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THE CHARTERED ACCOUNTANT JOURNAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

SET UP BY AN ACT OF PARLIAMENT

- Several ICAI Suggestions Incorporated
- FM Emphasises on Ind AS Implementation

UNION BUDGET

Inclusive and Sustainable Growth

MOVING TOWARDS NEW FRONTIERS

A Progressive Budget for a Vibrant India

Presented against the backdrop of a faltering economy, weak public finances and huge expectations, Finance Minister Shri Arun Jaitley's maiden Union Budget 2014-15 has lived up to the new Government's motto of *'Sab ka sath sab ka vikas'*. It has been able to comprehensively deliver to the large sections of the society and sectors of the economy. Having pressed the accelerator on reforms, it has all that is needed to lift the growth and set the engines of our economy roaring again.

A progressive Budget, it will lead to sustainable, investment-led and inclusive growth with fiscal consolidation. Besides committing on the next generation of tax reforms, stability of tax regime and fiscal prudence, it has also gone an extra mile for the middle class, youth, education, health, agriculture, infrastructure and defence. It is a responsible Budget that will ensure macro-economic stability and a vibrant India. The mandate of getting the fiscal deficit down to 3% of GDP by 2016-17 is in line with Finance Minister's observation that he wants to expand the economy and bring in fiscal consolidation rather than contracting expenditure. The Budget has set out clear expectations in respect of broad policy indicators and rationalisation of tax provisions with the intent of reducing litigation.

For the common man, the Budget announced sanitation for all by 2018 and housing for all by 2022. It extended benefit of investment allowance, increased limit of FDI in insurance and defence. Besides, it has been announced to set up an eBiz platform to create a business and investor friendly eco-system, by making all business and investment related clearances and compliances available on 24X7 single portal to demonstrate that the new Government means business and will deliver with *'minimum Government and maximum Governance.'*

What is especially welcome is the Finance Minister's big bang announcement and emphasis on implementation of Ind AS. *"There is an urgent need to converge current Indian standard with international accounting standards,"* he said in his Budget speech. It has been proposed that the new Indian Accounting Standards (Ind AS) converged with IFRS shall be adopted by India companies from the financial year 2015-16 voluntarily and from the financial year 2016-17 on mandatory basis. ICAI has always been emphasising that there is an urgent need to converge with IFRS, not only to bring the financial reporting practices of Indian corporate at par with the global standards, but also to fulfil India's commitment to G-20 in this regard. Globally, more than 130 countries have so far switched over to IFRS.

What is also welcome is the advance ruling to resident tax payers with respect to income tax liability. Constitution of additional IT benches and enlarging the scope of the Settlement Commission are also far-reaching steps in the right direction.

As a way forward for better taxation regime, the Finance (No.2) Bill, 2014 has proposed various amendments, both in direct and indirect taxes. The Bill has 71 clauses amending various provisions of direct taxes. On the indirect taxes front, 82 amendments have been effected so far after the Budget. These include 35 amendments in the Act and 47 amendments in the Notifications. It is noteworthy that as many as 18 of ICAI suggestions with respect to taxation proposals have been accepted in the Bill.

The Union Budget 2014-15 offers a plethora of opportunities to the Indian accountancy profession, to serve as a veritable partner in nation building. Indian Chartered Accountants symbolise fiscal prudence and financial discipline in India, which is one of the important aims of the Budget. Given their multifarious capacities, the Chartered Accountants can act as facilitator and enabler of economic development. They can be crucial in achieving the broader objectives of the Budget, i.e., inclusive growth combined with stronger and more effective public institutions, delivery mechanisms, good governance and reforms. They can be very effective harbingers of economic growth, which has stayed below 5% for years in a row.

However, it will be worthwhile to watch how the Budget helps counter some formidable challenges of the Indian economy. It is hoped that the Budget helps our economy unleash its full potential and move to a double digit growth trajectory. ■

-Editorial Board ICAI – *Partner in Nation Building*

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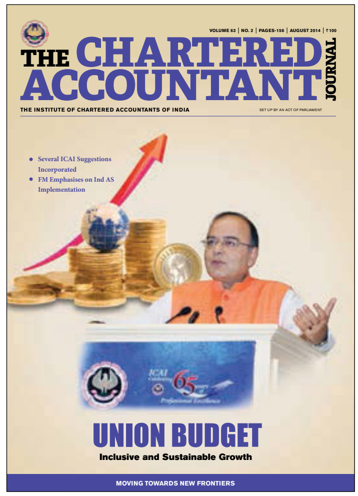

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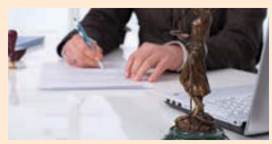


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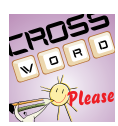

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Smile Please

From the President

CA. K. Raghu, President, ICAI

"As a leader of the Indian accountancy profession, I welcome the Finance Minister's big bang announcement regarding the implementation of Ind AS. *"There is an urgent need to converge current Indian Standards with International Accounting Standards,"* he said. The Finance Minister has proposed that the new Indian Accounting Standards (Ind AS) converged with IFRS shall be adopted by the Indian Companies from the financial year 2015-16 voluntarily and from the financial year 2016-17 on a mandatory basis. The ICAI has always propagated the need to converge with IFRS at the earliest…"

Dear Professionals,

Prime Minister Shri Narendra Modi tweeted on CA Day – ***"I congratulate my CA friends on Chartered Accountants Day and convey my best wishes. They have a crucial role to play in India's progress".*** These words of appreciation by the man at the helm of country's affairs set the tone for this year's CA Day celebrations on 1st July 2014. It was a historic day when our Institute completed 65 years of professional excellence and dedicated service to the nation.

CA Day Celebrations-65 Years of Professional Excellence

It was a momentous occasion of pride for us when Finance Minister Shri Arun Jaitley graced our CA Day celebrations at New Delhi. He showered words of praise on our profession and appreciated our role as a partner in nation-building. *"If there is one profession which is an integral part of the India story and which is consistently growing along with the economy, it is the profession of Chartered Accountants."* Shri Arun Jaitley said: *"My admiration for the Institute in comparison to several other professional bodies is because the ICAI makes intense and concentrated efforts to make sure that the Chartered Accountants training and education continues as an ongoing phenomenon."* The words of encouragement and recognition by the President of International Federation of Accountants Mr. Warren Allen further boosted the spirit of the CA Day celebrations.

We exemplarily showcased our profession's 65 years of excellence in the presence of a distinguished gathering of over 2000 at Vigyan Bhawan in New Delhi. I am happy to note that our members across the country joined hands to celebrate the CA Day by participating in a series of programmes and events like Tree Plantations, Distribution of Literacy Kits and Blood Donation camps. These activities demonstrated our commitment to society on this special occasion.

As endorsed by our Finance Minister, our profession is an integral part of India's success story. Over the last 65 years, our profession's persistent pursuit of perfection, integrity, skills and knowledge has effectively fulfilled our founding fathers' vision behind establishing the ICAI in 1949. This triumph of our profession called for a grand celebration, and the CA Day on 1st July 2014 offered us a perfect opportunity to do so. I am happy to say that the entire CA fraternity rose to the occasion with members and students across the 147 branches joining hands to rejoice and renew their resolution to provide enlightened value-added services to the society.

Cloud Campus Launched for Students

Leveraging technology to the maximum benefit of our profession is high on my agenda. We took a big leap in that direction as we launched the Cloud Campus – a new technology initiative for students, on the occasion of CA Day. The Cloud Campus is a revolutionary and futuristic next generation interactive learning management system for CA students. It is a virtual campus where e-learning courses, audio lectures, video lectures, webcasts, online mentoring, articleship training resources, etc. would be provided to the students free of cost. This initiative would herald a knowledge revolution by providing online resources to the students to prepare for the CA course. I am sure this initiative will prove to be immensely useful to our future Chartered Accountants.

Publications Online Store Takes Off

To facilitate members spread across the country to order publications online, we recently launched a Publications Online store. This new e-initiative would enable members and students to purchase all our publications online. I request you to take benefit of this capacity building initiative.

Digital Library — (24x7) Knowledge Initiative

Effective knowledge dissemination for a well-informed profession is one of my high priorities. To facilitate a large section of our members in remote areas to access the online ICAI library, we have launched a 'Digital Library' on CA Day. This important technology initiative will provide access to all our e-resources (24x7) at the comfort of your home or office. The digital library provides an access to ICAI Knowledge Gateway, ICAI publications, circulars and FAQs, etc. I request you to make use of this facility in your quest for knowledge.

Union Budget 2014-15: Progressive and Growth Oriented

The Union Budget 2014-15 paves the way for a strong and vibrant economy. I am confident that this progressive and growth oriented budget would facilitate the emergence of a resurgent India.

Progressive Budget: This year's Budget is quite progressive and will spur investment-led sustainable and inclusive growth. This Budget has made commitment for the next generation of tax reforms, stability of tax regime and fiscal consolidation. The announcement regarding retrospective amendments would facilitate a healthy investment climate in India. We also welcome the advance ruling to resident tax payers with respect to income tax liability besides constitution of additional IT benches and enlarging the scope of the Settlement Commission.

The Budget aims at achieving fiscal prudence and we as Chartered accountants, with multi-dimensional capabilities, can act as a catalyst for economic development. We can facilitate inclusive growth, good governance and reforms and can help the Government in achieving the broader objectives of the Union Budget.

Ind AS Implementation: As a leader of the Indian accountancy profession, I welcome the Finance Minister's big bang announcement regarding the implementation of Ind AS. *"There is an urgent need to converge current Indian Standards with International Accounting Standards,"* he said. The Finance Minister has proposed that the new Indian Accounting Standards (Ind AS) converged with IFRS shall be adopted by the Indian Companies from the financial year 2015-16 voluntarily and from the financial year 2016-17 on a mandatory basis.

The ICAI has always propagated the need to converge with IFRS at the earliest, to bring the financial reporting practices of the Indian corporates at par with the global standards.

From the President

This would also enable India to fulfill its G-20 commitments in this regard since globally more than 130 countries have switched over to IFRS in the preparation of financial statements. In this regard, I am delighted to state that ICAI is ready with the updated Ind AS corresponding to IFRS as of this date.

We are committed to work closely with Ministry of Corporate Affairs to ensure effective and smooth implementation of Ind AS in India, which will usher in a new era of accounting reforms in the country.

It's time for us to sit up and take stock of the consequent new changes and challenges pertaining to our profession and move on with professional panache for which we are known. Let us update ourselves with the latest developments taking place in the profession and continue our journey confidently, ethically and altruistically.

Our Contribution to Union Budget 2014-15

We have also played a role in shaping this Budget through our Pre-Budget Memorandum submitted to the Government. This Memorandum comprised our suggestions based on the concerns of membership on one hand and society on the other. I am extremely happy to share with you that this year all our significant suggestions regarding Direct, Indirect and International taxes were considered and several of them were incorporated in the Finance (No.2) Bill, 2014. To take this nationally important exercise forward, we have also submitted a Post-Budget Memorandum to the Government.

Join Hands with us for the Betterment of the Indian Economy

Proactively playing our role as a partner in nation-building, we have constituted a "Study Group on Indian Economy." The Group aims to study the qualitative assessment of the macro-economic developmental indicators inter-alia pertaining to trade, globalisation, monetary management, fiscal prudence and financial reforms as a tool to development, and recommend effective measures to the Government. It will put focus on empathisation of key governmental initiatives in sustaining economic momentum and leveraging ICAI's contribution to the core work programme in the said area. The Group will also contribute in the area of Economic Advocacy to position ICAI as a valued partner to existing knowledge depository besides working for other related objectives. In this regard, I invite you to join hands with us in this important exercise, by providing your valuable inputs on the Indian economy in line with the goals of the Group.

Embracing Social Media to Empower Profession

India's digital landscape is evolving fast. Our country has 243.2 million Internet users and 106 million active social media users, says a latest report. And a very big section of these social media users are the members of India's emerging knowledge society, including we Chartered Accountants. These professionals are not using the social media just to connect and network, but are also using it to generate ideas, map the trends and evolve strategies for organisational and competitive advantage. I feel that we at ICAI cannot afford to lag behind in reaping the immense benefits of social media, which has a big potential to serve our professional fraternity. With this perception and vision, ICAI has recently embraced social media platforms.

I am happy to inform you that at the moment, our links to *Facebook, Twitter, YouTube and Google+*, are available on the ICAI website for all of you. We have decided to use them to establish our credibility, trust and identity primarily by sharing our views and perspectives with our stakeholders. We may also engage some thought leaders to interact with our online community, which can emerge as an exclusive facilitating force in the coming days. Let's use these social media platforms to unite around common passions, inspire excellence and expand our professional horizons.

However, on a note of caution, I request users to follow proper netiquette while using these platforms for the good of all netizens. In this regard, you may refer to the 10 social media commandments as spelt out by the Ministry of Information & Broadcasting.

Visit of IFAC Delegation to India

In my earnest endeavour to position Indian accountancy profession on the global map, I have been taking far-reaching steps to engage leaders of the global accountancy profession. In line with that objective, we recently had wide-ranging discussions with a top-notch delegation of International Federation of Accountants (IFAC) that visited India recently. The delegation comprised IFAC President Mr. Warren Allen and Director - Quality & Member Relations Ms. Sylvia Tsen.

Meetings at ICAI: I shared with them the recent initiatives of ICAI and the role played by the ICAI in enabling institutional reforms and capacity building in financial management system at all levels of governance, so as to ensure high quality of accounting and financial reporting. We also organised an interactive session of the IFAC delegation with the officials of ICAI to have a better understanding on how ICAI has been playing its role in the development of the accountancy profession in India and globally through its 23 overseas chapters. Mr. Allen also delivered a special address to our students and also addressed our members at the 65^{th} CA Day Celebrations on the topic *"Accountancy Profession: Embracing Change and Driving Growth".*

Meeting with Regulators: IFAC delegation also had meetings with the Secretary, Ministry of Corporate Affairs Mr. Naved Masood, Deputy Comptroller and Auditor General of India & Chairman-Audit Board Dr. P. Mukherjee, and Controller General of Accounts (CGA) of India Mr. Jawahar Thakur. The objective of these meetings was to have a better coordination and understanding on the desired fusion of global and Indian perspectives with respect to accountancy profession. The IFAC delegation appreciated the steps being taken by the Indian regulators along with ICAI for transformation from Cash-based accounting system to Accrual-based accounting system.

Moving Ahead to Reform CA Education – A New Curriculum

Our students and CA education system is one of my topmost priorities as I believe in sustained and future-oriented growth of our profession. My vision is that accountancy profession and accountancy education need to constantly go hand in hand with academic, technological and economic advancements globally. It is with that aim that we set out for a review of the CA education and training schemes through the recently constituted CRET (Committee on Review of Education and Training). Taking this mission forward, CRET discussed the relevant issues in detail at its meetings in Mumbai, Kolkata, Delhi, Jaipur and Agra recently. In this regard, I also request you to give your feedback through an online questionnaire that has been sent to you. I am sure that this future-oriented drive of the ICAI will go a long way in benchmarking our CA education with the best in the world.

…

Before I conclude, let us give a thought to our Independence Day (15^{th} August) which is approaching. Let us celebrate independence with the desired sense of national pride as well as responsibility. I believe in what Mahatma Gandhi had observed once:

The condition of India is unique. Its strength is immeasurable. We need not, therefore, refer to the history of other countries. I have drawn attention to the fact, that when other civilisations have succumbed, the Indian has survived many a shock.

Let's bow to our great nation and extend our enthusiasm and festive spirit to the Independence Day celebrations as well.

Happy Independence Day to all of you!

Best wishes

K. Raghu

CA. K. Raghu
President, ICAI
New Delhi, July 22, 2014

Photographs

66th CA Day Celebrations

United under ICAI Flag

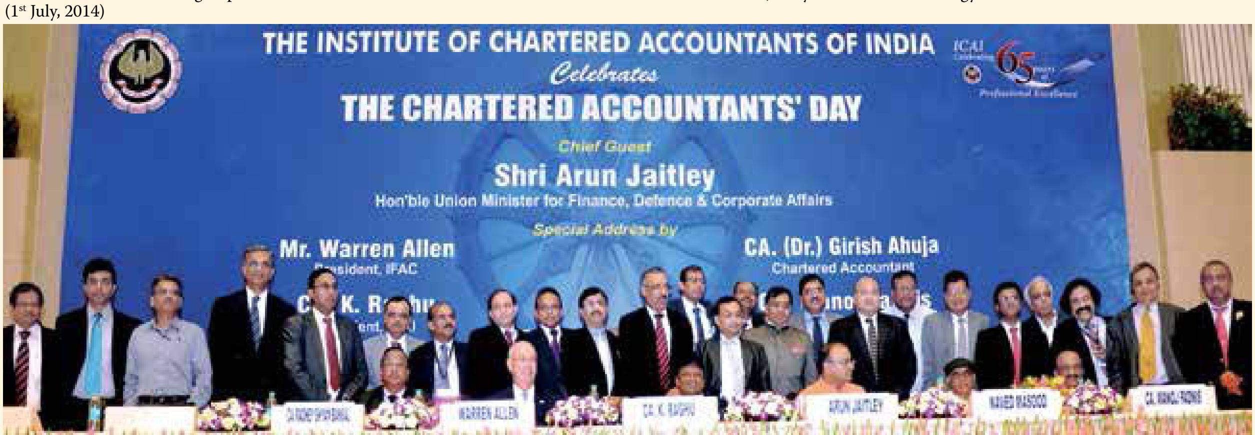
ICAI President CA. K. Raghu along with his better half with the IFAC President Mr. Warren Allen, ICAI Vice-President CA. Manoj Fadnis and ICAI Council members immediately after hoisting the ICAI Flag (1st July, 2014)

Watering the Growth

ICAI President CA. K. Raghu waters the tree, after planting it, at the ICAI headquarters, to celebrate the occasion while IFAC President Mr. Warren Allen and ICAI Vice-President CA. Manoj Fadnis along with ICAI Council members look on; ICAI President's wife can also be seen in the picture (1st July, 2014)

Felicitating Chief Guest Union Finance Minister

ICAI President CA. K. Raghu presents memento to the Chief Guest Union Finance Minister Shri Arun Jaitley at the dais of the Vigyan Bhawan Auditorium in New Delhi (1st July, 2014)



ICAI Council with CA Day Dignitaries

ICAI President and Vice-President CA. K. Raghu and CA. Manoj Fadnis share the dais with Chief Guest Union Finance Minister Shri Arun Jaitley, IFAC President Mr. Warren Allen, MCA Secretary Shri Naved Masood and NIRC Chairman CA. Radhey Shyam Bansal, while the ICAI Council members stand together behind the leaders for a click (1st July, 2014)

Photographs

IFAC Visits ICAI

ICAI Welcomes IFAC President

ICAI President CA. K. Raghu welcomes the IFAC President Mr. Warren Allen with a bouquet of flowers at the ICAI headquarters (30th June, 2014)

Meeting with MCA Secretary

IFAC President Mr. Warren Allen in talks with MCA Secretary Shri Naved Masood, while the ICAI President CA. K. Raghu looks on (30th June, 2014)

Meeting with Controller General of Accounts

ICAI President CA. K. Raghu presents a bouquet to the Controller General of Accounts, Shri Jawahar Thakur, while IFAC President Mr. Warren Allen and ICAI Vice-President CA. Manoj Fadnis, among others, look on (30th June, 2014)

Meeting with Deputy Comptroller and Auditor General of India

ICAI President CA. K. Raghu presents a bouquet to the Deputy Comptroller and Auditor General of India and Audit Board Chairman Dr. P. Mukherjee, while IFAC President Mr. Warren Allen and ICAI Vice-President CA. Manoj Fadnis, among others, look on (30th June, 2014)

Meeting with ICAI Committee & Department Heads

IFAC and ICAI leadership with the Secretaries/Heads of Committees and Departments of ICAI (30th June, 2014)

Photographs

Visit to Singapore Chapter of ICAI

ICAI President CA. K. Raghu along with Indian Ambassador to Singapore Ms. Vijay Thakur Singh, ICAI Vice-President CA. Manoj Fadnis and Chapter Chairman CA. S. V. Padmanabhan, at the Annual Gala Dinner event (7th July, 2014)

NIRC CA Utsav in New Delhi

NIRC Chairman CA. Radhey Shyam Bansal welcomes ICAI President CA. K. Raghu with a bouquet at the Utsav in Talkatora Stadium, while ICAI Council members CA. Anuj Goyal, CA. Vijay Kumar Gupta, CA. Sanjiv Kumar Chaudhary and CA. Naveen N. D. Gupta applaud the moment (28th June, 2014)

CA Day Togetherness at Vishwas Nagar Premises

ICAI President and Vice-President CA. K. Raghu and CA. Manoj Fadnis share the happy moments with NIRC Chairman CA. Radhey Shyam Bansal and other members; ICAI President's wife can also be seen in the picture (1st July, 2014)

Visit to Erode Branch of SIRC

ICAI President CA. K. Raghu addresses the members during his visit to the Branch, while Central Council member CA. Babu Abraham Kallivayalil, Branch Chairman CA. R. Nagarajan and SIRC Chairman CA. P. V. Rajarajeswaran, among others, share the dais (17th May, 2014)

33rd SAFA Board Meeting in Maldives

SAFA President (and ICAI past-President) CA. Subodh Kumar Agrawal along with other Board members at Auditor General's Office of the Republic of Maldives (8th-9th June, 2014)

Photographs

National Conference in Gurgaon Branch of CIRC

ICAI President CA. K. Raghu lights the lamp to inaugurate the Conference on Indirect Taxes, while the ICAI Vice-President CA. Manoj Fadnis, Central Council members CA. Sanjay Agarwal, CA. Sanjiv Kumar Chaudhary and CA. Atul Kumar Gupta, and Branch Chairman CA. Rajiv Dagar, among others, look on (28th June, 2014)

Interactive Meet of Leaders of Profession in Kolkata

ICAI President CA. K. Raghu addresses the leading professionals from industry, while ICAI Vice-President CA. Manoj Fadnis and Central Council members CA. Sumantra Guha, CA. Tarun Jamnadas Ghia and CA. M. Devaraja Reddy, and EIRC Chairman CA. Subhash Chandra Saraf share the dais (17th July, 2014)

National Conference in Surat Branch of WIRC

ICAI President CA. K. Raghu and Central Council Member CA. Jay Chhaira along with Branch Chairman CA. Hemant Jariwala, among others, at the dais during the Conference on Taxation (22nd June, 2014)

Two-Day Karnataka State Level CA Conference

ICAI President CA. K. Raghu lights the lamp to inaugurate the Conference, while SIRC Chairman CA. P. V. Rajarajeswaran and Bangalore Branch Chairman CA. Babu K. and other members celebrate (21st June, 2014)

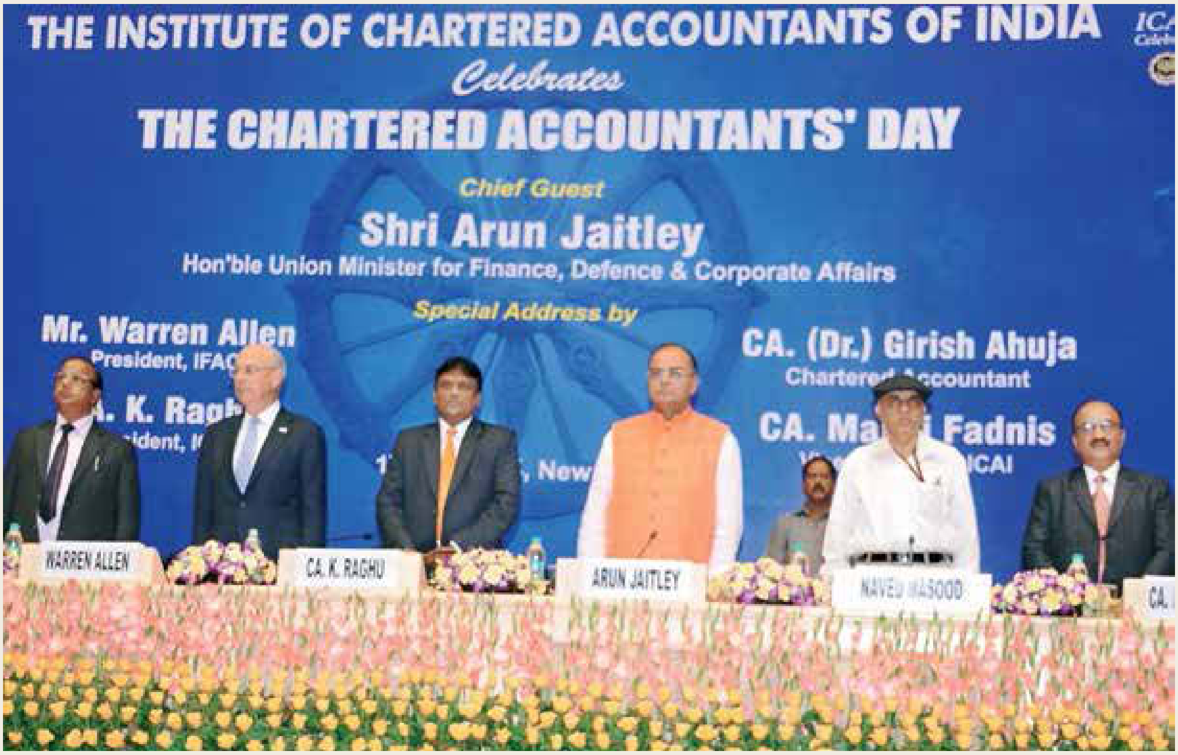
Members Meet at Ujjain Branch of CIRC

ICAI President CA. K. Raghu addresses the members, while ICAI Vice-President CA. Manoj Fadnis and Central Council member CA. Mukesh Kumar Kushwah and Branch Chairman CA. Saurabh Sodani, CIRC past Chairman CA. Vikas Jain, among others share the dais (13th July, 2014)

Visit to Tirupur Branch of SIRC

ICAI President CA. K. Raghu, past-President CA. R. Bupathy and Central Council member CA. Babu Abraham Kallivayalil greeted with bouquets by the SIRC Chairman CA. P. V. Rajarajeswaran, and Branch Chairman CA. N. Sivachalam and other members of the Branch (17th May, 2014)

ICAI Celebrates 65 Years of Professional Excellence on 1st July



The Institute of Chartered Accountants of India (ICAI) has completed 65 years of responsible existence and professional excellence with landmark achievements in accountability, independence and integrity. Since its inception in 1949, the ICAI has grown quite magnanimously along multiple professional tangents. Recently, we celebrated the 66th foundation day of the ICAI with quite an active and massive participation of our members and students at Vigyan Bhawan in New Delhi on 1st July, 2014. Celebrations started with the flag-hoisting ceremony at the ICAI headquarters. At the main function organised at Vigyan Bhawan, the ICAI evaluated its professional growth and reiterated its vows to serve all its stakeholders including its members and students in particular and the nation in general, at an august gathering of more than 2,000 dignitaries including Government officials, past ICAI Presidents and Council members. Union Finance Minister, Shri Arun Jaitley was the Chief Guest on the occasion. Secretary of the Ministry of Corporate Affairs, Shri Naved Masood also accompanied the Union Finance Minister. IFAC (International Federation of Accountants) President, Mr. Warren Allen delivered the special address on the occasion. ICAI President, CA. K. Raghu, in his presidential address, shared the concerns of accountancy profession with the august dignitaries. He also welcomed the audience on the occasion. Vote of thanks was given by the ICAI Vice-President, CA. Manoj Fadnis. Here is a brief report on the celebrations that took place on 1st July, 2014, held to commemorate the 66th Foundation Day of ICAI. Read on...

CA Day Report

At ICAI Headquarters-President's Address

The chartered accountants' flag was hoisted at the ICAI headquarters by the ICAI President in the morning of 1st July, 2014, in the august presence of IFAC President Mr. Warren Allen and many Central Council members; employees of the ICAI, were present.

The main function started at the Plenary Hall of Vigyan Bhawan in New Delhi, with the *welcome address* by ICAI President CA. K. Raghu, who wholeheartedly greeted a 2000-plus strong august audience gathered to celebrate the 66th Foundation Day of The Institute of Chartered Accountants of India. ICAI past-Presidents, present and past Central Council members, office-bearers of Regional Councils, the members and students of ICAI, and the employees of ICAI were also present in the audience.

IFAC President Mr. Warren Allen delivered a special address on Accountancy Profession: Embracing Change and Driving Growth on the occasion describing a comprehensive roles, responsibilities and initiatives of the Federation. He then went on to highlight how the ICAI shared the vision of IFAC and how the ICAI had been acting in the interests of world accountancy profession. He shared with the members the role played by IFAC in global development of accounting profession and the recent initiatives of IFAC for supporting the Accounting profession worldwide, including launching Global Knowledge Gateway, publication of International Good Practice Guidance and creation of resources for SMPs.

IFAC President Mr. Warren Allen discussed the role played by the accountants in the economic development and explained the importance of non-financial reporting in enhancing organisational reporting. He briefed the members about the support extended by the IFAC in providing thought leadership, resources and insight, and enhancing the visibility and voice through PIAB Committee and SMP Committee. He stressed on the need for good governance, transparency and accountability.

IFAC President went on to appreciate the massive presence in the auditorium and congratulated all stakeholders of the Indian accountancy profession on the occasion. He also thanked the ICAI President for inviting

ICAI President Welcomes IFAC President

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him on the occasion and called him a dynamic President.

Following is the special address of the ICAI President CA. K. Raghu:

Lighting the Lamp to Inaugurate

ICAI President CA. K. Raghu Delivers President's Address

"...The Institute of Chartered Accountants of India is the second largest accounting body in the world today. Our profession is one of the most popular professions today with more than 2,25,000 members and 8,40,000 students pursuing the chartered accountancy course. One of the reasons why our profession is very popular today is that there are multiple opportunities for our members in India and abroad. India is a happening economy today and chartered accountants are in great demand, not only in traditional sectors like banking, financial services or manufacturing, but in new-generation sectors like IT, telecom, infrastructure and retail. In the campus interviews organized by the Institute at 17 locations, average pay package for a young chartered accountant is ₹70,000/- per month, which is very encouraging for the young CA professionals. Also a lot of opportunities are available for our chartered accountants abroad. We have more than 25 Chapters around the world and this shows that Indian chartered accountants are in great demand. In countries like Dubai, Abu Dhabi, Singapore, Australia, or, Canada, you will find a whole lot of Indian CAs doing extremely well. We are very happy that this profession is being recognized across the world.

Sir, having said this, another important reason why our profession is popular is that it is an affordable profession. We have thousands of instances of students coming from very simple and humble backgrounds, who are pursuing the CA course. The cost of completing this course is less than ₹25,000. We have many success stories of young students joining the profession, becoming chartered accountants and getting good jobs, and eventually able to transform their lives.

On this happy occasion, Sir, I wish you all the best. You are our new Finance Minister. India, as I said, is doing extremely well. Public at large have a lot of expectations from the new government. As a profession, we sincerely look forward to a resurgent India.

Sir, we would just like to tell you that as a profession we are there to support you completely, in kick-starting the economy. However, I am sure that a lot of concerns, that you would be addressing soon, are taming the inflation, reducing the current account deficit, and attracting more foreign direct investments. I assure you on behalf of the entire accountancy profession in India that we will be there 24x7 to support the new Government in all its initiatives.

Mr. Warren Allen, President of the International Federation of Accountants was here yesterday. We had the opportunity of meeting the CAG and the other regulators, the Ministry of Corporate Affairs. One thing that came to Mr. Warren's mind was that our country, our Government should switch over to the accrual system of accounting. The ICAI has been working on many such pilot studies already. We are working with the Postal Department. We are working with the Ministry of Railways. This has been our sincere desire that all the Government departments eventually switch over to the accrual system of accounting. Even countries like Africa have gone ahead and adopted this accrual system in their respective departments, and I hope that the new Government would take strong measures to ensure that the accrual system of accounting is introduced in all the Government

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departments so that the Government will be able to understand what are the total assets that are being held by the Government. The entire liabilities and everything, it will be able to map under the accrual system of accounting.

Another important thing, Sir, we would request you to make India an investor-friendly country. Today…there are a lot of provisions of the new Companies Act that are quite stringent and it is absolutely essential for us to see that India becomes an investor-friendly country.

The Institute has been carrying out its regulatory responsibilities to perfection. We have a very robust disciplinary mechanism. We have a very strong examination system that is appreciated the world over. We have a very good peer-review system to improve the quality of professional work of our members. We have a Financial Reporting Review Board which reviews the financial statements of top corporations on its own. We have a strong Ethical Standards Board which binds all the members together. We have an excellent professional relationship with all the regulators of our country including Reserve Bank of India, Securities and Exchange Board of India, and Insurance Regulatory Development Authority of India, in addition to the Ministries of Finance and Corporate Affairs.

This year, Sir, we have undertaken many initiatives. One of our big bang initiatives was to set up reading halls across the country. And I am extremely happy to inform you that we have set up 90 reading halls across this country for students to pursue the chartered accountancy course. This is one initiative which we feel would help the students to approach our Institute and prepare. Similarly, we have set up IT labs across the country to provide technology training to our students, so that they are able to accept the challenges that are facing them in this era of technological advancement.

Sir, today, you will be launching our Cloud Campus…next-generation interactive learning system for the CA students' fraternity, and this will have a lot of features including audio lectures, video lectures, e-learning courses, webcasts, online mentoring and e-diary for the entire student community, which will be available online for our students to sit at the comfort of their home and access these online resources of the Institute. I am sure this initiative …first of its kind in India started by any professional institution…will be of immense help to our young students.

We are also working with the Ministry of Corporate Affairs in conducting investors' awareness programmes. Last year, we conducted 1,500 programmes. This year, we have taken a mandate to conduct 2,500 programmes. In the next 100 days, which the Government has drawn up, we have committed to conduct 500 investors' awareness programmes. This is our commitment. We will definitely work very closely with you and see how best we can contribute to all your financial programmes and initiatives.

Chartered Accountants' Benevolent Fund is an initiative…that helps our members in distress. One of our members from Bangalore, Mr. Mohan Das Pai has announced to donate a contribution of ₹1 crore to this Benevolent Fund…

This year, we have undertaken two new initiatives to empower our women members and young members. Today, we have 48,000 women members, and I understand that they face a lot of challenges in their lives. Besides their professional life, they have many a time mandatory commitments at home too. So, we decided that we must encourage our women members not to stay away from the profession in view of their personal commitments at home. We, therefore, launched a flexi-working portal for our women members, which has been a big

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hit with them. More than 1,500 women CAs have registered with the portal. We have also made a request to the corporate sector and CA firms to appoint our women chartered accountants on flexi-basis.

To conclude, Sir, we have a few concerns—

One is about the bank branch audit— our only request, as the audit regulator, is that all bank branches in the country should be subjected to audit…We have made a representation to the RBI in this regard. We also met the RBI Governor, Shri Raghuram Rajan, explaining why there was a need for a very robust audit mechanism in banks. This is one area which we would like to have your serious attention at. We will also submit personally our representation to you.

In the context of new Companies Act, a lot of responsibilities are there on independent directors and audit committees. We feel that adequate safeguards have to be built in this regard. The Ministry of Corporate Affairs has been proactively looking into all such concerns of various stakeholders. On our part, we have been in constant touch with them. They are looking into our concerns with desired sincerity, I must say. What is very important is that corporations must have an ease of doing business in India today. We must realize that they have options today to go to many countries. India is a happening country today. We just need to create the right kind of business environment to attract such ventures from international and foreign business entities and corporations. Cost of compliance in India appears to be very high for new companies today. This is something that needs a serious attention and reflection from the new Government.

Fraud reporting provisions that have been brought into the new Companies Act have posed a lot of challenges to the companies that are coming to India. This needs a relook.

I am sure, under your dynamic and visionary leadership, the Ministry of Finance would look into all our concerns in connection with the new Companies Act.

We, at the Institute, assure you and the new Government about our commitment to the growth agenda of our new Government. We are quite confident that under the dynamic leadership of our Prime Minister Shri Narendra Modi and your stewardship as Union Minister of Finance, we will very soon see a resurgent India. We will commit to ensure good governance, reforms, ease of doing business, financial discipline and economic growth. We are also committed to your vision of simplifying and rationalizing the tax regime in India.

The Indian accountancy profession today on the occasion of the 66th Chartered Accountants Day commits itself to the growth agenda of the Government with a promise to continue to contribute towards a vibrant and strong Indian economy.

Thank you very much.

Then the ICAI President invited the Union Finance Minister to address the stakeholders of the Indian accountancy profession.

While addressing the audience, Union Finance Minister Shri Arun Jaitely admired the Institute for making an intense and concentrated effort to ensure its members a phenomenal and effective training. He appreciated the concerns raised by the ICAI and expressed his willingness to look at each of those legislations on which ICAI had expressed its concerns. He said that the new Government is ready to start from scratch. While showing his dislike for populist measures, the Minister expressed his commitment to bring India back on the path to recovery and growth, and put the same on the race.

ICAI President Presents Bouquet to Union Finance Minister of India

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Chief Guest Union Finance Minister of India Addresses on CA Day

Union Finance Minister Shri Arun Jaitely Delivers Chief Guest's Address

Let me, at the very outset, thank Mr. Raghu for being very kind and gracious in inviting and asking me to come and associate with the 65th Foundation Day of The Institute of Chartered Accountants of India.

Well, the Institute is not new to me. I have, in the past also, been associated with several functions of the Institute. More than a decade ago, almost 12-15 years back, I held the responsibility of the Minister for Company Affairs for some time and I had started associating with the activities of the Institute. My admiration for the Institute in comparison to several other professional bodies was that this is one institute which has an intense and concentrated effort to make sure that the chartered accountants, who are practicing, who may be veteran in their field, their training and education continues as an ongoing phenomenon.

There are two changes which can never be stopped. They can never be slowed down. One is technology and the other is economy. When most of you became chartered accountants, some of the businesses did not exist. Some of the accounting practices did not exist. Some of the avenues for professional activities did not exist. So, traditionally, you had concentrated on the traditional role of a chartered accountant which was a tax planner, someone who interacted with the Revenue Departments, who was involved in auditing. Suddenly, 1991 became an important defining moment for this country. It also became an important defining moment for you. The economy opened up. The economy expanded. With the expansion of the economy, new avenues were created. If there is one profession which is an integral part or almost co-existent and growing along with the growth of the economy, nobody else is more consistent with it than the profession of chartered accountants. Many corporations are today headed by CEOs, who graduated from amongst you.

A chartered accountant is well equipped to be a regulator. A chartered accountant is well equipped to be a business manager. I am now seeing the interesting tendency of many of you becoming businessmen yourself. I think there is nothing wrong in it because these are all the expanding opportunities which the profession offers to you. When I studied in college, since I did study in a college which was specializing in commerce and business activities, I started off with a hidden desire of becoming a chartered accountant. I strayed into other activities and then preferred law. At that time also and, I have said this repeatedly, as of now, the chartered accountant exam was a very difficult one. To become a chartered accountant, you have to pass that exam and that exam was a very difficult one to pass. Law equally was a very difficult exam to fail in. Therefore, I chose a more comfortable option. Not that I regret it myself. I have enjoyed every minute of my activities in that profession itself. But, as I said

that you co-exist with the business life of the country.

We are today passing through very challenging times. In fact, it may not be an exaggeration to say that the past few years, certainly the last 3-4 years, have seen a lot of environment of pessimism. In that environment of pessimism, we found cynicism building in. We found disillusionment building in. Since we thought that India has the potential to be a world leader and suddenly we saw our decision making processes have slowed down, our potential is not being used. In the governance of this country, particularly in the domain of economic policy, we have never used phrases like "policy paralysis" and suddenly they entered our idiom. These phrases do enter our vocabulary when we find a sense of helplessness. It is this sense of helplessness or anger which also results in a kind of determination to beep the train and try and improve for the future. Suddenly, we see that out of all this, a new hope has been raised.

There is a hope now that a time will come when bold decision making will be possible. I do believe that the fact that we have a regime change itself is a powerful indication. It has created a trend where the world has started looking at us once again. India which was falling off the global agenda, an interest in India has suddenly emerged. The responsibility now lies on us to respond to this new opportunity that has come before us. But, this opportunity is not without its own challenges.

Let us be very clear as to where we stand today. The legacy which I have inherited is certainly not the cause to envy to anyone. We have had two years of sub-5% growth. We have had a loss of confidence in the credibility of governance. We have seen tax buoyancies which have gone down. Even though a current account deficit position has somewhat improved in the last few months, that seems to be a silver lining, but the fiscal deficit is the major challenge. So, you have growth which has slowed down, you have a high fiscal deficit, you have a rate of inflation which in comparison to last two years has somewhat come down but still is beyond the acceptable limits.

When I said you have a loss in the credibility in the Indian economy, the fact that the world suspects that we don't have a stable tax regime itself has dissuaded investors. Just as "policy paralysis" was unknown to our governance vocabulary, the other new addition which I have been reading, comments from independent observers including the media, is "tax terrorism". Therefore, this kind of environment can't do what Mr. Raghu just now said – give the impression that you are the best place for doing business. So, it is from here that we start. When we start from here, I can't have a more enlightened audience than this because you are inherently connected with the financial role. You know where the shoe pinches. It is here that the Indian society now whether it is Government, Parliament or political system which has to make a conscious choice and these conscious choices could either be in the direction of an ill-informed debate where I don't want to pay the price but I want the services.

Well, we have to realize that if you want the best services, the users have to pay. If the users don't pay, bankrupt institutions can't provide good services. Therefore, if we need a world class infrastructure, if we get the best possible highway – how did the highways come up? The highways came up on the strengths of the cess that each one of you was paying. So, we need to be clear that where public services are involved, by

ICAI President Presents Memento to MCA Secretary and large, monopolies have to be abhorred. Therefore, to come under pressures of traditional thinking and say departmental monopolies have to be maintained, users will not pay the market price, in such a situation, the services that we will get can't be globally competitive. They can't even be acceptable by normal human standards or normal economic standards. Therefore, one has to plan in that direction. In such a situation that I think India is now for the second time in the recent history, the first was in 1991 and I do believe that we have a choice to make.

In 1991, we did make the correct choice otherwise we would have lived in an era of shortages. When a very large number of you had grown up, we have all seen the era of shortages. Today, in the last 24 odd years, thereafter 23 years, we have tasted the advantages of what started after that and we have seen the relative disadvantages of slowing down on that track. I think we have once again to make a choice. Does India need a certain amount of fiscal discipline at this time? Do we need prudence? Do we need some mindless spending in populism? There is a school of thought in Indian politics that populism fetches votes. The state elections of 2014 and general election of 2014 have proved that it doesn't. Therefore, if you indulge in mindless populism, you burden the exchequer. You expect the Finance Minister to impose higher taxes. You expect him to reduce the spending power in the hands of the consumer. You want him to tax every activity of life. You convert yourself into a high taxation society so that you can indulge in populism where it doesn't work. Therefore, if you have to follow the path of fiscal prudence, have a certain amount of discipline, I am sure you don't have to wait for the next generation to get the benefits of what you do today. Very soon, you will see the benefits of it yourself. But, if you, at a stage of 5% growth, high fiscal deficit, high inflation situation, continue to expect populism, then it may be a one day pat in the back by an ill-informed opinion and perhaps a long-term journey where you walk into a trap and that is a trap which is very difficult then to get out of.

Our challenges are compounded. You have an uncertain monsoon. The impact of Iraq on oil prices adds to the challenges. But, these are not challenges which can't be overcome. You have a huge amount of foodgrains available. So, there is no scarcity of foodgrain. You can effectively be in a position to manage it. I think if we decide to go on that track, you will be back on a path where your growth rates are going to pick up. Obviously, if your growth rates pick up, your taxation picks up, your revenues pick up, you tax buoyancy picks up. Low growth rate means low taxes. Low taxes means you don't even have money for social sector schemes, forget infrastructure. High growth rate means greater tax buoyancy, more jobs, more profit. India must realize that profit is a good word. It is not a bad word. We used to use the word "profiteers" in the context of those who used to hoard.

Therefore, India has got an impression from the 1960s and 70s that this is a bad word but ultimately if there is no likelihood of profit, there would be no investment. I think our doors have to be open because investment–whether within or outside–in sectors where we need investment. Where we need investment depends on whether it will add jobs in that sector or not or will it destroy jobs in that sector or not. Therefore, it will have to be sector specific. But then, investment always will be an additionality of business. If there is no investment, there will be no economic activity. But, to retain that investment and to attract further investment, your infrastructure must be supportive. Your decision making has to be bigger. Your taxation regime has to be reasonable. And, the prospect of profitability has to be there otherwise if you don't give that prospect then there are other competing destinations of that investment which will attract people there. I think it is this approach which has to be accepted.

You did mention certain legislations which have been recently enacted. I do firmly believe that either cumbersome processes or very oppressive legislations also can scare away investment. But, at the same time, those in business must realize that free trade also means fair trade. World over when people betray that principle of fair trade and indulge in frauds, punishments are far harder than the ones in India. Therefore, they act as a deterrent. I am not for a moment suggesting that we go on that track. I am willing to look at each one of those legislations because in the new Government we have the liberty of writing on a fresh slate. But, at the same time, it is a national opportunity for us to thoroughly debate all these areas. Even if tough and at times not so popular decisions come, we will have to realize that it is a case where the country has to be put back on the race. Therefore, the economy of the country which was going on a great track at one stage, if India can grow at 8% and 9% which looks a very daunting proposition today because for two years you have a sub-5% growth. But, if you have to slowly move up again, I think, we all will have to put our heads together and I do hope that in the days to come we are able to make a small beginning in that direction. Since one of your colleagues did mention that India has voted a single party with an absolute majority after 30 years and therefore, there is a relative ease in the decision making in the Government. When I say "ease", I can tell you with a sense of confidence that no Finance Minister has ever succeeded without the support of the Prime Minister. Therefore, that support does come, then decision making becomes easier and the manner in which the present Government has started, I think, one distinct advantage we have is relative ease in decision making. If we are able to kick start the economy back, then hopefully this ease in decision making may result in what Mr. Raghu says the ease of doing business in India. I hope at the end of five years, we will be more happy than we are when we have started this term. Thank you.

CA. (Dr.) Girish Ahuja was then invited to address the stakeholders of accountancy profession on the occasion. CA. Ahuja assured the audience of the bright future ahead, but also asked them to be ready to face challenges: *There is a challenging task. But still, I hope things will improve and will definitely improve. This is a government which will listen, which will listen to The Institute of Chartered Accountants of India.* He assured that the Finance Minister had high regards for the ICAI. He also informed how the Finance Minister had left the meeting with Prime Minister Shri Narenda Modi in between, to come to the ICAI. He then assured the Finance Minister of an effective support from the Indian accountancy profession.

