a State Council for Vocational Training as having training standards equivalent to training institutes affiliated to the National Council for Vocational Training or, as the case may be, the State Council for Vocational Training.';

Also, "National Skill Development Agency" has been defined to mean the agency constituted by the Government of India vide Notification No. 14/27/2012-EC, dated the 6th June, 2013.

[Notification No. 16/2014, dated 20-03-2014]

2. Income-tax (Third Amendment) Rules, 2014 – Amendment in Rule 6AAE and substitution of Rule 6AAD

Section 35CCC was inserted by the Finance Act, 2012 to provide a deduction of 150% to an assessee in respect of any expenditure incurred on agricultural extension project notified by the Board in this behalf in accordance with the guidelines as may be prescribed. Rule 6AAD provides for Guidelines for approval of agricultural extension project under Section 35CCC. In exercise of the powers conferred by Section 295 read with section 35CCC of the Income-tax Act, 1961, the Central Board of Direct Taxes has substituted the Rule 6AAD with new Rule 6AAD. The new Rule 6AAD authorises the Member (IT), Central Board of Direct Taxes to directly receive and process the application made by the assessee in this regard. Earlier the process of making application and issuing notification was routed to CBDT through CIT or DIT, as the case may be, having jurisdiction over the case. The processing time has thus been effectively reduced.

Consequential amendments have been made in Rule 6AAE which provides for the conditions subject to which an agricultural extension project is to be notified under Section 35CCC.

[Notification No. 18/2014, dated 21-03-2014]

3. Amendment in Notification No. 61/2013 dated 8-8-2013

Section 10(15)(iv)(h) exempts any interest payable by any public sector company in respect of bonds or debentures and subject to such conditions as may be notified by the Central Government. In exercise of the powers conferred by section 10(15)(iv)(h) of the Income-tax Act, 1961, the Central Government had through Notification 61/2013 dated 8-8-2013 authorised specified entities, namely, Cochin Shipyard Ltd., Airport Authority of India

Ltd, IIFCL, RECL etc to issue during the financial year 2013-14 tax-free, secured, redeemable, non-convertible bonds, aggregating to specified amounts. The said notification also laid down conditions to be fulfilled namely eligibility, tenure of bonds, PAN, Rate of interest, issue expense & brokerage, public issue, private placement, repayment of bonds and selection of merchant bankers.

The Board has through this notification, amended Notification No. 61/2013 dated 08-08-2013, by including IFCI Limited in the list of authorised specified entities. Further, the allocated amount of bonds, which Indian Railway Finance Corporation Limited (IRFC) was authorised to issue, has been decreased.

[Notification No. 19/2014 dated 26-03-2014]

4. Agreement for avoidance of double taxation and prevention of fiscal evasion with Sri Lanka

In exercise of the powers conferred by Section 90 of the Income-tax Act, 1961, the Central Government has, through this notification, notified that the provisions of the agreement between the Government of the Republic of India and the Government of the Democratic Socialist Republic of Sri Lanka for the avoidance of taxation and prevention of fiscal evasion with respect to taxes on income shall be given effect to in the Union of India with effect from the 1st April, 2014.

[Notification No. 23/2014, dated 28-03-2014]

5. Notification of ITR Forms for the AY 2014-15

In exercise of the powers conferred by Section 295 of the Income-tax Act, 1961, the Central Board of Direct Taxes has, through this notification, notified new Income-tax return forms – SAHAJ (ITR-1), ITR-2, SUGAM (ITR-4S) and ITR-V for the Assessment year 2014-15. Rule 12 of the Income tax Rules, has also been amended to provide for the following:

(i) Rule 12(1) which prescribes return form applicable in respect of different categories of persons has been amended to make the same applicable for AY 2014-15. There is no change in the applicability of return forms.

(ii) The notice in writing given to the Assessing Officer under Section 11(2)(a) mentioning the purpose for which the income is being accumulated or set apart by the charitable trust/institution and the period thereof , is now required to be furnished electronically.

The Director General of Income Tax (systems) shall specify the procedures, formats and standards for ensuring secure capture and transmission of data and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to furnishing of notice under Section 11(2) also.

(iii) A person required to furnish the return in Form ITR-5, shall furnish the return for the assessment year 2014-15 and subsequent assessment years electronically under digital signature or transmit the data in the return electronically and thereafter submit the verification of the return in Form ITR-V.

However, a firm required to furnish return in form ITR-5 and to whom the provisions of Section 44AB are applicable shall continue to furnish its return electronically under digital signature. In effect, such firm does not have the option to transmit data in return electronically and thereafter submit form ITR- V.

(iv) A person required to furnish the return in Form ITR-7 shall furnish the same in paper form or electronically under digital signature or transmitting the data in the return electronically and thereafter submit the verification of the return in Form ITR-V. However, a political party which is required to furnish return under Section 139(4B) shall furnish the same ONLY electronically under digital signature.

[Notification No. 24/2014, dated 01-04-2014]

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

II. CIRCULARS

1. Clarification on interpretation of provisions of Section 10(2A)

Section 10(2A) provides that share in the total income of the firm shall not form a part of total income of a partner. A firm is assessed as such and is liable to pay tax on its total income. A partner is not liable to tax once again on his share in the said total income. Various references were received by the Board seeking clarification as to what will be the amount exempt in the hands of the partners of a partnership firm in cases where the firm has claimed exemption/deduction under Chapter III or VI A of the Act.

After examining the matter, the Board has clarified that 'total income' of the firm for Section 10(2A) of the Act, includes income which is exempt or deductible under various provisions of the Act. Further, the income of a firm is to be taxed in the hands of the firm only and the same can under no circumstances be taxed in the hands of its partners even if the income chargeable to tax becomes NIL in the hands of the firm on account of any exemption or deduction as per the provisions of the Act.

[Circular No. 8/2014 dated 31-03-2014]

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

III. PRESS RELEASE

1. Direct Taxes Code, 2013

The Hon'ble Finance Minister, in his Budget speech, has conveyed his intention to place the Direct Taxes Code on the website for a public discussion. Accordingly, the proposed Direct Taxes Code, 2013 has been placed in public domain for comments. A write-up on significant changes proposed in Direct Taxes Code, 2013 has also been hosted.

[Press Release, dated 31-03-2014]

2. Section 92CC of the Income-tax Act, 1961 – Highlighting features of Scheme of APA signed by CBDT

The CBDT has signed first batch of 5 unilateral Advance Pricing Agreements on 31st March, 2014 covering a period of 5 years from AY 2014-15 to AY 2018-19. The agreements specify the arm's length price for the covered international transactions entered into by the taxpayers. These agreements cover a range of international transactions including interest payments, corporate guarantees, non-binding investment advisory services and contract manufacturing. The agreements pertain to different industrial sectors including pharmaceuticals, telecom, exploration and financial services. The agreements provide a complete certainty to the taxpayers for 5 years with regard to the covered international transactions. The intention of the whole scheme of APA is to create a taxpayer friendly environment in transfer pricing matters and to minimise the transfer pricing disputes.

[Press Release, dated 31-03-2014]

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

IV. LETTERS

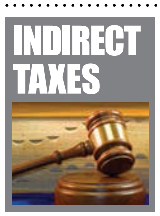
1. Invitation of Comments/ Objections of Income Tax Department relating to Merger/Amalgamation/ Demerger/Reconstruction scheme of companies

The CBDT had noted in a recent case, that the scheme of amalgamation was designed in a manner seeking amalgamation with retrospective dates so as to claim set off of losses of loss-making companies against the profits of profit making Companies of the group adversely impacting the public revenue. The intervention application filed by the department was rejected by the High court on the ground that only the Regional Director MCA has been delegated power in this regard.

In view of the same, MCA has issued Circular No.1/2014 dated 15.01.2014 to Regional Directors which provides that while furnishing any report regarding reconstruction or amalgamation of companies under the Companies Act, comments and inputs from the Income Tax Department may invariably be obtained so as to ensure that the proposed scheme of reconstruction or amalgamation has not been designed in such a way as to defraud the Revenue and consequently be prejudicial to public interest. Since this is the only opportunity with the Department to object to the scheme of amalgamation, the letter requires that the comments /objections of the Department be sent by the concerned CIT to the Regional Director, MCA for incorporating them in its response to the Court, immediately after receiving information about any scheme of amalgamation or reconstruction etc.

[Letter, dated 11-04-2014]

The complete text of the above letter 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. Excise

1. Chief Commissioner of Central Excise empowered (Under Rule 12CCC of CER & Rule12AAA of CCR)

Rule 12CCC of Central Excise Rules 2002 (CER) &

Rule 12AAA of CENVAT Credit Rules, 2004 (CCR) Provides for imposition of restrictions including suspension of registration in case of manufacturer, first/ second stage dealers or an exporter against duty evasion, default in duty payment or false utilisation of CENVAT Credit.

Now, the Chief Commissioner of Central Excise has been empowered in the place of officer authorised by the board for imposition of restrictions and/or withdrawal of facilities.

Chief Commissioner is required to provide an opportunity of being heard to assessee before issuing order against proposal to impose restriction.

The pending proposals before authorised officer of CBEC/DGCEI will be transferred to Chief Commissioner of Central Excise.

[Notification No. 13/2014-Central Excise (N.T.), Dated: 21st March, 2014, Notification No. 14/2014-Central Excise (N.T.), Dated: 21st March, 2014, Notification No. 15/2014-Central Excise (N.T.), Dated: 21st March, 2014, Notification No. 16/2014-Central Excise (N.T.), Dated: 21st March, 2014]

For details visit: www.cbec.gov.in

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

A. Rupee Drawing Arrangement

1. Increase in trade related remittance limit

A. P. (DIR Series) Circular No. 111 dated 13th March, 2014

The limit of trade transactions has been increased from the existing ₹2,00,000/- (Rupees Two Lakh only) per transaction to ₹5,00,000/- (Rupees Five Lakh only) per transaction, with immediate effect in respect of the Permitted Transactions under the Rupee Drawing Arrangements (RDAs).

2. 'Direct to Account' Facility

A.P. (DIR Series) Circular No.120 dated 10th April, 2014

In order to facilitate receipt of foreign inward remittances directly into bank accounts of the beneficiaries, RBI has decided to allow foreign inward remittances received under Rupee Drawing Arrangement (RDA) to be transferred to the KYC compliant beneficiary bank accounts through electronic mode, such as, NEFT, IMPS, etc.

The procedure to be followed for the purpose can be referred in the said circular available on RBI website at http://rbidocs.rbi.org.in/rdocs/notification/PDFs/120AP100414F.pdf

B. Foreign Portfolio Investor-Investment under Portfolio Investment Scheme, Government and Corporate debt

A.P. (DIR Series) Circular No.112 dated 25th March, 2014

The extant guidelines for Portfolio Investment Scheme for Foreign Institutional Investor (FII) and Qualified Foreign Investor (QFI) have since been reviewed and RBI has been decided to put in place a framework for investments under a new scheme called 'Foreign Portfolio Investment' scheme.

The salient features of the new scheme are:

(a) Under the new scheme, the portfolio investor registered in accordance with SEBI guidelines shall be called as 'Registered Foreign Portfolio Investor (RFPI)' and the existing portfolio investor class, namely, Foreign Institutional Investor (FII) and Qualified Foreign Investor (QFI) registered with SEBI shall be subsumed under RFPI;

(b) RFPI may purchase and sell shares and convertible debentures of Indian company through registered broker on recognised stock exchanges in India as well as purchases shares and convertible debentures which are offered to public in terms of relevant SEBI guidelines/regulations.
The terms of selling and acquiring shares or convertible debentures by an RFPI can be referred in the said circular available on RBI website at http://rbidocs.rbi.org.in/rdocs/notification/PDFs/CI112AP250314F.pdf

(c) The individual and aggregate investment limits for the RFPIs shall be below 10% or 24% respectively of the total paid-up equity capital or 10% or 24% respectively of the paid-up value of each series of convertible debentures issued by an Indian company. Further, where there is composite sectoral cap under FDI policy, these limits for RFPI investment shall also be within such overall FDI sectoral caps;

(d) RFPI shall be eligible to open a Special Non-Resident Rupee (SNRR) account and a foreign currency account with Authorised Dealer (AD) bank and to transfer sums from foreign currency account to SNRR account at the prevailing market rate for making genuine investments in securities. The AD bank may transfer repatriable proceeds (after payment of applicable taxes) from SNRR account to foreign currency account;

(e) RFPI shall be eligible to invest in government securities and corporate debt subject to limits specified by the RBI and SEBI from time to time;

(f) The investment by RFPI will be made subject to the SEBI (FPI) Regulations 2014, modified by SEBI/Government of India from time to time;

(g) RFPI shall be permitted to trade in all exchange traded derivative contracts on the stock exchanges in India subject to the position limits as specified by SEBI from time to time;

(h) RFPI may offer cash or foreign sovereign securities with AAA rating or corporate bonds or domestic Government Securities, as collateral to the recognised Stock Exchanges for their transactions in the cash as well as derivative segment of the market.

Any foreign institutional investor who holds a valid certificate of registration from SEBI shall be deemed to be an RFPI till the expiry of a block of 3 years for which fees have been paid as per the SEBI (Foreign Institutional Investors) Regulations, 1995. A QFI may continue to buy, sell or otherwise deal in securities subject to the SEBI (FPI) Regulations, 2014 for a period of 1 year from the date of commencement of these regulations, or until he obtains a certificate of registration as foreign portfolio investor, whichever is earlier.

However, all investments made by that FII/QFI in accordance with the regulations prior to registration as RFPI shall continue to be valid and taken into account for computation of aggregate limit.

RFPI shall report the transaction to RBI as being reported by FII in LEC Form as per extant practice.

C. External Commercial Borrowings (ECB)

1. ECB for Civil Aviation Sector

A.P. (DIR Series) Circular No.113 dated 26th March, 2014

RBI had *vide* A.P. (DIR Series) Circular No. 113 dated 24th April, 2012 allowed ECB to be raised by airline companies for working capital as a permissible end-use, under the approval route, subject to the conditions stipulated in the said Circular. The scheme was extended till 31st December, 2013 *vide* A.P. (DIR Series) Circular No. 116 dated 25th June, 2013.

On a review, RBI has decided that this scheme of raising ECB for working capital for Civil Aviation Sector will continue till 31st March, 2015.

All other conditions stipulated in aforesaid Circular dated 24th April, 2012 shall remain unchanged.

2. ECB Policy – Review of all-in-cost ceiling

A.P. (DIR Series) Circular No.121 dated 10th April, 2014

All-in-cost ceiling as specified in A.P. (DIR Series) Circular No.99 dated 20th March, 2012 relating to ECB shall continue to be applicable till 30th June, 2014 until further review. All other aspects of ECB policy remain unchanged.

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

A.P. (DIR Series) Circular No.122 dated 10th April, 2014

The all-in-cost ceiling as specified under paragraph 4 of A.P. (DIR Series) Circular No.28 dated 11th September, 2012 shall continue to be applicable till 30th June, 2014 and is subject to review thereafter. All other aspects of Trade Credit policy shall remain unchanged.

D. Advance Remittance for Import of Rough Diamonds

A.P. (DIR Series) Circular No.116 dated 1st April, 2014

With a view to further liberalise the procedure for facilitating the import of rough diamonds, RBI has now decided that henceforth RBI will not notify the names of overseas mining companies from whom an importer (other than a Public Sector Company (PSC) or a Department/ ndertaking of the Government of India (GOI)/State Government) may import rough diamonds into India, by way of advance payments, without any limit/bank guarantee/stand-by letter of Credit. (Currently 9 such names of overseas mining companies have been notified by RBI).

AD category – I banks are, henceforth, permitted to take decision on overseas mining companies to whom an importer (other than PSC or Department/Undertaking of GOI/State Government) can make advance payments, without any limit/bank guarantee/stand-by letter of Credit.

AD Category - I banks are required to submit a report of all such advance remittances made without a bank guarantee or standby letter of credit, where the amount of advance payment is equivalent to or exceeds USD 5,000,000/- to the concerned Regional Office of RBI, in the specified format, within 15 calendar days of the close of each half year.

E. Compounding of Contraventions under FEMA, 1999

A.P. (DIR Series) Circular No.117 dated 4th April, 2014

RBI has decided to delegate further powers to the Regional Offices of RBI to compound the contraventions of FEMA. Accordingly, the powers to compound the following contraventions shall now be vested with the Regional Offices –

(a) Delay in reporting inward remittance received for issue of shares
(b) Delay in filing form FC-GPR after issue of shares
(c) Delay in issue of shares/refund of share application money beyond 180 days, mode of receipt of funds, etc.
(d) Violation of pricing guidelines for issue of shares.
(e) Issue of ineligible instruments such as non-convertible debentures, partly paid shares, shares with optionality clause, etc.
(f) Issue of shares without approval of RBI or FIPB respectively, wherever required.

The above contraventions can be compounded by all Regional Offices (except Kochi and Panaji) without any limit on the amount of contravention. Kochi and Panaji Regional offices can compound these contraventions for amount of contravention below ₹1,00,00,000. The contraventions above ₹1,00,00,000 under the jurisdiction of Panaji and Kochi Regional Offices and all other contraventions of FEMA will continue to be compounded at Cell for Effective Implementation of FEMA (CEFA), Mumbai, as hitherto.

Accordingly, applications for compounding related to the above contraventions may be submitted by the concerned entities to the respective Regional Offices under whose jurisdiction they fall. For all other contraventions, applications may continue to be submitted to CEFA, Foreign Exchange Department, 5th floor, Amar Building, Sir P. M. Road, Fort, Mumbai-400001.

The above modifications will come into force with immediate effect. All other instructions on compounding shall remain unchanged.

F. Foreign investment in India in Government Securities

A.P. (DIR Series) Circular No.118 dated 7th April, 2014

The present limit for investment in Government Securities by SEBI registered FIIs, QFIs, long term investors and FPIs registered in accordance with SEBI guidelines stands at USD 30 billion.

On a review, to encourage longer term flow, RBI has now decided that foreign investment by all eligible investors i.e. RFPIs (including existing FIIs and QFIs) and Long term investors registered with SEBI–WFs, Multilateral Agencies, Pension/Insurance/Endowment Funds and foreign Central Banks, shall henceforth be permitted only in Government dated securities having residual maturity of 1 year and above.

Existing investment in T-bills and Government dated securities of less than 1 year residual maturity shall be allowed to taper off on maturity/sale and no fresh investment in T-bills and Government dated securities of less than 1 year residual maturity is allowed.

G. Foreign Direct Investment in Limited Liability Partnership

NotificationNo.FEMA.298/2014-RB/GSR 190(E) dated 13th March, 2014

RBI has notified the guidelines in relation to the FDI in LLP. These guidelines were long overdue since FDI in LLP was permitted vide Press Note 1 of 2011 Series by Department of Industrial Policy and Promotion (DIPP) but there was no corresponding reference in the Foreign Exchange Management Act (FEMA).

As per the new guidelines, any person resident outside India or an entity incorporated outside India, (other than a person or entity of Pakistan or Bangladesh), not being a registered FII or Foreign Venture Capital Investor or QFI registered with SEBI or FPI registered in accordance with SEBI guidelines, may contribute foreign capital either by way of capital contribution or by way of acquisition/transfer of profit shares in the capital structure of an LLP under Foreign Direct Investment, subject to the following terms and conditions-

(a) The Scheme shall be called Foreign Direct Investment (FDI-LLP) in Limited Liability Partnerships (LLP) formed and registered under the Limited Liability Partnership Act, 2008.

(b) An LLP, existing or new, operating in sectors/activities where 100% FDI is allowed under the automatic route of FDI Scheme would be eligible to receive FDI. A LLP engaged in following sectors/activities shall not be eligible to accept (FDI):
   i. Sectors eligible to accept 100% FDI under automatic route but are subject to FDI-linked performance related conditions;
   ii. Sectors eligible to accept less than 100% FDI under automatic route or accept FDI under Government Approval route;
   iii. Agricultural/plantation activity and print media;
   iv. Sectors ineligible to accept FDI *i.e.,* any sector which is prohibited under extant FDI policy
(c) Any form of foreign investment in a LLP, direct or indirect (regardless of nature of 'ownership' or 'control' of an Indian Company) shall require Government/FIPB approval.
(d) FDI in a LLP either by way of capital contribution or by way of acquisition/transfer of profit shares, would have to be more than or equal to the fair price as worked out with any valuation norm which is internationally accepted/adopted as per market practice and a valuation certificate to that effect shall be issued by the Chartered Accountant or by a practicing Cost Accountant or by an approved valuer from the panel maintained by the Central Government.
(e) Payment by an eligible investor towards capital contribution of LLPs will be allowed only by way of cash consideration to be received by way of inward remittance through normal banking channels; or by debit to NRE/FCNR(B) account of the person concerned, maintained with an AD Category - I bank
(f) LLPs shall report to the Regional Office concerned of the RBI, the details of the receipt of the amount of consideration for capital contribution and 'profit shares' in Form FOREIGN DIRECT INVESTMENT-LLP(I) as specified by RBI from time to time, together with a copy/ies of the FIRC/s evidencing the receipt of the remittance along with the KYC report on the non-resident investor, through an AD Category - I bank, and valuation certificate

as regards pricing within 30 days from the date of receipt of the consideration. The report would be acknowledged by the Regional Office concerned, which would allot a Unique Identification Number (UIN) for the amount reported.

(g) Disinvestment /transfer of capital contribution or profit share between a resident and a non-resident (or *vice versa*) shall be required to be reported within 60 days from the date of receipt of funds in Form FOREIGN DIRECT INVESTMENT-LLP(II) as specified by RBI from time to time.

(h) In case an LLP with FDI has a body corporate as a designated partner or nominates an individual to act as a designated partner, such a body corporate should only be a company registered in India and not any other body, such as an LLP or a Trust and would have to satisfy the definition of "person resident in India", as prescribed under Section 2(*v*)(*i*) of the FEMA, 1999.

(i) The designated partners will be responsible for compliance with all the above conditions and also liable for all penalties imposed on the LLP for their contravention, if any.

(j) Conversion of a company with FDI, into an LLP, will be allowed only if the above stipulations (except the stipulation as regards mode of payment) are met and with the prior approval of FIPB/Government.

(k) LLPs shall not be permitted to avail External Commercial Borrowings (ECBs).

CORPORATE LAWS

(Matter on Corporate Laws has been contributed by corporatelaws.taxmann.com)

MCA (www.mca.gov.in)

1. Company Law Board (Qualifications, Experience And Other Condition Of Service Of Members) (Amendment) Rules, 2014 - Amendment In Rule 8

MCA vide Notification No. GSR 197(E) [F.NO.A-12018/1/2011-AD.IV], dated 20-3-2014 has notified that in exercise of the powers conferred by Section 10E (2A), read Section 642 of Companies Act, 1956 [Corresponding to section 465 read with section 469 of the Companies Act, 2013] the Central Government has made amendments in Company Law Board (Qualifications, Experience and other Conditions of Service of Members) Rules, 1993 the rules would be called the Company Law Board (Qualifications, Experience and other Conditions of Service of Members) (Amendment) Rules, 2014.

In rule 8 of 1993 Rules, a proviso shall be inserted giving powers to Central Government to give extension in service of Chairman, Vice Chairman and Members.

2. Clarification with regard to resolution passed u/s 293 of Companies Act, 1956 prior to 12-09-2013

Ministry of Corporate Affairs vide General Circular No. 4/2014 [NO.1/32/2013-CL.V (PT.FILE)], dated 25-3-2014 has clarified that resolution passed under section 293 of the Companies Act, 1956 prior to 12-9-2013 with reference to borrowings (subject to the limits prescribed) and/or creation of security on assets of the company will be regarded as sufficient compliance of the requirements of Section 180 of the Companies Act, 2013 for a period of one year from the date of notification of Section 180 of the 2013 Act.

3. Enforcement of provisions of the Companies Act, 2013 shall come into force

MCA vide [Notification {File No. 1/15/2013-CL.V}], dated 26-03-2014] has notified that in exercise of the powers conferred by sub-Section (3) of Section 1 of the Companies Act, 2013 the Central Government has appointed 01.04.2014 as the date on which specified provisions of the said Act shall come into force.

4. Investor Education And Protection Fund (Uploading Of Information Regarding Unpaid And Unclaimed Amounts Lying With Companies) Amendment Rules, 2014 - Amendment in

MCA has issued Notification No. GSR 217(E) [F.NO.5/29/2013-IEPF], dated 27-3-2014 notifying that in exercise of the powers conferred by sub-section (1) of section 642 read with sub-Section (3) of Section 205C of the Companies Act, 1956 , the Central Government has amended the Investor Education and Protection Fund (Uploading of information regarding unpaid and unclaimed amounts lying with companies) Rules, 2012, the amended rules would be called Investor Education and Protection Fund (Uploading of information regarding unpaid and unclaimed amounts lying with companies) Amendment Rules, 2014 and it shall come into force with effect from the 31st March, 2014. The amendment has been made in Rule 2 and Rule 3 and Form 5 INV.

5. Online payment of stamp duty and court fee for issue of certified copies of documents filed with Registrar of companies

MCA has issued General Circular No. 5/2014 [NO.HQ/7/2012-Computerisation], dated 28-03-2014 with a view to identify and improve the component causing delay in issue of certified copies of documents filed with Registrar of Companies, and therefore, the Ministry of Corporate Affairs with effect from 31.03.2014 has enabled online payment of Stamp Duty as well as Court Fee payable through MCA portal. The online payment of Stamp duty and Court fee would enable the respective ROCs to send the certified documents without awaiting for physical stamp papers and any formal application (with Court Fee Stamp). Amount of Court Fee shall be added to the MCA fee calculated by the system for getting Certified Copies. This would be based on the State in which the registered office of the company is situated. Court Fee would be added as per SRN irrespective of number of documents applied for. Stamp duty for obtaining true copy would also be paid electronically through the system as per the existing process. The Stamp duty would be calculated based on document, number of copies requested and the State wherein the registered office of the Company is situated. Separate SRN will be generated for payment of Stamp duty. After the application is completely processed; an acknowledgement for stamp duty payment shall be generated separately. The same to be appended to the certified copy of the document. The certified copy of the documents requested shall be sent to the stakeholder by the jurisdictional Registrar of Companies within 15 days of post. The copies would be sent at the address of applicant mentioned in the challan.

6. Relevant financial year with effect from which provisions of the new act relating to maintenance of books of account, preparation, adoption and filing of financial statements will be applicable

MCA *vide* General Circular No. 8/2014 [No. 1/19/2013-CL-V], dated 04-04-2014 has clarified as regards relevant financial year with effect from which provisions of the new Act relating to maintenance of books of account, preparation, adoption and filing of financial statements (and attachments thereto), auditors report and Board's report will be applicable and accordingly it is notified that the financial statements (and documents required to be attached thereto), auditors report and Board's report in respect of financial years that commenced earlier than 1st April, 2014 shall be governed by the relevant provisions/Schedules/rules of the Companies Act, 1956 and that in respect of financial years commencing on or after 1st April, 2014, the provisions of the new Act shall apply.

SEBI (www.sebi.gov.in)

1. Strengthening of Investor Awareness & Education Measures

SEBI in its Board meeting at Mumbai, has approved upward revision of fees in order to achieve the mandated statutory objectives. The core areas for SEBI's activities in 2014-15 would be strengthening the investor awareness and education measures; enlarging reach amongst investors/potential investors through regional and local offices; Enhanced focus on capacity building and raising standards of supervision and enforcement functions in market place such as strengthening market surveillance and investigation functions. It has been ensured that revision of fee will have minimal impact on investors. *(Press Release No. 29/2014, Dated 20-03-2014)*

2. Format for auditors' certificate required under Clause 24(i) of the equity listing agreement

SEBI has issued circular no. CFD/DIL/1/2014, dated 25-03-2014 wherein it has been observed that the Auditors' Certificate filed under Clause 24(i) of Equity Listing Agreement by the companies are in different format and there is no standardisation and, therefore, it has been decided to prescribe a standard format for Auditors' Certificate which shall be followed by the companies. This circular is applicable for all draft or final scheme of amalgamation/Merger/reconstruction or petition filed with the Stock Exchange(s) on or after the date of this Circular

3. SEBI {KYC (Know Your Client) Registration Agency} (Amendment) Regulations, 2014 - Amendment in Regulation 16

In exercise of the powers conferred by Section 30 of the SEBI Act, 1992, SEBI has made amendments in SEBI (KYC (Know Your Client) Registration Agency) Regulations 2011. The regulation would be called SEBI (KYC (Know Your Client) Registration Agency) (Amendment) Regulations, 2014. In regulation 16 clause (b) it has been provided that intermediary shall be responsible for uploading the updated information of the client on the system of KRA and retaining the physical documents.

RBI (www.rbi.gov.in)

1. FEM (Transfer or Issue of Security by a person Resident outside India) Regulations, 2000

RBI *vide* Notification [No. FEMA.297/2014-RB]/GSR 189(E), dated 13-03-2014 has notified that in exercise of the powers conferred by Section 6 and Section 47 of the FEMA, 1999, amendments have been made in the FEM (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, The Regulations would be called FEM (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2014. Amendments have been made in Regulation 2, 5 and 14. Schedule 2A has been inserted and amendments have also been Schedule 1, 5 and 7.

2. Restructuring support finance- Participation by investors

RBI through Circular DNBS (PD) CC. NO. 36/SCRC/26.03.001/2013-2014, dated 19-03-2014 has clarified that Securitisation Companies/Reconstruction Companies have been allowed to utilise a part of funds raised under a scheme from the Qualified Institutional Buyers (QIBs) for restructuring of financial assets acquired under the relative scheme subject to following conditions:

i. SC/RCs with acquired assets in excess of Rs. 500 Cr. can float the fund under a scheme which envisages the utilisation of part of funds raised from QIBs in terms of Section 7(2) of the SARFAESI Act, 2002, for restructuring of financial assets acquired out of such funds.
ii. The extent of funds that shall be utilised for reconstruction purpose should not be more than 25% of the funds raised under the scheme in terms of Section 7(2) of the SARFAESI Act, 2002.
iii. Every SC/RCs shall frame a policy, duly approved by the Board of Directors, laying down the broad parameters for utilisation of funds raised from QIBs under such a scheme. ■

Legal Decisions[1]

DIRECT TAXES

Income-tax Act

LD/62/69

Endemol India (P.) Ltd., In re
19th February, 2014 (AAR)

Section 9, read with Section 194C and Section 195, of the Income-tax Act, 1961 – Income – Deemed to be accrued or arise in India

Line production service in respect of TV reality show such as installing equipments, arranging sets, crew members, safety security and transportation service fall within purview of term work under Section 194C and, hence, payment made to non-resident for providing such services outside India would not, in absence of a PE of non-resident in, taxable in India

The applicant is engaged in the business of producing and distributing television programs. It mainly produces reality shows. As per the format of a stunt operation program, the shooting took place primarily in Brazil. The applicant engaged a Brazilian company Utopia Films for providing line production services which would include (*a*) Arranging for crew and support personnel as may be requisitioned; (*b*) Arranging for props and other set production materials; (*c*) Arranging for safety, security and transportation; (*d*) Arranging for filming and other equipments as may be requisitioned.

The anchor and the participants of the show are engaged and paid separately by the applicant and is not the responsibility of Utopia Films. Accordingly, there is no payment made by Utopia Films in this regard.

Utopia Films would provide the entire scope of services to the applicant outside India. Utopia Films has been engaged for a particular season of a reality TV series and there is no continuity of relationship.

The Authority for Advance Rulings held as follows:

The services provided by the non-resident companies to the applicant company are line production services. In the applicant's own case in AAR No. 1083 it has been already held that the payments of similar nature are specifically characterised as work for the purpose of Section 194C by virtue of *Explanation* to that Section. Following said ruling in the applicants own case, it is to be held that the payments made by the applicant to the non-resident company specifically falls under the definition of work under Section 194C of the Act and they will not be taxable without Permanent Establishment in India. Consequently, the payment will not suffer withholding of tax under Section 195 of the Act.

[1] *Readers are invited to send their comments on the selection of cases and their utility at eboard@icai.in. For full judgment, write to eboard@icai.in*

LD/62/70
CIT, Ujjain
vs.
Dawoodi Bohara Jamat
20th February, 2014 (SC)

Section 13, read with section 11 and 12A, of the Income-tax Act, 1961 – Charitable/Religious/ Institutions – Denial of Exemptions

Where the activities of the assessee Dawoodi Bohara community trust were both charitable and religious of, but same were not exclusively meant for a particular religious community of Dawoodi Bohara meaning thereby that the objects did not channel the benefits to any community if not the Dawoodi Bohra Community, it cannot be held that Section 13(1)(b) would be attracted to the assessee-trust and thereby, it would be eligible to claim exemption under Section 11

If the primary or predominant object of an institution is charitable, any other object which might not be charitable but which is ancillary or incidental to the dominant purpose would not prevent the institution from being a valid charitable trust. This Court in several decisions has reiterated the test of predominant purpose.

A religious purpose would be one relating to a particular religion and broadly would encompass objects relating to observance of rituals and ceremonies, propagation of tenets of the religion and other allied activities of the religious community. An example of such would entail activities such as the dance performances (Garba) or distribution of food specifically for people on fast during the Hindu festivities of Navratri.

In certain cases, the activities of the trust may contain elements of both: religious and charitable and thus, both the purposes may be over lapping. More so when the religious activity carried on by a particular section of people would be a charitable activity for or towards other members of the community and also public at large. For example, the practice of optional charity in the form of *Khairat* or *Sadaquah* under Mohammadan Law would be covered under both charitable as well as religious purpose. Further, while providing food and fodder to animals especially cow is religious activity for Hindus, it would be charitable in respect to non-Hindus as well. Similarly, service of water to the thirsty would find mention as religious activity in sacred texts and at the same time would qualify as a charitable activity.

Unquestionably, some of the objects of the assessee trust which provide for the activities completely religious in nature and restricted to the specific community of the assessee-trust are objects with religious purpose only. However, in respect to the other objects, in our view the fact that the said objects trace their source to the Holy Quran and resolve to abide by the path of godliness shown by Allah would not be sufficient to conclude that the entire purpose and activities of the trust would be purely religious in colour. The objects reflect the intent of the trust as observance of the tenets of Islam, but do not restrict the activities of the trust to religious obligations only and for the benefit of the members of the community.

The provision of food to the public on religious days of the community, the establishment of Madarsa and organisations for dissemination of religious education and rendering assistance to the needy and poor for religious activities would reflect the essence of charity. The objects providing for arrangement for *nyaz* and *majlis* (lunch and dinner) on the religious occasion of the birth anniversary and *Urs Mubarak* of the Saints of the Dawoodji Bohra community and for arrangement of lunch and dinner on religious occasions and auspicious days of the Dawoodi Bohra community, respectively. *Nyaz* refers to the food a person makes and offers to others on any particular occasion on the occasion of the death of a saint and *Majhlis* implies a place of gathering or meeting. The activity of providing for food on certain specific occasions and other religious and auspicious events of the Dawoodi Bohra community do not restrict the benefit to the members of the community. Neither the religious tenets nor the objects as expressed limit the service of food on the said occasions only to the members of the specific community. Thus, the activity of *Nyaz* performed by the assessee-trust does not delineate a separate class but extends the benefit of free service of food to public at large irrespective of their religion, caste or sect and thereby qualifies as a charitable purpose which would entail general public utility.

Further, establishment of *Madarsa* or institutions to impart religious education to the masses would qualify as a charitable purpose qualifying under the head of education under the provisions of Section 2(15) of the Act. The institutions established to spread religious awareness by means of education though established to promote and further religious thought could not be restricted to religious purposes. The House of Lords in *Barralet vs. IR, 54 TC 446*, has observed that "the study and dissemination of ethical principles and the cultivation of rational religious sentiment" would fall in the category of educational purposes. The *Madarsa* as a Mohommedan institution of teaching does not confine instruction to only dissipation of religious teachings but also contributes to the holistic education of an individual. Therefore, it cannot be said that such object would embody a restrictive purpose of religious activities only. Similarly, assistance by the assessee-trust to the needy and poor for religious activities would not divest the trust of its altruist character.

Therefore, the objects of the trust exhibit the dual tenor of religious and charitable purposes and activities. Section 11 of the Act shelters such trust with composite objects to claim exemption from tax as a religious and charitable trust subject to provisions of Section 13. The activities of the trust under such objects would therefore be entitled to exemption accordingly. It becomes amply clear from the language employed in the provisions that Section 13 is in the nature of an exemption from applicability of Sections 11 or 12 and the examination of its applicability would only arise at the stage of claim under Sections 11 or 12. Thus, where the income of a trust is eligible for exemption under Section 11, the eligibility for claiming exemption ought to be tested on the touchstone of the provisions of Section 13. It being established that the assessee trust is a public charitable and religious trust eligible for claiming exemption under Section 11, it becomes relevant to test it on the anvil of Section 13.

From the phraseology in clause (b) of section 13(1), it could be inferred that the Legislature intended to include only the trusts established for charitable purposes. That however does not mean that if a trust is a composite one, that is one for both religious and charitable purposes, then it would not be covered by clause (b). What is intended to be excluded from being eligible for exemption under Section 11 is a trust for charitable purpose which is established for the benefit of any particular religious community or caste.

Such trusts with composite objects would not be expelled out of the purview of Section 13(1)(b) *per se*. The Section requires it to be established that such charitable purpose is not for the benefit of a particular religious community or caste. That is to say, it needs to be examined whether such religious-charitable activity carried on by the trust only benefits a certain particular religious community or class or serves across the communities and for society at large.

The section of community sought to be benefited must be either sufficiently defined or identifiable by a common quality of a public or impersonal nature.

In the present case, the objects of the assessee-trust are based on religious tenets under Quran according to religious faith of Islam. The perusal of the objects and purposes of the assessee-trust would clearly demonstrate that the activities of the trust though both charitable and religious are not exclusively meant for a particular religious community. The objects do not channel the benefits to any community if not the Dawoodi Bohra Community and thus, would not fall under the provisions of Section 13(1)(b) of the Act.

In that view of the matter, it is to be opined that the assessee-trust is a charitable and religious trust which does not benefit any specific religious community and therefore, it cannot be held that Section 13(1)(b) of the Act would be attracted to the assessee-trust and thereby, it would be eligible to claim exemption under Section 11 of the Act.

Note: Judgment and Order of the Madhya Pradesh High Court at Indore in ITA No. 112 of 2008 dated 22-06-2009, *Upheld*.

LD/62/71

Essae Teraoka Pvt. Ltd

vs.

Deputy Commissioner of Income Tax, Circle 11(3), Bangalore

4th February, 2014 (KAR)

[Assessment Year 2008-09]

Section 36(1)(va) read with Section 43B of the Income-tax Act, 1961 - Employees' contributions to other funds

Even if the employer fails to deduct the employees' contribution on or before the due date, contemplated under the provisions of the PF Act and the PF Scheme, that would not have to be treated as income within the meaning of Section 2(24)(x) liable to tax; if the contribution is made on or before the due date for furnishing the return of income under sub-Section(1) of Section 139 of the Act is made, the employer is entitled for deduction

In the present case, admittedly, though the employer did not deposit the contribution, within the stipulated time, as contemplated by paragraph-30 of the PF Scheme or before the due date under the provisions of the PF scheme/Act, he deposited the contribution to the PF/ESI fund before the due date contemplated under Section 139(1) of the Act. While the assessee claimed deduction, the Revenue denied same.

The High Court of Karnataka held as follows:

Section 36 provides for other deductions. Sub-Section (1), thereof states that the deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the ip.come referred to in Section 28. Clause (va) of sub-Section(1) of the Section 36 of the IT Act. It provides that any sum received by the assessee from any of his employees to which the provisions of sub-clause(x) of Clause(24) of Section 2 apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date. In the *explanation* appended to Clause (va) defines "due date". It means the date on or before which the employer is supposed to deposit the "contribution" as contemplated within the time stipulated under the provisions of the PF Scheme or under the provisions of the ESI Act.

Thus, from bare perusal of Clause(va) of Section 36(1) of the IT Act, it is clear that any sum received by the assessee-employer from any of his employees towards the employees' contribution as contemplated by sub-para (1) of paragraph-29 of the PF Scheme and if it is deposited with relevant provident fund or fund under the provisions of ESI Act, the assessee is straightaway entitled for deduction as contemplated by Section 36(1)(va) of the IT Act, without any difficulty whatsoever, if he deposits employees' as well as his own contribution within the time stipulated under the provisions of PF Act and the PF Scheme/ESI Act.

Section 43-B of the IT Act provides for certain deductions to be allowable only on actual payment. From bare perusal of Section 43B, it is dear that under the provision, for IT Act, an extension is given to the employer to make payment of contribution to provident fund or any other fund till the "due date" applicable for furnishing the return of income under sub-Section (1) of Section 139 of the IT Act in respect of the previous year in which the liability to pay such sum was incurred and the evidence of such payment is furnished by the assessee along with such return. In short, this provision states, notwithstanding anything contained in any other provision contained in this Act, a deduction otherwise allowable in this Act in respect of any sum payable by the assessee as an employer by way of contribution to any fund such as provident fund shall be allowed if it is paid on or before the due date as contemplated under Section 139(1) of the IT Act. This provision has nothing to do with the consequences, provided for under the PF Act/PF Scheme/ESI Act, for not depositing the "contribution" on or before the due dates therein.

Section 6 of the PF Act provides for contributions and matters which may be provided for in Schemes. Paragraph-29 of the PF Scheme states what is "Contribution". The expression "contribution" is also defined under the PF Act by Section 2(c) of the PF Act, which means a contribution payable in respect of a member under the Scheme or the contribution payable in respect of an employee to whom the Insurance Scheme applies. If this definition is read with sub-para(1) of paragraph-29 in Chapter-V of the PF Scheme, it would mean that the contributions payable by the employer under the Scheme shall be at a particular rate and the contribution payable by the assessee shall be equal to the contribution payable by the employer.

Paragraph-30 of the PF Scheme provides for payment of contributions. Sub-para(1) of paragraph-30 states that the employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

From bare perusal of sub-para(1) of paragraph-30, it is clear that the word "contribution" is used not only-to mean contribution of the employer but also contribution to be made on behalf of the member employed by the employer directly.

Paragraph-38 of the PF Scheme provides for Mode of payment of contributions. As provided in sub-para(1), the employer shall, before paying the member, his wages, deduct his contribution from his wages and deposit the same together with his own contribution and other charges as stipulated therein with the provident fund or the fund under the ESI Act within fifteen days of the closure of every month pay. It is clear that the word "contribution" used in Clause(b) of Section 43-B of the IT Act means the contribution of the employer and the employee. That being so, if the contribution is made on or before the due date for furnishing the return of income under sub-Section(1) of Section 139 of the IT Act is made, the employer is entitled for deduction.

The submission of the Revenue that if the employer fails to deduct the employees' contribution on or before the due date, contemplated under the provisions of the PF Act and the PF Scheme, that would not have to be treated as income within the meaning of Section 2(24)(x) of the IT Act and in which case,the assessee is liable to pay tax on the said amount treating that as his income, deserves to be rejected.

LD/62/72

Union of India, Through Director of Income Tax
vs.
Tata Chemicals Ltd.
26^{th} February, 2014 (SC)
[Assessment Year 1997-98]

Setion 244A, read with section 240, of the Income-tax Act, 1961 – Refunds – Interest On

Where Assessing Officer passed an order under Section 195(2) directing the resident/deductor to deduct tax at a particular rate on payment to foreign company, but Commissioner (Appeals) found that the reimbursement of expenses is not a part of the income for deduction of tax at source under Section 195 and accordingly, directed the refund of the tax that was deducted and paid over to the Revenue, interest requires to be paid on such refunds from the date of payment of such tax

The resident/deductor approached the Income Tax Officer under Section 195 (2) requesting him to provide information/determination as to what percentage of tax should be withheld from the amounts payable to the foreign company. On the request so made, the Assessing Officer/Income Tax Officer had determined and passed Special order under Section 195 (2) of the Act directing the resident/deductor to deduct/withhold tax at the rate of 20% before remitting aforesaid amounts to foreign company. The resident/deductor had appealed against the said order, but had deposited the tax as directed by the assessing officer by the aforesaid order in accordance with the provisions of Section 200. When the resident/deductor succeeded in the appeal, a direction was issued by the appellate authority for refund of tax so paid. In observance of the same, the assessing authority had granted the refund of the tax amount under Section 240, but declined to grant interest on the said refund amount.

The Supreme Court held as follows:

The refund becomes due when tax deducted at source, advance tax paid, self assessment tax paid and tax paid on regular assessment exceeds tax chargeable for the year as a result of an order passed in appeal or other proceedings under the Act. When refund is of any advance tax (including tax deducted/collected at source), interest is payable for the period starting from the first day of the assessment year to the date of grant of refund. No interest is, however, payable if the excess payment is less than 10% of tax determined under Section 143(1) or on regular assessment. No interest is payable for the period for which the proceedings resulting in the refund are delayed for the reasons attributable to the assessee (wholly or partly). The rate of interest and entitlement to interest on excess tax are determined by the statutory provisions of the Act. Interest payment is a statutory obligation and non-discretionary in nature to the assessee. In tune with the aforesaid general principle, Section 244A is drafted and enacted. The language employed in Section 244A of the Act is clear and plain. It grants substantive right of interest and is not procedural. The principles for grant of interest are the same as under the provisions of Section 244 applicable to assessments before 01-04-1989, albeit with clarity of application as contained in Section 244A.

The Department has also issued Circular clarifying the purpose and object of introducing Section 244A of the Act to replace Sections 214, 243 and 244 of the Act. It is clarified therein, that, since there was some lacunae in the earlier provisions with regard to non-payment of interest by the revenue to the assessee for the money remaining with the Government, the said Section is introduced for payment of interest by the Department for delay in grant of refunds. A general right exists in the State to refund any tax collected for its purpose, and a corresponding right exists to refund to individuals any sum paid by them as taxes which are found to have been wrongfully exacted or are believed to be, for any reason, inequitable. The statutory obligation to refund carried with it the right to interest also. This is true in the case of assessee under the Act.

The question before us is, whether the resident/ deductor is also entitled to interest on refund of excess deduction or erroneous deduction of tax at source under Section 195 of the Act.

What the deductor/resident primarily contend is that, what has been deposited by him is a tax, may be for and on behalf of non-resident/foreign company and when the beneficial circular provides for refund of tax to the deductor under certain circumstances, the refund of tax should carry interest.

Section 240 of the Act provides for refund of any amount that becomes due to an assessee as a result of an order in appeal or any other proceedings under the Act. The phrase "other proceedings under the Act" is of wide amplitude. This Court has observed, that, the other proceedings under the Act would include orders passed under Section 154 (rectification proceedings), orders passed by the High Court or Supreme Court under Section 260 (in reference), or order passed by the Commissioner in revision applications under Section 263 or in an application under Section 273A.

A "tax refund" is a refund of taxes when the tax liability is less than the tax paid. In the present fact scenario, the amount paid by the resident/ deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorisedly by the Department. When the collection is illegal, there is corresponding obligation on the revenue to refund such amount with interest in as much as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244A, as that, an assessee is entitled to payment of interest for money remaining with the Government which would be refunded. There is no reason to restrict the same to an assessee only without extending the similar benefit to a resident/deductor who has deducted tax at source and deposited the same before remitting the amount payable to a non-resident/ foreign company.

Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing Statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductor's lawful monies with the accrued interest for the period of undue retention of such monies.

The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which *ex ae quo et bono* ought to be refunded, the right to interest follows, as a matter of course.

In the present case, it is not in doubt that the payment of tax made by resident/depositor is in excess and the department chooses to refund the excess payment of tax to the depositor. The interest requires to be paid on such refunds.

The question is from what date interest is payable. Since the present case does not fall either under clause (a) or (b) of Section 244A of the Act. In the absence of an express provision as contained in clause (a), it cannot be said that the interest is payable from the 1st of April of the assessment year. Simultaneously, since the said payment is not made pursuant to a notice issued under Section 156 of the Act, *Explanation* to clause (b) has no application. In such cases, as the opening words of clause (b) specifically referred to "as in any other case", the interest is payable from the date of payment of tax. The sequel of our discussion is the resident/deductor is entitled not only the refund of tax deposited under Section 195(2) of the Act, but has to be refunded with interest from the date of payment of such tax.

....

LD/62/73
Sasi Enterprises
vs.
Assistant CIT
30th January, 2014 (SC)
[Assessment Years 1991-92 and 1992-93]

Section 276CC of the Income-tax Act, 1961– Offences and Prosecutions – Failure to furnish return of income

Benefit of proviso is available only to voluntary filing *of return as required under Section 139(1) and would not apply after detection of the failure to file the return and after a notice under Section 142(1)(i) or 148 is issued calling for filing of the return of income and therefore, envisages the filing of even belated return before the detection or discovery of the failure and issuance of notices under Section 142 or 148*

The expression "whichever is earlier" has to be read with the time if allowed under sub-section (1) to Section 139 or within the time allowed under notice issued under sub-section (1) of Section 142, whichever is earlier

Offence under Section 276CC is attracted on failure to comply with the provisions of Section 139(1) or failure to respond to the notice issued under Section 142 or Section 148 of the Act within the time limit specified therein

The question is on whom the burden lies, either on the prosecution or the assessee, under Section 278E to prove whether the assessee has or has not committed willful default in filing the returns it is held that the Court in a prosecution of offence, like Section 276CC has to presume the existence of mens rea and it is for the accused to prove the contrary and that too beyond reasonable doubt

The assessee firm, did not file any returns for the assessment year 1991-92 and 1992-93, for which the firm and its partners are being prosecuted under Section 276 CC of the Act. Two partners also did not file returns for the assessment year 1993-94 and, hence, they were being prosecuted for that breach (in their individual capacity) separately but not for the assessment years 1991-92 or 1992-93 and their returns have been filed as individual assessee by them for the assessment years 1991-92 and 1992-93, though belatedly on 20-11-1994 and 23-02-1994 respectively. In those returns it was mentioned that accounts of the firm had not been finalised and no returns of the firm had been filed.

The Assistant Commissioner of Income Tax in his complaint stated that the accused persons did not bother to file the returns even before the end of the respective assessment years, nor had they filed any return at the outer statutory limit prescribed under

Section 139(4) of the Act, *i.e.,* at the end of March of the assessment year. It was also pointed out that a survey was conducted in respect of the firm under Section 133A on 25-08-1992 and following that a notice under Section 148 was served on the partnership firm on 15-02-1994 to file the return of income tax for the years in question. Though notice was served on 16-02-1994, no return was filed within the time granted in the notice. Neither return was filed, nor were particulars of the income furnished. For the assessment year 1991-92, it was stated that pre-assessment notice was served on 18-12-1995, notice under Section 142(1)(ii) giving opportunities was also issued on 20-07-1995. The department made the best judgment assessment for the assessment year 1991-92 under Section 144 on a total income of ₹5,84,860/- on 08.02.1996 and tax was determined as ₹3,02,434 and demand notice for ₹9,95,388 was issued as tax and interest payable on 08-02-1996.

The Supreme Court held as follows:

The constitutional validity of Section 276CC, was upheld by the Karnataka High Court in *Sonarome Chemicals (P.) Ltd. vs. Union of India [2000] 242 ITR 39* holding that it does not violate Article 14 of 21 of the Constitution. Section punishes the person who "willfully fails to furnish the return of income in time". The explanation willful default, as observed by Wilber Force J. in *Wellington vs. Reynold* [1962] 40 TC 209 is "some deliberate or intentional failure to do what the tax payer ought to have done, knowing that to omit to do so was wrong". The assessee is bound to file the return under Section 139(1) of the Act on or before the due date. The outer limit is fixed for filing of return as 31st August of the assessment year, over and above, in the present case, not only return was not filed within the due date prescribed under Section 139(1) of the Act, but also the time prescribed under Section 142 and 148 of the Act and the further opportunity given to file the return in the prescribed time was also not availed of.

Section 276CC applies to situations where an assessee has failed to file a return of income as required under Section 139 of the Act or in response to notices issued to the assessee under Section 142 or Section 148 of the Act. The proviso to Section 276CC gives some relief to genuine assesses. The *proviso* to Section 276CC gives further time till the end of the assessment year to furnish return to avoid prosecution. In other words, even though the due date would be 31st August of the assessment year as per Section 139(1) of the Act, an assessee gets further seven months' time to complete and file the return and such a return though belated, may not attract prosecution of the assessee. Similarly, the *proviso* in clause ii(b) to Section 276CC also provides that if the tax payable determined by regular assessment has reduced by advance tax paid and tax deducted at source does not exceed ₹3,000/- such an assessee shall not be prosecuted for not furnishing the return under Section 139(1) of the Act. Resultantly, the *proviso* under Section 276CC takes care of genuine assesses who either file the returns belatedly but within the end of the assessment year or those who have paid substantial amounts of their tax dues by pre-paid taxes, from the rigor of the prosecution under Section 276CC of the Act.

Section 276CC, it may be noted, takes in sub-Section (1) of Section 139, Section 142(1)(i) and Section 148. But, the *proviso* to Section 276CC takes in only sub-Section (1) of Section 139 of the Act and the provisions of Section 142(1)(i) or 148 are conspicuously absent. Consequently, the benefit of *proviso* is available only to voluntary filing of return as required under Section 139(1) of the Act. In other words, the *proviso* would not apply after detection of the failure to file the return and after a notice under Section 142(1)(i) or 148 of the Act is issued calling for filing of the return of income. *Proviso*, therefore, envisages the filing of even belated return before the detection or discovery of the failure and issuance of notices under Section 142 or 148 of the Act.

In sub-Section (4) to Section 139 the legislature has used an expression "whichever is earlier". Both Section 139(1) and sub-Section (1) of Section 142 are referred to in sub-Section (4) to Section 139, which specify time limit. Therefore, the expression "whichever is earlier" has to be read with the time if allowed under sub-Section (1) to Section 139 or within the time allowed under notice issued under sub-Section (1) of Section 142, whichever is earlier. So far as the present case is concerned, it is already noticed that the assessee had not filed the return either within the time allowed under sub-Section (1) to Section 139 or within the time allowed under notices issued under sub-Section (1) to Section 142.

On failure to file the returns by the appellants, Income-tax Department made a best judgment assessment under Section 144 of the Act and later show cause notices were issued for initiating prosecution under Section 276CC of the Act. *Proviso* to Section 276CC nowhere states that the offence under Section 276CC has not been committed by the categories of assesses who fall within the scope of that *proviso*, but it is stated that such a person shall not be proceeded against. In other words, it only provides that under specific circumstances subject to the *proviso*, prosecution may not be initiated. An assessee who comes within clause 2(b) to the *proviso*, no doubt has also committed the offence under Section 276CC, but is exempted from prosecution since the tax falls below ₹3,000/-. Such an assessee may file belated return before the detection and avail the benefit of the *proviso. Proviso* cannot control the main section, it only confers some benefit to certain categories of assesses. In short, the offence under Section 276CC is attracted on failure to comply with the provisions of Section 139(1) or failure to respond to the notice issued under Section 142 or Section 148 of the Act within the time limit specified therein.

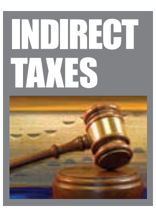
There is no basis in the contention of the appellant that pendency of the appellate proceedings is a relevant factor for not initiating prosecution proceedings under Section 276CC of the Act. Section 276CC contemplates that an offence is committed on the non-filing of the return and it is totally unrelated to the pendency of assessment proceedings except for second part of the offence for determination of the sentence of the offence, the department may resort to best judgment assessment or otherwise to past years to determine the extent of the breach. The language of Section 276CC, is clear so also the legislative intention. It is trite law that as already held by this Court in *B. Permanand vs. Mohan Koikal, [2011] 4 SCC 266* that "the language employed in a statute is the determinative factor of the legislative intent. It is well settled principle of law that a court cannot read anything into a statutory provision which is plain and unambiguous". If it was the intention of the legislature to hold up the prosecution proceedings till the assessment proceedings are completed by way of appeal or otherwise the same would have been provided in Section 276CC itself. Therefore, the contention of the appellant that no prosecution could be initiated till the culmination of assessment proceedings, especially in a case where the appellant had not filed the return as per Section 139(1) of the Act or following the notices issued under Section 142 or Section 148 does not arise.

The declaration or statement made in the individual returns by partners that the accounts of the firm are not finalised, hence no return has been filed by the firm, will not absolve the firm in filing the 'statutory return under section 139(1) of the Act. The firm is independently required to file the return and merely because there has been a best judgment assessment under Section 144 would not nullify the liability of the firm to file the return as per Section 139(1) of the Act. Appellants' contention that since they had in their individual returns indicated that the firm's accounts had not been finalised, hence no returns were filed, would mean that failure to file return was not willful, cannot be accepted.

Section 278E deals with the presumption as to culpable mental state, which was inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986. The question is on whom the burden lies, either on the prosecution or the assessee, under Section 278E to prove whether the assessee has or has not committed willful default in filing the returns. Court in a prosecution of offence, like Section 276CC has to presume the existence of *mens rea* and it is for the accused to prove the contrary and that too beyond reasonable doubt. Resultantly, the appellants have to prove the circumstances which prevented them from filing the returns as per Section 139(1) or in response to notices under Sections 142 and 148 of the Act.

Therefore, no reason was found to interfere with the order passed by the High Court. The appeals, therefore, lack merits and the same are dismissed and the Criminal Court is directed to complete the trial within four months from the date of receipt of this Judgment.

Note: Order of Madras High Court in Crl. R. C. Nos. 781 to 786 of 2006, dated 21-12-2006, *Upheld*.



Customs

LD/62/74

International Conveyors Ltd.
vs.
Commissioner of Central Excise & Customs
25th February, 2014 (SC)

Section 27, read with section 28 and 129A, of the Customs Act, 1962 – Refunds - Unjust Enrichment

Where, on demand raised by Revenue, amount of duty was paid by manufacturer and said amount of duty had not been passed over or recovered from purchasers, refund could not be denied to manufacturer on ground of unjust enrichment

The appellant was a manufacturer of PVC Coal Conveyor Belting made from imported Nylon Yarn. The case put forward by the appellant with regard to the classification of the goods imported by it. The amount which had been demanded by the Revenue had been paid by the appellant under protest. The appellant sought for refund of the amount deposited upon production of evidence of end-use of the imported yarn in the manufacturing of belting to the satisfaction of the concerned Assistant Collector. On writ, the High Court had directed the Revenue to take appropriate action for making payment of the refund. However, now, the Assistant Collector of Central Excise sought to reject the claim of refund on the ground of *unjust enrichment* as the amount of tax was alleged to have been recovered by the appellant from the companies to whom the goods had been supplied by the appellant. The Deputy Collector, Central Excise and Customs passed a final order concluding that the amount of duty claimed by way of refund had not been collected by the appellant from the above named two buyers who had purchased conveyor belting from the appellant. However after some more proceedings, once again the appellant was asked to pay the amount which had already been refunded to it. The said order was challenged by the appellant before the Tribunal and the Tribunal dismissed the said appeal which has been challenged by the appellant in this appeal.

The Supreme Court held as follows:

The amount of duty paid by the appellant had never been passed over to the purchasers and the said fact has been duly recorded by the Deputy Collector, Central Excise and Customs. The said finding has attained finality as nobody challenged the said order. There is no question of demanding the said amount again, especially when the facts which had been disputed by the Revenue before the Tribunal had already been admitted in the proceedings which had been initiated by the Deputy Collector, Central Excise and Customs. Without disturbing the findings arrived at by the Deputy Collector, Central Excise and Customs, the Revenue could not have come to an altogether different conclusion on facts. Due efforts were made to find out whether the amount of duty had been passed over to the purchasers, who are either government Companies or Corporations controlled by the Government. It has been clearly stated in the aforestated order of the Deputy Collector, Central Excise and Customs that even the purchasers had admitted the fact that the amount of duty paid by the appellant had not been passed over to the said purchasers or in other words, or the said amount of duty had not been recovered from the said purchasers.

The refund claim of appellant could not be denied.

Note: International Conveyors Ltd. vs. CCE & C, 2004 (178) ELT 858 (Mum.) *reversed*. ■

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Accounting Treatment of Subsequent Expenditure on Technological Upgradation/ Improvements on Capital Assets

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 is a wholly owned Government of India enterprise incorporated in the year 1965 with the main objective of setting up cement plants in deficit areas to cater to the needs of that area and other neighbouring States. Indian cement industry being the second largest producer of cement in the world after China, is comparable with any advanced country in terms of technology involved in cement manufacture. With the best energy efficient practices and environment friendly equipments, Indian cement industry is the most competitive globally. International trends in technology, like latest grinding systems, advanced material handling systems, automation in process control, high efficiency particle separation, clinker cooling, quality monitoring and control, etc. have been adopted by Indian cement industry.
2. The querist has stated that though the company is the only Government of India enterprise in the country in cement sector, its market share is less than 1% of the total market share in the country thereby leading to severe competition from private entrepreneurs in the market. The company has one of its cement factories in one of the districts of Andhra Pradesh. It was commissioned in the year 1987. The plant has been in operation for more than 25 years after its commissioning and most of its major equipments have outlived their lives.
3. The querist has further stated that cement industry is a process industry and functions of various departments are inter-dependent. The process starts from extracting and crushing of limestone, making it raw meal and then feeding into the kiln where burning takes place at a temperature of 1300 degrees C with the help of coal and its output is clinker. Grinding of clinker takes place in the cement mill by adding certain additives to make it cement, the final product, before the same is packed and despatched by rail/road.
4. Due to company having been declared sick by the Hon'ble Board for Industrial and Financial Reconstruction (BIFR) in the year 1996 due to erosion of its net worth, no technological upgradation/modernisation could take place, as was called for in the cement industry due to fast technological changes. However, normal maintenance was carried out to keep the plant running. As many new cement plants with higher capacity and latest technology have been set up by private entrepreneurs in the vicinity of the plant of the company in Andhra Pradesh and Karnataka, the company had been facing severe competition from private entrepreneurs in the industry and the company is finding difficulty to operate the plant economically without modernisation/technology upgradation. Therefore, in place of changing the vital equipments with latest technology which entails substantial investment, the company made an endeavour to upgrade/improve its certain equipments with certain amount of expenditure with a view to increase the standard efficiency of the vital equipments, increase its useful life and to reduce the operating cost to the extent possible. The modernisation programme was planned for a period of around 3 months by engaging best consultants in the industry and all the activities involved were meticulously worked out and taken up for implementation. The company has, therefore, undertaken modernisation/ upgradation of vital equipments, keeping energy efficiency and environment friendly technology in mind, to increase their standard performance with increase in overall productivity and standard operating efficiency of the plant. Major jobs involved and gist of results envisaged are as follows:

   Jobs involved:
   1. Modernisation of kiln with grate cooler.
   2. Upgradation of Vertical Roller Mill (VRM) and VRM fan assembly.

3. Upgradation of Electrostatic Precipitator (ESP) for VRM/Kiln.
4. Renovation of blending system of raw mill silo.
5. Upgradation of cement mill.
6. Upgradation of coal mill.
7. Upgradation of limestone crusher.

Results:

1. Increased kiln output rate.
2. Considerable effect on output rate of cement mill, raw mill, coal mill, *etc.*
3. Better utilisation of false waste heat.
4. Better process control.
5. Reduction in electricity power consumption.
6. Control on dust emission.
7. Enhance the life of equipments.

5. The equipment-wise details are as follows:

(i) Kiln

Kiln is considered to be heart and soul of the plant. The kiln has been upgraded with girth gear reversal and changing of approx. 43 meters length of kiln out of 68 meters shell to increase the standard output rate and to reduce the standard operating cost. With the above improvements, the standard revolutions per minute (rpm) of the kiln has increased from 2.2 rpm to 3 rpm resulting into increase in overall rated output from 3000 tonnes per day (tpd) to 3500 tpd resulting into increase in production of clinker by approximately 2 lakh MT. The above modifications along with other modifications in retrofitting of the clinker cooler and controlled feed of coal to calciner through installation of modified and accurate weigh feeder of 30 tph has resulted in better heat recovery and thus helped in reducing the rated coal consumption from 24% to 19%. The girth gear reversal had also helped in increasing the life of kiln by atleast another 10 to 15 years and also improving the brick lining life and reduction of refractory consumption. The increased output has further reduced the standard power consumption of clinkerisation section from 100 units to 85 units. The technical experts in the field were involved in the works associated with kiln section. The cost of new kiln would be around ₹100 crore.

(ii) ESP connected to kiln and VRM

The ESP connected to kiln and VRM are vital for plant operations and to maintain the requisite statutory emission norms as fixed by the Pollution Control Board. Since the plant was commissioned more than 25 years ago, the Pollution Control Board has been changing the emission norms periodically considering various parameters and also due to technological improvements/developments in the cement industry over the years. The existing ESP has been modified/upgraded in order to achieve the revised norms by changing the internals and gas distribution (GD), rapping mechanism and other related changes in the existing ESP System. With the above modifications, the reduction in emission has been achieved to 100 mg/Nm3 from earlier 150 mg/Nm3. The life of the modified ESP is also increased by more than 10 to 15 years, besides increased efficiency and savings in ground/calcined materials due to collection of recycling into system, which also brings productivity improvement. The approximate cost to upgrade the existing ESP with latest new ESP would be around ₹15 crore.

(iii) Vertical Roller Mill (VRM)

Major changes in the Vertical Roller Mill under the technical guidance of experts, such as, changing of roller assembly, table liner with improved ones and by doing other allied jobs have helped in improving the rated output of VRM from 260 tph to 280 tph. The increased rated output has further resulted in lower consumption of power to the extent of 2 to 2.5 kwh/tonne. The mill performance has increased which has been able to meet out the grinding requirement of additional raw material due to increase in clinker output. The works related to VRM main drive gear box was supervised by engineers from Germany. The life of VRM has increased by at least another 15 years. The cost of new VRM would be around ₹80 crore.

(iv) Coal mill section

Coal mill is a vital equipment for coal grinding in kiln operations. Retrofitting of coal mills with modified rings and balls have been done in order to increase the efficiency

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of the coal mill and to reduce the operating cost. The gear box and grinding table along with polyclone have been modified and replaced to improve the standard output of the coal mill from 15 tph to 20 tph. The power consumption of the coal mill has also reduced from standard consumption of 30 units per tonne to 25 units per tonne. With the above modification, the useful life of the coal mill has increased further at least by 15 years. The cost of latest new coal mill would be around ₹70 crore.

(v) Cement mill section

Grinding of cement takes place in cement mill before it is sent for packing and despatch. To modernise/upgrade the standard output rate of the cement mill, the gear box with latest technology/model was changed and girth gears of the cement mill were reversed. The cement mill operations had been upgraded with new Distributed Control System (DCS) which has computerised controlled operations instead of manual control. With the above modifications, the mill rated output has gone upto 100 tph in place of 80 tph besides overall improvement in productivity, better operational controls and fault annunciation through computer aided operations.

(vi) Crusher section

The function of crusher is to crush the limestone and supply to the raw mill which was upgraded by changing the rotor assembly and other allied internals with a view to obtain uniform grade of output and to increase the productivity. The crusher operations together with stacker/reclaimer operations have been upgraded with new DCS system instead of manual control. Installation of efficient crusher exhaust fans, apron feeder gear box assembly, reinforcement of concreting in hopper and above modifications have increased the overall productivity of the crusher and also resulted in saving the operating cost, besides increase in the life of the crusher by another 10 to 12 years. The installation cost of new crusher would be around ₹12 to 15 crore.

6. The company, being sick, does not have sufficient funds to modernise/change the entire old equipments with latest technology available in the world for manufacture of cement and therefore, efforts were made to upgrade/modernise the above equipments with certain modifications involving good amount of expenditure so as to obtain increased efficiency by way of increase in rated output with reduction in the standard operating cost and to lower the breakdown rates, wherever possible. The following amounts have been spent on the above upgradations/ improvements:

1.	Kiln	: ₹ 12.61 crore
2.	ESP for Kiln & VRM	: ₹ 3.98 crore
3.	Vertical Roller Mill	: ₹ 4.89 crore
4.	Coal Mill Section	: ₹ 1.50 crore
5.	Cement Mill Sectio	: ₹ 2.49 crore
6.	Crusher Section	: ₹ 2.64 crore
	Total	₹ 28.11 crore

B. Query

7. In view of the above, the opinion of the Expert Advisory Committee of the Institute of Chartered Accountants of India is sought on the following issues:
   (a) Whether the cost of above modifications/ upgradation/improvements can be capitalised along with the cost of concerned equipments and depreciation charged accordingly; or
   (b) Whether the cost of above modifications/ upgradations/improvements should be amortised/depreciated over a period of 10-15 years as the benefit of the above works would result in further increase in useful life of the equipments by not less than 10 years.

C. Points considered by the Committee

8. The Committee notes from the Facts of the Case that the querist has stated that certain amount of expenditure has been incurred to upgrade/ modernise certain vital equipments of the cement plant with a view to obtain increased efficiency by way of increase in rated output alongwith reduction in operating cost and increasing their lives. Accordingly, the company has raised an issue as to whether the expenditure incurred on such upgradation/modernisation can be capitalised as part of concerned equipment and depreciated accordingly or whether expenditure, so incurred, could be amortised over the period

by which the life of the equipments has increased. The Committee has, therefore, considered only these issues and has not examined any other issue that may arise from the Facts of the Case.

9. As far as accounting for the expenditure incurred on upgradation/modernisation of equipments is concerned, the Committee notes that paragraph 23 of Accounting Standard (AS) 10, 'Accounting for Fixed Assets', notified under the Companies (Accounting Standards) Rules, 2006 (hereinafter referred to as the 'Rules') states as below:

> ***"23. Subsequent expenditures related to an item of fixed asset should be added to its book value only if they increase the future benefits from the existing asset beyond its previously assessed standard of performance."***

10. The Committee is of the view that expenditure on fixed assets subsequent to their installation may be categorised into (i) repairs and (ii) improvements or betterments. Repairs, the Committee notes, implies "the restoration of a capital asset to its full productive capacity after damage, accident, or prolonged use, without increase in the previously estimated service life or capacity." It frequently involves replacement of parts. On the other hand, betterment is defined as "…an expenditure having the effect of extending the useful life of an existing fixed asset, increasing its normal rate of output, lowering its operating cost, or otherwise adding to the worth of benefits it can yield. The cost of adopting a fixed asset to a new use is not ordinarily capitalised unless at least one of these tests is met. A betterment is distinguished from an item of repair or maintenance in that the latter has the effect of keeping the asset in its customary state of operating efficiency without the expectation of added future benefits." (These definitions are reproduced from the Dictionary for Accountants by Eric C. Kohler, Sixth Edition.)

11. From the above, the Committee is of the view that normally, expenditure on repairs, including replacement cost necessary to maintain the previously estimated standard of performance, is expensed in the same period. Similarly, the cost of adopting a fixed asset to a new use or modernisation of such asset without actually improving the previously estimated standard of performance is also expensed. Accordingly, in the view of the Committee, only such expenditures that add new fixed asset units, or that have the effect of improving the previously assessed standard of performance, e.g., an extension in the asset's useful life, an increase in its capacity, or a substantial improvement in the quality of output or a reduction in previously assessed operating costs are capitalised. The Committee is of the view that 'previously assessed standard of performance' is not the actual performance of the asset at the time of repair/improvement etc., but the standard performance of the same asset in its original state.

12. The Committee notes from the Facts of the Case that it has been stated that the expenditure has resulted in increased productivity, reduced operating costs and also enhancing the life of the equipments. However, the querist has not informed whether the increase in productivity or enhancing the life is beyond the *previously assessed* standard of performance of the concerned equipments as stated in paragraph 11 above. It is only the increase beyond the standard of performance of the concerned equipments in their original state, which is treated as betterment and related expenditure is capitalised. In this regard, the Committee also notes paragraph 12.2 of AS 10, notified under the Rules, which is reproduced below:

> "12.2 The cost of an addition or extension to an existing asset which is of a capital nature and which becomes an integral part of the existing asset is usually added to its gross book value. Any addition or extension, which has a separate identity and is capable of being used after the existing asset is disposed of, is accounted for separately."

From the above, the Committee is of the view that if the expenditure incurred by the company has a separate identity and is capable of being used after the existing asset is disposed of, it should be accounted for separately and accordingly, depreciation should be provided considering the provisions of Accounting Standard (AS) 6, 'Depreciation Accounting', notified under the Rules and the Companies Act, 1956. However, if the expenditure incurred results into betterment of an existing asset which cannot be used independently of the existing asset then the same should be added to the gross book value of the concerned asset and depreciated at the rates applicable to the asset considering the requirements of paragraph 24 of AS 6, notified under the Rules, which is reproduced as below:

> ***"24. Any addition or extension which becomes an integral part of the existing asset should be depreciated over the remaining useful life of that asset. The depreciation on such addition or extension may also be provided at the rate applied to the existing asset. Where an addition or extension retains a separate identity and is capable of being used after the existing asset is disposed of, depreciation should be provided independently on the basis of an estimate of its own useful life."***

13. As regards the period over which the asset can be depreciated, the Committee notes the requirements of paragraph 23 of AS 6, notified under the Rules, which provides as follows:

> ***"23. The useful lives of major depreciable assets or classes of depreciable assets may be reviewed periodically. Where there is a revision of the estimated useful life of an asset, the unamortised depreciable amount should be charged over the revised remaining useful life."***

On the basis of the above, the Committee is of the view that if the above upgradation/modernisation results into an increase in the *useful life* of the concerned asset, the unamortised depreciable amount of the concerned asset alongwith the expenditure incurred on upgradation/modernisation (provided it is to be capitalised as discussed in paragraph 12 above) should be charged over the revised remaining useful life subject to the useful life implicit from the specified rates as per Schedule XIV to the Companies Act, 1956. The Committee wishes to point out that such depreciation should be charged with reference to the 'useful life' and not with reference to 'physical life' of the asset.

D.Opinion

14. On the basis of the above, the Committee is of the following opinion on the issues raised in paragraph 7 above:
    (i) If the expenditure incurred on upgradation/modernisation of equipments increases the future benefits of the existing equipments beyond their *previously assessed* standard of performance, the cost of such upgradation/modernisation can be capitalised along with the cost of concerned equipments, as discussed in paragraphs 11 and 12 above and depreciation should be charged accordingly, as discussed in paragraphs 12 and 13 above. However, if such expenditure does not result into such increase in future benefits, it should be expensed as and when incurred.
    (ii) If the above upgradation/modernisation results in increase of the useful life of the equipments, the unamortised depreciable amount of the concerned assets alongwith the expenditure incurred on its upgradation/modernisation (provided it is capitalised) should be charged over the revised remaining useful life, subject to the useful life implicit from the rates specified in Schedule XIV to the Companies Act, 1956, as discussed in paragraph 13 above.

1	The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute.
2	The Opinion is based on the facts supplied and in the specific circumstances of the querist. The Committee finalised the Opinion on July 16, 2013. 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 two volumes. A CD of Compendium of Opinions containing thirty two 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.in.

Moving Ahead towards Implementation of IFRS- converged Indian Accounting Standards (Ind AS)

Financial reporting quality plays a very significant role in the economic growth of a country, as it assists in conducting its economic and financial affairs in prudent and transparent manner. For taking various economic decisions, there is a need for accurate, relevant and consistent information. Aforementioned objectives can be met through establishment of sound financial reporting system in the country. The Institute of Chartered Accountants of India (ICAI) being premier accounting body in the country has always played a very influential role in taking Indian financial reporting system to new heights and achieving international benchmarks by taking necessary initiatives from time to time. In this direction, it was observed that various nations across the globe were pursuing convergence of their national Accounting Standards with International Financial Reporting Standards (IFRS) or their outright adoption. Accordingly, in order to enable Indian accountancy profession to discharge its responsibilities towards the world of business and the country in the most efficient manner, the ICAI also decided to converge the national Accounting Standards with IFRS.

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Benefits of convergence with IFRS

Substantial benefits are expected by adoption or convergence with IFRS. Implementation of IFRS-converged Indian Accounting Standards would help in bringing excellence in financial reporting, as these Standards are based on the premise that the financial statements should be transparent and should faithfully represent the actual financial position and performance of the entity. These Standards would enable comparability of financial information which will boost investor confidence, thereby enabling companies to raise capital at lower costs. It will provide better access to global capital markets and reduction in the cost of capital leading to overall economic growth. Since these Standards are based on fair value approach, historical costs will be replaced by fair values in several balance sheet items, which will enable the entities to know its true worth. By providing transparent and comparable financial information, reporting as per these Standards will provide an impetus to cross-border acquisitions, enable partnerships and alliances with foreign entities, and lower the cost of integration in post-acquisition periods. Accounting professionals having expertise in these Standards would also get global recognition.

Initial Initiatives

Considering the global developments and expected benefits of convergence with IFRS, the ICAI constituted Task Force in 2006 to explore approach for achieving convergence with IFRS. The Council of the ICAI in 2007 accepted recommendations of the Task Force to converge with IFRS and approach to be followed for the same. The Ministry of Corporate Affairs (MCA), Govt. of India, also supported the initiative of the ICAI to converge with IFRS in order to bring the accounting practices followed in India at par with the best international practices.

The decision to converge with IFRS and not to adopt the same signifies that while formulating I FRS-converged Indian Accounting Standards efforts will be made to keep these Standards, as far as possible, in line with the corresponding IAS/ IFRS, but keeping in view the Indian conditions and circumstances, departures will be made where considered absolutely essential. At the same time, Indian concerns will be raised before the IASB so that these are properly addressed at international level also.

In accordance with the above stated decision, the ICAI formulated IFRS-converged Indian Accounting Standards where absolutely essential departures were made and in certain Standards optional treatments prescribed under IFRS were removed keeping in view Indian environment to bring about comparability. These Standards were placed on its website by the MCA after the recommendation of the National Advisory Committee on Accounting Standards (NACAS) in February 2011. At that time, the MCA had decided to implement these Standards in phased manner from accounting periods commencing on or after 1st April 2011, but the same could not be done because of various issues, such as, non-compatible legal and regulatory requirements, tax related issues etc.

It has been recommended to the MCA that first Indian Accounting Standards consolidated financial statements may be prepared for the accounting periods beginning on or after April 1, 2016, with comparatives for the year ending 31st March 2016 or thereafter by the public interest entities. Public-interest entities for this purpose may include listed companies or the companies in the process of listing on any stock exchange in India or outside India, other large companies having net worth of ₹500 crore or more and the holding, subsidiary, joint venture or associate companies of these companies for preparing their Ind AS consolidated financial statements.

Recent initiatives: Suggested revised roadmap to MCA

The enactment of the Companies Act, 2013, has paved the way for IFRS-converged Ind AS environment as it has incorporated various provisions compatible with the requirements contained in IFRS-converged Indian Accounting Standards. Some of the examples of such requirements are inclusion of statement of changes in equity in the definition of financial statements, requirement for all companies to prepare consolidated financial statements, component approach for charge of depreciation on a fixed asset, etc.

Considering these developments in the Companies Act and recognising the need of implementation of IFRS-converged Indian Accounting Standards in India at the earliest, the MCA recently requested the ICAI to suggest revised roadmap for implementation of these Standards. In this regard, it has been noted that these Standards could not be implemented earlier due to various tax, dividend and other issues. Therefore, to overcome these issues, it has been decided by the ICAI to recommend to the MCA that Ind AS may be made applicable for preparation of Consolidated Financial Statements of public-interest entities compared to the earlier announced roadmap where Ind AS were to be made applicable to the Consolidated Financial Statements as well as

Individual Financial Statements. The major benefit of the revised approach would be that there would not be any tax, managerial and other employee compensation implications, dividend policy implications, etc., because Individual Financial Statements would continue to be prepared as per the existing notified Accounting Standards, which would be basis for all these purposes and these Standards would be upgraded over a period of time. It has been observed that most of the countries that have either adopted or converged with IFRS, have made these Standards applicable only for the purpose of preparation of Consolidated Financial Statements. Under this approach, India would be considered to be IFRS-compliant and at the same time mminimum legal and regulatory changes would be required.

It has been recommended to the MCA that public-interest entities for this purpose may include listed companies or the companies in the process of listing on any stock exchange in India or outside India, other large companies having net worth of ₹500 crore or more and the holding, subsidiary, joint venture or associate companies of these companies for preparing their Ind AS consolidated financial statements. It has been recommended that such first financial statements may be prepared for the accounting periods beginning on or after April 1, 2016, with comparatives for the year ending 31st March 2016 or thereafter. For this purpose, Ind AS effective as on 31st March 2017, would apply. The net worth for this purpose should be calculated as per the stand alone audited balance sheet of the company as at 31st March 2014 or the first balance sheet for accounting periods which end after that date.

It has also been suggested to include in the revised roadmap an option for the companies not mandatorily required to follow Ind AS to apply the Indian Accounting Standards voluntarily for their consolidated financial statements provided they prepare consolidated financial statements under the Indian Accounting Standards consistently thereafter. Once a company starts following Ind AS for consolidated financial statements, it shall be required to follow such accounting Standards for all the subsequent consolidated financial statements even if any of the eligibility criteria does not subsequently apply to it.

It has been suggested that the roadmap for banks, NBFCs and Insurance Companies shall be decided in consultation with RBI and IRDA.

Convergence: A Continuous Process

It is worthwhile to note that the convergence is a continuous process. In order to remain converged with IFRS, the Indian Accounting Standards need to be issued/revised corresponding to the IFRS being issued/revised by the IASB from time to time. Accordingly, post-February 2011, wherever any amendments have been made or new IFRS have been issued by the IASB, the ICAI has also revised the corresponding Ind AS and issued new Ind AS. With regard to certain recent amendments and new IFRS issued by the IASB, e.g., IFRS 14, Regulatory Deferral Accounts, the ICAI is in the process of revision/issuance of corresponding Ind AS. It has been endeavour of the ICAI to keep Ind AS updated in line with updations in IFRS.

Capacity Building Initiatives

In addition to formulation of Accounting Standards, the ICAI is committed to make every possible effort to ensure that these Standards are implemented in the same spirit in which they have been formulated. For this purpose, the ICAI has constituted a Committee, namely, Ind AS (IFRS) Implementation Committee, to deal with issues coming up in implementation of these Standards. The Committee provides guidance to the members and other stakeholders in the form of Educational Materials on Indian Accounting Standards. This Committee is also taking adequate steps to enhance the knowledge of the members and other stakeholders for proper implementation of IFRS-converged Indian Accounting Standards by conducting workshops, seminars and IFRS Certificate Course. Every possible effort is being made by the ICAI to address implementation issues so that risks associated with implementation of these Standards are minimised. Regulators also have a significant role to play in effectively addressing the issues involved in implementation of these Standards.