ICAI President welcomes CA (Dr) Girish Ahuja

ICAI Vice-President Delivers Vote of Thanks

The vote of thanks was delivered by the ICAI Vice-President CA. Manoj Fadnis on the occasion. He thanked Union Finance Minister Shri Arun Jaitley, IFAC President Mr. Warren Allen and the MCA Secretary Shri Naved Masood for making it to the occasion. He said: *The CA profession is always there to support the Government in its initiatives and would always be a partner in nation-building.* He thanked the Minister for expressing his faith in the ICAI and its initiatives and for his promise to look into the concerns of the ICAI. He thanked the august audience for its active participation and making the programme a great success.

During the programme, cloud campus, digital library and publication online store were launched, while various publications of the ICAI were also released. ■

ICAI Suggestions Accepted in Direct Tax and Indirect Tax Proposals of Union Budget 2014-15

Continuing to discharge its duty towards the nation, the ICAI had submitted the Pre-Budget Memoranda to the Ministry of Finance comprising its suggestions that were based on the concerns of our membership on the one hand and of our society on the other. This year all of ICAI's significant suggestions were considered while as many as 19 of them were incorporated in the direct tax and indirect tax proposals made in the Finance (No.2) Bill, 2014. The following are the 19 ICAI suggestions accepted...

Suggestions accepted with regard to direct taxes proposals

Sr. No.	Suggestions of ICAI given through Pre-Budget Memorandum (Direct Taxes) or through other representations.	Proposed Provisions of Finance (No.2) Bill, 2014
1.	Revision of tax slabs to increase the basic exemption limit to ₹3 lakh.	Partially accepted by the Finance (No.2) Bill, 2014 which has proposed to enhance the basic exemption limit from ₹2 lakh to ₹2.5 lakh.
2.	Increase in the limit of investment under 80C from ₹1 lakh to ₹1.50 lakh.	Accepted in toto by the Finance (No.2) Bill, 2014 which proposes to enhance the limit of 80C from ₹1 lakh to ₹1.5 lakh.
3.	Insertion of a provision relating to TDS in Chapter XVIIB to cover such payments where the exemption under Section 10(10D) is denied to the recipient of income from insurance companies.	Considered by the Finance (No.2) Bill, 2014 by way of insertion of Section 194DA to provide for deduction of tax at source @ 2% on non-exempt payments made under life insurance policies. However, no deduction is proposed in a case where such payment to payee in a financial year is less than ₹1 lakh.
4.	Increase in deduction in respect of interest on housing loan in case of self-occupied property from ₹1.5 lakh to ₹3 lakh.	Partially accepted by the Finance (No.2) Bill, 2014. The limit is proposed to be enhanced from ₹1.5 lakh to ₹2 lakh.

Sr. No.	Suggestions of ICAI given through Pre-Budget Memorandum (Direct Taxes) or through other representations.	Proposed Provisions of Finance (No.2) Bill, 2014
5.	In order to ensure clarity and certainty as regards the period within which the undertaking under Section 80-IA should be set-up or within which it should start transmission *etc.*, the terminal date may be extended till such time the country has acquired self-sufficiency in the supply of power, *i.e.*, the terminal date may be kept open-ended.	Reasonably considered by the Finance (No.2) Bill, 2014 which has proposed to extend the said terminal date for a period upto 31st March, 2017.
6.	With regard to provisions of Section 32AC, the following suggestions were made in the Post Budget Memorandum, 2013: a) The threshold limit may be fixed at a moderate level of say, ₹10 crore, so as to attract investment in plant and machinery by small and medium enterprises, which are the "drivers" or economic growth. b) The permissible period of investment may be increased to atleast five years for proper planning and execution of medium and large-sized projects.	Reasonably considered by the Finance (No.2) Bill, 2014 which proposes to : a) reduce the limit of investment from Rs.100 crores to ₹25 crore for investments made on or after 01-04-2014. b) extend the date of allowability of deduction with respect to investments made under this Section upto 31-03-2017.
7.	With regard to provisions of Section 115BBD, it was suggested that a longer period of time, say three years should be provided for distribution to shareholders (Post-Budget Memorandum, 2013).	Considered by the Finance (No.2) Bill, 2014, which proposes to extend the benefit of lower rate of tax without limiting it to a particular assessment year.
8.	Since there was no provision in Section 12A of the Act to provide for condonation of delay in applying for registration under Section 12A/12AA, ICAI in its earlier Pre-Budget memorandum had suggested that one-time scheme may be framed or a time slot may be allowed so that such unregistered charitable organisations may obtain registration under Section 12AA/ 12A with condonation of delay.	The suggestion of ICAI to bring the unregistered charitable organisations in the main stream of taxation, has been appropriately dealt by the Finance (No.2) Bill, 2014. The said Bill proposes to amend Section 12A to provide that in case where a trust or institution has been granted registration under Section 12AA, the benefit of Sections 11 and 12 shall be available in respect of any income derived from property held under the trust in any assessment proceeding for an earlier assessment year which is pending before the Assessing Officer as on the date of registration, if the objects and activities of the trust or institution in the relevant earlier assessment year are the same as those on the basis of which such registration has been granted. Further, it has been proposed that no action for re-opening of an assessment under Section 147 shall be made, merely for the reason that such trust or institution in the relevant assessment year has not obtained registration under Section 12AA for the said assessment year.

Sr. No.	Suggestions of ICAI given through Pre-Budget Memorandum (Direct Taxes) or through other representations.	Proposed Provisions of Finance (No.2) Bill, 2014
9.	To clarify the intention of the statute, ICAI had suggested that Section 115BBC(1)(ii) may be re-worded as follows:- "the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate amount of anonymous donations received which are subject to tax in Clause (i) above."	The suggestion of ICAI has been accepted and Section 115BBC(1)(ii) has been amended and re-worded as follows: "the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate amount of anonymous donations received in excess of the amount referred to in sub-Clause (A) or sub-Clause (B) of Clause (i), as the case may be."
10.	Advance Rulings should be introduced for resident's tax purposes also.	The Hon'ble Finance Minister in his Budget speech has proposed to enable resident tax payers to obtain an advance ruling in respect of their income tax liability above a defined threshold.
11.	With regard to Section 115JEE, the provisions should be amended appropriately to clarify that the specified persons are entitled to set-off AMT credit even when their adjusted total income falls below ₹20 lakh in the year of set-off. Further, even if the tax payer has discontinued the business, he should be allowed to set-off AMT credit, in line with the set-off of business losses allowed even after discontinuance of business.	Appropriately considered in the Finance (No.2) Bill, 2014 by amending Section 115JEE to provide that the credit of tax under Section 115JC shall be allowed in accordance with the provisions of Section 115JD, notwithstanding the conditions mentioned in sub-Section (1) or (2) of Section 115JD.
12.	Mode of transfers like RTGS, NEFT, EFT, ECS *etc.* be included as valid modes of fund transfers under Section 269SS and 269T of the Income–tax Act, 1961. Alternatively, Section may provide for any mode of payment other than cash on the lines of Section 80D.	Duly considered in the Finance (No.2) Bill, 2014 through a proposed amendment in Section 269SS and 269T to provide that acceptance or repayment of loan or deposit by use of electronic clearing system through a bank account shall not be prohibited under the said sections if the other conditions regarding the quantum are satisfied.
13.	With regard to "Tax Accounting Standards," the ICAI had submitted that bringing a whole new set of standards would be burdensome for taxpayers and would create confusion, thus the same are not desirable. It was further submitted that if at all these Standards are to be implemented the same should be named as "Tax Computational Rules" and should be notified under Section 295 rather than under Section 145 so that the objective that tax payers should not be required to maintain separate books after the TAS are notified is achieved. If they are so notified under Section 145, the tax payers would also have to face the best judgment assessment under Section 144.	The suggestion of ICAI in this regard has been partially accepted by the Finance (No.2) Bill, 2014. Section 145(2) is proposed to be amended to provide that the Central Government may notify in the official gazette from time to time "Income computation and disclosure standards" and best judgment assessment would be made under Section 144, if the income has not been computed in accordance with such standards. This proposed amendment has made it clear that two sets of books of accounts are not required to be maintained.

Suggestions accepted with regard to indirect taxes proposals

Sr. No.	Suggestions of ICAI given through Pre-Budget Memorandum (Indirect Taxes) or through other representations.	Proposed Provisions of Finance (No.2) Bill, 2014
1	List of Services received by an educational institution be provided which are exempt under Clause 9 of Notification No. 25/2012 dated 20-06-2012.	Substituting Clause 9 to provide a specified list of services provided to or by an educational institution which are exempted from service tax *vide* Notification No. 06/ 2014 dated 11-07-2014
2	A separate mechanism for advance ruling for every assessee be in place else advance ruling may be permitted for all assessees.	The scheme of advance ruling in indirect taxes to be expanded to cover resident private limited companies. Definition of resident has been amended *vide* Notification No. 15/ 2014 dated 11-07-2014.
3	Time limit for adjudication needs to be introduced in provisions of Section 73.	Sub-Section 4B to Section 73 has been inserted to provides to prescribe recommendatory time limits for completion of adjudication : (a) within six months from the date of notice where it is possible to do so, in respect of cases whose limitation is specified as 18 months in sub-Section (1); (b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under the *proviso* to sub-Section (1) or the *proviso* to sub-Section (4A).;
4	General rule of location of recipient of services be applied to intermediaries also.	Substitution of Clause f of Rule 2 in the Place of Provision of Services Rules, 2012 to define “intermediary” to include services also.
5	Amend the Customs Tariff Act, 1975 to harmonise UQC’s with trade practice.	The suggestion of the ICAI in this regard has been partially accepted by the Finance (No.2) Bill, 2014. Section 145(2) is proposed to be amended to provide that the Central Government may notify in the official gazette from time to time “income computation and disclosure standards” and best judgment assessment would be made under Section 144, if the income has not been computed in accordance with such standards. This proposed amendment has made it clear that two sets of books of accounts are not required to be maintained.
6	Information in respect of assessee be shared between the Central and the State Government on reciprocal Basis	Empowers the Central Government to prescribe an authority or agency to which the information return shall be filed by the specified persons such as Income Tax Authorities, State Electricity Boards, VAT or Sales Tax Authorities, Registrar of Companies. Information can be collected for the purposes of the Act

Overview of Salient Features of the Finance (No. 2) Bill, 2014: Direct Taxes

The Budget, besides addressing the expectation of all, has taken bold initiatives to boost economic growth and maintain fiscal discipline. As is usual, Budget also gives an opportunity to the Government to make changes in the tax laws. This Budget is no exception. Keeping the tradition, this Finance (No.2) Bill, 2014 has proposed various amendments both in direct and indirect taxes. This Bill has 71 clauses amending various provisions of direct taxes. These amendments are analysed below. Unless otherwise stated, all these amendments are proposed to be effective from 1st April, 2014, i.e., assessment year 2015-16 relevant to the income earned in the current financial year 2014-15. Read on…

A. TAX RATES

1. Increase in threshold limit – No change in tax rates

The Finance Minister has proposed to increase the threshold limit from ₹2 lakh to ₹2.5 lakh. However, there is no change in the tax rates. The tax rates applicable to an individual, HUF, association of persons, body of individual and every juridical person shall be as under:-

Income	Tax Rate
Upto ₹2,50,000	Nil
₹2,50,001 - ₹5,00,000	10%
₹5,00,001 - ₹10,00,000	20%
Above ₹10,00,000	30%

In the case of senior citizens (of 60 years to 80 years of age), the threshold limit has been increased from ₹2,50,000 to ₹3,00,000. There is no change in the threshold limit of ₹5,00,000 in the case of very senior citizens, *i.e.*, above 80 years of age. The benefit of the rebate upto ₹2,000 to individual resident whose total income does not exceed ₹5 lakh introduced in the last year by Finance Act, 2013, by way of Section 87A shall continue to be available. Further, Surcharge at the rate of 10% where income exceeds ₹1 crore shall continue to be applicable.

In view of this increase in threshold limit and rebate of ₹2,000 under Section 87A, there will be no tax liability on a person having total income upto ₹2,70,000.

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2. No Change in Tax Rate for Other Tax Payers

The Finance (No.2) Bill, 2014 has not proposed any change in the tax rates applicable to partnership firms and companies, both domestic as well as foreign companies. The tax rates applicable in the case of a partnership firm which includes LLP will be 30%. Surcharge at the rate of 10% shall be applicable in case total income exceeds ₹1 crore. The tax rate in the case of domestic companies shall be 30% with surcharge at the rate of 5% where the total income of the domestic company exceeds ₹1 crore but does not exceed ₹10 crore and surcharge at the rate of 10% where the total income of the domestic company exceeds ₹10 crore.

The tax rate in respect of companies other than domestic companies shall be 40% with surcharge of 2% where the total income exceeds ₹1 crore but does not exceed ₹10 crore and surcharge at the rate of 5% where the total income of such company exceed ₹10 crore.

3. Grossing up of Dividend for Distribution Tax – Increase in Effective Dividend Distribution Tax Rate of 3.47%

The Finance (No.2) Bill, 2014 proposes to levy dividend distribution tax by grossing up the dividend payable for the purpose of computing liability towards dividend distribution tax. As per the existing provision of Section 115-O, dividend distribution tax at the rate of 15% is to be paid on the amount of the dividend paid to shareholders. Further, under Section 115R, tax at the rate of 15% is to be paid on the income distributed by the Mutual Fund to its investors. Presently, the effective tax rate after levy of surcharge and education cess is 16.995% (15% tax + 10% surcharge + 3% education cess thereof) and tax at this effective rate of 16.995% is paid on the amount of dividend paid/income distributed. The Finance (No.2) Bill, 2014 proposes to gross up the dividend paid with the income distributed for computing the tax liability on account of dividend distribution tax. With the grossing up, the effective tax rate will be 20.47%, with the result, there will be an additional tax liability of 3.475%.

In the Memorandum, explaining the provision of the Finance (No.2) Bill, 2014, it has been stated that prior to introduction of dividend distribution tax, the dividends were taxable in the hands of the shareholder. After introduction of dividend distribution tax, a lower rate of 15% is being applied on the amount paid as dividend after deduction of distribution tax by the company and hence tax is computed with reference to the net amount. Accordingly, in order to ensure that tax is levied on a proper base, the dividend actually received need to be grossed up for the purpose of computing the dividend distribution tax. This explanation to the Memorandum is contrary to the reasoning given while introducing the dividend distribution tax way back in the year 1997. It may be relevant to refer to the budget speech of the then Finance Minister, the relevant paras read as under:-

> *"100. Another area of vigorous debate over many years relates to the issue of tax on dividends. I wish to end this debate. Hence, I propose to abolish tax on dividends in the hands of the shareholder.*
>
> *101. Some companies distribute exorbitant dividends. Ideally, they should retain bulk of their profits and plough them into fresh investments. I intend to reward companies who invest in future growth. Hence, I propose to levy a tax on distributed profits at the moderate rate of 10 per cent on the amount so distributed. This tax shall be incidence on the company and shall not be passed on the shareholder."*

On going through the above reasoning given way back in 1997, it is quite clear that tax on dividend

The proposed grossing up provision shall be applicable from 1st October, 2014. Accordingly, it will be advisable that corporates and mutual funds declare and pay dividend of the financial year 2013-14 including interim dividend of financial year 2014-15, if any, before 1st October, 2014 so as to save tax of 3.475%.

was abolished and this dividend distribution tax was introduced to encourage companies to retain the income for the future growth. Thus, to say that dividend distribution tax is a tax on the dividend income of the shareholder is not correct. Further, in case the present Government is of the view that dividend income should be taxed, then there is no reason why company should bear the dividend distribution tax. The dividend may be taxed in the hands of the shareholder at the appropriate tax rate applicable as the case may be with benefit of old Section 80M to avoid cascading effect of this tax in the hands of corporate. It may also be important to note that the dividend distribution tax in the present form is being retained not because any concession is to be provided to the shareholder but by way of revenue compulsion as substantial amount of dividend distribution tax is paid by the public sector companies in respect of the dividend, these PSUs pay to the Government. In case dividend is taxed in the hands of the shareholder, substantive amount of this dividend paid by public sector companies and banks (estimated at ₹90,229 crore in the receipts budget for 2014-15) to the Government will not be liable for taxation as income of the Government is not chargeable to tax and consequently collection on account of income tax will go down.

The reasoning given in the Memorandum also runs contrary to the provision of Section 14A of the Income-tax Act. As per provisions of Section 14A, no deduction is allowed of expenditure incurred in relation to the income which does not form part of the total income, *i.e.*, tax-free income. Dividend income in the hands of the shareholder, for the purposes of this Section 14A, is considered to be tax-free income and accordingly substantial amount of expenditure is disallowed in the hands of the shareholder being incurred towards earning dividend income under Section 14A. If dividend distribution tax is considered to be a tax paid by the company for and on behalf of the shareholders, as is being explained in the Memorandum, there is no justification for considering dividend income as tax-free income in the hands of the shareholder so as to attract disallowance under Section 14A.

The proposed grossing up provision shall be applicable from 1st October, 2014. Accordingly, it will be advisable that corporates and mutual funds declare and pay dividend of the financial year 2013-14 including interim dividend of financial year 2014-15, if any, before 1st October, 2014 so as to save tax of 3.475%. Similarly, it will be advisable to Mutual Funds to distribute its income before 1st October, 2014 to save burden of increased tax liability.

B. EXEMPTIONS/DEDUCTIONS

1. 80C Deduction being increased to ₹1,50,000

The Finance (No.2) Bill, 2014 proposes to increase deduction available to an individual or HUF under Section 80C in respect of life insurance premium, contribution to provident fund, *etc.* from ₹1,00,000 to ₹1,50,000. Corresponding amendment is being made to enhance the maximum contribution in a year to Public Provident Fund from ₹1,00,000 to ₹1,50,000. With this enhanced deduction under Section 80C, a tax payer may have the benefit ranging from ₹5,150 in case the income is upto ₹5 lakh, ₹10,300 in case the income is upto ₹10 lakh and ₹15,450 in case the income is above ₹10 lakh but below ₹1 crore and ₹16,995 in case the income is above ₹1 crore.

Amendment has also been proposed in Section 80CCD in respect of contribution to Pension Scheme. As per the existing provision of Section 80CCD, an assessee being an individual employed on or after 1st January, 2014 by the Central Government or any other employer is entitled to a deduction in respect of the amount deposited by him under a pension scheme to the extent of 10% of his salary or 10% of his gross total income in the previous year. It has been proposed by the Finance (No.2) Bill, 2014 that contribution under this scheme shall not exceed ₹1 lakh per year. Further, in the case of a person other than an employee of the Central Government, it will not be necessary that his employment should have started on or after 1st day of January, 2004.

The Finance (No.2) Bill, 2014 proposes to reduce disallowance of such expenditure to 30% as against 100% at present. The explanatory note in this regard recognise the fact that disallowance of the whole of the amount of expenditure results into undue hardship.

The provisions of Section 80CCE are also being amended to provide that aggregate of the deductions under Section 80C, 80CCC and 80CCD shall not exceed ₹1,50,000.

C. INCOME FROM HOUSE PROPERTY

1. Deduction of interest on capital borrowed for self occupied property being increased to ₹2,00,000

The Finance (No.2) Bill, 2014 proposes to amend Clause (b) of Section 24 so as to enhance the deduction from ₹1,50,000 to ₹2,00,000 in respect of interest on the amount borrowed for the acquisition or construction of a self-occupied property. As per Clause (b) of Section 24, interest on the capital borrowed for the acquisition or construction, repair, renewal of property is allowed as deduction. This deduction is allowed in full in case the property is let out. However, in case the property is self occupied, the deduction is limited to ₹1,50,000, if the same has been constructed out of the capital borrowed on or after 1st day of April, 1999. With the proposed amendment, the deduction under this clause in respect of self occupied property shall get increased to ₹2 lakh. In view of this proposed amendment, the tax benefit to a tax payer, in case he has borrowed capital for acquisition or construction or a residential house and paying interest thereon, will be of ₹5,150 if the income is up to ₹5 lakh, ₹10,300 if the income is up to ₹10 lakh and ₹15,450 in case the income is above ₹10 lakh but below ₹1 crore and ₹16,995 if the income is above ₹1 crore.

2. Effective exempt income now can be ₹6,20,000

Taking into consideration all the three relaxations proposed in the Budget, *i.e.*, enhanced threshold limit, increased 80C deduction and increased deduction on account of interest on borrowed capital for self occupied property, the effective tax exempt income can be ₹6,20,000 in the case of an individual resident in India, as explained below:

	₹
Total income	6,20,000
Less: Deduction on account of interest on housing loan	2,00,000
Balance	4,20,000
Less: Deduction under Section 80C	1,50,000
Taxable income	2,70,000
Tax payable	2,000
Rebate under Section 87A	2,000
Tax payable	Nil

It has been proposed that the Government shall notify the accounting standard under the Income-tax Act, the application of which shall be limited to the computation of taxable income and disclosure for tax purposes and the tax payer will not be required to maintain books of account on the basis of such standard notified by the Government under the Income-tax Act. Accordingly the provisions of Section 145(2) are being amended so as to rename the 'accounting standards' as 'income computation and disclosure standards.'

In the case of a senior citizen the effective exempt income can be ₹6,70,000 and in the case of very senior citizen ₹8,50,000.

D. CHARITABLE TRUST

1. No depreciation to be allowed while computing income in respect of asset considered towards application of income

The Finance (No.2) Bill, 2014 proposes to amend the provision of Section 10(23C) as well as Section 11 by specifically providing that income required to be applied or accumulated for application in the case of a charitable trust or institution shall be determined without any deduction or allowance by way of depreciation in respect of any asset, the cost of which has been claimed as an application of income in the same year or in earlier years. This amendment is being made to overcome the decision of the Punjab & Haryana High Court in the case of *CIT vs. Tiny Tots Pvt. Ltd*. 330 ITR 21 (P&H) (2011) and Delhi High Court in the case of *DIT vs. Vishwa Jagriti Mission* (2013) 262 CTR (Del) 558 where it has been held that depreciation need to be allowed even in respect of an asset, the cost of which has been claimed as application of income.

2. Deduction under Section 10 not to be allowed to trust registered under Section 12AA or approved under Section 10(23C)

The Finance (No.2) Bill, 2014 proposes to insert a new sub-section (7) under Section 11 to not to allow the benefit of deduction under Section 10 [other than 10(1) and 10(23C)] to a trust or institution which is registered under Section 12AA of the Act and the said registration is in force in the said year. Similar provision is being introduced by way of eighteenth *proviso* under Section 10(23C) to the effect that trust or institution approved under Clause (iv), (v), (vi) and (via) of Section 10(23C) shall not be allowed benefit of section 10 (other than 10(1) regarding agriculture income) if such approval is in force.

As per provision of Section 10, income of certain authorities/institutions is exempt as it is not considered to be income forming part of the total income such as income of a local authority, which is chargeable under Section 10(20), income of a research foundation under Section 10(21), income of a news agency under Section 10(22B), income of an association or institution set up to control and regulate the profession of law, medicine, accountancy, engineering, architecture, *etc*. and various such type of associations. In view of the dispute arising in respect of the certain nature of income whether it is exempt or not under Section 10, these trusts or institutions get registered under Section 12AA of the Act and claim exemption under Section 11 or Section 12. In case of any dispute arising about their activities falling within the meaning of 'charitable purposes,' the exemption is shifted to a specific provision of Section 10. With the proposed amendment once such entity get registered under Section 12AA, and such registration is in force, it will not be permissible for it to claim deduction under any provision of section 10. However, agricultural income which is exempt under Section 10(1) shall still not be taxable. Similarly exemption under Section 10(23C) can still be claimed despite being registered under Section 12AA. Under section 10(23C), income of a university, educational institution, hospital, *etc*. are exempt on fulfillment of certain conditions specified therein. The educational institutions, hospitals, *etc*. by and large are also registered under Section 12AA of the Act and at the same time eligible for claiming exemption under Section 10(23C). The proposed amendment will not hit the interplay between Section 10(23C) and Section 11 of the Act. Thus these educational institutions, hospitals can claim exemption under Section 10(23C) even if such educational institutions or hospitals are registered under Section 12AA of the Act or *vice versa*.

3. Scope of power for cancellation of registration by CIT under section 12AA being widened

At present, registration of a trust or institution granted under Section 12AA can be cancelled by the Commissioner if the activities of a trust or institution are not genuine or the activities are not being carried on in accordance with the object of the trust or institution. The scope of power of Commissioner to cancel the registration is being withdrawn. Now with the proposed amendment, the Commissioner can cancel the registration if the activities are being carried whereby its income does not ensure the benefit of general public or it is for the benefit of any particular religious community or caste or income is being applied for the benefit of specified persons or the funds are invested in prohibited modes. This proposed amendment will increase litigation. At present, once the registration is granted, the assessing officer is empowered to make assessment and to ensure compliance of all the provisions of the Act including Section 13. In case he is of the opinion that income has not been applied for the charitable purposes or there has been violation of any provision of this Act, he is well within his right to deny the benefit of Section 11 while assessing the income of such trust or institution. These powers of the assessing officer can be exercised on year to year basis. Thus, there is no reason for making this amendment empowering the Commissioner to cancel the registration. The registration of a trust or institution does not entitle the trust or institution to claim exemption automatically. The trust or institution is required to maintain accounts and get the same audited. In the audit report, there are specific columns about mode of investment and application of income and violation, if any, of Sections 11(5), 13, *etc*. The assessing officer is also entitled to verify the same and in case there is violation, to deny benefit of Section 11 and 12. Thus, there is no need to empower the Commissioner to cancel the registration for some defaults here or there.

This amendment is proposed to be effective from 1st October, 2014 and accordingly the Commissioner of Income Tax shall be empowered after 1st October, 2014 to cancel the registration by invoking the widened scope of this amendment.

4. Benefit of Section 11 and Section 12 can be claimed even for period when trust or institution was not registered

As per the provisions of Section 12A of the Act, every trust or institution is required to make an application for registration under Section 12AA. Further, benefit of Section 11 and Section 12 can be claimed by such trust or institution from the financial year in which such application is made. In case of delay in making the application, there is no provision for condonation of the delay with the result that benefit of Section 11 and Section 12 cannot be claimed for any financial year preceding the financial year in which application for registration is made.

The Finance (No.2) Bill, 2014 proposes to address this issue by allowing benefit of availing exemption under Section 11 and Section 12 to a trust or institution which has been granted registration subsequently in respect of preceding assessment years, the proceeding of which are pending before the assessing officer as on the date of such registration. The only condition is that the objects and activities of such trust or institution should be same on the basis of which such registration has been granted. It has been further provided that no action for reopening an assessment under Section 147 shall be taken by the assessing officer in the case of such trust or institution, merely on the ground that such trust or institution has not obtained registration for the said assessment years.

This amendment will have a far reaching implication. At present there are many trusts or institutions which are not registered under Section 12A of the Income-tax Act, but are otherwise eligible for claiming exemption under Section 11 and Section 12 of the Act. These trusts or institutions do not apply for registration as on date though these are eligible to get registration for fear that in the absence of registration being applicable for past years, those assessments will get reopened and benefit of Section 11 and Section 12 will be denied to them in the absence of registration under Section 12A of the Act. This proposed amendment will help these trust or institution to come forward and get registered without any fear of earlier year income being taxed for want of registration. Thus, this proposed amendment in a way is better than the power of the Commissioner to condone the delay in applying registration. The benefit of this provision, however, shall not be allowed to such trusts or institutions which have applied for registration in the past and same was refused or such registration if granted was cancelled.

This provision shall be applicable from 1st October, 2014 and accordingly all such trusts or institutions which are otherwise eligible for exemption under Section 11 and Section 12 but are not registered, it will be a good opportunity to apply and obtain registration after 1st October, 2014 without any fear of reopening of the assessment of earlier assessment years merely on the ground that it was not registered during that period.

By the proposed amendment in Section 112, the benefit of concessional rate of 10%, tax in respect of long term capital gain shall be restricted to listed securities (other than unit) and zero coupon bonds.

5. Income of a trust or institution receiving anonymous donations–anomaly in computation being addressed

Provisions of Section 115BBC in respect of computation of income of a trust or institution in respect of anonymous donation are proposed to be amended to address the anomaly in the existing provision. As per the existing provision, tax at the rate of 30% is payable on anonymous donations exceeding 5% of the total donations received or ₹1 lakh whichever is higher and tax is payable on the total income other than the anonymous donations at the normal rate. In this process the anonymous donations to the extent of 5% of the total donation or ₹1 lakh which is higher gets neither taxed at 30% nor at the normal rate. The amendment proposes to address this anomaly by providing that the tax shall be payable on the total income of a trust or institution as reduced by the amount of anonymous donations on which tax at the rate of 30% has been paid. This amendment will bring to tax the 5% of the anonymous donation or ₹1 lakh whichever is higher at the normal rate of tax.

E. BUSINESS INCOME

1. Corporate Social Responsibility (CSR) Expenditure not eligible for deduction

The Companies Act, 2013 mandates that certain companies which have net worth of ₹500 crore or more, turnover of ₹1,000 Crore or more or a net profit of ₹5 crore or more during any financial year are required to spend 2% of their profit on activities relating to corporate social responsibility. Consequent to this, there has been a debate whether the CSR expenditure so mandated to be incurred by the Companies Act, 2013, will be considered as an expenditure incurred for the purposes of the business or not. The Finance (No.2) Bill, 2014 proposes to insert an Explanation below Section 37(1) to clarify that such expenditure shall not be deemed to be an expenditure incurred by the assessee for the purposes of business or profession. Accordingly deduction of CSR expenditure shall not be allowed under Section 37(1) of the Income-tax Act while computing income of the business.

The memorandum explaining the provision of the Finance (No.2) Bill, 2014, however, clarifies that the CSR expenditure which is of the nature described in Sections 30 to 36 shall be eligible for deduction under these Sections subject to fulfillment of condition, if any, provided in these sections. In this regard, it may be relevant to note that as per the provision of Section 35AC, the expenditure incurred on a project or scheme for promoting a social and economic welfare or uplift of the public, as approved by the National Committee set up for this purpose, is eligible for deduction while computing profit and gains of business or profession. Further, expenditure incurred by way of payment to an institution for carrying out rural development programme is eligible for deduction under Section 35CCA of the Act. Payment to an institution for carrying out programmes of conservation of natural resources is an eligible deduction under Section 35CCB. Not only that expenditure incurred on agricultural extension project, as notified by the Board under Section 35CCC and expenditure incurred on skill development project, as notified by the Board, under Section 35CCD are eligible for weighted deduction of 150%.

As against continuing uncertainty on the issue of retrospective amendment and indirect transfer, the Finance Minister has brought certainty in respect of the income earned by the foreign institutional investors on sale of securities. Section 2(14) which defines 'capital asset' is being amended to provide for any securities held by a foreign institutional investor which has invested in such securities in accordance with the regulations made under the SEBI Act, 1992, shall be considered to be a capital asset.

All the above activities stated in Section 35AC, 35CCA, 35CCB, 35CCC and 35CCD are eligible activities, permissible under the corporate social responsibility as specified in Schedule VII, in terms of Section 135 of the Companies Act, 2013. Accordingly, in case any corporate intends to claim expenditure incurred on Corporate Social Responsibility while computing its business income it will be advisable that it obtains approval of the project or scheme under any of the above stated provisions of the Income-tax Act. This will ensure compliance of the obligation of CSR under the Companies Act and at the same time deduction of such expenditure while computing business income for tax purposes. In fact, if approval is obtained under Section 35CCC for agricultural extension projects or under Section 35CCD for skill development project, the deduction will be one and one-half times, *i.e.*, 150 % of such CSR expenditure.

Still in case above projects or approvals are not found to be practically feasible by any corporate, the alternative option can be, to contribute the amount of the CSR to a trust or institution for carrying out the CSR activities and such trust or institution get registered with the income tax authorities under Section 12AA so that the amount of contribution can be claimed as deduction by the corporate as eligible donation to the extent of 50% under Section 80G of the Income-tax Act. It is to be noted that under the Companies Act, 2013 it is permissible that the CSR activities are either carried out by the corporate itself or through a trust or institution.

2. Failure to deduct tax at source – disallowance to be restricted to 30%

As per the existing provision of Section 40(a)(ia), any payment made by way of interest, commission, brokerage, rent, royalty, fee for professional services, fee for technical services, payment to a contractor or sub-contractor on which tax is deductible at source but is not deducted is not allowed as deduction while computing profit of the business or profession. Thus the entire expenditure incurred on this account is disallowed and added back in the income on failure to deduct tax at source. An idea how draconian this Section 40(a)(ia) is, can be had from the following example:-

An individual who is engaged in the business of export of readymade garments, assuming having a sales of ₹5 crore, the exporter instead of having its own machineries and labour, gets the garments fabricated, printed, embroidery, etc. on job work basis, it buys cloth from the market and incurs expenditure on such purchase of ₹1 crore. It incurs an expenditure of ₹3 crore on account of fabrication, printing, embroidery, etc. as job charges. It incurs overhead expenditure of ₹80 lakh and earns a net profit of ₹20 lakh. The tax liability on the net income of ₹20 lakh is ₹4.43 lakh, where he pays before filing the return. Now visualise a situation that due to ignorance or inadvertence it has failed to deduct tax at source in respect of the job charges paid ₹3 crore on which tax at source is required to be deducted at the rate of 1% i.e. default of TDS of ₹3 lakh only. The income in such case, because of the operation of the Section 40(a)(ia) will be computed at ₹3,20,00,000/- since ₹3 crore paid as job charges without TDS will be disallowed and added to the income. The additional tax payable on account of this disallowance will be ₹1.02 crore. Since the income of such person is just ₹20 lakh, it will be practically impossible for such person to pay this liability of Rupees more than one crore. Such person may pay the tax of ₹3 lakh which he has failed to deduct along with interest. In such a case he will be eligible to claim expenditure of ₹3 crore in the year in which TDS is deposited, with the result that his income for that year will be loss of ₹2.80,00,000/- assuming the income of that year is also ₹20 lakh. This loss he could carry forward for next eight years. Considering that the income is around ₹20 lakh per year in subsequent years, this person need another 14 years to set off the carry forward loss which in view of provision of Section 72(3) can't be carried forward for more than eight years. Just see the hardship. For a default to deduct and pay tax of ₹3 lakh, a tax liability of ₹32 lakh i.e. more than 10 times.

Considering this hardship, the Finance (No.2) Bill, 2014 proposes to reduce disallowance of such expenditure to 30% as against 100% at present. The explanatory note in this regard recognise the fact that disallowance of the whole of the amount of expenditure results into undue hardship. Further disallowance of 30% of the expenditure irrespective of the nature of such payment is not appropriate. In case of payment of interest, commission, rent, royalty, where tax is deductible at the rate of 10%, disallowance of 30% may be appropriate but in the case of payment to a contractor where tax is deductible at the rate of 2% or 1% the disallowance of 30% is not justified. The tax is deductible at the rate of 2% or 1% on payment to a contractor on the assumption that the income component in such payment is not very high. Considering this, the disallowance in respect of payment to a contractor should not be 30 % and need to be proportionately reduced. It will be more appropriate to link the percentage of disallowance with the rate at which tax is deducted at source.

This provision was introduced way back in the year 2005. Thereafter, amendments are being made almost every year. There can't be a denial to the fact that deterrence helps in ensuring compliance of the provisions of the Act. But deterrence has to be

The Finance (No.2) Bill, 2014 proposes to broaden the scope of deduction of tax at source by inserting Section 194DA. As per this amendment, tax shall be required to be deducted at source at the rate of 2% by a person responsible for paying to a resident any sum under a life insurance policy including the sum allocated by way of bonus on such policy except such amount which is not chargeable to tax under Section 10(10D) of the Income-tax Act in case such payment is ₹1 lakh or more.

The Finance (No.2) Bill, 2014 proposes to address the anomaly which is arising in claiming credit of Alternate Minimum Tax paid by a person other than a company. It has been proposed that credit of tax paid as Alternate Minimum Tax can be availed even in those years where the provision of this AMT are not applicable in view of the total income not exceeding ₹20 lakh.

reasonable, not to the extent where in case of default, it becomes virtually impossible to pay the liabilities arising in consequence thereof. Accordingly the best way for achieving this TDS compliance is to disallow the expenditure in case of default and to allow such expenditure in the same year by way of rectification under Section 154 on payment of such tax with interest. To save the period of limitation for rectification suitable provision can be inserted in Section 155 to allow rectification from the date of deposit of such tax with interest. This will ensure realisation of such tax and also save the undue hardship which at present is caused to such tax payers.

This amendment is proposed to be effective from 1st April, 2014, *i.e.*, assessment year 2015-16 but considering the past history it may be possible to contend that this judgment is remedial and hence will have retrospective effect. To address the hardship caused by Section 40(a)(ia) amendments were made in the past by the Finance Act, 2010 and Finance Act, 2012. All these amendments are stated in the Finance Act to be applicable prospectively. However, the Courts while interpreting these amendments have held that these are remedial and hence have retrospective effect. The Calcutta High Court in the case of *CIT vs. Virgin Creations* in ITA No. 302 of 2011 in GA No. 3200/2011, held that the amendments made to Section 40(a)(ia) by the Finance Act, 2010 of allowing benefit of the payment made before the due date of filing return is retrospective in operation. Similarly, the Delhi High Court in the case of *Commissioner of Income-tax –XIII vs. Naresh Kumar* [2013] 262 CTR 389(Delhi HC) held that the amendment made by the Finance Act, 2010 is remedial and hence will have retrospective application. In the case of *Rajiv Kumar Agarwal vs. Addl. CIT,* ITA No.337/Agra/2013 dated 29th May, 2013, Agra Bench of ITAT has held that amendment made by the Finance Act, 2012 of not treating the assessee in default in case the deductee has included such sum in its income and paid tax thereon as remedial and retrospective. In view of these judgments and particularly the explanation given in the memorandum explaining the provision of the Finance (No.2) Bill, 2014 that this amendment is being made to address the undue hardship, it can be contended that this amendment is also remedial and accordingly shall have retrospective application.

3. Scope of Section 40(a)(ia) being widened to cover payment of salaries and directors fee

Scope of disallowance in respect of payment made to a resident without deduction of tax at source while computing business income is being widened to include payment made by way of salaries and directors fee. Accordingly, if any payment is made by way of salaries and director's fee on which tax is deductible but tax is not deducted from such payment to the extent of 30% will be disallowed and added back to the income.

4. Benefit of tax deducted at source paid before due date of filing return being extended in respect of non-resident

As per the existing provision of Section 40(a)(i), in case of failure to deduct tax at source or failure to deposit such tax after deduction on the due date, in respect of any payment made to a non-resident, which is chargeable to tax such amount is not allowed as deduction while computing income of the business or profession. However, such amount is allowed as deduction in the year in which such payment is made. Thus, there was a hardship even in those cases where payment of the tax got delayed beyond the financial year but such payment was deposited before the due date of filing return. Considering this hardship the Finance (No.2) Bill, 2014 proposes to amend Section 40(a)(i) to not to disallow such expenditure in case such tax is paid before due date of filing of the return.

This amendment is also proposed to have prospective effect *i.e.,* from 1st day of April, 2015 *i.e.,* assessment year 2015-16. A similar amendment was made in the Finance Act, 2010 in respect of the payment to a resident. This amendment was also stated to apply prospectively. However, as explained hereinabove the Courts have held that such amendments are remedial and hence shall have retrospective application. Accordingly it may be contended that this amendment proposed by this Finance (No.2) Bill, 2014 is also remedial and hence will have retrospective application.

5. Business of trading in shares not to be treated as speculative business

As per the existing explanation to Section 73, in the case of a company the business of purchase and sale of shares, irrespective of the fact that such purchase and sale of share is delivery based is deemed to be speculative business and consequently loss on such business is considered as a speculative loss except in the case of a company where gross total income consists mainly of income from house property, capital gain and income from other sources, or a company the principle business of which is the business of banking or the granting of loans and advances. This explanation has affected a lot of companies engaged in the business of share trading and share broking as losses suffered by such companies in the business of share trading are deemed to be speculative and hence not allowed to be set off against other income. Considering this hardship the Finance (No.2) Bill, 2014 proposes to exclude such companies from this explanation if the principle business of such company is trading in shares. Accordingly if a company which is in the business of trading in shares, losses suffered in such business will be eligible to be set off against other income provided the business of purchase and sale of shares is a principal business.

6. Trading in Commodity derivatives not to be speculative only if Commodity Transaction Tax (CTT) has been paid

As per the existing provision of Section 43(5), a transaction in which a contract for the purchase or sale of any commodity including stocks and shares is periodically or ultimately settled otherwise than by actual delivery or transfer of the commodity, is considered to be a speculative transaction. The loss arising on such speculative transaction is considered to be a speculative loss. Further, in terms of Section 73, such speculative loss cannot be set off against any other income except speculative income. However, there are certain exceptions provided below sub-Section 43(5), such as hedging by manufacturer *etc.*, which are not considered speculative transactions despite being settled without actual delivery. The Finance Act, 2013 has added one such exception being a transaction in respect of trading in commodity derivatives carried out in a recognised association. The Finance (No.2) Bill, 2014 proposes to put an additional condition that not only such transaction in commodity derivatives should be carried out in a recognised association but such transaction should be chargeable to Commodity Transaction Tax. Accordingly, the benefit of this exclusion from speculative transaction in respect of commodity derivative shall be available only when such transaction is carried out in a recognised association and also when CTT has been paid on such transaction.

This amendment is the only amendment which is being made retrospectively, *i.e.*, from assessment year 2014-15. It is to be noted that this amendment does not affect those commodity transactions which are delivery based as Section 43(5) applies only in respect of a transaction which is ultimately settled otherwise than by actual delivery.

7. Investment allowance at the rate of 15% for plant or machinery exceeding ₹ 25 crore acquired and installed during any previous year

Finance Act, 2013 has introduced a scheme of investment allowance in respect of any new plant or machinery acquired and installed by inserting Section 32AC. As per this provision, investment allowance at the rate of 15% of the actual cost of the new plant or machinery acquired and installed after 31st day of March, 2013 but before 1st day of April, 2015 will be allowed, if the aggregate of actual cost of such new plant or machinery exceeds ₹100 crore. The Finance (No.2) Bill, 2014 proposes to extend the benefit of this investment allowance where the actual cost of such new plant or machinery exceeds ₹25 crore in a year. This benefit will be available on year to year basis and for investment in new plant and machinery till 31st March, 2017. The assessees who are eligible to claim deduction under existing Section 32AC, shall continue to have the same benefit. As per the amended provision, the benefit of 15% shall be available on year to year basis wherever the actual cost of the new plant and machinery in the year exceeds ₹25 crore. Accordingly the benefit of this investment allowance will not be allowed in case actual cost of the new plant and machinery during the year is ₹25 crore or less.

8. Scope of investment linked incentive under Section 35AD being widened

As per the existing provision of Section 35AD an assessee is allowed deduction in respect of the whole of the capital expenditure incurred for the purpose of any specified business during the year in which such expenditure is incurred. At present, there are 11 specified businesses which are eligible to claim this incentive under this section. The scope of the same is being widened to include following businesses:-

i. Laying and operating slurry pipelines for the transportation of iron ore;
ii. Setting up and operating a semiconductor wafer fabrication manufacturing notified unit;

Further the provisions of Section 35AD are being amended by inserting sub-Section (7A) in order to ensure that, any asset in respect of which a deduction has been claimed and allowed under Section 35AD, such asset shall be used only for the specified business for a period of eight years. It is being provided that in case such asset is used for any purpose other than specified business then the difference of the deduction claimed in respect of such asset under Section 35AD and the depreciation in respect of such asset which would otherwise allowable under Section 32 shall be deemed to be the income of the business in the year in which the asset is used for the purpose other than eligible business.

It is also being provided that where a deduction has been claimed under this Section, no deduction shall be available in respect of such specified business under Section 10AA in the same year or any assessment year.

It may be relevant to note that as per the provision of Section 35AD, the entire expenditure of capital nature incurred for the purpose of specified business other than expenditure on land, goodwill or financial instrument is allowed as deduction during the year in which such expenditure is incurred. Such expenditure is not eligible for any further deduction under any other provision of the Act. The net implication of this Section 35AD is, that one can claim the entire capital expenditure (of course other than on land, goodwill or financial instrument) which it would have otherwise claimed over a period by way of depreciation in very first year. Thus, this Section 35AD, in fact allows depreciation at the rate of 100% in the very first year with no additional benefit in future years. The claim of entire capital expenditure in the very first year under this Section 35AD can be counter-productive in many cases, as deduction of 100% expenditure in the very first year may result into carry forward of losses which cannot be carried forward for more than eight years as against depreciation which can be claimed on year to year basis and unabsorbed depreciation, if any, can be carried forward for indefinite period.

9. Presumptive income of goods carriages being increased to ₹7,500 per month

As per the existing provisions of Section 44AE income in respect of plying, hiring or leasing goods carriages is computed on presumptive basis. The income of a heavy goods vehicle is deemed to be ₹ 5,000 per month and income of a vehicle other than heavy goods vehicle is deemed to be ₹ 4,500 per month. The Finance (No.2) Bill, 2014 has proposed to remove the distinction between the heavy goods vehicle and the vehicle other than heavy goods vehicle. Further, it proposes to enhance the presumptive income to ₹7,500 per month. The presumptive income in respect of goods carriages, irrespective of the fact, whether it is a heavy goods vehicle or not, shall deemed to be ₹7,500 every month or part of a month.

10. Extension of sunset date (time limit for claiming exemption of income) for the Power Sector

The tax holiday available to the undertaking which is set up for generation, distribution, transmission including substantial renovation and modernisation of existing network of transmission or distribution lines of power by 31st March, 2014 is being extended to undertakings which are set up upto 31st March, 2017. In view of this extension, the undertaking which begins to generate power or which lays network of new transmission and distribution lines or which undertakes substantial renovation and modernisation of existing network of transmission or distribution lines up to 31st March, 2017 shall be eligible to claim exemption upto 100% of its profit and gains for a period of 10 consecutive assessment years within the 15 years beginning from the year in which the undertaking generates power, or commences transmission or distribution of power or undertake substantial renovation and modernisation of the existing transmission or distribution lines.

11. Income of business and other sources to be computed in accordance with computation and disclosure standards

Section 145(1) of Income-tax Act provides that Income under the head 'profit and gains of business or profession' and 'income from other sources,' shall be computed in accordance with the method of accounting regularly employed by the assessee. This section thus gives an option to the assessee to choose the method of accounting to be employed by it while computing business income or income from other sources with only one condition that such method should be regularly employed.

In order to bring consistency in the method of accounting, the Finance Act, 1995 inserted sub-Section (2) empowering the Central Government to notify the accounting standards to be followed by any class of assessee in respect of any class of income. Section 211(3C) of the Companies Act, 1956 also empowers the Central Government to prescribe accounting standards to be followed by the Companies. Principle and objective of accounting standard for preparation of financial statement and disclosure under the Companies Act are different from the principle and objective of the accounting standards to be followed for computation of income. Thus, there was a dilemma, how can a company be asked to maintain two sets of books of accounts. One set of books of accounts in accordance with accounting standards notified under the Companies Act and another set of books of accounts in accordance with accounting standards notified under the Income-tax Act. In view of this, the Central Government could not notify the accounting standard under the Income-tax Act, other than the two basic accounting standards, despite this enabling Section 145(2) being in the Income-tax Act for almost 20 years.