Other Initiatives

Apart from various initiatives directly related to issuance and implementation of IFRS-converged Indian Accounting Standards, the ICAI makes every possible effort to participate and interact with the IASB and other Standard–Setters to discuss Indian concerns in the context of IFRS. For this purpose, the Accounting Standards Board of the ICAI is representing India on various international fora, such as, IASB; Asian-Oceanian Standard-Setters Group

(AOSSG) - a group of the accounting standard-setters in the Asian-Oceanian region to discuss issues and share experiences on the adoption of IFRS; International Forum of Accounting Standards Setters (IFASS) - a forum to bring together policy makers, regulators and national standards-setters to share their experience, discuss IFRS related policy issues and to discuss developments in IFRS; Emerging Economies Group (EEG) - a group to focus on issues around the application and implementation of IFRS in emerging economies, etc. In this regard, recently a meeting of the IFASS formerly known as National Standards Setters (NSS) was hosted by the ICAI at New Delhi on March 6-7, 2014. Two-days 8th IFRS Regional Policy Forum ("Forum") was also hosted by the ICAI at New Delhi on 8–9 March 2014, with the theme "Financial Reporting: New Frontiers". The ICAI also conducts various outreach programmes on IFRS in collaboration with IASB from time to time. In addition to the aforementioned initiatives, in order to participate effectively in Standards formulation, incisive comments are submitted to the IASB on their various consultative documents. This helps in raising Indian concerns at the earliest, which enables the IASB to address the same in the best possible manner.

Conclusion

It may be concluded that by taking lead in all possible ways, the Institute has paved the way for implementation of IFRS-converged Indian Accounting Standards which would bring financial reporting in India at par with the international financial reporting. With this, India would also be considered an IFRS-compliant country. While India is moving towards convergence at present, in future the Indian accountancy profession is expected to play a significant role not only in Indian financial reporting system but also in international financial reporting by playing an influential role in formulation of IFRS before their finalisation. In future, India would make an increased contribution to international accounting on the basis of its rich experience, such as, its survival in the global financial crisis because of its prudence based accounting principles and would aim to emerge as a global accounting leader. ■

Opportunities and Challenges for Chartered Accountants from IFRS Convergence

Convergence brings a golden opportunity to comprehensively re-assess financial reporting and take 'a clean sheet of paper' approach to financial policies and processes. Understanding IFRS or Ind AS and its implications is a business imperative for Indian companies. The changeover to the International Financial Reporting Standards (IFRS) is a major challenge, but it is also an opportunity for chartered accountants. Its success depends on the availability of adequate tools and resources, development of expertise by the professionals as well as a considerable investment of time and money on the part of management. This article gives sneak peak into the background of the IFRS and a lucid analysis and insight into the opportunities and challenges arising out of IFRS convergence for chartered accountants and the roadmap to success.

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The Council of the ICAI, on 20th-22nd March, 2014, has accepted the roadmap for convergence with the IFRS. The revised roadmap recommends Ind AS to be implemented for the preparation of Consolidated Financial Statements of listed companies and unlisted companies having net worth in excess of ₹500 crore from the accounting year beginning on or after 1st April, 2016, with the previous year comparatives in Ind AS for the year 2015-16. The stand-alone financial statements will continue to be prepared as per the existing notified Accounting Standards which would be upgraded over a period of time.

What are International Financial Reporting Standards (IFRS)

The statements of IAS issued by the Board of the IASC (1973-2001) are designated as IAS. However, the IASB announced in April, 2001 that its Accounting Standards would be designated as 'International Financial Reporting Standards' (IFRS). The IASB publishes its Standards in a series of pronouncements called The International Financial Reporting Standards (IFRS). It also adopted the body of Standards issued by the Board of the International Accounting Standards Committee. Those pronouncements continue to be designated as the "International Accounting Standards" (IAS). Presently, there are 41 IAS and 13 IFRS. Some of the Standards issued by IASC have since been withdrawn and replaced or superseded.

Benefits of Adopting or Convergence to IFRS

In the present era of globalisation and liberalisation, the World has become an economic village. The globalisation of the business world and the attendant structures and the regulations, which support it, as well as the development of e-commerce makes it imperative to have a single globally accepted financial reporting system. A number of multinational companies are establishing their businesses in various countries with the emerging economies and *vice versa*. The entities in emerging economies are increasingly accessing the global markets to fulfill their capital needs by getting their securities listed on the stock exchanges outside their country. The Capital markets are, thus, becoming integrated, consistent with this world-wide trend. Sound financial reporting structure is, thus, imperative for economic well-being and effective functioning of capital markets.

The use of different accounting frameworks in different countries, which require inconsistent treatment and presentation of the same underlying economic transactions, creates confusion for users of financial statements. This confusion leads to inefficiency in the capital markets across the world. Therefore, increasing complexity of business transactions and globalisation of capital markets call for a single set of high quality accounting standards. The high standards of financial reporting underpin the trust investors place in the financial and non-financial information. Hence, the case for a single set of globally accepted accounting standards.

Adoption of IFRS helps the economy at large, investors, industry as well as the accounting professionals. It benefits the economy by increasing growth of its international business. It facilitates maintenance of orderly and efficient capital markets and also helps to increase the capital formation and thereby economic growth. It encourages international investing and thereby leads to more foreign capital flows to the country.

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So far as investors are concerned, they want the information that is more relevant, reliable, timely and comparable across the jurisdictions. The financial statements prepared, using a common set of accounting standards, help investors to better understand the investment opportunities as opposed to the financial statements prepared using a different set of national accounting standards.

The industry is able to raise capital from the foreign markets at lower cost if it can create confidence in the minds of foreign investors that their financial statements comply with globally accepted accounting standards. With the diversity in accounting standards from country to country, enterprises, which operate in different countries, face a multitude of accounting requirements prevailing in the countries. The burden of financial reporting is lessened with the convergence of accounting standards because it simplifies the process of preparing the individual and group financial statements and thereby reduces the costs of preparing the financial statements using different sets of accounting standards.

India's Roadmap to the IFRS Convergence

The Ministry of Corporate Affairs (MCA) had earlier issued the convergence roadmap from 2011 but the same was not implemented primarily due to tax implications. Since then, the Parliament has passed the new Companies Act, 2013. The new Act has introduced various new provisions, including requirement to prepare the Consolidated Financial Statements, which would facilitate implementation of Ind AS converged with the IFRS.

Having regard to this and the ever growing need to implement the IFRS, the convergence roadmap has been issued by the ICAI in the press release dated 24th March, 2014. The revised roadmap recommends Ind AS to be implemented for the preparation of the Consolidated Financial Statements of listed companies and unlisted companies having net worth in excess of ₹500 crore from the accounting year beginning on or after 1st April, 2016, with previous year comparatives in Ind AS for the year 2015-16. The stand-alone financial statements will continue to be prepared as per the existing notified Accounting Standards which would be upgraded over a period of time.

The roadmap also proposes that the previous year comparatives for the year 2015-16 shall be prepared in accordance with Ind AS as against the previous roadmap which required the same to be prepared in accordance with the existing notified Accounting Standards, which was done at that time because the time for implementation of Ind AS was very short. This proposal would also be another step to make Ind AS convergent with the IFRS, as without this, Ind AS would not be considered to be IFRS-converged. It is felt that for preparation of the previous year comparatives also, the time presently proposed is sufficient.

Opportunities for CAs from Convergence with the IFRS

The adoption or convergence with the IFRSs benefits the accounting professionals in a way that they are able to render their services as experts in different parts of the world. It offers them more opportunities in any part of the world if uniform accounting practices prevail throughout the world. For accounting professionals in the industry as well as in practice, their ability to work in different parts of the world also increases.

Some of the specific opportunities that the convergence to the IFRS brings in are given below:

International Gateway for Indian Accountants

The world of the IFRS offers a distinctly Indian opportunity. There are several areas which promise growth on the world stage. A working knowledge and experience in IFRS offers an international gateway for Indian accountants to take their professional abilities anywhere around the world.

Growing Demand of Valuation Experts

The IFRS requires recognition of certain assets and liabilities hitherto unrecognised under the Indian GAAP. It also derecognises certain assets and liabilities hitherto recognised under the Indian GAAP. A significant proportion of the total items in the balance sheet will be measured on fair valuation. The fair valuation will require valuation experts which is another opportunity for chartered accountants.

Hiring of the IFRS Specialists by Companies

Companies would consider hiring or teaming up with the recognised IFRS specialists. So, there would be more demand for IFRS experts both in-house and as outside consultants. Presently, there are around 50,000 listed companies in India. Thus, there could be requirement of 50,000 teams consisting of IFRS experts for 3-6 months for the first-time convergence itself. Also, for a continuous review, IFRS professionals would be required.

Continuing Education and Core Resources

The conversion process should start with intensive and ongoing IFRS training for key audit and review personnel. It is a major task to impart knowledge and training, both to the preparers of these financial statements and to the auditing profession. This responsibility has been assigned to the ICAI, which has already embarked on the task. There would be extensive education initiatives to train around two lakh chartered accountants for this purpose.

Challenges for CAs

The changeover to Ind AS is a major challenge. A critical factor in the convergence to IFRS is the application of IFRS 1 on 'First-time Reporting of International Financial Reporting Standards' for which a corresponding Indian accounting standard (Ind-AS) 101 has been issued. This Standard requires the preparation of an opening balance sheet which requires:

The burden of financial reporting is lessened with convergence of accounting standards because it simplifies the process of preparing the individual and group financial statements and thereby reduces the costs of preparing the financial statements using different sets of accounting standards.

The adoption or convergence with IFRSs benefits the accounting professionals in a way that they are able to render their services as experts in different parts of the world. It offers them more opportunities in any part of the world if uniform accounting practices prevail throughout the world. For accounting professionals in industry as well as in practice, their ability to work in different parts of the world also increases.

(a) recognition of all assets and liabilities which are required to be recognised under Ind AS.
(b) derecognition of all assets and liabilities which cannot be recognised under Ind AS.
(c) reclassification of items required under Ind AS
(d) application of Ind AS to the measurement of assets and liabilities. Some of the challenges in the IFRS convergence are highlighted below:

Challenges in First Time Adoption

First-time adoption has its own challenges. One has to undergo the exercise. There is no escape. And that is the easier part of the entire exercise. The difficult part is that in first time adoption, the Ind AS grants limited exemptions in certain areas where the cost of compliance may exceed the benefits. These exemptions are optional and not mandatory. You may choose not to avail the exemption.

An entity thus has to evaluate all these exemptions and understand the impact these will have on its financials in the short run as well as in the long run. Moreover, quite a few new accounting policies may need to be adopted. The previous policies may need modifications. The basis of judgements and estimates will need detailed working and understanding. The decision will not be easy and will require expert assistance provided after considering the financial and regulatory environment.

Regrouping/Reclassification

Presently, items are regrouped or reclassified to conform to the current year classification without any justification being provided in the financial statements. Under the Ind AS, in case any regrouping or reclassification is done, the same needs to be disclosed along with reasons thereof.

Industry Comparatives

Now with the Ind AS, not only the basis of quantitative data will change, the compiling and collation itself will become a major challenge. The comparison of present performance on the Ind AS basis with the historical data prepared on the Indian GAAP would be challenging.

Changes in Concepts Requiring Consideration

a) ***Introduction of 'fair value' concept***
A number of the Ind AS, mainly (a) Ind AS 102- Sharebased Payments (b) Ind AS 103- Business Combinations (c) Ind AS 20- Government Grants (d) Ind AS 39- Financial Instruments, *etc.* require that certain assets and liabilities have to be measured at their initial recognition and also at their subsequent measurement at their fair value and not at their cost. There are also a number of Standards where an option is given to use the fair value method or the cost method.

b) ***Introduction of 'time value of money' concept***
This concept requires that where the expected date of recovery of an asset or payment of a liability is deferred, it is recorded at its discounted value using an effective rate of interest and not at its face value. Some of the assets and liabilities where this concept is used are deep discount bonds, deferred receivables and payables and long term provisions

c) ***'Substance over form' concept***
There are also a number of Standards which use the concept of substance over form, *e.g.*, redeemable preference shares are considered to be debt and not share capital; employee loans at concessional rates are deemed to include an employee cost equivalent to the interest forgone; convertible instruments are bifurcated into debt and equity, *etc.*

Awareness at the Board Level

Unless and until the Board of directors themselves understand the Ind AS, the buy-in for the Ind

AS implementation will be difficult. Thus, the board needs to be aware about the impact the Ind AS implementation will have on the entity's financial results, ratios, the remuneration packages, distributable surplus *etc.*

External communications

It is, nowadays, necessary for any public interest entity, to regularly communicate in a transparent manner with its various stakeholders. To ensure a continuous growth momentum, strong investor relations are a prerequisite. The challenge would be to educate the stakeholders including the analysts, shareholders and lenders to correctly understand and analyse the Ind AS statements.

Internal Changes

The Ind AS will cast its shadow not only on the accounts department but will influence the other departments also. There will be new terms, new definitions for old terms, different ways of things done hitherto. Ind AS will entail changes in various internal processes and systems. There would also be a need to reconfigure accounting software. The way the budgets are drawn, the way performance is measured, the way performance is rewarded will require substantial changes. The MIS also has to follow Ind AS and cannot be based on old systems.

The changeover to Ind AS is a major challenge. A critical factor in the convergence to IFRS is the application of IFRS 1 on 'First-time Reporting of International Financial Reporting Standards' for which a corresponding Indian accounting standard (Ind-AS) 101 has been issued.

Lack of core financial background amongst users of financial statements, such as research analysts, shareholders etc.

The annual reports are becoming bulkier. Instead of results, more and more information is being provided in the name of transparency. The onus of understanding the results has shifted considerably from the management to the person analysing the results. It is advisable that the results should be crisper so that an average user can make an intelligent use of it.

Most of the financial and research analysts do not have a core financial background and rather hails from the management profession such as MBA where the advance financial knowledge is usually not imparted. It may be advisable that in the financial courses more emphasis is given in the core curriculum so that the educated trained work force is available for the industry.

Availability of Valuers

A significant proportion of the balance sheet items will be measured on fair valuation. The fair valuation will require valuation experts, thereby increasing the requirement of trained valuers and adequate numbers of subject matter experts. In the absence of the requisite number of valuation experts, the quality will be hampered.

Accounting Policy Changes

The Ind AS entails major accounting policy changes in the areas such as:

(i) Revenue Recognition
(ii) Inventory Valuation: Service Sectors
(iii) Accounting for taxes on income
(iv) Useful life of Intangible asset
(v) Prior period items
(vi) Extraordinary items
(vii) Financial Instruments
(viii) Business Combinations

The Roadmap to Success

The Ind AS implementation requires a project approach with a commitment from the highest level. If done properly, it provides a huge opportunity. From my practical experience, the following approach to the Ind AS implementation is suggested.

Phase I : Plan Conversion
Phase II : Impact Analysis & Quantification
Phase III : Redefine/Redesign

Phase IV : Opening balance sheet as per the Ind AS

Phase V : Reporting date – the Ind AS financial statements

Phase I: Plan conversion

The Steering Committee:

- The steering committee has to consist of members of the audit committee including the CFO, CEO & COOs of the Company.
- The role of the steering committee may include:
  - a) Create and allocate resources
  - b) Develop major milestones
  - c) Oversee the project
  - d) Develop a communication plan for all stakeholders e) Interact with the Board of Directors
  - f) Assessing the impact on the internal control systems.
  - g) Evaluating the various exemptions available under the Ind AS 101
  - h) Evaluating the alternative accounting policy choices available
  - i) Organising training for the staff at various levels
  - j) Assessing impact on normal business and financial contracts
  - k) Developing communication plans to various stakeholders

The Project Team:

- The project team should be headed by the CFO. The SBU heads should be invited on need base. The senior and middle level corporate, finance and accounts professionals should be other members of the team. Each of them should be assigned specific rolls.
- The role of the project team may include:
  - a) Mapping each line item of the financial statements-whether quantitative or narrative to the applicable Ind AS
  - b) Conducting a gap analysis between requirements under the Ind AS and the current practices under the Indian GAAP
  - c) Redesigning the chart of accounts
  - d) Evaluating the IT related requirements
  - e) Evaluating the impact on the processes for gathering information f)Assessing the need for multiple GAAP reporting.
  - g) Evaluating the impact on regulatory information submissions

- A champion should be identified who will act as an interface with the external world and the internal world.

Train the team

- Once the steering committee and the project team is in place, they have to be trained.
- The interaction and training of the steering committee will involve basic understanding of the Ind AS. They need to appreciate the strategic implications of the Ind AS implementation.
- The training and workshop sessions of the project team has to be an extensive and focussed exercise and will require a phased approach. After the training sessions, the team members should be able to comprehend and appreciate the operational aspects of the Ind AS.

Develop milestones

- The Ind AS implementation needs a determination of milestones. The milestones have to be categorised under various groups to be developed by the project team.
- The milestones will include determination, fixation of dates for completion and evaluation of various activities such as:
  - a) Training Program
  - b) Impact Analysis
  - c) Choice of accounting policies
  - d) Valuations
  - e) Opening the Ind AS balance sheet
  - f) Interim financial statements
  - g) Annual financial statements
  - h) Changes in the ERP
  - i) Modifications of the accounting tree
- One should use extensively the Gantt Charts, CPM & PERT techniques to develop these milestones.

Phase II: Impact Analysis & Quantification:

- The project team will study the existing policies, practices, processes and records.
- Assess and evaluate implication of Ind AS on
  - a) financial statements and reporting
  - b) Long term contracts
  - c) Supporting business processes
  - d) Systems and controls
  - e) Tax compliances
  - f) MIS
- Identify the differences/gaps between existing policies, practices, processes and records with Ind AS requirements.
- Thereafter, analyse the above and quantify each of the items.

Phase III – Redefine/Redesign policies, practices, processes and records

- Once the team and the committee has evaluated the impact, they should carry out an ABC analysis for gaps/differences and identify items and areas that:
  1. requires minimal changes
  2. requires medium level changes
  3. requires significant IT and system changes
- Alternatives should be developed and options identified by the team. On the recommendation of the team, the committee should develop a suitable criteria for approval of the most appropriate alternative.
- The knowledge for the selected alternative will need documentation for smooth implementation and subsequent references.

Phase IV: Opening balance sheet as per Ind AS

- After evaluating the accounting policy alternatives and selecting the Ind AS accounting policies most appropriate to the entity, the initial conversion to create Ind AS opening balance sheet will be undertaken.

Note: In the Indian context, opening the Ind AS balance sheet will mean the balance sheet as on 01-04-2015, *i.e.*, the Ind AS balance sheet on the earliest date for which the comparatives will be presented.

- At this stage, a decision will need to be taken whether one would like to prepare two sets of books of accounts - one for the Indian GAAP reporting and the other for the Ind AS reporting or one would like to continue maintaining accounts under the Indian GAAP with a suitable spreadsheet being prepared for the changes required for converting the Indian GAAP accounts to the Ind AS accounts.

- Further, one must exercise a caution that one will not only need the annual financial statements for 2016-17 but also the quarterly financial statements since all the listed companies will need to give comparative Ind AS quarterly numbers in 2015-16.
- The accounting staff will be trained as per the Ind AS requirements. ERP or any other accounting software will be reconfigured. The Internal MIS budgets and other parameters will need to have equivalent Ind AS numbers for understanding and transition.

Phase V: Reporting date Ind AS financial statements

- The opening trial balance as on 01-04-2015 has to be as per the Ind AS.
- The Ind AS methodology will be integrated into day to day operations
- The auditors will vet the quarterly financial statements as per the Ind AS requirements
- The project team and the steering committee will have to ensure self-sustenance.

Conclusion

The decision to converge with the IFRS will go a long way in the history of the profession. While it has its challenges, it is a golden opportunity for the profession to rise to the occasion and make a mark for themselves. ■

Impact of the Companies Act, 2013 – *Independent Auditors' Role and Responsibilities*

The wide ranging changes brought in through the Companies Act 2013 and the Rules made thereunder to the manner of functioning of the companies in India indicate the proactiveness of the Government towards protecting the interests of the various stakeholders by means of provisions aimed at ensuring greater discipline, ethics and accountability in the working of the various components of the framework of corporate governance of a company, including, Board of Directors, Audit Committees, Auditors, Internal Auditors, etc. The independent auditors (also commonly known as "statutory auditors" and hereinafter referred to as "auditors") are an integral part of the corporate governance framework. From their traditional role as experts who provide comfort on the truth and fairness of the financial information generated by a company, the stakeholders are looking up at the contemporary auditors to contribute more in terms of bolstering transparency, ethics and discipline in the corporates.

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The New Reporting Requirements

Chapter X of the Companies Act 2013 and the Companies (Audit and Auditors) Rules, 2014 notified thereunder, contain comprehensive provisions relating to appointment, qualifications, powers, duties and responsibilities, *etc.*, of the auditors.

Among the various responsibilities of the auditors are the specific matters that the auditors need to report on in terms of Section 143 of the Companies Act, 2013.

Reporting on True & Fair View of Financial Statements – Section 143(2)

The primary responsibility of an auditor is to express an opinion on the *"true and fair view"* of the financial statements of the company. Section 143(2) of the Companies Act 2013 ("2013 Act"), like section 227 of the Companies Act, 1956 ("1956 Act"), requires the auditors to make a report to the members of the company on the accounts examined by him and on every financial statement which are required to be laid before at the general meeting of the company. Though always implicit and prerequisite for the auditors, Section 143(2) now requires the auditors to explicitly report whether he has taken into account the provisions of the said Act, the accounting and auditing standards and matters which are required to be included under the provisions of the Act or related rules or Order made under Section 143(11) of the Act before expressing his opinion on the true and fair view of the financial statements. Another important change *vis-a-vis* the corresponding Section of 1956 Act is that the requirements to express an opinion on true and fair view is not restricted to just the balance sheet, profit & loss account and the cash flow for the year. The 2013 Act has left it open ended by including the phrase "and such other matters as may be prescribed" at the end although no further matters seem to have been prescribed till now in respect of Section 143(2) in the aforementioned Rules.

Auditor to specifically report that he has taken into account the provisions of the Act, Accounting & Auditing Standards etc. before expressing on opinion on true and fair view.

Other Matters to be Reported in Auditor's Report under Section 143(3)

Moving further, Section 143(3) of the 2013 Act lays out some more matters to be included in the auditor's report.While some of these matters are similar to those that the auditors had to report in terms of Section 227(3) of the 1956 Act though with some changes and quite a few have been newly added. For example, while reporting on whether the auditor has obtained all the information and explanation necessary for his audit as under the 1956 Act, the auditor has to now also specifically report that he had "sought" such information and explanation and in case that is not so, the details and impact thereof on the financial statements. Similarly, instead of reporting the observations or comments of the auditors which have an adverse effect on the functioning of the company, the 2013 Act requires the auditors to report their observations and comments on financial transactions or matters which have an adverse effect on the functioning of the company. However, the requirement to use thick type or italics is no longer there. The auditors are also now required to report any qualification, reservation or adverse remark relating to maintenance of accounts and other matters connected therewith. The 2013 Act has done away with the requirement of reporting on cess (as under Section 441A of the Companies Act 1956). However, the most important reporting requirement that has been added by the 2013 Act is that to report whether the company has an adequate internal financial controls (IFCs) system in place and the operating effectiveness of such controls.

Many reporting requirements of Section 227(3) of the 1956 Act retained (with some modifications). New reporting requirements include observations on maintenance of accounts and other related matters and internal financial controls.

Reporting Requirements Introduced through the Rules

In addition to above, three further reporting requirements have been added to Section 143(3) through the related Rules. These are whether the company has disclosed impact, if any, of pending litigations on its financial position in its financial statements, whether the company has made provisions, as required under any law/accounting standards for material foreseeable losses on long term contracts including derivative contracts and whether there has been any delay in transferring the required amounts to the Investor Education and Protection Fund. Again, there are certain aspects in these reporting requirements which need to be clarified, such as, what would be the practical limitations of reporting under "any law" *vis-a-vis* the principles enunciated in the SA 250, *Consideration of Laws and Regulations in An Audit of Financial Statements.*

Rules additionally require reporting on pending litigations, provision for material foreseeable losses and transfers to IEPF.

IFC makes its maiden appearance in Section 135(5) that also defines the concept.

Reporting on Frauds to Central Government

The most demanding reporting requirement introduced by the 2013 Act is, perhaps, Section 143(12) which envisages the auditor to act as a whistleblower. The section requires that if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government. The time and manner of such reporting has been prescribed under the aforesaid Rules.

Since the auditor occupies a very unique position in the entire framework of functioning of a Company and the auditor's report is considered to be his mouthpiece, it is not surprising to see that this medium is sought to be used by the Central Government fruitfully for the benefit of the society. There are, however, certain issues that need to be addressed in these reporting requirements to enable the auditors to appropriately meet the expectations of the requirements of the Act and comply with them in letter and spirit. These issues have been briefly discussed in the following paragraphs.

Internal Financial Controls–*Issues for Auditors*

The Concept

The term IFCs has been introduced for the first time in the Companies Act. In the 2013 Act, it first makes an appearance in Section 134(5) that deals with the Directors' Responsibility Statement. Clause (e) of Section 134(5) requires the directors of a listed company to state in the Directors Responsibility Statement that they had laid down internal financial controls to be followed by the company and that such controls are adequate and were operating effectively. The Explanation to clause (e) describes "IFCs" as *"the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information."*

Section 134(5) vis-a-vis Unlisted Companies

Section 135(5) applies only to listed companies which gives rise to a peculiar situation in case of unlisted companies where the auditors would be expected to opine on matters of a company for which even the Directors have not taken the responsibility. This is contrary to the concept of basic premise on which an audit is conducted, as enshrined in Standard on Auditing (SA) 210, *Agreeing the Terms of Audit Engagement.* The basic premise is acknowledgement by the management of its responsibility in relation to matters including design, implementation and effective operation of a system on internal controls.

Benchmark Framework for Evaluating IFCs

Even if one were to argue that establishment of such internal controls is a fundamental duty of the Directors of any company whether or not stated so explicitly in the Act, the second issue is that there is no generally recognised and accepted framework of internal controls to serve as a benchmark for evaluating IFCs in a company. While a few bigger companies in India could be using the COSO framework, it cannot *per se* be said to be "generally recognised and accepted" as there are a number of other frameworks too in vogue. Thus, it is necessary to first have such a benchmark framework before the auditors can report on IFCs. As a corollary, the Government needs to work on developing this Framework and deciding its legal mandate as also its suitability to companies of all sizes and in various industries.

IFCs vis-a-vis Internal Control Evaluation Under Auditing Standards

Even if there is a benchmark internal control framework, while carrying out an audit of financial statements in accordance with the SAs, the auditors undertake evaluation of internal controls in relation to such matters as are relevant to forming an opinion on the financial statements. This has been clearly mentioned in paragraph A1 of SA 200, *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing*, which further states that where the auditor is required to provide opinions on other specific matters, such as the effectiveness of internal controls, auditors would need to undertake additional procedures. Consequently, the auditor's responsibility paragraph as prescribed in the SA 700, *The Auditor's Report on Financial Statements*, contains a clear disclaimer to that effect. Further, this is a globally accepted position, and appears in the International Standards on Auditing. Even for reporting on certain internal control related clauses under the Companies (Auditor's Report) Order, 2003 (CARO 2003), the same is restricted to reporting on the aspects of existence and adequacy only and not on operating effectiveness of those controls.

Reporting on IFCs would require procedures beyond those envisaged in SAs.

Reporting on Orderly and Efficient Conduct of Business - *IFCs vis-a-vis PCAOB's[1] Auditing Standard (AS) 5*

In fact, the Auditing Standard (AS) 5, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements* issued by the PCAOB, as the name makes it clear, deal only with such controls which deal with the entity's financial reporting process and does not extend to policies and procedures that ensure orderly and efficient conduct of its business as envisaged in the meaning of IFCs as envisaged in 2013 Act. Reporting on whether the policies have ensured "orderly and efficient conduct of the company's business" is quite subjective and beyond the scope of evaluation by auditors. If at all, this aspect is to be reported upon by the auditor, the auditors' nature and extent of procedures would be greatly different and penetrative from those employed for a normal audit of financial statements, as they would also need to address the "propriety" issues. Though ICAI could develop guidance on this aspect also, this may lead to resistance from the Company's management as it would in effect lead to a situation of the auditor sitting on judgment of the decisions of the management with an obvious benefit of "hindsight". This is neither practical nor a desirable situation. From another perspective, it would shift the burden of good governance from the shoulders of the Board of Directors to that of the auditors.

Is it possible for the auditors to report on subjective matters such as "orderly & efficient conduct of business" as part of reporting on IFCs.

The instant impact of such reporting by the auditor on the securities' prices of listed companies should also be kept in mind. Further, a clean report on such aspects by the auditors is fraught with the risk that the lay users would assume it to be a guarantee by the auditor as to the manner in which the affairs of the company are being conducted. This is contrary to the basic principles on which an audit is conducted. The liability that the auditor would incur in case of any subsequent detection of improper conduct of affairs of the Company also needs to be clarified before the auditor is made to report on this aspect. Accordingly, while reporting on IFCs, it needs to be examined if it is reasonable to assume that the evaluation and assessment by the auditors would be restricted to the extent such controls relate to preparation and presentation of financial statements.

Timing of Reporting – 'As on Date' or 'For the Period'

The timing of reporting on IFCs is also an issue that needs clarity, ie whether the reporting on the operating effectiveness of the internal financial controls would be *"as on date"* or *"for the period"* since the manner of reporting in both the situations would be different. Some deficiency/ies is/are bound to exist in any control system at any given point in time. Managements perpetually

[1] *Public Company Accounting Oversight Board, USA.*

undertake the process of identifying and rectifying deficiencies and implementing other remedial measures to strengthen the controls. Further, there seems to be no value addition by reporting on such deficiencies which have been rectified by the management and do not exist on the reporting date. Also, clause 57(k) of the Statement on CARO 2003 issued by ICAI does not require any reporting by the auditor in case of major weakness in the internal control that have been rectified by the management by the balance sheet date. Thus, it seems reasonable that the auditor's testing of the operating effectiveness of a control spans over the year but the reporting is restricted to the status "as on date". Accordingly, the auditor need not report any deficiencies found during testing of operating effectiveness which have been duly rectified by the management as at the end of the reporting period. Such deficiencies may be communicated by the auditor to those charged with governance by way of a separate report.

For better value, testing could be for the period and the report as on date.

Impact on True and Fair View

The auditors would also need to assess whether their negative observations with respect to IFCs would have an impact on the true and fair view of the financial statements. The answer to this would depend on factors such as the nature of deficiency, materiality of deficiency, mitigating factors, nature of financial statements, *etc.*, that give rise to a situation where the modified opinion has been given on the operating effectiveness of the internal financial controls. Thus, in accordance with the SAs, the auditor would need to perform adequate substantive or other audit procedures to obtain sufficient appropriate audit evidence about the amounts and the disclosures in the financial statement that would mitigate the effect of the control deficiencies which may give rise to the risk of material misstatement of financial statements. The results of the findings arising from such audit procedures would need to be evaluated in determining the nature of the auditor's opinion on the financial statements.

Reporting by Auditors of Group Financial Statements

Reporting on IFCs would pose practical difficulties to auditors of group financial statements on account of the fact that the consolidated financial statements would integrate the financial statements of the various components on which their\respective auditors would have issued their reports. In case the component is an Indian company, the auditor thereof would have included his/her report on Section 143(3)(i) of the Companies Act, 2013. In case the component is not an Indian company, there may not be any requirement for its auditor to report on internal financial controls. In any case, the components can be spread far and wide, geographically, and the management of each component could have instituted different types of internal financial controls to suit their individual requirements. Accordingly, while the consolidation under the Accounting Standard (AS) 21, Consolidated Financial Statements, is only a line by line consolidation, the same cannot be stated in respect of "internal financial controls" relating to various components. Further, Rule 8 of the Companies (Accounts) Rules, 2014 states that the Board Report, which includes the Directors' Responsibility on internal financial controls, is required to be prepared only based on the stand alone financial statements and, thus, the responsibility for establishing such controls on the subsidiaries, joint ventures and associates, in any case, woulsd not rest with the Board of the parent company but with the management of the respective component.

AS 21 like line-by-line consolidation of components auditors report on components' IFC is not possible. How will the group auditor report on IFC in audit report on group financial statements?

Applicability to Foreign Companies

Similarly, since Section 143(3) of the Companies Act 2013 applies equally to foreign companies, auditing and reporting on "internal financial controls" in a foreign company may pose typical challenges as given the Information Technology available today, in quite a few cases, "internal financial controls" may be situate and/or controlled from foreign locations.

Section 143(3)(i) vis-a-vis Section 404 of Sarbanes Oxley Act 2002 of USA

The requirement to report on IFCs and their operating effectiveness seems to be a take-off from the famous Section 404 of the Sarbanes Oxley Act 2002 in vogue in the USA which requires the auditors to report on operating effectiveness of the internal controls over financial reporting (ICFR). Interestingly, pursuant to the passing of the Dodd Frank Wall Street Reform and Consumer Protection Act, 2010, operation of Section 404 of the Sarbanes Oxley Act 2002 has been relaxed in respect of certain types of listed companies to provide that the auditors of such companies are not required to report on the internal controls. This exemption has been granted primarily in view of the increasing costs of compliance without commensurate additional benefits. However, the managements of such companies continue to report on their responsibility and their assessment of the operating effectiveness of the internal controls as envisaged under clause (a) of Section 404 of the 2002 Act. Thus, as of today, in the USA, the auditors of unlisted companies (non filers) and defined listed companies (non accelerated filers) are outside the purview of reporting on operating effectiveness of internal controls under Section 404(b) of the Sarbanes Oxley Act 2002.

In the USA, auditors of unlisted companies/small listed companies not required to report on internal controls over financial reporting.

Cost of Compliance

As mentioned earlier, the Act is silent on the responsibility of the management of the unlisted companies on defining and implementing the framework for internal financial control. However, the auditors are mandated to report on the IFCs of all companies. It goes without saying that there would be defined requirements of the auditors for reporting on IFCs and such requirements would necessarily have to be provided by the management. To ensure correct reporting by auditors, the management has to ensure a system which complies with an effective internal control mechanism. Since the reporting requirement applies to all companies, it may be burden on cost to the small and medium sized companies.

Reporting on Frauds to Central Government–*Issues for Auditors*

Fraud Definition and Considerations under SA 240

A mentioned earlier, Section 143(12) is one of the most demanding reporting requirements for the auditors. It envisages reporting of frauds by the auditor during the course of his audit. While the auditors conducting an audit of financial statements in accordance with the SAs need to comply with the requirements of SA 240, *Auditor's Responsibilities relating to Fraud in An Audit of Financial Statements*, the Standard is clear that although fraud is a broad legal concept, for the purposes of the SAs, the auditor is concerned with fraud that causes a material misstatement in the financial statements *viz.*, fraudulent financial reporting and misappropriation of assets. Further, although the auditor may suspect or, in rare cases, identify the occurrence of fraud, the auditor does not make legal determinations of whether fraud has actually occurred. SA 240 defines "fraud" as *"an intentional act by one or more individuals among management, those charged with governance, employees, or third parties, involving the use of deception to obtain an unjust or illegal advantage."* Thus, the principles enunciated under SAs are from the perspective of an audit of financial statements and not from the perspective of carrying out an investigation. As a corollary, the auditor's consideration of fraud under SAs is also from the point of view of aspects relevant to audit of financial statements and its objective of expressing an opinion on the true and fair view and not with the objective of carrying out an investigation.

Definition of Fraud under Section 447 of Companies Act 2013

The primary difficulty in reporting under Section 143(12) is the wide difference in the definition of fraud as given in SA 240 *vis-a-vis* that given under Section 447 of the Act. The latter defines fraud in relation

"Fraud" under section 447 of Companies Act 2013 travels beyond financial matters; much beyond that envisaged in SAs.

to affairs of a company or any body corporate, as including *"any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss".* Clearly "fraud" under Section 447 is not restricted to misstatements in the financial statements but seems to venture into the territory of propriety or even morality since the impact is not restricted to merely wrongful gain/loss. The latter are the areas in respect of which the auditors cannot reasonably be expected to report. Also the definition under Section 447 is open ended to the extent that the aggrieved party need not just be the company or its shareholders or its creditors but extends to "any person".

Reporting on Frauds by Auditors–*An International Perspective*

To make it really effective and implementable, the scope of the auditor's work as whistleblower has to be specific and within some boundaries. Some developing countries like Australia and the USA contain similar provisions envisaging the auditor to act as a whistleblower. Specifically, in Australia, the Corporations Act 2001 (s311 and s601HG) require the auditor to report to the Australian Securities and Investments Commission (ASIC) matters that they have reasonable grounds to suspect amount to a significant contravention of the Corporations Act or, in the case of matters that are not a significant contravention, the auditor believes that the matter will not be adequately dealt with. Similarly, in USA, the Final Rule on Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934 issued by the Securities and Exchange Commission (SEC) states that external auditors of non-issuers not subject to Section 10A (such a broker dealers and investment advisors) may report directly to the SEC in circumstances where:

Requirement for the auditors to act as whistleblowers exist in USA and Australia, but with necessary safeguards and clear scope of reporting.

- the auditor has "a reasonable basis to believe" that disclosure is necessary to prevent the client entity from "engaging in conduct that is likely to cause substantial injury to the financial interest or property of the entity or investors"; or
- the auditor "has a reasonable basis to believe that the relevant entity is engaging in conduct that will impede an investigation of the misconduct", or
- 120 days or more have passed since the auditor-whistleblower provided the information to the relevant entity's audit committee, chief legal officer, chief compliance officer (or their equivalents), or the whistleblower's supervisor, or since the whistleblower received the information under circumstances indicating any of these parties "was already aware of the information."

In any case, a successful whistleblower mechanism needs the support of an adequate and authoritative mechanism that protects the whistleblower against cases of defamation and more importantly, against bodily harm.

Reporting on Frauds and Materiality Considerations

Also, the 2013 Act and the related Rules are silent as to the application of materiality to such fraud reporting. This could be implied to mean that the concept of "materiality" would apply in this case also as is, normally, applied in the case of audit of financial statements as per SAs. Alternatively, it could mean that all frauds, irrespective of the amount involved, would need to be reported. However, having regard to the practicality and feasibility, the former view seems to be more rational and reasonable.

What Constitutes "Reason to Believe"

Similarly, what constitutes "reason to believe" also needs interpretation. A study of some relevant international literature shows that a "reasonable ground" includes suspicion and belief and "requires existence of facts which are sufficient to induce that state in a reasonable person."In any case, it seems that the auditors would now need to add more rigor to procedures relating to obtaining an understanding of the client entity as also in exercise of professional skepticism during audit, running the risk of bordering on "presumptive suspicion" to be able to report pursuant to Section 143(12). The same would be true in case of audit documentation also. In fact, whether the auditors would need to apply some additional procedures for reporting under Section 143(12), needs a serious contemplation.

Reputation Risk Associated with Fraud Reporting

While Section 143(12) can be an early warning mechanism, all should also be wary of the fact that the prices of the securities of listed companies are extremely sensitive to any negative news/ publicity. Hence, even a drifting news of such a report by the auditor can send the securities prices spiraling down, exposing the investors to risk of loss at the very instant even if later on after a due investigation it is found that the so called 'fraud" was a mere *bona fide* error. It is also not clear what would be the liability of the auditor in such a situation. Another perspective to this issue, however, is the fact that while the auditor is required to make a report on frauds in terms of Section 143(12) after seeking response of the Board of Directors/Audit Committee on his observations in this regard, the shareholders would remain unaware of the fact that such report has been made to Central Government. To bring in greater accountability of the Board of Directors and Audit Committees, it may be appropriate if at least the fact of such report having been submitted by the auditor to the Board of Directors/Audit Committees and thereafter to the Central Government is made a part of the Directors Responsibility Statement or the Board's Report.

Fraud reporting is fraught with negative effects of reputation risks both for the company and its auditor, especially, where subsequently, its found to be a *bona fide* error.

Reporting on Other Information under SA 720

Reporting on "other information" contained in the documents containing audited financial statements is a requirement of SA 720. This aspect too seems to have been impacted positively by the 2013 Act. The SA 720 required the auditors to make suitable arrangements with the management to obtain such "other information" before signing the audit report. The auditors have often faced difficulties in implementation of this Standard on account of the fact that the managements were *per se* not required under the Act to provide such information before signing of the audit report. With the notification of the 2013 Act which gives a legal mandate to the auditing standards, the companies too are required to ensure compliance with auditing standards.

Finally...

The Companies Act, 2013 and the Rules have indeed made the task of the auditors of companies all the more onerous. Reporting on matters newly prescribed under Chapter X and the related Rules, particularly, reporting on IFCs and frauds, would require auditors to exercise far greater degree of professional skepticism. It will have its own implication in terms of employment of enhanced, and perhaps, different nature of audit procedures, and as a corollary, enhanced time and effort and also additional documentation requirements. It would obviously lead to increase in the time and costs of audit. It is to be seen how the Industries react to it as the cost of audit could go up significantly. Moreover, the 2013 Act provides for rigorous financial penalties as well as criminal proceedings for the auditors. The risks associated with the audit of companies seem to far outweigh the returns.

Finally, though there are quite a few issues in respect of Chapter X of the 2013 Act and the related Rules notified thereunder, this is nothing new in the lifecycle of a newly promulgated legislation of this volume. During the transition period, there are bound to be several doubts and implementation issues. But with time, as the doubts and issues get resolved through discussion and consultative processes between legislators and legislatees, and people gain more experience and comfort in implementation of the legislation in letter and spirit, the legislation would stabilise.

While the Auditing & Assurance Standards Board is in the process of taking up the issues of concern in Chapter X and related Rules with the concerned authorities, it is simultaneously working on developing guidance on the various newly inserted reporting requirements under the said Chapter and Rules so that there is uniformity in understanding of the various provisions among the members on the procedures to be applied and, finally, reporting thereon. ■

Provisions Relating to Accounts of Companies: *Comparative Study of the Companies Act, 2013 and 1956*

Provisions relating to the accounts of companies are contained in Sections 128 to 137 (except 135) under Chapter IX of the Companies Act, 2013 (CA,2013) and the Companies (Accounts) Rules, 2014. Similar provisions in the Companies Act, 1956 (CA, 1956) were contained in Sections 209 to 220 under Chapter I of Part VI of the Act. Section 2(13) of CA, 2013 has given an inclusive definition whereas in CA, 1956, though there was no separate definition of 'Books of Account'. Read on to know more…

Books of Accounts

Section 2(13) of the Companies Act, 2013 (CA, 2013) has given an inclusive definition. "Books of account" includes records maintained in respect of—

(i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
(ii) all sales and purchases of goods and services by the company;
(iii) the assets and liabilities of the company; and
(iv) the items of cost as may be prescribed under Section 148 in the case of a company which belongs to any class of companies specified under that Section;

In the Companies Act, 1956 (CA, 1956), though there was no separate definition of 'Books of Account' but Section 209 of the Act required every company to keep proper books of account with respect to -

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;
(b) all sales and purchases of goods by the company ;
(c) the assets and liabilities of the company;
(d) in the case of a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, such particulars relating to utilisation of material or labour or to other items of cost as may be prescribed, if such class of companies is required by the Central Government to include such particulars in the books of account.

The CA, 2013 has covered 'sale and purchase of services' in the scope of books of account.

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Proper Books of Accounts

Section 128(1) of CA,2013 requires every company to prepare and keep at its registered office, books of account and other relevant books and papers and financial statements for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and to keep such books on accrual basis and according to the double entry system of accounting.

Section 209(3) of the CA, 1956 provided that proper books of account would not be deemed to be kept with respect to the matters specified therein if (a) there are not such books kept as are necessary to give a true and fair view of the state of affairs of the company or branch office, as the case may be, and to explain its transactions or (b) such books are not kept on accrual basis and according to the double entry system of accounting.

Books and Papers

Section 2 (12) of the CA, 2013 defines "book and paper" and "book or paper" to include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form. Whereas, Section 2 (8) of the CA, 1956 defines "book and paper" and "book or paper" to include accounts, deeds, vouchers, writings, and documents. So, 'minutes and registers' are now part of 'Book and Paper'. Section 128(1) of the CA, 2013 requires every company to prepare and keep at its registered office other relevant books and papers along with books of account, whereas in the CA, 1956, Books and Papers have a reference only in Section 209A which deals with inspection of companies.

Maintenance of Books of Accounts in Electronic Mode

Second *proviso* to Section 128 of the CA, 2013 permits the company to keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed. Rule 3 of the Companies (Accounts) Rules, 2014 prescribes the manner of books of account to be kept in an electronic mode. As per the Rule:

(1) The books of account and other relevant books and papers maintained in an electronic mode shall remain accessible in India so as to be usable for subsequent reference.

(2) The books of account and other relevant books and papers referred to in sub-Rule (1) shall be retained completely in the format in which they were originally generated, sent or received, or in a format which shall present accurately the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered.

Section 128(1) of the CA,2013 requires every company to prepare and keep at its registered office, books of account and other relevant books and papers and financial statements for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and to keep such books on accrual basis and according to the double entry system of accounting.

(3) The information received from the branch offices shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches.

(4) The information in the electronic record of the document shall be capable of being displayed in a legible form.

(5) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law, provided that the back-up of the books of account and other books and papers of the company maintained in an electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

(6) The company shall intimate to the Registrar on an annual basis at the time of filing of the financial statement:
   (a) the name of the service provider;
   (b) the internet protocol address of service provider;
   (c) the location of the service provider (wherever applicable);
   (d) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.

There was no specific provision in the CA, 1956 regarding the maintenance of books of accounts on electronic mode. However, there was provision for filing of electronic record, including financial statement in an electronic mode to the Registrar of Companies. Section 610E provided that all the provisions of the Information Technology Act, 2000 relating to the electronic records (including the manner and format in which the electronic records to be filed), in so far as they were not inconsistent with this Act, would apply, or in relation, to the records in electronic form under Section 610B.

Financial Statement

As per Section 2(40) of the CA, 2013 "financial statement" in relation to a company, includes—

(i) a balance sheet as at the end of the financial year;

(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(iii) cash flow statement for the financial year;

(iv) a statement of changes in equity, if applicable; and

(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

Such definition of 'Financial statement' neither was available under the CA, 1956 nor was the term used in any sections in that Act. As per the definition, all the companies, except for One Person Company, small company and dormant company is required to prepare a cash flow statement. Earlier, the Companies (Accounting Standards) Rules, 2006 exempted 'SMCs' from preparing the cash flow statement. Since no format is prescribed in Schedule III to the CA, 2013, the cash flow statement shall be prepared in the format prescribed in the AS-3 – Cash Flow Statement only.

Financial Year

As per Section 2(41) of the CA, 2013, "financial year" in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof the financial statement of the company or body corporate is made up:

Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:

Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause.

Under the CA, 1956, Section 2(17) and section 210(3) and (4) were dealing with the 'financial year'.

As per Section 2(17) of the CA,1956 "financial year" means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in the annual general meeting is made up, whether that period is a year or not. Provided that, in relation to an insurance company, "financial year" shall mean the calendar year referred to in sub-Section of Section 11 of the Insurance Act, 1938.

Section 210 (3) of the CA, 1956 provided that the profit and loss account shall relate:

(a) in the case of the first annual general meeting of the company, to the period beginning with the incorporation of the company and ending with a day which shall not precede the day of the meeting by more than nine months ; and

(b) in the case of any subsequent annual general meeting of the company, to the period beginning with the day immediately after the period for which the account was last submitted and ending with a day which shall not precede the day of the meeting by more than six months, or in cases where an extension of time has been granted for holding the meeting under the second *proviso* to sub-Section (1) of Section 166, by more than six months and the extension so granted.

Section 210(4) of the CA, 1956 provided that the period to which the aforesaid account relates, is referred to in this Act as a "financial year" ; and it may be less or more than a calendar year, but it shall not exceed 15 months. Provided that it may extend to 18 months where special permission has been granted on that behalf by the Registrar.

Now, under the CA, 2013 all companies have to have their financial year as the period ending on 31st March every year. Exemption is available only to holding/ subsidiary companies of foreign companies with the Government approval. All existing companies, not having their financial year closing on 31st March have to align latest by 31st March, 2016. Period of first accounting year of a company is also defined in the Section and there shall be no options available.

Now, under the CA, 2013, all companies have to have their financial year as period ending on 31st March every year. Exemption is available only to holding/subsidiary companies of foreign companies with Government approval. All existing companies, not having their financial year closing on 31st March have to align latest by 31st March, 2016. The period of the first accounting year of a company is also defined in the Section and there shall be no options available.

Section 129 of the CA, 2013 requires that the financial statements shall comply with the accounting standards notified under Section 133 and Section 133 provides that the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

Form and Content of Financial Statement

Section 129 (1) of the CA, 2013 requires that the financial statements of a company shall

- (i) give a true and fair view of the state of affairs of the company,
- (ii) comply with the accounting standards notified under Section 133 and
- (iii) be in the form or forms as may be provided for different class or classes of companies in Schedule III.

This sub-Section shall not apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company.

Sub-Section (5) of Section 129 further provides that without prejudice to sub-Section (1), where the financial statements of a company do not comply with the accounting standards referred to in sub-Section (1), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.

Sub-section (6) of Section 129 provides that the Central Government may, on its own or on an application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of this Section or the rules made thereunder, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

Similar provisions were there in the CA, 1956. Section 211(1) provided that every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit or in such other form as may be approved by the Central Government either generally or in any particular case ; and in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of the balance sheet under the heading "Notes" at the end of that Part :

Sub-Section (2) provided that every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year and shall, subject as aforesaid, comply with the requirements of Part II of Schedule VI, so far as they are applicable thereto :

Nothing contained in this sub-Sections (1) and (2) applied to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of balance sheet and profit and loss account have been specified in or under the Act governing such class of company.

Sub-Section (3) permitted the Central Government to, by notification in the Official Gazette, exempt any class of companies from compliance with any of the requirements in Schedule VI if, in its opinion, it is necessary to grant the exemption in the public interest, either unconditionally or subject to such conditions as may be specified in the notification.

Sub-Section (3A) required every profit and loss account and balance sheet of the company to comply with the accounting standards and where the profit and loss account and the balance sheet of the company did not comply with the accounting standards, such companies were to disclose in its profit and loss account and balance sheet, the deviation from the accounting standards, the reasons for such deviation and the financial effect, if any, arising due to such deviation.

Section 134(7) of the CA, 2013 requires a signed copy of every financial statement, including consolidated financial statement, if any, to be issued, circulated or published along with a copy each of (a) any notes annexed to or forming part of such financial statement, (b) the auditor's report and (c) the Board's report referred to in sub-Section (3).

Sub-Section (4) empowered the Central Government to, on the application, or with the consent of the Board of directors of the company, by order, modify in relation to that company any of the requirements of this Act as to the matters to be stated in the company's balance sheet or profit and loss account for the purpose of adapting them to the circumstances of the company.

Accounting Standards

Section 129 of the CA, 2013 requires that the financial statements shall comply with the accounting standards notified under Section 133 and Section 133 provides that the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

Rule 7 of the Companies (Accounts) Rules, 2014 provides that as a transition provision, the standards of accounting as specified under the Companies Act, 1956 (i.e. the Companies (Accounting Standards) Rules, 2006) shall be deemed to be the accounting standards until accounting standards are specified by the Central Government under Section 133.

Similar provisions were provided in sub-Sections (3A), (3B) and (3C) of Section 211 of CA, 1956.

Formats for Financial Statements

Section 129 of the CA, 2013 requires that the financial statements shall be in the form or forms as may be provided for different class or classes of companies in Schedule III.

Sub-Section (6) of Section 129 provides that the Central Government may, on its own or on an application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of this Section or the Rules made thereunder, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

Schedule III to the CA, 2013 provides that the disclosure requirements specified in this Schedule are in addition to and not in substitution of the disclosure requirements specified in the Accounting Standards prescribed under the Companies Act, 2013. Additional disclosures specified in the Accounting Standards shall be made in the notes to accounts or by way of additional statements unless required to be disclosed on the face of the Financial Statements. Similarly, all other disclosures as required by the Companies Act shall be made in the notes to accounts in addition to the requirements set out in this Schedule.

Such provisions were also there in Section 211 and Schedule VI of the Companies Act, 1956. However, Schedule III to the Companies Act, 2013 also contains general instructions for the preparation of consolidated financial statements which provides that where a company is required to prepare Consolidated Financial Statements, *i.e.*, consolidated balance sheet and consolidated statement of profit and loss, the company shall *mutatis mutandis* follow the requirements of this Schedule as applicable to a company in the preparation of balance sheet and statement of profit and loss. In addition, the consolidated financial statements shall disclose the information as per the requirements specified in the applicable Accounting Standards. It also requires certain additional information to be disclosed in the Consolidated Financial Statements.

Consolidated Financial Statement

Sub-Section (3) of Section 129 of the CA, 2013 provides that where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub-Section (2), prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-Section (2) provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed. The Central Government may provide for the consolidation of accounts of the companies in such manner as may be prescribed. An Explanation to the sub-Section provides that for the purposes of this sub-Section, the word "subsidiary" shall include associate company and joint venture.

Sub-Section (4) of Section 129 provides that the provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, *mutatis mutandis*, apply to the consolidated financial statements referred to in sub-Section (3).

Rule 5 of the Companies (Accounts) Rules, 2014 provides the form of the statement containing the salient features of the financial statement of a company's subsidiary or subsidiaries, associate company or companies and joint venture or ventures under the first *proviso* to sub-Section (3) of Section 129 shall be in Form AOC-1.

Rule 6 provides the manner of consolidation of accounts and it requires that the consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards.

There was no such provision in the the CA, 1956 which mandated the mandatory consolidation of the financial statement by a company having a subsidiary company. However, Section 212 required the Balance Sheet of the Holding Company to include certain particulars as to its subsidiary company(s) and to attach to the balance sheet of a holding company (a) a copy of the balance sheet of the subsidiary, (b) a copy of its profit and loss account,(c) a copy of the report of its Board of directors,(d) a copy of the report of its auditors and (e) a statement of the holding company's interest in the subsidiary as specified in sub-Section (3). However, sub-Section (2) (a) required the balance sheet, profit and loss account, auditors report and directors' report of the subsidiary company to be made out in accordance with the requirements of that

The CA, 2013 requires mandatory preparation of the consolidated financial statement in case a company has a subsidiary, associate and joint venture. It is worthwhile to mention here that the CA, 2013 contains definitions of 'Subsidiary company' as well as that of 'associate company'.

Authentication of Accounts

Section 134 (1) of the CA,2013 requires that the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.

Section 215 of the CA, 1956 provided that the balance sheet and the profit and loss account would be approved by the Board of directors before they are signed on behalf of the Board in accordance with the provisions of this Section and before they are submitted to the auditors for their report thereon. Every balance sheet and every profit and loss account of a company shall be signed on behalf of the Board of directors:

(i) in the case of a banking company, by the persons specified in clause (a) or clause (b), as the case may be, of sub-Section (2) of Section 29 of the Banking Companies Act, 1949 (10 of 1949) ;

(ii) in the case of any other company, by its manager or secretary if any, and by not less than two directors of the company one of whom shall be a managing director, where there is one.

In the case of a company not being a banking company, when only one of its directors is for the time being in India, the balance sheet and the profit and loss account shall be signed by such director; but in such a case there shall be attached to the balance sheet and the profit and loss account, a statement signed by him explaining the reason for non-compliance with the provisions of sub-Section (1).

The authentication of the financial statement by the Chairman (if authorised by the Board) along with CFO and company secretary (if so appointed) is a new provision.

Section 128(6) of the CA, 2013 provides that the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this Section, contravenes such provisions, such person of the company shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5 lakh or with both.

Circulation of Accounts

Section 134(7) of CA, 2013 requires a signed copy of every financial statement, including the consolidated financial statement, if any, to be issued, circulated or published along with a copy each of (a) any notes annexed to or forming part of such financial statement, (b) the auditor's report and (c) the Board's report referred to in sub-Section (3).

Section 210(1) of CA, 1956 also required that at every annual general meeting of a company held in pursuance of Section 166, the Board of directors of the company would lay before the company (a) a balance sheet as at the end of the period specified in sub-Section (3) and (b) a profit and loss account/ Income and Expenditure Account for that period.

Section 216 of CA, 1956 required the auditors' report (including the auditors' separate, special or supplementary report, if any) to be attached thereto and Section 217 (1) required a report by its Board of directors to be attached to every balance sheet laid before a company in a general meeting.

So, there is no change in the two Acts with regard to the circulation of accounts.

Revision of Accounts

In the CA, 2013, Section 130 provides that a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that (i) the relevant earlier accounts were prepared in a fraudulent manner; or (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements. Sub-Section (2) provides that without prejudice to the provisions contained in this Act the accounts so revised or re-cast under sub-Section (1) shall be final.

Another Section 131 of the CA, 2013 provides that, If it appears to the directors of a company that (a) the financial statement of the company; or (b) the report of the Board do not comply with the provisions of Section 129 (The financial statements do not give a true and fair view of the state of affairs of the company or companies, or do not comply with the accounting standards notified under Section 133 or are not in the form or forms as may be provided for different class or classes of companies in Schedule III) or Section 134 (financial statements not properly signed or auditor's report is not attached or Directors' Report containing required disclosures is not attached), they may prepare a revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining the approval of the Tribunal on an application made by the company in such form and manner as may be prescribed. The Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section. This revision of account shall be subject to the conditions that such a revised financial statement or report shall not be prepared or filed more than once in a financial year and the detailed reasons for the revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

Sub-Section (2) of Section 131 provides that where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in the general meeting, the revisions must be confined to (a) the correction in respect of which the previous financial statement or report do not comply with the provisions of Section 129 or Section 134 and (b) the making of any necessary consequential alternation.

Under the Companies Act, 1956, there was no specific provision permitting revision of account. Neither was there any provision prohibiting the revision of accounts once they were adopted. The Ministry of Corporate Affairs (then Department of Company Affairs) *vide* its Circular No.17/75/2002CL-V dated 13th January, 2003 clarified that a company could reopen and revise its accounts even after their adoption in the annual general meeting and filing with the Registrar of

Section 209A of the CA, 1956 provided that the books of account and other books and papers of every company shall be open to inspection during business hours (i) by the Registrar or [(ii) by such officer of the Government as may be authorised by the Central Government in its behalf or (iii) by such officers of the Securities and Exchange Board of India as may be authorised by it. Such inspection could have been made without giving any previous notice to the company or any officer thereof.

Companies in order to comply with the technical requirements of any other law to achieve the object of exhibiting a true and fair view. The revised annual accounts would be required to be adopted either in the extraordinary general meeting or in the subsequent annual general meeting and filed with the Registrar of Companies. The matter was further clarified by the Ministry *vide* its General Circular no. 5/2010 dated 22nd November, 2010 that keeping in view the provisions of Section 220 of the Act read with the Ministry's General Circular No. 1/2003, a company cannot lay more than one set of annual accounts for a particular financial year unless it has reopened/ revised such annual accounts after their adoption in the Annual General Meeting on the grounds specified in the Ministry's Circular No. 1/2003. So far as the auditor's report on revision of accounts is concerned, the same has been dealt with by SA 560 (Revised) – Subsequent Events. The Standard has visualised two situations in this regard. One, when Facts which become known to the Auditor after the date of the Auditor's Report but before the date the financial statements are issued and second, when the facts which become known to the Auditor after the financial statements have been issued. The Standard mandates auditors to take appropriate steps in both the situations in case the management decides to revise the accounts or not.

Person Responsible to Maintain Books of Accounts and Penalties for Contravention

Section 128(6) of the CA, 2013 provides that the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this Section, contravenes such provisions, such person of the company shall be punishable with imprisonment for a term which may extend to one year or with a fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5 lakh or with both.

Section 209(6) and (7) of CA, 1956 made the following persons responsible to maintain books of account:

(a) where the company has a managing director or manager, such managing director or manager and all officers and other employees of company,

(b) where the company has neither a managing director nor a manager, every director of the company,

(c) Any person having been charged by the managing director, manager or Board of directors, as the case may be, with the duty of seeing that the requirements of this Section are complied with.

Section 209(5) of CA, 1956 provided that, if any of the persons referred to in sub-Section (6) fails to take all reasonable steps to secure compliance by the company with the requirements of this Section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with a fine which may extend to ₹ 10,000, or with both provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

Thus, the CA, 2013 brings in responsibility to maintain books of accounts on whole-time director (in charge of finance) and Chief Financial Officer also.

Filing of Accounts

Section 137 of the CA, 2013 requires that a copy of the financial statements, including the consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, to be filed with the Registrar within 30 days of the date of the annual general meeting in such manner, with such fees or additional fees as may be prescribed within the time specified under Section 403.

The Section also provides that if the financial statements are not adopted at the annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents under sub-Section (1) shall be filed with the Registrar within 30 days of the date of the annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose. The Section further provides that the financial statements adopted in the adjourned annual general meeting shall be filed with the Registrar within 30 days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed within the time specified under Section 403.

It further provides that a One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within 180 days from the closure of the financial year.

The Section further provides that where the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached under sub-Section (1), duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within 30 days of the last date before which the annual general meeting should have been held and in such manner, with such fees or additional fees as may be prescribed within the time specified, under Section 403.

Section 220 (1) of the CA, 1956 provided that after the balance sheet and the profit and loss account have been laid before a company at an annual general meeting as aforesaid, these would be filed with the Registrar within 30 days from the date on which the balance sheet and the profit and loss account were so laid, or where the annual general meeting of a company for any year has not been held, there shall be filed with the Registrar within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of this Act provided that in the case of a private company, a copy of the balance sheet and copy of the profit and loss account shall be filed with the Registrar separately .

The Section also provided that if the annual general meeting of a company before which a balance sheet was laid as aforesaid did not adopt the balance sheet, or was adjourned without adopting the balance sheet, or, if the annual general meeting of a company for any year had not been held, a statement of that fact and of the reasons therefor, would be annexed to the balance sheet required to be filed with the Registrar.

The provisions relating to filing of financial statements are the same except separate filing of the Profit and Loss Account by private limited companies under the provisions of the CA, 1956 did not find a place in the CA, 2013.

Period of Retention of Books of Accounts

Section 128(5) of the CA, 2013 requires that the books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period of less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order:

Provided that where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

Section 209(4A) of the CA, 1956 have the similar provisions.

Inspection of the Books of Account

Section 209A of the CA, 1956 provided that the books of account and other books and papers of every company shall be open to inspection during business hours (i) by the Registrar or [(ii) by such officer of the Government as may be authorised by the Central Government in its behalf or (iii) by such officers of the Securities and Exchange Board of India as may be authorised by it. Such inspection could have been made without giving any previous notice to the company or any officer thereof.

In the CA, 2013, such provisions are contained in Sections 206 to 209 under Chapter XIV – Inspection, Enquiry and Investigation. Section 206 of the Act provides the power to call for information, inspect books and conduct inquiries. Sub-Section (3) of Section 206 provides that if no information or explanation is furnished to the Registrar within the time specified under sub-section (1) or if the Registrar on an examination of the documents furnished is of the opinion that the information or explanation furnished is inadequate or if the Registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company and does not disclose a full and fair statement of the information required, he may, by another written notice, call on the company to produce for his inspection such further books of account, books, papers and explanations as he may require at such place and at such time as he may specify in the notice: Provided that before any notice is served under this sub-Section, the Registrar shall record his reasons in writing for issuing such notice.

Sub-Section (5) of Section 206 provides that the Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose. And under sub-Section (6) the Central Government may, having regard to the circumstances by general or special order, authorise any statutory authority to carry out the inspection of books of account of a company or class of companies. ■

Corporate Frauds and their Prevention Under the New Companies Act

The term 'fraud' is very wide in scope. As per the Indian Contract Act, 1872, fraud includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party or his agent, or to induce him to enter into the contract: (1) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true; (2) the active concealment of a fact by one having knowledge or belief of the fact; (3) a promise made without any intention of performing it; (4) any other act fitted to deceive; and (5) any such act or omission as the law specially declares to be fraudulent.

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Curbing of Corporate Frauds under the Companies Act, 2013

Probably the first major corporate scam in Independent India was what is referred to as the Mundhra scam. Hari Das Mundhra, an industrialist and stock speculator, sold fictitious shares to the Life Insurance Corporation of India (LIC) and thereby defrauded the corporate by ₹1.25 crore in 1957. He was found guilty and was sentenced to imprisonment for 22 years.

An initiative has been taken for preventing and curbing corporate frauds by including the concept of fraud and provisions for stringent punishment under the Companies Act, 2013. The major provisions introducing the concept of fraud are contained in Section 447, which is re-produced below:

Section 447: *Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found* *to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:*

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Explanation-For the purposes of this Section—

(i) "fraud", in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

The new act has included the concept of fraud which is inclusive, not comprehensive, and pertains only to the affairs of a company or body corporate. Certain terms used in the definition need elaboration. While the term fraud not only includes any 'act' but also 'the omission, not to act', concealment of any fact, and abuse of position by a person. Such an act, omission and concealment, can pertain to any person himself or by him with the connivance of any other person in any manner.

Act/Omission to Act: While an act of omission is the failure to perform an act expected to be done by a person, an act of commission is doing an act that causes harm. According to the *Oxford Law Dictionary*, the word 'omission' means 'a failure to act' that means when a person is bound to do an act but he omits to do it or deliberately neglects that, it is called omission.

Fraudulent Concealment: The meaning of the word 'concealment' as found in the *Shorter Oxford English Dictionary*, 3rd Edition, reads, "In law, the intentional suppression of truth or fact known, to the injury or prejudice of another."*[C.I.T. vs. J.K.A. Subravania Chettiar, (1977) 110 ITR 602, 608 (Mad). [Income Tax act, 1961, s. 271(1)(c)]*

The word 'fraudulently', appearing in Section 206 of the IPC, cannot be interpreted as meaning nothing more than 'dishonestly'. The two words do not mean exactly the same thing. A dishonest act is not necessarily a fraudulent act. The elements which make an act fraudulent are, first deceit or an intention to deceive and in some cases mere secrecy. Where there is neither an intention to deceive, not secrecy, the act, though dishonest is not fraudulent *[1937 MWN 462;46 LW 139;AIR 1937 Mad 713(1937) 2 MLJ 802.]*.

'Fraudulent concealment' means the deliberate hiding or suppression, with an intention to deceive or defraud other persons of a material fact or circumstances, by a person which he is legally bound to disclose. Any fraudulent failure to reveal the information which some one knows and is aware that he should, in good faith, communicate to another, such as the failure to disclose a defect in a product or omitting one's assets from a bankruptcy scheme to keep them from being available for distribution to the creditors.

Fraud by Abuse of Position: Many cases of the most serious frauds and corruption are committed by the people at the top who have the power to conduct fraudulent transactions and cover them up. There are several things which suggest someone is abusing his position and could actually be committing fraud. A fraud by abuse of position is defined in section 4 of the Fraud Act, 2006 (UK), which reads:

Section 4: *Fraud by Abuse of Position*

(1) A person is in breach of this section if he—

(a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,

(b) dishonestly abuses that position, and

(c) intends, by means of the abuse of that position—
   (i) to make a gain for himself or another, or
   (ii) to cause loss to another or to expose another to a risk of loss.

(2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

Moreover, such an act, omission or concealment must be done with intent:

(a) to deceive;
(b) to gain undue advantage from someone; and
(c) to injure the interest of (i) the company, (ii) a shareholder (iii) a creditor, or (iv) any other person.

Intent to Defraud Creditors: A person was acting dishonestly and fraudulently if he realises at the time when the debts were incurred that there was no reason for thinking that funds would become available to pay the debt when it became due or shortly thereafter.{*R. V. Grautham,(1984) 3 All ER 166, 170 (CA)(UK Companies Act 1948, S.332)*}

The main emphasis of this definition is on intent. In fact, the legal system in India is replete with concepts, like 'intent', 'public interest' and 'principles of natural justice'. This is particularly true about the Indian Penal Code and certain other legislations. The term intent is of paramount importance. It is the 'intent' of a person which determines whether his action, omission, concealment of facts, or abuse of position amounts to a fraud or not.

The intent of a person must be to deceive, to gain undue advantage, or to injure the interest of the other party. The other party can be a company, or its shareholder, creditor or 'any other person' (associated with the company concerned). In a majority of criminal cases, the main element involved is *mens rea* (criminal intent), which is an intention to commit offence and is related to the mind of the offender.

The term 'intent to defraud' contains two elements, deceit and injury. A person is said to deceive another if by false suggestion or suppression or by both intentionally induces another to believe a thing to be true. *[S. Harnam Singh vs. State, AIR 1976 SC 2140, 2145;IPC S. 477-A]*

Deceit: To deceive is to induce someone to believe that a false thing is true, and which the person indulging in the deceit knows or believe to be false. Deceit is the state that prompts intentional concealment or perversion of truth for the purpose of misleading. Deceit is behaviour that is deliberately intended to make people believe something which are not true.

As per Section 415 of the IPC, a dishonest concealment of facts, or where there is a legal duty to disclose particular facts, a dishonest omission to disclose those facts, is a deception.

Wrongful Gain: The word 'wrongful' means prejudicially affecting a party in some legal right. Section 23 of IPC, defines 'wrongful gain' as a gain by unlawful means of property to which the person gaining is not legally entitled. A person is said to gain wrongfully when such a person retains something wrongfully, as also when he acquires it wrongfully. Wrongful gain includes a short-lived gain.

Wrongful Loss: As defined in Section 23 of IPC, 'wrongful loss' as the loss by unlawful means of property to which the person using it is legally entitled. A person is said to in case lose wrongfully, when such person is wrongfully kept out of any property as well as when such person is wrongfully deprived of the property. As in the case of a Wrongful Gain, Wrongful Loss also includes a short-lived loss.

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing 'dishonestly'. The wrongful gain or wrongful loss involves pecuniary or economic gain or loss.

Fraudulent Misrepresentation: A false statement as to a material fact, made with the intent that another rely thereon, which is believed by another party and on which he relies. It also includes by which inducement of act that causes injury to him. The statement is fraudulent if the speaker knows the statement to be false or if it is made with utter disregard to its truth or falsity. *(Cormack vs. American Underwriters Corp., 288 NW 2d 634).*

A misrepresentation is made with the express intention of defrauding someone, which subsequently causes injury to that person. In order for a statement to be 'deceit', it must be untrue, made with the knowledge of its falsity, or made in reckless disregard of the truth. The misrepresentation must be such that it causes and might cause harm to another individual.

Offences Punishable for Corporate Fraud

A corporate fraud has to be controlled and it can surely be prevented if it is not curbed; it will spread, and will eventually lead to the demise of a company or its shareholder and irreparable loss to its stakeholders.

The measures for prevention and control of corporate frauds can be divided into two categories:

(1) Pre-fraud Measures: action to be taken prior to the committing of fraud; and

(2) Post-fraud Measures: action against persons committing fraud.

The ancillary provisions relating to the curbing of corporate frauds are contained in Sections 7 (5), 7 (6), 8 (1), 34, 36, 38 (1), 56 (7), 66 (10), 75 (1), 140 (5), 206 (4), 213 *(proviso)*, 229, 251 (1), 266 (1), 339 (3), and 448 of the Companies Act, 2013 and offences punishable for fraud are given below in the **Table**.

Table: Offences Punishable for Fraud

S. No.	Relevant Sections	Events	Nature of Offences	Persons Liable for Offences
Pre-fraud Measures				
1.	Secs. 7(5); 7(6); and 8(1)	Incorporation of a Company	1. Furnishing false or incorrect information or suppressing material facts during incorporation 2. Fraudulently conducting affairs of Section 8-company (company having charitable objects).	1. Promoters, first directors, and persons giving declaration 2. Directors and officers of the company.
2.	Sec. 34	Company's Share Capital	Issuing prospectus containing untrue/ misleading information.	Person authorising someone to issue prospectus
3.	Sec. 36	Inducing others to invest money	Inducing others to invest money on the basis of false, deceptive, misleading and concealed information and to obtain credit facilities from banks/financial institutions on false grounds.	Person inducing other persons
4.	Sec. 38 (1)	Impersonation for acquisition of securities	Making applications in fictitious names or multiple applications to acquire shares, or inducing the company to allot or register shares in fictitious names.	Person who makes the application and who induces the company.
5.	Sec. 46 (5)	Issuing of duplicate share certificates	Issuing of duplicate share certificates with an intent to defraud.	Officers in default.
6.	Sec. 56 (7)	Transfer/ transmission of shares by depository	Transferring/transmitting of shares by depository with an intent to defraud.	Depository/depository participant.
7.	Sec. 66 (10)	Reduction of share capital	Concealing the name of the creditor who- (1) objects to the reduction of capital, or (2) who mis-represents the nature of debt amount or claim of any creditor.	Officers who conceal names or misrepresent.
Post-fraud Measures				
1.	Sec. 75 (1)	Repayment of deposits (Damages for fraud):	Accepting deposits with an intent to defraud or for fraudulent purposes, or failure to repay deposits/interest within the specified time.	Every officer responsible for acceptance of deposits.
2.	Sec. 140 (5)	Removal/ Resignation of Auditors	Auditors acting in a fraudulent manner or found guilty of abetting or colluding in any fraud by the company or its directors or officers.	Auditor individually or firm or partner/partners of the audit firm jointly or severally.

S. No.	Relevant Sections	Events	Nature of Offences	Persons Liable for Offences
Post-fraud Measures				
3.	Sec. 206 (4)	Carrying on of Unlawful Business	Carrying on of business by company for fraudulent or unlawful purpose.	Officers in default
4.	Sec. 213 Proviso	Inspection/ Investigation into Company's Affairs	Forming of a company with fraudulent/ unlawful purpose or conducting business to defraud members/creditors.	Officers in default and persons concerned with the formation of the company/managing its affairs.
5.	Sec. 229	Furnishing False Statement/ Mutilation/ Destruction of Documents	Furnishing false statement, or mutilating, destroying, concealing, tampering with, or removing any document relating to company's property, assets or affairs.	Person who furnishes false information or mutilates, destroys, conceals, tampers with, or removes any document.
6.	Sec. 251 (1)	Fraudulent Removal of Name from Register	Filing application for removal of name (voluntarily striking off of the name) for evading liabilities of the company or for defrauding its creditors or any person(s).	Person in charge of the management of the company.
7.	Sec. 266 (1)	Damages against Delinquent Directors	Misapplication of money or property found guilty of any misfeasance in relation to sick company.	Person found guilty of any misfeasance.
8.	Sec. 339 (3)	Fraudulent Conduct of Business	Carrying on the business with an intention to defraud creditors/ other persons.	Person who was knowingly a party to the carrying on the company's business.
9.	Sec. 448	False Statements	Furnishing of false statement, in any return, report, certificate, financial statement and prospectus, etc.	Person making such false statements.

Pre-fraud Measures

(1) **Fraud in respect of Incorporation of a Company:** Sections 7(5), 7(6) and 8(11) of the Companies Act deal with the action specified under Section 447, which provides that a company's promoters, first directors, and the persons who have given any declaration, shall be liable to the action provided under Section 447, if they have furnished any false or incorrect information or suppressed any material information with the Registrar of Companies for incorporating the company. They are liable at the time of formation or after formation of the company. Furthermore, if it is proved that if the affairs of the company formed with charitable objects were conducted fraudulently, then the directors and every officer of the company shall be liable for action under Section 447.

(2) **Frauds related to Company's Share Capital:** Numerous Sections under the Companies Act, deal with the raising of share capital and its treatment by a company and offences under those Sections are liable to action under Section 447.

(a) **Raising capital by misstatement in the prospectus:** The penalty has been broadened in the new Companies Act. As per Section 34, a person who has authorised someone to issue a prospectus containing any untrue and misleading statement shall also be punishable under Section 447. The provisions read as follows:

(b) **Fraudulently inducing others to invest money:** Any person who induces others to invest money by making any statement which is false, deceptive, misleading or deliberately concealing any facts, shall be liable for punishment for fraud under Section 447. This offense is non-compoundable. The term investment here, means investment in all types of securities and is not limited to shares and debentures. Section 36 also provides for punishment to a person who induces another person on false grounds to enter into agreement to obtain credit facilities from any bank or other financial institution.

(c) **Impersonation for acquisition of securities:** A person who makes an application in a fictitious name, makes multiple applications in different names or in different combinations of names, for acquiring or subscribing for securities, or induces a company to allot or register any transfer of securities in a fictitious name, shall be liable for punishment under Section 447.

(d) **Issuing duplicate share certificates:** If a company issues a duplicate share certificate with an intention to defraud, every officer of the company who is in default shall be liable for action under Section 447 of the Act.

(e) **Transfer/transmission of shares by depository:** Where any depository or depository participant, having an intention to defraud a person, transfers shares, such depository or depository participant, besides incurring the liability under the Depositories Act, 1996, shall be liable for punishment under Section 447 of the Act.

(f) **Reduction of share capital under:** An officer of the company shall be liable for action under Section 447 of the Act, if he knowingly conceals the name of any creditor who was entitled to object to the reduction of share capital or knowingly misrepresents the nature or debt amount or claim of any creditor or encourages or assists or concerned to any such concealment.

Post-fraud Measures

(1) **Repayment of Deposits:** Section 75(1) of the new Companies Act provides that every officer of the company who is responsible for acceptance of any deposit shall be liable to action under Section 447, if such company fails to repay the deposits or any part thereof or any interest thereon, within the time specified, and if it is proved that the deposit was accepted with an intent to defraud the depositors or for any fraudulent purpose. Under this Section, an action can be taken by any person/group of persons or any association of person who had incurred any loss as a result of the company's failure to repay the deposit or part thereof or interest accrued thereon. The officer shall be personally responsible without any limitation of liability.

(2) **Removal/Resignation of Auditors:** The new Act also imposes penalties on 'Independent Professionals'. While in the case of contravention of an auditor's duties, the penalty for the auditor has been made more stringent, if any partner/ partners of the audit firm has or have acted in a fraudulent manner, they shall also be punishable for fraud. The Act specifically provides that the partner/partners of the audit firm and the firm shall be jointly and severally responsible for the liability, whether civil or criminal as provided in the Companies Act or in any other law for the time being in force. A duty has been cast on the auditors to immediately report any offence involving fraud to the Central Government. When the tribunal, either *suo motu* or an application from the Central Government or a person concerned, is satisfied that the auditors have acted in a fraudulent manner or found guilty of abetting or colluding in any fraud by the company or in relation to the company or its directors or officers, it shall direct the company to change its auditors and such auditor, individual or firm will be jointly or severally liable for action under Section 447. Moreover, such auditor shall not be eligible for appointment for a period of 5 years from the date of passing of the order.

(3) **Carrying On of Unlawful Business:** The Registrar of Companies has been empowered to call for information, explanation of documents or inspect books of the company, either on the basis of information available with him or furnished to him or on a representation given to him by any person, if the business of the company is carried on for fraudulent or unlawful purposes. In such case, every officer of the company who is in default shall be punishable for fraud under Section 447.

(4) **Inspection/Investigation into Company's Affairs:** The Central Government shall appoint one or more competent person as inspectors to

investigate into the affairs of the company. If after the investigation, it is found that the company was formed with a fraudulent or unlawful purpose or the business is conducted to defraud its members, creditors or any other person concerned in the formation of the company, or manage its affairs has been guilty of fraud, then every officer who is in default or any other person concerned in the formation of the company and managing its affairs shall be punishable for fraud under Section 447.

(5) **Furnishing False Statement/Mutilation/ Destruction of Documents:** A new Section 229 has been added in the Companies Act which provides punishment as per Section 447 to such person who, during the course of inspection, investigation or inquiry, furnishes any false statement, or mutilates, destroys, conceals, tampers with, or removes any document relating to property, assets or affairs of the company.

(6) **Fraudulent Removal of Name:** When the Registrar of Companies finds that an application for removal of name (voluntarily striking off of the name) has been filed with an objective to evade liabilities of the company or with an intent to defraud its creditors or any person(s), then the person in charge of management of the company shall be liable for punishment under Section 447. Such person(s) shall also be liable to the person(s) who had incurred loss or damages due to the dissolution of the company.

(7) **Damages against Delinquent Directors:** Section 266 (1) empowers the Company Law Tribunal to assess the damages against delinquent directors during scrutiny or implementation of a scheme of a sick company. If the Tribunal finds that any person, who took part in the formation, promotion of or managing the affairs of such company has misapplied money or property of such company or found guilty of any misfeasance in relation to the sick company, such a person shall be punishable under Section 447.

(8) **Fraudulent Conduct of Business:** During the course of winding up of the company, if it appears that any business of the company has been carried out with an intention to defraud creditors or any other person or for fraudulent purposes, then every person who was knowingly a party to the carrying off of the business, shall be liable for action under Section 447. The Tribunal on the application of the Official Liquidator, Company Liquidator, any creditor or contributory of the company can declare such a person liable personally for debts or other liabilities of the company.

(9) **Making of False Statement:** If any person makes a statement, in any return, report, certificate, financial statement, prospectus, statement or other document required by, or, for, the purposes of this Act, or rules there under, which is false or omit any material fact, shall be punishable for fraud under Section 447.

Penalty for Corporate Fraud

The new Act provides stringent penalties for corporate frauds. Any person who is found guilty of fraud shall be punishable with imprisonment for a minimum period of 6 months, which may extend to 10 years, and also a fine equivalent to the amount involved in the fraud, which may extend to three times the amount involved in the fraud. However, where the fraud involves public interest, the imprisonment shall be for a minimum period of three years.

Conclusion

The frauds can be either of civil or criminal nature. However the intention of the perpetrator of fraud is of paramount importance in establishing an offence as a fraud. The Companies Act, 2013, has included a comprehensive definition of fraud and stringent provisions regarding punishment for such frauds. Moreover, independent professionals shall also be held liable for action and proceeded against under the Act. ■

Future of Internal Audit is Now – Provisions in Companies Act, 2013

The Companies Act, 2013, has definitely shaped the way forward for internal audit function in India, and has provided a strong legal mandate for the crucial role of internal auditors in the corporate governance structure. The writing on the wall is clear – from the earlier requirement of CARO prescribed in the erstwhile Companies Act, 1956, requiring the statutory auditor to comment on internal audit system being commensurate with the size and nature of business for specified companies, the internal audit has successfully earned a mandatory requirement in the new Companies Act, 2013. While listed companies, as per requirement in Clause 41 of the Listing Agreement, already maintained internal audit departments, the Companies Act, 2013 has extended the coverage to unlisted public companies and private companies meeting specified criteria.