The Finance (No.2) Bill, 2014 now has worked out a mechanism to address this issue. Accordingly, it has been proposed that the Government shall notify the accounting standard under the Income-tax Act, the application of which shall be limited to the computation of taxable income and disclosure for tax purposes and the tax payer will not be required to maintain books of account on the basis of such standard notified by the Government under the Income-tax Act. Accordingly, the provisions of Section 145(2) are being amended so as to rename the 'accounting standards' as 'income computation and disclosure standards'. These standards will be notified by the Central Board of Direct Taxes and income of the business or profession and income from other sources wherever applicable has to be computed and disclosure made in accordance with these 'income computation and disclosure standards.' The memorandum explaining the budget expressly clarifies that these 'income computation and disclosure standards' are not meant for maintenance of the books but are to be followed only for computation of income and disclosure.

This amendment is also proposed to be effective from assessment year 2015-16, *i.e.*, current financial year 2014-15 and accordingly it will be important to understand the implication of these standards immediately and advance tax and other obligations for the current financial year have to be on the basis of the income computed in accordance with these income computation and disclosure standards.

12. International Financial reporting standards to be applicable from financial year 2015-16

The Finance Minister has made an announcement in his budget speech regarding applicability of International Financial Reporting Standards (IFRS) now known as new Indian Accounting Standard (IND AS) by the Indian companies from the financial year 2015-16 voluntarily and from financial year 2016-17 on mandatory basis. Consequent to this amendment, now companies will be required to switch over to Indian Accounting Standards (IND AS). The date of applicability of Indian Accounting Standard (IND AS) for the banks and insurance companies shall be from the date it will be notified by the regulators.

F. CAPITAL GAIN

1. Advance forfeited against sale of capital asset–to be treated as income from other sources

As per the existing provisions of Section 45(1), tax is payable in respect of the capital gain in the year in which the capital asset is transferred. Further, as per provisions of Section 51 where any capital asset was subject matter of negotiation for the transfer, any advance received at the time of such negotiation is not considered as income but is deducted from the cost of acquisition. The Finance (No.2) Bill, 2014 proposes to amend this provision. As per the proposal, any advance or other money received in the course of negotiation for transfer of a capital asset shall be considered as income from other sources and chargeable under Section 56(2)(ix) if such sum is forfeited and negotiation do not result in any transfer of such capital asset. Corresponding amendment is being made to Section 51 to provide that such forfeited advance having been taxed as income from other sources, will not be deducted from the cost of acquisition while computing capital gain at the time of actual transfer later on. In view of this amendment, any advance received for transfer of a capital asset which include immovable property, and share held as investment, the moment such advance is forfeited without any transfer of such property or share, the same will be taxable as income under the head 'income from other sources' in the year in which forfeiture is made.

2. Benefit of Section 54 and 54F – limited to one residential house and that too in India

As per the existing provisions of Section 54 and Section 54F where a capital gain arises in the hands of an individual or HUF on the transfer of a long term capital asset including a residential house, the same is not chargeable to tax if it is invested in purchase or construction of a residential house within the prescribed period. There has been a dispute going on for many years about the meaning of the word 'a residential house' whether 'a' is an article or 'a' is a number meaning one. The dispute was also going on whether this new residential house has to be in India or it can be in any part of the world. The Finance (No.2) Bill, 2014 proposes to settle this controversy to rest by explicitly providing that the benefit under Section 54 and Section 54F will be available in respect of one residential house only and that such residential house should be in India. This is being done by substituting the words 'a residential house' with the words 'one residential house in India.' This amendment is proposed to be effective from 1st April, 2015, *i.e.*, assessment year 2015-16. It may be important to note that the memorandum explaining the provision of the Finance Bill clarifies that this benefit was intended for investment in one residential house within India. In view of this explanation, there is possibility that tax authorities may contend that this amendment is clarificatory in nature and hence shall be applicable retrospectively.

3. Exemption for investment in capital gain bonds–to be limited to ₹50 lakh

As per the existing provision of Section 54EC of the Act an exemption is provided in respect of the capital gain arising from long-term assets if the same is invested in long term specified bonds, commonly known as Capital Gain Bonds, within a period of six months after the date of such transfer. The proviso to this section restricts the deduction in respect of such investment to a sum of ₹50 lakh during any financial year. In view of this restriction of investment of ₹50 lakh in a financial year, there has been a controversy whether this benefit of ₹50 lakh can be availed in two financial years by investing ₹50 lakh in one financial year and another ₹50 lakh in next financial year, if both investments fall within a period of six months from the date of transfer of long term capital asset. (This being possible if long term capital asset is transferred during October to March). The Finance (No.2) Bill, 2014 proposes to address this controversy by inserting a new proviso to the effect that investment made in such specified bonds from capital gains arising from transfer of one or more original assets during the financial year in which the original asset or assets are transferred and in the subsequent financial year should not exceed ₹50 lakh. The implication of the above proviso will be that the total eligible investment for specified bonds will be ₹50 lakh in the year in which one or more original assets are sold and also in the subsequent financial year. This *proviso* may have an unintended implication whereby any long term capital asset sold in the subsequent year may not be eligible for claiming exemption independently of investment in specified bonds in view of the overall limitation of ₹50 lakh in two financial years.

4. Compensation received by way of interim order on compulsory acquisition to be taxed in the year in which final order of the Court is made

As per the provision of Section 45 of the Income -tax Act, capital gain is chargeable to tax in the year in which the capital asset is transferred irrespective of the fact when consideration for such transfer is received. In view of the practical difficulties arising for making payment of taxes as compensation gets unduly delayed in respect of the transfer by way of compulsory acquisition, sub-Section (5) was inserted in Section 45 by the Finance Act, 1987 to provide that capital gain arising from the transfer of a capital asset by way of compulsory acquisition under any law including any enhancement or further enhancement shall be deemed to be the income chargeable of the previous year in which said compensation or the amount is received by the assessee.

Thereafter, further issue arose about the compensation received and having been taxed in terms of the provision of Section 45(5) in the year of receipt and later on such compensation getting reduced in subsequent years by the order of the Court or the Tribunal. In order to address this issue, the Finance Act, 2003 further inserted a Clause (c) in Section 45(5), to provide that where such consideration or the enhanced compensation is reduced subsequently by any order of the Court or the Tribunal, then the assessed capital gain of that very year in which year the same was taxed will be recomputed by taking the compensation or consideration as so reduced by such Court. For enabling this re-computation amendment was also made to Section 155 by inserting sub-Section (15), allowing rectification of that assessed capital gain within a period of 4 years from the end of the previous year in which the order of the Court or the Appellate Tribunal for reducing the consideration or the enhanced compensation was passed. Thus, a complete mechanism was provided to tax the capital gain and to re-compute the same in case of compensation getting reduced.

The Finance (No.2) Bill, 2014 surprisingly proposes to tax the compensation received in pursuance to an interim order of the Court/ Tribunal in the year in which the final order of such Court/Tribunal or authority is made. The reasoning given in the memorandum explaining the provision of the Finance (No.2) Bill, 2014 is that there is an uncertainty in the year in which the amount of the compensation received in pursuance of an interim order of the Court is to be charged to tax. After the insertion of Clause (c) to Section 45(5) to re-compute the capital gain and enabling provision of allowing rectification for an extended period of 4 years from the date when the Court order is passed under Section 155(15) there does not appear to be any uncertainty about the interim relief so as to postpone the tax on the capital gain on the compensation received in pursuance of an interim order. The person having received the amount, there is no reason to postpone the taxation of the same for an indefinite period which probably may lead to non-recovery of tax as compensation so received by way of an interim order may be spent or used irretrievably by the time final order of the Court or Tribunal is made. In case there was any issue on the interpretation of the meaning of interim order the better course would have been to clarify that compensation received in pursuance of an interim order shall be taxable in the year in which it is received.

5. Benefit of Long term capital gain on debt mutual fund after 3 years and to be taxed at the rate of 20 %

The Finance (No.2) Bill, 2014 proposes to make far-reaching amendment affecting the debt mutual fund. As per the existing provisions of the Act, debt mutual funds are treated at par by and large with the equity oriented mutual fund. In terms of provision of Section 2(42A), debt mutual fund is considered as a long term capital asset if it is held for more than 12 months. Further in terms of provision of Section 112 where capital gain arises on transfer of a long term capital asset which include listed securities or units (mutual fund), the amount of capital gain before allowing for indexation adjustment shall be 10%. In view of these two provisions, the debt mutual fund of Fixed Maturity Plan commonly known as FMP was being used for the purpose of tax arbitrage. In case of any deposit with a bank, the interest so received on such deposit is chargeable to tax at the normal rate which in the case of corporates is 30%. As against this, if one makes an investment in a debt mutual fund of a fixed maturity plan of 366 days or more, such investment is considered to be a long term capital asset in view of its holding period being more than 12 months. Accordingly, it becomes eligible for benefit of indexation. In case the return on such investment in the mutual fund is equivalent to bank deposit, *i.e.*, 10% and the cost inflation index goes up by 6%, then the long term capital gain shall be chargeable on balance 4%. Tax at the rate of 20% on such long term capital gain of 4% will mean that effective tax rate is just 8% as against 30% on deposit with bank. In case one does not want to avail benefit of cost inflation indexation, capital gain on such mutual fund is charged at concessional rate of 10% under section 112 of the Act. Thus, in this process, the debt mutual fund investors pay less tax as compared to tax payable on income of interest on bank deposits. This is known as tax arbitrage. Considering this, the Finance (No.2) Bill, 2014 proposes to amend the definition of the short term capital asset so as to consider units of a mutual fund other than units of an equity oriented fund as short term capital asset if the same is held for not more than 36 months. Accordingly, for a unit of debt mutual fund to be eligible as long term capital asset, the period of holding of such debt mutual fund unit will have to be three years or more. FMP held for period of three years or less shall be considered short-term capital asset and gain arising thereon as such term capital gain liable for taxation at the rate of 30%.

Further, despite being held for a period of more than three years, so as to qualify as a long term capital asset, units of debt mutual fund will also not be eligible for concessional rate of 10% of tax without benefit of indexation under Section 112 as debt mutual fund units are being excluded from the purview of Section 112. By this proposed amendment in Section 112, the benefit of concessional rate of 10%, tax in respect of long term capital gain shall be restricted to listed securities (other than unit) and zero coupon bonds. The implication of the above amendments will be that the income arising from the debt mutual fund in case holding is less than 3 years will be taxed as short term capital gain chargeable at the normal rate and in case such units are held for more than a period of three years so as to qualify as long term capital asset, the gain arising on such unit after benefit of indexation will be chargeable at the rate of 20%.

The amended provision still gives scope of tax arbitrage *vis-a-vis* the fixed deposit with banks. An amount of ₹100 invested in mutual fund for 3 years with a simple return of 10% per annum will give a gain of ₹30 after a period of three years. After benefit of cost inflation indexation assuming to be 6% simple per year the indexed cost will work out to 118 and the long term gain of ₹12 will be chargeable to tax at the rate of 20% with the result that the tax liability will be ₹2.40. As against this the income arising on account of fixed deposit at the simple rate of return of 10% will be ₹30 and tax liability at the rate of 30% will be ₹9. Thus, one will still save ₹6.60 in taxes. The implication of the proposed amendment will be that the maturity period of the debt mutual fund which at present is normally 366 days will be increased to 1,096 days or more so as to avail the benefit of tax arbitrage.

6. Unlisted shares to be considered short term capital asset if held for less than 3 years

At present, as per Section 2(42A) shares held in a company are considered to be short term capital asset if it is held for not more than 12 months. If the shares are held for more than 12 months, the same are considered to be a long term capital asset. The Finance (No.2) Bill, 2014 proposes to restrict this benefit to securities (other than unit) listed in a recognised stock exchange in India. Accordingly for shares held in a company other than those shares listed in a recognised stock exchange, the holding period has to be more than 36 months so as to be eligible as long term capital asset for the benefit of indexation and concessional rate of 20%.

G. INTERNATIONAL TAXATION

1. No relief on the issue of retrospective amendment

There is no proposal in this Finance (No.2) Bill, 2014 to withdraw the retrospective amendment made by the Finance Act, 2012 on the issue of indirect transfer. This retrospective amendment made by the Finance Act, 2012 has vitiated the atmosphere of investment in India and has been subject matter of a lot of criticism from all quarters. The Finance Minister in his speech has referred to this issue and has assured that this Government will not ordinarily bring about any change retrospectively which creates a fresh liability. However, in respect of the amendment made by the Finance Act, 2012 he has proposed that those cases pending in Courts or other Tribunals, the same will be resolved through the legal process. He has further proposed that all fresh cases arising out of the retrospective amendment on the issue of indirect transfers will first be scrutinised by a high level committee to be constituted by the Central Board of Direct Taxes before any action is initiated in such cases by the assessing officer. This statement by the Finance Minister means that the retrospective amendment made by the Finance Act 2012, continues to be on the statute and the assessing officer shall be well within his power to refer to the CBDT for initiation of action. The CBDT on its part, in view of the retrospective amendment being on the statute, may find it difficult not to allow initiation of the proceedings by the assessing officer. Thus, the uncertainty on the issue of retrospective amendment in respect of indirect transfers continues. This issue of retrospective amendment has been going on for more than two years. It will be more appropriate if certainty is brought at the earliest by way of a statute rather than leaving it to a committee of the CBDT.

Further, there is an urgent need to define the meaning of the 'indirect transfer.' Foreign investors will continue to be wary of cross border deals where one of the companies in the group proposed to be acquired is based in India. Even if one overseas company acquires shares of another overseas company, and many layers down the organisational structure, the seller company has a subsidiary in India in which it has substantial economic value, there could be a tax incidence in India in the hands of the seller.

2. Income of FIIs to be taxed as capital gain

As against continuing uncertainty on the issue of retrospective amendment and indirect transfer, the Finance Minister has brought certainty in respect of the income earned by the foreign institutional investors on sale of securities. Section 2(14) which defines 'capital asset' is being amended to provide for any securities held by a foreign institutional investor which has invested in such securities in accordance with the regulations made under the SEBI Act, 1992, shall be considered to be a capital asset. It is also being provided that stock-in-trade shall not include any securities held by a foreign institutional investor.

With the above amendment, the income of the foreign institutional investor will be considered and taxed as income arising from the transfer of a capital asset and hence chargeable as capital gain. The above amendment though will bring certainty but may not be good for all FIIs particularly those which have been successful in arguing that it is business income earned from a base outside India and do not have permanent establishment in India and hence there is no tax incidence in India at all. With the proposed amendment even such FIIs will have to pay tax as capital gain in India. Though long term capital gain in respect of securities sold through stock exchange cannot be subjected to tax but the short term capital gain will attract tax at the rate of 15% except in case of those FIIs which have come via Mauritius or Singapore with whom India is having a special tax avoidance treaty.

3. Range Concept – Multiple year data to be considered for determination of arm's length price

The Finance Minister has proposed to align transfer pricing regulation in India with the best available practices. In this regard he has proposed to introduce the 'range concept' for determination of the arm's length price. This will go a long way in establishing that the transactions entered into between the two associated enterprises are at arm's length. The Finance Minister has further proposed to amend the regulation to allow multiple year data for comparable analysis while determining arm's length price.

4. Definition of deemed international transaction being amended

As per the existing provision of Section 92B(2) a transaction entered into by an enterprise with a person other than an associated enterprises is deemed to be a transaction entered into by associated enterprise, if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise or the terms of the relevant transaction are determined in substance between such other persons and the associated enterprise. This is proposed to be amended to clarify that deemed international transaction shall include transaction between resident entities within the definition of an international transaction if there exists a prior agreement or the terms of the transaction are determined between an unrelated resident entity and the off-shore associated enterprise of the Indian entity. This amendment on the one hand will reduce the controversy on this aspect, on the other hand it will make the compliance requirement more difficult as it may not be possible to monitor and report such arrangements.

5. Roll back provision in the Advance Pricing Agreement (APA) Scheme

The Finance Minister has proposed to introduce a roll back provision in the Advance Pricing Agreement Scheme to allow applicability of such agreement to the international transactions undertaken in previous 4 years. In this regard, an amendment has been proposed in Section 92CC by inserting sub-Section (9A) whereby agreement entered into may, subject to such condition and procedure as may be prescribed, may also provide for determining the arm's length price in relation to the international transaction entered into by the person during any period not exceeding four previous years preceding the first of the previous year in which the APA has been entered into. This move may substantially reduce the litigation. It may be important to note that the Advance Pricing Agreement Scheme was introduced by the Finance Act, 2012 and since then more than 300 applications have been filed but agreements have been signed only in five cases. To make the advance pricing mechanism successful there is a need to depute more officials and for the tax authorities to consider the application with an open mind and dispose of the same expeditiously.

6. Concessional rate of 15% tax on dividend received from foreign companies to continue

The Finance Act, 2011 has introduced a special provision under Section 115BBD for taxing dividend received from foreign companies at a concessional rate of 15%. Initially, this provision was introduced for a period of one year only. This was extended by another one year by Finance Act, 2012 and further extended for one year by the Finance Act, 2013. This Finance (No.2) Bill, 2014 proposes to extend this benefit of concessional rate of 15% tax in respect of dividend received from foreign companies for perpetuity without limiting to a particular assessment year. As per this provision, dividend received from a foreign company in which the Indian company holds 26% or more in nominal value of the equity share capital of the company, the same will be chargeable to tax at the rate of 15%. It is to be noted that this benefit will be available only to a company and that too when such company holds 26% or more of the equity capital of the foreign company. Dividend so received by a company is not exempt from Minimum Alternate Tax. Thus, if such company does not have any other taxable income it may be required to pay the tax at the rate of 18% as against 15%.

7. No tax on transfer of government security from one non-resident to another non-resident

A new Clause (viib) is being inserted under Section 47 proposing to exempt capital gain in the transfer of a government security carrying a periodic payment of interest made outside India through intermediary dealing in settlement securities by a non-resident to another non-resident. This amendment is being made to facilitate listing and trading of government securities outside India. It may be interesting to note that the Government by this amendment is exempting from tax direct transfer of an asset, which lies in India, on the other hand it wants to tax even indirect transfer of underlying assets, that too retrospectively.

8. Transfer Pricing Officer can now levy penalty for default in furnishing information

As per the existing provision of Section 271G, a penalty equivalent to 2% of value of the international transaction for specified domestic transaction is leviable on the person who has entered into such transaction and fails to furnish any such information or document as required by Section 92D(3) of the Act. As per the existing procedure this penalty can be levied by the assessing officer or the Commissioner (Appeals). The scope of this is being extended by empowering the transfer pricing officer also to levy this penalty in case of failure to furnish information as required under Section 92D(3). This provision shall be applicable from 1st October, 2014.

H. ASSESSMENT

1. Scope of reference to valuation officer under section 142A being widened

As per the existing provision of Section 142A, the assessing officer can make a reference to the valuation officer where an estimate of the value of investment referred in Section 69, Section 69A, Section 69B or where the fair market value of any property referred to in Section 56(2) is required to be made. The above provision has been subject matter of interpretation by the various Courts whereby it has been held that the power of the assessing officer under these provisions is limited and this power can be invoked when there is an undisclosed investment or where there is understatement of investment. In order to overcome this, the Finance (No.2) Bill, 2014 proposes to substitute this existing provision of Section 142A.

As per the amendment proposed, the assessing officer is being empowered to make a reference to the valuation officer to estimate the value including fair market value of any asset, property or investment. This reference can be made by the assessing officer irrespective of the fact whether he is satisfied about the correctness or completeness of the accounts of the assessee. The valuation officer is to estimate the value of the asset, property or investment after taking into account such evidence as the assessee may produce and any other evidence in his possession or he gathers after giving an opportunity of being heard to the assessee. In case of non-cooperation by the assessee, the valuation officer can estimate the value to the best of his judgment. The valuation officer is to give a report of the estimate within a period of six months from the end of the month in which the reference is made. The assessing officer after giving opportunity of being heard to the assessee may take into account such report in making the assessment. It has been further proposed that the time period beginning with the date on which reference is made and ending with the date on which the report is received by the assessing officer shall be excluded for computing period of limitation for completion of assessment. This amendment is also proposed to be effective from 1st October, 2014 and being a procedural amendment will be applicable to all the pending assessments as on 1st October, 2014.

2. Proceeding under Section 153C only if the assessing officer of such person is also satisfied that the seized documents have bearing on determination of total income of such other person

As per the existing provision in the case of a search, the assessment for the six years preceding the search year gets reopened automatically of the searched person under Section 153A. Further, under Section 153C where the assessing officer of the searched person is satisfied that any money, bullion, jewellery or other valuable article or things or books of account or documents found during search, belongs to a person other than the person searched, then he is supposed to hand over the same to the assessing officer having jurisdiction over such person. The assessing officer of such other person is required to issue notice and reassess income of such other person in accordance with the provision of Section 153A, *i.e.*, he has to issue notice for reassessment for all the six years preceding the year in which search has been carried out. There have been instances where the documents have been found belonging to the person other than the person searched but such documents are the documents in the ordinary course of the business and are not incriminating documents to have any bearing on the determination of income of such other person. However, in view of the mandate of the Section 153C, the assessing officer of such other person has no option but is required to reopen the assessment and complete the reassessment proceedings.

This Finance Bill (No.2) Bill, 2014 proposes to address this issue by clarifying that the assessing officer of the such other person shall initiate the proceedings in accordance with the provision of Section 153A only if that assessing officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of total income of such other person for the relevant assessment year or years referred to in sub-Section (1) of Section 153A. The implication of this amendment will be that the assessing officer of such other person will be now required to apply mind to the documents found belonging to such other person and only if he is satisfied that these documents are incriminating material which have a bearing on the determination of the total income of such other person only then he will initiate the proceedings against such person, and that too for the relevant assessment year for which such incriminating material pertains to. In this regard, insertion of the word 'for the relevant assessment year or years' is important. With this amendment the assessment for the six years will not get reopened automatically of the person other than the person searched as is the case at present. This amendment gives statutory recognition to the decision of the Delhi High Court in the case of *SSP Aviation Ltd. vs. DCIT* 346 ITR 177 whereby the Court has dealt this issue and has held as under:-

> *"The section 153C merely enables the revenue authorities to investigate into the contents of the document seized, which belongs to a person other than the person searched so that it can be ascertained whether the transaction or the income embedded in the document has been accounted for in the case of the appropriate person. It is aimed at ensuring that income does not escape assessment in the hands of any other person merely because he has not been searched under Section 132 of the Act. It is only a first step to the enquiry, which is to follow. The Assessing Officer who has reached the satisfaction that the document relates to a person other than the searched person can do nothing except to forward the document to the Assessing Officer having jurisdiction over the other person and thereafter it is for the Assessing Officer having jurisdiction over the other person to follow the procedure prescribed by Section 153A in an attempt to ensure that the income reflected by the document has been accounted for by such other person. If he is so satisfied after obtaining the returns from such other person for the six assessment years, the proceedings will have to be closed. If the returns filed by the other person for the period of six years does not show that the income reflected in the document has been accounted for, additions will be accordingly made after following the procedure prescribed by law and after giving adequate opportunity of being heard to such other person. That, in sum and substance, is the position."*

This amendment is effective from 1st October, 2014.

I. TAX DEDUCTION AT SOURCE

1. Tax to be deducted at source on payment on maturity of key man insurance policy, *etc*.

The Finance (No.2) Bill, 2014 proposes to broaden the scope of deduction of tax at source by inserting Section 194DA. As per this amendment, tax shall be required to be deducted at source at the rate of 2% by a person responsible for paying to a resident any sum under a life insurance policy including the sum allocated by way of bonus on such policy except such amount which is not chargeable to tax under Section 10(10D) of the Income-tax Act in case such payment is ₹1 lakh or more. As per the provision of Section 10(10D) amount received from a life insurance policy is exempt except any sum received under a key man insurance policy or an insurance policy issued between 1st April, 2003 and 31st March, 2012 in respect of which premium payable for any of the years during the term of the policy exceeds 20% of the capital sum assured and also any sum received under an insurance policy issued after 1st day of April, 2012 in respect of which premium payable for any of the years during the term of the policy exceeds 10% of the actual capital sum assured. Accordingly, with the introduction of the TDS provision, now Insurance companies shall deduct tax on payment of maturity amount of key man insurance policy as well as single premium insurance policy since the premium paid in such cases exceeds the prescribed limit. This provision will be applicable from 1st day of October, 2014 and hence tax will be required to be deducted on all such payments of ₹1 lakh or more in a financial year on or after 1st October, 2014.

2. Concessional rate of tax of 5% being extended to interest on all long term bonds

As per the existing provision of Section 194LC, tax is required to be deducted at source at the rate of 5% in respect of any interest payable to a non-resident on monies borrowed by it in foreign currency under a loan agreement or through issue of long term infrastructure bonds at any time on or after 1st July, 2012 but before 1st July, 2015.

The Finance (No.2) Bill, 2014 proposes to extend benefit of this concessional rate of 5% to any long term bond not limiting the benefit to long term infrastructure bond. Further the period is being extended by another two years *i.e.*, till 1st July, 2017.

It is also being clarified that the provision of Section 206AA for levy of higher rate of tax of 20% where the recipient does not provide Permanent Account Number to the deductor shall not be applicable in respect of payment of such interest on the long term infrastructure bonds. This amendment shall be effective from 1st October, 2014.

3. Power of survey for verification of TDS

The scope of Section 133A is being extended to allow survey for the purpose of verifying that the tax has been deducted or collected at source in accordance with the provisions of the Act. For this purpose, an income tax authority may enter a place where business or profession is carried on or where books of accounts or documents are kept, after sunrise and before sunset. Such authority shall have the power to inspect books of account and other documents and to place marks of identification on the books of account or other documents inspected by him, take extracts and copies thereof and also record the statement of any person which may be useful or relevant to any proceeding under the Act. However, such authority shall not have the power to impound and retain in his custody any books of account or documents inspected by him nor such authority shall have the power to make any inventory of any cash, stock or other valuables.

Further the provision of Section 133A is being amended to allow retention of the books in the case of a normal survey for a period of not exceeding 15 days (exclusive of holidays) without obtaining prior approval of the Chief Commissioner or the Commissioner as the case may be as against the existing period of 10 days (exclusive of holidays).

The above amendments shall be effective from 1st day of October, 2014.

4. Statutory recognition to file correction statement of TDS

As per provision of Section 200(3) a person deducting tax is required to file quarterly statement of the tax deducted by the due date. As per the existing procedure a correction statement for rectification of the information furnished in this statement is allowed in terms of the notification dated 15th January, 2013. However, there is no statutory provision allowing filing of such correction statement. The Finance (No.2) Bill, 2014 proposes to add a *proviso* below sub-Section (3) to Section 200, allowing filing of correction statement for rectification of a mistake or to add, or delete or update data furnished in the statement.

5. Time period for treating assessee in default for TDS being extended to 7 years

As per the existing provision of Section 201(1) a person who is required to deduct tax but does not deduct or does not pay after deducting such tax is considered to be an assessee in default. However, as per Section 201(3) no order can be passed deeming such person to be an assessee in default after the expiry of two years from the end of the financial year in which the statement as required under Section 200(3) is filed in the case of a person who has filed the statement and six years from the end of the financial year in which payment is made or credit is given in the case of a person who has not filed the statement.

The Finance (No.2) Bill, 2014 proposes to extend this limitation period. As per the proposed amendment, no order shall be made directing such person to be an assessee in default at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given. Thus, this Finance Bill proposes to remove the distinction between a person who has filed the statement under Section 200(3) and a person who has not filed the statement. Further an order under Section201(1) can be passed treating the person as assessee in default for not deducting tax or not depositing the tax after such deduction within a period of seven years from end of the financial year in which payment has been made or credit has been given.

This amendment is being made effective from 1st October, 2014.

J. ALTERNATE MINIMUM TAX (AMT)

1. Incentive claimed under Section 35AD liable for AMT

The Finance Act, 2012 has introduced levy of Alternate Minimum Tax on person other than a company. As per the provision of Section 115JC Alternate Minimum Tax is payable on adjusted total income which is total income before any deduction under Chapter VIA and deduction under Section 10AA. The Finance (No.2) Bill, 2014 proposes to add deduction by way of incentive allowed under Section 35AD of the Act in respect of capital expenditure incurred by an eligible business while computing adjusted total income from long term asset. In terms of the proposed amendment, capital expenditure which is allowed as deduction less depreciation allowable on such capital expenditure under Section 32 shall be added to the total income while computing adjusted total income and hence liable for Alternate Minimum Tax.

2. Credit of Alternate Minimum Tax to be allowed even in the year in which AMT is not applicable

The Finance (No.2) Bill, 2014 proposes to address the anomaly which is arising in claiming credit of Alternate Minimum Tax paid by a person other than a company. As per the existing provision, all the provisions of AMT (including of allowable credit of AMT paid in earlier years) are not applicable to an individual or HUF if the adjusted total income does not exceed ₹20 lakh in that year. The provisions of AMT are applicable only in the year in which adjusted total income exceeds ₹20 lakh. Accordingly credit of Alternate Minimum Tax paid in earlier years cannot be claimed by such an individual or HUF in the year in which its total income does not exceed ₹20 lakh. In order to remove this anomaly, it has been proposed that credit of tax paid as Alternate Minimum Tax can be availed even in those years where the provision of this AMT are not applicable in view of the total income not exceeding ₹20 lakh.

K. MISCELLANEOUS

1. Pass through status to real estate investment trust–infrastructure investment trust

The Finance (No.2) Bill, 2014 proposes to grant pass through status to the real estate investment trust and infrastructure investment trust by inserting Chapter XII-FA relating to Business Trusts. As per the proposal, there will be no taxation in the case of the trust. The income will be taxed in the hands of the beneficiaries.

The listed units of a business trust, when traded on a recognised stock exchange, would attract same levy of securities transaction tax (STT), and would be given the same tax benefits in respect of taxability of capital gains as equity shares of a company, *i.e.*, long term capital gains, would be exempt and short term capital gains would be taxable at the rate of 15%.

In case of capital gains arising to the sponsor at the time of exchange of shares in SPVs with units of the business trust, the taxation of gains shall be deferred and taxed at the time of disposal of units by the sponsor. However, the preferential capital gains regime (consequential to levy of STT) available in respect of units of business trust will not be available to the sponsor in respect of these units at the time of disposal. Further, for the purpose of computing capital gain, the cost of these units shall be considered as cost of the shares to the sponsor. The holding period of shares shall also be included in the holding period of such units.

The income by way of interest received by the business trust from SPV is accorded pass through treatment *i.e.*, there is no taxation of such interest income in the hands of the trust and no withholding tax at the level of SPV. However, withholding tax at the rate of 5 % in case of payment of interest component of income distributed to non-resident unit holders, at the rate of 10%. in respect of payment of interest component of distributed income to a resident unit holder shall be effected by the trust.

The dividend received by the trust shall be subject to dividend distribution tax at the level of SPV but will be exempt in the hands of the trust, and the dividend component of the income distributed by the trust to unit holders will also be exempt.

The income by way of capital gains on disposal of assets by the trust shall be taxable in the hands of the trust at the applicable rate. However, if such capital gains are distributed, then the component of distributed income attributable to capital gains would be exempt in the hands of the unit holder. Any other income of the trust shall be taxable at the maximum marginal rate.

This provision will be applicable with effect from 1st October, 2014.

2. Enquiry of the information with the tax authorities

A new Section 133C is being introduced to enable the tax authorities to verify the information in its possession relating to any person. For this purpose, such authority may issue a notice to such person requiring him, on or before a date to furnish information or document verified in the manner which may be useful or relevant to an enquiry proceeding under this Act. The amendment is effective from 1st October, 2014.

3. All Mutual Funds, Venture Capital Companies to file tax returns

Under the provisions of Section 139, various persons are required to file return of income. The scope of this being extended to include filing of return by the mutual fund, securitisation trust, venture capital companies, venture capital funds despite income of such activities being exempt under various clauses of Section 10 of the Act.

4. Signing and verification of return of income

The provisions of Section 140 are being amended, with regard to signing and verification of the return, in view of the electronic filing of return. Now, the return can be verified by signature or by electronic mode. This amendment will be effective from 1st October, 2014.

5. Interest to be paid under Section 220 even from the period during which there was no demand.

The Finance (No. 2) Bill, 2014 proposes to amend the provision of Section 220 to provide that once a notice of demand under Section 220 has been served upon an assessee, such demand shall deemed to be valid till the disposal of the appeal by the last appellate authority or disposal of proceedings as the case may be.

The implication of this amendment will be that an assessee will be required to pay interest under Section 220 even in respect of the period starting from the day when there was no demand outstanding consequent to the relief granted by an appellate authority till the period when such order of relief is reversed by higher appellate authority consequent to which the demand notice is again issued.

This amendment probably is being made to overcome the decision of the Hon'ble Supreme Court in the case of *Vikrant Tyres Ltd vs. ITO* reported at 247 ITR 821 (SC) dated 9th February, 2001, whereby the court has held that the provisions of section 3 of the Taxation Laws (Continuation & Validation of Recovery Proceedings) Act, 1964, can't be interpreted to construe that, the revenue has authority to demand interest under Section 220 of the Act, in a situation, when the assessee has satisfied the demand in regard to tax originally assessed. The Supreme Court has held that Section 3 of the Validation Act, was enacted only to revive the old demand notice which has never been satisfied by the assessee and which notice got quashed during some stage of challenge and finally the quashed notice got restored by the order of a higher forum. With this amendment, the assessee will be required to pay interest for the period during which there was no default or delay in making payment of demand as there was no demand subsisting during that period.

This amendment will be effective from 1st October, 2014.

6. Mode of acceptance of repayment of loan and deposit can be by way electronic clearing system

The provision of Section 269SS and 269T which provides for levy of penalty for acceptance and repayment of loans and deposit otherwise than by account payee cheques are proposed to be amended by allowing acceptance of repayment of loan or deposit by use of electronic clearing system through a bank account.

7. Prosecution for failure to produce accounts and documents or get accounts audited

As per the existing provision of Section 276D, if a person willfully fails to produce accounts and documents as required by a notice under Section 142(1) or willfully fails to comply with the direction issued for special audit under Section 142(2A), he is punishable with a rigorous imprisonment for a term which may extend to one year or with fine equal to a sum calculated at the rate which is not less than ₹4 and which is not more than ₹10 per day during which default continues or with both. The word 'or' is being proposed to be substituted by the word 'and' with result that in case of such failure there will be imprisonment as well as fine.

This amendment will be effective from 1st October, 2014.

8. Furnishing of statement of information

The existing provisions of Section 285BA in respect of furnishing of annual information report are being restructured. As per the proposal, prescribed financial institutions shall be required to furnish statement of the specified financial transaction or reportable account. This information is to be furnished within the prescribed time. It will be an obligation of the person furnishing such information to inform about any discovery or inaccuracy in the information provided within a period of 10 days. In order to ensure the compliance of the above provision a penalty of ₹50,000 is being introduced by way of Section 271FAA. This penalty shall be leviable in case such person provides inaccurate information in the statement and where inaccuracy is due to a failure to comply with the due diligence requirement or is deliberate on the part of the person or the person knows of the inaccuracy at the time of furnishing the statement but does not inform the same to the tax authorities and the person having discovered the inaccuracy does not furnish the correct information within the prescribed period.

9. Uniform KYC norms and single Demat account

The Finance Minister in his Budget speech has proposed to introduce a Uniform KYC norms and inter-usability of the KYC records across the entire financial sector. The Finance Minister has also proposed to introduce one single operation Demat account so that one can access all financial assets through this one account.

10. Kisan Vikas Patra being reintroduced

The Finance Minister in the Budget speech has proposed to reintroduce the Kisan Vikas Patra to encourage small savers to invest in this instrument. This is being revived probably to encourage savings. The money invested in Kisan Vikas Patra used to get doubled in eight years and seven months. There was no upper limit of investment. Though the objective of the Finance Minister apparently is to tap untapped savings but it can also bring in a lot of unexplained money especially in semi-urban and rural areas who invest much amount of cash in Kisan Vikas Patra. Kisan Vikas Patra can be easily bought from the post office and also encashed in cash at the post office without deduction of tax at source and one does not need a bank account for buying and encashing Kisan Vikas Patra. ■

Taxation of Charitable Trust-Amendments Proposed in the Finance (No.2) Bill 2014

Charitable Trusts have always been a hotspot in the domain of Direct Taxation considering the separate scheme of Taxation and Exemptions provided to them under Chapter III of the Income-tax Act, 1961 (hereinafter referred to as the "Act") and the relevant rules thereunder. Charitable Trusts of late have garnered even more importance with the much discussed Intelligence Bureau's report on NGOs and their sources of funding and the Income Tax proceedings in the much publicised National Herald Scam involving the political big wigs of our country. In this article however, the focus would be restricted to getting the readers acquainted with key changes w.r.t. taxation of Charitable Trusts in the Finance (No.2) Bill, 2014 (hereinafter referred to as "the Bill") proposed by the Government.

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A. Key Amendments

1. ***Non applicability of Other Exemptions under 10 to Charitable Trusts***

The existing provisions of Section 11 of the Act provide for exemption to trusts in respect of income derived from property held under trust and voluntary contributions subject to prescribed conditions. The primary condition for grant of exemption is that the income derived from property held under trust should be applied for the charitable purposes/accumulated and later applied for charitable purpose.

Section 13 of the Act provides for the circumstances under which exemption under Section 11 or 12 would not be available to a trust or institution. The Sections 11, 12, 12A, 12AA and 13 constitute a complete code governing the grant or withdrawal of registration and its cancellation, providing exemption to income, and also the conditions to be satisfied by a Charitable Trust

Several issues have arisen in the applicability of the general provision of exemptions which are contained in Section 10 of the Act in the context of the specific exemption under Sections 11 to 13.

Following the decision in the case of *Bar Council of Maharashtra* [130 ITR 28], there have been several instances where the registered trusts claiming benefits under Section 11 do not apply their income, for charitable purposes. In such instances, where the income is taxable, a claim of exemption under general provisions of Section 10 would be contrary to the specific provisions under Sections 11 to 13

Therefore, it is proposed to amend Section 11 to include a new sub-Section (7) as follows–

> *"(7) Where a trust or an institution has been granted registration under Clause (b) of sub-Section (1) of Section 12AA or has obtained registration at any time under Section 12A as it stood before its amendment by the Finance (No. 2) Act, 1996 and the said registration is in force for any previous year, then, nothing contained in Section 10 other than Clause (1) and Clause (23C) thereof shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that previous year."*

Therefore, that where a trust is availing exemption under section 11, and the registration is in force for a previous year, then such trust or institution cannot claim any exemption under any provision of Section 10 [other than that relating to exemption of agricultural income and income exempt under Section 10(23C)].

Similarly, entities which have been approved or notified for claiming benefit of exemption under Section 10(23C) would not be entitled to claim any benefit of exemption under other provisions of Section10 (except the exemption in respect of agricultural income).

2. *Disallowance of Depreciation where Cost of Asset has already been allowed*

The existing provisions of Section 11/10(23C) inherently provide that when income is applied to acquire a capital asset the same can be treated as application of income. Further, depreciation on the said asset can also claimed by the assessee as provided in the below cases–

Where a trust is availing exemption under Section 11, and the registration is in force for a previous year, then such trust or institution cannot claim any exemption under any provision of Section 10 [other than that relating to exemption of agricultural income and income exempt under Section 10(23C)].

- *Institute of Banking Personnel Selection 131 Taxmann 386 (Bom.)*
- *CIT vs. Munisuvrat Jain 1994 Tax Law Reporter 108*
- *Framjee Cawasjee Institute [1993] 109 CTR 463 (Bom.)*

It was also held by the High Court of Punjab & Haryana in the case of *Commissioner of Income-tax vs. Market Committee, Pipli,* that claim of depreciation by a charitable institution, whose income is fully exempt, does not amount to taking of double benefit by such charitable institution. The income of the assessee being exempt as the assessee was merely claiming depreciation as a deduction for calculating the amount applied for charitable purpose.

To counter the above decisions, it is proposed to amend Section 11 and 10(23C)by inserting the following provision–

> *"(6) In this section where any income is required to be applied or accumulated or set apart for application, then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year."*

By virtue of the above provision, w.e.f. 01-04-2015 providing depreciation shall not be allowed in respect of any asset, the cost of acquisition of which has been claimed as an application of income in the same or any other previous year.

3. *Definition of the term "Substantially financed by Government" under Section 10(23C)*

Presently, the Act provides for exemption in respect of the income of certain educational institutions, universities and hospitals which are wholly or

"Substantially financed by the Government." The term substantially financed by the Government had not been defined in the Act, leading to a lot of litigation.

W.e.f. 01-04-2015, the meaning of the term "wholly or substantially financed by the Government" has been clarified to cover cases where the Government grants to such university or other educational institution, hospital or other institution, exceeds a specified percentage (to be prescribed) of its total receipts (including any voluntary contributions), during the relevant financial year.

4. ***Cancellation of registration of the trust or institution in certain cases***

The existing provisions of Section 12AA (and under Section 10(23C)) of the Act provide that the registration once granted to a trust or institution shall remain in force till it is cancelled by the Commissioner. The Commissioner can cancel the registration under two circumstances -

(a) The activities of a trust or institution are not genuine, or;

(b) The activities are not being carried out in accordance with the objects of the trust or institution.

Therefore, the powers of Commissioner to cancel registration were considered limited in nature.

The Commissioner did not have explicit powers to cancel registration in cases where trusts, particularly in the year in which they have substantial income claimed to be exempt under other provisions of the Act, or have violated provisions of Section 13 by investing in prohibited mode or where the income has been diverted for benefit of certain Prohibited persons under Section 13(3).

Thus, the powers of the Commissioner to cancel registration under Section 12AA have been widened w.e.f 01-10-2014 to provide that where a trust or an institution has been granted registration, and subsequently it is noticed that its activities are being carried out in such a manner that—

- It is for benefit of any particular religious community or caste (in case it is established after commencement of the Act);
- Any income or property of the trust is applied for benefit of prohibited persons under Section 13(3)
- Its funds are invested in prohibited modes,

then the Principal Commissioner or the Commissioner may cancel the registration if such trust or institution does not prove that there was a reasonable cause for the activities to be carried out in the above manner.

It is proposed that no action for reopening of an assessment under Section 147 shall be taken by the Assessing Officer in the case of such trust or institution for any assessment year preceding the first assessment year for which the registration applies, merely for the reason that such trust or institution has not obtained the registration under Section 12AA for the said assessment year.

5. ***Retrospective Exemption***

Prior to 01-06-2007 there existed a *proviso* to Clause (a) of Section 12A of the Act, which provided that in case belated application for registration by the Charitable Trust, if the Commissioner is satisfied that the assessee was prevented by sufficient cause from submitting the application within the time limit, then the Exemption under Sections 11 and 12 shall be made applicable from the date of creation of the trust.

However, the above discretionary power of the Commissioner to provide retrospective Exemption was removed by the Finance Act, 2007 w.e.f 01-06-2007. The removal of such discretionary powers resulted in denial of exemption to Charitable Trusts who were unable to obtain registration within the time limit even due to genuine reasons.

Hence, it has also been proposed to tax exemption even for prior years provided the objects or activities of trusts or institutions in those years is same as those on the basis of which registration has been granted.

Further, it is proposed that no action for reopening of an assessment under Section 147 shall be taken by the Assessing Officer in the case of such trust or institution for any assessment year preceding the first assessment year for which the registration applies, merely for the reason that such trust or institution has not obtained the registration under Section 12AA for the said assessment year.

However, the above benefit would not be available in case of any trust or institution which at any time had applied for registration and the same was refused under Section 12AA or a registration once granted was cancelled.

6. ***Anonymous Donations under Section 115BBC***

Under Section 115BBC anonymous donations received by the following persons are taxable at the rate of 30% -

(a) Any university or educational institution
(b) Hospital/Institution
(c) Fund/Institution
(d) Trust/Institution

However, the amount of aggregate anonymous donations exceeding 5% of the total donations received by the assessee or ₹1 lakh, whichever is higher shall alone be taxable at 30%.

The current provisions of Section 115BBC, also provide that total income after reducing the full amount of anonymous donations will be chargeable to tax at applicable rates. There is an obvious anomaly in the wordings of the Section and the proper way of computation is to reduce the income by the amount that has been taxed at the rate of 30%.

Therefore, it is proposed to amend Section 115BBC w.e.f 01-14-2015, to provide that the income tax payable shall be the aggregate of the amount of income tax calculated at the rate of 30% on the aggregate of anonymous donations received in excess of 5% of the total donations received by the assessee or ₹1 lakh, whichever is higher, and the amount of income tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of the anonymous donations which is in excess of the 5% of the total donations received by the assessee or ₹1 lakh, whichever is higher.

Illustration

XYZ Educational Trust, a Public Charitable Trust with the following details –

Particulars	₹
1. Income from Property held under trust	**75,00,000**
2. Total donations (including anonymous donations of ₹10 lakhs)	**25,00,000**

The below would be the method of computation of taxable income and tax payable for the Previous Years 2013–14 and Previous Years 2014–15 –

A. **Calculation of Income to be applied for Charitable Purposes**

Particulars	***PY 13–14***	***PY 14-15***
1. Income from Property held under trust	**75,00,000**	**75,00,000**
2. Donations (other than anonymous donations of ₹10 lakh)	**15,00,000**	**15,00,000**
3. **Less:** Amount as per Sch B Below	**(10,00,000) Sch B(1)**	**(8,75,000) Sch B(3)**
4. **Income to be applied for Charitable Purpose (See Note*)**	**80,00,000**	**81,25,000**

B. **Anonymous Donations Taxable at 30%**

Particulars	***PY 13–14***	***PY 14-15***
1. Anonymous Donations	**10,00,000**	**10,00,000**
2. **Less:** Non Taxable Anonymous Donations– Higher of–[5% of Total Donations 25,00,000=1,25,000] or [₹1,00,000]	**(1,25,000)**	**(1,25,000)**
3. **Taxable Anonymous Donations–Taxable at 30%**	**8,75,000**	**8,75,000**

***Note:** The Effect of the above calculations is that earlier where the amount of ₹1,25,000 was considered as an "Exempt Donation," now the same would be added to the Income which is to be applied for charitable purpose.