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Section 138 to The Companies Act, 2013, states as follows:

"Internal audit

138 (1) Such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as

may be decided by the Board to conduct internal audit of the functions and activities of the company.
(2) The Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board."

Companies (Accounts) Rules, 2014

In this regard, the Companies (Accounts) Rules, 2014, which comes into effect from 1st April, 2014, lays down rules, as follows:

"13. Companies required to appoint internal auditor:-

(1) The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors, namely:-
(a) every listed company,
(b) every unlisted public company having –
(i) paid up share capital of fifty crore rupees or more during the preceding financial year; or
(ii) turnover of two hundred crore rupees or more during the preceding financial year; or
(iii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or
(iv) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and
(c) every private company having –
(i) turnover of two hundred crore rupees or more during the preceding financial year; or
(ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year.

Provided that an existing company covered under any of the above criteria shall comply with the requirements of Section 138 and this rule within six months of commencement of such section.

Explanation – For the purposes of this rule –
(i) The internal auditor may or may not be an employee of the company;
(ii) The term "Chartered Accountant" shall mean a Chartered Accountant whether engaged in practice or not.
(2) The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit."

Internal auditors should rise to the task and seize the opportunity of establishing high performing internal audit functions as per the new requirements. Further, the abovementioned Rule is applicable from 1st April, 2014, which means that by 30th September, 2014, companies which are required to appoint internal auditor should comply with the provisions of Section 138 and the corresponding Rules, thereby allowing sufficient time for the companies that have not yet done so. The Rules also provide leverage to the companies to keep an employee of the company as internal auditor.

While listed companies, as per the requirement in Clause 41 of the Listing Agreement, already maintained internal audit departments, the Companies Act, 2013 has extended the coverage to unlisted public companies and private companies meeting specified criteria. This requirement is intended to ensure that the specified companies have a mechanism in place to regularly review and assess their internal control system and, thereby, to identify any weaknesses and develop and implement appropriate measures. The internal audit function plays an important role in the corporate governance framework, and would thereby protect investors and public interest. Internal auditors should rise to the task and seize the opportunity of establishing high performing internal audit functions as per the new requirements. Further, the abovementioned Rule is applicable from 1st April, 2014, which means that by 30th September, 2014, companies which are required to appoint the internal auditor should comply with the provisions of Section 138 and the corresponding Rules, thereby allowing sufficient time for companies that have not yet done so. The Rules also provide leverage to the companies to keep an employee of the company as internal auditor.

In order to maximise independence and objectivity of the internal audit function, the Companies Act, 2013, also specifies that the primary reporting line of the internal audit function should be the Audit Committee. The new regulatory requirement very clearly requires that the Audit Committee of the company or the Board shall, in consultation with the internal auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit. It is very important for the internal audit function to have the full support of the Board and the Audit Committee, and

also equally important for it is to understand their expectations. This direct contact with the Audit Committee would surely help the internal audit to maximise its contribution to good governance and exhibit high quality of professionalism and quality in its work. The objective is to set up an effective internal audit function which would assist the audit committee in discharging it's responsibilities in light of its limited time and oversight capacity.

Further, Section 144 of The Companies Act, 2013, which deals with "Auditor not to render certain services" *inter alia* specifically prohibits the external auditor to render services of the internal audit to the company, whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company. This prohibition justifies that external audit and internal audit should be two separate functions with a clear division of responsibility.

Internal Control Systems and Compliances

In the new regulatory environment, responsibility and liability have been elevated to an unprecedented level and the demand for heightened accountability resonates especially clearly for the Directors. Section 134 of the Companies Act, 2013, has added the following two new requirements to be included in 'Directors' Responsibility Statement':

"134…..

Section 134 of the Companies Act, 2013, has introduced the following new requirement to be included in the report by the Board of Directors in its report given in general meeting: "134 (3) (n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company,"

(5) The Directors' Responsibility Statement referred to in Clause (c) of sub-Section (3) shall state that –

…… (e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Explanation – For the purpose of this Clause, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of it's business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information; and

(f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively."

An effective internal audit function can help the Directors' in fulfilling these newly introduced requirements by objectively validating the effectiveness of the internal control system and compliance function. The internal auditor can provide support by examining the continued effectiveness of the internal control system through evaluation and make recommendations, if any, for improving that effectiveness. As far as compliance is concerned, the internal audit can review the adequacy and effectiveness of the functioning of controls implemented by the management to ensure compliance with the applicable laws and regulations. In broader terms, it can assist the directors in auditing compliance and the compliance function by providing valuable inputs.

The new regulations also specifically require, as per Section 177, for the Audit Committee to evaluate internal financial controls and risk management systems. Section 177 (5) of the Act clearly states as follows:

"Section 177 (5) The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company."

It may also be clarified that under the provisions of the Act, the Board of Directors and the Audit Committee is solely responsible for establishing an efficient system of internal control. Internal audit may serve in many capacities, including advisory, testing, training and development, so long as that should not cross the line into a decision-making role.

Risk Management

Risk management is a central part of any organisation's strategic management. In fact, risk management and internal control are two sides of the same coin, as risk management focuses on the identification of threats and opportunities, and controls are designed to effectively counter threats and take advantage of opportunities. Successful organisations seek to integrate risk management and internal control into all activities, through a framework of risk identification, risk assessment and risk response. Section 134 of the Companies Act, 2013, has introduced the following new requirement to be included in the report by the Board of Directors in its report given in general meeting:

"134 (3)(n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company,"

As soon as the task of reviewing the company's risk management systems reaches even a reasonably low level of complexity, the board of directors will find the need to delegate this important work. Decisions should be made only with the explicit understanding of related risks and the potential consequences for achieving an organisation's objectives. Thus, the Board of Directors require relevant and reliable information on risk management for decision making and control processes. In other words, it requires a skilled team of internal auditors who can act independently and report back objectively to

Indian corporates are facing challenges in implementing the new requirements and the internal auditors can and should take a leading role. Internal auditors must be conscious that the current responsibilities come with new risks and new rewards. Continuous learning with an eye on the future and a timely application of relevant knowledge to create value will help to increase internal audit's credibility and confidence in their enhanced roles.

the board of directors. Internal audit function, thus, can provide an objective assurance to the board on the effectiveness of the company's risk management activities to help ensure key business risks are being managed appropriately.

Further, the more risk-mature the organisation is, the more internal audit can give the board a realistic picture of how well risks to their strategic objectives are being managed. The top risks where internal audit can play a vital role are:

- Data privacy and security
- Business continuity
- Fraud
- Reputation and Brand
- Regulatory compliance
- Outsourcing
- Ethics and culture
- Merger and acquisitions
- Product innovation
- Employee relations
- Access to Finance
- Economic uncertainty

Conclusion

Change and innovation are the norms. Indian corporates are facing challenges in implementing the new requirements and the internal auditors can and should take a leading role. Internal auditors must be conscious that the current responsibilities come with new risks and new rewards. Continuous learning with an eye on the future and a timely application of relevant knowledge to create value will help to increase the internal audit's credibility and confidence in their enhanced roles. The ability to learn, and translate that learning into action rapidly, is the ultimate competitive advantage, and then only the corporates will be able to reap the benefits of sustainable compliance in this new regulatory era. ■

CAG'S Audit of Direct Tax

The Institute of Chartered Accountants of India (ICAI), the premier accounting body and statutory institution for the regulation of the profession of Chartered Accountants in India is known for its expertise and contribution inter alia in the domain of direct taxes, indirect taxes and international taxation. The expert committees specifically constituted by ICAI viz. Direct Tax Committee, Indirect Tax Committee and Committee on International Taxation demonstrate the significance attached by the institute for playing a key role as a think tank in the reforms in tax laws, practice and thereby accelerating business growth in the country. This article is intended to familiarise the CA tax practitioners about the audit of revenue (Direct Taxes) conducted regularly by the Comptroller and Auditor General's (CAG). It focuses on the constitutional mandate, role, functions and reports on the Central Board of Direct Taxes including international taxation.

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To understand the CAG's mandate relating to audit of government receipts encompassing tax, non tax revenue, it is appropriate to refer to the latest judgment pronounced by the High Court of Delhi in January, 2014 on the writ petition of the Association of Unified Telecom Service Providers of India & Others with reference to the constitutional *provisos* and the CAG's (Duties Powers & Conditions) of Service Act, 1971.

"Section 16: Audit of receipts of Union or of States.

It shall be the duty of the Comptroller and Auditor-General to audit all receipts which are payable into the Consolidated Fund of India and of each State and of each Union territory having a Legislative Assembly and to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, affection and proper allocation of revenue and are being duly observed and to make for this purpose such examination of the accounts as he thinks fit and report thereon"

Article 266 of the Constitution of India reads as under:

(1) Subject to the provisions of Article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State".

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution."

We highlight the expression that all revenues received by the Government of India shall form one consolidated fund to be entitled in Article 266.

The Delhi High court made it clear as under:

"Thus, it is the constitutional obligation of the Comptroller and Auditor General to perform such duties in relation to the accounts of the Union as may be prescribed under any law made by Parliament, and the law made by Parliament is the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971. As per Section 10 thereof, the Comptroller and Auditor General is responsible for compiling the accounts of the Union from the initial and subsidiary accounts. As per Section 13 thereof, the Comptroller and Auditor General is charged with the duty to audit all expenditure from the Consolidated Fund of India. As per Section 14 thereof, bodies or authorities substantially financed from the Union or State revenues are subject to the audit by the Comptroller and Auditor General and as per Section 16 thereof, the Comptroller and Auditor General has to audit all receipts which are payable into the Consolidated Fund of India and Article 266 of the Constitution of India, to which we have adverted to hereinbefore and in respect whereof we have already explained what would the revenues to be kept in mind. And needless to state, would include any income of the nation derived from any source, to be credited into the Consolidated Fund of India."

The legal position could be stated in simple language as follows:

The Constitution (Article 149) mandates the Comptroller and Auditor General to perform such duties and exercise such powers in relation to the accounts of the Union. Accounts would include a record of money received and spent by the Union. Power in relation to the account envisaged under Article 149 would be as prescribed by or under any law made by Parliament which would mean that Parliament can make a law with respect to compiling accounts and auditing the same. While enacting the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971, vide Section 10, the Parliament has prescribed the manner in which power contemplated by Article 149 shall be exercised by the Comptroller and Auditor General in relation to compiling and keeping accounts and vide Section 13 has prescribed the manner in which the expenditure shall be audited and vide Section 16 has prescribed the manner in which the receipts have to be audited.

51. We see no scope for any argument of there being any conflict between Section 16 of the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971 and Article 149 of the Constitution of India. We see no scope for an argument to urge any conflict between Rule 5 of the Telecom Regulatory Authority of India, Service Providers (Maintenance of Books of Accounts and other Documents) Rules, 2002 and Section 16 of the Comptroller and Auditor

As part of the checks and balance of the Parliamentary democracy, the CAG reports help the people's representatives to ensure proper accountability of the executive through effective review, monitoring and control of government receipts going into the Consolidated Fund of India and accounting expenditure there from. It's an inalienable responsibility of the CAG to submit the reports on revenue and expenditure to the President and the Governor to place before the legislature.

General (Duties, Powers and Conditions of Service) Act, 1971 for the reason, interpreting the contract, we have already held hereinabove that in a very real sense the licensees are the accountant of the Central Government with respect to the complete, accurate and honest maintenance of the books as to any transaction(s) involving revenue. We have already held in paragraph 31 above that under the terms of the licence agreement the licensee has undertaken the accounting responsibility for the Central Government as well as itself. Thus, the accounts of the licensees, in relation to the revenue receipts can be said to be the accounts of the Central Government and thus subject to a revenue audit as per Section 16 of the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971."

Article 151(1) of the Constitution of India empowers the Comptroller and Auditor General of India to prepare report on the accounts of the Union of India which shall be submitted to the President who in turn shall cause them to be laid before the Parliament. As per Section 16 of CAG's (Duties, Powers and Conditions of Service) Act, 1971 CAG audits and prepares a report on all the revenue receipts and audit of the revenue department functioning under the administrative control of Department of Revenue, Ministry of Finance.

Understanding the IT Department and the Revenue Audit of C&AG

i) Income-tax Department-

The field formation of the Income-tax Department comes under the direct control of Central Board of Direct Taxes (CBDT) which frequently issues various circulars, instructions, notifications, press releases *etc.* to streamline the tax collection procedures. The CBDT consists of a Chairman and six members of their respective functional areas and has seven attached offices under its direct control *viz.* the Administration, Systems, Vigilance, Training, Legal and Research, Logistics and HRD headed by Director Generals of Income Tax (DGsIT).

At the field level apart from the CCsIT there are four field formations headed by DGsIT *viz.* the Investigation, Exemption, International Taxation and Intelligence & Criminal Investigation under the direct control of the CBDT. The Chief Commissioners of Income Tax (CCsIT) ensure that the various tax collection procedures are in place and conform to the guidelines of the CBDT. The Commissioner of Income Tax (CIT) and its subordinates perform the various administrative and tax recovery functions comprising assessment and affiliated functions. In addition, since 2007 a new inter audit system has been put in place wherein the CIT (Audit) has been entrusted with the responsibility of internal audit of the assessments finalised within the department.

There is a three-tier system above the Internal Audit Party (IAP) headed by the ITOs and the Special Audit Party (SAP) headed by the Deputy/Assistant CsIT. On an average, the Income-tax Department selects 2% of the total returns filed for scrutiny assessment every year on the basis of scrutiny selection guidelines issued by CBDT in the Action Plan. The CASS (Computer Aided Scrutiny Selection) list is generated for each jurisdiction for the finalisation of the scrutiny assessments every year.

ii) Revenue Audit of CAG

At the CAG headquarters in New Delhi, Deputy Comptroller and Auditor General (Central Revenue Audit) heads and controls the Direct Tax and Indirect tax audit with the help of the Director General (Direct Taxes) and other officers. At the field level, there are four Central Revenue Audit offices at the four metro cities headed by the Director General of Audit and Principal Director of Audit in some major cities. In certain states where there are no separate central audit offices, the Direct Tax wing functions under Pr. Accountant General/Accountant General. The Local Audit Parties (LAPs) headed by Senior Audit Officers/Audit Officers are supervised by Directors/Deputy Directors/Deputy AG, who in turn report to their respective Director General/

Compliance Audit Report No. 15 of 2013: During the FY 2012-13, the department has completed 5.5 lakh scrutiny assessments out of which 2.96 lakh cases were audited by the revenue audit. The report discusses 455 high money value cases reported to the Ministry out of which the Ministry has accepted to 68% of the audit objections.

Principal Director/Pr. AG/AG. The Local Audit Party performs the actual audit of the Direct and Indirect Tax Departments.

The audit planning with selection of charges to be audited is done on the basis of application of specified inherent risk parameters and systematic sampling methodology. The units to be audited are categorised into high, medium and low risk units based on selected parameters and are audited annually, biennially or pent annually. From the Financial Year 2012-13, revenue audit has taken a paradigm shift from its traditional approach of 'Assessment Centric' Audit to 'Department Centric' Audit. Earlier, the revenue audit used to focus only on the assessment functions along with the collection and recovery functions of the Department.

Since the introduction of Department Centric Audit, audit exercise has become holistic in its approach taking the Commissioner of Income Tax as the focal point and checks its efficiency and effectiveness in the implementation of various systems and control issues introduced by the government from time to time. The Central Board of Direct Taxes (CBDT) issued an instruction on 14-11-2013 to the department, releasing the standard templates for collection of information and affiliated guidelines for Department Centric Audit. The CAG's revenue audit wing also undertakes audit of attached offices of CBDT to fulfill the statutory obligations entrusted by the Constitution of India.

iii) Why revenue audit of C & AG is necessary

In a Democracy, defined roles and responsibilities are entrusted to every organisation on the basis of specified Acts, Rules, Manuals, Instructions, and Guidelines. Though there is a provision of internal check/supervision within every organisation, there is a constitutional requirement in a parliamentary democracy for cross-checking and oversight functions by an independent third party statutory organisation, as enshrined in the Constitution of India as explained above. The Revenue Department has a paramount role in India's fiscal system and functioning of the Indian democracy. The Direct Tax receipts have exceeded Indirect Tax receipts recently. Now, the Direct Tax receipts contribute to 55.56[1]% of the Gross Tax receipts of the country. India, being a global economic destination, the Direct Tax administration is one of the critical factors for accelerated economic growth of the nation. The statistics in the table shows the importance of Direct Taxes *vis-à-vis* the GDP of the country.

Financial Year	2007-08	2008-09	2009-10	2010-11	2011-12
GDP at current Market prices	4987090	5630063	6477827	7795314	8974947
Net tax collection of DT in India	312213	333818	378063	446935	494799
Direct Tax to GDP ratio	6.67%	5.93%	5.84%	5.73%	5.51%

(Figures in Crores)(Source- Website of Department of Revenue & CAG audit Report)

As part of the checks and balance of the Parliamentary democracy, the CAG reports help the people's representatives to ensure proper accountability of the executive through the effective review, monitoring and control of government receipts going into the Consolidated Fund of India and accounting expenditure therefrom. It's an inalienable responsibility of the CAG to submit the reports on revenue and expenditure to the President and the Governor to place before the legislature. The CAG's revenue reports ensure that a proper system of tax collection and administration with internal controls are in place, tax revenue is correctly assessed and collected in compliance with tax laws and there is no under assessment or over assessment. The CAG reports on Direct Tax have been impacting substantially towards better revenue collection, by throwing light on various systemic and procedural deficiencies through Compliance Audit and Performance Audit Reports. The performance audits, conducted from time to time, highlight the lapses in various incentive schemes as well as the internal control deficiencies. The impact of the

[1] *Source Report 15 of 2013 of C&AG*

CAG reports has enhanced recently due to the intense media activism, social activism, people's awareness, interest in governance issues and overall dissemination of information through digital media and social networking sites.

Functioning of the Local Audit Parties in Direct Tax wing

An audit plan for the forthcoming financial year is prepared, considering the constraints of available workforce and working days in a financial year. Adopting Risk Based Auditing based on Risk analysis and sampling technique, the units to be audited are selected and distributed among the Local Audit Parties. The allocation of time schedule for audit is done on the basis of the workload available for each unit. Prior intimation of the audit schedule is fowarded to the department to make the records ready for audit. During the audit the cases are selected from the Demand & Collection Register (D & CR) on the basis of the available guidelines. The selected cases are then audited and audit queries (AQs) are raised in cases of omissions and commissions. A Local Audit Report (LAR) is prepared incorporating sustainable audit observations with the department's response and sent to the regional headquarters. After vetting the AQs based on audit evidence substantiated through the rule position and key documents gathered during the course of audit, the Local Audit Report is issued to the concerned CIT. The statement of Facts (SOFs) are issued to the department in the case of Draft Paragraphs having significant tax effect to obtain the action taken report, before sending to the CAG office for inclusion in the audit report.

Once the reports are submitted to the President of India who causes them to be laid before the Parliament, they are discussed in the Public Accounts Committee constituted by Members of Parliament calling the representatives from the CBDT and CAG. The Ministry of Finance, after its internal verification, provides a suitable reply incorporating the details of action taken. The audit paragraphs are then settled on the basis of the action taken by the department.

The Revenue audit, after adoption of the Department Centric approach of the audit, is in the process of drafting the audit guidelines to conduct the audit of transfer pricing offices. Being a new field it would be keenly awaited by various tax professionals as well as the Income-tax Department to see the type of lapses highlighted by the revenue audit.

Audit Products: Audit Reports of C & AG on Direct Taxes

Every year, two categories of the revenue audit reports are produced by the CAG on Direct Taxes taking into consideration the state of affairs of the department immediately preceding the Financial Year. The first category is known as the Compliance Audit report that deals with the functioning of the department and compliance issues in relation to the relevant Act, Rules, Manuals, Procedures, Guidelines, Circulars, and Instructions. The report *inter alia* consists of various 'Draft Paragraphs' based on types of non-conformity to the applicable regulations and procedures. The second category of CAG reports on revenue audit is termed as Performance Audit report that focuses on systemic and procedural issues, analysing the lapses in any incentive schemes and the internal control mechanism of the department. As the mission of the department is 'collecting resources efficiently, considerate towards its clients, adapting and improving and promoting voluntary compliance' and the mission is 'to promote compliance with Direct Tax laws, through caring tax payer service' with a view to maximise the resources of the nation, Performance Audit focuses on efficiency, effectiveness, and economy in tax administration, revenue collection, remittance, accounting and overall tax governance as envisaged by the legislation.

Besides audit scrutiny of individual assessment cases, revenue audit team validates whether adequate

i) Collection and utilisation of data necessary for the computation of demand or refunds under the law;
ii) Prompt raising of demands on taxpayers in the manner required by law;
iii) Regular accounting of demands, collections and refunds;
iv) Correct accounting and allocation of collections and their credit to the Consolidated Fund;
v) Proper safeguards against willful omission or negligence in the levy or collection of taxes or issue of refunds;
vi) Due diligence in the pursuit of claims on taxpayers and their abandonment, reduction or waiver is with adequate justification and proper authority; and

vii) Prompt reporting and subsequent investigation of cases of double, fraudulent or forged refunds or other cases of loss cases of loss of revenue.

Receipt Audit would also cover:

i) Examination of the Board's general circulars, instructions, notifications, and order in specific cases so as to check whether these are in accordance with the law and have been issued under proper authority.
ii) Checking of the CIT's orders under Sections 263, 264 and 273 and orders under the corresponding provisions of the other Direct Tax laws so as to identify cases involving any deviation from the law.
iii) Checking the penalty orders passed by the JCITs/ Addl. CITs and other instructions issued by them to the A.O.s so as to ensure that they are in conformity with the provisions of the law and the instructions of the Board.
iv) Checking the orders of the CITs (Appeals) so as to ensure that they are not against the plain meaning of law or against the procedure that has been laid down.
v) With reference to assessment work, seeing whether:
   a. the assessment made is in accordance with the provisions of the relevant Act and the Rules;
   b. the block assessments are correctly made. The Revenue Audit Parties (RAPs) are entitled to have access to the seized material as also the appraisal reports while checking block assessments;
   c. the procedure laid down by the CBDT/the CCIT has been followed; and
   d. the instructions or orders issued by the higher authorities have been complied with. It may be noted that the Receipt Audit will not call into question the excise of discretionary powers vested with various authorities under the statute, but it is competent to see whether the departmental interpretation of law and facts is not contrary to any decision of the jurisdictional High Court or that of the Supreme Court.
vi) Scrutinising orders of reassessment, rectification, penalty, refunds and relief u/s. 89 of the I.T. Act, and also giving orders; giving effect to appellate orders.
vii) Checking whether recovery has been credited under the proper head of account. Audit may also point out cases of undue delay in recovery to pinpoint faults in the procedure.
viii) Test checking entries in the registers of the Assessing Officer with a view to seeing that no irregularities occur in assessment, collection and adjustment of taxes due to improper maintenance of the prescribed registers and that the statistical reports of the department truly reflect the figures shown in the registers.
ix) Examination of the cases checked by the Internal Audit to verify its effectiveness.
x) Point out cases of over-assessment.
xi) Specially checking the classification of revenue receipts and refunds under various heads of account.
xii) Scrutinising orders of write-off to see if they are passed by the competent authority after following the prescribed procedure, rules and statutory provisions.
xiii) Checking whether arrears have been correctly carried forward.

The common errors highlighted through the CAG report gives the chartered accountants a chance to re-look at the accounts from the perspective of revenue auditors and prevents them from committing such errors which otherwise they would be prone to.

Highlights of the C & AGs Audit Report on Direct Taxes for the year 2013

In 2013, the CAG submitted one Compliance Audit report and three Performance Audit reports. The contents of the reports add value to the perception of the tax practitioners.

1. **Compliance Audit Report No. 15 of 2013:** During the FY 2012-13, the department has completed 5.5 lakh scrutiny assessments out of which 2.96 lakh cases were audited by the revenue audit. The report discusses 455 high money value cases reported to the Ministry out of which the Ministry has accepted to 68% of the audit objections. The reply was yet to be received from the department for 113 cases till the date of publishing the report. It includes 325 high value transactions pertaining to the Corporation Tax with a tax effect of ₹2,271.32 crore, 115 high value transactions pertaining to Income Tax with a tax effect of ₹593.30 crore and 15 cases of

Wealth Tax involving tax effect of ₹35.19 lakh.

Out of the total demand raised for collection, the demand difficult to recover has risen from ₹1.87 lakh crore in FY 2009 to ₹3.87 lakh crore in FY 2012. As per the Ministry's reply, a single case of Shri Hasan Ali Khan pertaining to Mumbai charge has resulted in such an exceptional situation.

The mistakes were raised by the Revenue Audit in 3471 cases assessed which was already audited by the Internal Audit of the Department. However, incidence of error was witnessed in 18,072 cases audited by revenue audit.

2. Performance audit on Exemptions to Charitable Trusts (Report 20 of 2013)

The audit was conducted on all 0.9 lakh charitable Trust cases where ITD granted registrations/approvals/notifications. 0.81 lakh assessment cases where checked in which 1,211 objections were raised with a tax effect of ₹3,019.21 crore. Some important findings are indicated below:

- It has been reported that in 1149 cases registrations without verifying the proper documents.
- It has been reported that trusts are earning huge profits. But, they spend little for the charitable purpose and transfer the accumulated surplus to some other trust for avoiding tax or utilise the surplus fund for acquiring capital assets.
- It has been concluded from the data collected from the ITD that only 3% of the assessee (*i.e.,* 51570 Trusts) claimed 96% (₹76.02 lakh crore) deductions/exemptions during FY 2011.
- The department granted approval for registration as Trust to 60 cases whose objectives were not charitable in nature. This resulted in revenue loss of ₹87.33 crore.
- In 161 cases the exemptions were granted from the date prior to the date of application as Trusts involving tax of ₹24.23 crore.
- Two Trusts related to one of the big corporate houses in India was given exemption on investments in modes which were prohibitive by the Act. This resulted in the loss of revenue of ₹1,066.95 crore. This issue was highlighted by The Times of India on 21st November, 2013.
- The ITD has not taken a uniform view in allowing the deficit of earlier years, depreciation and repayment of loan to Trusts.

3. Performance audit on Strengthening the Tax Base through use of Information (Report 4 of 2013)

At the time of taking up the performance audit of the Central Information Branch (CIB), the department had already notified the reorganisation of the CIB with the creation of the Intelligence and Criminal Investigation wing in place of the CIB. The same is under progress. Some of the important findings are as indicated below:

- Several deficiencies were pointed out in the scheme of flow of information for augmentation of tax base. In some cases the data collected lacked basic information like PAN rendering them of no use to the department.
- It was also found that in some cases incorrect information was transmitted and no steps were taken to rectify the same.
- The department did not take any action for non-filing of adequate Annual Information Returns (AIRs). The Central Information Branch (CIB) (now DIT-Intelligence & Criminal Investigation) did not upload the information and could not utilise the full functions of the CIB Module of the system due to technical problems.
- In 285 high value cases the ITD did not utilise the available AIR information during assessment finalisation.
- The department does not maintain any standard database from the prospective people/organisations from whom information is to be collected. Form 60/61 was not digitised which rendered them to be of little use.
- As per the Action Plan of the ITD published every year, the department targets an increase of 15% in the number of assessee base. However, it was noticed that during the period from FY 2002 to 2011, the increase was of 3.1% only.

The internal auditors (Chartered Accountants), The Income-tax Department and the Revenue Audit are the three pillars of the tax collection system. The internal auditor helps in preparation and finalisation of the accounts of an entity and file the returns accordingly. The Income-tax Department conducts the preliminary scrutiny of the returns and the CAG's revenue audit ensures that there exists a proper tax collection procedure to plug the loopholes.

- Out of the total cases selected for scrutiny during FY 2008 to 2010, the Annual Information Return (AIR) was the basis of selection for only an average of 7.7% of the selection.

4. IT Applications in Income-tax Department (Report 23 of 2012-13)

The ITD had spent ₹790 crore between FYs 2006-2011 on computerisation of department. The performance audit focused on four important modules of the ITD application *viz.* the Assessment Information System (AST- for processing of returns), Online Tax Accounting System (OLTAS- tax accounting and payment information), e-TDS (information on tax deducted at source) and Individual Running Ledger Account (IRLA- individual ledger of each assessee for demand and refund). Some important findings are as indicated below:

- AST/CPC applications do not link up with the assessee's legacy details;
- Details of scrutiny assessment/penalty proceedings/Appeals are not recorded in the system;
- ITD does not reconcile the revenue collected as reported by the Banks and Zonal Accounts Offices (ZAO);
- Some banks which are not authorised are collecting taxes;
- Unposted credits are lying in OLTAS;
- Instances of multiple uses of the challan have been found resulting in incorrect tax credit. 3,089 cases worth ₹153 crore have already been confirmed by the department;
- All non-filers identified by the system have not been served notice.

Impact of Revenue Audit

The audit findings in C & AG reports have always been a key persuasive factor in determining the legislative amendments to plug the loopholes in the Act. Apart from the general guidelines issued by the CBDT to streamline the lapses highlighted by the revenue audit for this year, there has been some direct impact:

1. Audit pointed out that the benefit of Minimum Alternate Tax (MAT) was being availed by some Firms/Association of Persons (AOP) which was exclusively available for Companies. As a result, Section 115JC was inserted in the Income-tax Act, 1961 through the Finance Act, 2012 to extend the benefit of the MAT to certain specified categories.
2. The ITD recovered ₹2,680.97 crore from mistakes pointed out by revenue audit during the last five years including ₹1,583 crore during the FY 2012 itself.
3. On pointing out that there is no place to quote the PAN number in Form 10A (Form seeking registration by ITD as Trust), the department has agreed to include a column for PAN.
4. The ministry withdrew the registration provided to 799 Trusts after being pointed out in the audit that they were given Trust status without proper verification of documents. At the same time the exemptions of 161 Trusts were withdrawn after it was pointed out they were given Trust status from a date prior to the date of actual application.
5. The IT department has withdrawn the exemptions given to four state cricket associations affiliated to BCCI on basis of the CAG report. (report published in various newspapers on 10-01-2014).

International Taxation – Audit of Transfer Pricing

The introduction of Transfer Pricing regulations since the Finance Act 2001 was a move to catch up with the world which has transformed into a 'Global village' and international transactions within the Associated Enterprises have become a necessity for multi-national players. On one hand it is of utmost importance for our country to invite investments from the global players to boost the economy but, at the same time it is also important to keep a track of the transactions within the defined purview of regulations so that there is no flight of profit in a disguised manner.

The recent cases of Vodafone and Shell have highlighted several areas which need urgent attention. The transfer pricing regulations in India is in its nascent stage and the Income-tax Department is struggling with several issues like lack of availability of information, access to various databases to choose the most appropriate method, availability of manpower to assess the increasing number of cases (extension of transfer pricing regulations to domestic transactions is going to increase the woes of the department), increasing litigation at the level of the ITAT and absence of proper legislative recourse to take remedial action in cases of mistakes.

Though the Income-tax Act has made certain provisions in Section 144C for reference to the

Dispute Resolution Panel for avoidance of litigation; the assessee has the right to sit silent for one month to evade the DRP and choose the normal course of appealing before the CIT(A). Hence, this provision has only partially been able to achieve the objective of reducing litigation.

The Revenue Audit, after adoption of the Department Centric approach of audit is in the process of drafting the audit guidelines, to conduct the audit of transfer pricing offices. Being a new field it would be keenly awaited by various tax professionals as well as the Income-tax Department to see the type of lapses highlighted by the revenue audit.

Audit of Non Assessment Charges including CIT Appeal

The CIT (Appeal) is the first judicial recourse available to the assessee in the hierarchy of the Indian Revenue Judiciary System. The provisions enumerated in para 1.2(iv) of Chapter 8 of Manual of Office Procedures- Volume III of the Income-tax Department which empowers the revenue audit to Check the orders of the CITs (Appeals) so as to ensure that they are not against the plain meaning of law or against the procedure that has been laid down.

The Audit of CIT(Appeal) was not being conducted till now but same has been taken up from the FY 2013-14 onwards after adopting the Department Centric approach of the audit. The audit reports in the forthcoming years would highlight the deficiencies in the orders passed by CIT(Appeals) and other non-assessment charges.

How CAs are benefited by CAG Reports

The CAG reports have always been a pondering factor both for the internal as well as the external auditors in addition to the Income-tax Department. No process of tax collection is complete unless it passes the test of revenue audit which gives an insight of lapses during tax collection procedures. The common errors highlighted through the CAG report gives the chartered accountants a chance to re-look at the accounts from the perspective of revenue auditors and prevents them from committing such errors which otherwise they would be prone to.

Lessons that can be Learnt

The Revenue audit primarily conducts the audit of assessment records of the Income-tax Department which contains the details furnished by the assessee during the assessment proceedings. The most common mistakes observed during the audit are related to:

1. Arithmetical mistakes in adoption of figures from returns filed/computation sheets furnished/ revised returns filed.
2. Application of incorrect rate of tax/surcharge.
3. Incorrect computation of the time period for which a particular rate of interest is to be levied.
4. Escapement of income due to omission of certain facts
5. Incorrect computation of deductions/ exemptions/depreciation/business loss *etc.*
6. Incorrect computation of capital gains due to reckoning of incorrect period of holding of asset/ time of investment for claiming exemption/set-off *etc.*

Conclusion

The internal auditors (Chartered Accountants), the Income-tax Department and the Revenue Audit are the three pillars of the tax collection system. The internal auditor helps in the preparation and finalisation of the accounts of an entity and file the returns accordingly. The Income-tax Department conducts the preliminary scrutiny of the returns and the CAG's revenue audit ensures that there exists a proper tax collection procedure to plug the loopholes. The Nation can progress only if these three work in harmony and learn from each other while focusing on respective sphere of responsibilities. A trust based taxation system can only ensure enhanced tax compliance and thereby reduction in cost through onerous compliance requirements. The Tax laws should be de-complicated and simplified in a fair, equitable and non-arbitrary manner to reduce the cost of compliance and litigation. There should be checks and balances for tax compliance while guaranteeing against double taxation and enforcement of tax treaty provisions. To reduce the misery and sorrow arising out of taxation, the department needs to concentrate on efficient redressal of tax disputes within a reasonable time frame. The proposed new Direct Tax Code may bring requisite changes in the tax laws as lack of non-ambiguous regulatory laws lead to uncertainty and inconsistent interpretations and orders by the courts, tribunals and other forums putting revenue tax payers at bay. ■

Accounting and Taxation Aspects of Gold Deposit Scheme

With the Government imposing a lot of restrictions on the import of gold, jewellery houses are trying to come out with schemes which encourage citizens to free their gold holdings from their lockers and bring it into circulation. Though some banks are already running gold deposit schemes, the accounting and tax treatment of the transaction is not coming out from their annual report, may be for the reason that in terms of total size of their final accounts, such transactions are not material. Success of Gold deposit scheme to bring out gold stored in lockers and vaults is of national importance. However, the Legislative framework for the same is not ready. In fact, the Legislature has not thought about a commercial transaction of interest bearing deposits in kind.

Pliny the Elder, in 77CE, in his encyclopedic work on classical Rome, called India the 'sink of the world's precious metal'. It is believed that a Roman ship laden with gold touched an Indian port daily to carry Indian spices, silks and fine cotton in exchange. India's culture and mythology embrace gold. Given the one-way flow of gold over the centuries, till the beginning of the nineteenth century, a staggering amount of precious metal has accumulated in India. The World Gold Council estimates it to be over 20,000 tonnes. Even today, India absorbs about a quarter of the world's gold. There is no firm estimate of how much gold is held by Indian temples, but it is believed to be several thousand tonnes. One of the reasons of high Current Account Deficit (CAD) is attributed to the madness of Indians towards gold which is often termed as an unproductive asset. The finance minister is quite right in wanting to limit its import, which of late has led to increase in smuggling of this precious metal in the country and also complaint of loss of livelihood to thousands of craftsmen. With the Government imposing lots of restrictions on the import of gold, jewellery houses are trying to come out with schemes which encourage citizens to free their gold holdings from their lockers and bring it into circulation. Salient features of such schemes are:

a. The customer brings in gold in the form of jewellery, bars, coins *etc.*
b. That gold is melted by jewellery houses to ascertain its purity *etc.* and a receipt is issued to the customer for its quantity and purity (say 100 gms. of 22 carat)

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c. The pure gold so obtained is used by Jewellery house for its business (for making jewellery and coins for sale)
d. After a specified period (say one year), the customer can take back the gold with interest in the form of gold (say 105 gms of 22 carat)
e. The extra five grams is treated as interest cost by the Jewellery house. If the value of extra quantity exceeds the threshold exemption limits of Income-tax TDS, the customer is required to pay the tax amount in cash for which a TDS certificate is issued.

Though some banks are already running gold deposit schemes, the accounting and tax treatment of the transaction is not coming out from their annual report, may be for the reason that in terms of total size of their final accounts, such transactions are not material.

Accounting of deposits in kind

The initial recording of receipt of deposit in kind will be a Balance-Sheet activity only; increasing the assets and liabilities side by an equal amount. For recording the transaction, a value in monetary terms will have to be assigned to it. This initial recognition would be at fair market value. Fair market value is the price that a given property or asset would fetch in the market place, subject to the following conditions: (i) prospective buyers and sellers are reasonably knowledgeable about the asset; they are behaving in their own best interests and are free of undue pressure of trade; (ii) a reasonable time period is given for the transaction to be completed. The definition of 'fair market value' contained in Section 2(22B) of the Income-tax Act, 1961 is on similar lines. Gold has an active market in India and therefore, it would not be difficult to get a fair market rate. However, the commodity is subject to change in rate during even the course of a day. Now the question arises, as towhat should be the rate used for accounting? Guidance may be taken from Accounting Standard (AS) 11 which permits the use of the average rate for all transactions during the week or month in which the transactions occur. So long as a consistent practice is followed for arriving at the fair market value for the purpose of recording the transaction, the adoption of the previous week's or previous day's rate will be a permissible practice.

Gold is not money as understood under the Sales Tax law. There is no reason why the word 'money' should be given a different meaning for the purpose of Companies Act or Income-Tax Act. Does this mean that the Legislature allows a free play when the transaction relates to deposits in kind?

The purpose of taking deposits in the form of gold (deposit in kind) is to use it as the inventory of business. AS 2 defines inventory *inter alia* to mean assets in the form of material or supplies to be consumed in the production process or in the rendering of services. Gold obtained under a deposit scheme will be converted into jewellery and coins by deploying labour, consumables, and further material (gems, pearls, other precious and non-precious metals and alloys *etc.*). As soon as gold is put into a production process, it will have to be brought into the regular inventory of business. This bringing-in into regular inventory will require a journal entry debiting 'purchases of inventory account' (trading or profit and loss account) and crediting earlier inventory account (asset account). Thus, the final entry in the books remains as 'purchases' debit and 'depositor' credit. This conversion of special inventory to regular inventory should be at historical cost, *i.e.*, the cost at which the initial recording of acceptance of deposit was made. There is no need of finding fair market value again.

The Income-tax Act requires that when a capital asset is converted into stock-in-trade of business conversion should happen at fair market value. Capital asset is defined under Section 2(14) of the Income-tax Act which excludes stock-in-trade, consumable stores or raw material from the ambit of capital asset. The purpose of taking deposits in the form of gold (deposit in kind) is to use it as inventory of business. Thus, the Conversion at the historical cost will be in consonance with the Income-tax Act also. An enterprise may even choose to directly record receipt of deposit as purchase of raw material.

Restatement of liability on Balance Sheet date

The concept or doctrine of prudence will require restatement of liability of repayment of deposit in kind. If the rate of gold on the Balance-Sheet date will be less than the carrying rate of liability in gold, this will lead to unrealised gain which needs to be ignored. However, if the rate of gold on the Balance-Sheet date exceeds the carrying rate of liability in gold, a provision will have to be made. In addition to the general application of the doctrine of prudence, increase in liability is a present obligation as a result of a past event, which can be estimated reliably requiring recognition of provision in accordance with AS29. The doctrine of prudence was endorsed by the Supreme Court way back in 1953 in *Chainrup Sampatram vs. Commissioner of West Bengal [1953] 24 ITR 481* and is being applied consistently by Courts. In *Oil and Natural Gas Corporation Ltd vs. CIT [2010] 322 ITR 180 (SC)* it was held that the loss claimed by the appellant on account of fluctuation in the rate of foreign exchange as on the date of Balance-sheet was allowable as expenditure under Section 37(1) of the Income-tax Act, 1961. For taxation and accounting purposes, restatement of liability of repayment of deposit in kind is equivalent to restatement of the liability of payment in foreign currency. In *Moss vs. Hancock [1899] 2 QB 11,* it has been held that foreign money or currency and coins are chattels which can be bought and sold.

Whether gold is money

It appears neither the Companies Act nor Income-tax Act has visualised a transaction of accepting deposits in kind and also payment of interest thereon in kind.

Section 2(31) of the Companies Act, 2013 defines deposit thus: 'deposit' includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

Chapter V of the Companies Act, 2013 consisting of Sections 73 to 76 regulates the acceptance of deposit by Companies. The Act *inter-alia* requires companies to obtain the rating from a recognised credit rating agency, maintain deposit repayment reserve account and obtaining deposit insurance.

Section 269SS of the Income-Tax Act, 1961 prescribes mode of taking or accepting certain loans and deposits. *Explanation (iii)* to Section 269SS provides that loan or deposit' means loan or deposit of money.