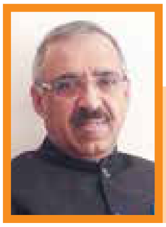
Conclusion

It has been hardly 50 days since the Modi Team had been given a verdict to lead this country for next five years. The expectations of the common man, the business community, non-residents, FII's, Markets and all Stake Holders are very high. In spite of the above constraints, most of the proposals outlined in the budget particularly those w.r.t. Charitable Trusts have been made after effectively considering the needs of the ordinary man and the relevant business and non-business sectors of the country. It should also be a source of pride to the Institute also that for the first time probably most of the proposals outlined in the pre-budget memorandum of the Institute have been effectively considered in framing the proposals. Hence, I am able to solemnly conclude that after a long time we have a Government at the centre, which actually listens to its people. May be not immediately, but surely–

"*Ache din aane waale hain*". ■

Proposed Amendments in Finance (No. 2) Bill 2014-Impacting Income from Business

The most eagerly awaited and the most talked about budget in the recent times has made a genuine attempt to appease as many sectors and regions as it could, gratifying its mandate of "Sab ka Sath, Sab ka Vikas." The challenge for the Finance Minister was to balance the unduly high expectations of the people at large with the ground realities of fighting higher level of inflation, higher fiscal deficit, unmanageable current account deficit, two years of sub 5% growth etc. The Government, through this budget, has set out clear expectations in respect of a broad policy indicators and introduced measures for revival of the economy, promotion of investment in manufacturing sector and rationalising tax provisions with the intent of reducing litigation and giving relief to the taxpayers and certain sectors of the economy. This article aims to highlight some of the amendments made by Finance Bill, 2014 in relation to 'Income from Business or Profession.'



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I. Measures for Socio-Economic Growth

a. Section 32AC-Investment Allowance

- The Finance Act 2013 had introduced Section 32AC in the Income-tax Act, 1961 (hereinafter referred to as 'the Act') which provided an investment allowance of 15% (subject to certain specified conditions) to companies engaged in the manufacture of an article or thing and acquires or installs new plant or machinery of value more than ₹100 crore during the period 1st April, 2013 to 31st March, 2015. The Finance Bill, 2014 proposes to extend the time lines to 31st March, 2017 to claim benefit of this deduction for all investments made in plant and machinery.

- With an intent of simplifying the existing provisions and extending the benefit to promote the interest of small to medium enterprises, the Finance Bill, 2014 has proposed certain amendments to the existing provisions. The scope has been expanded to include investments in plant and machinery of value ₹25 crore or more on or after 1st April, 2014 by way of proposed insertion of sub Section 1A to Section 32AC.
- It is also clarified that the assessee who is eligible to claim deduction under the existing combined threshold limit of ₹100 crore for investment made in financial years 2013-14 and 2014-15 shall continue to be eligible to claim deduction under the existing provisions even if its investment in the year 2014-15 is below the proposed new threshold limit of investment of ₹25 crore during the financial year.
- The amendments will be effective from 1st April, 2015 and will accordingly apply for assessment year 2015-16 and subsequent years.

b. Section 35AD- Expenditure on Specified Business

- At present, investment-linked deduction of certain percentage of the capital outlay is allowed under Section 35AD of the Act in 11 specified businesses. This Section was inserted by the Finance (No. 2) Act, 2009 w.e.f 1st April, 2010. The Finance Bill, 2014 proposes to bring two more business within the ambit of Section 35AD of the Act *viz.* (i) the assessee is engaged in the business of laying and operating slurry pipelines for transportation of iron ore, and (ii) setting up and operating a semiconductor wafer fabrication manufacturing unit to be notified by the Board in accordance with guidelines to be prescribed. The deduction shall be available where the commencement of said business operations takes place on or after 1st April, 2014.
- In the existing provisions, there was neither any mention of specific time period for which such assets were required to be used nor there was any restriction to use for specified business.
- With a view to ensure that the capital asset on which such deduction is claimed is used for the specified business, it is proposed to insert sub-Section 7A which provides, that any asset in respect of which a deduction is claimed and allowed under Section 35AD, shall be used only for the specified business for a period of eight years commencing from the year in which the asset is acquired or constructed.

The Finance Bill, 2014 proposes to bring two more business within the ambit of Section 35AD of the Act viz. (i) assessee is engaged in the business of laying and operating slurry pipelines for transportation of iron ore, and (ii) setting up and operating a semiconductor wafer fabrication manufacturing unit to be notified by the Board in accordance with guidelines to be prescribed.

- The other amendment in Section 35AD proposed by Finance Bill, 2014 is by way of insertion of sub-Section 7B, which provides that in case any asset is used for any purpose other than the specified business, the total amount of deduction so claimed and allowed in the previous year as reduced by the depreciation claim on such asset under Section 32 as if no deduction was available under Section 35AD, shall be deemed to be the income of the assessee and shall accordingly be charged under the head, "Profits and gains of business or profession." However, according to proposed sub-section (7C), these provisions shall not apply in case of a company which has become a sick industrial company under the relevant Act.
- As per the existing provisions of sub-Section (3), where an assessee has claimed a deduction under this Section, no deduction shall be allowed under the provisions of Chapter VIA for the same or any other assessment year. Section 10AA provided for profit linked deduction to an assessee for units set up in Special Economic Zones. It is proposed to further amend sub-Section (3) such that if deduction has been availed under Section 35AD of the Act on account of capital expenditure incurred for the purpose of specified business, the assessee is restricted to claim deduction under Section 10AA (besides provisions of chapter VI-A as it stands today) for the same or any other assessment year.
- ***Interplay of Section 10AA and Section 35AD*** – Whilst Section 35AD provides for investment linked deduction for assessees engaged in specified business, Section 10AA provides for profit linked deduction for units

set up in Special Economic Zone and engaged in manufacture of an article or provision of services. There is a possibility of claiming profit linked deduction after expiry of the investment linked deduction in the initial years. The Finance Bill, 2014 has amended the provisions in order to plug this loophole. The units set up in the SEZ unit shall now be required to opt in the initial years to claim deduction under either of the above Sections. Corresponding amendments have also been carried out in Section 10AA by inserting sub-Section 10 which provides *"Where a deduction under this section is claimed and allowed in respect of profits of any of the specified business, referred to in Clause (c) of sub-Section (8) of Section 35AD, for any assessment year, no deduction shall be allowed under the provisions of Section 35AD in relation to such specified business for the same or any other assessment year."*

- ***Consequential change in Section 115JC*** -The existing provisions of Section 115JC dealing with special provisions for alternate minimum tax provide that the total income shall be increased by deductions claimed under Part C of Chapter VI-A and deductions claimed under section 10AA to arrive at adjusted total income. The proposed amendment to Section 115JC by Finance Bill, 2014 prescribes the methodology for computing the adjusted total income where the total income will be further increased by adding deduction claimed under Section 35AD as reduced by allowable depreciation under Section 32 as if no deduction under Section 35AD was allowed.
- The amendments will take effect from 1st April, 2015, *i.e.*, Assessment Year 2015-16.

The proposed amendment to Section 80-IA, by extending the tax holiday period for a period of 3 years instead of annual extensions, has brought some respite amongst the Power sector. With an intent to provide further time to the undertakings to commence the eligible activity to avail the tax incentive, the terminal date has been extended up to 31st March, 2017.

c. *Section 80-IA-A boost for Power Sector*

- Supply of Power has been an area of concern for one and all and also one of the key drivers of economic growth. The Finance Minister's budget proposals in relation to the Power sector shall certainly boost the investor interest at the same time benefitting the general public at large.
- As per the existing provisions of Section 80-IA, the terminal date for setting up of a unit for generation and distribution of power or laying network/undertaking substantial renovation for new transmission or distribution lines was 31st March, 2014. It may be pertinent to note at this juncture, that since last couple of years, the sunset date was being extended for a period of one year.
- The proposed amendment to Section 80-IA, by extending the tax holiday period for a period of three years instead of annual extensions, has brought some respite amongst the Power sector. With an intent to provide further time to the undertakings to commence the eligible activity to avail the tax incentive, the terminal date has been extended up to 31st March, 2017. This move has been initiated with an intent to bring stability in the policy thereby facilitating the investors to plan their investments accordingly.

d. *Section 194LC and Section 206AA*

- With an intent to attract foreign investments and to augment the long term funds required for the infrastructure sector, Section 194 LC was inserted by the Finance Act, 2012 with effect from 1st July, 2012. This section provided that on interest paid by certain class of companies to a non-resident in respect of borrowings made in foreign currency (by way of loan or issue of long term infrastructure bonds) during the period 1st July, 2012 to 30th June, 2015, tax shall be deductible at a concessional rate of 5%.
- In order to further incentivise low cost long-term borrowings, the Finance Bill, 2014 has proposed to extend the eligible date of borrowing by a further period of two years up to 30th June, 2017. Further, the provision which was earlier

To bring parity amongst the provisions, the Finance Bill, 2014 has proposed to amend provisions of Section 40(a) (i) to provide that the deductor shall be allowed to claim deduction for payments made to non-residents, if the tax as deducted during the previous year, the payment is made on or before the due date specified for filing of return under Section 139(1) of the Act.

made available to a specified company, has been extended to 'business trusts' also. The benefit of concessional deduction of taxes is proposed to be extended to borrowings by way of issue of any long term bond and not limited to only long term infrastructure bond w.e.f 1st October, 2014.

- As per the existing provisions, Section 206AA(7) of the Act explicitly provides that higher deduction in absence of PAN shall not be attracted in respect of payment of interest on long term infrastructure bonds eligible for benefit under Section 194 LC. Consequent to amendment proposed by Finance Bill, 2014 in Section 194LC it is also proposed to amend provisions of Section 206AA to extend the benefit to payment of interest on any long-term bond with effect from 1st October, 2014 as compared to the existing provisions which are limited to long term infrastructure fund.

II. Relief Provisions

a. *Section 40(a) (i) & Section 40(a) (ia)-Disallowability of Expenditure*

- The existing provision of Section 40(a)(i) of the Act provides for disallowance of certain payments (interest, royalty *etc.*) made to non-residents in case of non-deduction of tax on such payments or non-payment of tax after deduction within the time prescribed under Section 200(1) of the Act. However, the time prescribed in similar provisions for payment to residents under Section 40(a)(ia), is on or before the due date as prescribed under Section 139(1) of the Act.
- To bring parity amongst the provisions, the Finance Bill, 2014 has proposed to amend provisions of Section 40(a) (i) to provide that the deductor shall be allowed to claim deduction for payments made to non-residents, if the tax as deducted during the previous year, the payment is made on or before the due date specified for filing of return under Section 139(1) of the Act.
- Even though the amendment brought by Finance Act, 2010 to Section 40(a)(ia) was made effective from 1st April, 2010, it was held in various judicial pronouncements[1] that the amendment brought in by Finance Act, 2010 is remedial in nature and designed to eliminate unintended consequences which may cause undue hardship to the taxpayer. In view of this, it was stated that the provision is of clarificatory nature and therefore to be treated as retrospective with effect from 1st April, 2005, the date on which Section 40(a)(ia) was inserted by Finance (No 2) Act, 2004.
- Since the Memorandum clarifies that the amendment proposed to Section 40(a)(i) has been made to bring parity with the provisions of Section 40(a)(ia), it is suggested that with a view to reducing litigation and following the principles held in judicial precedents referred above, the amendment may be clarified to be retrospective in nature.
- The existing provision of Section 40(a)(ia) specifies certain expenditure *viz.* interest, commission or brokerage, rent, royalty, fees for professional or technical services or amounts payable to a contractor on which disallowance can be made. However, the proposed amendment brought by Finance Bill, 2014 has enlarged the scope of expenditure by mentioning the words 'any sum payable to resident'. The proposed amendment would bring other payments (for instance salary, director fees, transaction of immovable property *etc*) also within the realm of the disallowances under this Section.
- Another amendment proposed in the provisions relating to TDS, is restriction of disallowance to 30% of the amount of expenditure claimed in case of non-deduction or non-payment of TDS on payments made to 'residents' as against the current disallowance of 100% of the expenditure claimed.
- On one hand, some relief has been given to the taxpayers by restricting the disallowance to 30%. On the other hand, in order to ensure compliance of TDS provisions to expenditure on which 40(a) (ia) was not applicable, the scope of applicability of the Section and the resultant disallowance has been enlarged to include all expenditure on which tax is deductible under Chapter XVII-B.

[1] *CIT vs Virgin creations (ITA No 302/2011 Kolkata ITAT);CITvs Naresh Kumar (2013) 39 taxman 182 Delhi*

- The amendments shall be effective from 1st April, 2015 and shall apply from assessment year 2015-16.

b. *Section 73- Losses of Speculation Business*

- As per the existing provisions of Section 73 of the Act, losses incurred in respect of a speculation business cannot be set-off or carried forward and set-off, except against the profits of any other speculation business.
- The Finance Bill, 2014 proposes to exclude from the deeming provisions under Section 73 of the Act, the companies whose principal business is trading in shares. The said amendment brings considerable relief to proprietary traders, as this would allow set off of losses from trading in shares with other income from business activities.
- With effect from 1st April, 2015, where the principal business of any company is trading in shares, such business of purchase and sale of shares would not be regarded as a speculation business. Therefore, any loss from such a business will not be treated as speculative loss and shall be allowed to be set off against profits of other activities.

c. *Section 269SS/269T- Mode of acceptance/ repayment of loans and deposits*

- The provisions of Section 269 were inserted by Finance Act 1984, w.e.f 01-04-1984. The initial monetary ceiling for accepting loans and advances was ₹10,000/- which was increased to ₹20,000/ w.e.f 01-04-1989. As per the existing provisions, the mode of acceptance of loans and deposits and its repayment is not permitted otherwise than by way of account payee cheque or draft. It may be pertinent to note that there has been no change in the provision since its inception.
- With increased dependency on the use of technology, payments are preferred to be made by mode of NEFT transfers or RTGS by use of payment gateways. In view of the above, the Finance Bill, 2014 proposed to amend the provisions of Section 269SS and Section 269T so as to provide that any acceptance or repayment of loan or deposit by use of electronic clearing system through a bank account shall not be prohibited if other conditions regarding quantum *etc*., are satisfied.
- The proposed amendment is clarificatory in nature and though is made effective from 1st April, 2015, it is suggested the same may be applied retrospectively to the previous assessment years as well.

d. *Advance Ruling Provisions*

- The existing provision for making application seeking Advance Ruling is restricted to either non-resident or to residents entering into transaction with non-residents.
- With a view to reduce litigation, one of the important proposition laid in the Budget is to extend the benefit of advance ruling provisions to resident taxpayer, who will now be in a position to obtain advance ruling in respect of their tax liability above a defined threshold.
- To meet the objective, there is also a proposition to constitute additional benches in order to strengthen the Authority for Advance Rulings since there is a dire need to strengthen the capacity of the Benches.
- This is a welcome step in order to reduce the existing disputes and litigation pending before various Courts and Appellate Authorities. Extending Advance Ruling route to resident taxpayers shall certainly go a long way to bring clarity and certainty on such issues and reduce tax litigation.

III. Measures to Widen Tax Base

a. *Section 37 with reference to Corporate Social Responsibility (CSR)*

- With an intent to share the Government's burden in providing social services, the Government of India has notified the rules for CSR spending under Section 135 of the Companies Act, 2013 along with Companies(Corporate Social Responsibility Policy) Rules 2014 effective 1st April, 2014. The concept of CSR is not new as many corporates have taken initiatives in this direction. There is one big change now, as this activity has been made mandatory for certain class of companies and is no more a voluntary act.
- It has been clarified in the Memorandum to Finance Bill, 2014 that CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purpose of carrying on the business. As application of income is not allowed as deduction for the purpose of

computing taxable income, CSR expenditure cannot be allowed as a deduction under Section 37(1) of the Act.

- In order to provide certainty to the issue of admissibility of expenditure in relation to CSR activities, the Finance Bill, 2014 has proposed to amend Section 37 (1) by way of insertion of Explanation 2 which provides as under :-
  "Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-Section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in Section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession."
- It has also been clarified that CSR expenditure, which is of the nature described in the Section 30 to Section 36 of the Act, shall be allowed subject to fulfilment of conditions specified therein.
- In view of the mandatory provisions of Companies Act, 2013 relating to contribution to CSR activities, the corporate sector had huge expectations that the Finance Bill, 2014 would propose allowability of such expenses under Section 37 of the Act. As a consequence of this amendment, some corporates may be more inclined to contribute to funds like PM National relief fund, Defence fund *etc.*, which would entail them a deduction of the entire expenditure, in contrast to the real social activities *viz.* imparting free education, helping eradicate poverty, malnutrition, *etc.* This would defeat the very objective of bringing CSR-related amendments in Companies Act, 2013.
- The Finance Minister, in his budget speech, has also proposed to include slum development in the list of CSR activities to encourage contribution from the private sector.
- The amendment will take effect from 1st April, 2015 and will accordingly apply in relation to assessment year 2015-16 and subsequent years.

b. *Section 44AE-Business of Plying, Hiring or Leasing Goods Carriages*

- Budget 2014, aiming at simplifying the tax provisions for the taxpayer at large, has proposed certain amendments to the provisions of Section 44AE of the Act. The existing provisions provided for presumptive taxation in the case of assessee's not owning more than 10 good carriages and engaged in the business of plying, hiring or leasing. The Section, as it stands today, makes a distinction between the carriages into heavy goods vehicles and other than heavy goods vehicle for the purposes of specifying the amount to be taxed.
- The Finance Bill, 2014 proposes to dispense with the distinction of type of carriage and provides for a uniform presumptive income of ₹7,500 for every month or part thereof during which the goods carriage is owned by the assessee.
- The amendments shall be effective from 1st April, 2015, *i.e.*, Assessment Year 2015-16.

c. *Section 220- Interest Payable by an Assessee*

- The existing provision contained in Section 220(1) of the Act provides that any amount specified as payable in a notice of demand under Section 156 of the Act shall be paid within 30 days of the service of notice at the place and to the person mentioned in the notice. Sub-Section 2 provides that in case the amount is unpaid, the assessee shall be liable to pay interest at the rate of one percent for every month or part thereof for the period commencing from the expiry of 30 days and ending with the day on which the amount is paid.
- The *proviso* to sub-Section 2 of Section 220 of the Act states that where as a result of an order under Sections 154, 155, 250, 254, 260, 262, 264or sub-Section (4) of Section 245D, the amount on which interest payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.
- The amendment proposed to Section 220 by Finance Bill, 2014, is by way of insertion of sub-Section 1A which states that where any appeal or proceeding is initiated against the notice of demand, such demand shall be deemed to be valid till the disposal of the appeal by the last appellate authority.
- Further, second *proviso* to sub-Section 2 has been inserted to provide that where as a result of an order under sections specified in the first *proviso*, the amount on which interest was payable under this Section had been reduced and subsequently as a result of an order under said Sections or Section 263, the amount on which interest was payable under Section 220 is increased, the assessee shall be liable to pay

interest under sub-Section (2) of the said Section on the amount payable as a result of such order, from the day immediately following the end of the period mentioned in Section 220(1) and ending with the day on which the amount is paid.

- The amendment shall be effective from 1st October, 2014.

d. Section 276D- Penalty for failure to produce accounts and documents

- The existing provisions of Section 276D provide that if a person wilfully fails to produce accounts and documents as required in any notice issued under sub-Section (1) of Section 142 or wilfully fails to comply with a direction issued to him under sub-Section (2A) of Section 142, he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine (equal to a sum calculated at a rate which shall not be less than four rupees or more than ten rupees for every day) during which the default continues, or with both.
- The Finance Bill, 2014 proposes to amend provisions of Section 276D to provide that in above stated defaults, he shall be punishable with rigorous imprisonment for a term which may extend to one year and with fine.
- The amendment will take effect from 1st October, 2014.

IV. Other Miscellaneous Provisions

a. SECTION 133A-Power of Survey

- As per the existing provision contained in Section 133A of the Act, the Income-tax Authority is empowered to enter any premises in which business or profession is carried out, after sunrise and before sunset, for the purposes of survey. An Income-tax Authority acting under this Section may impound and retain in his custody any books of account or documents inspected by him during the course of survey. However, he shall not retain in his custody any such books of account or document for a period exceeding 10 days (exclusive of holidays) without obtaining the approval of the Chief

Commissioner or Director General, as the case may be.

- The Finance Bill, 2014 makes certain proposals to enhance the powers of the Income-tax Authorities. The time limit for retaining the books of accounts or other documents, without approval of the Chief Commissioner or Director General, has been extended to 15 days as against the existing time frame of 10 days. Further, it is also proposed to amend Section 133A to provide that the scope of survey shall also be extended for the purpose of verifying that tax has been deducted or collected at source in accordance with the provisions of chapter XVII-B or XVII-BB.
- The power of survey gives a right to an Income-tax Authority to enter any premises for the purpose of its investigation. There is a growing demand that powers of Survey under Section 133A should be exercised only in certain circumstances where the authorities have reasons to believe that there is probability of tax evasion and the same can be unearthed only by resorting to a survey.
- The amendment will take effect from 1st October, 2014.

b. Accounting Standards

- The Union Budget, 2014 has laid a roadmap for convergence of the current Indian accounting standards with the International Financial Reporting Standards (IFRS).
- As part of his budget speech, the Finance Minister has proposed adoption of new Indian Accounting Standards (Ind AS) by the companies voluntarily from FY 2015-16 and mandatorily from FY 2016-17.
- The Finance Minister has also clarified that the standards notified under Section 145(2) are to be followed only for computation of income and are not meant for maintenance of accounts.
- In the past also, the Government made an attempt of convergence of Ind AS with IFRS but the roadmap could not be implemented due to various challenges. While hailing the Government's proposal to meet the convergence deadlines, there is a need to address the pitfalls that resulted in unsuccessful implementation of Ind AS in 2011.
- One of the biggest challenge foreseen is the short timeframe within which convergence with IFRS is expected. The implementation of convergence with IFRS coinciding with the transition to new Companies Act, 2013 may pose its own challenges. It is expected that Ministry of Corporate Affairs, after due consideration, shall implement the convergence in a phased manner. The ICAI's proposed roadmap submitted to Ministry of Corporate Affairs in April, 2014 may be referred to in the context. A lot of deliberation and proactive efforts shall be required on all fronts in order to meet the objective and smoothen out the transition challenges.

V. Conclusion

Several other administrative and legislative measures have been introduced in Finance Bill, 2014. On the transfer pricing front, introduction of the Range Concept for determining arm's length price and use of multiple year data as well as allowing roll back of APA for the earlier four years is certainly a well intended measure to resolve the disputes. Moreover, the announcement of constitution of high level Committee to interact with trade and industry on a regular basis, in order to ascertain areas where clarity in tax laws is required and issue clarification within two months wherever required is indeed encouraging. The retrospective amendments made by Finance Act, 2012 had dissuaded the business sentiments and the investor community at large. The commitment of the new Government to provide stability in the tax regime and constitution of high-level committee for scrutinising new cases arising out of retrospective amendments before any action being initiated, shall certainly boost the sentiments of the investor community. The proposed amendments and the view of the Government on exemption of capital gain being available only in respect of one house belonging to the taxpayer and exemption would be available if the new house is situated in India has brought much needed clarity in view of the divergent judicial interpretation on the issue .

The Finance Minister has announced the changes and stated this is the beginning of a journey towards a sustained growth of 7-8 per cent or above within the next 3-4 years. It would, therefore, not be wise to expect everything in the first Budget. The journey has started and we will see more positive changes, bringing in certainty on policy coupled with reduced tax litigation. ■

Finance (No. 2) Bill, 2014— Proposals Relating to Capital Gains

The Finance Bill, 2014 has introduced a series of changes relating to computation of capital gains. The major areas affected would include housing, capital market and compensation on compulsory acquisition. Barring some relief relating to taxation of compensation on compulsory acquisition, the proposals relating to capital gains have been largely adverse to the taxpayer. A more friendly tax regime would have encouraged taxpayers to report their capital gain transactions, thereby ensuring that all such transactions come into the main stream. Read on to know more...

It was widely believed that the retrospective amendment relating to indirect transfer introduced by the Finance Act, 2012 would be withdrawn. However, there is no such proposal in the Finance Bill. The speech of the Finance Minister states that all fresh cases arising out of such retrospective amendments and coming to the notice of the assessing officers will be scrutinised by the high-level committee constituted by the CBDT before any action is initiated in such cases. It is interesting to note that scrutiny by the high-level committee would apply only to the fresh cases and not to the existing disputes.

Changes Affecting Housing

1) Section 54 provides for relief in respect of reinvestment of capital gains arising from transfer of long-term residential house into a residential house. Similarly, Section 54F provides for relief in respect of reinvestment of net consideration arising from transfer of long-term capital asset other than a residential house into a residential house.
2) Disputes arose as regards meaning to be attributed to 'a residential house.' While the Department insisted on attributing the meaning of 'one residential house,' the taxpayers insisted on attributing the meaning of 'any or many residential houses'. The interpretation of the taxpayer was supported by the analogous provisions like Section 23(2)/(4) relating to computation of income from self-occupied/vacant house property. Such interpretation was also supported by a different language adopted in Section 5(vi) of Wealth Tax Act. Section 13(2) of the General Clauses Act also supported the case of the taxpayers.
3) On the basis of the aforesaid reasoning, several courts have held that multiple adjoining flats constitute to one residential house. The

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following are some of the important rulings in this regard:

- *CIT vs. D. Ananda Basappa* [2009] ITR 329 (Karn. – HC) [S.L.P. (C) No. 20867 of 2009/ [2010] 320 ITR (St.) 19; dismissed]
- *CIT vs. Joe B. Fernandes:* SLP (C) No. 23581 of 2009/[2010] 322 ITR (St.) 8;
- *CIT vs. Smt. Rashmi Khanna:* SLP (C) No. 30894 of 2009/[2010] 322 ITR (St.) 8;
- *CIT vs. Late Khoobchand M. Makhija* [2014] 223 ITR 189 (Karn. - HC)(Mag);
- *CIT vs. Gita Duggal* 2013-TIOL-143-HC-DEL-IT;
- *Dr. Smt. P. K. Vasanthi Rangarajan vs. CIT* [2012] 209 Taxman 628 (Mad.);
- *K. C. Kaushik vs. P. B. Rane,* ITO (1990) 185 ITR 499 (Bom - HC);
- *CIT vs. Mr Raman Kumar Suri* 2012-TIOL-982-HC-MUM-IT;
- *Vittal Krishna Conjeevaram vs. ITO* [2013] 144 ITD 325 (Hyderabad - Trib.);
- *Smt. V. R. Karpagam vs. ITO* [2013] 143 ITD 126 (Chennai - Trib.);
- *R. Gopinath (HUF) vs. ACIT* [2010] 5 taxmann.com 80 (Chennai);
- *Prabhandam Prakash vs. ITO* [2008] 22 SOT 58 (Hyd.).

4) While holding so, the Honourable Karnataka High Court interpreted the meaning of 'a residential house' as meaning more than one. A reference may be made to the following decisions in this regard:
   - *CIT vs. D. Ananda Basappa* [2009] ITR 329 (Karn. – HC) upheld by the Supreme Court in S.L.P. (C) No. 20867 of 2009/[2010] 320 ITR (St.) 19;
   - *CIT vs. Late Khoobchand M. Makhija* [2014] 223 ITR 189 (Karn. - HC)(Mag);
   - *CIT vs. Smt. K.G. Rukminiamma* [2011] 196 Taxman 87 (Kar.) - "…it was not the intention of the legislation to convey the meaning that it refers to a single residential house. If that was the intention, they would have used the word "one"…"

5) The Honourable Delhi High Court in the case of *CIT vs. Gita Duggal* 2013-TIOL-143-HC-DEL-IT held that multiple flats scattered in an apartment complex may also constitute a single residential house. While holding so, the Honourable Delhi High Court sought to distinguish 'a residential house' from 'a residential unit.'

It is proposed to amend both Sections 54 and 54F to restrict the benefit of rollover to one residential house. This amendment being prospective would apply only from the assessment year 2015-16 onwards. Despite aforesaid amendment, in respect of adjacent multiple flats bought for holding them as one residential house, one may contend that the ratio of some of the earlier decisions may be applied to claim the benefit of relief in respect of all such flats.

6) All the aforesaid cases dealt with the fact situation of multiple flats situated in the same apartment complex. In *CIT vs. Late Khoobchand M. Makhija* [2014] 223 ITR 189 (Karn.-HC) (Mag), a case came up before the Honourable Karnataka High Court where investments were made in two separate house properties located in different areas. Applying the ratio of the earlier decisions and considering the fact that the assessee had two sons, the Honourable Karnataka High Court ruled in favour of the taxpayer. However, a *caveat* was added indicating that while 'a' cannot mean 'one,' it can also not mean multiples.

7) It is proposed to amend both Sections 54 and 54F to restrict the benefit of rollover to one residential house. This amendment being prospective would apply only from the assessment year 2015-16 onwards. Despite the aforesaid amendment, in respect of adjacent multiple flats bought for holding them as one residential house, one may contend that the ratio of some of the earlier decisions may be applied to claim the benefit of relief in respect of all such flats. However, in respect of scattered flats or residential houses located in different areas, it may be difficult to claim the benefit in respect of all the houses.

8) The first portion of Section 54(1) which contains the reference to 'a residential house' is not proposed to be amended. This means that taking analogy from various decisions, 'a' includes more than one and if an assessee sells more than one residential house and invests the aggregate capital gains in one residential house, he would continue to get the benefit of exemption under Section 54.

9) It is proposed that in order to claim benefit of exemption under Section 54/54F, the new asset

should be in India. This amendment is to undo the following decisions:

- *Vinay Mishra vs. ACIT* [2012] 20 ITR (Trib) 129 (Bangalore)
- *N. Ranganathan vs. ITO* (ITA 863/ Mds/2014)
- *Prema P. Shah vs. ITO* [2006] 282 ITR (AT) 211 (Mum.)
- *ITO vs. Girish M. Shah* [ITA 3582/M/ 2009]

10) While capital gains arising from transfer of a residential house situated outside India is taxable in the hands of a resident like any other residential house, denial of rollover benefit in case the property is situated outside India appears harsh.

Changes Affecting Capital Market

1) An unlisted share is presently regarded as long-term if held for more than 12 months under the proviso to Section 2(42A). Similarly, a unit of a mutual fund would also be regarded as long-term if held for more than 12 months. It is proposed to amend the aforesaid *proviso* to remove unlisted share and units of mutual fund so that they have to be held for more than 36 months to be regarded as long-term capital assets. However, units of equity oriented mutual fund continue to be kept in the aforesaid *proviso* so that the same would be regarded as long-term if held for more than 12 months.

2) The holders of shares of private company, unlisted public company and foreign company would be affected by the aforesaid amendment. Similarly, holders of units of mutual fund other than equity oriented mutual fund would also be affected. This has removed the time arbitrage between such units and other bonds on deposits making the former no more attractive. It is always considered that the investment in mutual funds is more transparent than investment in bonds and deposits. Because of KYC norms, it is easier to track the investments in mutual funds than elsewhere. In any case, there is no scope for escapement of tax in respect of income arising from such units. Therefore, the proposed amendment to make investment in units of mutual fund less attractive appears retrograde.

An unlisted share is presently regarded as long-term if held for more than 12 months under the proviso to Section 2(42A). Similarly, a unit of a mutual fund would also be regarded as long-term if held for more than 12 months. It is proposed to amend the aforesaid proviso to remove unlisted share and units of mutual fund so that they have to be held for more than 36 months to be regarded as long-term capital assets.

3) The long-term capital gains from transfer of units of equity oriented mutual fund would enjoy exemption under Section 10(38) subject to conditions therein. The long-term capital gains from transfer of units of other mutual funds would suffer the concessional tax of 20% after indexation under Section 112(one). In terms of the *proviso* thereunder, such tax is limited to 10% without indexation. This effectively meant that the capital gains tax on transfer of such units does not exceed 10% of the arithmetical gain. It is proposed to amend the aforesaid *proviso* to remove reference to such units. This would mean that henceforth, long-term capital gains from transfer of such units would necessarily suffer tax at 20% after indexation. It may be noted that there is no change in the manner of taxation of short-term capital gains arising from transfer of units other than units of equity oriented mutual fund. Such capital gains continue to be taxed as normal income in the hands of the taxpayer. Short-term capital gains arising from transfer of units of equity oriented mutual funds in recognised stock exchange would continue to be taxed at 15% under Section 111A.

4) There has been a controversy as regards characterisation of income arising to the FIIs between capital gains and business profits. In the case of *LG Asian Plus Ltd. vs. ADIT* (International Taxation) [2011] 11 taxmann.com 414 (Mum.-ITAT)/*Platinum Investment Management Ltd. vs. Dy. DIT* (International Taxation) [2014] 44 taxmann.com 208 (Mumbai - Trib.), it was held that such income is in the nature of capital gains and the same is chargeable to tax at the concessional rate provided in Section 115AD. However, in the case of *XYZ/ ABC Equity Fund*, (2001) 250 ITR 194 (AAR) and *Morgan Stanley & Co. International Limited*, [2005] 272 ITR 416 (AAR), it was held that the same is in the nature of business profits. As the FIIs are non-residents covered by respective double taxation avoidance agreements, the taxability of the business profits would depend on existence of a permanent establishment in India. In order that no permanent establishment

In order to encourage overseas listing of government securities, it is proposed to exempt transfer of government security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities by a non-resident to another non-resident by inserting a new Clause (viib) to Section 47.

is constituted, the FIIs attempt to place their managers outside India. The Finance Bill proposes to amend Section 2(14) to the effect that from the assessment year 2015-16 onwards, the securities held by FIIs would always be regarded as capital assets.

5) This amendment would remove any ambiguity in the matter of characterisation of income in so far as the Income-tax Act, 1961 is concerned. It has also adversely affected those FIIs who would prefer to characterise the gain as business profits and avoid incidence of taxation by claiming that no business operations are carried out in India in terms of Section 9 (1)(i) read with Explanation 1(a). The question that is still open is whether such characterisation of domestic tax law would apply even when applicable DTA is pressed into service. Except in rare cases like in the case of USA, in most cases, taxation of capital gains is separately provided in the Treaty. In such case, the domestic law characterisation may not prevail over distinct characterisation provided by the Treaty. One has to see how the authorities would use Article 3(2) providing for adoption of domestic tax law meaning of the terms used but not defined in the Treaty to impose domestic law characterisation.

6) In order to encourage overseas listing of government securities, it is proposed to exempt transfer of government security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities by a non-resident to another non-resident by inserting a new Clause (viib) to Section 47.

Changes Affecting Taxation of Compensation on Compulsory Acquisition

1) Compulsory acquisition is regarded as a transfer under Section 2(47) (iii). Capital gains arising from such compulsory acquisition are chargeable to tax under Section 45. Sub-Section 5 provides for separate scheme of taxation in respect of such capital gains. Although, it appears that Section 45(5) deals with the case of compulsory acquisition involving enhancement of compensation and not other compulsory acquisition, it is widely believed that this provision would deal with all cases of compulsory acquisition irrespective of whether there is been a claim for enhancement of compensation. Under Section 45(5), it is provided that capital gains will be charged to tax in the previous year in which the compensation awarded in the first instance is received by allowing full cost of acquisition and improvement. In the subsequent previous year of receipt of enhanced compensation, the same would be charged to tax without allowing any deduction whatsoever. It is also provided that in the event of any reduction in the compensation already charged to tax as a result of subsequent court order, the previously assessed capital gain should be re-computed.

2) Even after insertion of 45(5), several courts held that enhanced compensation should not be taxed as the same is contingent in nature as may be noted in the following cases:
   - *CIT vs. Hindustan Housing & Land Development Trust Ltd.* [1986] 161 ITR 524 (SC)
   - *CCIT vs. Smt. Shantavva* [2004] 267 ITR 67 (Karn. - HC);
   - *CIT vs. A.B.V. Gowda* [1986] 157 ITR 697 (Karn. – HC);
   - *Chandi Ram vs. CIT* [2009] 312 ITR 139 (Punjab & Haryana);

3) However, the Apex Court in the case of *Ghanshyam* 315 ITR 1 has held that the receipt of enhanced compensation although subject to further appeal is to be charged to tax under Section 45 (5).

4) It is now proposed to introduce the *proviso* under Section 45(5) (b) so that any amount of compensation received in pursuance of interim order of the court, tribunal or other authority shall be deemed to be income chargeable under the head 'capital gains' of the previous year in which the final order of such court, tribunal or other authority is made. *Vide* this amendment, the decision of the Supreme Court in *Ghanshyam's* case has been partially neutralised in a case of interim order. This would enable the taxpayers to defer the payment of tax in respect

of receipt of such enhanced compensation till such time the final order is made by the very same court that passed the interim order. However, this would not enable the taxpayers to defer the payment of tax in respect of receipt of such enhanced compensation where such enhancement is challenged in a higher forum till such enhancement becomes final. Therefore, this proposed amendment gives only a marginal relief to the tax payers.

5) Section 54H has not been suitably amended to take care of the above amendment. This will lead to a peculiar situation. The time limit for making investment would be reckoned from the compensation/consideration received whereas the taxability happens in the year in which the final order is passed. It is ideal that a proper link is created between Section 54H and Section 45(5).

6) Throughout Section 45(5), reference has been made to consideration (expression used for transfer where consideration is determined or approved by Central Government or RBI) and compensation (expression used for transfer by way of compulsory acquisition under any law). However, the proposed *proviso* makes reference only to consideration.

Other Amendments Relating to Capital Gains

1) A new scheme of taxation of business trusts, sponsors and unit holders of the business trusts has been proposed. Taxation of capital gains in the hands of the business trusts would be governed by Sections 10(38), 111A, 112 and other applicable provisions including newly proposed Chapter XII-FA. The sponsor who exchanges his shares in SPV against units of a business trust is not liable to tax upon such exchange in terms of proposed Section 47(xvii). In determining the period of holding of such units, the period during which shares in SPV were held is also to be considered in terms of proposed Clause (hc) to Explanation to Section 2(42A). Further, the cost of acquisition of the shares in SPV would be taken to be the cost of acquisition of units as per Section 49(2AC). However, the capital gains arising from transfer of such units in the hands of sponsor would not be eligible for exemption under Section 10(38) or concessional tax treatment under Section 111A as per the proposed *provisos* under the respective Sections. However, capital gains on transfer of units by the unit holders other than the sponsors would be governed by Section 10 (38) and Section 111 A.

2) It is proposed to amend Explanation (v) to Section 48 to replace 'consumer price index for urban non-manual employees' by 'consumer price index (urban).' Henceforth, while notifying the indexation figure, the Central government will have to have regard to 75% increase in 'consumer price index (urban).'

3) Any advance received against proposed sale of a capital asset but forfeited is to be reduced from the actual cost of the capital asset while computing the capital gains arising on eventual transfer of the capital asset. This caused difficulty in determining the indexed cost of acquisition/improvement as the law does not provide for factoring such advance forfeited while computing indexed cost. It is now proposed to dispense with the present system of reduction of forfeited advance from the actual cost by providing for taxation of such forfeited amount as income from other sources by introducing Section 56(2)(ix) with a corresponding insertion of Section 2(24)(xvii). A *proviso* has been inserted under Section 51 for ensuring that there is no double taxation.

4) If the asset involved is a short-term capital asset, it does not make any difference whether advance is reduced from cost while computing capital gains or if the advance is liable to tax under the proposed Section 56(2)(ix). In both the case the tax rate would be 30%. If the asset involved is a long-term capital asset, it would make a difference. This is because the tax rate is 20% in case of LTCG and 30% in case of income from other sources. If the assessee offers the advance under Section 56, he might be liable to pay tax at 30%. On the other hand, if he reduces

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it from cost of acquisition or indexed cost of acquisition, the incremental gain would be liable to tax at 20%.

5) It is interesting to note the difference between the language used in the main provision of Section 51 and the proposed *proviso* or Section 56(2)(ix). The language used in Section 51 is "any advance or other money received and retained." The language used in the proposed *proviso* or Section 56(2)(ix) is 'any sum of money, received as advance or otherwise'. Further, conditions specified in Section 56(2)(ix) are not found in Section 51. The scope of these two expressions is different thereby retaining relevance of Section 51 under circumstances when Section 56(2)(ix) is not attracted.

6) The first *proviso* to Section 54 EC provided for a ceiling of ₹50 lakh of investment in respect of long-term capital gains. The aforesaid ceiling was fixed with reference to a financial year which enabled taxpayers effecting transfer after 30th September to invest ₹50 lakh in that financial year and another ₹50 lakh in the next financial year (but within six months from the date of transfer of original asset). This was upheld in the following cases:
   - *Vivek Jairazbhoy vs. Dy. CIT* [ITA No. 236/Bang/2012, dated 14-12-2012];
   - *Aspi Ginwala vs. ACIT* [2012] 20 taxmann.com 75 (Ahmadabad – Trib.);
   - *Coromandel Industries (P.) Ltd. vs. Asst. CIT* 2013] 145 ITD 171 (Chennai – Trib.);
   - *Smt. Sriram Indubal vs. ITO* [2013] 32 taxmann.com 118 (Chennai – Trib.);
   - *ITO vs. Ms. Rania Faleiro* [2013] 142 ITD 769 (Panaji – Trib.).

7) In order to neutralise the aforesaid decisions, it is proposed to introduce second *proviso* to Section 54 EC. As per the second *proviso*, the investment from capital gains arising from one or more original assets during the financial year in which such assets are transferred and in the subsequent financial year shall not exceed ₹50 lakh. Thus, the limit of ₹50 lakh is now pegged with reference to transfer of one or more original assets in a particular financial year irrespective of how such investment of ₹50 lakh is spread between that financial year and next financial year. However, care should be taken to see that the spilled over part of ₹50 lakh in the next financial year is not reckoned for determining the ceiling of ₹50 lakh relating to transfer of original asset/assets taking place in the next financial year. In other words, a separate limit of ₹50 lakh would be available in respect of transfer of original assets taking place in the next financial year.

A new scheme of taxation of business trusts, sponsors and unit holders of the business trusts has been proposed. Taxation of capital gains in the hands of the business trusts would be governed by Sections 10 (38), 111A, 112 and other applicable provisions including newly proposed Chapter XII-FA.

8) Section 194LA provides for deduction of tax at source at 10% in respect of payment of compensation on acquisition of certain immovable property. Similarly, 194 IA provides for deduction of tax at source at 1% in respect of any sum by way of consideration of transfer of any immovable property. While there is no change in these provisions, there has been an amendment to Section 40(ia) providing for disallowance of 30% in respect of any sum payable to a resident requiring deduction of tax at source, if the tax is not deducted and paid. Presently, these two sections are not found in Section 40(ia) and therefore non-deduction of tax at source would not have entailed disallowance in the hands of payer businessman. As a result of proposed amendment to Section 40(ia), a businessman who pays the aforesaid sums towards purchase of immovable property to be held by him as stock in trade, will have to suffer the disallowance of 30% if tax is not deducted at source.

Conclusion

On going through the aforesaid comments, the author is certain that the readers would agree with him that the proposals are largely non-friendly to the taxpayer. Given that the new government did not have sufficient time to appreciate the nuances associated with taxation of capital gains, it is hoped that in the next budget, appropriate corrective measures would be taken. ■

Neutralisation of Controversial Issues

The Union Elections, 2014 was one of India's most high profile elections. A promise of 'change' was enthroned. A concomitant of this choice was the budget of hope. It was a hope to transform India and revive the neutrons of development. The task for the new government was two-fold: spur the growth catalysts and 'neutralise' the financial bugs. At a macro level, there was more to be undone than done. From an income-tax legislation standpoint, remedying the existing controversies attained primacy. The Finance Bill (No.2), 2014 is unique in its own way. It does not prescribe any landmark directional change or path breaking amendments. The ghost of retrospective changes was not seen, although the power to do so was remembered. There appears to be a move to 'clean-up' some of the provisions which had been the bone of contention for some time. This seems to have been the theme of many of the direct tax amendments.

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The Finance Minister in his speech (Para 11) said, "*Tax demand of more than ₹4 lakh crore is under dispute and litigation before various Courts and Appellate authorities. This is one of the serious concerns of all taxpayers in this country. In order to reduce litigation in direct taxes, I propose to make certain legislative and administrative changes.*"

The intent to reduce litigation has been on the priority of the Finance minister. Keeping these sentiments in mind, in this article, we have highlighted those provisions through which the Finance Minister proposes to neutralise certain existing controversies.

Rationalisation of Provisions Governing Charitable Institutions

Scope of 'substantially financed' explained

Sub-Clauses (iiiab) and (iiiac) of Section 10(23C) of the Income-tax Act, 1961 ("the Act" for brevity) provide exemption, subject to various conditions, in respect of income of certain educational institutions, universities and hospitals which exist solely for educational purposes or solely for philanthropic purposes, and not for purposes of profit and which are wholly or substantially financed by the Government.

Absence of a definition of the phrase "substantially financed by the Government" has led to litigation. Varying decisions of judicial authorities have emerged. In so deciding, they have relied upon other provisions of the Income-tax Act and other Acts. There has been a lack of certainty in this regard.

In *District Health & Family Welfare Society vs. DCIT* [2013] 39 Taxmann.com 148 (Bang. Trib.), it was held that exemption under Section 10(23C) (iiiac) is automatic for entities which are wholly or substantially funded by the Government of India of State Government. It was held that percentage of funding is irrelevant so long as the programmes implemented by the hospitals are sponsored by the Central Government or State Government. The Karnataka High Court in *Visvesvaraya Technological University ("VTU") vs. ACIT TS*-702-HC-2013(KAR) denied exemption under Section 10(23C)(iiiab) on the premise that the assessee did not satisfy the condition of being an institution 'wholly or substantially financed by the Government.' The Court observed that the assessee received huge amounts from students through affiliated colleges and examination authority; and the grants received from the Government accounted for merely 1% of total receipts of the assessee.

It is proposed to amend Section 10(23C) by inserting an Explanation that if the Government grant to a university or other educational institution, hospital or other institution during the relevant previous year exceeds a percentage (to be prescribed) of the total receipts (including any voluntary contributions), of such university or other educational institution, hospital or other institution, as the case may be, then such university or other educational institution, hospital or other institution shall be considered as being substantially financed by the Government for that previous year.

It is proposed to amend Section 10(23C) by inserting an Explanation that if the Government grant to a university or other educational institution, hospital or other institution during the relevant previous year exceeds a percentage (to be prescribed) of the total receipts (including any voluntary contributions), of such university or other educational institution, hospital or other institution, as the case may be, then such university or other educational institution, hospital or other institution shall be considered as being substantially financed by the Government for that previous year.

The provisions seek to clarify that if the grants from the Government exceed the prescribed percentage of the 'receipts,' then, such institution(s) shall be considered to have been substantially financed by the Government. A deeming fiction is introduced whereby the extent of 'Government financing' can now be reckoned by viewing the Income and expenditure (or Profit and loss account). The financing is now not restricted to a 'balance sheet approach.' The revenue statements shall spell out whether the institution is 'Government financed' or not. The proposed explanation uses the 'total receipts' as the yardstick without defining this phrase. This could possibly pave way for questions regarding the contents and constituents of this "total receipts." To elucidate, whether proceeds from sale of capital assets would be included? Can *corpus* donations be a part of total receipts? Whether total receipts are to be restricted to those reflected in the revenue statement or does it encompass every receipt (cash inflow) by the Institution? Whether receipt in the form of loan repayments would be included in such 'total receipts'? Would the prescribed percentage under the proposed law serve as a guidance or yardstick for cases currently pending before the appellate authorities/courts (pertaining to earlier years)?