This situation leads to the question as to whether gold is money? In *Vadivel Achari vs. Madras Sales Tax Appellate Tribunal [1969] 23 STC 273,* the Madras High Court considered the question whether payment by gold can be 'other valuable consideration' within the meaning of the Madras General Sales Tax Act. The Court held that money need not necessarily be confined to coins or currency notes but has a wider connotation. It was held that

The jewellery house is free to sell, mortgage, gift or dispose the gold in any other manner whatsoever without obtaining any consent from the depositor.

payment of gold could be treated as payment in the nature of cash or money consideration. That was based on the reasoning that the monetary system, both national and international, is based on gold and silver reserves, and that when currency is used, it is representing its value in gold or silver. A full bench of the Kerala High Court in *M. Jaihind vs. State of Kerala [1998] 111 STC 374 (Ker) (FB)* dissented with the above reasoning and conclusion. The Allahabad High Court in *Sales Tax Commissioner, UP vs. Ram Kumar Agarwal [1967] 19 STC 400 (All)* also held that the term 'money' has also a legal meaning as well as a popular sense both of which bar the inclusion of bullion or metal of any kind as such in the concept of 'money'. The Court explained that, what may pass for money in exceptional conditions or under the special usages and customs of a peculiar or commercially backward or primitive society is not relevant. Legally speaking, 'money' is just what a 'legal tender' is, or what a tradesman is legally bound to accept under the law of the country. The Andhra Pradesh High Court in *Vijaya Aluminium Industries vs. State of Andhra Pradesh [1996] 103 STC 508* disagreed with the conclusion in *Vadivel Achari (supra)* and followed the view taken by the Allahabad High court in *Ram Kumar Agarwal (supra).*

It can be fairly concluded that gold is not money as understood under the Sales Tax law. There is no reason why the word 'money' should be given a different meaning for the purpose of Companies Act or Income-tax Act. Does this mean that the Legislature allows a free play when the transaction relates to the deposits in kind? Though the intention might not have been so, yet the current interpretation of the term 'money', as given by the Courts, leads to such conclusion, which needs to be arrested by regulators.

TDS on interest in kind

In the earlier part, it was concluded that the Income-tax Act has not visualised a transaction of accepting deposits in kind and also payment of interest thereon in kind. Theconclusion gets fortified from the fact that the Act does not contain any provision for making TDS when payment of interest is in kind. The Karnataka High Court in *CIT vs.*

Hindustan Lever Limited 2013-TIOL-878-HC-Kar-IT judgment dated 30th August, 2013 while dealing with a matter of TDS under Section 194B (winnings from lottery or crossword puzzle) has observed that the word/term 'deduct', employed in Section 194B, postulates a reduction or subtraction of an amount from a gross sum to be paid and payment of the net amount thereafter. Where the winning is wholly in kind subtraction/reduction of any sum therefrom does not arise. The Court further noted that under Section 194B, when winnings are wholly in kind or partly in cash and partly in kind, the legislature has cast duty/responsibility on the person responsible for paying to ensure that the tax is paid before the winnings is released. Now, if we extend this analogy to the requirement of deduction of tax at source under Section 194A of the Act from payment of income by way of interest, it can be concluded that there is no requirement of deduction where payment of interest is in kind.

Section 194A talks about deduction at the time of payment or credit in cash or by the issue of a cheque or draft or by any other mode. If the rule of *ejusdem-generis* is applied, meaning of the words 'any other mode' should be restricted to 'cash or cash equivalents' and it cannot be extended to cover payments in kind. Otherwise, nothing can be deducted or subtracted from payment in kind. Unlike Section 194A, there is no requirement of deduction under Section 194B on simply crediting the sum to a payable account or suspense account *etc*. On the other hand, unlike Section 194B, there is no requirement in Section 194A of ensuring that the tax is paid by payee before the interest in kind is released. This scheme of the Income-tax Act fortifies the conclusion that the Legislature, has not envisaged a transaction where interest bearing deposits are accepted in kind and interest is contracted to be paid in kind.

Deposits in kind and Sales Tax

There is a view that, though under the agreement, the depositor gives possession of gold as deposit for earning interest, yet in effect general property in goods held in deposit passes from depositor to a jewellery house and irrespective of name given to scheme and underlying contract, whole transaction is covered under the Sales-tax (VAT) law and the applicable tax is payable every time there is a physical movement of goods. The reasons for such views are:

1. As soon as brought-in gold is melted and a receipt is issued to the customer, all the risks and rewards associated with gold stand transferred to the jewellery house. The jewellery house is free to sell, mortgage, gift or dispose the gold in any other manner whatsoever without obtaining any consent from the depositor. The goods are not delivered by the depositor to the jewellery house for performing any job on them.
2. The jewellery house is not acting as a Bailee for safekeeping of gold for consideration. The purpose of entering into transaction is to use gold as an item of 'stock in trade'. Under the transaction, the jewellery house acquires 'stock in trade' for 'deferred payment', that payment is made 'in kind' after the agreed period along with the 'period cost' (interest).
3. As per Section 26 of the Sale of Goods Act, 1930, risk *prima facie* passes with property. When under the scheme, all risks and rewards in gold stand transferred to the jewellery house, it will be difficult to say that property in gold has not been transferred. No depositor will agree to a condition, whether written or implied, of the effect that risk in goods, possession of which is given to a jewellery house, remains with the depositor.
4. The gold obtained from the depositor will loose its identity as soon as it is mixed with the other stock of gold held by the jewellery house. The depositor will never know the customer to whom goods made out of gold obtained from him under the deposit scheme has been sold. Similarly, the jewellery house cannot tell the customer that it does not have ownership rights of the ornament or coin which it is selling. In fact, Section 27 of the Sale of Goods Act will provide full protection to the customer and the depositor will not have any right to sue the customer.
5. For every sale of goods, there should be a corresponding purchase of goods. Unless the gold received as deposit is converted in purchase, the matching principle of accounting will not get satisfied. Under the mercantile system of accounting, in order to determine the net income of an accounting year, the revenue and other incomes are matched with the cost of resources

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consumed (expenses). Under the mercantile system of accounting, this matching is required to be done on accrual basis. Under this matching concept, revenue and income earned during an accounting period, irrespective of actual cash-in-flow, is required to be compared with expenses incurred during the same period, irrespective of the actual out-flow of cash. Thus, as soon as goods, manufactured out of gold received from the depositor is sold to the customer, the corresponding purchase of gold will have to be recognised. Even if the gold received is accounted as 'deposit' it will have to be converted in purchase at every sale of goods made out of gold held as deposit.

6. The substance, and not the form of the contract, is material in determining the nature of the transaction. In this transaction, substance is the acquisition of 'stock in trade for deferred payment' which will be sold for a price. Thus, the form of 'deposit' and an understanding in contract with the depositor that the property in goods remains with the depositor is of no help.

There is a contrary view which advocates that transaction is a pure barter transaction hence out of the purview of Law of Tax on Sale of Goods. Supporters of this view rely on three Judgments of the Supreme Court (i) *State of Madras vs. Gannon Dunkerley & Co. [1958] 9 STC 353; (1959) SCR 379;2002-TIOL-493-SC-CT-LB* Judgment dated 1st April, 1958 wherein the Court observed that if the consideration for transfer of title to the goods was not money but other valuable consideration, it may then be exchanged or bartered but not sold. The observation came in the context of dispute about powers of States, of imposing a tax, on the supply of materials in the works contracts. It was held that the expression 'sale of goods' is a *nomenjuris*, and therefore it should be construed in the sense which it has in the Indian Sale of Goods Act. In the concluding paragraphs, the Supreme Court observed that if the power to tax supply of materials in the works contracts would have been lodged with the States, the Constitution might have given an inclusive definition of 'sale' in Entry 54 in the State List contained in the Seventh Schedule of the Constitution so as to cover the extended sense. The Allahabad High Court in *Sales Tax Commissioner, UP vs. Ram Kumar Agarwal [1967] 19 STC 400 (All)* Judgment dated 6th September, 1966 following *Gannon Dunkerley (supra)* held that the words 'other valuable consideration' which occur in the definition of sale under the Sales Tax Act, and which do not find a place in the definition of 'sale' in the Sale of Goods Act, must be held to be *ultra vires* the scope of the Provincial or State Legislatures. Those words, at best, can be interpreted, on the basis of the rule of *ejusdem generis* to mean payment, *i.e.*, by cheque, bills of exchange or any such other negotiable instruments. (ii) *Devi Dass Gopal Krishnan vs. State of Punjab & others [1967] 20 STC 430 (SC)); 3 SCR 557* Judgment dated 10th April, 1967 wherein the Court observed that the expression 'valuable consideration' has a wider connotation. The Court further observed that the said expression has been used in the collocation of 'cash' and 'deferred payment' in the definition of sale in most of the Sales Tax Acts and it has never been argued or decided that the said expression means other than monetary consideration. In conclusion, in order to maintain 'consistent legislative practice', it was held that the expression 'valuable consideration' takes colour from the preceding expression 'cash or deferred payment'. If so, it can only mean some other monetary payment in the nature of cash or deferred payment.(iii) *Commissioner of Income Tax vs. Motor And General Stores P. Ltd [1967] 66 ITR 692 (SC); 1968 AIR 200, 1967* Judgment dated 2nd May, 1967 which was a matter under the Income-tax Act, 1922 where, in the absence of definition of word 'sale' under the Income-Tax Act, 1922 reference to Section 54 of the Transfer of Property Act and then to Sale of Goods Act, 1930 was made to hold that the exchange of immovable and movable property with shares was not a sale of that immovable and movable property.

It is a settled law that a precedent is an authority only for what it actually decides and not what may remotely or even logically follow from it. A decision on a question which has not been argued cannot be treated as a precedent[1]. It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to

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[1] Goodyear India Ltd vs. State of Haryana [1990] 188 ITR 402; 76 STC 71; 1990 AIR 781

be answered in that judgment[2]. In none of the above three judgments, the Court was directly called upon to answer the question whether a barter transaction, and in the current context a transaction purported to be a transaction of loan or deposit in kind, which is accounted for in the books as purchases, will be excluded for liability of tax on sale or purchase of goods. In *Devi Dass Gopal Krishan (Supra),* the Courts refrained from examining the meaning of 'valuable consideration' to maintain 'consistent legislative practice' and in the *Motor and General Stores* there was no definition of sale under the relevant statute.

The States get the authority to levy sales tax by virtue of Entry 54 in the State List contained in the Seventh Schedule of Constitution. The power to levy tax on inter-state transactions is vested in the Union Government by virtue of Entry 92A in the Union List. Both these entries are about 'Taxes on the sale or purchase of goods…….'. In the absence of any definition of the word 'sale' in the Constitution, the word 'sale' contained in above entries was assigned meaning as understood under the Indian Sale of Goods Act, 1930. The Constitution (Forty-sixth) Amendment Act, 1982 which received the assent of the President on 2nd February, 1983, brought about a deviation by introducing the definition of the phrase 'tax on the sale of purchase of goods' by inserting Article 366(29-A). The definition is an inclusive definition. The introduction of definition was aimed at the expanding meaning of 'sale' to bring the concept of 'deemed sales'. This Constitutional amendment posed a question as up to what extent the concept of 'sale' for taxation purposes has become independent of the Sale of Goods Act, 1930. It is settled a law that the word 'includes' or 'including' is normally used to enlarge the scope of the definition or expression to include things that would not properly fall within its ordinary connotation. In other words, it is used as an extensive word.

A three Judges Bench of the Supreme Court in *Bharat Sanchar Nigam Limited vs. Union of India [2006] 3 SCC 1; [2006] 145 STC 91 (SC)* Judgment dated 2nd March, 2006 examined the effect of insertion of Article 366(29-A) and declared in para 44 that despite the amendment (i) definition of 'sale' for the purposes of the Constitution in general and for the purposes of entry 54 of List II (State list) in particular remains unaltered [except to the extent that the clauses in Article 366(29-A) operate] and (ii) the word 'goods' has not been altered by the 46th amendments and (iii) the dominant nature test to be applied to a composite transaction not covered by Article 366(29-A) remains unaffected. It was declared that the transactions which are mutant sales are limited to the clauses of Article 366(29-A). All other transactions would have to qualify as sales within the meaning of the Sales of Goods Act, 1930 for the purpose of levy of sales tax.

The gold obtained from the depositor will lose its identity as soon as it is mixed with the other stock of gold held by the jewellery house. The depositor will never know the customer to whom the goods, made out of gold, obtained from him under the deposit scheme, has been sold.

In the same paragraph, the Court also said that the contents of the concepts do not remain static and also that the Courts must move with the times. In fact, the Supreme Court way back in 1989 in *Video Electronics Pvt. Limited and Another vs. State of Punjab and Another [1990] 77 STC 82 (SC)* observed that it is not that with changing times the meaning changes but changing times illustrate and illuminate the meaning of the expression used. The connotation of the expressions used takes its shape and colour in the evolving dynamic situations (page 109 of report).

Like all other linguistic canons of construction, the *ejusdem generis* principle applies only when a contrary intention does not appear[3]. The interpretation of the words 'other valuable consideration' contained in the phrase 'for cash or deferred payment or other valuable consideration' used in the definition of sale as contained in the Uttar Pradesh Trade Tax Act, 1948 came before a Division bench of the Supreme Court in *Dhampur Sugar Mills Limited vs. Commissioner of Trade tax, U.P. [2006] 147 STC 57 (SC)* Judgment dated 12th May, 2006. The matter pertained to the post Constitutional amendment period and the Supreme Court had the benefit of having views of a three Judges bench of the same Court on effects of the Constitutional amendment. The matter pertained to a commercial contract wherein the lease rent (license fee) payable for transfer of right to use a sugar mill, though quantified in monetary terms was settled by the supply of molasses, generated in the mill, to the owners. The value of molasses was also quantifiable in monetary terms. The assessee relying on *Gannon Dunkerley & Co. [1958] (supra); Devi Dass Gopal*

[2] *CIT vs. Sun Engineering Works P. Ltd. [1992] 107 CTR 209; 198 ITR 297 (SC)*
[3] *Maharashtra University of Health and others vs. Satchikitsa Prasarak Mandal & Others [2010] 3 SCC 786*

Krishnan (supra) and *Motor and General Stores P. Ltd. (supra)* contended that supply of molasses for an amount equivalent to the license fee would not constitute a sale of molasses so as to attract the provisions of Sales tax Act. *Bharat Sanchar Nigam Limited vs. Union of India (supra)* was also pressed in service in support of the contention. In short, the contention was that the consideration for supply of molasses was a license fee, which is not 'money' hence such supply cannot be said to be 'sale' as understood under the Sales of Goods Act, 1930 and therefore under the Sales-tax Act. Dismissing the contention that the Supreme Court held that (i) the definition of 'sale' as contained in the Sales-tax Act, being an inclusive one must be given a broad meaning (ii) only when the consideration for transfer consists of other goods, it may be an exchange of barter (iii) it is unconceivable in law that a license fee can be subject-matter of barter or exchange(iv) An adjustment of price in a case of this nature would come within the purview of the term 'other valuable consideration' (v) *decisions in Devi Dass Gopal Krishnan (supra)* and *Motor and General Stores P. Ltd. (supra)* are not an authority for the proposition that cash or deferred payment cannot be by way of adjustment(vi) the term 'valuable consideration' in the changed context (in view of the Constitution amendment) may be viewed differently and finally that (vii) for construction of the words 'sale of goods,' now the court is not necessarily required to fall upon the definition of sale of goods, as contained in the Sales of Goods Act, 1930. It has to be governed by its enlarged definition under Clause (29-A) to Article 366 of the Constitution of India.

Thus, the traditional meaning given to the words 'other valuable consideration' based on the principal of *ejusdem generis* is given a go-bye after the Constitution (Forty-sixth) Amendment Act and Sales tax authorities in States are levying tax on barter transactions based on this exposition of law.

In the *Ozone Properties Pvt. Ltd. vs. Addl. Commissioner of Commercial Taxes [2012] 52 VST 370 (Karnataka HC)* Division bench, Judgment dated 9th November, 2010 the appellant, a property developer, entered into a joint development agreement with the owners of certain land, and in furtherance of the agreement after completion of the project, 26.45% of the built-up area was to be transferred to the owners of the land in lieu of transfer of 73.55% of their undivided interest in the land to the appellant. The built up area of 73.55% put up by the appellant remained with it. Most of the construction work was handed over to the sub-contractors who were registered dealers. The revenue brought the transaction to tax as works contract, which was contested by the assessee. The first appellate authority, relying on the *Motor and General Stores P. Ltd. (supra)* set aside levy and held that the transaction involving an undertaking by the appellate builder or developer for exchange of 26.45% built up area in the property for 73.55% undivided interest in the land does not amount to sale. The revisioning authority under *suo moto* revisional powers relying on the *Dhampur Sugar Mills Ltd. (supra)* restored levy of tax. When the matter reached the High court, as all the facts of the transactions were not properly examined by the authorities below, the High court sent the matter back to the assessing officer.[4]

In the recent times, it is observed that the law of sale of goods is developing not through the issues arising out of the traditional, commercial or civil disputes but rather through the tax laws[5]. The Gujarat VAT Act, 2003 specifically includes 'supply by way of barter of goods' in the definition of sale. The definition of 'sale' in the Gujarat VAT Act, like other State's VAT Acts, is an inclusive one. Now the question arises that are other States which do not specifically include 'barter' in the inclusive definition of sale not entitled to levy tax on barter of goods or the law as framed for the Gujarat VAT is Unconstitutional? Does the law need to have valuation rules? Can non-monetary consideration, for the purpose of Sales Tax be stretched upto the extent that it has been stretched for the purposes of the Central Excise Act where even benefit which was not measured in terms of money was included in the purview of consideration[6]? Whether barter is limited to exchange of goods for goods only and if goods are exchanged for service then how will the valuation happen? These precise questions are yet to be answered by the Courts.

It is also pertinent to note that the words which came for interpretation before the Supreme Court

[4] *In Larsen & Toubro Limited vs. State of Karnataka 2013-TIOL-46-SC-CT-LB; [2013] 65 VST 1 (SC) Judgment dated 26th September, 2013 a three judges Bench of Supreme Court observed that in the development agreement between the owner of the land and the developer, direct monetary consideration may not be involved but such agreement cannot be seen in isolation to the terms contained therein and following development agreement, the agreement in the nature of the tripartite agreement between the owner of the land, the developer and the flat purchaser whereunder the developer has undertaken to construct for the flat purchaser for monetary consideration. It was however clarified that activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser.*

[5] *See preface of Mulla The Sale of Goods Act - 2007 edition by Dr. Justice G . C. Bharuka*

[6] *In Commissioner of Central Excise vs. Fiat India Pvt. Ltd. 2012-TIOL-58-SC-CX; [2012] 283 ELT 161 (SC) the intention of the assessee to penetrate the market was held to be 'extra commercial consideration'.*

in *Devi Dass Gopal Krishnan (supra)* and *Dhampur Sugar Mills Limited (supra)* were 'other valuable consideration'. The Central Sales Tax Act and also many of the State VAT Acts use the words 'any other valuable consideration'. The use of the word 'any' generally makes the scope of the word or phrase with which it is used unlimited. The Black's Law Dictionary, Sixth Edition defines 'any' thus: "Some; one out of many; an indefinite number. One indiscriminately of whatever kind or quantity, 'Any' does not necessarily mean only one person, but may have reference to more than one or to many. The word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and the subject matter of the statute. It is often synonymous with 'either', 'every', or 'all'. Its generality may be restricted by the context; thus, the giving of a right to do some act 'at any time' is commonly construed as meaning within a reasonable time; and the words 'any other' following the enumeration of particular classes are to be read as 'other such like', and include only others of like kind or character."

In *Radhas printers vs. State of Kerala [1993] 90 STC 201 (Kerala HC)* Division Bench Judgment dated 27th September, 1992[7] the assesse supplied goods valued at ₹1,00,000 to its sister concern on the consideration that the latter shall return the goods together with interest at 15% per anum on ₹1,00,000. The goods were returned after a year with interest of ₹15,000. According to the assesse, since the same was a loan transaction it did not include the said amount of ₹1,00,000 as its taxable turnover. The revenue maintained that the loan transaction is a make-believe one, the provision for payment of interest is totally inconsistent with a case of exchange or barter, and with due regard to the fact that the value of the goods in question was reckoned and since admittedly interest was charged on the said amount and was paid and received, the assesse cannot claim that the transaction was only a loan and not a sale. The High Court dismissed revision petition filed by the assesse holding that the stipulation for payment of interest has added significance when it is remembered that the same usually could be on the purchase price, indicative of deferred payment rather than damages for the user of the goods. In this particular case, the assesse could not produce stock register to demonstrate that the goods said to be given on loan were actually received back. Thus, on facts, its case was weak.

Is it transfer of right to use?

A transaction of loan or deposit of gold cannot be termed as transaction of transfer of right to use. It is for the reason that under the contract, when the depositors part with the gold, it parts with 'general' property in goods. The essential requirement of a transaction for transfer of the right to use goods is not the transfer of the property in goods, but it is right to use property in goods[8]. In the transfer of right to use, customers are not entitled to sell or offer for sale, mortgage and pledge the goods, whereas in the transaction in hand, as soon as the brought-in gold is melted and a receipt is issued to the customer, all risks and rewards associated with gold stand transferred to the jewellery house. The jewellery house is free to sell, mortgage, gift or dispose the gold in any other manner whatsoever without obtaining any consent from the depositor. The goods are not delivered by the depositor to the jewellery house for performing any job on them. In transfer of right to use goods, there is an implied stipulation of return of the very same goods whereas in a transaction under the gold deposit scheme, the jewellery house is not returning very same goods. In fact, it cannot. Otherwise, the whole purpose of entering into the transaction will vanish. The jewellery house promises to return the goods which have an approximate correlation between the goods received and the goods returned.

Where we stand

The success of Gold deposit scheme to bring out gold stored in lockers and vaults is of national importance. However, the above analysis of law demonstrates that Legislative framework for the same is not ready. In fact Legislature has not thought about a commercial transaction of interest bearing deposits in kind. In recent years, demand of gold has picked up not because of religious or ceremonial reasons but as a hedge against inflation. The depositor is interested in protection of purchasing power of its savings. In substance, when depositor parts with its gold, it really sells the same with a stipulation of buying back the same quantity at original price on a later date. On sale, as the payment is not received by depositor immediately it becomes entitled to period cost, i.e., interest. Viewing the transaction from any other eye will make it non-starter. ■

[7] *The decision in Radhas Printers case [1993] 90 STC 201 (Ker) does not require reconsideration.. - M. Jaihind vs. State Of Kerala [1998] 111 STC 374 (Ker) (FB)*

[8] *G S Lamba & Sons vs. State of Andhra Pradesh [2011] 43 VST 323 (AP HC) ; 2012-TIOL-49-HC-AP-CT*

Service Tax (Settlement of Cases) Rules, 2012: Rules, Procedures and Penalties under Service Tax Laws

"The sword of the law should never fall but on those whose guilt is so apparent as to be pronounced by their friends as well as foes." - Jefferson

The Settlement Commission is a boon for the tax assessees in agreeing to pay the taxes seeking and settling the tax disputes with the waiver of penalties, interest and other prosecutions, giving the assessees an opportunity to 'come clean' for the past years' assessments. The Settlement Commission acts like a God in forgiving the past misdeeds of the assessees, not paying the taxes by waiving the penalties, Interests and other prosecutions and not be a repeat offender.

Background and Procedure

In exercise of the powers conferred by clause(j) of sub-Section (2) of Section 94 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as "the Act") read with Sections 31,32 and 32A to 32P of the Central Excise Act, 1944 (1 of 1944) made applicable to service tax *vide* Section 83 of the Act, 1994, the Central Government framed the Service Tax (Settlement of Cases) Rules, 2012 *vide* Notification No. 16/2012-ST dated 29th May, 2012. Service Tax(Settlement of Cases) Rules, 2012[16/2012-Service Tax dated 29-05-12] was passed by the Finance Act,1994 to settle service tax cases through application under Section 32E (1) of the Central Excise Act,1944 made applicable to service tax *vide* Section 83 of the Finance Act, 1994 (32 of 1994) w.e.f. 28th May, 2012.

The Settlement Commission-Indirect Tax (Settlement Commission) has been formed by the Revenue Department to settle tax disputes after prolonged litigations as a forum for mediation or arbitration providing the assessee to pay taxes as per the settlement order and judgment given by the Chairman of the Bench of the Settlement Commission as per Service Tax (Settlement of Cases) Rules, 2012 [16/2012- Service Tax dated 29-05-2012] as settled in the affirmation of the assessee and the revenue with recommendation of the Indirect Tax Enquiry Commission. The judgment/orders of the Settlement Commission may allow partial/full

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waiver of the penalties, interest and other penal prosecutions.

The aforementioned judgment/orders of the Settlement Commission benefits the assessee as well as the Revenue Department towards early tax dispute settlement, revenue, clean records, challenged by the High Court and the Supreme Court only with a true and fair decision eliminating prolonged litigations, cost and time.

The Settlement Commission judgment/orders consider the merits, full disclosures, transparencies, responsibilities and accountability of the case of the assessee and reducing the chances of continued tax evasion. It provides an alternative tax dispute resolution for the assesses seeking to come clean by making tax payments with the waiver of penalties, interest and other prosecutions.

Any restriction by the Act is borne out of the interpretation of the provisions of the statutes invariably leading to the interpretations of the wordings thereof and eventually to litigations. The law evolves out of such interpretations of the provisions of the laws, being in its development stages, the settlement commission has the ominous task of interpreting and judging the issues to be settled.

The Settlement Commission has admitted cases where it does not have jurisdictions to settle issues concerning officers' default in the settlement of tax disputes, interest, penalties and other prosecutions with the assessee. It can admit cases even after the assessee deposits tax, interest and penalties. The settlement commission invites and admits cases even if the assessee has not filed returns in the prescribed manner by filing a 'Declaration', being entitled to file application for settlement of tax dispute. The judgment/orders of Settlement Commission are generally conclusive and cannot be reopened in any legal proceedings, except for and by the High Courts and the Supreme Court who can initiate legal proceedings anew if the order is against the prevailing Act or Rules of the laws. The Settlement Commission has jurisdiction in admitting all kinds of applications other than that of the applications of short levy on account of misclassifications of services or otherwise. The settlement process with divergent opinions with regards to its interpretations where applications for settlement is not barred for notified services under the Act other than for negative lists and mega-exemptions as notified by the Act.

The Settlement Commission has been formed by the revenue department to settle tax disputes after prolonged litigations as a forum for mediation or arbitration providing the assessee to pay taxes as per settlement order and judgment given.

The settlement commission in the spirit of the settlement can settle tax disputes by expanding its purview of operations even after revenue department opposes the settlement for revenue. Despite much opposition, the judgment/orders of the Settlement Commission are conclusive without diluting the orders or scope of the oppositions by the revenue and/or the final settlement of tax disputes.

The Settlement Commission cannot entertain cases which are pending with the Appellate Tribunal or in a Court. The matters relating to the classification cannot be raised before the Commission. It is also specified that no application can be made unless the appellant has filed a bill or unless the appellant has received a show cause notice issued by the Officer concerned for the additional amount of duty accepted as payable by the applicant in his application.

Settlement Commissions power to grant immunity from prosecution and penalty

The Settlement Commission may, if it is satisfied that any person who made the application for settlement under the Act, has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his duty liability, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force and also either wholly or in part from the imposition of any penalty, interest and other penal prosecutions under this Act, with respect to the case covered by the settlement

The Settlement Commission has been following a practice of allowing immunity when the applicant comes clean with a full and true disclosure of its duty liability, which also sets the trend as far as co-operation with the Commission is concerned.

In the spirit of Settlement and also the language of the relevant section, such a view has been a cause of heartburn for the enforcement wings given that in most cases hardcore offenders and smugglers, backed by the power of money, hoarded after indulging in such activities get away with penal prosecutions and/or leave any scope to consider a repeat offender or for that matter the nature of offence/modus operandi and cartel involved.

Constitutional Jurisprudence of Levy of Service Tax

Article 265 of the Constitution lays down that no tax shall be levied or collected except by the authority of law. Schedule VII divides this subject into three categories:

a) Union list (only the Central Government has power of legislation).
b) State list (only the State Government has power of legislation).
c) Concurrent list (both the Central and the State Government can pass legislation).

To enable the Parliament to formulate by law principles for determining the modalities of levying the Service Tax by the Central Government and collection of the proceeds thereof by the Central Government and the State, the amendment *vide* Constitution (92nd Amendment) Act, 2003 has been made. Consequently, the new Article 268A has been inserted for Service Tax levy by the Union Government, collected and appropriated by the Union Government, and amendment of Seventh Schedule to the Constitution, in list I-Union list after entry 92B, entry 92C has been inserted for taxes on services as well as in Article 270 of the Constitution the clause (1) Article 268A has been included.

Penalties under the Service Tax Laws

The Service Tax Laws have introduced penal provisions which make liable the offences as cognisable and non-bailable under various penal provisions of the Act.

Under the Service Tax law any service provider and service receiver who collects and/or is liable to pay service tax does not deposit or pay the service tax to the exchequer of the Government of India within a period of 6 months and the amount exceeds ₹50.00 lakh, the person shall be liable to imprisonment upto 7 years.

The penalty provisions *w.e.f* 28th May, 2012 are as follows:

1. Penalty for non-registration is being restricted to ₹10,000. Currently quantum of penalty may extend to higher of:-
   a. ₹10,000,
   b. ₹200 per day of failure
2. A new Section 78A is also being introduced to impose penalty on the directors, managers, secretary and other officers of the company for specified offences *e.g.*, evasion of service tax, in cases of willful actions.

The aforementioned judgment/orders of the Settlement Commission benefits the assessee as well as the revenue department towards early tax dispute settlement.

A. Section 78A

Where a company has committed any of the following contraventions, namely:

(a) evasion of service tax; or
(b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of this Chapter; or
(c) availment and utilisation of credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or
(d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due,

then any director, manager, secretary or other officer of such company, who at the time of such contravention was in charge of, and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention, shall be liable to a penalty which may extend to ₹ 1 lakh.

B. Section 89

Offences and penalties —

(1) Whoever commits any of the following offences, namely :—
   (a) knowingly evades the payment of service tax under this Chapter; or
   (b) avails and utilises credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or
   (c) maintains false books of account or fails

to supply any information which he is required to supply under this Chapter or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(d) collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, shall be punishable,—

(i) in the case of an offence specified in clauses (a), (b) or (c) where the amount exceeds ₹50 lakh, with imprisonment for a term which may extend to three years:
Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months;

(ii) in the case of the offence specified in clause (d), where the amount exceeds ₹50 lakh, with imprisonment for a term which may extend to seven years:
Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months

(iii) in the case of any other offences, with imprisonment for a term, which may extend to one year

(2) If any person is convicted of an offence punishable under—

(a) clause (i) or clause (iii), then, he shall be punished for the second and for every subsequent offence with imprisonment for a term which may extend to three years;

(b) clause (ii), then, he shall be punished for the second and for every subsequent offence with imprisonment for a term which may extend to seven years.

The Settlement Commission judgment/orders consider the merits, full disclosures, transparencies, responsibilities and accountability of the case of the assessee and reducing the chances of continued tax evasion.

(3) For the purposes of sub-Sections (1) and (2),the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:—

(i) the fact that the accused has been convicted for the first time for an offence under this Chapter;

(ii) the fact that in any proceeding under this Act, other than prosecution, the accused has been ordered to pay a penalty or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a secondary party in the commission of offence;

(iv) the age of the accused.

(4) A person shall not be prosecuted for any offence under this Section except with the previous sanction of the Chief Commissioner of Central Excise.

C. Cognisable and Bailable Penalty under Section 90

(1) An offence under clause (ii) of sub-Section (1) of Section 89 shall be cognisable.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences, except the offences specified in sub-Section (1), shall be non-cognisable and bailable.

D. Commissioner's Authority under Section 91

(1) If the Commissioner of Central Excise has reason to believe that any person has committed an offence specified in clause (i) or clause (ii) of sub-Section (1) of Section 89, he may, by general or special order, authorise any officer of Central Excise, not below the rank of Superintendent of Central Excise, to arrest such person.

(2) Where a person is arrested for any cognisable offence, every officer authorised to arrest a person shall, inform such person of the grounds of arrest and produce him before a magistrate within 24 hours.

(3) In the case of a non-cognisable and bailable offence, the Assistant Commissioner, or the Deputy Commissioner, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and

be subject to the same provisions as an officer in charge of a police station has, and is subject to, under Section 436 of the Code of Criminal Procedure, 1973.

(4) All arrests under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrests.

Service Tax Settlement of Cases: Rules & Procedures

A. Form and manner of Application under Service Tax (Settlement of Cases) Rules, 2012 [16/2012-Service Tax dated 29-05-2012] [Rule 3]

1. An application under sub-Section (1) of Section 32E of Central Excise Act,1944 made applicable to service tax *vide* Section 83 of the Act, shall be made in the *Form SC(ST)-1.*
2. The application referred to in sub-Rule (1), the verification contained therein and all relevant documents accompanying such application shall be signed,-
   - in the case of an individual, by the individual himself; or
   - where the individual is absent from India,by the individual concerned or by some person duly authorised by him in this behalf; and
   - where the individual is a minor or is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

   (a) in the case of a Hindu undivided family, by the *Karta* of such family and, where the *Karta* is absent from India or is mentally incapacitated from attending to his affairs, by the senior most adult member of the family available;

   (b) in the case of a company or local authority, by the principal officer thereof;

   (c) in the case of a firm, by any partner thereof, not being a minor;

   (d) in case of any other association, by any member of the association or the principal officer thereof; and

   (e) in the case of any other person, by that person or some person competent to act on his behalf.
3. Every application in the *Form SC(ST)-1* shall be filed in quintuplicate, *i.e.*, original with 5 copies and shall be accompanied by a fee of one thousand rupees (₹1000/-).
4. The additional amount of service tax accepted by the applicant along with interest due thereon, shall be deposited by him in any of the authorised bank under:
   - o TR-6, referred to in the Service Tax Rules, 1994 (hereinafter referred to as TR-6 Challan) in quintuplicate, *i.e.,* original with 5 copies, or
   - o G.A.R.-7 and

   shall be disclosed by him in the Form [**Form No. SC(ST)-1**].

B. Disclosure of information in the application for settlement of cases in Form SC(ST)-1 [Rule 4]

The Settlement Commission shall, while calling for a report from the Commissioner of Central Excise or Service Tax having jurisdiction, Section 32F(3) of Central Excise Act, 1944 made applicable to service tax *vide* Section 83 of the Act, in Form SC(ST)-1; forward a copy of the following:

1. Application referred to in Rule 3(1);
2. Annexure to the Application; and
3. The statements; and
4. Other documents accompanying such annexure.

C. Manner of provisional attachment of property [Rule 5]

1. Where the Settlement Commission orders attachment of property under Section 32G(1) of Central Excise Act, made applicable to service tax *vide* Section 83 of the Act, it shall send a copy of such order to the Commissioner of Central Excise or Commissioner of Service Tax having jurisdiction;
   a. over the place in which the applicant owns any movable or immovable property; or
   b. resides; or
   c. carries on his business; or
   d. has his bank account.
2. On receipt of the order referred to in Section 32G(1), the Commissioner may authorise any officer subordinate to him and not below the

The settlement commission in the spirit of settlement can settle tax disputes by expanding its purview of operations even after revenue department opposes the settlement for revenue.

rank of an Assistant Commissioner of Central Excise or Service Tax to take steps to attach such property of the applicant.

3. The Central Excise officer authorised under Section 32G(2) shall prepare an inventory of the property attached and specify in it, in the case of the immovable property, the description of such property sufficient to identify it and in case of the movable property, the place where such property is lodged or kept and shall hand over a copy of the same to the applicant or to the person from whose charge the property is attached.
4. The officer authorised under sub-Rule (2) shall send a copy of the inventory so prepared each to the Commissioner of Central Excise and the Settlement Commission.

D. Fee for copies of reports [Rule 6]

Any person who makes an application under Section 32J of Excise Act, made applicable to service tax *vide* Section 83 of the Act, for obtaining copies of reports made by any Central Excise Officer, shall pay a fee of ₹ 5 per page of each report or part thereof.

E. Documents Checklist to be submitted on application in Form No. SC(ST)-1

1. PAN Card.
2. Service Tax Registration Certificate.
3. Service Tax Returns.
4. Invoices.
5. Invoice entries in the books of accounts with General Ledger Accounts.
6. Show cause Notice Letter with show cause Notice No and date, period of dispute in the notice, service tax demanded in the notice (in ₹), dispute in connection with which the application for settlement is made, adjudicating authority before whom the notice is pending adjudication.
7. Petition with the brief facts of the case and particulars of the issues to be settled and terms of settlement sought by the applicant with the following details:
   a. Amount of Service Tax accepted as payable for settlement (in ₹)
   b. Interest on the said admitted service tax (in ₹):
      (Detailed calculations of (a) and (b) above to be enclosed as *Annexure-I*)
8. Payment details of the service tax accepted, by the applicant, along with interest (TR-6 challan) or
9. (G.A.R.-7 number and date)
   (Details to be enclosed as *Annexure-II*)
10. Any other application for settlement (other than the present one) has been filed by the applicant before any Bench of Settlement Commission with the following details:
    - Application No. and date
    - Amount admitted for settlement
    - Show cause notice No. and date.
11. Status of the application, if decided, then details of the final order of the Commission:
    - Settlement Order No. and date
    - Details of deposit of settlement amount
    - Whether settlement amount has been paid in terms of the order.
12. If any application of the applicant was sent back/ rejected by the Settlement Commission, the reference number and date of the order.
13. Reference number and date of the order, if any, in case the applicant was convicted of any offence under Chapter V of the Act in relation to a case settled earlier by the Settlement Commission.
14. Order Notice: Details of the order, if the applicant was ever debarred from making further application for settlement under Section 32-O of the Excise Act made applicable to Service Tax *vide* Section 83 of the Act, by any of the Benches of the Settlement Commission.
15. Order Notice: Details of the order, if any settlement in respect of the applicant has ever been made void under Section 32L of Excise Act made applicable to Service Tax *vide* Section 83 of the Act, by any of the Benches of the Settlement Commission.
16. Statement containing particulars,referred to in item 8 of the application, made under Section 32E (1) of the Excise Act made applicable to Service Tax *vide* Section 83 of the Act.
    - Details of information which has not been correctly declared in the periodical return;
    - Service tax liability accepted out of the total Service Tax demanded in the show cause notice issued and the manner in which such Service Tax liability has been derived;
    - Full and true disclosure of the facts regarding the issues to be settled including the terms of settlement sought for by the applicant.

The form should be duly signed by the applicant and all the above documents should be self attested. ■

Big Data—Governance and Compliance

The phrase **big data** *is used to describe structured and unstructured data, significantly imposing in volume, which is too large to be processed by the traditional database and software tools and methods. Mostly, this data exceeds the capacity of data processing. Vendors use this terminology to refer to the technology which is needed to manage the data and storage. From a pure governance perspective, when the executive management decides to take all decisions on the basis of quantitative analysis and refuse to go by the gut feeling, it is said that the management has taken a big-data approach. The author in this article explores the concept of big data and tries to look at that from the perspective of governance and compliance. Read on…*

"Big data is often described as extremely large datasets that have grown beyond the ability to be managed and analysed with traditional data-processing tools." This definition, given by a Mckinsey study, is relative in the sense that the data to be processed is larger than the capacity of the processing tools.

It is assumed that as the technology advances, the size of the datasets that qualify as big data will also increase. From a pure governance perspective, when the executive management decides to take all decisions on the basis of quantitative analysis and refuses to go by its gut feeling, we can say that it has followed the *big data approach*. So far, companies have been doing quantitative research in order to take their decisions. So, what's new then? Well, the answer lies in the fact that, due to data explosion, *i.e.*, data gets doubled every two years, an average executive has to sift through large datasets than that of the past to decide on things of similar nature. Normally, the present day top executives cannot afford to wait for the structured and completed information to take their decisions. French aviator, Antoine de Saint-Exupery rightly says,"*As for the future, your task is not to foresee it, but to enable it.*" Instead of waiting for the structured data, they opt for the unstructured one, since most of the data available is unstructured. It is established that enterprises that wait to take a perfect decision based on the structured information only, are at a disadvantage. At this point, we should take note of the Gartner's analysis which says that more than 90% of universal data have been created in the last two years and about 80 % of the enterprise data comprises unstructured data.

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Big Data and The Human Brain

It may be interesting to note that the human brain's storage capacity as per the recent research reports is 2.5 petabytes or 1 million gigabytes, which means that it has a capacity of a video recorder which will run for more than 300 years continuously.

Big Data and The Internet

The size of the internet, the world's largest library, can be estimated in *yottabytes* as on date, which would take 11 trillion years to download using the fastest internet connectivity. It had been estimated as 5 lakh TB in size as in 2003, and it has expanded by 20 lakh times in the last 10 years. Scientific philosopher, Karl Popper, has argued in his paper *Conjectures and Refutations: The growth of scientific knowledge* in 2002 that every scientific theory exists on insufficient premises and thus it can be challenged. He then noted,"*The Internet emphasises the depth of our ignorance because our knowledge can only be finite, while our ignorance must necessarily be infinite.*"

The IDC's digital universe study states that, between 2009 and 2020, digital data will grow 44 fold to 35 zetta bytes per year. Refer to the following table:

- 1000 Bits = 1 Kilobyte
- 1000 Kilobytes = 1 Megabyte
- 1000 Megabytes = 1 Gigabyte
- 1000 Gigabytes = 1 Terabyte
- 1000 Terabytes = 1 Petabyte
- 1000 Petabytes = 1 Exabyte
- 1000 Exabytes = 1 Zettabyte
- ....Yottabyte..Brontobyte...GEOPBYTE!!

There are two types of data: structured and unstructured. Structured data is any data capable of being entered in a data field and all the reports of MIS, Profit & Loss account and Balance Sheet are examples of structured data. Unstructured data is information that does not have any predefined data model and/or does not fit well into a relational database. This data typically is text heavy and includes dates, numbers and other details like that of audio, video, image, geospatial, click streams and log files. All new data entering into an organisation typically consists more of unstructured data (90-95%). Opportunity and challenges lie before an organisation that successfully mines the unstructured data and converts that into opportunities, and eventually wealth maximisation for its stakeholders.

There are two types of data: structured and unstructured. Structured data is any data capable of being entered in a data field and all the reports of MIS, Profit & Loss account and Balance Sheet are examples of structured data. Unstructured data is information that does not have any predefined data model and/or does not fit well into a relational database.

The three dimensions of Big Data are: volume, variety and velocity. **Volume** is the sheer size of the data, or the amount of transactions created every day. This is an obvious constraint for the organisation which cannot process huge data sets due to storage or computational processing limitations. **Variety** consists of structured and unstructured data. **Velocity** is the speed with which the data is created, accumulated, and processed. The increasing pace of the world has put demands on business to process information in real-time to arrive at real-time decisions.

Essential Facts for Businesses

1. Businesses cannot wait to take decision on the completed, processed and structured data.
2. They need to take decisions on unstructured data.
3. However, not all unstructured data are useful.
4. Business houses that ignore unstructured data are doomed.

Factors Enabling Big Data

1. Internet and digitisation of opinions and behaviour
2. Mobile computing
3. Social networking
4. Moore's law (power of microprocessor doubles itself in every 18 months)
5. Cloud computing

Data explosion and Knowledge Management

Data explodes every two years. On a reasonable assumption that huge intellectual knowledge is created, what happens to the proprietary knowledge of the big corporations that spend a lot of money on research and development? It gets diluted and until the organisation continues with its rigours of research, it will find itself obsolete and would lose its relevance. So, as a consequence of big data, innovation and new discovery will pay a great role in the coming years.

Effect of Big Data on Data Processing

1. Data needs to be stored in the system in which hardware is infinitely scalable.
2. Storage and network cannot be a bottleneck.
3. Data must be processed into business intelligence where it is.
4. Move the code to the data and not the other way.
5. Data sits in one place; never move that around.

Challenges in Protection of Big Data

1. There is a risk of permanent loss of data stored in monitoring devices, *e.g.* surveillance cameras.
2. Too much of logs generated needs to be analysed in real time, or else it is of no use and the storage poses a problem.
3. Because of the uniqueness of data, deduplication cannot be applied, resulting in constraints on storage.
4. Huge CPU processing power is required to process large files.
5. No good back-up solution is available.
6. RDBMS is not suitable to handle big data.
7. HIPAA and PCI compliance becomes difficult.
8. It is a very risky business in the medical industry.

Enterprise Governance and Big Data

1. *Strategic Alignment:* Identify the business priorities and define the problems to be solved within a specified time frame with measurable and achievable outcomes.
2. *Management Sponsorship:* Management should be willing to go for fact-based decision making. Identify champions for consumption of data analytics and ensure that benefits realisation happens from various reports and statistical models.
3. *Appropriate Human Resources:* Human resources should be well-skilled in data analytics and inferences. Good knowledge of mathematics, business and technology is a must.
4. *Key Performance Indicators:* Ensure business effectively uses analytics to make better business decisions. Ensure that investment is made in right type of analytics and it happens in the right type of people, process and technology.

Protection of Big Data

Security for big data is not an easy task. One needs to have balance between access, availability, performance and liability from unwanted disclosure.

1. *Keep only needed data:* Now, what is needed data? It is tough to ascertain that in practical terms. For example, logs, if we keep it and analyse it, we get to know the performance of large data systems in terms of scale, use and efficiency. At the same time, it poses a risk of disclosure. Deleting the logs eliminates the risk, but we also lose the benefits of big data analytics. A balance needs to be taken between both the options
2. *Classifying data:* This is one obvious solution. Classify data in terms of sensitivity, high importance and low importance. Sensitivity is related to privacy and other confidential data. High importance is data to be analysed in a smaller duration as it may lose importance as the time elapses. The example is number of website hits and the demography of customers taken from cookies. Rest of the data can be classified as low importance. Typically, sensitive data is long-term, while other two are short-term, meaning it can be considered for deletion, after the analysis is done.
3. *Backing up data:* Big data typically contains unique data, *i.e.*, data taken from monitoring devices like that of traffic movement, soil pH, *etc.*, which are accumulated frequently and in real time. All data are unique to the moment, and if they are lost, it is impossible to recreate them. Finding a good back-up solution may be challenging, but with evolution and advancement of technology, something can be expected soon.
4. *Big data and compliance:* Big data is not easily handled by relational databases, hence the traditional way of managing data is not possible here and it may be difficult to understand how compliance affects the data. To put it simply, relational databases took time to give you inputs for decisions, but the inputs were accurate. Now in the realm of big data, horizontal and unstructured databases which are good at solving business problems have arrived. Here, inputs for decision-making are faster, but not accurate. But, we need to comply with the law irrespective of the data methodology. ■

On a reasonable assumption that huge intellectual knowledge is created, what happens to the proprietary knowledge of the big corporations that spend a lot of money on research and development? It gets diluted and until the organisation continues with its rigours of research, it will find itself obsolete and would lose its relevance.

New Regime for Foreign Portfolio Investment

Foreign portfolio investment, where foreign investors hold securities and other financial assets, does not provide any direct ownership of their financial assets to the investors. Such a relatively-liquid investment depends on the market's volatility. Most commonly used by investors who do not wish to manage a foreign firm, the investment generally is about short-term involvement in the international stock and bond markets, at times only for conjecture, is not very different from domestic investments in securities, conceptually. Despite having no direct management powers, foreign investors can still participate in the profitability of their firms. Read on this article, to understand the intricacy of the subject and new perspectives that have come to the fore in recent times…

1. Background

Ever since India embarked on the path of liberalisation and economic reforms a couple of decades ago, the Government of India (GOI) has been keen to attract foreign capital and investment. First among the changes was the opening up of the Indian capital markets to foreign investors and that's when, in September 1992, the GOI announced for the first time the policy framework for *foreign institutional investor* permitting them to invest in the Indian listed entities which regime subsequently culminated into the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations 1995 (FII Regulations). Since then, the flow of funds from foreign institutional investors (FIIs) has given an impetus to the Indian capital markets. Additionally, the sustained nature of the FII investments has reiterated their belief in India's growth story, thus sending strong positive signals about the prospects of India as an investment destination to the global investment community.

CA. Alkesh Shah

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2. Regulatory Framework for Foreign Investment in India

Currently, foreign investors are allowed to invest in the Indian capital markets through different investment windows[1], each of which has its own regulatory framework, licensing/registration requirements and investment conditions. This makes the regulatory landscape in India rather complicated when compared to that of other emerging markets. Investment by the FIIs in India is jointly regulated by the securities market regulator, SEBI, through the SEBI (Foreign Institutional Investors) Regulations, 1995 and by the nation's financial regulator, the RBI, through the Regulation 5(2) of the Foreign Exchange Management Act (FEMA), 1999.

In 2011, the GOI in consultation with the RBI and SEBI, decided to allow a new category of investors,

[1] *Foreign investment in India is primarily channelised in three forms—foreign direct investment, portfolio investment scheme and foreign venture capital investment. Under foreign portfolio investment route, entities that are allowed to invest are foreign institutional investors and sub-accounts, non-resident Indians/persons of Indian origin, and qualified foreign investors.*

termed as *qualified foreign investors*[2] (QFI) under the portfolio investment route, who meet the KYC norms, to directly invest in Indian equity, corporate bonds and mutual fund schemes. In order to reduce the overall complexity and number of regulations governing inbound investments, SEBI has recently notified the SEBI (Foreign Portfolio Investors) Regulations, 2014 (FPI Regulations), which have come into force with effect from 7th January, 2014[3] replacing the existing FII Regulations. The RBI has recently issued a Circular[4] and notified[5] the amendments to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, regarding the framework for the FPIs to implement portfolio investments in Indian securities.

The FPI Regulations aim to rationalise foreign investments made into India by the portfolio investors such as the FIIs and QFIs. Following are some of the significant features of the FPI Regulations:

- Designated Depository Participants[6] (DDPs) (and not SEBI) to grant registration to the FPIs.
- Registration as an FPI can be obtained in one of the three categories specified by the SEBI.
- Registration granted to an FPI shall be permanent unless suspended or cancelled by the SEBI or surrendered by the FPI.
- Total holding by each FPI shall be below 10 % of the total paid-up equity capital or 10 % of the paid-up value of each series of convertible debentures issued by an Indian company and the total holdings of all the FPIs put together shall not exceed 24 % of the paid-up equity capital or paid-up value of each series of the convertible debentures.
- In case the same set of ultimate beneficial owner(s) invest through multiple entities, these entities shall be treated as part of the same investor group and the investment limits of all such entities shall be clubbed at the investment limit as applicable to a single foreign portfolio investor.
- The FPIs are permitted to issue, subscribe or deal in offshore derivative instruments where the same is issued to persons regulated outside India. However, Category III FPI and unregulated broad-based funds (classified as Category II FPIs by virtue of their investment manager being appropriately regulated) are not permitted to issue, subscribe or deal in ODIs.

The RBI has recently issued a Circular and notified amendments to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, regarding the framework for the FPIs to implement portfolio investments in Indian securities.

3. Regulatory Differences

Set out below is the broad summary of differences between the FII/QFI Regulations and the new FPI Regulations:

FII / QFI Regime	FPI Regime
Foreign Investments in India	
Foreign investment in India is characterised by multiple routes like FIIs, QFIs, *etc.*, and various regulators overseeing these routes, overlapping policies, complicated tax structures, and high cost of transactions leading to inconsistencies, reduced transparency and higher capital costs.	The new policy provides for a single route for various Foreign Portfolio Investors by merging the present day FIIs, Sub-Account and QFIs into a new investor class termed as *Foreign Portfolio Investor* (FPI) where there will be common market entry, limit monitoring and reporting norms.

[2] *Qualified foreign investors have been defined as persons who are not registered with the SEBI as FIIs/sub-accounts of an FII and are residents of a country that is compliant with the Financial Action Taskforce Standards and are signatory to the International Organisation of Securities Commission's Memorandum of Understanding.*

*3 SEBI has recently issued a circular extending the date of commencement of the FPI regime to **1st June 2014**.*

[4] *AP (DIR Series) Circular No. 112, dated 25th March, 2014.*

[5] *Notification No. FEMA 297/2014-RB, dated 13th March, 2014.*

[6] *Designated Depository Participant means a person who has been approved by SEBI under Chapter III of these regulations.-A*

<table>
<tr><th>FII / QFI Regime</th><th>FPI Regime</th></tr>
<tr><td colspan="2">FIIs and Sub Accounts</td></tr>
<tr><td>FII route includes FIIs and Sub-Accounts.
Under the QFI route, investors including individuals, corporates, private banks, Funds etc., can invest on fully repatriable basis in schemes of domestic mutual funds, listed equity shares of the Indian companies and debt securities.</td><td>FIIs and QFIs route merged into a single investment window, called the FPI window.
SEBI has done away with the concept of Sub-Accounts.</td></tr>
<tr><td colspan="2">Licensing Requirements</td></tr>
<tr><td>FII, Sub-Accounts were required to register with SEBI before making investments in India.
QFI to directly open an account with a Qualified Depository Participant (QDP) in India.</td><td>No direct registration with SEBI. Instead, DDP authorised by SEBI would register FPIs on behalf of SEBI subject to compliance with the KYC requirements.</td></tr>
<tr><td colspan="2">KYC (know your client) Norms</td></tr>
<tr><td>Uniform KYC norms apply to all the investors.</td><td>In the new regime, SEBI has moved towards a risk-based approach to KYC, where government-related FPIs (Category I FPIs) would be subject to less stringent KYC norms, all regulated entities (Category II FPIs) would be subject to moderate KYC norms and unregulated investors (Category III FPIs) would have to undergo stringent KYC norms.</td></tr>
<tr><td colspan="2">Broad Based Criteria</td></tr>
<tr><td>Under the FII Regulations, a 'broad-based fund' meant a fund, established or incorporated outside India which has at least 20 investors with no investor holding more than 49% of the shares or units of the fund.
Where the broad-based fund had any institutional investor, it was not necessary for such fund to have 20 investors.
Further, any institutional investor holding more than 49% of the shares or units of the fund would have to itself satisfy the broad based criteria.</td><td>The FPI Regulations continue to follow the 'broad-based' criteria with two notable deviations.
To satisfy the 'broad-based' criteria, it would be necessary for a fund to have 20 investors even if there is an institutional investor.
To compute the number of investors in a fund, both direct and underlying investors, i.e. investors of entities that are set up for the sole purpose of pooling funds and making investments, shall be counted.</td></tr>
<tr><td colspan="2">Investment In Unlisted Securities</td></tr>
<tr><td>The FIIs can make investment in unlisted securities in India.</td><td>Investments in unlisted securities, regardless of the level of ownership that they represent, regarded as FDI.</td></tr>
<tr><td colspan="2">Investment Limits</td></tr>
<tr><td>The FIIs shareholding was not to exceed 10 % of the share capital.
Aggregate shareholding of all FIIs shall not exceed the lower of (i) 24% of the paid up equity capital of the company at any point of time or (ii) the sectoral cap.

QFIs – 5% (individual) and 10% (aggregate) of the paid- up capital of the Indian company. The QFI limits were over and above the limits specified in the case of FIIs.</td><td>A single FPI or an investor group shall purchase below 10% of the total issued capital of a company or 10% of the paid-up value of each series of convertible debentures issued by an Indian company. The total holdings of all FPI put together shall not exceed 24 % of paid-up equity capital or paid-up value of each series of convertible debentures.</td></tr>
</table>

FII / QFI Regime	FPI Regime
	Where the *same set* of ultimate beneficial owner(s) invests through multiple FPI entities, such FPI entities shall be treated as part of the same investor group. Further, the investment limits of all such entities shall be clubbed at the investment limit as applicable to a single FPI.
Monitoring of Investment Limits	
Monitoring of the above investment limits was done at an *investor group level* after considering who the ultimate beneficial owner is or who holds the ultimate beneficial interest in the investing entity/ies. The identity of the ultimate beneficial owner in an entity who owns more than 50 % of the total capital of that entity (called the 'ownership test') was followed for FIIs.	The FPI Regulations have sought to replicate this practice. However, in the FPI Regulations, SEBI has stipulated that the monitoring of this limit needs to be done based on: (1) the shareholding, (2) the voting rights, and (3) any other form of control that may exist in excess of 50 % across the FPIs, if any.
Issue of Offshore Derivative Instruments (ODIs)	
FIIs are eligible to issue ODIs based on the shares held by them. Sub-accounts are not eligible to issue ODIs. QFIs are not eligible to ODIs.	(1) Category-III FPIs barred from issuing ODIs. The FPI Regulations bars even those unregulated broad-based funds that are classified as Category-II FPIs by virtue of their investment manager being appropriately regulated (which, under the FII Regulations, were eligible to hold ODIs). (2) Entities that qualify as regulated broad based sub accounts, may also issue ODIs under the FPI Regulations (which, under the FII Regulations, could not do so as 'broad based sub-accounts').

With the introduction of the FPI Regulations, QFIs will now be able to invest in additional securities like Rupee-denominated bonds/units of IDFs, IDRs, SRs issued by ARCs, *etc.* Moreover, under the current regulations, a single QFI was allowed to invest in an Indian-listed company, a maximum of up to 5 % of the total paid-up capital of the company; this limit would now double, as an FPI can invest a maximum of 10 % of the total paid-up capital of an Indian-listed company.

4. Tax Framework

Presently, a differential tax treatment is prevailing for FIIs and QFIs. The Income-tax Act, 1961 (the Act) contains specific provisions for taxation of FIIs/Sub-Accounts. Section 115AD of the Act provides a concessional basis of taxation to FIIs/ sub-accounts in terms of:

(i) taxing the income earned by them from sale of Indian securities as capital gains,
(ii) prescribing concessional tax rates for this type of investor, and
(iii) exempting them from withholding the tax requirements on their capital gains income – Section 196D of the Act.

There is no specific code for taxation of QFIs. Kindly see the next page for the snapshot of the tax rates applicable to the FPIs and its comparison with the FII and QFI tax rates.

Following are some of the tax ambiguities which continue to remain and need to be addressed in order to provide clarity and certainty to foreign portfolio investors:

i) FPIs are covered under the Section 115AD of the Act by way of a CBDT notification. In order to rule out any controversy and litigation in the matter, it is suggested that the Act be amended.
ii) FPI Regulations have come into force from 7th January, 2014, however, the CBDT notified on 22nd January, 2014, the applicability of Section 115AD to FPI investors. Hence, FPI investors who would have put their arrangements in place with a bona fide belief that such

arrangements were within the framework of a new regime would be put to difficulty. Hence, suitable transitional/grandfathering provisions should be incorporated in the Income-tax Act, 1961 which would avoid such difficulties to taxpayers.

iii) Direct Tax Code proposal to deem income of FIIs as income from capital gains should be brought in the statute to make the matter beyond any doubt for the FPI investors.

Until the tax and regulatory regimes are aligned to make India an attractive jurisdiction for foreign investments, investors may continue to be weary of making investments in India.

5. Conclusion

Today, foreign investors face an ad hoc system of sometimes overlapping, sometimes contradictory and sometimes non-existent rules for different categories of players resulting in the lack of transparency and create onerous transaction costs. Adding to these complexities is the complicated tax structure resulting in uncertainty in the tax policy for such investments. All these impediments not only result into higher transaction costs to foreign investors but also translate into higher cost of capital for Indian companies who are accessing foreign equity capital.

By integrating the existing portfolio routes available for foreign investors and providing clarity on the tax policy, the Government has done well to remove some of the impediments for portfolio investors. However, in line with the revamping of the regulatory framework for foreign portfolio investments, the GOI should also consider revamping the tax policies and tax laws so as to place an integrated regulatory and tax framework to make it more conducive for foreign investments. ■

Assessment Year: 2014-2015 (Previous Year: 1st April, 2013 to 31st March, 2014)	*(all numbers are in percentages)*					
Nature of Income	Rate of tax[7]					
	FIIs/Sub-Accounts		**QFIs**		**FPIs (including QFIs)**	
	Foreign Companies	Non-corporate entities	Foreign Companies	Non-corporate entities	Foreign Companies	Non-corporate entities
Dividend						
Dividends/income in respect of units of a Mutual Fund	Nil	Nil	Nil	Nil	Nil	Nil
Interest						
Interest under Section 194LD[8] of the Act	5	5	5	5	5	5
Interest other than interest under Section 194LD of the Act	20	20	40	30	20	20
Capital Gains						
Capital Gains on sale of shares and units of equity oriented funds subject to STT						
Long-term capital gains	Nil	Nil	Nil	Nil	Nil	Nil
Short-term capital gains	15	15	15	15	15	15
Capital Gains on sale of bonds, debentures, off-market equity transactions not subject to STT						
Long-term capital gains	10	10	20[9]/10	20/10	10	10
Short-term capital gains	30	30	40	30	30	30
Other Income	40	30	40	30	40	30

[7] *Tax rates are exclusive of Surcharge and Education Cess: For foreign company surcharge is applicable at the rate of 2% if taxable income exceeds INR 10 million but does not exceed INR 100 million and at the rate of 5% if taxable income exceeds INR 100 million. For non-corporate assessees surcharge is applicable at the rate of 10% if taxable income exceeds INR 10 million. Education cess at the rate of 3% of Income-tax and surcharge is applicable to all taxpayers.*

[8] *The above rates are not applicable where a lower rate is prescribed under a DTAA entered into by the Central Government under Section 90 of the Act. Section 194LD of the Act provides for a concessional rate of withholding tax of 5% (to be increased by applicable surcharge and education cess) in case of income earned by FIIs or QFIs in the nature of interest from a Rupee denominated bond of an Indian company or a Government security. The interest should be payable between 1st June 2013 to 31st May 2015. Further, the rate of interest in respect of the bond of an Indian company should not exceed the rate as notified by the Central Government.*

[9] *Subject to indexation benefits under the Act.*

EC Tightens Tax Screw on Parties

The Election Commission of India (EC) has asked the Central Board of Direct Taxes (CBDT) to cancel the income tax (I-T) exemption given to political parties that have failed to meet the deadline for submitting their expenditure contribution reports. It is mandatory for political parties to submit their expenditure reports to the EC by the due date. According to sources, CBDT has received a report from the EC citing delay in the filing of expenditure reports by a few political parties as it sought action by the department under I-T laws. Some smaller parties have not even furnished the data till now, according to the EC. The EC has reported instances of parties which have not submitted details of their contributions of over ₹20,000 received by them for the year 2012-13. The deadline for submitting these details was September 2013. The I-T Department will now initiate proceedings under the provisions of Income Tax Act, 1961, in this case and after issuing summons, will seek to tax the entire amount received by these parties as donations.

*(**Source:** Mail Today)*

CBDT Signs Five APAs

The CBDT has recently signed the first batch of 5 unilateral Advance Pricing Agreements (APA). The agreements cover a period of 5 years from AY 2014-15 to AY 2018-19 and specify the arm's length price for the covered international transactions entered into by the taxpayers. These agreements cover a range of international transactions, including interest payments, corporate guarantees, non -binding investment advisory services and contract manufacturing. The agreements pertain to different industrial sectors including pharmaceuticals, telecom, exploration and financial services. The agreements provide a complete certainty to the taxpayers for 5 years with regard to the covered international transactions. The APA programme came into effect on 1st July 2012.

*(**Source:** Press Trust of India)*

About 8k Cr Service Tax Evasion in 2013-14

With increased focus on revenue generation from service tax, officials have detected several cases of tax evasion amounting to about ₹8,000 crore during 2013-14 fiscal. Finance Ministry officials said service tax was being evaded by a number of small and big service providers across the country through non-filing of mandatory returns, wrongful declaration of amounts collected by them and other means. The Directorate General of Central Excise Intelligence (DGCEI) had registered 1,144 cases of service tax evasion during 2013-14. The amount involving the cases of service tax evasion was 7,928.22 crore during the period, they said. The service tax detection amount of about 8,000 crore does not include cases registered at various service tax and excise commissionerates and other allied offices across the country, the officials said.

*(**Source:** http://www.business-standard.com/)*

SC Allows CAG Audit of Private Telcos

The Supreme Court on Thursday held that the Comptroller and Auditor General (CAG) could audit the account books of private telecom companies, which share their revenues with the government for using spectrum. The Court said such a scrutiny was crucial for ensuring the government got its "legitimate share" for allowing private telecom operators to use the valuable natural resource. Though the Supreme Court's present order is for the telecom sector, it is believed to also have an implication for other industries like power, mining, roadways, ports and airports, in which private companies either share revenues with the government or partner it under the public-private partnership (PPP) model. According to experts, such projects, too, could come under CAG's scrutiny. A Bench of judges K S Radhakrishnan and Vikramajit Sen passed the order after hearing a batch of petitions filed by the two telecom industry bodies — Association of Unified Telecom Service Providers of India (Auspi) and Cellular Operators Association of India (COAI). These associations had filed petitions challenging the Delhi High Court's January order allowing CAG to examine the account books of private telecom companies under the Telecom Regulatory Authority of India (Trai) Act.

*(**Source:** www.thehindubusinessline.com)*

CBDT Directions on Merger Schemes

The income-tax department will now have an opportunity to protect the interest of the revenue in reconstruction or amalgamation schemes filed for approval before various High Courts. The Central Board of Direct Taxes (CBDT) has in a letter directed the Chief Commissioners of income tax to ensure that the comments/objections of the tax department on such schemes are sent to the regional director (MCA) for incorporating them in the response to the Court. Till recently, there was no procedure for the income tax department to raise objections (for any loss of revenue) to any schemes of amalgamation or reconstruction filed before High Courts. There had been a recent instance when an amalgamation scheme was sought to be implemented on a retrospective date and involved setting off of losses of loss making companies with profits of profit making companies within the same group, thereby impacting public revenues.

*(**Source:** www.thehindubusinessline.com)*

TDS on Deposits Doesn't Mean These are Tax-Free

Are you receiving emails or telephone calls from banks advising you to invest in recurring deposits because there is no tax deducted at source (TDS) in this case? Remember, such investments aren't tax-free. No TDS merely means the bank will pay you the entire interest amount without forwarding the tax on it to the government. However, the fixed deposit holder will have to include this interest income in her/his total income and pay tax on this, according to her/his tax bracket. "There is a common misconception if there is no TDS, it is tax-free. But whether it is recurring deposit, post-office deposits, national savings certificates, or any other savings, if there is no TDS, the interest income is taxed. The only difference between these and fixed deposits is the bank or post office will not deduct tax at source," says an expert. Banks offer the same rate of interest on fixed deposits and recurring deposits. For fixed deposits, you invest the money in a lump sum, while in the case of recurring deposits, you invest once every month. This instrument is encouraged as a way of instilling discipline among investors. The difference is in the case of fixed deposits. If the interest exceeds ₹10,000 in a financial year, the bank will deduct 10 per cent tax before crediting the interest to the account. However, this is not the only tax the deposit holder is liable to pay.

*(**Source:** www.economictimes.indiatimes.com)*

No Tax on Foreign Currency Bank Deposit Interest for NRIs

Interest earned on deposits held in foreign currency with a scheduled bank, by a non-resident or by a person who is not ordinarily resident (RNOR) is exempt from income tax according to the provisions of section 10 (15) of the Income-tax Act, 1961 (the Act). The exemption would be available until you are non-resident or an RNOR under the Act. You will be an RNOR if you are a non-resident in nine out of the 10 previous years or your stay in India in the seven previous years preceding the current year does not exceed 729 days. Typically, a returning NRI would qualify to be RNOR for two years; consequently, she will be eligible to claim exemption on the interest earned from deposits in foreign currency. Once you are considered as being ordinarily resident for income tax purposes, your global income becomes taxable in India. Your earnings from deposits in India would be chargeable to tax as per the slab rates applicable to an individual.

*(**Source:** News agencies)*

CCI Tightens Rules on M&A Structures

The competition watchdog has tightened its rules to ensure that companies do not escape its scrutiny through innovative structuring of mergers and acquisitions. The Competition Commission of India (CCI) has clarified that it will look at the substance of the transaction and not just the structure while approving any merger. Most of the combinations involving Indian companies or having presence in India have to get CCI nod. "The requirement of filing notice under Regulation 5 of these regulations shall be determined with respect to the substance of the transaction and any structure of the transaction," said the notification by the CCI. The commission has also deleted a clause under the merger regulations pertaining to the relaxation of transactions that take place entirely outside the Indian jurisdiction. CCI has said that there is no need for seeking its approval if the transaction has taken place entirely outside India with "insignificant local nexus and effect on markets in India".

*(**Source:** http://www.expressindia.com)*

Bring Back Black Money: SC

The Supreme Court has recently rejected Centre's plea to recall its order for setting up a Special Investigation Team (SIT) to probe all cases of black money, saying it stepped in as for over six decades "the government failed to bring back the money stashed in foreign banks to the country". "Let us see the SIT will do things which this country is dreaming of," a three-judge bench headed by Justice H L Dattu observed while dismissing the Centre's plea and pulling it up for its reluctance to accept the SIT headed by two retired judges of the apex court.

*(**Source:** News Agencies)*

FASB Provides Guidance on Reporting Discontinued Operations

The Financial Accounting Standards Board has issued a new guidance on representing when a company or organisation discontinues its operations. Accounting Standards Update No. 2014-08, Presentation of Financial Statements (Topic 205) and Property, Plant, and Equipment (Topic 360): Reporting Discontinued Operations and Disclosures of Disposals of Components of an Entity, changes the criteria for reporting discontinued operations while enhancing disclosures in this area. It also addresses sources of confusion and inconsistent application related to financial reporting of discontinued operations guidance in U.S. GAAP. Under the new guidance, only disposals representing a strategic shift in operations should be presented as discontinued operations. Those strategic shifts should have a major effect on the organisation's operations and financial results. Examples include a disposal of a major geographic area, a major line of business, or a major equity method investment. In addition, the new guidance requires expanded disclosures about discontinued operations that will provide financial statement users with more information about the assets, liabilities, income, and expenses of discontinued operations. It also requires disclosure of the pre-tax income attributable to the disposal of a significant part of an organisation that does not qualify for discontinued operations reporting. This disclosure will provide users with information about the ongoing trends in a reporting organisation's results from continuing operations. The amendments in the update will enhance convergence between U.S. GAAP and International Financial Reporting Standards, according to FASB. Part of the new definition of discontinued operation is based on the elements of the definition of the discontinued operations in IFRS 5, Non-Current Assets Held for Sale and Discontinued Operations. The new standard is effective in the first quarter of 2015 for public organisations with calendar year-ends. For most non-public organisations, it is effective for the annual financial statements with fiscal years beginning on or after 15th December, 2014. The new guidance, and the FASB in Focus document that provides a high-level overview of the guidance, are available at www.fasb.org

*(**Source:** http://www.accountingtoday.com/)*

GASB Issues Concepts Statement on Measurement of Assets and Liabilities

The Governmental Accounting Standards Board has issued a concepts statement that will guide GASB in establishing accounting and financial reporting standards for the U.S. state and local governments regarding the measurement of assets and liabilities. Concepts Statement No. 6, Measurement of Elements of Financial Statements, augments the framework that the GASB uses to promote consistency in setting accounting and financial reporting standards and is primarily intended for the board's use. The new concepts also could benefit the preparers and auditors of financial statements when evaluating transactions for which there are no existing standards. Concepts Statement 6 establishes concepts that will inform the GASB's decisions when setting future standards for how the state and local governments determine the dollar amount at which to report assets and liabilities. It establishes two approaches to measuring assets and liabilities—the initial amounts and remeasured amounts. Initial amounts are determined at the time an asset is acquired or a liability is incurred. Remeasured amounts are determined as of the date of each year's financial statements. The full text of Concepts Statement 6 is available at http://www.gasb.org/

*(**Source:** http://www.accountingtoday.com/)*

IPSASB Consults On Strategy and Work Plan Priorities

The International Public Sector Accounting Standards Board (IPSASB) has published its Strategy Consultation, which includes a consultation on its work program for 2015-2019 and emphasises the IPSASB's commitment to serving the public interest by developing a high-quality International Public Sector Accounting Standards (IPSASs) for global adoption. The Strategy Consultation proposes the strategic objective for the IPSASB focused on strengthening public financial management and knowledge globally through increasing adoption of accrual-based IPSASs by developing high-quality financial reporting standards; producing publications for the public sector; and raising awareness of the IPSASs and the benefits of their adoption. As the IPSASB's public sector conceptual framework will be completed during 2014, the IPSASB aims to develop a work programme for 2015-2019 that will continue to be aligned to stakeholder needs. The IPSASB is, therefore, seeking stakeholders' views on a range of potential projects, including ones that address public sector specific issues, maintain existing IPSASs, and converge with International Financial Reporting Standards (IFRSs). The work program will continue to support the development of high-quality accounting standards and other publications, which underpin public sector entities' financial reporting, so that the information they report will be useful for accountability and decision-making.

*(**Source:** http://www.ifac.org/)*

IFAC Receives major funding from U.K. to Develop National Accounting Organisations

The International Federation of Accountants has received funding from the United Kingdom's Department for International Development, or DFID, for the purpose of strengthening the professional accountancy organisations around the world. The funding will be concentrated in 10 DFID focal countries within four regions (Asia, the Caribbean, the Middle East and North Africa, and Sub-Saharan Africa), to indicate DFID's recognition of the need to improve accounting globally and its understanding that better accounting can grow and stabilise economies by maintaining organisational control and sustaining capital markets. The IFAC and DFID are signatories of MOSAIC: Memorandum of Understanding to Strengthen Accountancy and Improve Collaboration, which sets out the basis for improving cooperation and collaboration between IFAC, international donors, and the international development community to increase the capacity of the PAOs and improve the quality of financial management systems in the emerging economies. The programmes will build the managerial, financial and technical capacity of the professional accountancy organisations, or PAOs, in developing countries so they can drive improvements in professional and ethical standards. The organisations likely to emerge as mentors for the others may come from the more established accounting organisations in a particularly region, or they might not.

*(**Source:** http://www.accountingtoday.com/)*

GASB Declines to Delay Implementation Date of Pension Standards

The Governmental Accounting Standards Board recently voted unanimously not to delay the implementation date of the GASB Statement No. 68, Accounting and Financial Reporting for Pensions. The requirements of Statement 68 are effective for periods beginning after 15th June, 2014. The request to the Board for an indefinite delay in the implementation date came from the stakeholder groups that asserted that such a delay is necessary until the related auditing procedures have been implemented for a sufficient period. The concern was expressed that governments in multiple-employer pension plans will receive a modified audit opinion on their financial statements in the interim. Other individuals, organisations, and stakeholder groups wrote to the Board requesting that the implementation date of Statement 68 not be changed. Some of these groups urged the GASB and other organisations to find a solution that does not involve a delay in implementation. The Board's decision was based on feedback received from its stakeholders, including officials from governments and pension plans, auditors, actuaries, and users of financial statements. Delaying the new standards would not necessarily address the concern about a modified audit opinion. It appears, based on feedback received, that many governments would face a similar prospect of a modified audit opinion even if governments were to follow the previous pension standards. Pension plans are already well into the process of implementing the associated pronouncement, Statement No. 67, Financial Reporting for Pension Plans. If the implementation of Statement 68 were postponed, some governments would now incur the added cost of engaging an actuary to provide information under the old standards in addition to the information already obtained under the new standards. The financial statement users who provided feedback to the GASB expressed a strong preference not to delay Statement 68. These users understand the circumstances under which some governments may receive modified audit opinions. They stated that a clearly worded modification would not negatively impact their analyses of government finances. Concerns about the effort required to implement Statement 68, particularly with regard to governments in some cost-sharing multiple-employer pension plans, are real and significant. However, the Board was fully aware of these issues when it originally considered the costs and benefits associated with establishing the original implementation date. No new evidence has been brought forth to date that would result in the reconsideration of this conclusion.

*(**Source:** http://www.gasb.org/)*

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals received during March-April, 2014 for the reference of Faculty/Students & Members of the Institute.

1 Accountancy

Accounting Standards: Gaps in Gaap-Presentation of Changes in Accounting Policies in Interim Periods by Dolphy D' Souza, *The Bombay Chartered Accountant Journal*, March 2014, V.45-B/6, pp.76-77.

Increasing Length on Annual Reports: Annual Reports Lengthened by a Third between 2004 and 2012 by Sue Malthus and Jeanette Bosman. *The Journal*, March 2014, pp.38-39.

2 Auditing

Auditing/Employee Benefits: Lessons Learned: Practical Tips to Help Avoid Common EBP Audit and Reporting Errors by AICPA. *Journal of Accountancy*, February 2014, pp.46-47.

Demystifying Corporate Fraud by R. Sriranjani, *Chartered Secretary*, March 2014, pp.283-287.

Financial Frauds in India: An Enquiry into their Causes and Cures by Vinod Kothari. *Chartered Secretary*, March 2014, pp.263-268.

3 Economics

Briefing Fighting Corruption India: A Bad Boom. *The Economist*, March 15th 2014, pp.21-24.

Discussion Paper on Review of Policy for Trade Cancellation/Annulment. *Company Law Journal*, March, 2014, pp.163-176.

Microfinance: To What End?: Finding from Pakistan by Ghazal Zulfiqar. *Economic & Political Weekly*, March 8th 2014, Vol. 49/10, pp.63-67.

Saving Agriculture-What India Must Do? By Suresh Chandra Babu. *The Global Analyst*, March 2014, pp.21-23.

4 Investment

Indulgent Regulator & Foolish Investor: India is a Fertile Ground for Frauds and Scams Because We Have a Very Poor Legal Frame Work by R. Balakrishnan. *Moneylife*, April 3rd 2014, pp.22.

Securities Laws: More Delays in Mergers/Arrangements-A Recent MCA Circular Prescribes Further Requirements for Schemes by Jayant M. Thakur, *The Bombay Chartered Accountant Journal*, March 2014, V.45-B/6, pp.65-67.

5 Law

10 Ways Life Insurance Turns Useless: Real-life Cases from Moneylife Foundation's Insurance Helpline. by Raj Pradhan. *Moneylife*, April 3rd 2014, pp.28-35.

Companies Act,2013: A Big Leap to Prevent and Punish Fraud by Lalit Kumar, *Chartered Secretary*, March 2014, pp.279-282.

Corporate Manslaughter-United Kingdom vs. India: A Comprehensive Study by Arindam Ghosh. *Company Law Journal*, March, 2014, pp.113-121.

Legality of Plain Packaging under International Law by Aridhi Anderson. *Economic & Political Weekly*, March 15th 2014, Vol. 49/11, pp.21-24.

Will the Doctrine of Precedent Benefit the Investment Arbitration Regime? By Srishti Goyal. *Company Law Journal*, March 2014, pp.122-128.

6 Management

Infrastructure Financing: A Long and Winding Road. *The Economist*, March 22nd 2014, pp.67-68.

SME Financing: Managing Cost of Finance Function by Sanjay Gaggar. *The Global Analyst*, March 2014, pp.12-20.

7 Management/Accounting

Next Generation Management Accountant: Transforming Finance Professionals into Value-Adding Business Partners by Aubrey Joachim, *The Journal*, March 2014, pp.40-41.

8 Taxation & Finance

'Income' Includes 'Loss' : A Revisit By P. Shivanand Nayak. *The Bombay Chartered Accountant Journal*, March 2014, V.45-B/6, pp.10-15.

Full Texts of the above articles are available with the Central Council Library, ICAI, which can be referred on all working days. For further inquiries please contact on 011-23370154 or by e-mail at library@icai.in

On Line Articles Placement Portal

On Line Articles Placement Portal for selection of Articled Assistants by CA Firms

The Board of Studies of the ICAI has been providing Online Articles Placement facility for selection of Articled Assistants by CA Firms through its Articles Placement Portal on pan India basis. It provides a platform to the firms of Chartered Accountants having vacancies for Articled Assistants to shortlist eligible students for selection of articled assistants, and call them for Interview at their offices, as per date and time convenient to them. The eligible candidates who have passed Group-I or both Groups of the Intermediate (Integrated Professional Competence) Course or have been admitted under the Direct Entry Scheme and are willing to join articled training can register themselves on the portal. **The services to the Online Placement Portal are available free of charge for both CA Firms and students and they can register themselves online through the Portal at http://bosapp.icai.org.**

The services on the Portal would be available for two months, twice a year, from the date of registration by the firms. Similarly the bio data of a student will also be available on the portal for a maximum period of 2 months from student's registration. The candidates shortlisted by CA Firms would be informed by e-mails through the Portal, to appear for interview at their respective Offices, at the designated date and time.

Detailed guidelines are available at the institutes' website www.icai.org and on the Portal. In case of any further clarification, please contact the Board of Studies, ICAI Bhawan, A-29, Sector-62, Noida-201309, Tel.No.0120-3045930/931; eMail: bosapp@icai.org.

Chairman, Board of Studies

Invitation for software development

Invitation for Expression of interest from software development companies for providing software relevant to the Practitioners & CA Firms of ICAI by 30th May, 2014

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) of the Institute of Chartered Accountants of India (ICAI) is meant to encourage and enhance close links between the Institute and the Chartered Accountants, so as to provide for them, a base of reference in terms of knowledge, expertise, skills and assistance in their professional growth, simultaneously pursuing the goal of providing newer opportunities to the practitioners & CA Firms. One of the major responsibilities of CCBCAF & SMP is to arrange software relevant for the Members of the Institute of Chartered Accountants of India (ICAI).

The CCBCAF & SMP invites Expression of Interest from the various software vendors who are interested to provide the software relevant to the Practitioners & CA Firms of ICAI by 30th May, 2014. The intending parties are expected to have appropriate level of practical experience in the relevant area along with the knowledge of various aspects of the CA profession.

Terms of Reference for the Vendors of the software

THE SOFTWARE VENDOR must be willing to rebrand its existing software.

Further, THE SOFTWARE VENDOR shall not use the logo of its Company on the software provided to ICAI members and/or in any ancillary document related to the software except with prior approval of ICAI and for limited purposes only.

THE SOFTWARE VENDOR shall act as a Development and Support Partner to this arrangement and shall provide support through their help desk.

THE SOFTWARE VENDOR shall provide initial license free of cost for first two years activation from date of MOU to CA members and thereafter, provide the software at nominal price. Any registered member with ICAI would be eligible to get single copy of initial license without paying any cost.

THE SOFTWARE VENDOR shall provide free of cost licenses of the software during the period of MOU to all present and future Information Technology Training Centers of ICAI all over India with two years' activation. THE SOFTWARE VENDOR shall also provide free of cost live patches of the software as and when released during the term of this MOU.

THE SOFTWARE VENDOR shall provide free of cost single license of the software with two years' activation from date of MOU to all present and future offices of ICAI.