Claim for both Depreciation as well as cost of asset not to be allowed

Under the existing scheme of Section 11 as well as Section 10(23C), income of the eligible institution is required to be applied/accumulated for objects of the institution. Application of income to acquire a capital asset was construed as 'valid income application.' Subsequently, these assessees (who had claimed exemption on application of income for capital asset purchase) claimed deduction (in income computation) by way of depreciation on such assets. Therefore, "double benefit/deduction" was being claimed by the trusts and institutions under the existing law.

Various judicial precedents approved this treatment on the premise that even if investment in asset is treated as application of income, depreciation on such assets is allowable in computing the income of the trust. [refer *CIT vs. Society of The Sisters of St. Anne* [1984] 146 ITR 28 (Kar), *Assistant Commissioner of Income-tax vs. Shri Adichunchanagiri Shikshana Trust* [2012] 19 ITR (Trib) 828; *DIT vs. Vishwa Jagriti Mission* (2012) 73 DTR 195 (Del); *CIT vs. Gujrati Samaj* (Regd.) [2012] 349 ITR 559 (MP) *etc*]. Contrary view was taken by *Lissie Medical Insitutions vs. CIT* 348 ITR 344 (Ker).

It is now proposed to deny the double benefit (of capital expenditure deduction and depreciation allowance). Income under Section 11 and Section 10(23C) is now proposed to exclude any deduction or allowance by way of depreciation or otherwise in respect of any asset (on whose acquisition benefit of application of income has been claimed). In other words, an eligible trust which has considered cost of acquisition of an asset as application of income cannot again claim depreciation on such assets. Although the proposed amendment seeks to plug the controversy around double deduction in case of assets acquired from 'own funds,' application of this explanation in case of assets acquired from loan funds may require some elucidation. Does it validate earlier double deduction (prior to this amendment) thereby effectively negating the Kerala High Court decision?

Relief to Foreign Institutional Investors

Post the Indian economic liberalisation during the 1990(s), international investment has been gushing into Indian capital markets. With foreign investments taking the centre stage, FII(s) have played a crucial role in the growth of capital markets. India's tax regime in respect of FII(s) has, however, been fluid.

It is proposed to provide that the amount of compensation received in pursuance of an interim order of the court, Tribunal or other authority shall be deemed to be income chargeable under the head 'Capital gains' in the previous year in which the final order of such court, Tribunal or other authority is made. The decision of the Karnataka High Court is proposed to be statutorily affirmed.

The Authority for Advance Ruling in the case of Royal Bank of Canada ruled taxation of income from derivative transactions by FII(s) as "business income." The ruling distinguished an earlier ruling of AAR in the case of Fidelity North Star Fund (2007) 288 ITR 641 (AAR) wherein purchase/sale of shares and securities was construed to be "capital gains". Subsequently, the Mumbai Bench of Income-tax Appellate Tribunal (the Tribunal) in the case of *LG Asian Plus Ltd. vs. ADIT* (2011) 46 SOT 159 (Mum ITAT) held that income earned by FII from exchange traded derivative transactions shall be taxable as capital gains in view of special provisions of Section 115A of the Act (which was later followed in *DDIT vs. Platinum Investment Management Ltd. A/c Platinum International Fund* [2013] 33 taxmann.com 298 etc). Much before these decisions, the Government of India, Ministry of Finance (Department of Economic Affairs) had issued guidelines on the taxation aspects *vide* No.F.5(13)/SE/91/FIU wherein FII were considered to be 'investors' (and not service providers or traders).

The issue was the difficulty in characterisation of income arising from transaction in securities in the hands of FII(s). Should the gains be classified as capital gain or business income? An additional issue was whether presence of fund manager (who manage the investor funds) in India would result in creation of Permanent Establishment for such FII(s) in India?

In response to this the Finance Minister in his speech observed (in Para 201 of the Speech):

Foreign Portfolio Investors (FPIs) have invested more than ₹8 lakh crore (about 130 billion US $) in India. One of their concerns is uncertainty in taxation on account of characterisation of their income. Moreover, the fund managers of these foreign investors remain outside India under the apprehension that their presence in India may have adverse tax consequences. With a view to put an end to this uncertainty and to encourage these fund managers to shift to India, I propose to provide that income arising to foreign portfolio investors from transaction in securities will be treated as capital gains.

The objective was to set the uncertainty to rest. Any 'security' held by FII which has complied with the SEBI investment norms would be treated as <u>capital asset</u>. Income arising from such securities is sought to be classified as capital gain. From a *de lege ferenda* point of view, capital gains taxation appears to be justified. But one wonders whether the

It is proposed to insert a proviso in sub-Section (1) to provide that the investment made by an assessee in the long-term specified asset, out of capital gains arising from transfer of one or more original asset, during the financial year in which the original asset or assets are transferred and in the subsequent financial year shall not exceed ₹ 50 lakh.

proposed amendment could have been a little more candid and explicit in addressing other issues which could emerge from this amendment. To elucidate, the proposed amendment remains silent on how the presence of fund managers in India would not result in any adverse tax consequence (*i.e.*, creation of PE)? What would be the impact on the period of holding (of these securities)? Is the period to be reckoned from the date of acquisition or from the date of characterisation (from business asset to capital asset)? Whether the cost of acquisition would be governed by Section 49? What would be the interplay between Section 49 and Section 115A(3) (which denies deduction under Section 28 to 44C and 57)? Whether the income characterisation (as capital gains) is to be examined 'as such' under the treaty provisions as well? Whether change in income characterisation under domestic law would alter the understanding under the treaty provisions?

Capital gains

Compensation under interim order

Section 45(5) deals with capital gains arising from transfer by way of compulsory acquisition where the compensation is enhanced or further enhanced by a court, Tribunal or any other authority. Clause (b) of the said sub-Section provides that where the amount of compensation (on compulsory acquisition) is enhanced or further enhanced by the court, it shall be deemed to be the income chargeable of the previous year in which such amount is received by the assessee. The provision shifts the date of "income" from the date of acquisition and from the date of determination of compensation by a court/Tribunal/authority, to the date of receipt of the compensation in pursuance of an enhancement by the court/Tribunal/authority.

The applicability of Section 45(5)(b) necessitates satisfaction of twin conditions: (a) There should be enhancement of compensation by a court/Tribunal/authority; and (b) The assessee should receive payment of such enhanced compensation. When the award of the reference court enhancing the compensation is stayed and an interim payment is ordered as condition for such stay or otherwise and is paid pending final decision, neither of the two conditions are satisfied. Judicial precedents have held that the amount received in pursuance of an interim order by furnishing security, not being an amount payable in pursuance of an enforceable order or decree increasing the compensation, cannot be considered as receipt of enhanced compensation [Refer *CIT vs. Smt. Shantavva* [2004] 267 ITR 67 (Kar)].

It is proposed to provide that the amount of compensation received in pursuance of an interim order of the court, Tribunal or other authority shall be deemed to be income chargeable under the head 'Capital gains' in the previous year in which the final order of such court, Tribunal or other authority is made. The decision of the Karnataka High Court is proposed to be statutorily affirmed.

Reinvestment permissible in 'single' Indian property

The existing provisions in Section 54(1), *inter alia*, provide that where capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, and the assessee within a period of one year before or two years after the date of transfer, purchases, or within a period of three years after the date of transfer constructs, a residential house then the amount of capital gains to the extent invested in the new residential house is not chargeable to tax under Section 45 of the Act. Similar provisions are found in Section 54F(1) as well.

The objective was to provide capital gains tax relief on reinvestment in "a" house property. While interpreting this reinvestment option, certain judicial precedents held that "a" should not be understood as limited to a singular number. Investments in multiple house properties were held to be permissible for exemption. Some of these decisions are: *CIT vs. D. Ananda Basappa* (2009) 180 Taxman 4 (Kar); *CIT vs. Smt. Rukminiamma* (2011)196 Taxman 87; *CIT vs. Jyoti K. Mehta* ITA No.194 of 2010; *Dr. (Smt.) P. K. Vasanthi Rangarajan vs. CIT* [2012] 23 taxmann.com 299; *CIT vs. Gita Duggal* [2013] 30 taxmann.com 230 (Del); *CIT vs. Syed Ali Adil* reported in (2013) 33 taxmann.com 212 (AP).

Further, some of the Tribunal decisions held that investment of sale proceeds in residential properties outside India (also) qualifies for exemption under Section 54 of the Act [Refer *Mrs. Prema P. Shah, Sanjiv P. Shah vs ITO* (2006) 282 ITR (AT) 211 (Mumbai); *Vinay Mishra vs. Asstt.CIT*–ITA NO.895(Ban) of 2012-order dated 12-10-12-[2012] 79 DTR (Bang) (Trib.) 1 *etc*].

It is now proposed to amend the aforesaid sub-Section (1) of Section 54 and 54F so as to provide that the rollover relief under the said Section is available if the investment is made in one residential house situated in India.

Investment cap of ₹50 lakhs for specified bonds

Section 54EC(1) of the Act provides that where capital gain arises from the transfer of a long-term capital asset and the assessee has, within a period of six months, invested the whole or part of capital gains in the long-term specified asset, the capital gains so invested in the long-term specified asset, out of the whole of the capital gain, shall not be charged to tax. The *proviso* to the said sub-Section investment made in the long-term specified asset during any financial year shall not exceed ₹50 lakh.

The phrase used is 'during the financial year.' The language as employed in this provision paved way for litigation. Judicial precedents held that assessee can invest up to ₹1 crore in capital gain bonds under Section 54EC spread over a period of two financial years at ₹50 lakh in each financial year. For instance, capital gains arising during the year (after September) were being invested in the specified asset in such a manner so as to split the investment (of ₹50 lakh each) in two financial years *i.e.*, one within the year and second in the next year (although before the expiry of six months). This resulted in the claim for relief of ₹1 crore as exemption towards gains

It is proposed to insert a new Clause (ix) in sub-Section (2) of Section 56 to provide for the taxability of any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset. Such sum shall be chargeable to income-tax under the head 'Income from other sources' if such sum is forfeited and the negotiations do not result in transfer of such capital asset. A consequential amendment in Clause (24) of Section (2) is also being made to include such sum in the definition of the term 'income.'

arising during the concerned previous year. Such computation was blessed by the Tribunals in the case of *Aspi Ginwala, Shree Ram Engg. & Mfg. Industries vs. Asst. CIT* [2012] 20 taxmann.com 75/52 SOT 16 (Ahd.); *Vivek Jairazbhoy vs. Dy. CIT* [ITA No.236/ Bang/2012]; *Smt. Sriram Indubal vs. ITO* [2013] 32 taxmann.com 118 (Chennai); *ITO vs. Ms. Rania Faleiro* [2013] 33 taxmann.com 611 (Panaji - Trib.); *Ms. Shantabai V. Kamat vs. CIT* (Panaji-ITAT) ITA NO. 10/PNJ/2013 and others.

It is proposed to insert a *proviso* in sub-Section (1) to provide that the investment made by an assessee in the long-term specified asset, out of capital gains arising from transfer of one or more original asset, during the financial year in which the original asset or assets are transferred <u>and in the subsequent financial</u> year shall not exceed ₹50 lakh.

Forfeiture of Advances is Income (from other sources)

Under general principles, an amount received as advance for the purchase of an asset would not constitute income. However, when the same amount is received from a buyer and forfeited by the seller; will the forfeited amount become the income of the seller? The Apex Court in the case of *Travancore Rubber & Tea Co. Ltd* (2000) 243 ITR 158 considered forfeited amount to be a capital receipt and was therefore excluded from the charge of tax.

It is proposed to insert a new Clause (ix) in sub-Section (2) of Section 56 to provide for the taxability of any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset. Such sum shall be chargeable to income-tax under the head 'Income from other sources' if such sum is forfeited and the negotiations do not result in transfer of such capital asset. A consequential amendment in Clause (24) of Section (2) is also being made to include such sum in the definition of the term 'income.'

Currently, Section 51 provides that advance retained or received shall be reduced from the cost of acquisition of the asset or the written down value or the fair market value of the asset. In order to avoid double taxation of the advance received and retained, Section 51 is proposed to be amended to provide that where any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, has been included in the total income of the assessee for any previous year, in accordance with the provisions of Clause (ix) of sub-Section (2) of Section 56, such amount shall not be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition. The decision of the Apex Court is thus reversed. The proposed amendment is silent on the impact of such amendment on the buyer. In other words, if the buyer defaults and the monies are forfeited, whether the payments are allowed as a capital loss? The verdict of the Bombay High Court in the case of *CIT vs. Sterling Investment Corporation Ltd.* (1980) 123 ITR 441 (Bom) does not permit such payments to be claimed as capital loss.

The Finance Minister in his budget speech said, *"In order to align Transfer Pricing regulations in India with the best available practices, I propose to introduce range concept for determination of arm's length price. However, the arithmetic mean concept will continue to apply where number of comparable is inadequate. The relevant data is under analysis and appropriate rules will be prescribed."*

The proposed Section 56(2)(ix) may not envelope cases of forfeiture of call money or share application money or forfeiture of assets received (*i.e.*, not in form of legal tender) for the reason that they do not involve a transfer. Disputes could also arise as to whether subsequent amendment within the same year, of contracts (to undo an event of forfeiture) could by-pass the proposed law? What would be the characterisation of such receipts under the treaty provisions?

Full-Time Share Trading is Not Speculative Transaction

Section 73 of the Act provides that losses incurred in respect of a speculation business cannot be set off or carried forward and set off except against the profits of any other speculation business. Explanation to Section 73 *inter alia* provides that if any part of the business of a company consists in purchase and sale of shares, then such part of the business will be deemed to be speculative.

The question was whether an assessee engaged in the business of trading in shares is excluded from being regarded as an assessee engaged in speculative business. Arguments were raised that the Explanation would be attracted only where 'any part' of the business of a company consisted of the purchase and sale of shares and not otherwise. The Calcutta High Court in the case of *Arvind Investment Ltd.* [1991] 192 ITR 365 concluded that the Explanation to Section 73 applies to the case of an assessee whose entire business consists of dealing in shares. It observed that it would cover cases not only where part of business of a company consists of purchase and sale of shares but also where the entire business of the company is of purchase and sale of shares.

It is proposed to amend the aforesaid Explanation to Section 73 so as to provide that the provision of the Explanation shall **not** apply to a company the principal business of which is the business of trading in shares. The decision of the Calcutta High Court and such other decisions stand reversed.

Interest on Tax Demand

Section 220(1) provides that any amount specified as payable in a notice of demand under Section 156 shall be paid within 30 days of the service of notice at the place and to the person mentioned in the notice. Sub-Section (2) states that if the amount specified in the notice is not paid within the period, the assessee shall be liable to pay simple interest at 1% for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-Section (1) and ending with the day on which the amount is paid. The *proviso* to sub-Section (2) states that where as a result of an order under Sections 154, 155, 250, 254, 260, 262, 264 or sub-Section (4) of Section 245D, the amount on which interest payable under this Section has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.

Liability of the assessee to pay interest is based on the theory of continuity of the proceedings and the doctrine of relation back. Accordingly, it is proposed to insert a new sub-Section in Section 220 to provide that where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then such demand shall be deemed to be valid till the disposal of appeal by the last appellate authority or disposal of proceedings, as the case may be and such notice of demand shall have effect as provided in Section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964.

It is further proposed to provide that where as a result of an order under the Sections specified in the first *proviso*, the amount on which interest was payable under this section had been reduced and subsequently as a result of an order under said Sections or Section 263, the amount on which interest was payable under Section 220 is increased, the assessee shall be liable to pay interest under sub-Section (2) of the said section on the amount payable as a result of such order, from the day immediately following the end of the period mentioned in the first notice of demand referred to in sub-Section (1) of the said Section and ending with the day on which the amount is paid. This amendment affirms the decision of the Delhi High Court in the case of *Girnar Investment Ltd. vs. CIT and Anr.* (2012) 340 ITR 529 (Del).

Transfer Pricing

Deemed international transaction

The existing provisions of Section 92B of the Act define 'International transaction' as a transaction in the nature of purchase, sale, lease, provision of services, *etc.* between two or more associated enterprises, either or both of whom are non-residents. Sub-Section (2) of the said Section extends the scope of the definition of international transaction to a transaction entered into with an unrelated person. Such a transaction shall be deemed to be a transaction with an associated enterprise, if there exists a prior agreement in relation to the transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between the other person and the associated enterprise. The sub-Section as presently worded has led to a doubt whether or not, for the transaction to be treated as an international transaction, the unrelated person should also be a non-resident.

Section 92B(2) deems transaction between non-AEs as a transaction between AE under prescribed circumstances. Though the Section heading is 'International transaction,' the plain language of Section 92B(2) does not provide that the transactions are deemed to be international transactions between AEs. It was so observed the Hyderabad Tribunal in the case of *Swanadhara IJMII Integrated Township Development Company Private Limited vs. DCIT* (2013) 32 taxmann.com 395 (Hyd-ITAT). The honorable Tribunal also observed that a transaction can be construed as 'international transaction' only if other person is a non-resident.

Both these aspects have been considered in the Finance Bill. It is proposed that the transaction shall be deemed to be an international transaction irrespective of whether such unrelated person is a resident or non-resident, as long as either the enterprise or the associated enterprise is a non-resident.

Use of multiple year data for ALP computation

As per Rule 10B(4) of the Income-tax Rules, 1962 the data to be used in analysing the comparability of an uncontrolled with an international transaction shall be the data relating to the financial year in which the international transaction has been entered into. An exception is carved out in the rule, which allows that data relating to a period not being more than two years prior to such financial year may also be considered if such data reveals facts, which could have an influence on the determination of transfer prices in relation to the transactions being compared. Various judicial precedents held that only data for the relevant financial year in which the international transaction took place, is to be considered for comparability analysis unless the assessee demonstrates the need for invoking the exception referred to above. Some of the decisions which took this view are: *Honeywell Automation India Limited vs. DCIT* 2009-TIOL-104-ITAT-Pune; *Symantec Software Solutions Private Limited vs. DCIT* (2011) 46 SOT 48 (Mum); 24/7 *Customer.com Private Limited vs. DCIT* (2012) 28 taxmann.com 258 (Bang-ITAT) and many others. However, contrary view has been taken by the Madras Tribunal in the case of *Caterpillar Logistics Services India Limited vs. ACIT* [ITA No.1916/Mds/2011]. The Finance Minister now proposes to amend the regulations to allow use of multiple year data. More clarity on this aspect will be available once the Rules are notified.

Use of range for ALP determination

Arm's Length Price ('ALP') determination under the current Transfer Pricing norms prescribe computation of arithmetic mean of prices. Adoption of arithmetic mean for computing ALP is influenced by extreme values and often does not give a true arm's length price/margin.

The Finance Minister in his budget speech said,"*In order to align Transfer Pricing regulations in India with the best available practices, I propose to introduce range concept for determination of arm's length price. However, the arithmetic mean concept will continue to apply where number of comparable is inadequate. The relevant data is under analysis and appropriate rules will be prescribed.*"

Adoption of international practices like inter-quartile range might be a step in right direction (since the impact of extreme values would stand mitigated). More clarity would emerge once the rules are prescribed. It is interesting to note that no amendment has been prescribed under Section 92C(2) to effectuate this amendment. Further, the Finance minister talks about continuation of 'arithmetic mean' concept in cases where number of comparables are 'inadequate.' The import of this 'inadequacy' would have to be 'adequately' clarified to avoid any further disputes in this regard.

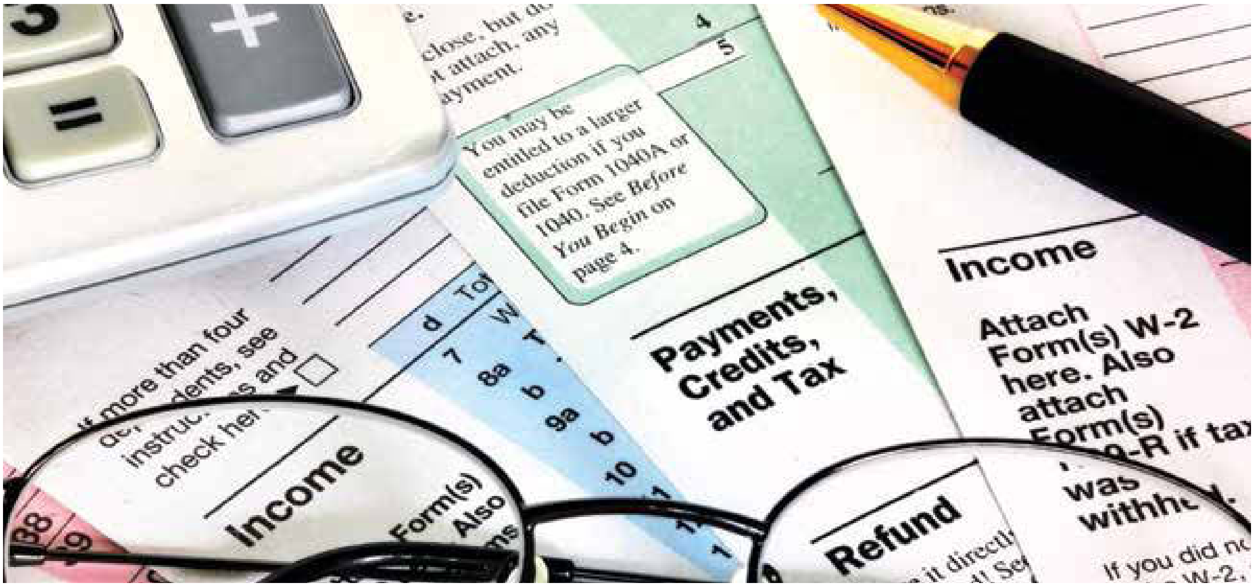
Introduction of DTC

Direct Tax Code ("DTC") was expected to usher in new tax regime by succeeding the old and matured Income-tax Act. However, the Finance Minister appears to set such expectation at rest (at least as of now). In his speech (at para 208), he said:

"The Direct Taxes Code Bill, 2010 has lapsed with the dissolution of the 15th Lok Sabha. Having considered the report of the Standing Committee on Finance and the views expressed by the stakeholders, my predecessor had placed a revised Code in the public domain in March, 2014. The Government shall consider the comments received from the stakeholders on the revised Code. The Government will also review the DTC in its present shape and take a view in the whole matter."

The present Income-tax statute is more than five decades old. Since its birth, it has accommodated the visions (and confusions) of various law makers. The annual modifications (sometimes twice a year) have made it a law which is tough to read; complex to understand and difficult to interpret (in more than one way). The court rulings, notifications, circulars have fuelled the jigsaw puzzle. The result is a galaxy of perpetual controversies. An attempt to plug one has invariably opened another Pandora's box. While there is an honest attempt to rectify some of the anomalies in the law, these were only the tip of an ice-berg. There are many other provisions which are stilling lingering in darkness of ambiguity; many more haunted by semantic and super technical interpretations and few diseased by redundancy. These await their omission or immediate operation/alteration. ■

International Taxation Proposals in Union Budget 2014-15



GAAR provisions have been left untouched and not extended in the present Union Budget 2014-15. While it was proposed that all fresh cases involving indirect transfer tax would be pre-approved by a high-level committee, some clarity is required with regard to the interpretation of these provisions per se. However, despite this, Union Finance Minister, Shri Arun Jaitley has done a commendable job through his Budget, by maintaining the fiscal prudence and giving due impetus to growth. The Union Finance Minister says, "The steps that I will announce in this Budget are only the beginning of a journey towards a sustained growth…These steps are only the beginning of our effort to revive the growth spirit of the Indian Economy. They are directional." Overall, the honest efforts of the new Government are admirable while it lives up to its manifesto of encouraging growth by attracting foreign investments, reducing tax uncertainty boosting manufacture and spurring up investments in infrastructure projects. Clearly, the Budget of the new Government aims at a broader horizon. Read on to know the development in international taxation in the Union Budget 2014-15…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The newly-elected NDA government presented its first Union Budget in the backdrop of huge expectations, given the strong mandate from the people of India. The Budget presented by the Union Finance Minister did not have any big bang reforms but had lot of small fixes in direct taxes and ushered policy statements. Also, several proposals were directionally right aimed at consolidating the economy but the challenge is going to be on implementation. It must be appreciated that the Government inherited and decided to retain the ambitious tax collection target of ₹13.7 lakh crore as set by the previous UPA Government in the interim budget. In the interest of economy at large, the Government very much wanted to increase the tax to GDP ratio but given the limitation the Finance Minister did not attempt to raise any tax revenues during service tax.

On international taxation front, though retro amendments of 2012 in respect of indirect transfer will continue, it is proposed that all fresh cases of indirect transfers coming to the notice of Assessing Officer will be scrutinised by a High Level Committee, to be constituted by the Central Board of Direct Taxes ('CBDT') before initiating any action. Further, it is proposed that the existing tax disputes, arising out of such retrospective amendments, and pending in the Courts, will be allowed to reach their logical conclusions through litigation process.

On the transfer pricing front, those seeking to reduce the transfer pricing litigation, the Union Finance Minister proposed to introduce 'roll back' provisions for APA and 'range concept' for computing arm's length price and this is a very welcome measure considering the litigation in this area.

Retro-Active Amendments of 2012 in Respect of Indirect Transfer

- The Supreme Court in the case of *Vodafone International Holdings B. V.* held that the transfer by a non-resident to another non-resident, of shares of a foreign company holding an Indian subsidiary Company does not amount to transfer of any capital asset situated in India. Accordingly, the gains arising from the said transaction were not liable to tax in India.
- Subsequently, the Finance Act, 2012 amended the Income-tax provisions and consequently the income deemed to be accruing or arising to non-residents directly or indirectly through the transfer of a capital asset situated in India is to be taxed in India with retrospective effect from 1st April, 1962. The widening impact of retro-active amendments are:
  - Retrospective applicability of amendments is a controversial issue and as per international best practices, resort to retrospective amendments in other countries is made only in the rarest of the rare cases.
  - Certainty in taxation is a key driver for India's investment climate. Retro-active amendments have a negative impact on investor confidence.
  - Retrospective overruling of judicial precedents favouring taxpayers potentially undermines rule of law in India.
  - Concerns over the impact of retro-active amendments acknowledged by the Prime Minister as well as the Finance Minister in 2012. Circular F. No. 500/111/2009-FTD-I dated 29th May, 2012 clarifies that cases where assessment proceedings under Section 143(3) have been completed prior to 1st April 2012, will not be reopened on account of the retrospective amendments.
- With the retro-active amendments, tax officers have targeted various companies–who had done any restructuring which has an Indian leg.
- There was a widespread expectation that the new Government will do away with the retro-active amendments regarding indirect transfer. But that did not happen, given the legislature implications. The Finance Minister, however, took the middle path to resolve the contentious issue.
- Though the provisions regarding taxation of indirect transfer of shares would continue, the Finance Minister could have provided certain clarity or relief in respect of the following:
  - Functioning of the Committee–whether the Committee would only implement the law regarding indirect transfer or it can take certain decision like defining 'substantial' interest, *etc.*
  - Indian tax should not be imposed where the shares of the foreign company are listed and traded on a stock exchange outside India.
  - Only *transfer of a controlling interest* in a foreign entity deriving its value substantially from assets located in India should attract tax in India. In this regard, a threshold limit of transfer of more than 50 % beneficial interest in the capital of a foreign entity and/or transfer of more than 50% voting power of a foreign entity could

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have been prescribed to define *transfer of a controlling interest.*

- Even in case of a foreign entity deriving its value substantially from assets located in India, only such portion of the gains should be taxable in India as are relatable to Indian assets.
- No taxes to be levied on group restructurings wherein the ultimate parent remains unchanged.
- No tax to be levied on repatriation of funds by the offshore company/entity to its investors on account of buy back, redemption, capital reduction.
- No tax to be levied on liquidation by the offshore company to the extent the repatriation amount relates to the amount realised by the offshore company on sale of Indian assets on which taxes have been duly discharged, or on which no taxes or lower taxes are due on account of tax provisions or treaty benefits available, as may be applicable.
- Transactions which are otherwise not *transfer* as per law, *e.g.* gift, or transactions, which do not result in any transfer *per se, e.g.* primary infusion in company for acquisition of shares, should not be covered in the deeming fiction created by amending the Section 2(47) of the Act.

International Practice – Taxation of Indirect Transfers

Circular issued by Chinese tax authorities

- Circular No. 698, issued by Chinese tax authorities on 10th December, 2009, with retrospective effect from 1st January, 2008, the date when China's GAAR came into effect, addresses taxability of gains from sale of equity shares, *i.e.*, capital gains, and is aimed at increasing the administration and taxation of direct and indirect capital gains derived by non-residents.
- As per the Circular, in case the tax rate of the country where the overseas transferor is domiciled, is lower than 12.5% or no tax is levied when an overseas investor indirectly transfers the equity of a Chinese resident enterprise, then it should within 30 days upon signing of the equity transfer contract offer certain documents to the competent taxation administration in China.
- In case an overseas investor makes indirect transfer of the equity of a Chinese resident enterprise in the forms including abusing organisation without reasonable commercial purpose to dodge the obligation of paying certain enterprise income tax, the competent taxation administration may reconfirm the quality of the equity transfer trading in accordance with the economic substance, to negate the existence of the overseas holding company serving as taxpayer.

Taxation of indirect transfer in Brazil

- Supplementary Law No. 104 empowers tax authorities to disregard transactions where the intention is to avoid a tax realisation event.
- This provision is typically employed only where a non-Brazilian company without economic substance/business purpose is interposed to avoid Brazilian capital gains tax.

Taxation of indirect transfer in Peru

- The tax laws provide for *pro-rata* taxation of gains based on ratio of fair value of the Peruvian company to the value of the foreign company whose shares are being transferred.
- So, if one notices the international experience particularly developing countries they have not gone not go on a confronting approach but in a non adversial manner. This is where the Indian legislation lacks and the Finance Minister has assured that he would adapt this approach.

It is proposed to provide roll back mechanism in the APA Scheme for a period of four years preceding the first previous year for which the APA is applied, subject to prescribed conditions. The roll back provisions refer to the applicability of the methodology of determination of ALP, or the ALP, to be applied to the international transactions which had already been entered into, in a period prior to the period covered under an APA.

Transfer Pricing

Roll back provisions in Advanced Pricing Agreements ('APA')

It is proposed to provide roll back mechanism in the APA Scheme for a period of four years preceding the first previous year for which the APA is applied, subject to prescribed conditions. The roll back provisions refer to the applicability of the

Union Budget 2014-15

Currently, there is an ambiguity in the characterisation of the gains derived by the FIIs from their portfolio investments in India. It is now proposed that the securities held by FIIs would be treated as capital asset and accordingly, resulting gain from sale of such assets would be liable to be taxed under the head capital gains.

methodology of determination of ALP, or the ALP, to be applied to the international transactions which had already been entered into, in a period prior to the period covered under an APA. This amendment shall take effect from 1st October, 2014. It is also proposed to strengthen the administrative set up for quick disposal of pending APA applications.

The APA programme at India will be now more successful with this proposal of roll back, as it will give certainty to all stake holders and will reduce the cost of litigation, especially where the normal appeal process is time consuming with uncertain outcomes. However, how the same would get implemented is to be seen, *i.e.,* the date from which this option can be availed. Can it be from the date in which the assesses made his filing request?

Use of Inter Quartile Range

As per the Budget speech of the Finance Minister, the concept of price range for determination of ALP will be introduced in the Income-tax Rules, to align the Indian transfer pricing regulations with international best practices. However, the existing concept of arithmetic mean would continue to apply where the number of available comparables is inadequate.

In India, Arm's Length Price ('ALP') is determined as the arithmetic mean of the range of prices/ margins leading to disputes in majority of the cases. It is a fact that no comparable enterprise can operate at the exactly at the identical level of comparability as the taxpayer/comparables so as to transact at the same price or earn the same margin. Moreover, there are constraints of information available of the comparables and some issues regarding the comparability would remain that cannot be identified and adjusted. Computation of arithmetic mean as an average of the prices/margins obviously gets distorted by the extreme values on higher sides and lower sides and accordingly, does not give a true arm's length price/margin.

Tax payers as well as tax administrators have gained significant understanding and learning in the data analysis and for the benchmarking processes. Adoption of internationally accepted concept of range-which includes a sizable number of comparables of such prices/margin will be a step in the right direction. This will also reduce disputes at the assessment stage itself. Specific rules/guidelines regarding computation and adoption of inter-quartile range are yet to be notified.

Use of Multiple year data permitted

Currently, taxpayers are required to undertake year by year analysis. Prices/Margins in a particular year may be affected due to various economic reasons which can have a material effect on transfer pricing benchmarking. Product and Life cycle of the enterprise also varies from year to year and industry to industry. The Finance Minister, in his budget speech, proposed to amend regulations to allow the use of multiple year data for comparability analysis. Use of multiple year data would now address this issue and will also improve the selection of comparables, for *e.g.* a significant variance in margin from year to year may lead to rejection of that comparable.

Definition of Deemed International Transaction

The deeming transfer pricing provisions contained in Section 92B(2) of the Act are now proposed to be extended to transactions between an enterprise and an independent person where there is a prior arrangement between the independent person and associated enterprise, irrespective of whether such independent person is a non-resident or resident. This provision requires more clarity as what is meant by prior arrangement, as in the absence of the clear definition it can lead to controversy.

Levy of Penalty

It is proposed to extend the authority to levy documentation penalty to the Transfer Pricing Officer. The Transfer Pricing Officer would now have the authority to levy penalty under Section 271G of 2% of the value of international transactions or specified domestic transactions for failure to furnish prescribed information or documentation. This amendment shall take effect from 1st October, 2014.

Others

Transfer of Government Security by one non-resident to another non-resident

Transfer of Government Security, carrying a periodic payment of interest, by a non-resident person to another non-resident which is made outside India through an intermediary dealing in settlement of securities, would not to be regarded as transfer and accordingly, the same would not liable to capital gains tax.

Any security held by Foreign Institutional Investor ('FIIs') to be a capital asset and liable to be taxed under the head capital gains

Currently, there is an ambiguity in the characterisation of the gains derived by the FIIs from their portfolio investments in India. It is now proposed that the securities held by FIIs would be treated as capital asset and accordingly, resulting gain from sale of such assets would be liable to be taxed under the head capital gains. Therefore, the FII's would now be eligible to invoke the beneficial provisions of the Capital Gains Article, if any, in the various Double Taxation Avoidance Agreements.

The Government's proposal to treat income generated by foreign portfolio investors as capital gains has been widely welcomed by market participants.

Conclusion

There are some disappointments the GAAR provisions were left untouched and not extended. While it is proposed that all fresh cases involving indirect transfer tax will be pre-approved by a high level committee, there is still no clarity on the interpretation of these provisions *per se* which will only fuel uncertainty. Having said this, in his maiden budget the Hon'ble Finance Minister has done a commendable job of managing to maintain prudence at the same time given impetus for growth. As mentioned by the Finance Minister himself he said, people should look at this as a beginning look at me as a marathon runner not as a sprinter!

Overall, we should admire the honest efforts of the new Government to live up to its manifesto of encouraging growth by attracting foreign investments, reducing tax uncertainty boosting manufacture and spurring up investments in infrastructure projects. Clearly, the Government has its eyes on a longer horizon and it will be interesting to watch the next Budget to see some bold measures. ■

Changes Affecting Negative List and Mega Exemption under Service Tax

Since entering into regime of Negative List, taxability of an activity depends whether the activity falls under definition of Services, if yes, whether the same is specifically excluded from taxability by way of negative list or exempted by way of Mega or other exemptions. In the Finance (No 2) Bill 2014, where the efforts are put in to clarify some of these exemptions, on the other hand certain exemption are withdrawn or newly introduced. Certain new activities also become taxable as they are being withdrawn from negative list. Efforts are made here to explain changes with consequential impact under Mega Exemption and Negative list. Changes in Mega exemptions are introduced through notification No 6/2014 which had the impact from 11th July 2014 whereas since Negative list is into Act i.e. Section 66D of Finance Act, the changes in Negative list will become applicable only from a date to be notified after assent of President on Finance Bill 2014.

Mega Exemption Applicable w.e.f. 11th July, 2014

1. **Service Tax on Air-Conditioned Contract Carriages [S. No. 23(b)]**

   The scope of exemption related to transport of passengers by a contract carriage other than for specified purposes has been constrained by *excluding the exemption available to air conditioned contract carriages*. Therefore, service tax will be applicable on air conditioned contract carriages. Further, service tax will be charged at abated value of 40%, meaning thereby that the effective tax, rate will be 4.944%.

   As a result of this alteration, a leisurely travel by an air conditioned carriage will now be pricey.

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2. **Service Tax on Clinical Research Organisation [S. No. 7]**

   The exemption available under clause 7, by way of technical testing or analysis of newly developed drugs by a clinical research organisation which is approved by Drug Controller general of India has now been excluded from the purview of exemption notification. Therefore, from now onwards, any such clinical research organisation will be liable to pay service tax.

3. **Services received by Educational Institutes [S. No. 9]**
In the field of education, the base notification provided exemption to the services provided by educational institutions to its students, staff and faculty which was further withdrawn vide Notification No 3/2013-ST dated 1st March 2013 w.e.f. 1st April 2014. Now, the exemption to the services provided by educational institutions to its students, staff and faculty has been brought again to the Mega Exemption Notification. Therefore, the services of transportation facility, air conditioned canteen, health services etc. provided to students, faculty and staff by the educational institutions now became exempt. This clause was peculiarly operated by the sub clause (a) which defined *auxiliary educational services*. The clause left various scope for interpretation. Barring all, the government has now introduced an inclusive list wherein exemption will be available only to the specified services provided by and educational institution, viz:
   - Transportation of students, faculty and staff of educational institution,
   - Catering services including any mid-day meal scheme sponsored by government,
   - Security or cleaning or house-keeping services in such educational institution,
   - `Services relating to admission to such institution or conduct of examination.

   Further, exemption in respect of providing services of renting of immovable property to educational institutions stands withdrawn. The government has therefore limited the scope of exemption in lieu of such services.

4. **Services Provided by Municipality [S. No. 25]**
In clause 25 of the exemption notification, the scope of exemption has been constrained by omitting the phrase *"in relation to"*, thereby limiting the exemption only to the services by way of *water supply, public health, sanitation conservancy, solid waste management or slum improvement and up gradation*. Any service in relation to the specified services such as designing, consultancy etc. will be taxable which are not directly linked to these specified services.

5. **Services Provided by Dharamshala etc. [S. No. 18]**
The antecedent exemption notification provided exemption to services by way of renting of hotel, inn, guest house, club, campsite, or other commercial places. However, owing to doubts raised by the public, the word, *"commercial"*, has now been omitted. The implication will be that the exemption will now be available to any entity such as ashrams, dharamshala, etc. subject to capping of ₹1000/- as declared tariff of a unit of accommodation.

6. **Service Tax on Tours wholly conducted outside India [New Entry at S. No.42]**
Services provided by the Indian tour operators to foreign tourists in relation to tours wholly conducted outside India are being exempted. This exemption is available to Indian tour operators in cases where they organize tours for a foreign tourist wholly outside India, e.g., service provided to a Sri Lankan for a tour conducted in Bhutan. It may be noted that service provided by a tour operator in relation to an inbound or an outbound tours continue to be leviable to service tax

7. **Other Exemptions**
   a. All life micro-insurance schemes approved by the Insurance Regulatory Development Authority (IRDA), where sum assured does not exceed Fifty Thousand Rupees are being exempted from service tax. [S. No. 26A]
   b. Transport of organic manure, cotton, ginned or baled by vessel, rail or road (by GTA) is being exempted by amending entries at Sl. No. 20 and 21. Therefore, organic manure will be on par with fertilizer which is already exempted. [S. No. 20 & 21]
   c. Services by way of loading, unloading, packing, storage or warehousing, transport by vessel, rail or road (GTA), of cotton, ginned or baled, is being exempted. [New Entry at S. No. 40]
   d. Services provided by Common Bio-medical Waste Treatment Facility operators by way of treatment, disposal of bio medical waste or processes incidental to such treatment or disposal are being exempted. [New Entry at S. No. 2B]

e. Service provided by Employees State Insurance Corporation (ESIC) during the period prior to 1.7.2012 is proposed to be exempted from service tax. This exemption for services by ESIC would come into effect from the date the Finance (No.2) Bill, receives the assent of the President. It may be noted that any service provided by ESIC to persons governed under the Employees Insurance Act, 1948 is already exempt for the period commencing from 1.7.2012. [S. No. 36]

f. Specialised financial services received by RBI from outside India, in the course of management of foreign exchange reserves, e.g. external asset management, custodial services, securities lending services, are being exempted. [New Entry at S. No. 41] [Notification 6/2014 -ST]

Changes in Negative List

Changes in Negative List to be effective from the date to be notified after the Finance (No. 2) Bill, 2014 receives the assent of the president are as follows:

A) Sale of Space or Time for Advertisement

Service Tax leviable currently on sale of space or time for advertisements in broadcast media, namely radio or television [section 66D (g) read with section 66B], is proposed to be extended to cover such sales on other segments like online and mobile advertising. The new levy would further extend to advertisements in internet websites, out-of-home media, on film screen in theatres, bill boards, conveyances, buildings, cell phones, Automated Teller Machines, tickets, commercial publications, aerial advertising, etc. Sale of space for advertisements in print media, however, would continue to be in the negative list and hence remain excluded from service tax. Print media is being defined in service tax law for the purpose.

Major impact of these changes will be as under:-

Items	Under Existing Scheme	Under Proposed scheme
Advertisement Broadcast by radio or Television	Taxable	Taxable
Sale of space for online and mobile advertising	Non-taxable	Taxable
Advertisements on internet websites	Non-taxable	Taxable
Advertisements in Out of home media	Non-taxable	Taxable
Advertisements on film screens in theatres	Non-taxable	Taxable
Advertisements in ATM's	Non-taxable	Taxable
Advertisements on tickets	Non-taxable	Taxable
Advertisements in Commercial publications	Non-taxable	Taxable
Aerial Advertising	Non-taxable	Taxable
Advertisement in print media such as newspapers etc.	Non-Taxable	Non-Taxable
Advertisement in business directories, yellow pages and trade catalogues	Non-Taxable	Taxable
Advertisement in book other than business directories, yellow pages and trade catalogues	Non-Taxable	Non-Taxable
Advertisements in bill boards, conveyances, buildings, cell phones etc.	Non-taxable	Taxable

B) Transportation of Passengers

Earlier, Services of transportation of passengers, with or without accompanied belongings, by metered cabs, radio taxis or auto rickshaws were non- taxable.

But now Service tax is proposed to be levied on services provided by radio taxis or radio cabs, whether or not air-conditioned [Section 66D (o)(vi)]. The abatement presently available to rent-a-cab service would also be made available to radio taxi service, to bring them on par. A definition of radio taxi is being included in the exemption Notification No.25/2012-ST.

"Radio taxi" means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS).

Proposed Changes in Finance Act, 1994 & Rules (Excepting Cenvat Credit Rules Made Thereunder)

Indirect Tax Laws (particularly law relating to levy of Service Tax) are not static has been proved by the Finance Bill (No. 2), 2014. The aforementioned Bill has proposed some changes in the Finance Act, 1994 and various Rules made thereunder which are briefly discussed in this article.

A modest effort has been made to briefly explain the changes that are proposed to be made in the Finance Act, 1994 (excepting changes in Negative List of Services & Mega Exemption Notification] and various Rules [excepting CENVAT Credit Rules, 2004] made thereunder. The readers are advised to carefully go through the proposed legislative changes & relevant Notifications before taking any decision.

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Changes applicable on the enactment of the Finance Act, 2014

1. Insertion of Section 73(4B): Obligation on the part of the Department to adjudicate SCN within specified time period

Section 73(4B) is proposed to be inserted with a view to provide following time limits for completion of adjudication:

Different cases	Time limit for adjudication
Cases whose limitation is specified as 18 months	Within six months from the date of notice, where it is possible to do so.
Cases of fraud, collusion *etc.*, where extended period of limitation of 5 years is invoked or cases where during the course of any audit, investigation or verification it is found that any Service Tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded but the true and complete details are available in the specified records	Within one year from the date of notice, where it is possible to do so.

However, the use of the phrase **"where it is possible to do so"** leaves a room for avoiding strict compliance of the provision.

2. Scope of Section 80(1) to be reduced: Penalty can not be waived in case of fraud *etc.* even when details of the transactions are available in specified records

Section 80(1) is proposed to be amended to exclude reference of first *proviso* to Section 78(1). The aforesaid proposed amendment removes the power to waive 50% penalty imposed in cases where Service Tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud or collusion or wilful misstatement or suppression of facts or contravention of any of the provisions of Chapter V of the Finance Act, 1994 or the rules made there under but true and complete details of transactions are available in the specified records. Thus, as per the proposed amendment, the penalty levied under Section 78(1) cannot be dropped on the basis of reasonable cause. The impact of such amendment would be pervasive as there would be no scope to argue *bona fide* belief as reasonable cause under Section 80.

3. Section 82(1) to be amended: Power to order search and seizure to be conferred on A.C.E. and Central Excise Officer Notified by Board also

Under the existing Section 82(1), only the Joint Commissioner of Central Excise is authorised to order for search and seizure. However, the aforesaid Section 82(1) is proposed to be substituted with a view to empower the Additional Commissioner of Central Excise and any other notified Central Excise Officer also (in addition to Joint Commissioner of Central Excise) to order search and seizure proceedings either by way of authorising any Central Excise Officer or to conduct such proceedings by himself.

4. Scope of Section 83 to be enhanced: Specified additional sections of Central Excise Act to apply to Service Tax

Section 83 of the Act is proposed to be amended to include a reference to Section 5A (2A), Section 15A and Section 15B of the Central Excise Act, 1944. The aforementioned Sections are briefly discussed below:

(a) **Section 5A(2A):** This Section prescribes that any explanation inserted in a notification or special order at any time within one year of issue of notification or order shall have effect from the date of issue of such notification or order.

(b) **Section 15A:** The new Section is proposed to be inserted in the Central Excise Act to provide that third party sources shall furnish periodic information, as specified, in the prescribed manner.

(c) **Section 15B:** This new Section is proposed to be inserted in the Central Excise Act to provide that failure to provide information under Section 15A of the Act shall attract specified penalty.

5. Section 35F to be substituted: Mandatory pre-deposit of duty

(a) **Section 35F:** This Section is already applicable to Service Tax with effect from 01-07-1994. However, the aforesaid Section 35F is proposed to be substituted with a new section to prescribe a mandatory pre-deposit of 7.5% of the duty demanded or penalty imposed or both for filing the appeal before the Commissioner (Appeals) or the Tribunal at the first stage, and 10% of the duty demanded or penalty imposed or both for filing second stage appeal before the Tribunal. However, the amount of pre-deposit payable shall be subject to a ceiling of ₹10 crore. It is also pertinent to add here that all pending appeals or stay applications shall be governed by the statutory provisions prevailing at the time of filing such applications or appeals.