THE SOFTWARE VENDOR shall also provide free of cost training to all staffs in the Head Office & other offices of ICAI as well as to provide live patches of the software as and when released during the period of MOU.

Any other terms & conditions, as decided by the Committee from time to time.

Delivery of software products

THE SOFTWARE VENDOR shall make available the Software Setup in the ICAI/Committee website www.icai.org.in and www.icai.org so that software setup may be downloaded from website and installed by the ICAI members.

i) THE SOFTWARE VENDOR shall upload the extensive documentation in soft form (PDF & HTML) through web links. These documents shall include Installation Manual, Feature List, FAQs, and User Manual etc.

ii) THE SOFTWARE VENDOR shall provide latest software patches through website www.icai.org.in

iii) THE SOFTWARE VENDOR shall provide access to the updated documentation, whenever the new update/release of the current version of the products is published if the same is required.

b) UPLOADING THE SOFTWARE ON COMMITTEE'S WEBSITE:
THE SOFTWARE VENDOR shall make available the Software content through the website of Committee for Capacity Building of CA Firms and Small & Medium Practitioners, www.icai.org.in and www.icai.org so that software setup can be downloaded and installed easily by the members, free of cost.

Training to End Users

The software vendor shall provide free of cost Training to all users of the software.

THE SOFTWARE VENDOR shall not use the name of the ICAI or any of its associates in any manner whatsoever for the promotion of its products. THE SOFTWARE VENDOR shall not publicize directly or indirectly in their advertisements in any manner about the MOU or arrangements with the ICAI except with the prior written approval of ICAI.

THE SOFTWARE VENDOR shall not state in any manner that any of its software products are endorsed, vetted, approved or developed with the inputs of the ICAI.

THE SOFTWARE VENDOR shall use the data coming to its possession for intended purpose only, in case this data is otherwise used or intended to be so used by THE SOFTWARE VENDOR, the Company shall be liable for the same.

ICAI hereby retains the right to impose any other or relax the existing terms & conditions for the arrangement of the software.

The intending Software vendors are required to send a formal request letter with the following details to 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, A-29, First Floor, Administrative Block, Sector-62, Noida (U.P.), Pin - 201309, Telephone: 0120-3045994. Sending proposals by email at sambit.mishra@icai.org is preferred:

1. Brief profile of the Company
2. Specific experience and expertise in the software relevant to the Practitioners & CA Firms of ICAI they offer.
3. Proposed coverage of the Software relevant for Practitioners & CA Firms of ICAI
4. Details about the software relevant for Practitioners & CA Firms of ICAI
5. Modalities about the software relevant for Practitioners & CA Firms of ICAI

It may be noted that mere submission of the Expression of Interest shall not entitle the applicant Vendor Company to enter into an arrangement with CCBCAF&SMP, ICAI for its software. CCBCAF&SMP, ICAI reserves the right to invite similar proposal from any other Vendor Company though they may not have offered their expression of interest in this regard. No communications will be entertained from the applicant Vendor Companies in this regard. Only selected vendors will be individually communicated. CCBCAF&SMP, ICAI reserves the right to reject the Expression of Interest received from the applicant Vendor Companies without assigning any reason therefore.

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

Exposure Draft of Revised SRE 2400 for Comments

Exposure Draft of Revised Standard on Review Engagements (SRE) 2400, "Engagements to Review Historical Financial Statements" for Comments

The Auditing and Assurance Standards Board of the ICAI has issued the exposure draft of Revised Standard on Review Engagements (SRE) 2400, "Engagements to Review Historical Financial Statements" for comments. The complete text of the exposure draft can be downloaded from ICAI website at the link: http://220.227.161.86/33014aasb22763.pdf

The comments on this Exposure Draft can be sent latest by **May 20, 2014** to:

Secretary, Auditing and
Assurance Standards Board
The Institute of Chartered
Accountants of India
ICAI Bhawan, A-29, Sector-62,
NOIDA, Uttar Pradesh – 201 309
Comments can also be e-mailed at: aasb@icai.in

Certificate Course on Concurrent Audit of Banks

The concurrent audit system of banks has become very crucial and important for banks. The main objective of the system is to ensure compliance with the audit systems in banks as per the guidelines of the Reserve Bank of India and importantly, to ensure timely detection of lapses/ irregularities. In view of the core competence of the chartered accountants in the area of finance and accounting, risk management, understanding of the internal functioning and controls of banks, etc., the banking sector has been relying extensively on them to comply with these requirements of the regulator. The Internal Audit Standards Board of ICAI conducts six days Certificate Course on Concurrent Audit of Banks. The purpose of the ***Certificate Course on Concurrent Audit of Banks*** is to provide an opportunity to the members to understand the intricacies of concurrent audit of banks thereby improving the effectiveness of concurrent audit system in banks, and also the quality and coverage of concurrent audit reports.

The course is open for the members of the Institute of Chartered Accountants of India as well as the students who have cleared CA final examinations.

Please refer link for further details of the Course: http://www.icai.org/post.html?post_id=8236

Course Fees: For metro cities: ₹15,000 per participant, for non-metro cities: ₹12,500/- per participant *(Cheque may be drawn in favor of "Secretary, ICAI" Payable at Delhi and should be submitted to respective branch)*

The details of the forthcoming batches of the Certificate Course on Concurrent Audit of Banks, organised by the Internal Audit Standards Board at various places in May 2014 are as follows:

Location	Scheduled Dates	Registration and Course Details
Muzaffarnagar	May 3&4, 10&11, 17&18, 2014	http://220.227.161.86/33110iasb22858muzngr.pdf
Dehradun	May 3&4, 10&11, 17&18, 2014	http://220.227.161.86/33111iasb22858dehradun.pdf
Hyderabad	May 10&11, 17&18, 24&25, 2014	http://220.227.161.86/33131iasb1804-hyd.pdf
Visakhapatnam	May 17&18, 24&25, 31 and June 1, 2014	http://220.227.161.86/33127iasb1804-Visakhapatnam.pdf
Varanasi	May 17&18, 24&25, 31 and June 1, 2014	http://220.227.161.86/33128iasb1804-varanasi.pdf
Gorakhpur	May 17&18, 24&25, 31 and June 1, 2014	http://220.227.161.86/33129iasb1804-gkpur.pdf
Kolkata (EIRC)	May 24&25, 31 and June 1, 7&8, 2014	http://220.227.161.86/33130iasb1804-kolkata.pdf

Chairman
Internal Audit Standards Board, ICAI
E-mail: cia@icai.in; iasb.program@icai.in

Email Menace

Announcement/Circular

No. 1-CA(7)/165/204

Dated: 17th April, 2014

The Council of the Institute of Chartered Accountants of India (ICAI), at its 329th (Adjourned) meeting held on 4th January, 2014, while taking note of various malicious emails being circulated in various fora has decided that:

The member(s) of ICAI should not host, display, upload, modify, publish, transmit, update, forward or share any information, in any form which is harmful, harassing, defamatory, indecent, immoral or invasive of another's privacy, dignity or prestige or hateful, causing insult or injury or otherwise unlawful in any manner against the **Institute and/or its members**. Further,

1. Any member of ICAI, if found spreading such information, **may** invite disciplinary action under the Chartered Accountants Act, 1949.
2. Besides above, ICAI **may** also initiate appropriate legal proceedings against such members circulating malicious emails under the applicable provisions of the Information Technology Act, 2000 or under any other law for the time being in force.

All the members of the ICAI are hereby advised to take note of the above decision of the Council.

(T. Karthikeyan)
Secretary, ICAI

Resource Persons for Workshop

Invitation for empanelment as Resource Persons for the Workshop for Members in Practice to be organised by the Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) in the Year 2014-15

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) of the Institute of Chartered Accountants of India proposes to organise **Workshops for Members in Practice** during the year 2014-15, which are broadly relevant to the Members of ICAI in Practice.

Indicative topics for the programme on Workshop for Members in Practice

i. How to Represent before Assessing & Appellate Authority
ii. Drafting and Conveyancing
iii. Risk Based Internal Auditing: Execution & Reporting
iv. Auditing in ERP Environment
v. Cloud computing
vi. Wealth Management & Investment Strategy
vii. Commercialism vs Professionalism: Do's & Don't's in Ethical Framework
viii. Bird's Eye View on Financing Techniques and Parameters
ix. Professional opportunities/avenues in New Companies Bill
x. Valuation
xi. Anti Money Laundering
xii. Any Other topics relevant for the Members in Practice

Experts who have more than five years of experience in the relevant area and who have delivered lectures at various forums of Chartered Accountants are eligible for the enlistment in the Panel of Experts.

Experts who are interested to be associated with The Institute of Chartered Accountants of India as Resource Persons are requested to send/e-mail their resume to the following address:

Dr. Sambit Kumar Mishra, Secretary, Committee for Capacity Building of CA Firms and Small & Medium Practitioners(CCBCAF&SMP), The Institute of Chartered Accountants of India (ICAI), ICAI Bhawan, A-29, First Floor, Administrative Block, Sector-62, Noida (U.P.), PIN-

201309, E-Mail: sambit.mishra@icai.org, Phone: 0120-3045994

It would be appreciated if the resume including all details regarding qualification, Membership no. of ICAI (if any), Experience, areas of specialisation, contact address, etc. is sent at the earliest, preferably within 31.05.2014.

CCBCAF&SMP, ICAI reserves the right to invite similar proposal from any other Member/Members of ICAI though they may not have offered their expression of interest in this regard. No communications will be entertained from the applicant Member/Members in this regard. Only selected applicant Member/Members will be individually communicated. CCBCAF&SMP, ICAI reserves the right to reject the Expression of Interest received from the applicant Member/Members of ICAI without assigning any reason therefore.

Chairman
Committee for Capacity Building of CA Firms and Small & Medium Practitioners(CCBCAF&SMP), ICAI
E-mail: chairman.ccbcaf@icai.org

Invitation for Authoring Publications

Invitation for Expression of Interest for Authoring Publications relevant to the Members in Practice of ICAI

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) is meant to encourage and enhance close links between the Institute and the Chartered Accountants in Practice, so as to provide for them, a base of reference in terms of knowledge, expertise, skills and assistance in their professional growth, simultaneously pursuing the goal of providing newer opportunities to the practitioners & Firms.

One of the major responsibilities of CCBCAF & SMP is to bring out publications on various topics relevant for the Members in Practice of the Institute of Chartered Accountants of India (ICAI).

The CCBCAF & SMP invites Expression of Interest from members of the Institute and other experts who are interested in developing / preparing basic drafts of the publications on topics relevant to the Members in Practice of ICAI. The intending authors of the CCBCAF & SMP publications are expected to have appropriate level practical experience in the relevant area along with the knowledge of various aspects of profession.

The CCBCAF & SMP publication has to be prepared as self-learning booklets in the form of handbooks with proper mix of theory and practical case studies or any other form for enhancing the knowledgebase of the Practitioners of ICAI.

Apart from getting recognition, among their professional brethren, for their contribution in preparing the background materials, the authors of the accepted publication materials will get:

1. Their names will be acknowledged in the Publications
2. Honorarium and reimbursement of incidental expenses as per the prevailing policy of the Institute. (Which will depend upon the size, time and efforts to be required to prepare such publication materials).

The intending authors are required to send a formal request letter with the following details, to 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, First Floor, Administrative Block, ICAI Bhawan, A-29, Sector-62, Noida(U.P.)-201309. Sending proposals by email at sambit.mishra@icai.org is preferred:

1. Brief profile of the author
2. Specific experience and expertise in the relevant topic for which they offer themselves to write the background materials which will enable the CCBCAF&SMP secretariat for allotting the preparation of material for them
3. Proposed coverage of the Publication
4. Sources of primary and secondary data based on which the Publication material will be written
5. Time frame within which they can submit the publication material.

It may be noted that mere submission of the

ICAI News

Expression of Interest may not lead to the allotment of the particular publication materials to a particular applicant. The Institute reserves the right to request any other expert (though they might not have offered their expression of interest in this regard) to prepare publication materials. No communications will be entertained in this regard. Only selected authors will be individually communicated.

Indicative topics on which CCBCAF & SMP would like to bring out publications are given below:

1. Mentoring Guidelines for Small & Medium Practitioners
2. Evaluating and Improving Performance: A Guide for Small & Medium Practitioners
3. Handbook for the Practice Management
4. E-Business and the Small & Medium Practitioners
5. Handbook for Information Security Governance: Practitioner/CA Firms perspectives
6. Issues & Perspectives of Financial Reporting by Small & Medium Practitioners
7. LLP: Practitioner/CA Firms perspective
8. Export Documentation : A Guideline for Small & Medium Practitioners
9. Professional Opportunities: A Snapshot for Small & Medium Practitioners
10. Other topics relevant to Practitioners/CA Firms

CCBCAF&SMP, ICAI reserves the right to invite similar proposal from any other Member/ Members of ICAI though they may not have offered their expression of interest in this regard. No communications will be entertained from the applicant Member/Members in this regard. Only selected applicant Member/Members will be individually communicated. CCBCAF&SMP, ICAI reserves the right to reject the Expression of Interest received from the applicant Member/Members of ICAI without assigning any reason therefore.

Chairman
Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP), ICAI.
E-mail: chairman.ccbcaf@icai.org

Extension of time to complete GMCS-I Course

Sub: Extension of time to complete GMCS-I Course by the students registered for articleship training on or after 1st May, 2012

Important Announcement

It has been decided to grant extension to students, who were registered for practical training on or after 1st May, 2012 and completed one year of their practical training but not completed the GMCS-I course are required to complete GMCS-I Course latest by 30th September, 2014.

The above students are advised to register at the portal www.icaionlineregistration.org or contact the nearest Regional Council/Branch for registration in GMCS-I Course and complete the same at the earliest but not later than 30th September, 2014.

Chairman,
Board of Studies

Guidelines for Authors

Refer to Guidelines for Authors before You Send an Article to Us!

Before you submit your articles to the Editorial Board of The Institute of Chartered Accountants of India for publication in the journal *The Chartered Accountant*, you are requested to read the Author Guidelines available at http://www.icai.org/post.html?post_id=2556.

This document contains information on the kind of articles that are accepted for publication in our Journal. It also explains our requirements such as formatting, word-limit, references, enclosures that should be sent with the article, etc.

Kindly do check the Guidelines to make our editorial process streamlined and efficient.

-Editor

Commencement of 7th Batch of Certificate Course on

Master* in Business Finance (MBF)

In Delhi, Mumbai and Ahmadabad from May 2014 (Registrations Open)

About the Course

The Committee on Management Accounting (CMA) of ICAI will conduct 7th 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 1 - Financial Management and Advanced Financial Analysis

Paper 2 - Capital Structuring, Fund Raising and Investment Management

LEVEL II

Paper 3 - Capital and Financial Markets Management

Paper 4 - Forex, Treasury and Risk Management

LEVEL III

Paper 5 - Valuations, Merger & Acquisitions, and Restructure

Paper 6 - 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 7:30 pm) and Sundays (9 am to 2 pm).

There will be two (one week each) residential programmes as part of Course.

Professional Credit

100 CPE hours credit in completion of course

Two Full Time Residential Programme of One Week Each

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, Hyderabad is Rs. 20,000 (Rs. Twenty thousand only) which includes cost of stay, food etc. Residential programmes are mandatory to attend.

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 favour of "The Secretary, ICAI" payable at Delhi. Course fee can also be paid online through ICAI Payment Portal.

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

Registration Form Submission

The Registration form with course fee has to be sent to :

The Secretary,
Committee on Management Accounting (CMA)
ICAI Bhawan, Administrative Block, 3rd Floor,
A-29, Sector - 62
Noida (U.P) - 201 309
E-mail: cma@icai.in

Course Details :

Prospectus, Registration Form available in website :
www.icai.org/ post.html?post_id=4092

Contact :

CMA Office : cma@icai.in Ph: 0120-3045905

Secretary, CMA: akagrawal@icai.in
Ph 9350572094

Chairman,
Committee on Management Accounting :

Committee on Management Accounting
The Institute of Chartered Accountants of India

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

New Branch: Anantapur

(TO BE PUBLISHED IN PART 111, SECTION 4 OF THE GAZETTE OF INDIA)
N O T I F I C A T I O N
(Chartered Accountants)

No.1 -CA(7)/(165)2014 Date: 04.04.2014

In pursuance of Regulation 159(1A) of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify the setting up of a branch of Southern India Regional Council at Anantapur covering the jurisdiction of Anantapur District in Andhra Pradesh with effect from 22nd March, 2014.

The Branch shall be known as Anantapur Branch of the Southern India Regional Council.

The jurisdiction of the Branch shall include all the places within Anantapur District.

As prescribed under Regulation 159(3), the Branch shall function subject to the control, supervision and directions of the Council through the Southern India Regional Council and shall carry out such directions as may, from time to time, be issued by the Council.

(T. Karthikeyan)
Secretary

New Branches of SICASA: Karimnagar, Ongole and Warangal

Announcement
The Institute of Chartered Accountants of India,
New Delhi-110 002

Date: 04.04.2014

In pursuance of Regulation 81(5) of the Chartered Accountants Regulations, 1988, read with Rule 4 of the Chartered Accountants Students' Association Rules, the Council of the Institute of Chartered Accountants of India is pleased to announce the setting up of Branches of Southern India Chartered Accountants Students' Association at Karimnagar, Ongole and Warangal with effect from March 25th 2014.

The Branches shall be known as Karimnagar Branch of SICASA, Ongole Branch of SICASA and Warangal Branch of SICASA.

As prescribed under Rule 4(b) of the Chartered Accountants Students' Association Rules, the Branches shall, at all time function subject to the control, supervision and direction of the Central Council, exercised through the Regional Council or the Regional Students' Association and shall be governed by the directions issued by the Central Council from time to time, for the functioning of the Branches of Students' Association or such other directions that may be issued from time to time.

(T. Karthikeyan)
Secretary

CA Journal: Online Payment Facility

Online Payment Facility for The Chartered Accountant Journal

In line with our concerted efforts to harness technology for added convenience, comfort and services to our members, we have operationalised the ***Online Payment*** facility for *The Chartered Accountant journal*, which will benefit the readers across the Globe.

The online payment facility is now available on the ICAI website (Online Payment tab under e-Services) for different categories of readers. Those with web links are as under:

1. Members Abroad
   - Airmail Surcharge Fee - http://www.icai.org/ccm.html?progid=417
2. Students (ICAI) subscribers

- o For One Year - http://www.icai.org/ccm.html?progid=399
- o For 3.5 Years - http://www.icai.org/ccm.html?progid=400
- o Student abroad for One Year - http://www.icai.org/ccm.html?progid=407
- o Student abroad for 3.5 Years - http://www.icai.org/ccm.html?progid=406

3. Other Subscribers

- o Non-Members Abroad (For Three Years) - http://www.icai.org/ccm.html?progid=416
- o Non-Members Abroad (For Two Years) - http://www.icai.org/ccm.html?progid=415
- o Non-Members Abroad (For One Year) - http://www.icai.org/ccm.html?progid=403
- o Non-Members (For Three Years) - http://www.icai.org/ccm.html?progid=411
- o Non-Members (For Two Years) - http://www.icai.org/ccm.html?progid=410
- o Non-Members (For One Year) - http://www.icai.org/ccm.html?progid=402
- o Students/Faculty other than ICAI Abroad (For Three Years) - http://www.icai.org/ccm.html?progid=414
- o Students/Faculty other than ICAI Abroad (For Two Years) - http://www.icai.org/ccm.html?progid=413
- o Students/Faculty other than ICAI Abroad (For One Year) - http://www.icai.org/ccm.html?progid=412
- o Students/Faculty other than ICAI (For Three Years) - http://www.icai.org/ccm.html?progid=409
- o Students/Faculty other than ICAI (for two year) - http://www.icai.org/ccm.html?progid=408
- o Students/Faculty other than ICAI (For One Year) - http://www.icai.org/ccm.html?progid=401

We are sure that this much desired online payment facility for the journal will prove to be immensely beneficial and convenient for its readers and other stakeholders.

-Editor

Overseas Members/Subscribers for Journal Subscription

As per a change in policy, the Postal Department of Government of India is not receiving *The Chartered Accountant* Journals for posting through Seamail. Hence the Journals are being sent through Airmail only.

In view of the above situation it has been decided to discontinue the Seamail category of sending the journals to the foreign members/subscribers henceforth. As such, all the overseas Members/Subscribers of the Journal are being sent journal by Airmail only. Thus, all such members/subscribers are requested to pay ₹2,100/- (for One Year) as Airmail surcharge for posting of the Journal.

-Editor

Overseas Members who have Paid/Opted for sending of Journal through Seamail

As per a change in policy, the Postal Department of Government of India is not receiving *The Chartered Accountant* Journals for posting through Seamail. Hence the Journals are being sent through Airmail only. The airmail surcharge is ₹2,100/- for one year.

In view of the above situation it has been decided to discontinue the Seamail category of sending the journals to the foreign members/subscribers henceforth. As such, the Overseas Members/Subscribers, who had paid/opted for Seamail category, are requested to pay the difference amount of ₹1,000/- for sending the journals through Airmail to them.

-Editor

Empanelment as a Resource Person

ANNOUNCEMENT
COMMITTEE ON PUBLIC FINANCE AND GOVERNMENT ACCOUNTING

INVITATION FOR EMPANELMENT AS A RESOURCE PERSON & FOR CONTRIBUTION OF ARTICLES ON THE TOPICS OF PUBLIC FINANCE & GOVERNMENT ACCOUNTING

Committee on Public Finance & Government Accounting of The Institute of Chartered Accountants of India has been constituted to extend professional excellence of Chartered Accountants in the area of Public Finance and Government Accounting. The Committee is focusing not only in the areas of financial reporting, accounting and auditing but is also laying emphasis on issues of Public Finance and Government Accounting and is thus striving to create resources/outcomes of utility to society at large. The Committee assist in developing robust mechanism for channelising adequate resources to ensure appropriate sectoral allocation for inclusive growth and economic development. It strives to provide awareness about the benefits and necessity of accounting reforms in Government sector.

The Committee invites experts, researchers and writers to contribute articles (ranging from 1500-2000 words) on different areas of Public Finance and Government Accounting for hosting at its web-portal and publication in various publications of the Committee.

Authors may only submit original work that has not been appeared elsewhere in any publication. A formal signed undertaking in the form of a letter stating that "the article is original and does not infringe any copyright and has not been published elsewhere or has not been sent for publication" should be sent along with the article. The articles may be sent to us in the form of soft copy through mail/CD or in printed format through post giving details of the subject matter.

Those interested to act as a Resource Person are requested to send their resume at the following address. It would be appreciated if the resume including all details regarding qualification, membership no. of ICAI (if any), experience, areas of specialisation, contact address etc. is sent at the earliest, preferably within 15 days.

The Chairman
Committee on Public Finance and Government Accounting
The Institute of Chartered Accountants of India
'ICAI Bhawan', 3rd Floor, A-29, Sector-62,
Noida- 201 309
Phone: 0120-3045950/968(O)
Email: cpf_ga@icai.in

Classifieds

5107 Jamshedpur (Jharkhand) based CA firm, is looking for work on assignment, partnership basis. Jaluka & Associates, jalukaandassociates@gmail.com, 9709138711, 8406000707.

5108 Mumbai based CA firm established in 1986 invites proposal for branches all over India. Contact 8452895452/9324377003 or e-mail: smosantosh@rediffmail.com

5109 Mumbai based CA Firm having 10 years of experience willing to undertake professional work on assignment/sub-contract/partnership basis in Mumbai and Navi-Mumbai location. Kindly Contact us on: 022-41271751, 9322949820, e-mail: anurag.jain18@gmail.com

5110 Chartered Accountant firm with 16 years of experience willing to undertake professional work on assignment/sub-contract/retainer-ship basis from all over India. e-mail: cafirmtax@gmail.com

5111 Mumbai based newly established CA firm (Proprietor) wishes to undertake professional work on sharing/assignment basis. Contact: caviraj23@gmail.com

5112 CA based in Kolkata 33 year experience in corporate finance, capital market, independent Director of reputed company, now working as CFO needs change in company or in a CA firm, ranmajumdar@yahoo.co.in

5113 Amritsar (Punjab) based CA firm seeks professional work on assingment/sub-contract basis. nrdnconsultants@gmail.com, Mobile: 7696922109

5114 Chennai based Chartered Accountant with 33 years of Industrial Experience and held positions as CFO and CEO looking for partnership assignment. Few years worked in overseas and headed the business. Please contact: nachimn@gmail.com. Mobile No: +91 97915 79480.

ICAI – LIC Group Term Insurance Scheme

Chartered Accountants Benevolent Fund (CABF) of ICAI is facilitating ICAI – LIC Group Insurance Scheme for Chartered Accountant Members and their spouse.

Members are invited to join the Scheme (optional for spouse)

The Scheme is effective w.e.f. 01.01.2007 and it is open for all continuing members of ICAI.

The salient features of the scheme:

- Highly competitive rate of premium for Insurance.
- A single premium payment against 3 yrs of Life Insurance coverage.
- Rate of premium is varying to the mentioned age group.
- Members aged between 21 years to 60 years are eligible to join the Scheme.
- Spouse aged between 18 years to 60 years may join the scheme.
- However, applicant should be healthy and disease free while joining the scheme. No Health or Medical Underwriting is required at joining of the scheme.
- Life Insurance Coverage of Rs. 10 Lacs for member of ICAI.
- Life Insurance Coverage of Rs. 5 Lacs for spouse.
- Insurance Scheme covers accidental death also.
- Insurance Coverage doubles in case of accidental death of member/ spouse.
- 24 hours Global Death risk coverage without any pre – conditions.
- Settlement of claims through ICAI.
- Scheme is renewable on option after 3 years on completion of due period.

S. No.	Particulars	Terms	
1.	Age at entry	18-60 years (on last birthday)	
2.	Validity period of Life Cover	Three years	
3.	Type of Cover	24 hours Comprehensive Global risk cover for the period of insurance from date of commencement which also includes death due to accident.	
4.	Sum Assured	Rs. 10 Lacs	
5.	Mode of Premium	Single Premium payable for Three years.	
6.	Single premium to be paid in case of Members for the sum assured of Rs. 10 lacs for a term of 3 years.	**Age [Completed Years]**	**Total Amount Rs.**
		18-30	4390
		31-35	4700
		36-40	6240
		41-45	7890
		46-50	11810
		51-55	19880
		56-60	29160
7.	Single premium to be paid in case of spouse for the sum assured of Rs. 5 lacs for a term of 3 years.	18-30	2195
		31-35	2350
		36-40	3120
		41-45	3945
		46-50	5905
		51-55	9940
		56-60	14580

Application form along with DD of requisite amount of premium drawn in favour of "CABF Insurance Scheme" be sent to;
The Institute of Chartered Accountants of India, ICAI BHAWAN
A-29, Sector 62, Noida-201309

Special conditions:

1. The assurances granted under the scheme are subject to a lien clause. No claim is admissible for death during the first 45days from the entry date, except for cases of death due to accident. **However, in case of a Normal Death, taking place during the Lien Period, PREMIUM charged on the life of the deceased Member shall be refunded in full**.
2. Scheme is administered by P&GS, Delhi Division of LIC.
3. The period of 3 years of coverage starts from the date of insurance coverage given to member.
4. Coverage starts for 3 years with lien period of 45 days from the date of insurance coverage date.
5. Entry to the Scheme is valid duly on confirmation by LIC / ICAI.
6. The decision of LIC will be final in all cases of Insurance Coverage and ICAI will not bear any responsibility for the same.
7. Any clarification with regard to the scheme may be had from LIC;
   Sr. Branch Manager
   LIC of India
   P&GS Department, Delhi Divisional Office – I, 6th Floor, Jeevan Prakash"
   25 K. G. Marg, New Delhi – 110 001.

Note: This is a Group Term Insurance Scheme facilitated by CABF of ICAI jointly with LIC and recommendatory only. No Individual Policy is issued to the applicant. Coverage of Insurance Scheme is solely subjected to acceptance by LIC. CABF of ICAI is just a facilitator. The processing of Insurance Policy may take substantial time, hence applicants is advise to wait atleast a month for its confirmation. Acknowledgments to the receiptof premium is issued after realisation of premium amount.

JOIN CA GROUP PROTECTION SCHEME – INSURE FOR LIFE

Forthcoming Events[1]

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
1.	One Day Seminar on Standards on Auditing	17th May 2014	Siliguri	6
Topics	1. New Audit Reporting Standards – SA 700, SA 705, SA 706 & SA 720. 2. Risk Assessments and Fraud Risk Considerations for Auditors – SA 315 & SA 240. 3. Audit Documentation – SA 230. 4. Revised Schedule VI – Considerations for Auditors.			
Fees	₹300/- per participant			
Contact Person	**Seminar Chairman:** CA. Abhijit Bandyopadhyay, Chairman, Auditing and Assurance Standards Board **Seminar Director:** CA. Sanjay Goyal, Chairman, Siliguri Branch of EIRC of ICAI **For Registration and Information contact:** • Siliguri Branch of EIRC of ICAI, Phone: 0353-2560445, E-mail: siliguri@icai.org • Secretariat, Auditing and Assurance Standards Board, Phone: 0120-3045920, E-mail: aasbsecretariat@icai.in			
2.	National Seminar on "Multi State Co-operative Societies"	24th May, 2014	Mumbai	6
Topics	**Topic 1:** Role of Multi State Co-operative Societies in economic growth **Topic 2:** Formation of Multi State Co-operative Societies and drafting by laws **Topic 3:** Issues related to Accounting and Auditing in Multi State Co-operative Societies **Topic 4:** Taxation (Income Tax, Service Tax and VAT, etc.) in Multi State Co-operative Societies			
Fees	₹1500/- per member			
Contact Person	CA. Ashish Tiwari, Secretary, Committee for Co-Operatives and NPO Sectors, ICAI, Phone: (0120) 3045996, E-mail: cconpo@icai.in			
3.	Residential Refresher Course	23rd-25th May, 2014	Green Berg Holiday Resorts, Nadukani, Idukki, Kerala	12
Topics	• An Overview of IFRS • Companies Act, 2013 with Emphasis on Accounts and Audit • Companies Act, 2013 - New Concepts, Incorporation and Meetings • Service tax - Discussion on Negative list and Mega Exemptions • Domestic Transfer Pricing • Capacity Building Measures for Practitioners & CA Firms			
Fees	Residential (Including accommodation, breakfast, lunch, dinner, all other entertainments and course material) • For Members ⇒ Per Participant – (on twin sharing basis) ₹8,000/- ⇒ For Alleppey ARS Members (twin sharing basis) ₹7,500/- ⇒ Per Participant – (single occupancy) ₹12,000/- ⇒ Accompanying person: - or Spouse (including child below age 5 years): ₹7,500/- - Per Child age 5-12 years (Without extra bed) ₹3,000/- - Per Child age 5-12 years (With extra bed) ₹3,600/- - Per Child age 13-18 years (With extra bed) ₹6,000/- • For non Members ⇒ ₹8,500 (on twin sharing basis) • For Non Resident ⇒ Members ₹4,000/- ⇒ Members (ARS Alleppey) ₹3,500/- ⇒ Non Members ₹4,500/- (fee for including lunch and dinner)			
Contact Person	Programme Chairman: CA. Anuj Goyal, Chairman, CCBCAF&SMP, ICAI and CMA, ICAI, E-mail: anujgoyal@icai.org Programme Director: CA. Babu Abraham Kallivayalil, Central Council Member, ICAI, E-mail: babucentralcouncil@gmail.com For Registration & Information: • CA. Bijumon Antony, Chairman, Alleppey Branch of SIRC of ICAI, Mobile: 09847887042, E-mail: alleppey@icai.org, bijumon72@yahoo.co.in • Dr. Sambit Kumar Mishra, Secretary, CCBCAF&SMP, ICAI, Phone: 0120-3045994			

[1] For more details about the forthcoming events please refer the detailed announcements hosted on the ICAI website www.icai.org

Events

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
4.	Certificate Course on Indirect Taxes	17^{th} May, 2014 to 22^{nd} June, 2014 (Every Saturday and Sunday) Time: 9.30 am to 5.30 pm	Jaipur	70 Hours (50 Structured and 20 Unstructured)
Topics	• Service Tax • Introduction to Central Excise Law • Introduction to Customs Law • CST/ VAT Laws • Foreign Trade Policy/GST • Case Law • Practical case Studies			
Fees	₹15,000/-			
Contact Person	**For Registration visit:** http://www.icai.org/post.html?post_id=7382 **For Information contact:** • CA. Shailendra Agarwal, Phone: 9314412945 • Secretariat, Indirect Taxes Committee, Phone: 0120-3045954, 9350799932, E-mail: ccidt@icai.in			
5.	Certificate Course on Indirect Taxes	28^{th} June, 2014 to 3^{rd} August, 2014 (Every Saturday and Sunday) Time: 9.30 am to 5.30 pm	Gurgaon	70 Hours (50 Structured and 20 Unstructured)
Topics	• Service Tax • Introduction to Central Excise Law • Introduction to Customs Law • CST/ VAT Laws • Foreign Trade Policy/GST • Case Law • Practical case Studies			
Fees	₹15,000/-			
Contact Person	**For Registration visit:** http://www.icai.org/post.html?post_id=7382 **For Information contact:** • CA. Rajiv Dagar, Phone: 9818280137 • Secretariat, Indirect Taxes Committee, Phone: 0120-3045954, 9350799932, E-mail: ccidt@icai.in			
6.	Certificate Course on Indirect Taxes	2^{nd} May, 2014 to 25^{th} May, 2014 (Every Friday, Saturday and Sunday) Time: 9.30 am to 5.30 pm	Jalandhar	70 Hours (50 Structured and 20 Unstructured)
Topics	• Service Tax • Introduction to Central Excise Law • Introduction to Customs Law • CST/ VAT Laws • Foreign Trade Policy/GST • Case Law • Practical case Studies			
Fees	₹15,000/-			
Contact Person	**For Registration visit:** http://www.icai.org/post.html?post_id=7382 **For Information contact:** • CA. Puneet Duggal, Phone: 9814532400 • Secretariat, Indirect Taxes Committee, Phone: 0120-3045954, 9350799932, E-mail: ccidt@icai.in			
7.	One Day Progamme on Introduction to Service Tax	2^{nd} May, 2014 Time: 2.00 pm to 8.45 pm	Ludhiana	6
Topics	• Concepts & Opportunities in Service Tax • Definition of 'Service' and Concept of 'Negative List of Services' • Concept of 'Exempted Services' and Declared Services' • Tax liability under Reverse and Joint Charge Mechanism • Procedural Aspects and Compliances under Service Tax • Basic Concepts of Cenvat Credit Rules and Point of Taxation Rules			
Fees	₹400/-			
Contact Person	**For Information contact:** • CA. Rajesh Kumar Jain, Phone:9814026727, E-mail: ludhiana@icai.in • Secretariat, Indirect Taxes Committee, Phone: 0120-3045954, 9350799932, E-mail: ccidt@icai.in			

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
8.	One Day Progamme on Introduction to Service Tax	24th May, 2014 Time: 12 Noon to 6.50 pm	Siliguri	6
Topics	• Point of Taxation and Valuation Rules • Audit under Service Tax & Handling of Litigation • Service Tax liability & VAT on Builders Reverse Charge Mechanism, Exemption & Exclusions			
Fees	₹500/-			
Contact Person	**For Information contact:** • CA. Sanjay Goyal, Phone: 9733091111, E-mail: siliguri@icai.in • Secretariat, Indirect Taxes Committee, Phone: 0120-3045954, 9350799932, E-mail: ccidt@icai.in			
9.	Two Days Progamme on Service Tax Law	24th and 25th May, 2014 Time: 9.30 am to 5.30 pm	Dhanbad	6
Contact Person	**For Information contact:** • CA. Anant Bhartia, Phone: 9431319104, E-mail: dhanbad@icai.in • Secretariat, Indirect Taxes Committee, Phone: 0120-3045954, 9350799932, E-mail: ccidt@icai.in			
10.	Live webcast on Service Tax Valuations Rules	10th May, 2014 Time : 6.00 Pm to 8.00 Pm	-	-
Contact Person	**For Information contact:** • Visit : www.icaitv.com/?cat=68 • Secretariat, Indirect Taxes Committee, Phone: 0120-3045954, 9350799932, E-mail: idtc@icai.in			
11.	Two Days National Conference on Service Tax	21st and 22nd June, 2014 Time: 9.30 am to 5.30 pm	Surat	12
Fees	₹1,750/-			
Contact Person	**For Information contact:** • CA. Hemant Jariwal, Phone: 8401550155, E-mail: surat@icai.org • Conference Director: CA. Jay Chhaira, CCM: Phone: 09825196241 • Secretariat, Indirect Taxes Committee, Phone: 0120-3045954, 9350799932, E-mail: ccidt@icai.in			
12.	Programme on IFRS for Young Members	Saturday, 3rd, 10th, 17th, 24th and 31st May, 2014	Conference Hall, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	15
Topics	• **Introduction and Concepts:** Introduction to IFRS • Conceptual Framework for Financial Reporting • Convergence process with IFRS in India and Indian Accounting Standards (IND-AS) • **Presentation of Financial Statements:** IAS 1, Presentation of Financial Statements • IAS 7, Statement of Cash Flows • IAS 8, Accounting Policies, Changes in Accounting Estimates and Errors • **Recognition and Measurement of Assets:** IAS 2, Inventories • IAS 16, Property, Plant and Equipment • IAS 40, Investment Property, IAS 38, Intangible Assets • IAS 36, Impairment of Assets • **Recognition and Measurement of Liabilities:** IAS 37, Provisions, Contingent Liabilities and Contingent Assets • IAS 12, Income Taxes • IFRS 2, Share-based Payments • **Revenue Recognition:** IAS 11, Construction Contracts • IAS 18, Revenue • **Financial Instruments:** (IAS 39, IAS 32, IFRS 7, IFRS 9) • **Business Combinations and Consolidations:** IFRS 3, IAS 27, IAS 28, IFRS 10, IFRS 11 and IFRS 12 IFRS 1, First-time Adoption of International Financial Reporting Standards			
Fees	₹500/-			
Contact Person	**For Registration, Visit:** https://www.wirc-icai.org/eventDetails.aspx?id=1820 **For Information, Contact:** • CA. Prafulla Chhajed, CCM, Chairman YMEC, Mobile: 9320350007 • CA. Rajkumar S. Adukia, CCM, Chairman, Ind AS (IFRS) Implementation Committee, Mobile: 9820061049/9323061049 • CA. Rohit Kumar, Secretary, YMEC, Phone: 0120-3045945, Mobile: 9650075010, E-mail: ymec@icai.in			

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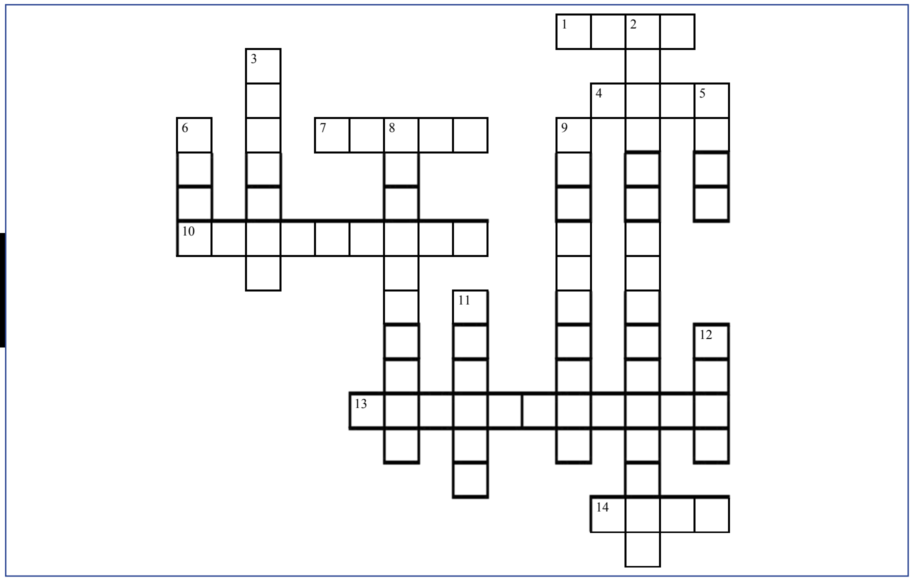
CROSS WORD 095



ACROSS

1. Goal/According to the _____ - ____ model, people with an internal locus of control prefer participative and achievement oriented leadership styles.
4. Recently constituted committee by SEBI for undertaking review of audit qualifications in the auditor's report of listed enterprises.
7. Recently launched a flexi hours job portal for ________ members by ICAI.
10. Qualified Audit Review Committee may direct the entity to restate its __________ results.
13. A leadership style which is not identified in path-goal theory.
14. Canadian university students value ________-oriented instructors for want of clear objectives, as suggested by a research.

DOWN

2. Demonstrating charisma is not an element of ___________ leadership.
3. ___________ leaders expect to serve and help employees.
5. _______, an initiative by CAs for the CAs.
6. ______-leadership is a leadership substitute.
8. Path-goal theory has its roots in which expectancy theory of _________.
9. If Management is doing things right; ___________ is doing the right things.
11. _______-oriented behaviours does not include clarifying work duties and procedures.
12. A recently constituted committee by ICAI for CA curriculum reforms covering all the five regions in this regard.

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.

Q: Why shouldn't you tell an Easter egg a good joke?

A: It might crack up.

SOLUTION CROSSWORD 094