It is opined that the above substitution may prove to be detrimental to the interest of genuine assesses who might get wrongly implicated by the Revenue Authorities for evasion of taxes/duty.

6. Consequential amendment in Section 86(6A): No need to file an application for grant of stay

Section 86(6A) is proposed to be amended with a view to omit the words "for grant of stay or." It is opined that this amendment has been proposed consequent upon applicability of substituted Section 35F of the Central Excise Act, 1944. Further, such amendment has been proposed with a view to spare appellate authorities from hearing stay applications listed before them and to take up regular appeals for final hearing and disposal.

7. Amendment to Section 87(c) – Power to recover dues of a predecessor from the goods purchased by a successor

A *proviso* is proposed to be inserted to Section

87(c) with a view to empower the Central Excise Officer to recover dues of a predecessor (say Mr. A) from the goods of a successor (say Mr. B) purchased from the predecessor(say Mr. A). It is felt that insertion of such *proviso* to Section 87(c) of the Act, will not allow unscrupulous persons to evade/avoid tax liabilities arising under Service Tax, by transferring or disposing of their business or trade in whole or in part due to change of ownership thereof.

8. Scope of Section 94 to be enhanced-Rule making power in respect of specified matters

Section 94 is proposed to be amended to obtain rule making powers in respect of the following matters:

(a) To impose upon assessees, *inter alia*, the duty of furnishing information, keeping records and making returns and specify the manner in which such records shall be verified;

(b) For withdrawal of facilities or imposition of restrictions (including restrictions on utilisation of CENVAT Credit) on a service provider or exporter, for dealing with evasion of tax or misuse of CENVAT Credit;

(c) To issue instructions in supplemental or incidental matters

Changes applicable from the date to be notified after enactment

Section 67A: Enactment of Rules to determine "rate of exchange"

Explanation to Section 67A is proposed to be substituted to provide that "rate of exchange" means the rate of exchange determined in accordance with such rules as may be prescribed. For the aforesaid purposes, Section 94 is also proposed to be amended accordingly.

Changes applicable w.e.f. 11.07.2014

1. Service Tax Rules, 1994 (Notification No. 9/2014-ST dated 11.07.2014)

(a) Rule 2(1)(d)(i) to be amended/substituted: Certain taxable services brought within the ambit of Reverse Charge Mechanism:

(i) Services provided or agreed to be provided by a Recovery Agent to Banking Company or a Financial Institution or a Non-Banking Financial Company has been brought within the ambit of Reverse Charge Mechanism. Consequently, in respect of aforesaid Recovery Agent's Services, the person liable for paying Service Tax shall be the recipient of the service namely Banking Company or a Financial Institution or a Non-Banking Financial Company.

(ii) Services provided or agreed to be provided by a director on behalf of a body corporate have also been brought within the ambit of Reverse Charge Mechanism. As a consequence, in respect of aforesaid services person liable for paying Service Tax shall be the recipient of the service namely Company or the body corporate.

It may not be out of context to add here that in terms of Notification No. 30/2012-ST (as amended by Notification No. 10/2014-ST dated 11-07-2014) dated 20-06-2012 with effect from 11-07-2014 in respect of both the above-mentioned taxable services, 100% Service Tax is payable by the person receiving the service. Again, in terms of aforesaid Notification No. 30/2012 with from 01-10-2014 in respect of services of renting of motor vehicle designed to carry passengers on non-abated value, Service Tax payable by the Service Provider and Service Recipient shall be 50% each instead of 60% and 40% respectively.

Changes applicable w.e.f. 01-10-2014

1. Service Tax Rules, 1994 (Notification No. 9/2014-ST dated 11-07-2014)

(a) **Rule 6(2): E-payment of Service Tax by every assessee**

Rule 6(2) of STR, 1994 shall be substituted with a view to make e-payment of Service Tax mandatory for every assessee. However, *proviso* to aforesaid Rule 6(2) provides that jurisdictional Assistant Commissioner of Central Excise or jurisdictional Deputy Commissioner may allow the assessee to deposit the Service Tax by any made other than internet banking.

2. Service Tax (Determination of Value), Rules, 2006 (Notification No. 11/2014-ST dated 11-07-2014)

(a) **Rule 2A (ii) to be amended: Increase in value of service portion in respect of certain works contracts**

Presently, as per the provisions of Rule 2A(ii) of Service Tax (Determination of Value), Rules, 2006, value of service portion in case of Works Contract Services is determined as under:

S. No.	Type of Works Contract	Value of Service Portion
(A)	In case of works contracts entered into for execution of Original Works	40% of Total Amount Charged for the Works Contract
(B)	In case of works contract entered into for maintenance or repair or reconditioning or restoration or service of any goods	70% of Total Amount Charged for the works contract
(C)	In respect of other Works Contract not covered under sub-Clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property	60% of Total Amount Charged for the works contract

However, Notification No. 11/2014 dated 11-07-2014 has merged the aforesaid Clause (B) and Clause (C) into one single clause. Thus, with effect from 01-10-2014, Service Portion in respect of all Works Contracts other than Works Contract entered into for execution of Original Works shall be 70% of total amount charged for the Works Contract. Accordingly, Service Tax shall be applicable on aforesaid 70% of total amount charged.

3. Point of Taxation Rules, 2011 (Notification No. 13/2014-ST dated 11.07.2014)

(a) First *proviso* to Rule 7 to be substituted: Change in point of taxation in respect of services subject to Reverse Charge in specified situation

The first *proviso* to Rule 7 of Point of Taxation Rules, 2011 shall be substituted to provide that the point of taxation in respect of services falling within the ambit of Reverse Charge Mechanism shall be earlier of the following two dates:

(a) The date of payment date;

(b) 1st day after three months from the date of invoice.

However, it is clarified here that point of taxation shall be determined in accordance with above provisions only in respect of invoices issues on or after 01-10-2014.

(b) Insertion of Rule 10 to take care of transitional period: Determination of Point of Taxation in respect of invoices issued before 01-10-2014

Rule 10 shall be inserted with effect from 01-10-2014 to provide that if the invoice in respect of a service, for which point of taxation is determinable under Rule 7 has been issued before 01-10-2014 but payment has not been made as on 01-10-2014, the point of taxation shall be determined as under:

If payment is made within a period of six months of the date of invoice	Point of Taxation shall be the date on which payment is made.
If payment is not made within a period of six months of the date of invoice	Point of Taxation shall be determined as if Rule 7 and Rule 10 do not exist. In simple words, the Point of Taxation shall be determined by Rule 3.

4. Place of Provision of Services Rules, 2012 (Notification No. 14//2014-ST dated 11-07-2014)

(a) Rule 4: Determination of place of provision of repair services carried out on temporarily imported goods

The second *proviso* to Rule 4(a) shall be substituted to prescribe that it would be sufficient for the purpose of exclusion of repair service from applicability of Rule 4(a) that the goods imported for repair are exported after repair without being put to any use in the taxable territory, other than those which are required for such repair. It is worth highlighting that said exclusion does not apply to goods that arrive in the taxable territory in the usual course of business and are subject to repair while such goods remain in the taxable territory.

(b) Rule 2(f): Definition of 'Intermediary' to be substituted and its effect

The existing definition of term 'intermediary' include only 'intermediary of services.' The definition of term 'intermediary' shall be substituted with effect from 01-10-2014. The substituted definition shall include 'intermediary of goods' also to its ambit. Resultantly, with effect from 01-10-2014, an intermediary of goods (for instance, a commission agent of goods) shall fall within the purview of Rule 9(c) instead of Rule 3 as at present.

(c) **Rule 9(d) to be substituted and its effect: Services of hiring of Aircrafts & Vessels (except yachts) to fall within the purview of Rule 3**

Rule 9(d) shall be substituted with a view to exclude services of hiring of Aircrafts & Vessels (except yachts). Consequently, the aforementioned services, regardless of period of hire, shall fall within the ambit of Rule 3. However, it is worth highlighting that services of hiring of yachts upto a period of one month shall continue to fall within the ambit of Rule 9(d).

Other important changes

1. Section 75: Increase in Interest Rate in case of delayed payment of Service Tax with effect from 01-10-2014 [Notification No. 12/2014-ST dated 11-07-2014]:

Currently, simple interest at 18% p.a. is charged in case of delayed payment of Service Tax. In exercise of the powers conferred by Section 75 and in supersession of the Notification No. 26/2004-ST dated 10-09-2004, the Central Government has fixed the following rates of simple interest per annum for delayed payment of Service Tax with effect from 01-10-2014:

S. No	Period of delay	Rate of Simple Interest
(1)	(2)	(3)
1.	Upto Six Months	18%
2.	More than six months and upto one Year	18% for the first six months of delay and 24% for the delay beyond six Months
3.	More than One Year	18% for the first six months of delay; 24% for the period beyond six months upto one year and 30% for any delay beyond one year

It is pertinent to highlight here that the aforesaid time limits have been prescribed on monthly basis whereas interest is required to be computed on per day basis. In order to have a better understanding of the aforesaid interest rates, the following illustration has been provided:

For Instance: M/s. ABC Ltd. discharges its Service Tax Liability amounting to ₹1 lakh for the month

of July, 2014 on 25th August, 2015. In that case, the amount of interest required to be paid by M/s. ABC Ltd. shall be computed as under:

The due date of discharging Service Tax Liability in the aforesaid case shall be 6th August, 2014. Thus, interest shall be computed as under:

Period	Computation of amount of interest
Interest for the period 07-08-2014 to 06-02-2015	1,00,000*18%*184/365 = 9,074
Interest for the period 07-02-2015 to 06-08-2015	= 1,00,000*24%*181/365 = 11,901
Interest for the period 07-08-2015 to 25-08-2015	1,00,000*30%*19/365 = 1,562
Total Interest payable by ABC Ltd.	**₹9,074 + 11,901 + 1,562 = 22,537**

2. Section 96A(b)(iii): Resident Private Limited Company is also permitted to apply for Advance Ruling with effect from 11.07.2014 (Notification No. 15/2014-ST dated 11-07-2014)

In exercise of the powers conferred by Section 96A(b)(iii), with effect from 11-07-2014, the resident private limited company shall be included as a class of persons eligible to make an application for Advance Ruling in respect to a proposed activity to be undertaken.

Budget 2014-Changes in the Excise and Customs Law

Looking at the concessions and tax cuts provided both under Customs and Central Excise, there is a push to increase the manufacturing facilities at home rather than importing the goods. This certainly would have long-term favourable implications not only for manufacturing but for services also. The important changes as proposed in the Finance Bill, 2014 as regards to excise and customs laws are discussed in this article.

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(The authors are members of the Institute. They can be contacted at vraghuraman@vraghuraman.in)

Introduction

Through the Union Budget, which is an annual exercise, the Government plans its revenue and expenditure and mops up its revenues through direct and indirect taxes. The Union Budget also gives an opportunity to amend the tax laws prospectively as well as retrospectively.

Being the first year of a new government, the expectations from the industry as well as the tax professionals was very high and several booklets of suggestions did reach the Finance Ministry. On the indirect tax front, there was an expectation that as a move towards GST, this budget would correct the errors of limiting Cenvat mechanism and would rationalise the tax credit system. However, none of these were seen in this budget but the statement of GST sounds conducive for its introduction in the next Budget. Keeping the rates largely stable gives a favourable impression to the investors.

That apart, looking at the concessions and tax cuts provided both under Customs and Central Excise, there is a push to increase the manufacturing facilities at home rather than importing the goods. This certainly would have long-term favourable implications not only for manufacturing but for services also.

With the above background, the important budget changes as regards excise and customs laws are discussed below.

Excise

Proposed Amendments to Central Excise Act, 1944

I. Information collection: (Clause 90)

With a view to broad-base the information collection to identify tax evaders or recover confirmed dues, a new section (Section15A) is proposed wherein the Central Government would be empowered to collect information from various government and other agencies such as income tax authorities, banks, registration offices, state VAT authorities, Registrar of companies, stock exchanges, *etc.*

The time periods, format and manner of providing information return shall be prescribed. Further, the new section also proposes to impose penalty on the person who is required to furnish information (Section 15B) for failure to furnish information return or submission of wrong particulars. We are unsure how this would work, on the employee level or the departmental level.

II. Appeal provisions:(Clauses 95 to 100)

a) *Non admission of appeals:*

Presently, in terms of Section 35B the Customs Excise and Service Appellate Tribunal (CESTAT) been empowered with the discretion to refuse to admit the appeal where duty implications or the penalty amounts does not exceed ₹50,000/-. It is proposed to increase the monetary limit to ₹2,00,000/-. It should be noted that matters relating to rate of duty or valuation would continue to be admitted irrespective of the duty amounts involved.

Being the first year of a new Government, the expectations from the industry as well as the tax professionals was very high and several booklets of suggestions did reach the Finance Ministry

b) *Procedure to constitute committee of commissioners:*

For the purpose of filing appeal by the department, the committee of commissioners shall have to take a decision as to whether to file appeal or not. Presently, the above referred committee has to be constituted by way of issue of notification in official gazette. The amendment proposes that give power the CBEC to constitute committee by way of an **order** instead of notification in gazette.

c) *Pre-deposit and stay proceedings before Commissioner (Appeals) and CESTAT:*

Presently, Section 35F provides that where an appeal is to be preferred before Commissioner (Appeals) or before the Tribunal, duty, interest or penalty shall be deposited prior to filing appeal. However, the Commissioner (Appeals) or CESTAT may waive deposit of such adjudicated levies. Further, in terms of Section 35C(2A), the stay granted by the CESTAT stands vacated where the appeal is not disposed off within 365 days from the date of order of the stay.

In place of the above, it is proposed to bring new set of provisions which would provide that at each stage of the appeal proceedings appellant is required to deposit certain percentage of demands and the discretion to grant full waiver would be withdrawn. The proposed provisions are analysed s below:

Orders other than passed Commissioner (Appeals) against which appeal to be preferred before CESTAT or Commissioner (Appeals) as the case may be.	7.5% of the duty demanded or penalty imposed or both in the order appealed against.

Appeal before Tribunal against order of Commissioner(Appeals)	10% of the duty demanded or penalty imposed or both in the order appealed against.
Maximum pre-deposit amount	₹10 crore.
The above pre-deposit requirements would apply only to those appeals which are filed after these provisions are notified and not to the stay/appeals pending as on that date.	
Duty demand for this purpose has been defined to include (i) amount determined under Section 11D (ii) amount of erroneous Cenvat Credit taken; (iii) amount payable under Rule 6 of the Cenvat Credit Rules, 2001 or the Cenvat Credit Rules, 2002 or the Cenvat Credit Rules, 2004.	
Consequently, the provisions relating to lapse of stay is proposed to be omitted.	

Author is of the view that the above amendments are welcome as it would speed up the disposal of pending matters before CESTAT and Commissioner (Appeals). However, pre-deposit percentages could have been restricted to duty amount or penalty where only penalties are imposed, in light of the fact that the lower authorities impose penalties without even ascertaining whether conditions under concerned penal provisions would get fulfilled or not. The author is quite sure that the constitutionality of the above provisions would be challenged.

However, where the lower authorities [including Commissioner (Appeals)] confirm the demands without even looking at the favourable decisions of the higher forums (which the authorities normally do), the assesses would certainly be put to hardship.

Further, the interpretation of this provision as per the TRU circular would land into further litigation as the TRU circular envisages 17.5% as per deposit, where the appeal is carried thorough Commissioner (Appeals). The proposed provision only requires 10% of the amount confirmed to be paid as pre-deposit and such amount is not over and above the amount already deposited. Further, the theory of doctrine of merger has not been considered by the TRU circular.

Another fear is that the pre-deposit figures are kept low but may be made higher in the later years. The new section should also have a specific clause that on payment of the said amounts, waiver of pre deposit is automatic.

On the indirect tax front, there was an expectation that as a move towards GST, this budget would correct the errors of limiting Cenvat mechanism and would rationalize the tax credit system. However, none of these were seen in this budget

d) *Appeal to Supreme Court:*

This Clause is proposed to clarify that clarify that determination of disputes relating to taxability or excisability of goods is covered under the term "determination of any question having a relation to rate of duty" and hence, appeal against the Tribunal orders in such matters shall be preferred before the Supreme Court. This proposal is necessitated in the background of the fact that many High Courts have taken a view that taxability or excisability relates to determination of rate of duty and hence appeal shall be preferred to the Supreme Court and not the High Courts.

e) *Revision of order by Committee of Chief Commissioners:*

Presently, in terms of Section 35E, revision shall be made by the committee within three months from the date of the order and there was no power to CBEC to extend the time limit. Proposed amendment provides power to CBEC to grant extension by one month.

f) *Amendment to Section 35R dealing non filing of appeal by the Department in certain cases:*

Section 35R provides that based on the monetary limits, the board shall decide not to file appeals before appellate authorities or tribunal or courts. Reference under Section 35R(4) did not include Commissioner (Appeals). Proposal is to include Commissioner (Appeals) under the said sub-Section and therefore departmental appeals below specified limits would not be admitted.

III. Settlement Commission [Clauses 91 to 94]

Summary of amendments proposed to settlement provisions are as below:

a) Commission has been renamed as *"Customs, Central Excise and Service Tax Settlement Commission."*

b) Reference to Section 11AB with a reference to Section 11AA to align the same with the existing central excise provisions relating to recovery of interest on delayed payment.

c) Allow filing of applications of settlement before the Settlement Commission in cases where the applicant has not filed the excise returns.

d) To allow filing of settlement applications before 180 days from the date of seizure of books or records.

e) No subsequent applications would be allowed where there is a concealment of duty before the central excise authority.

Amendments to Rules

<table>
<tr><th>Rule</th><th>Nature of amendment</th></tr>
<tr><td>Central Excise Rules, 2002 [Notification No. 19/2014-Central Excise (N.T.) dt. 11-07-2014]</td><td>i. Manner of payment: W.e.f. 01-10-2014, all assesses are required to pay duty only through internet banking mode and the Assistant Commissioner may allow payment in other mode, after recording the reasons for allowing the same.
ii. Consequences of default in payment of duty: In case of default in payment of duty beyond one month, then the assessee is liable to pay the penalty at the rate of 1% of such amount of the duty not paid, for each month or part thereof calculated from the due date, for the period during which such failure continues. Earlier provisions of withdrawal of Cenvat facility or payment of duty on each clearance would not be applicable henceforth. Replacement of existing Rule 8(3A) of the Central Excise Rules, 2002 with the new one is a much needed relaxation for the industry.</td></tr>
<tr><td>Rule 6 of Central Excise Valuation (Determination Of Price Of Excisable Goods) Rules, 2000 [Notification No. 20/2014-Central Excise (N.T.) dt. 11-07-2014]</td><td>Where excisable goods are sold at a price below the manufacturing cost and profit and there is no additional consideration flowing from the buyer to the assessee directly or from a third person on behalf of the buyer, value for the assessment of duty shall be deemed to be the transaction value.
This is also a welcome amendment that overcomes the decision of the Supreme Court in Fiat's case, 2012 (283) E.L.T. 161 (S.C.)</td></tr>
<tr><td>Cenvat Credit Rules, 2004 [Notification No. 21/2014-Central Excise (N.T.) dt. 11-07-2014]</td><td>i. Definition of place of removal: Place of removal has been specifically defined for the purpose of the Cenvat Credit Rules, 2004. This may make it difficult to take credit on transportation of goods beyond such places.
ii. Restriction on availment of credit (Rule 4): Restriction of six months from date of the invoice/bill to avail credit has been re-introduced for inputs and input services effective from 01-09-2014. The author is of the view that this is a retrograde step which re-introduces the restrictive provisions which were existing and withdrawn many years back.
iii. When to avail credit on service tax paid under reverse charge [Rule 4(7)]:
<table>
<tr><td>Where whole of service tax is paid by recipient</td><td>To avail credit after of payment of service tax</td></tr>
<tr><td>Service tax is partly paid by recipient and partly by the provider</td><td>To avail credit on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill</td></tr>
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	iv. **Reversal of credit if value of service is not paid [Rule 4(7)]:** Where the value of service and service tax is not paid to the service provider(other than those services covered under reverse charge or joint charge), within 3 months from the date of invoice or bill, then amount equal to the credit availed shall be reversed. Whether the recredit has to be taken within 6 months of date of original invoice is going to be litigated. v. **Delay in realisation of proceeds [Rule 6(8)]:** The purpose of this amendment is to allow credit to be re availed when reversed on account of non receipt within the time limit fixed by RBI. This proviso allows a further period of one year from the time limits fixed by RBI. vi. **Transfer of credit between two units of an assessee under LTU scheme [Rule 12AA]:** Rule provided for transfer of credit available with one unit of an assessee registered as LTU to another unit of assessee under LTU. This transfer would not be allowed henceforth and there seems no logic to this. vii. **Clarification on distribution of Credit by input service distributor [Rule 7]:** It is clarified that the credit of service tax on common input services by ISD could be distributed between units based on their turnover irrespective of the fact that a particular unit is exempted from duty / tax. [Circular No. 178/4/2014-ST dt.11.07.2014]

Customs

Amendments to Customs Act, 1962

Similar to amendments proposed under the Central Excise Act, 1944, amendments are proposed in Customs Act, 1962 relating to appeal provisions **(Clauses 80-84)** and settlement commission provisions **(Clauses 77-79)**. Therefore, the amendments discussed in paragraphs BII and BII relating to appeals and settlement commission would equally be applicable to customs also. Apart from the above, following are the proposed changes in Customs Act.

I. **Amendment to Section 15 & Section 46: Date of determination of rate of duty and valuation and filing of bill of entry (Clause 74 & 76)**
It is proposed to amend Section 15(1) which provides for determination of rate of duty and tariff valuation for imports. Presently, this section does not cover import through vehicles by land.' Amendment proposes to cover imports by vehicles through land routes and allows presentation of bill of entry for imported goods before arrival of vehicle carrying the goods.

II. **Retrospective exemption to mineral oils extracted in the continental shelf of India or the exclusive economic zone of India for the period prior to 7th February, 2002 (Clause 75)**
It is proposed to grant exemption to mineral oils including petroleum and natural gas extracted or produced in the continental shelf of India or the exclusive economic zone of India for the period prior to 7th February, 2002 from whole of customs duties. This would settle the disputes in this regard.

III. **Settlement Commission (Clauses 77-79)**
This amendment proposes to expand the scope of Settlement Commission by providing that an application for settlement of cases can also be filed in cases where a Bill of Export, Baggage Declaration, Label or Declaration accompanying the goods effected through Post or Courier have been filed.
As discussed in the preceding paragraphs, amendments relating settlement commission as discussed under central excise section would equally be applicable to customs also.

IV. **Levy of safeguard duty on inputs/raw materials imported by an EOU (Clause 86)**
Amendment proposed to the Customs Tariff Act, 1975 to provide for levy of safeguard duty on inputs/raw materials imported by an EOU and cleared into DTA as such or are used in the manufacture of final products and cleared into DTA. This amendment would have immediate implication as the said amendment is covered under declaration made under Provisional Collection of Taxes Act, 1931.

Baggage Allowance [Notification Nos. 50/2014-Cus (N.T.) Dated 11-07-2014]

For passenger facilitation, free baggage allowance increased from ₹35,000 to ₹45,000. However, duty free allowance of cigarettes has been reduced from 200 to 100, of cigars from 50 to 25 and of tobacco from 250 gms to 125 gms.

A. Duty Structures and Important Exemptions Under Excise and Customs

Excise

- The peak rate of duty of excise remained unchanged at 10%. However, incentives in the form of reduced rates have been extended to goods manufactured for use in renewable energy, wind, solar and Bio-CNG. Further, duty has been reduced for branded petrol. Further, rate of duty on food processing and packaging machines, foot ware having MRP between ₹500 and ₹1,000, has been reduced.
- On the other hand, duty on cigarettes, tobacco products and aerated waters containing added sugars, has been increased. Further, concessional rate of duty on smart cards and paper and educational text book has been withdrawn and would be liable to duty at 6%.
- Rule 8 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 is being amended with retrospective effect from 13-04-2010 to provide that where a manufacturer manufactures pouches of different RSPs on a single machine in a month, the duty liability for that month would be the duty applicable to the highest of the RSP so manufactured. Earlier, such manufacture of pouches having different RSPs was treated to be a different machines for the purpose of imposing capacity based duty. This amendment would result in reduction of duty liability and assesses could prefer refund within six months from date of presidential ascent subject to provisions of Section 11B. **(Clause 101)**
- Retrospective exemption effective from 08-02-2013 to 10-07-2014 (both days inclusive) to liquefied propane and butane mixture, liquefied propane, liquefied butane and Liquefied Petroleum Gases (LPG) supplied to Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited or Bharat Petroleum Corporation Limited for supply to household domestic consumers or to nondomestic exempted category (NDEC) customers. Prospective from 11-07-2014, exemption has been granted and similar prospective and retrospective exemptions are also brought in central excise also. This is to ensure that the exemption is available to both domestic as well as non-domestic users. **(Clause 85)**
- Education cess and secondary and higher education cess (customs component) is being exempted on goods cleared by an EOU into the DTA. **(Notification No. 18/2014-Central Excise dt. 11-07-2014)**

Customs

The peak rate of duty of customs remained unchanged at 10%. However, it appears that, in order to give a boost to the local industry to manufacture, duty concessions have been extended on many goods. Important goods which attract duty concession include parts and components of PCs and Laptops, goods used for manufacture of solar panels or cells, plant and machinery for setting up Bio-CNG plant, *etc.*

B. Tax Administration

New post as Principal Chief Commissioner/ Principal Commissioner (Clauses 72-73 and 88-89)

There is a proposal to create to create new posts as principal chief commissioner or principal commissioners. Similar provisions have been brought under Customs Act, 1962. The author is of the view that this amendment does not gel with the theory of maximum governance minimum government.

Advance Rulings [Notification Nos. 51/2014-Cus (N.T.) Dated 11.07.2014 and 18/2014-CE (NT) dated 11-07-2014]

Apart from public sector and resident public limited companies, resident private limited companies could also prefer advance ruling under Central Excise and Customs provisions.

C. Conclusion

As mentioned in the earlier paragraphs, the Budget tries to give push to self reliance in manufacture of certain goods, especially in power sector. Concrete steps have been made to reduce litigation but the provisions itself may be challenged. The imminent introduction of GST in the coming year would be a major boost to the industry, if things are kept simple. However, some of the steps in relation to Cenvat Credit would require a re-look by the Government. ■

Analysis of Changes in Cenvat Credit Rules, 2004 Vide Notification No. 21/2014-Central Excise (N.T.) dated 11-7-2014

Finance Minister presented the budget for the 2014-15 on 10th July, 2014. Various changes and new concepts have been introduced in indirect taxes. In this article, the amendment brought out in the Cenvat Credit Rules, 2004 is discussed. Vide Notification No. 21/2014-Central Excise (NT), dated 11.07.2014, the Central Government made the rules to amend the Cenvat Credit Rules, 2004 by virtue of powers under Section 37 of Central Excise Act, 1944 and Section 94 of Finance Act, 1994.

CA. Dharmendra Srivastava

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Definition of "Place of Removal" Inserted

A new sub-rule (qa) has been inserted in Rule 2 of Cenvat Credit Rules, 2004 to introduce the definition of "place of removal".

According to this Rule, the 'place of removal' means-

- *A factory or any other place or premises of production or manufacture of the excisable goods;*
- *A warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;*
- *A depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearances from the factory,from which such goods are removed.*

Definition of 'place of removal' as defined above is the same as that already given under Section 4(3)(c) of the Central Excise Act, 1944. It has now been introduced separately in Cenvat Credit Rules, 2004.

Hence, this new definition will be helpful in the interpretation of Rule 2(l) – 'input service' *in which it is defined that 'input service' means any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal.* This Rule has come into effect from 11-07-2014.

Conditions for Allowing Cenvat Credit

Amendment to Rule 4(1) of Cenvat Credit Rules, 2004

Rule 4 provides the conditions for availing Cenvat credit. Rule 4(1) provides that the Cenvat credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service.

Rule 3(a) of Amendment Rules inserted proviso after the second proviso to Rule 4(1) of Cenvat Credit Rules, 2004. The new *proviso* provides that the manufacturer or the provider of output service shall not take Cenvat credit after six months of the date of issue of any of the documents specified in Rule 9(1).

The following are the documents specified under Rule 9(1):

- Invoice issued by a manufacturer, importer, first stage dealer;
- Supplementary invoice;
- Bill of entry;
- A certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office;
- A challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax;
- An invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004;
- An invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

Rule 4(1) (for input credit) has been amended in order to fix a time limit of six months for availment of the Cenvat Credit. Accordingly, credit can be taken only before expiry of six months from the date of supplier's invoice or date of challan in case of payment under reverse charge.

This amendment will come to effect from 01-09-2014. Earlier to this amendment, the availment of cenvat credit was not barred by any time limit. As the rule has been made effective from 1st September, 2014, the time limit of six months shall be applicable only for the invoices issued on or after 1-09-2014. In case of invoices issued before 1-09-2014, no time limit shall apply as was the case earlier. Thus, if bill of purchases of inputs or input services is dated 1-09-2014, the credit can be taken maximum by 1-3-2015. In case of bill dated 31-08-2014, the credit can be availed any time, without any restriction of time limit.

Rule 3(a) of Amendment Rules inserted proviso after the second proviso to Rule 4(1) of Cenvat Credit Rules, 2004. The new proviso provides that the manufacturer or the provider of output service shall not take Cenvat credit after six months of the date of issue of any of the documents specified in Rule 9(1).

The tax payers and the consultants now onwards should be vigilant and take great care to ensure all the credit are properly availed within the new prescribed period of 6 months to avoid any possible loss.

Amendment to Rule 4(7)of Cenvat Credit Rules, 2004

Rule 4(7) of Cenvat Credit Rules, 2004 provides that the Cenvat credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received.

Rule 3(b)has brought amendment to Rule 4(7) of Cenvat Credit Rules, 2004. Rule 3 (b)(i) of the amendment rules has substituted the first and second proviso by means of new *provisos*.

Earlier to the amendment the *provisos* to Rule 4(7) provided that in case of reverse charge mechanism, the Cenvat credit in respect of input service shall be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in Rule 9.

The new inserted provisos provide the following conditions for taking credit in respect of input services—

- ***Full Reverse Charge*** : Earlier credit was allowed only after payment of service tax and value of input service (both). Now, credit is allowed after service tax is paid. The condition relating to payment of value of input service prior to taking credit, has been removed.

- ***Partial Reverse Charge :*** The credit is allowed only after value of service and service tax has been paid. Thus, there is no change in position of law.
- ***No reverse charge cases :*** Credit is allowed on receipt of invoice. The payment of value of service along with service tax must be made within 3 months from date of invoice otherwise, credit would have to be reversed and can be re-taken after payment of invoice.

The new proviso brings a change in availing Cenvat credit under Full Reverse Charge Mechanism scheme. This amendment is w.e.f 11-07-2014.

Rule 3(b)(ii) of Amendment Rules inserted another proviso after the fifth proviso which provides that the manufacturer or the provider of output service shall *not take CENVAT credit on input service after six months* of the date of issue of any of the documents specified in Rule 9(1). This amendment will be effective from 01.09.2014.

Thus Rule 4(1) and Rule 4 (7) of Cenvat Credit Rules, 2004 has been amended in order to fix a time limit for manufacturer and service provider to avail the cenvat credit on inputs and input services. It is important to note that the time limit of 6 months is applicable only for inputs and inputs services and not for capital goods. It is recommended to the assessees to ascertain any cenvat credit missed out or kept on hold and avail the same before 1st eptember, 2014.

In case of service tax paid under full reverse charge, the condition of payment of invoice value to the service provider for availing credit of input services has been withdrawn vide the Amendment Rules. However, the said change is not applicable in respect of partial reverse charge mechanism.

Cenvat Credit on Receipt/Non-Receipt of Export Proceeds

Rule 4 of Amendment Rule has inserted a proviso after Rule 6(8)(b) that if proceeds of export of services are realised —

Rule 4(1) and Rule 4 (7) of Cenvat Credit Rules, 2004 has been amended in order to fix a time limit for manufacturer and service provider to avail the cenvat credit on inputs and input services. It is important to note that the time limit of 6 months is applicable only for inputs and inputs services and not for capital goods.

- after the specified or extended period allowed by the Reserve Bank of India
- but within one year from such period,

The service provider shall be entitled to take the credit of the amount equivalent to the Cenvat credit paid earlier in terms of Rule 6(3) to the extent it relates to such payment, on the basis of documentary evidence of the payment so received.

Thus, Cenvat Credit already reversed owing to non-realization of export proceeds of services can be re-taken suo-motuon pro rata basis to the extent of payment realised on the basis of documentary evidence of realization.

Amendment to Rule 12A

Rule 12A provides the procedures and facilities for large tax payers. Rule 12A(4) has been amended so as to disallow transfer of credit by a large taxpayer from one unit to another.

The inter-unit transfer of credit by large taxpayers has been withdrawn, if credit is taken on or after 11-07-2014 by any registered premises. Credit taken on or before 10-07-2014 by any registered premises would continue to be available for inter-unit transfer by large tax payers

Input Service Distributor

Rule 7 of the Cenvat Credit Rules, 2004, provides for the manner of distribution of common input service credit by the Input Service Distributor.

This was amended vide notification No. 05/2014-CE (N.T.) amending, *inter-alia*, Rule 7(d), to provide for distribution of common input service credit among all units in their turnover ratio of the relevant period. Some interpretational issues were raised regarding the amendment such as:

(i) due to the use of the term “such unit” in Rule 7(d), the distribution of the credit would be restricted to only those units where the services are used, and

(ii) the credit available for distribution would also get reduced by the proportion of the turnover of those units where the services are not used.

Clarification has been provided vide Circular No. 178/04/2014-ST, dated 10-07-2014 illustrating the effect of the amendment carried out *vide* Notification No. 05/2014-CE (N.T.). It clarifies that the amended Rule 7 allows distribution of input service credit to all units (which are operational in the current year) irrespective of whether such common input services were used in all the units or in some of the units, in the ratio of their turnover of the previous year/previous quarter as the case may be. ■

A Conventional Budget Holds Hopes for the Future: Macro-Economic View

Government budgeting involves a tradeoff where different public programmes compete for a share of the limited available resources. It is fundamentally different from private budgeting where the major objective is to maximise profit. Public budget encompasses a wide range of public objectives and reaches out to different sections of the society. The Union Budget 2014-15, the first of the NDA Government after the change in regime at the Centre, avoided the decisions that would have been construed as paradigm changes that turned out viable, by continuing with the existing budgeting practice. Although it was a conventional one, the budget 2014-15 instilled some optimism for the future, based on the intents outlined in it.

Relating expenditure to revenue to avoid an explosive situation of higher deficit and debt burden, remains the key element of budgetary decisions, which need to have control over public money, ensuring accountability in spending it responsibly, efficiently and effectively. The varied expectations from the budget make it a very complex exercise for the policy makers. This budget 2014-15, with its macroeconomic policies and programmes, reveals the intent of the new Government to take the decisions as they go along.

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The Indian economy was one of the fastest growing economies with growth of over 9 % during 2005-06 and 2007-08. After recovering from the slowdown induced by the global financial crisis in 2008-08, the Indian economy managed to achieve a growth rate of 8.6 % and 8.9 % in 2009-10 and 2010-11 respectively. The recent sub -5 percent growth in the last two years, 4.5 % and 4.7 % in 2012-13 and 2013-14 respectively, was one of the lowest in recent history, since 1987-88.

Union Budget 2014-15

The Economic Survey for the year 2013-14 indicates that the prolonged slowdown in the Indian economy was caused by the persistent uncertainty in the global outlook, caused by the crisis in the Euro area and general slowdown in the global economy, compounded by the domestic structural constraints and inflationary pressures. While the external factors explain a part of the story, the domestic structural constraints bogged down the decision making process, affecting the growth adversely. The Survey indicates that lack of quick decisions on project proposals, growing subsidies that reduced the space for public investment, lack of clear policies to facilitate growth of the manufacturing sector, low labour absorption in the organised sector, and structural supply's side factors that made it difficult to control rein in food inflation, are the major factors inhibiting the economic growth. These are the areas, in which people expected actions from the new Government, to help improve the growth process.

The Economic Survey indicates that the slow growth in the investment sector in recent years can be attributed to policy uncertainties emanating from difficulties in land acquisition, delayed environmental clearances, infrastructure bottlenecks, problems in coal linkages, ban on mining in selected areas, *etc.* High and volatile inflation and high fiscal deficit along with the overall global uncertainty, may have resulted in slowdown in corporate investment. Slowdown in investment could also be explained in terms of the subdued business environment and low business confidence.

Managing inflation remains one of the major macroeconomic challenges in front of the Government. High inflation has the potential to vitiate the private investment climate stalling the growth prospects, which was evident in recent years. In addition to food inflation, the headline WPI was also affected by rising fuel prices. Factors like rationalisation of tariff for electricity in many states, the policy of allowing greater pass-through in diesel prices, and depreciation of the Indian rupee against the US dollar contributed to the fuel inflation.

The new Government with a resounding electoral verdict was expected to provide policy guidelines on a range of issues including enhancing economic growth, controlling inflation, improving employment opportunities, reviving investment, allocating resources to social and infrastructure sectors, achieving fiscal consolidation, and introducing reform measures. It is a different matter to expect everything to be provided in the budget. The budget 2014-15 being the first major opportunity, the railway budget preceding it, to outline the economic policies of the new Government, the wish list was rather long. The recessionary situation with the fiscal stress and adverse macroeconomic indicators like high inflation, declining savings and investment rates, and falling consumption needed to be addressed and some concrete policy directions on these issues was expected from the bduget. As the Economic Survey 2013-14 outlined, policies were required to adopt structural reforms to ease supply-side constraints, provide design sector-specific incentives to boost demands, accelerate project clearances and streamline implementation procedures, restore growth in manufacturing, keep fiscal deficit in check without compromising on capital expenditure, and maintain the CAD in the range of 2-2.5 %t of GDP.

One notable feature of the budget 2014-15 was continuity, particularly evident in fiscal consolidation roadmap. The budget accepted the previously laid out fiscal roadmap to achieve fiscal deficit of 4.1 per cent of GDP in 2014-15, 3.6 per cent in next fiscal year and 3 per cent in 2016-17. The emphasis on the need of fiscal discipline in the system is unmistakable.

One notable feature of the budget 2014-15 was the continuity, particularly evident in the fiscal consolidation roadmap. The budget accepted the previously laid out fiscal roadmap to achieve fiscal deficit of 4.1 % of GDP in 2014-15, 3.6 % in the next fiscal year and 3 % in 2016-17. The emphasis on the need of fiscal discipline in the system is unmistakable. Fiscal consolidation is vital to initiate a virtuous cycle of lower government borrowing, helping monetary policy to lower policy rates, improvement in investment climate due to lower interest rates, and growth. The fiscal discipline provides scope for the Government to fulfill many of the promises made in the budget relating to social sector development. To put a limit on the fiscal deficit, the budget assumes a tax revenue growth of 17.7 % in 2014-15, which seems to be a tall order compared to an 11.8 % growth achieved in the previous year. The deficit target is also based on the public-sector disinvestment target of Rs. 63,425 crore in the current year over the Rs. 25.841 crore collected last year. In addition to the higher growth in tax revenue, the budget also projects other non-tax revenue target of ₹99, 000, a 24% growth. As the budget does not attempt to compress the expenditure, the feasibility of achieving the targeted fiscal deficit will depend upon the economic recovery with an assumed nominal growth of 13.6 %.

The FRBM Act, which acted as benchmark for fiscal targets until 2007-08, has not been revised. When the fiscal deficit widened to 5.7 % of GDP in 2011-12, the FRBM targets were summarily breached. The Fiscal restructuring path chalked out by the 13th FC and accepted by the Government, which recommended reducing the fiscal deficit to 4.2 % of GDP in 2012-13 and contain at 3 % level thereafter, was certainly found to be unachievable. In this situation, the decision of the new Government to continue with the fiscal roadmap of the earlier Government to reduce the fiscal deficit to 3 % of the GDP in 2016-17 is significant. However, as the economic survey pointed out, there is a need to revise the FRBM Act with fiscal targets and safeguards for its adherence. While fiscal rules are being revised by most countries in the aftermath of the financial crisis of 2008-09, the discretionary attempts to fix the deficit targets in India should give way to a more robust FRBM Act.

The improvement in fiscal situation also depended on the expenditure control, by tightening the subsidy regime. As the Government provided for most of the existing flagship central schemes and announced a plethora of new schemes, the expenditure control depended heavily on limiting the subsidy outflow. However, the subsidy outgo at ₹2,55,707 crore was more or less at the same level as compared to the revised estimates of 2013-14. Major subsidies, accounting for 96 % of the total subsidy outgo, remained at a higher level than the RE level. Even this level of subsidy hinges on the ability of the Government to adopt targeting subsidies through direct benefit transfers using Aadhar and reducing fuel subsidy by raising prices periodically. Increasing fuel price, though calibrated over time, will be an important element of rationalising the subsidy regime.

The Government announced to set up an Expenditure Management Commission for expenditure reforms, which will go into the whole range of issues relating to subsidy management. This holds hopes for the future. Although there were other Committees and Expert Bodies, which looked into the expenditure management issues, reducing subsidy was never dealt with in a systematic manner.

The Government announced to set up an Expenditure Management Commission for expenditure reforms, which will go into the whole range of issues relating to subsidy management. This holds hopes for the future. Although there were other Committees and Expert Bodies, which looked into the expenditure management issues, reducing subsidy was never dealt with in a systematic manner. However, the proposed Expenditure Management Commission should be given a broader mandate to provide inputs to the Government to improve the efficiency of public spending through a sound budget-management system. The Commission should deal with issues relating to achieving fiscal discipline, improving prioritisation for allocative efficiency, and establishing good operational management to deliver public services.

The tax proposals in the budget were more guarded, which are in line with the overall philosophy of the budget, to avoid big changes this time around. The budget, however, provides enough indications regarding ushering in tax reforms in due course. The Economic Survey emphasised on structural tax reforms in both policy and administration by shifting to a more simplified and equitable regime. Although the government reaffirmed the commitment to implementing Goods and Services Tax (GST) and Direct Taxes Code (DTC), no timeframe was announced. The feedback and willingness of the stakeholders, particularly State governments in the case of GST, will be important for the Government to announce policy initiatives. The Government attempted to assuage the fears of the foreign investors on retrospective tax by declaring restraint. Disputes emerging from issues related to retrospective amendments would be reviewed by a special committee. Amendments were proposed to transfer pricing rules to bring those in line with international best practices. The administrative reforms proposed to strengthen tax dispute resolution are an important decision. However, tinkering with a large number of indirect tax measures does not seem to be an efficient solution to the functioning of the tax system.

The budget pushed towards infrastructure development that includes cities, roads, airports, and the energy sector. The budget envisages the creation of Infrastructure Investment Trust and real

Union Budget 2014-15

Estate investment Trust for providing long-term funds on a sustained basis. This will help projects to broaden and diversify the source of funds. The exemption of CRR and SLR requirements on banks financing infrastructure projects through issue of long-term bonds will raise the funding availability. The budget, however, emphasises largely on public-private-partnership (PPP) model to improve the infrastructure base in the country. The PPP has not evolved as an efficient solution in the infrastructure sector in the country. The creation of infrastructure remains a big challenge and the Government needs to provide clearer policy guidelines in this sector.

Given the dismal performance of the manufacturing sector in recent years, dragging the growth rate down, it was natural for the Government to focus on the revival of this sector. The search for expanding job opportunities depends heavily on the revival of the manufacturing sector. Increasing the FDI limit to 49 % in defence in the budget is expected to help the manufacturing sector to infuse new technology by foreign investors. The scope for ancillary manufacturing units to increase their production base will also increase. Extending investment tax credit to small and medium enterprises will provide the stimulus to these units. The budget provision for skill development, which was there earlier, is an important element for the proving more employment in the manufacturing sector. The budget, however, avoided the issues relating to labour reforms, which is a big-ticket reform needed for better labour participation and job creation.

Although the budget refrained from any commitments towards any major reform initiatives, it evinced positive intent for the future economic development in the country. It may be a little early to expect big reforms from a new Government in the first budget. Searching for solutions for all the ills facing the economy from the budget, which is essentially a financial instrument, may not be correct. The policy process of the new Government will come out with details of directions in various sectors to address the challenges. The budget, however, provides indications of likely policy changes that the new government will take in the future. ■

Accounting Treatment of Expenditure Incurred on Stamp Duty and Registration Fees for Increase in Authorised Capital

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 was incorporated under the Companies Act, 1956 as a private limited company. The company is registered as a non-banking financial company ('NBFC') (non-deposit accepting) as defined under section 45-1A of the Reserve Bank of India ('RBI') Act, 1934. The company is primarily engaged in the business of lending for purchase of equipments.

2. The details of share capital of the company as at 31st March, 2013 are as follows:
   Authorised share capital (70,00,000 equity shares of ₹10/- each) ₹7,00,00,000
   Issued, subscribed and paid-up capital ₹6,48,00,000
   (64,80,000 equity shares of ₹10/- each)
   The company has not issued shares or other securities at premium and hence, does not have securities premium account.
   The company has received share application money of ₹55,62,55,000. To be able to allot further equity shares, the shareholders of the company, have approved increase in authorised share capital to ₹75,00,00,000/-. The company has incurred an expenditure of ₹47,60,000 (₹34,00,000 towards stamp duty and ₹13,60,000 towards registration fees paid to the Registrar of Companies) for the said increase in authorised share capital.
   Post increase in authorised capital, the Board of Directors of the company has passed a resolution for allotment of 5,56,25,500 equity shares of the company of ₹10/- each at par amounting to ₹55,62,55,000.
3. The issue relates to accounting treatment of the expenditure of ₹47,60,000 incurred by the company for increase in authorised capital.

Relevant legal/accounting requirements

4. The querist has stated that the following technical literature merits consideration to determine the appropriate accounting treatment for stamp duty and registration fee incurred by the company for increase in authorised share capital:

- Section 78 of the Companies Act, 1956 permits the use of securities premium account, inter alia,
  (a) in writing off the preliminary expenses of the company, and
  (b) in writing off the expenses of any issue of shares or debentures of the company.
- As per Accounting Standard (AS) 26, 'Intangible Assets',

  "6.1 An <u>intangible asset</u> is an identifiable non-monetary asset, without physical substance, held for use in the production or supply of goods or services, for rental to others, or for administrative purposes."

  "5. Exclusions from the scope of an Accounting Standard may occur if certain activities or transactions are so specialised that they give rise to accounting issues that may need to be dealt with in a different way. Such issues arise in the expenditure on the exploration for, or development and extraction of, oil, gas and mineral deposits in extractive industries and in the case of contracts between insurance enterprises and their policyholders. Therefore, this Standard does not apply to expenditure on such activities. However, this Standard applies to other intangible assets used (such as computer software), and other expenditure (such as start-up costs), in extractive industries or by insurance enterprises. Accounting issues of specialised nature also arise in respect of accounting for discount or premium relating to borrowings and ancillary costs incurred in connection with the arrangement of borrowings, *share issue expenses* and discount allowed on the issue of shares. Accordingly, this Standard does not apply to such items also." (Emphasis supplied by the querist.)
- As per the Guidance Note on Terms Used in Financial Statements:

  "15.08 Share Issue Expenses

  Costs incurred in connection with the issue and allotment of shares. These include legal and professional fees, advertising expenses, printing costs, underwriting commission, brokerage, and also expenses in connection with the issue of prospectus and allotment of shares."

- As per the Guidance Note on Audit of Miscellaneous Expenditure:
  "14. Preliminary expenses are the expenses relating to the formation of an enterprise. For example, in the case of a company, preliminary expenses would normally include the following:
  (a) Legal cost in drafting the memorandum and articles of association.
  (b) Fees for registration of the company.
  (c) Cost of printing of the memorandum and articles of association and statutory books of the company
  (d) Any other expenses incurred to bring into existence the corporate structure of the company."

"Expenses Related to Subscription or Issue of Shares
20. Expenses related to subscription or issue of share include commission or brokerage on underwriting or subscription of shares or debentures, discount allowed on issue of shares or debentures. ..."
"24. Other expenses on issue of shares or debentures, such as fees of the managers to the issue, fees of the registrars to the issue including mailing and handling charges, fees of the advisors to the issue, advertisement expenses, expenses on printing and supply of prospectus and application forms, expenses on printing of share/debenture certificates, etc., should be verified with reference to supporting documents such as invoices, agreements, etc. ..."
(Emphasis supplied by the querist)

- As per paragraph 8.7.4 of the Guidance Note on the Revised Schedule VI to the Companies Act, 1956, dealing with 'Other non-current assets':
  "The Revised Schedule VI does not contain any specific disclosure requirement for the unamortized portion of expense items such as share issue expenses, ancillary borrowing costs and discount or premium relating to borrowings. The Old Schedule VI required these items to be included under the head "Miscellaneous Expenditure".
  As per AS 16 *Borrowing Costs* ancillary borrowing costs and discount or premium relating to borrowings could be amortized over the loan period. Further, share issue expenses, discount on shares, ancillary costs-discount-premium on borrowing, etc., being special nature items are excluded from the scope of AS 26 *Intangible Assets* (Para 5). Keeping this in view, certain companies have taken a view that it is an acceptable practice to amortize these expenses over the period of benefit, i.e., normally 3 to 5 years. The Revised Schedule VI does not deal with any accounting treatment and the same continues to be governed by the respective Accounting Standards/practices. Further, the Revised Schedule VI is clear that additional line items can be added on the face or in the notes. Keeping this in view, entity can disclose the unamortized portion of such expenses as "Unamortized expenses", under the head "other current/non-current assets", depending on whether the amount will be amortized in the next 12 months or thereafter."

- As per an EAC opinion (Volume XI, Query No. 3.1) regarding classification of share issue expenses:
  "3. The Committee is of the view that, in general, all expenses incurred directly in relation to a public issue should be considered as public issue expenses. In other words, public issue expenses are those expenses which would not have been incurred had the public issue not been made, e.g., Registrar's Processing Charges, expenses on printing and distributing of a application forms, prospectus, etc. Further, in the view of the Committee, public issue expenses would be those which are incurred between the decision to make the public issue and completion of all necessary formalities with regard to the issue." (Emphasis supplied by the querist.)

Querist's analysis

5. As per the literature quoted above, it is permissible to amortise share issue expenses over a period of 3 to 5 years. A company has also an option to write off expenses on issue of shares against the securities premium account. However, none of the aforesaid literature makes specific reference to expenditure incurred on increase in authorised share capital and whether such expenditure is a part of share issue expenses. The querist's analysis is as follows:

- One argument is that the increase in authorised capital happens before issuance of shares and should not be regarded as share issue expenses. However, the purpose of increasing authorised share capital of a company is solely to enable the company to issue shares to that extent. There is no other reason why any company would increase its authorised share capital. Thus, the benefit from incurring expenditure on increase in authorised capital arises when the company issues shares. To properly reflect this cost-benefit relationship, expenditure on increase in authorised share capital should be regarded as part of share issue expenses.

- In the given case, the nexus of increase in authorised capital with issue of shares is even clearer than is the case generally. The test (laid down in the EAC opinion referred to above) for determining whether an expenditure is a part of share issue expenses is whether it would have been avoided if the share issue had not been made. This test is satisfied in the present case:
  - Further equity shares could not have been allotted without increasing the authorised share capital as the company's issued capital was nearly equal to its authorised share capital.
  - Share application money was received first and the increase in authorised share capital was effected later.
  - The expenditure was incurred after the company had firmed up its decision to issue shares.

Thus, it is clear that the company would not have incurred this expenditure had the share issue not been made.

6. On the basis of the above analysis, the querist believes that the expenditure incurred by the company for increase in authorised share capital should be treated as part of share issue expenses.

- If expenditure on increase in authorised capital is treated as part of share issue expenses, it would be a logical corollary that pending issue of shares, the same should be regarded as an asset. What are the future economic benefits from this asset - can capacity to issue shares be regarded as a future economic benefit?
- If shares are issued only for a part of the increase in authorised capital, should a proportionate part of the relevant expenditure for such increase be carried as an asset? The current accounting practice does not seem to support an affirmative answer to the above.

B. Query

7. On the basis of the above, opinion of the Expect Advisory Committee is sought by the querist on whether the company can treat the whole of the expenditure incurred on increase in authorised capital as 'share issue expenses'.

C. Points considered by the Committee

8. The Committee notes from the Facts of the Case that the company has received share application money in excess of the authorised share capital and subsequently increased its authorised share capital and made allotment of shares. The Committee notes that the query raised is in relation to expenses (stamp duty and registration fee) incurred for increase in authorised share capital of the company. Accordingly, the Committee has examined only that issue and has not examined any other issue arising from the Facts of the Case, such as, accounting for expenses incurred on allotment and other share issue expenses, etc. Further, the opinion of the Committee expressed, hereinafter, is only from accounting point of view and not from legal viewpoint.

9. The Committee notes that the querist has argued that the expenses incurred on increase in authorised share capital can be considered as share issue expenses as in the extant case, the shares against the excess share application money received can be issued only after increasing the authorised share capital. Accordingly, the Committee has first analysed whether these expenses can be termed as 'share issue expenses'. In this respect, the Committee notes paragraph 5 of Accounting Standard (AS) 26, 'Intangible Assets', notified under the Companies (Accounting Standards) Rules, 2006 (as reproduced in paragraph 4 above), which states that this Standard does not apply to accounting for share issue expenses. The term 'share issue expenses', however, has not been defined in AS 26. The Committee further notes that the term has been defined in the Guidance Note on Terms Used in Financial Statements which provides as under:

"Costs incurred in connection with the issue and allotment of shares. These include legal and professional fees, advertising expenses, printing costs, underwriting commission, brokerage, and also expenses in connection with the issue of prospectus and allotment of shares."

From the above, the Committee notes that share issue expenses are costs incurred *in connection with the issue and allotment of shares.*

10. The Committee also notes that the querist has cited the view expressed by the Committee in one of its opinion (refer paragraph 4 above), wherein the Committee had expressed the view that public issue expenses are those expenses which would not have been incurred had the public issue not been made, e.g., Registrar's processing charges, expenses on printing and distributing of application forms, prospectus,

8th ICAI AWARDS 2014

For Members in Industry

Invitation for Nomination

Dear Professional Colleagues,

The Committee for Members in Industry (CMII) of ICAI is organizing the 8th ICAI Awards 2014, during January 2015, at Mumbai to recognize the distinguished efforts and exemplary achievements of the Members in Industry.

These Awards aim to honor the Members who have reached exceptional levels of professional achievements. Many Members of the institute holding top management positions viz., Chairmen, Directors, CEOs and CFOs have been the recipients of these prestigious awards.

CMII is delighted to announce that nominations for the 2014 Awards are now being accepted online wherein the forms can be submitted electronically on www.corporateforum.icai.org

Keeping in view the time constraints of the members in Industry and the inconvenience faced due to time consuming conventional procedure of nomination, CMII has taken the initiative of accepting fully online, paperless system for nomination forms, making it hassle free, to save time and bring out better process consistency.

The awardees will be finalized by a jury of the eminent business leaders. The awards will be bestowed to the awardees in a gala award function scheduled in January 2015, at Mumbai.

Award Categories: ICAI Awards are presented in various sub-categories under the three main categories:

- **CA Business Leader**
- **CA CFO**
- **CA Professional Achiever**

The ICAI Awards 2014 are meant for the Members of ICAI who are in Industry. We request them to nominate themselves or other members in industry, whom they deem fit for grant of these awards in any of the Award Categories.

We also request all the Members who are in Practice, to bring this to the knowledge of Members who are working in Industry and known to your good selves, to nominate them for the awards in any of the above mentioned Award categories.

Wishing you a grand success in all your endeavors,

With Kind Regards,

Chairman
Committee for Members in Industry
The Institute of Chartered Accountants of India
Email: tarunghiaca@yahoo.co.in
Mobile: 09821345687

Last date for the receipt of online nominations by CMII -31st October 2014

For filling Nomination form. Please visit http: www.icai.org/nominationcmii2014.html

Committee for Members in Industry
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
Tel. No. +91 (11) 30110555/430 I Fax: +91 (11) 30110483, E-mail: ruchi_gupta@icai.in, cmii_events@icai.in

etc. Further, the Committee had expressed the view that, public issue expenses would be those which are incurred between the decision to make the public issue and completion of all necessary formalities with regard to the issue. The Committee wishes to point out that in the cited query, the issue of enhancing the authorised capital was not raised. The Committee is of the view that increase in authorised share capital is an independent process which does not necessarily lead to issue of shares. The need to increase the authorised capital and to incur expenses for increasing the same would not have arisen had the additional allotment of shares was within the limits of existing authorised capital. Accordingly, the Committee is of the view that the expenses incurred on increase in authorised share capital are distinct and separate from the expenses incurred on share issue. Additionally, the Committee is of the view that accounting depends on the nature of expense and the fact that the share application money was received before increase in authorised share capital will not change the nature of expense. Further, increase in authorised share capital does not represent issue of additional share capital and only sets a limit for the paid up capital of a company at any given point of time. Accordingly, the Committee is of the view that the expenses incurred on increasing the authorised share capital cannot be termed as 'share issue expenses'.

11. As regards the issue relating to accounting for the expenses incurred on increase in authorised capital, the Committee notes the following paragraphs of AS 26:

"6.2 An asset is a resource:
(a) controlled by an enterprise as a result of past events; and
(b) from which future economic benefits are expected to flow to the enterprise."

"56. In some cases, expenditure is incurred to provide future economic benefits to an enterprise, but no intangible asset or other asset is acquired or created that can be recognised. In these cases, the expenditure is recognised as an expense when it is incurred. ..."

From the above paragraph of AS 26, the Committee notes that if an expenditure does not result into acquisition of an asset, it should be recognised as an expense as and when incurred. The Committee also notes that the amount spent towards increase in authorised share capital does not give rise to any *resource controlled* by the enterprise. In fact, such expenses are only permitting the company to enhance the limit for the paid-up capital of the company which does not ensure any flow of funds to the company. Accordingly, it does not meet the definition of an asset, as reproduced above. Thus, the amount aggregating to ₹47,60,000 incurred towards stamp duty and fees paid to the Registrar of Companies should be recognised as expense in the statement of profit and loss as per the requirements of paragraph 56 of AS 26.

D. Opinion

12. On the basis of the above, the Committee is of the opinion that the expenditure incurred by the company towards increase in authorised share capital (stamp duty and registration fee paid to the Registrar of Companies) cannot be considered as share issue expenses and should be treated as expense and charged off in the statement of profit and loss, as discussed in paragraphs 10 and 11 above.

1	The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute.
2	The Opinion is based on the facts supplied and in the specific circumstances of the querist. The Committee finalised the Opinion on January 22-23, 2014. 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.

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)

A. NOTIFICATIONS

1. Notification of Wealth tax return form Nos. BA and BB – Substitution of Rule 3

For promoting electronic filing of annexure-less return of net wealth, new Sections 14A and 14B have been inserted in the Wealth-tax Act, 1957 by the Finance Act, 2013 in line with Sections 139C and 139D of the Income-tax Act, 1961.

Consequently, Section 46(2) of the Wealth-tax Act, 1957 which provides for rule making powers of the Board, has been amended to empower the CBDT to make rules for implementing the provisions of Section 14A and 14B *i.e.*, the CBDT is empowered to make rules to provide for-

(1) the documents, statements, receipts, certificates, audit reports, reports of registered valuers, etc. which may not be furnished along with the return but shall be produced on demand before the Assessing Officer;

(2) (i) the class or classes of persons who are mandatorily required to e-file their wealth-tax returns,

(ii) the prescribed form and manner in which returns may be e-filed; and

(iii) the documents, statements, receipts, certificates, audit reports etc. which may not be furnished along with the e-return; and

(iv) the computer resource or electronic record to which such return may be transmitted under Section 14B.

In exercise of the powers conferred by clause (ba) and (bb) of Section 46(2) read with Sections 14A and 14B of the Wealth-tax Rules, 1957, the Central Board of Direct taxes has amended the Wealth-tax Rules, 1957 and the amended Rules shall come into force on the date of their publication in the Official Gazette. The Board has, through this notification, substituted Rule 3 to provide the following:

1. The return of net wealth referred to in Section 14 shall be furnished in case of individuals, HUFs and Companies –
   (i) in Form BA for A.Y. 2013-14 and earlier assessment years; and
   (ii) in Form BB for A.Y. 2014-15 and any other subsequent years

   The said forms are also required to be verified in the manner specified therein.
2. For the A.Y. 2014-15 and any other subsequent years, the return of net wealth is to be furnished electronically under digital signature. However, for A.Y. 2014-15, an individual or HUF to whom provisions of the Section 44AB of the Income-tax Act, 1961 are not applicable, may furnish his return in paper form.
3. Form No. BB, inserted after Form BA in the Appendix, shall not be accompanied by a statement showing computation of tax payable on the basis of return, or proof of tax and interest paid, or any other document or copy of an account or form of report of valuation by registered valuer required to be attached with the return of net wealth under any provisions of the Wealth-tax Act.
4. The Director General of Income-tax (Systems) shall specify the procedures, formats and standards and 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 the returns electronically under digital signature.

[Notification No. 32/2014, dated 23-06-2014]

The complete text of the above mentioned notification can be downloaded from the link below: http://www.incometaxindia.gov.in/archive/Final-Vetted-Notification.-I-24-06-2014.pdf

B. PRESS RELEASE

1. Updation and Validation of taxpayers Email-Id and Mobile No. for their e-filing account

The Department observed that in many cases incorrect email ids and mobile numbers have been provided and taxpayers did not receive important communication from the Department. Also, many taxpayers are not able to reset their password since the new temporary password from the Department is sent to their registered email id which may be different from the taxpayer's personal email, *e.g.* email of their intermediary. In order to have direct communication with the assessee, the Department has through this Press release, advised all taxpayers to immediately update and authenticate their correct Email-Id and Mobile nos. on the e-filing website of the Income-tax Department. The following has been mentioned in the Press release for ease and understanding of the assessees:

a. The Department will send separate One Time Passwords (OTP) also referred as PIN on the mobile and email provided by the taxpayer.
b. The OTPs have to be entered by the taxpayer after logging into their e-filing account to authenticate the same.
c. The OTPs will remain valid for 24 hours within which the taxpayer has to complete the process.
d. For 'Foreign/ NRI' taxpayers, the OTP validation of the email ID would be sufficient.
e. One mobile number or email ID can be used for a maximum of 10 user accounts as the Primary Contact - Mobile Number and Email ID in e-Filing.
f. The taxpayer can enter any other person's email or mobile number in addition, as a Secondary Contact (without any restriction on the number of user accounts linked as a Secondary Contact). Using "Profile Settings → My Profile" the taxpayer can select to include the Secondary Contact to also receive emails, alerts *etc.*
g. It is advised that the emails and SMS from the Income-tax Department may be included in the 'safe list' or 'white list' to prevent the communications from the Department from being blocked or rejected or sent to Spam folder.
h. Taxpayers are also advised not to share their user id and password of their e-filing account with others to prevent un-authorised access.
i. Taxpayers can reset their password using the 'Forgot Password?' link while logging in to their e-filing account and by providing the necessary details.

[Press Release, dated 04-07-2014]

The complete text of the above Press Release can be downloaded from the link below: https://incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF/Update_Contact_Details.pdf

C. INSTRUCTIONS

1. Revision of monetary limits for filing of appeals – Measures for reducing litigation

In supersession of the Instruction No. 3/2011, dated 09-02-2011, wherein monetary limits and other conditions for filing departmental appeals before Appellate Tribunal, HC and SC were specified, the Board has issued this Instruction. The Board has decided that departmental appeals may be filed on merits before Appellate Tribunal, High Courts and Supreme Court keeping in view the monetary limits and conditions specified therein. The Instruction clearly provides that, appeals shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder: -

Appeals in Income-tax matters	Monetary Limit (in ₹)
Before Appellate Tribunal	4,00,000/-
U/s. 260 A before High Court	10,00,000/-
Before Supreme Court	25,00,000/-

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the prescribed monetary limits.

For this purpose, "tax effect" means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as "disputed issues"). However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal, can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the specified monetary limit. In other

words, henceforth, appeals can be filed only with reference to the tax effect in the relevant assessment year. However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeal shall be filed in respect of all such assessment years even if the 'tax effect' is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which 'tax effect' exceeds the monetary limit prescribed. In case where a composite order/judgment involves more than one assessee, each assessee shall be dealt with separately.

The instruction has further clarified that the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits or there is no tax effect:

(a) Where the Constitutional validity of the provisions of an Act or Rule are under challenge, or
(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or *ultra vires*, or
(c) Where Revenue Audit objection in the case has been accepted by the Department.

The Instruction mentions that the proposal for filing Special Leave Petition under Article 136 of the Constitution before the Supreme Court should, in all cases, be sent to the Directorate of Income-tax (Legal & Research), New Delhi and the decision to file Special Leave Petition shall be in consultation with the Ministry of Law and Justice.

It has been clearly mentioned that, the aforesaid monetary limits shall not apply to writ matters and direct tax matters other than income tax. Filing of appeal in cases of income tax, where the tax effect is not quantifiable or not involved, shall not be governed by the limits so specified and such cases may be taken on merits of a particular case.

This instruction is applicable on appeals filed on or after 10th July, 2014. The cases where appeals have been filed before 10th July, 2014 will be governed by the instructions operative at the time when such appeal was filed.

[Instruction No. 5/2014, dated 10-07-2014]

The complete text of the above Instruction can be downloaded from the link below: http://www.incometaxindia.gov.in/archive/revision-of-monetary-limits-10-07-2014.pdf

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

A. SERVICE TAX

1. Amendments in Mega Exemption Notification No. 25/2012 ST dated 20-06-2012

a. New entry 2B is inserted to exempt Services provided by operators of the Common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.

b. Entry 7 which provides exemption to services by way of technical testing or analysis of newly developed drugs on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India withdrawn.

c. Existing Entry 9 is substituted with the following:
Services provided:-
(a) by an educational institution to its students, faculty and staff;
(b) to an educational institution, by way of,-
  (i) Transportation of students, faculty and staff;
  (ii) catering, including any mid-day meals scheme sponsored by the Government;
  (iii) Security or cleaning or house-keeping services performed in such educational institution;
  (iv) Services relating to admission to, or conduct of examination by, such institution

Earlier there were doubts regarding the scope and meaning of 'auxiliary educational services.' The said exemption has removed the ambiguity. Educational institution has been redefined under Clause (oa) as "an institution providing services specified in Clause (l) of Section 66D of the Finance Act,1994 (32 of 1994)" *i.e.,* Pre-School education services, education recognised by any law or approved vocational education course."

d. Existing Entry 18 is substituted with the following:
Exemption available to accommodation services provided by hotels, dharamshalas or ashrams who provide rooms for less than

₹1,000 per day, re-worded to bring out the intent clearly. The earlier clause including the term "other commercial places" is done away with.

e. Exemption to services provided by way of transportation by rail/vessel/GTA of organic manure and cotton, ginned or baled.

f. In existing Entry 23, item (b) is substituted with the following:
(b) Non-air-conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or"
Earlier the condition of non-air-conditioned was not there. However Radio Taxis have been categorically exempted.
A new Clause (za) is inserted to define Radio Taxi as a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS). Now the definition of "recognised sports body" has been shifted to Clause (zaa).

g. Entry No. 25, item (a) is substituted with the following:
(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation
For greater clarity, the exemption in respect of services provided to Government or local authority or governmental authority made more specific. Services by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation continue to remain exempted but exemption not be extendable to other services such as consultancy, designing, *etc.*, not directly connected with these specified services.

h. A new item (c) has been inserted in Entry 26A to provide exemption to life insurance service provided by life micro-insurance product as approved by the IRDA, having maximum amount of cover of ₹50,000.
A new Clause (xa) is inserted to define "life micro-insurance product" as having the same meaning assigned to it in regulation 2 (e) of the Insurance Regulatory and Development

Authority (Micro-insurance) Regulations, 2005.

i. Existing Entry 40 has been substituted with the following 3 new entries:
40. Services by way of loading, unloading, packing, storage or warehousing of rice, cotton, ginned or baled;
41. Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves;
42. Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India."
[Notification No. 06/2014-Service Tax, Dated: 11th July, 2014]

2. Exemption to Services provided in SEZ Unit or Developer of SEZ for authorised operations

Procedure with respect to SEZ exemption has been further simplified. Following Changes are being made in *Notification No. 12/2013- Service Tax dated 1st July, 2013 vide Notification No. 07/2014-Service Tax dated 11th July, 2014* so as to simplify the procedure for availing benefit under the said notification:

1) Central Excise Officer would issue authorisation in Form A-2, within 15 working days from the date of receipt of Form A-1 by the Central Excise Officer.
2) Authorisation will have validity from the date on which Form A-1 is verified by the Specified Officer of SEZ. However, if Form A-1 is furnished after a period of 15 days from the date of its verification by the Specified Officer, the authorisation shall have validity from the date of furnishing of Form A-1 to the Central Excise Officer.
3) SEZ Units or the Developer will, pending issuance of Form A-2, be entitled to avail upfront exemption on the basis of Form A-1. However, in such a case, the SEZ Unit/ Developer would be required to furnish a copy of authorisation issued by the Central Excise Officer within three months from the date of receipt of specified services. If a copy of authorisation is not provided within the said period of three months, the service provider shall pay service tax on the service so provided availing the exemption.
4) As regards services covered under full reverse charge, it is being mentioned specifically in Form that there would be no requirement of furnishing service tax registration number of service provider.
It is being provided that a service shall be treated as exclusively used for SEZ operations if the recipient of service is SEZ unit or developer, invoice is in the name of such unit/developer and the service is used exclusively for furtherance of authorised operations in SEZ.
[Notification No. 07/2014-Service Tax, Dated: 11th July, 2014]

3. Amendments in Abatement Notification No. 26/2012 ST dated 20-06-2012

Notification No. 08/2014-Service Tax, Dated: 11th July, 2014 amends the Notification No. 26/2012 ST dated 20-06-2012 which provides abatement in respect to specified services, with the following changes:

a. The condition for availing abatement in case of GTA service is being amended with immediate effect to clarify that the condition for non-availment of credit is required to be satisfied by the service providers only. Service recipient will not be required to establish satisfaction of this condition by the service provider.
b. The taxable portion of service of transportation of passenger by air-conditioned contract carriages shall be 40% with the condition that CENVAT credit of inputs or capital goods or input services has not been taken.
c. With effect from 01-10-2014, CENVAT credit of input service of renting of a motor cab is allowed if such services are received from a person engaged in the similar line of business, *i.e.*, a sub-contractor providing services of renting of motor cab to the main contractor. The whole of the CENVAT credit has been allowed with respect to input service of renting of any motor cab, received from a person who is paying service tax on 40% of the value of services. The CENVAT credit eligibility will be restricted to 40% of the credit of the input service of renting of any motor cab if service tax is paid or payable on full value of the services, *i.e.*, no abatement is availed.
d. With effect from 01-10-2014, tour operator service providers, availing abatement, are allowed CENVAT credit on the input service of another tour operator, which are used for providing the taxable service.
e. With effect from 01-10-2014, abatement in respect of transport of goods by vessel is

increased from 50% to 60%. Effective service tax will decrease from the present 6.18% to 4.944%.
[Notification No. 08/2014-Service Tax, Dated: 11th July, 2014]

4. Service Tax Rules 1994 amended

Notification No. 09/2014-Service Tax, Dated: 11th July, 2014 amends the definition of "person liable for paying service tax" clause (i) in respect of the taxable services notified under sub-Section (2) of Section 68 of the Act, to come into effect from 11th July, 2014, as follows:

a. Services provided by Recovery Agents to Banks, Financial Institutions and NBFC is being brought under the reverse charge mechanism; service receiver will be the person liable to pay service tax. (New Entry AA)
b. Service provided by a Director to a body corporate is being brought under the reverse charge mechanism; service receiver, who is a body corporate will be the person liable to pay service tax. This is in view of requests by body corporates such as the Reserve Bank of India. Entry EE substituted.

Notification No. 09/2014-Service Tax, Dated: 11th July, 2014 further amends Rule 6 regarding mode of payment of service tax and mandates every assessee to pay service tax electronically through internet banking unless allowed by Deputy/Assistant Commissioner to pay it in any mode other than internet banking. This will come into effect from 1st October, 2014.
[Notification No. 09/2014-Service Tax, Dated: 11th July, 2014]

5. Amendments in Reverse Charge Notification No. 30/2012 ST dated 20-06-2012

Notification No. 10/2014-Service Tax, Dated: 11th July, 2014 amends Reverse Charge Notification No. 30/2012 ST. In relation to following services, service receiver is liable to pay service tax:

(a) Services provided by a recovery agent to a banking company/financial institution/NBFC.
(b) Services provided by a Director to a body corporate.

With effect from 01-10-2014, in renting of motor vehicle, where the service provider does not take abatement, the portion of service tax payable by the service provider and service receiver will be 50% each.

[Notification No. 10/2014-Service Tax, Dated: 11th July, 2014]

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

Notification No. 11/2014-Service Tax, Dated: 11th July, 2014 amends Service Tax (Determination of Value) Rules, 2006.

With effect from 01-10-2014, in Rule 2A of the Service Tax (Determination of Value) Rules, 2006, category 'B' and 'C' of works contracts to be merged into one single category, with service portion as 70%. This rationalisation by way of merger of categories has been made to avoid disputes of classification between these two categories.

[Notification No. 11/2014-Service Tax, Dated: 11th July, 2014]

7. Interest on Delayed Payment of Service Tax

Notification No. 12/2014-Service Tax, Dated: 11th July, 2014 provides for simple interest rates per annum payable on delayed payments under Section 75. With effect from 01-10-2014, to encourage prompt payment of service tax, it is being proposed to introduce interest rates which would vary on the extent of delay and are proposed to be as follows:

Extent of delay	Simple interest rate per annum (Revised)	Simple interest rate per annum (Existing)
Up to six months	18%	18%
More than six months & upto one year	18% for first six months, and 24% for the period of delay beyond six months	18%
More than one year	18% for first six months, 24% for second six months, and 30% for the period of delay beyond one year	18%

[Notification No. 12/2014-Service Tax, Dated: 11th July, 2014]

8. Amendment in Rule 7 of Point of Taxation Rules, 2011

Notification No. 13/2014-Service Tax, Dated: 11th July, 2014 amends Point of Taxation Rules, 2011. As per the first *proviso* to Rule 7 of POT Rules, 2011, for reverse charge services, if payment is not made within a period of six months of the date of invoice, POT will be governed by Default Rule 3 of POT Rules, 2011.

However, first *proviso* to Rule 7 of the Point of Taxation Rules (POTR) is being amended to provide that point of taxation in respect of reverse charge will be the payment date or the first day that occurs immediately after a period of three months from the date of invoice, whichever is earlier. This amendment will apply only to invoices issued after 1st October, 2014. A transition rule is being prescribed (new Rule 10 of POTR).

[Notification No. 13/2014-Service Tax, Dated: 11th July, 2014]

9. Amendments in Place of Provision of Supply of Rules, 2012

Notification No. 14/2014-Service Tax, Dated: 11th July, 2014 amends Place of Provision of Supply of Rules, 2012.

Rule 4: Place of provision of performance based services-Provision for prescribing conditions for determination of place of provision of repair service carried out on temporarily imported goods is being omitted. The second *proviso* to Rule 4(a) is being amended to prescribe that it would suffice for the purpose of exclusion of repair service from applicability of Rule 4(a) that the goods imported for repair are exported after repair without being put to any use other than that which is required for such repair. It may be noted that this exclusion does not apply to goods that arrive in the taxable territory in the usual course of business and are subject to repair while such goods remain in the taxable territory, *e.g.*, any repair provided in the taxable territory to containers arriving in India in the course of international trade in goods will be governed by Rule 4.

<u>Rule 9: Place of provision of specified services</u>

Relevant clause	Description of Services	Relevant Changes
(c)	Intermediary Services	The definition of intermediary is being amended to include the intermediary of goods in its scope. Accordingly, with effect from 01-10-2014, an intermediary of goods, such as a commission agent or consignment agent shall be covered under Rule 9(c) of the Place of Supply of Services Rules.

Relevant clause	Description of Services	Relevant Changes
(d)	Service consisting of hiring of means of transport, upto a period of one month	Service consisting of hiring of Vessels (excluding yachts) and Aircraft is being excluded from Rule 9(d). Accordingly, hiring of vessels, or aircraft, irrespective of whether short-term or long-term, will be covered by the general rule, that is, the place of location of the service receiver. Hiring of yachts would however continue to be covered by Rule 9 (d).

[Notification No. 14/2014-Service Tax, Dated: 11th July, 2014]

10. Advance Ruling allowed to Resident Pvt. Ltd. Company

Notification No. 15/2014-Service Tax, Notification No. 18/2014-Central Excise (N.T.) & Notification No. 51/2014-Customs (N.T.), Dated: 11th July, 2014 notifies resident private limited company" as class of persons who can make application for advance ruling. The definitions of "private limited company" and "resident" have the same meaning as in the Companies Act, 2013 and the Income-tax Act, 1961 respectively.

[Notification No. 15/2014-Service Tax, Dated: 11th July, 2014; Notification No. 18/2014-Central Excise (N.T.) Dated: 11th July, 2014; Notification No. 51/2014-Customs (N.T.), Dated: 11th July, 2014]

B. CENTRAL EXCISE

1. Amendment in Rule 8 of Central Excise Rules, 2002

Notification No. 19/2014-Central Excise (N.T.) Dated: 11th July, 2014 amends Rule 8 of Central Excise Rules, 2002 regarding mode of payment of excise duty and mandates every assessee to pay the duty electronically through internet banking unless allowed by Deputy/Assistant Commissioner to pay it in any mode other than internet banking.

However, in case payment of duty declared in the return is delayed beyond a month from the due date, a penalty at the rate of one percent on such amount of the duty not paid, for each month or part thereof as calculated from the due date, is payable for the period during which such failure continues (sub-Rule 3A).

The above amendments will come into effect from 1st October, 2014.

[Notification No. 19/2014-Central Excise (N.T.) Dated: 11th July, 2014]

2. *Proviso* to Rule 6 of Central Excise Valuation Rules, 2000: Price not the sole consideration

Rule 6 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 states the value of goods to be the aggregate of transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee, where price is not the sole consideration.

Notification No. 20/2014-Central Excise (N.T.) Dated: 11th July, 2014 adds a *proviso* to Rule 6 providing an exception to the rule that where price is not the sole consideration for sale and excisable goods are sold by the assessee at a price less than manufacturing cost and profit with no additional consideration flowing directly or indirectly from the buyer to such assessee, then the value of goods shall be deemed to be the transaction value.

[Notification No. 20/2014-Central Excise (N.T.) Dated: 11th July, 2014]

3. Amendment in CENVAT Credit Rules, 2004

Notification No. 21/2014-Central Excise (N.T.) Dated: 11th July, 2014 amends CENVAT Credit Rules, 2004 with effect from 11th July 2014 as follows:

a. Clause (qa) is inserted in Rule 2 defining 'place of removal' as
   i) a factory or any other place or premises of production or manufacture of the excisable goods;
   ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
   iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory,

   from where such goods are removed.

b. Under Rule 4(1) & 4 (7), a manufacturer or a service provider shall take credit on inputs and input services within a period of six months from the date of issue of invoice, bill or challan with effect from 1st September, 2014.

c. *Proviso* to Rule 4 (7) has been amended to withdraw the condition of payment of invoice value to the service provider for availing credit of input services, in case the service tax is paid under full reverse charge.

d. A new *proviso* is inserted in Rule 6(8) Clause (b) to allow re-credit of CENVAT credit reversed on account of non-receipt of export proceeds within the specified period or extended period, if export proceeds are received within one year from the period so specified or extended period. This can be done on the basis of documents evidencing receipt of export proceeds.

e. Rule 12A is being amended so as to disallow transfer of credit by a large taxpayer from one unit to another.

[Notification No. 21/2014-Central Excise (N.T.) Dated: 11th July, 2014]

C. CUSTOMS

1. Amendment in the Baggage Rules, 1998

Notification No. 50/2014-Customs (N.T.), Dated: 11th July, 2014 amends the Baggage Rules, 1998 as follows:

i. The free baggage allowance is raised from ₹35,000 to ₹45,000.

ii. The duty free allowance for cigarettes is reduced from 200 to 100, for cigars from 50 to 25 and for tobacco from 250 gm to 125 gm

[Notification No. 50/2014-Customs (N.T.), Dated: 11th July, 2014]

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

A. Amendments to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 [Notification No. FEMA 20/2000-RB dated 3rd May, 2000]

Notification No. 306/2014-RB dated 23rd May, 2014 (published in Gazette of India on 8th July 2014)

Valuation norms for unlisted company are simplified and DCF valuation is substituted by any internationally accepted pricing methodology for valuation of shares on arm's length basis. Reserve Bank has included the same in Notification No. FEMA 306/2014-RB dated 23rd May, 2014 and made necessary amendments to Regulations and Schedules of the Notification No. FEMA 20/2000-RB dated 3rd May, 2000.

In regulation 9 (already amended by Notification No. FEMA 294/2013-RB dated 12th November, 2013), sub-regulation (1) -

a. In Clause (i) the words "market price determined on the floor of the recognised stock exchanges" shall be substituted by the words "market price prevailing on the floor of the recognised stock exchanges."

b. The existing clauses (ii) and (iii), shall be substituted by the following namely–
"(ii) in case of equity shares, preference shares or debentures of unlisted company, at a price not exceeding that arrived at as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker. The guiding principle would be that the non-resident investor is not guaranteed by any assured exit price at the time of making such investments/agreements and shall exit at the price prevailing at the time of exit, subject to lock in period requirement."

Amendment to Schedules:

(i) In Schedule 1,
  a. In paragraph 5, the existing Clause (b) shall be substituted by the following, namely –
  "b. the valuation of shares done as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by chartered accountant or a SEBI Registered Merchant Banker where the shares of the Company are not listed on any recognised stock exchange in India; and"
  b. In paragraph 5, Clause (c) shall be omitted.

(ii) In Schedule 2, in paragraph (1) sub paragraph (5), in *proviso* the existing Clause (b) shall be substituted by the following' namely–
  "(b) in case of issue by private placement, the price is not less than the price arrived in terms of SEBI guidelines or not less than the fair price worked out as per the internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a SEBI registered Merchant Banker or Chartered Acoountant, as applicable."

B. Annual Return on Foreign Liabilities and Assets Reporting by Indian Companies – Revised format

Notification No. FEMA. 307/2014-RB dated May 26, 2014 and A .P. (DIR Series) Circular No. 145 dated 18th June, 2014

All Indian companies which have received FDI and/or made FDI abroad in the previous year(s) including the current year, are required to file the annual return on Foreign Liabilities and Assets (FLA) in the soft form to the RBI by 15th July every year.

In order to collect information on Indian companies' Outward Foreign Affiliated Trade Statistics (FATS) as per the multi-agency global 'Manual on Statistics of International Trade in Services,' the FLA return has been modified marginally and is made available on the RBI website (www.rbi.org.in → Forms category →FEMA Forms) along with the related FAQs (www.rbi.org.in → FAQs category → Foreign Exchange).

Consequently, Schedule 1 of Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA.20/2000-RB dated 3rd May 2000) has been amended vide Notification No. FEMA.307/2014-RB dated 26th May, 2014 to give effect to the above changes.

C. Export and Import of Currency: Enhanced facilities for residents and non-residents

Notification No. 309/2014-RB dated 4th June, 2014 and A. P. (DIR Series) Circular No. 146 dated 19th June, 2014

Currently, any person resident in India is allowed to take outside India or having gone out of India on a temporary visit, to bring into India (other than to and from Nepal and Bhutan) currency notes of GOI and RBI notes up to an amount not exceeding ₹10,000 (Rupees Ten Thousand only).

In view of the evolving economic conditions and with a view to facilitating travel requirements of residents travelling abroad as well as non-residents visiting India, RBI has decided to allow all residents and non-residents (except citizens of Pakistan and Bangladesh and also other travellers coming from and going to Pakistan and Bangladesh) to take outside India (Other than to Nepal and Bhutan) while leaving the country or who had gone out of India on a temporary visit, to bring into India at the time of their return from any place outside India (Other than from Nepal and Bhutan)

Indian currency notes up to ₹25,000 (only through an airport in case of non-residents).

Necessary amendments to The Foreign Exchange Management (Export and Import of Currency) Regulations 2000 (Notification No.FEMA.6/2000-RB dated 3rd May, 2000) have been notified in the Official Gazette *vide* G.S.R. Nos. 399(E) dated 12th June, 2014 [Notification No. FEMA 309/2014-RB dated June 4, 2014].

D. Switching over from NIC-1987 to NIC-2008 in respect of industrial license/IEM

Press Note No. 4 (2014 Series) issued by The Department of Industrial Policy and Promotion (DIPP) dated 27th June, 2014.

As per the extant usage, National Industrial Classification-1987 (NIC-1987) version is applicable for the purpose of classification of activities in respect of industrial licensing/IEM proposals submitted to the DIPP. It has been decided to switch over to the NIC-2008 for classification of activities, thus allowing Indian businesses to undertake globally recognised and accepted classification.

The above decision shall take immediate effect.

E. Financial Commitment (FC) by Indian Party under Overseas Direct Investments (ODI) – Restoration of Limit

A.P. (DIR Series) Circular No.1 dated 3rd July, 2014

RBI has decided to restore the limit of ODI/FC to be undertaken by an Indian Party under the automatic route to the limit prevailing, as per the extant FEMA provisions, prior to 14th August, 2013. It has, however, been decided that any FC exceeding USD 1 billion (or its equivalent) in a financial year would require prior approval of RBI even when the total FC of the Indian Party is within the eligible limit under the automatic route (*i.e.*, within 400% of the net worth as per the last audited balance sheet).

All the other provisions under the Notification *ibid* shall remain unchanged.

F. Foreign Exchange Management Act, 1999 – Import of Rough, Cut and Polished Diamonds

A.P. (DIR Series) Circular No. 2 dated July 7, 2014

As per the extant regulations, AD Category –I banks are permitted to approve Suppliers' and Buyers' Credit (Trade Credit), including the usance period of Letters of Credit for import of Rough, Cut and Polished Diamonds for a period not exceeding 90 days from the date of shipment.

Taking into consideration the representations received from the diamond importers and the GJEPC, RBI has decided, in consultation with the Government of India (GOI), that the Clean Credit *i.e.,* credit given by a foreign supplier to its Indian customer/buyer, without any Letter of Credit (Suppliers' Credit)/Letter of Undertaking (Buyers' Credit)/Fixed Deposits from any Indian financial institution for import of Rough, Cut and Polished Diamonds, may be permitted for a period not exceeding 180 days from the date of shipment.

The revised directions shall come into force with immediate effect.

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

MCA (www.mca.gov.in)

1. Clarification on Incorporation of a Company, Incorporated Outside India

MCA has issued General Circular NO.23/2014 [F.NO.1/13/2013-CL-V], Dated 25-06-2014 whereby it has been clarified that Companies Act, 2013 doesn't bar a company incorporated outside India to incorporate a subsidiary either as a public company or a private company.

2. Clarifications on Issues Associated With e-voting Procedure

Vide MCA General Circular No. 20/2014 [NO.1/34/2013-CL-V], dated 17-06-2014 it has been decided not to treat the relevant provisions of Companies (Management and Administration) Rules, 2014 which deals with the exercise of right to vote by members by electronic means (e-means) as mandatory till 31-12-2014.

3. Clarification on Format of Annual Return Applicable for Financial Year 2013-14 and Fees to be Charged By Companies For Allowing Inspection of Records

MCA *vide* General Circular NO.22/2014 [NO.1/34/2013-CL-V[PART-I], Dated 25-06-2014 has clarified that that Form MGT-7 shall not apply to annual returns in respect of companies whose financial year ended on or before 01-04-2014 and for annual returns pertaining to earlier years. These companies may file their returns in the relevant Form applicable under the Companies Act, 1956.

Further, in respect of cost of inspection of records under Rule 14(2) and Rule 16 of Companies (Management and Administration) Rules, 2014 and till a fee is prescribed for the purpose in the Articles. It has been clarified that until the requisite fee is specified by companies, inspections could be allowed without levy of fee.

4. Clarification on Applicability of Requirement for Resident Director

MCA *vide* General Circular No.25/2014 [No.1/22/13-Cl-V], Dated 26-06-2014 has clarified that the 'residency requirement' as required under Section 149 (3) of the Companies Act, 2013 would be reckoned from the date of commencement of Section 149 of the Act *i.e.,* 1st April, 2014. The first 'previous calendar year' for compliance with these provisions would, therefore, be Calendar Year 2014. The period to be taken into account for compliance with these provisions will be the remaining period of calendar year 2014 (*i.e.,* 1st April to 31st December). Therefore, on a proportionate basis, the number of days for which the director(s) would need to be resident in India, during Calendar Year 2014, shall exceed 136 days.

As regards newly incorporated companies it is clarified that companies incorporated between 01-04-2014 to 30-09-2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation. Companies incorporated after 30-09-2014 needs to have the resident director from the date of incorporation itself.

5. Clarifications with Regard to Provisions of Corporate Social Responsibility under Section 135

MCA *vide* General Circular NO.21/2014 [NO.05/01/2014-CSR], Dated 18-06-2014 has issued clarification as regards the provisions under Section 135 of Companies Act, 2013 ('the Act') and the Companies (Corporate Social Responsibility Policy) Rules, 2014 (CSR Rules, 2014), as well as activities to be undertaken as per Schedule VII of the Companies Act, 2013 as under:-

(i) The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule.

(ii) CSR activities should be undertaken by the companies in project/programme mode [as referred in Rule 4(1) of Companies CSR Rules, 2014]. One-off events such as marathons/ awards/charitable contribution/advertisement/ sponsorships of TV programmes *etc.* would not be qualified as part of CSR expenditure.

(iii) Expenses incurred by companies for the fulfillment of any Act/Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.

(iv) Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company's time/ hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure.

(v) "Any financial year" referred under Section 135 (1) of the Act read with Rule 3(2) of Companies CSR Rule, 2014, implies 'any of the three preceding financial years.'

(vi) Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per Section 135 of the Act.

(vii) 'Registered Trust' (as referred in Rule 4(2) of the Companies CSR Rules, 2014) would include Trusts registered under Income-tax Act, 1956, for those States where registration of Trust is not mandatory.

(viii) Contribution to Corpus of a Trust/society/ Section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/society/ Section 8 companies *etc.* is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

SEBI (www.sebi.gov.in)

1. SEBI lays down minimum asset limit of ₹20 Crores for debt-oriented Mutual Fund Schemes

SEBI has issued Circular No. IMD/DF/15/2014, dated 20-06-2014 whereby it has been observed that many debt oriented schemes are operating with a very low Assets Under Management (AUM). In the interest of investors, it is important that debt oriented schemes have an adequate corpus to ensure adherence to the investment objectives as stated in Scheme Information Document and compliance with investment restrictions specified under SEBI (Mutual Funds) Regulations, 199 In this regard, it has been decided that:

(i) the minimum subscription amount of debt oriented and balanced schemes at the time of new fund offer shall be at least ₹20 crore and that of other schemes shall be at least ₹10 crore.

(ii) an average (AUM) of ₹20 crore on half yearly rolling basis shall be maintained for open ended debt oriented schemes.

(iii) the existing open ended debt oriented schemes shall comply with point (ii) stated above within one year from the date of issue of this circular.

(iv) in case of breach of points (ii) and (iii) above, the AMC shall scale up the AUM of such scheme within a period of six months so as to comply with point (ii) stated above, failing which the provisions of Regulation 39(2)(c) of SEBI (Mutual Funds) Regulations, 1996 would become applicable.

(v) the confirmation on compliance of the above shall be reported to SEBI in the Half Yearly Trustee Reports.

2. Registration of Inter-Governmental Agreement with USA under Foreign Accounts Tax Compliance Act

SEBI has issued Circular No. MIRSD/2/2014, dated 30-06-2014 whereby in respect of an Inter-Governmental agreement (IGA) between Government of India and the United States of America (US) to implement Foreign Accounts Tax Compliance Act (FATCA) it has issued the following points which may be noted by all SEBI registered intermediaries as under:

i. Indian Financial Institutions would have time upto 31-12-2014 to register with US authorities and obtain a Global Intermediary Identification Number (GIIN).

ii. Overseas branches of Indian Financial Institutions in a jurisdiction having IGA 2 agreement or in a jurisdiction that does not have an IGA but permits financial institutions to register and agree to a Foreign Financial Institution (FFI) agreement, may register with US authorities within the stipulated time period and obtain a GIIN in accordance with the requirements to avoid potential withholding under FATCA.

iii. Overseas branches of Indian Financial Institutions in a jurisdiction that does not have an IGA and does not permit financial institutions to register and agree to an FFI agreement may not register and their overseas branches would eventually be subject to withholding under FATCA.

The Government has further advised that if registration of the parent intermediary/head office is a pre-requisite for a branch to register, such intermediaries may register as indicated at (i) and (ii) above.

RBI (www.rbi.gov.in)

1. Banks to Disclose Sector-Wise Advances from Financial Year 2014-15

RBI has issued Circular DBOD. NO.BP. BC.121/21.04.018/2013-14 dated 18-06-2014 whereby banks have been advised to disclose sector-wise advances in the 'Notes to Accounts' to the financial statements as per the new format prescribed from the financial year 2014-15 onwards. Accordingly, the disclosure requirements as prescribed in its earlier circular dated 15-03-2014 on 'Additional Disclosures by Banks in Notes to Accounts' shall be replaced by the disclosure requirements specified herein.

2. Depositor Education and Awareness Fund Scheme, 2014 - Operational Guidelines - Payment of Interest

Reserve Bank of India *vide* Circular DBOD.NO. DEAF CELL.BC. 126 /30.01.002/2013-14, dated 26-06-2014 has specified that the rate of interest payable by banks to the depositors/claimants on the unclaimed interest bearing deposit amount transferred to the Fund shall be 4% simple interest per annum until further notice. The amount of interest payable in this behalf shall be calculated in the manner specified in paragraph 4 (ii) of the Scheme and by rounding off the amount of interest to the nearest Rupee. ■

Examination: Result Common Proficiency Test(CPT) June 2014

TOPPERS IN
COMMON PROFICIENCY TEST(CPT)
JUNE - 2014

PRESS RELEASE

The result of the Common Proficiency Test held in **JUNE 2014** was declared recently.

The details of percentage of candidates passed in the above said examinations are given below:

GENDER	No. of candidates appeared	No. of candidates passed	% of pass	Exam Centres
MALE	78453	21190	27.01	**414**
FEMALE	51838	16113	31.08	
TOTAL	130291	37303	28.63	

The details of top three rank holders on the all India basis for the Common Proficiency Test(CPT) with the marks secured by them are also given herewith.

TOPPERS OF CHARTERED ACCOUNTANTS

COMMON PROFICIENCY TEST JUNE , 2014

	ALL INDIA TOPPER FIRST
	 SRO0497628
NAME	BORRA MURALI MOHAN
CITY	GUNTUR
ROLL	155849
MARKS	197
%AGE	98.50
PH	9912632354

	ALL INDIA TOPPER SECOND
	 CRO0512869
NAME	PALASH MAHESHWARI
CITY	BHOPAL
ROLL	195372
MARKS	196
%AGE	98.00
PH	7415495750

	ALL INDIA TOPPER SECOND
	 WRO0530609
NAME	HONEY BATRA
CITY	NAGPUR
ROLL	131602
MARKS	196
%AGE	98.00
PH	8983396884

	ALL INDIA TOPPER THIRD
	 SRO0468308
NAME	CHARLA AASUTOSH SAI
CITY	VIJAYAWADA
ROLL	180361
MARKS	195
%AGE	97.50
PH	9247155697

	ALL INDIA TOPPER THIRD
	 CRO0515991
NAME	SHUBHAM MAHESHWARI
CITY	BHILWARA
ROLL	195302
MARKS	195
%AGE	97.50
PH	9414259745

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, organized by the Internal Audit Standards Board at various places in August & September, 2014 are as follows:

Location	Scheduled Dates	Registration and Course Details
NIRC	August 2&3, 9&10 and 16 & 17, 2014	http://220.227.161.86/33388iasb-nirc-98.pdf
Thane	August 9&10 , 16 & 17 and 23 & 24, 2014	http://220.227.161.86/33389iasb-thane-99.pdf
Baroda	August 16 & 17 , 23 & 24 and 30 & 31, 2014	http://220.227.161.86/33401iasb-baroda-100.pdf
Aurangabad	August 16 & 17 , 23 & 24 and 30 & 31, 2014	http://220.227.161.86/33402iasb-aurangabad-101.pdf
Cuttack	August 16 & 17 , 23 & 24 and 30 & 31, 2014	http://220.227.161.86/33403iasb-cuttack-102.pdf
Goa	August 22, 23 & 24 and September 5, 6 & 7, 2014	http://220.227.161.86/34050iasb-goa-140.pdf
NIRC	August 23 & 24, 30 & 31 and September 6 & 7, 2014	http://220.227.161.86/34142iasb-nirc-142.pdf
Jamnagar	August 23 & 24, 30 & 31 and September 6 & 7, 2014	http://220.227.161.86/33417iasb-jamnagar-106.pdf
Rajkot	August 23 & 24, 30 & 31 and September 6 & 7, 2014	http://220.227.161.86/33418iasb-rajkot-107.pdf
Bhubaneswar	August 30 & 31 , September 6 & 7 and 13 & 14, 2014	http://220.227.161.86/33404iasb-bhubaneshwar-103.pdf
Sivakasi	August 30 & 31 , September 6 & 7 and 13 & 14, 2014	http://220.227.161.86/33405iasb-sivakasi-104.pdf

Chairman
Internal Audit Standards Board, ICAI
E-mail: cia@icai.in; concurrentaudit@icai.in

ICAI Awards for Excellence in Financial Reporting 2013-14: Invitation to Participate

ICAI AWARDS FOR EXCELLENCE IN FINANCIAL REPORTING
Invitation to Participate in the Competition for the year 2013-14

Last date for receipt of entries: 30th September, 2014

Objective

To recognise and encourage excellence in preparation and presentation of financial information.

Award Categories of the Competition 'ICAI Awards for Excellence in Financial Reporting' for the year 2013-14

Category I	:	Public Sector Banks
Category II	:	Private Sector Banks (including Co-operative Banks & Foreign Banks)
Category III	:	Insurance Sector
Category IV	:	Financial Services Sector (Other than Banking and Insurance)
Category V	:	Manufacturing Sector – (Turnover equal to or more than ₹500 crore)
Category VI	:	Manufacturing Sector – (Turnover less than ₹500 crore)
Category VII	:	Infrastructure and Construction Sector (Turnover equal to or more than ₹500 crore)
Category VIII	:	Infrastructure and Construction Sector (Turnover less than ₹500 crore)
Category IX	:	Service Sector (Other than financial services sector) – (Turnover equal to or more than ₹500 crore)
Category X	:	Service Sector (Other than financial services sector) (Turnover less than ₹500 crore)
Category XI	:	Not-for-Profit Sector
Category XII	:	Local Bodies
Category XIII	:	Agricultural Sector (includes entities engaged in direct agriculture, horticulture, tea & coffee, plantations, dairies, poultry etc. but excludes entities engaged in food processing etc. which are covered by Manufacturing Sector).

In a case, where an organisation is engaged in more than one business, the dominant source of revenue will determine the category to which the organisation belongs.

Turnover will be determined on the basis of standalone financial accounts.

Awards to be distributed

Hall of Fame to be awarded to the entity that has been winning the first prize under the same category continuously in the last five years. One Gold Shield and one Silver Shield in each category for the best entry and the next best entry, respectively. Plaques to be awarded to the entities who are following better financial reporting practices amongst the enterprises that are left in each category after conferring Hall of Fame, Gold Shield and Silver Shield.

Procedure for Participation

1. There is no fee for participation in the competition.
2. Annual report relating to the financial year ending on any day between April 1, 2013 and March 31, 2014 (both days inclusive) is eligible for participation in this competition.
3. Decisions of the Panel of Judges in all the matters relating to the Competition will be final.
4. An entity awarded 'Hall of Fame' may again participate in the competition after three years of getting the award of 'Hall of Fame'.
5. Fill in the Entry Form at the link http://220.227.161.86/34103reserach23796b.pdf andsubmit with requisite documents on or before September 30, 2014 to:

The Secretary
Research Committee, Technical Directorate,
The Institute of Chartered Accountants of India,
ICAI Bhawan, Indraprastha Marg,
New Delhi – 110 002

For any further information please write to Chairman, Research Committee, at research@icai.in or visit our website www.icai.org.

The Institute of Chartered Accountants of India

E- Learning on the topics- Business Etiquette and Mastering the Interview by CMII of ICAI

Dear Professional Colleagues,

Greetings from CMII of ICAI!

Over the past several years, e-learning has assumed growing importance as a new approach to continuing education. CMII has taken an initiative by introducing e-learning to provide learning at their door step to its members to update their knowledge. This is being done considering the fact that members in industry find it difficult to attend seminars and conferences due to their work pressures and located at distanced places.

With great pleasure, we would like to inform you that the e-learning programme is offered to the members in industry free of charge from 1st May 2014 to 31st August 2014 on below mentioned topics.

- **Business Etiquette-Gaining that Extra Edge:** Smart behavioural techniques in the business which are not taught in the conventional teaching. Duration of course is 6 hours (approx.).
- **Mastering The Interview:** Effective & better ways to prepare for an interview to make it work all the time. Duration of course is 5 hours (approx.).

Maximum of 3 CPE hours per e-Learning module on a particular topic subject to a maximum of 6 hours per annum shall be provided for the above e-learning courses. For getting the CPE hours, members will have to complete the requisite duration of the course and also have to qualify the quiz given at end of the course.

For login, you may visit www.placement.icai.org.

We wish you a very knowledgeable and enriching experience.

With kind regards,

Chairman
Committee for Members in Industry
The Institute of Chartered Accountants of India

Campus Placement Programme

August-September-October 2014

For Newly Qualified Chartered Accountants

Invitation For Participation

The Institute of Chartered Accountants of India (ICAI) has achieved recognition as a premier accounting body not only in the country but also globally for its contribution in the field of education, professional development, maintenance of high accounting and auditing standards. The Committee for Members in Industry (CMII) of ICAI has been successfully organizing Campus Placement Programmes for the Newly Qualified Chartered Accountants and is pleased to announce the next Campus Placement Programme to recruit Newly Qualified CAs during August-September- October 2014.

Chairman, CMII

The Revised Schedule of the Campus Placement Programme August-September-October 2014

Centre	Date
Baroda, Coimbatore, Ernakulam & Trichur	2^{nd} – 3^{rd} September, 2014
Bhubaneswar, Chandigarh, Kanpur, Navi Mumbai, Thane & Vasai	3^{rd} – 4^{th} September, 2014
Indore & Nagpur	4^{th} – 5^{th} September, 2014
Ahmedabad & Jaipur	10^{th} – 11^{th} September, 2014
Pune	11^{th} – 12^{th} September, 2014
Mumbai & New Delhi	13^{th} ,14^{th}, 15^{th}, 16^{th}, 17^{th}, 18^{th} & 20^{th} October, 2014
Bangalore, Chennai & Kolkata	14^{th}, 15^{th}, 16^{th}, 17^{th}, 18^{th} & 20^{th} October, 2014
Hyderabad	15^{th}, 16^{th}, 17^{th}, 18^{th} & 20^{th} October, 2014

For Complete details please visit http://placement.icai.org

Organised By:

Committee for Members in Industry (CMII)

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

'ICAI BHAWAN', Post Box No 7100, Indraprastha Marg, New Delhi-110 002

Tel. No. (011) 30110491/548/549

E-mail: cmii@icai.in, campus@icai.in, placements@icai.in

Website: www.icai.org, www.placement.icai.org

Exposure Draft: For Comments

Invitation to comment on Exposure Draft of the Guidance Note on Accounting for *Service Concession Arrangements by Concessionaires*

Comment Deadline: August 29, 2014

The Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India (ICAI), considering the non-availability of any pronouncement or guidance from the Institute on Accounting for Service Concession Arrangements and due to increasing number of transactions entered into by the Indian entities under the service concession arrangement model, decided to formulate Guidance Note on Accounting for Service Concession Arrangements by Concessionaires. The Accounting Standards Board at its last meeting considered and finalised the Exposure Draft of the Guidance Note on Accounting for *Service Concession Arrangements by Concessionaire* and decided to invite comments from various stakeholders. The said Exposure Draft can be accessed/downloaded on the Institute's website namely, www.icai.org at the following link: http://220.227.161.86/34164asb23859.pdf

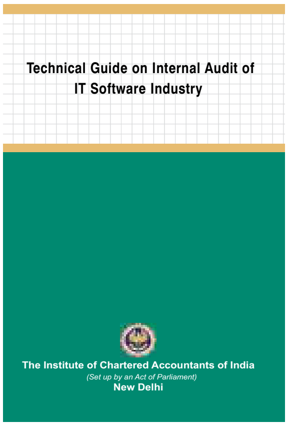
The Board invites comments on any aspect of the Exposure Draft. Comments are most helpful if they indicate the specific paragraph or group of paragraphs to which they relate, contain a clear rationale and, where applicable, provide a suggestion for alternative wording.

Comments should be submitted in writing to the **Secretary, Accounting Standards Board, The Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi – 110 002, so as to be received not later than August 29, 2014.** Comments can also be sent by e-mail at commentsasb@icai.in. Further clarifications on any aspect of this Exposure Draft may be sought by e-mail to shilpi.hisaria@icai.in

New Publications

Technical Guide on Internal Audit of IT Software Industry

Pages: 121 (including initial pages)
Price: ₹ 150/- (including CD)



During the last decade, India has seen a steady growth of IT Software Industry, which is constantly witnessing changes due to emerging technologies, such as, social media, mobility, analytics and cloud computing, etc. This unique sector faces complexity of processes which give rise to a spectrum of strategic, economic, operational, compliance, disaster, political, human capital and reputational risks. Internal auditors can play an important role in governance, risk and compliance aspects, which are essential to ensure that the IT Software industry remains on the growth path. Keeping this in view, the Internal Audit Standards Board of ICAI has issued "***Technical Guide on Internal Audit of IT Software Industry***", which is aimed to equip the internal auditors with deeper understanding of this unique and complex industry.

Significant features of the Technical Guide are:

- Covers evolution, history, special features, business processes, major challenges faced by the entities in IT Software Industry.
- Explains legal framework applicable to IT Software Industry in detail.
- Highlights major areas of external and internal risks faced by this Industry.
- Explains the detailed procedures to be undertaken by the internal auditor in respect of contracts, fixed assets, government grants, loans and borrowings, foreign currency transactions, related party transactions, information security and privacy of data, patents and copyrights, etc.
- Includes Annexure listing out major compliances applicable to software industry under various governing laws and regulations.
- Includes glossary of the terms and abbreviations used in the IT Software Industry.
- The Guide comes with a CD of the entire Guide to ensure ease of reference and reusability.

Ordering Information

These publications can be purchased online. Please refer link: http://www.icai.org/publications.html. The publications are also available at the sales counters of the Institute at New Delhi, Chennai, Mumbai, Kolkata and Kanpur. To order by post, please send a demand draft in favour of *"Secretary, The Institute of Chartered Accountants of India"*, payable at New Delhi to:

Postal Sales Department
A-29, Sector-62
Noida-201309
Phone: (0120) 3045943
E-mail: postalsales@icai.in

Examinations: December 2014: CPT

The Institute of Chartered Accountants of India
[Set up by an Act of Parliament]
Post Box No.7112, 'ICAI BHAWAN', Indraprastha Marg
New Delhi – 110002

TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA

NOTIFICATION **16th July, 2014**

No.13-CA (EXAM)/CPT/December/2014: In pursuance of Regulation 22 of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify that the Common Proficiency Test will be held on **Sunday, 14th December, 2014** in two sessions as below, at the following centres provided that sufficient number of candidates offer themselves to appear from each centre.

[This Common Proficiency Test will be conducted as per provisions of Regulation 25 D (3) of the Chartered Accountants Regulations, 1988.]

First Session **(i.e. Morning Session)**	**10.30 AM to 12.30 PM (IST)** Section - A Fundamentals of Accounting Section - B Mercantile Laws
Second Session **(i.e. Afternoon Session)**	**2.00 PM to 4.00 PM (IST)** Section - C General Economics Section - D Quantitative Aptitude

PLACES OF EXAMINATION CENTRES IN INDIA:

Sl. No.	Name of the Cities	Sl. No.	Name of the Cities	Sl. No.	Name of the Cities
1	AGRA	2	AHMEDABAD	3	AHMEDNAGAR
4	AJMER	5	AKOLA	6	ALAPPUZHA
7	ALIGARH	8	ALLAHABAD	9	ALWAR
10	AMBALA	11	AMRAVATI	12	AMRITSAR
13	ANAND	14	ANANTAPUR	15	ASANSOL
16	AURANGABAD	17	BANGALORE	18	BAREILLY
19	BATHINDA	20	BEAWAR	21	BELGAUM
22	BELLARY	23	BERHAMPORE	24	BHAGALPUR
25	BHARATPUR	26	BHARUCH	27	BHAVNAGAR
28	BHILWARA	29	BHIWANI	30	BHOPAL
31	BHUBANESWAR	32	BHUJ	33	BIKANER
34	BILASPUR	35	CHANDIGARH	36	CHENNAI
37	CHITTORGARH	38	COIMBATORE	39	CUTTACK
40	DEHRADUN	41	DELHI / NEW DELHI	42	DHANBAD
43	DHULE	44	DUNDLOD	45	DURG
46	DURGAPUR	47	ERNAKULAM	48	ERODE
49	FARIDABAD	50	FATEHABAD	51	GANDHIDHAM
52	GANDHINAGAR	53	GHAZIABAD	54	GORAKHPUR
55	GUNTUR	56	GURGAON	57	GUWAHATI
58	GWALIOR	59	HISAR	60	HUBLI
61	HYDERABAD	62	INDORE	63	JABALPUR
64	JAIPUR	65	JALANDHAR	66	JALGAON
67	JAMMU	68	JAMNAGAR	69	JAMSHEDPUR
70	JHANSI	71	JHUNJHUNU	72	JODHPUR
73	KAITHAL	74	KAKINADA	75	KANNUR
76	KANPUR	77	KARIMNAGAR	78	KARNAL
79	KISHANGARH	80	KOLHAPUR	81	KOLKATA

Sl. No.	Name of the Cities	Sl. No.	Name of the Cities	Sl. No.	Name of the Cities
82	KOLLAM	83	KOTA	84	KOTTAYAM
85	KOZHIKODE	86	KUMBAKONAM	87	KURNOOL
88	LATUR	89	LUCKNOW	90	LUDHIANA
91	MADURAI	92	MANGALORE	93	MAPUSA (GOA)
94	MARGAO (GOA)	95	MATHURA	96	MEERUT
97	MORADABAD	98	MUMBAI	99	MUZAFFARNAGAR
100	MYSORE	101	NAGPUR	102	NANDED
103	NASHIK	104	NAVI MUMBAI	105	NAVSARI
106	NEEMUCH	107	NELLORE	108	NOIDA
109	ONGOLE	110	PALGHAT	111	PALI MARWAR
112	PANIPAT	113	PANVEL	114	PATIALA
115	PATNA	116	PIMPRI-CHINCHWAD	117	PONDICHERRY
118	PUNE	119	RAIPUR	120	RAJAMAHENDRAVARAM
121	RAJKOT	122	RANCHI	123	RATLAM
124	REWARI	125	ROHTAK	126	ROURKELA
127	SAHARANPUR	128	SALEM	129	SAMBALPUR
130	SANGLI	131	SANGRUR	132	SATARA
133	SHIMLA	134	SIKAR	135	SILIGURI
136	SIRSA	137	SIVAKASI	138	SOLAPUR
139	SONEPAT	140	SRI GANGANAGAR	141	SRINAGAR
142	SURAT	143	SURENDRANAGAR	144	THANE
145	THIRUVANANTHAPURAM	146	THRISSUR	147	TINSUKIA
148	TIRUCHIRAPALLI	149	TIRUNELVELI	150	TIRUPATI
151	TIRUPUR	152	TUTICORIN	153	UDAIPUR
154	UDUPI	155	UJJAIN	156	VADODARA
157	VAPI	158	VARANASI	159	VASAI
160	VELLORE	161	VIJAYAWADA	162	VISAKHAPATNAM
163	WARANGAL	164	YAMUNA NAGAR		

PLACES OF EXAMINATION CENTRES OVERSEAS:

(1) ABU DHABI	(2) BAHRAIN	(3) DOHA	(4) DUBAI	(5) KATHMANDU

The Council reserves the right to withdraw any centre at any stage without assigning any reason.

Applications for admission to Common Proficiency Test is required to be made in the relevant prescribed form as contained in the Information Brochure, which may be obtained from the **Additional Secretary (Examinations)**, The Institute of Chartered Accountants of India, ICAI Bhawan, Indraprastha Marg, New Delhi – 110002 on payment of ₹1000/- (₹500/- towards examination fee and ₹500/- towards cost of application form and Information brochure) per application form. The fee for candidates opting for Abu Dhabi, Dubai, Doha and Bahrain centres will be US $160 (US $ 150 towards examination fee and US $ 10 towards cost of application form and information brochure) or its equivalent Indian Currency. The fee for the candidates opting for Kathmandu centre are required to remit INR.1350/-(INR 850/- towards examination fee and INR 500/- towards the cost of application form and information brochure) or its equivalent foreign Currency. Since the cost of Information brochure containing Common Proficiency Test application form includes the examination fee, no separate fee is required to be remitted at the time of submitting the filled in application form. The Information brochure containing Common Proficiency Test application form will also be available in the Regional and Branch Offices of the Institute and can be obtained there from on cash payment on or from **7th October, 2014.**

Common Proficiency Test application forms duly filled in may be sent so as to reach the **Additional Secretary (Examinations)** at New Delhi not later than **28th October, 2014**. Applications received after **28th October, 2014** shall not be entertained under any circumstances. Applications duly filled in will be received by hand delivery at the offices of Institute at New Delhi and at the Decentralised Offices of the Institute at Mumbai, Chennai, Kolkata, Kanpur, Ahmedabad, Bangalore, Ernakulam, Hyderabad, Indore, Jaipur, Nagpur, Pune, Surat, Thane and Vadodara upto **28th October, 2014**. Candidates residing in these cities are advised to take advantage of this facility. **It may be noted that there is no provision for acceptance of application forms after 28th October, 2014 with late fee.**

The candidates who fill up the examination application form online at http://icaiexam.icai.org from **7th October, 2014 (10.00 hrs) to 28th October, 2014 (17.30 hrs)** and remit the fee online by using either VISA or MASTER Credit/ Debit Card **shall not be charged ₹500/-** (i.e. cost of application form fee).

The aforesaid Common Proficiency Test (CPT) is open only to students registered with the Institute of Chartered Accountants of India for the Common Proficiency Course on or before 1st October, 2014 and fulfill the requisite eligibility conditions.

QUESTION PAPER BOOKLET LANGUAGE:

Common Proficiency Test is an objective type multiple choice questions based examination. Candidates will be allowed to opt for Hindi medium Question Paper Booklet for answering the questions. Detailed information will be found given in the Information brochure.

(T. KARTHIKEYAN)
SECRETARY

Invitation for Articles

The Committee on Management Accounting (CMA) invites research articles, write-ups and other similar materials in the areas of Management accounting and Financial Management for publishing in its journal. The Institute proposes to publish a quarterly Journal "Management Accounting and Business Finance" with an object of spreading the advanced knowledge on Management Accounting and allied areas which are relevant for the members of the profession and others concerned. The Journal is to focus on practical articles for advanced and research oriented knowledge.

The articles submitted for consideration of publication should be of 4000-6000 words typed double space on A4 size paper with 1 inch margin all around. In order to facilitate the blind review process, the author should not mention his/her name on the body of the manuscript. Three hard copies of manuscript along with a soft copy (MS Word) may be sent at the following address:

Secretary,
Committee on Management Accounting (CMA),
3rd Floor, Administration Block,
A-29, Sector 62, Noida- 201309 (UP)
Phone No: 0120-3045905
Email id: cma@icai.in; akagrawal@icai.in

Authors may note that in appreciation of their contribution to the MABF journal an honorarium of ₹5,000/- per article would be paid to them.

Detailed Guidelines for writing the articles are available on the website of Committee at http://www.icai.org/new_post.html?post_id=10667&c_id=240

The Editorial Board hopes that professionals and other experts will come forward to share their expertise and practical experience with our readers by preparing the papers in view of the specific requirements of the accounting profession.

Chairman,
Committee on Management Accounting (CMA),
ICAI, New Delhi

Examinations: December 2014: IPC/FINAL/MAC/IRM/ITL&WTO

The Institute of Chartered Accountants of India
[Set up by an Act of Parliament]
Post Box No.7112, 'ICAI BHAWAN', Indraprastha Marg
New Delhi – 110002

TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA
NOTIFICATION

No. 13-CA (EXAM)/N/2014: In pursuance of Regulation 22 of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify that the Intermediate (IPC) and Final examinations will be held on the dates given below at the following places provided that sufficient number of candidates offer themselves to appear from each centre.

Similarly, Examinations in Post Qualification Courses under Regulations 204, *viz.*: Management Accountancy Course (MAC) Part – I, Corporate Management Course (CMC) Part – I, Tax Management Course (TMC) Part – I, Insurance and Risk Management (IRM), and International Trade Laws and World Trade Organisation (ITL & WTO) examinations (which are open to the members of the Institute) will be held on the dates given below at the above places (centres in India only) provided that sufficient number of candidates offer themselves to appear from each of the above places.

INTERMEDIATE (IPC) EXAMINATION

[As per syllabus contained in the scheme notified by the Council under Regulation 28 E (3) of the Chartered Accountants Regulations, 1988]

Group-I:	**8th, 10th, 12th & 14th November 2014**
Group-II:	**16th, 18th & 20th November 2014**

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

FINAL EXAMINATION

[As per syllabus contained in the scheme notified by the Council under Regulation 31 (ii) of the Chartered Accountants Regulations, 1988.]

Group -I: 7th, 9th, 11th & 13th November 2014
Group -II: 15th, 17th, 19th & 21st November 2014

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

MANAGEMENT ACCOUNTANCY COURSE (MAC) PART - I, CORPORATE MANAGEMENT COURSE (CMC) PART – I, TAX MANAGEMENT COURSE (TMC) PART – I EXAMINATIONS

Group-I: 15th & 17th November 2014
Group-II: 19th & 21st November 2014

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

INSURANCE AND RISK MANAGEMENT (IRM) EXAMINATION

Modules I to IV	**15th, 17th, 19th & 21st November 2014**

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

INTERNATIONAL TRADE LAWS AND WORLD TRADE ORGANISATION (ITL&WTO) EXAMINATION

Group-A : 8th, 10th & 12th November 2014
Group-B :14th, 16th & 18th November 2014

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

PLACES OF EXAMINATION CENTRES IN INDIA: (FOR ALL EXAMINATIONS)

Sl. No.	Name of the Cities	Sl. No.	Name of the Cities	Sl. No.	Name of the Cities
1	AGRA	2	AHMEDABAD	3	AHMEDNAGAR
4	AJMER	5	AKOLA	6	ALAPPUZHA
7	ALIGARH	8	ALLAHABAD	9	ALWAR
10	AMBALA	11	AMRAVATI	12	AMRITSAR
13	ANAND	14	ANANTAPUR	15	ASANSOL
16	AURANGABAD	17	BANGALORE	18	BAREILLY
19	BATHINDA	20	BEAWAR	21	BELGAUM
22	BELLARY	23	BERHAMPORE	24	BHARATPUR
25	BHARUCH	26	BHAVNAGAR	27	BHILWARA
28	BHIWANI	29	BHOPAL	30	BHUBANESWAR
31	BHUJ	32	BIKANER	33	BILASPUR
34	CHANDIGARH	35	CHENNAI	36	CHITTORGARH
37	COIMBATORE	38	CUTTACK	39	DEHRADUN

Sl. No.	Name of the Cities	Sl. No.	Name of the Cities	Sl. No.	Name of the Cities
40	DELHI / NEW DELHI	41	DHANBAD	42	DHULE
43	DURG	44	DURGAPUR	45	ERNAKULAM
46	ERODE	47	FARIDABAD	48	FATEHABAD
49	GANDHIDHAM	50	GANDHINAGAR	51	GHAZIABAD
52	GORAKHPUR	53	GUNTUR	54	GURGAON
55	GUWAHATI	56	GWALIOR	57	HISAR
58	HUBLI	59	HYDERABAD	60	INDORE
61	JABALPUR	62	JAIPUR	63	JALANDHAR
64	JALGAON	65	JAMMU	66	JAMNAGAR
67	JAMSHEDPUR	68	JHANSI	69	JHUNJHUNU
70	JIND	71	JODHPUR	72	KAITHAL
73	KAKINADA	74	KANNUR	75	KANPUR
76	KARIMNAGAR	77	KARNAL	78	KISHANGARH
79	KOLHAPUR	80	KOLKATA	81	KOLLAM
82	KOTA	83	KOTTAYAM	84	KOZHIKODE
85	KUMBAKONAM	86	KURNOOL	87	LATUR
88	LUCKNOW	89	LUDHIANA	90	MADURAI
91	MANGALORE	92	MAPUSA (GOA)	93	MARGAO (GOA)
94	MATHURA	95	MEERUT	96	MORADABAD
97	MUMBAI	98	MUZAFFARNAGAR	99	MYSORE
100	NAGPUR	101	NANDED	102	NASHIK
103	NAVI MUMBAI	104	NAVSARI	105	NEEMUCH
106	NELLORE	107	NOIDA	108	ONGOLE
109	PALGHAT	110	PALI MARWAR	111	PANIPAT
112	PANVEL	113	PATIALA	114	PATNA
115	PIMPRI-CHINCHWAD	116	PONDICHERRY	117	PUNE
118	RAIPUR	119	RAJAMAHENDRAVARAM	120	RAJKOT
121	RANCHI	122	RATLAM	123	REWARI
124	ROHTAK	125	ROURKELA	126	SAHARANPUR
127	SALEM	128	SAMBALPUR	129	SANGLI
130	SANGRUR	131	SATARA	132	SHIMLA
133	SIKAR	134	SILIGURI	135	SIRSA
136	SIVAKASI	137	SOLAPUR	138	SONEPAT
139	SRI GANGANAGAR	140	SRINAGAR	141	SURAT
142	SURENDRANAGAR	143	THANE	144	THIRUVANANTHAPURAM
145	THRISSUR	146	TINSUKIA	147	TIRUCHIRAPALLI
148	TIRUNELVELI	149	TIRUPATI	150	TIRUPUR
151	TUTICORIN	152	UDAIPUR	153	UDUPI
154	UJJAIN	155	VADODARA	156	VAPI
157	VARANASI	158	VASAI	159	VELLORE
160	VIJAYAWADA	161	VISAKHAPATNAM	162	WARANGAL
163	YAMUNA NAGAR				

PLACES OF EXAMINATION CENTRES OVERSEAS:
(FOR INTERMEDIATE (IPC) AND FINAL EXAMINATIONS ONLY)

1) ABU DHABI	**2) DUBAI**	**3) KATHMANDU**	**4) MUSCAT**

Payment of fees for the examinations should be made by Demand Draft only. The Demand Drafts may be of any Scheduled Bank and should be drawn in favour of The Secretary, **The Institute of Chartered Accountants of India, payable at New Delthi only.**

The Council reserves the right to withdraw any centre at any stage without assigning any reason.

Applications for admission to Intermediate (IPC) and Final examinations are required to be made either online at http://icaiexam.icai.org **free of cost (*i.e.* ₹500/- for Intermediate (IPC) & Final candidates for the cost of application form shall not be charged if applications are filled in online)** or in the relevant prescribed form, copies of which may be obtained from the **Additional Secretary (Examinations), The Institute of Chartered Accountants of India,** 'ICAI BHAWAN', Indraprastha Marg, New Delhi – 110002 on payment of ₹500/- per application form in respect of Intermediate (IPC) and Final Examination candidates, whereas the Examination application forms for Management Accountancy Course (MAC) Part – I, Corporate Management Course (CMC) Part – I, Tax Management Course (TMC) Part – I, Insurance and Risk Management (IRM), International Trade Laws and World Trade Organisation (ITL & WTO) examination are to be filled up in the paper based form only and is priced at ₹100/- per application form. The forms shall also be made available in the Regional and Branch Offices of the Institute and can be obtained there from on cash payment on or from **12th August, 2014**.

Applications together with the prescribed fee by Demand Draft of any Scheduled Bank may be sent so as to reach the Additional Secretary (Examinations) at New Delhi not later than 30th August, 2014. However, applications will also be received at Delhi Office after **30th August, 2014** and upto **4th September, 2014** with late fee of ₹500/-. Applications for the students' examinations only duly filled in will also be received by hand delivery at the office of Institute at New Delhi and at the Decentralised Offices of the Institute at Mumbai, Chennai, Kolkata, Kanpur, Delhi, Ahmedabad, Bangalore, Ernakulam, Hyderabad, Indore, Jaipur, Nagpur, Pune, Surat, Thane and Vadodara upto 4th September, 2014. Candidates residing in these cities are advised to take advantage of this facility. Applications received after **4th September, 2014** shall not be entertained under any circumstances.

However, application forms duly completed for the Post Qualification Course Examinations i.e. Management Accountancy Course (MAC) Part – I, Corporate Management Course (CMC) Part – I, Tax Management Course (TMC) Part – I, Insurance and Risk Management (IRM), International Trade Laws and World Trade Organisation (ITL & WTO) will be received **only** at the New Delhi office of the Institute.

The candidates who apply online at http://icaiexam.icai.org from 12th August, 2014 to 30th August, 2014 and remit the fee online by using either VISA or MASTER Credit/ Debit Card shall not be charged ₹500/- in case of Intermediate (IPC) & Final examination (i.e. cost of application form fee). They shall however, be required to remit additional ₹500/- towards late fee in case the application online is made after 30th August 2014 and upto 4th September, 2014.

The fees payable for the various examinations are as under:

INTERMEDIATE (IPC)	
For Both the Groups / Unit - 9	₹1,600/-
For one of the Groups / Unit 1 to 8	₹1,000/-
FINAL EXAMINATION	
For Both the Groups	₹2,250/-
For one of the Groups	₹1,250/-

MANAGEMENT ACCOUNTANCY COURSE (MAC) PART - 1, CORPORATE MANAGEMENT COURSE (CMC) PART – I, TAX MANAGEMENT COURSE (TMC) PART – I EXAMINATIONS	
For Both the Groups	₹400/-
For one of the Groups	₹200/-

INSURANCE & RISK MANAGEMENT (IRM) EXAMINATION	₹1,000/-

INTERNATIONAL TRADE LAWS AND WORLD TRADE ORGANISATION (ITL & WTO) EXAMINATION:	
For Both the Groups	₹2,000/-
For one of the Groups	₹1,000/-

Candidates of Intermediate (IPC) and Final examination opting for Dubai/Abu Dhabi/ Muscat are required to remit, US$ 350 and US$ 400 respectively or their equivalent Indian Currency irrespective of whether a candidates appears in a group or in both the groups or in a unit.

Candidates of Intermediate (IPC) and Final Examinations opting for Examination Centre at Kathmandu are required to remit Indian ₹2,250/- and Indian ₹ 3,000/- respectively or their equivalent relevant foreign currency irrespective of whether the candidates appear in a group or in both the groups or in a unit.

OPTION TO ANSWER PAPERS IN HINDI:

Candidates of Intermediate (IPC) and Final Examinations will be allowed to opt for Hindi medium for answering papers. Detailed information will be found printed in the Information Sheets attached to the relevant application form. However the medium of Examinations will be only English in respect of Post Qualification Courses *viz.*: Management Accountancy Course (MAC) Part – I, Corporate Management Course (CMC) Part – I, Tax Management Course (TMC) Part – I, Insurance and Risk Management (IRM) Examination and International Trade Laws and World Trade Organisation (ITL & WTO) Examinations.

(T. KARTHIKEYAN)
SECRETARY

Applicability of SA 700

Applicability of SA 700, Forming an Opinion and Reporting on Financial Statements, To Formats of Auditor's Reports Prescribed under Various Laws and/ or Regulations (22-08-2013)

1. The Council of ICAI, at its 326th meeting held from 27th to 29th July 2013 considered the issue relating to application of Standard on Auditing (SA) 700, Forming An Opinion And Reporting on Financial Statements to such cases where the format of the auditor's report is prescribed under the relevant law or the regulation thereunder and are *per se* not in line with the requirements of SA 700. The Council noted that in many cases such prescribed auditor's report were required to be filed online in a preset form and, hence, it was not possible for the auditors to make necessary changes in these reports to bring them in line with the SA 700. Similarly, many a times, even where the auditor's report were to be submitted in a physical form and not filed online, the concerned regulatory/ government agencies may not accept such audit reports which contained any changes made by the auditors to the prescribed formats to bring them in line with SA 700.

2. In view of the above, the Council decided that while the matter was being taken up by the Institute with the relevant regulatory authorities/Government agencies, *etc.*, to change the prescribed formats for bringing the same in line with the requirements of SA 700, the members may, in the situations described in paragraph 1 above, submit the auditor's report in the format/s prescribed under the relevant law or regulation until announcement of necessary change is made by the appropriate authority. In such cases the members would not be viewed as having not complied with the provisions of SA 700.

3. In this context, it may also be noted that paragraph A55 of the SA 200, Overall Objectives of the Independent Auditor and the Conduct of An Audit in Accordance With Standards on Auditing clearly states as follows:
"A55. In performing an audit, the auditor may be required to comply with legal or regulatory requirements in addition to the SAs. The SAs do not override laws and regulations that govern an audit of financial statements....................."

4. Further, paragraph 43 of SA 700 requires that if the auditor is required by any law or regulation to

use a specific layout or wording of the auditor's report, the auditor shall refer to Standards on Auditing only if the auditor's report includes, at minimum, each of the elements as prescribed in the said paragraph.

5. On a perusal of a cross section of the formats of the auditor's report prescribed under various laws, specially, the Income-tax Act, 1961 and the Value Added Tax Acts of various States, it is clear that these prescribed formats do not contain all the elements of the auditor's report as required in paragraph 43 of SA 700. In the background of the difficulties mentioned in paragraph 1 above, it may also not be possible for the auditors to suitably modify the prescribed format. Accordingly, it would not *per se* be possible for the auditors to state in their audit reports that the audit has been carried out in accordance with the Standards on Auditing. However, the auditors would be required to carry out the audits in accordance with the Standards on Auditing issued by the Institute of Chartered Accountants of India.

The said announcement can also be downloaded from the link below: http://www.icai.org/new_post.html?post_id=9835

The Institute of Chartered Accountants of India

(Setup by an Act of Parliament)

Convocation - 2014

As you are aware, for promoting a sense of bonhomie among members, and also for bringing them closer to the Institute, the Institute of Chartered Accountants of India organizes Convocations for distribution of Certificates. This is an occasion to mark the entry of new members into the fraternity.

ICAI invites members enrolled during the period of December, 2013 to May, 2014, to participate in the Convocation wherein Certificate of Membership will be awarded amidst the august gathering of the President and other dignitaries. The schedule of the proposed Convocation is as under:

ICAI Convocation - 2014

Chennai - 4th July 2014, Friday	Kanpur - 22nd July 2014, Tuesday	Mumbai - 19th August 2014, Tuesday
Bangalore - 14th July 2014, Monday	Jaipur - 23rd July 2014, Wednesday	Ahmedabad - 25th August 2014, Monday
Kolkata - 17th July 2014, Thursday	Delhi - 6th August 2014, Wednesday	Pune - 26th August 2014, Tuesday
	Chandigarh-9thAugust 2014,Saturday	

This schedule has been released for the advance information of the participants. Further details about the Venue and Timing of the Convocation Programme scheduled will be intimated to the participants by the concerned Regional offices of ICAI.

Members who, due to any reason, could not attend the last Convocation held in January, 2014 at Delhi, Kolkata, Bangalore, Mumbai and Kanpur may also participate in the proposed Convocation. They are advised to be in touch with concerned Regional office of ICAI

28th April, 2014

Joint Secretary
MC & MSS Section

Classifieds

5140 Jamshedpur (Jharkhand) based CA firm, is looking for work on assignment, partnership basis. Jaluka & Associates, jalukaandassociates@gmail.com, 9709138711, 8406000707

5141 Kerala based firm of Chartered Accountants with corporate/bank audits require young/experienced CA's. Selected candidates will have excellent exposure to Company/Tax/ IS Audit and Consultancy and be groomed to eventually become partners of the firm. Please mail your resume to: job4caindia@gmail.com

5142 Chennai based FCA, seeks professional work on sub-contract/assignment basis. Also, interested in merger, networking & partnership. Email: madhavan.ca2008@gmail.com, Contact: 9865691436.

5143 Delhi based CA Firm invites proposals to induct new partners; open branch office in major metro cities. Contact: sunilbhatia.ca@gmail.com Mob: 9810214722

5144 CA Firm in Delhi willing to take up assignments on sub-contract/ partnership basis with other CA firms. Contact: nsassociates.ca@gmail.com Contact: 92 1210 4977.

5145 CAs are invited to get internal Quality and/or Peer review done to strengthen attest function. Mail in strict confidence to: sudhirca@vsnl.com

5146 Delhi based CA firm having exposure in audits, direct, indirect taxation and corporate compliancecs seeks professional work on sharing/assignment/sub-contract/retainership/partnership basis. Contact: 9871657744. E-mail: dev_bansal24@yahoo.com

5147 Delhi based 35 years old mid-sized firm having branches in Mumbai & Bangalore seeks merger proposal for small & mid-sized CA firms in Delhi/ Bangalore/Chennai/Mumbai/Hyderabad. Proposals are also invited from veteran CA firm's willing to retire from their practices and form partnerships. Contact: merger.firm@gmail.com

5148 Required old CA firm for merger. Also required partners/qualified assistants to open branch in India. Retired/lady members can apply. Contact to S. Kanungo, Flat No. 24, Shiela Mansion, Rath Road, Bhubaneswar-751014 or E-mail: ssahoo8998@gmail.com

5149 Senior FCA (DISA) having experience (both in profession and service), based at Bengaluru is seeking to join with an audit firm as a partner/consultant. Contacts: e-mail id, fca.profession@gmail.com; Mobile-09910038630

5150 Delhi based newly established CA firm (Proprietor) wishes to undertake professional work on assignment/ sharing basis, Contact: ca.shailesh.maheshwari@gmail.com

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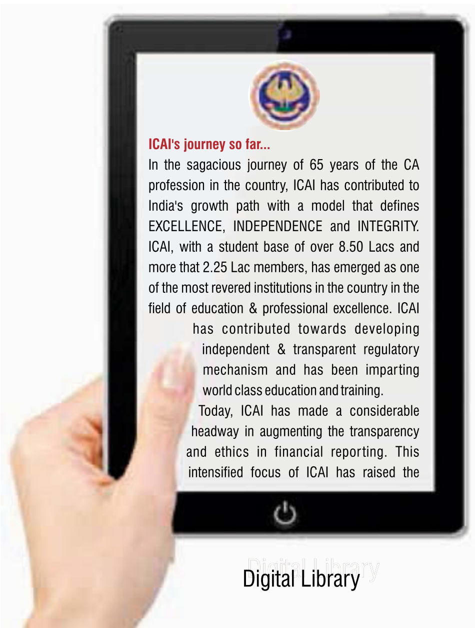

Digital Library

ICAI Publications Online Store

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The Institute of Chartered Accountants of India, the pioneering accounting body of India, introduces a revolutionary duo of technology initiatives- The ICAI Digital Library and ICAI Online Store, to empower CA students, young professionals and members in practice and industry to face the challenges of tomorrow.

The ICAI Digital Library - A repertoire of books

One stop destination of an exhaustive collection of various Digital Publications, e-Books and Journals offers online usable resources subscribed by ICAI. This digital knowledge bank helps and assists young professionals in pursuing higher education and professional development. Its robust search mechanism lets you glide effortlessly while browsing across for content.
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(https://icaionlinestore.org/)

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

www.icai.org

Moving Towards New Frontiers

Forthcoming Events[1]

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
1.	National Conference on Capacity Building Measures of CA Professionals with special focus on Companies Act, 2013	29th & 30th August, 2014	J.P. Hotels, I.P. Extension, New Delhi	12
Topics	• Accounts & Audit • Loans Advances and disclosure of interest by director • Provision Relating to board of Director • Depreciation & dividend • Deposit • Related parties transaction			
Fees	₹2000/- for Members of ICAI For registration online payment can be made on: http://www.icai.org/ccm.html?progid=611			
Contact Person	**Conference Chairman:** CA. Anuj Goyal, Central Council Member, ICAI & Chairman, CCBCAF&SMP, ICAI , E-mail: anujgoyal@icai.org **Programme Co-ordinator:** CA. Radhey Shyam Bansal, Chairman, NIRC of ICAI, Mobile: 9811019657, E-mail: rsbansalca@gmail.com **For Registration & Information:** • CA. Rakesh Varshney, Convenor, Jawahar Park Study Circle of NIRC of ICAI, Mobile: 9868075132, 9811208829, Email: rakeshvarshney2001@yahoo.com • Dr. Sambit Kumar Mishra, Secretary, CCBCAF&SMP, ICAI, Telephone: 0120-3045994, E-mail: sambit.mishra@icai.in			
2.	All India CA Conference	22nd, 23rd & 24th August, 2014	Hotel Mayfair, Bhubaneswar	12
Topics	• Direct Taxes – Highlights of the Union Budget 2014 • Implementation of Accounting Standard & IND AS-"Subjectivity overtaking Objectivity" • Value Addition through Availment of Cenvat Credit under Service Tax • Panel discussion on Indian Economy – Stressed or Growth propeller • Related Party Transactions, Provision relating to SME under Companies Act, 2013 • Compliance in respect to Disclosure in Accounting Standard • Auditing under CBS & ERP Platform • Panel discussion on "Sky is the limit for CAs"			
Fees	• Member: ₹2,500/- upto 20th August, 2014, ₹3,000/- after 20th August, 2014 • Non Member & Corporate Delegate: ₹3,000/- + S.T. upto 20th August, 2014, ₹3,500/- + S.T. after 20th August, 2014			
Contact Person	**Conference Chairman:** CA. Anuj Goyal, Chairman, CCBCAF&SMP, ICAI and CMA, ICAI, E-mail: anujgoyal@icai.org **Conference Co-ordinator:** CA. Partha Sarathi Mishra, Chairman, Bhubaneswar Branch of EIRC of ICAI, Mobile: 9437044824 Email: bhubaneswar@icai.org **For Registration & Information** • CA. Amit Kumar Agarwalla, Secretary, Bhubaneswar Branch of EIRC of ICAI, M: 9437029129 Email: amitagarwalla3@gmail.com • Dr. Sambit Kumar Mishra, Secretary, CCBCAF&SMP, ICAI, Phone: 0120-3045994, Email: sambit.mishra@icai.in			
3.	Workshop on Capacity Building Measures of CA professionals with special focus on budget updates	August 2, 2014	Dibrugarh	6
Topics[2]	• Budget Updates on direct taxes • Budget Updates on indirect taxes			
Fees	₹750/-			
Contact Person	**Conference Chairman:** CA. Anuj Goyal, Chairman, CCBCAF&SMP, ICAI and CMA, ICAI, E-mail: anujgoyal@icai.org **Conference Director:** CA. Sumantra Guha, Central Council Member, ICAI & Vice Chairman, CCBCAF&SMP, ICAI, Mobile: 09831015331, Email: ca.sumantraguha@gmail.com			

1 For more details about the forthcoming events please refer the detailed announcements hosted on the ICAI website www.icai.org

2 Don't give the details of technical sessions, timings and speakers, etc.

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
	For Registration & Information • CA. Navin Jain, Chairman, Dibrugarh Branch of EIRC of ICAI, Conference Co-ordinator, Mobile: 9435030076, Email: canavinjain@gmail.com • Dr. Sambit Kumar Mishra, Secretary, CCBCAF&SMP, ICAI, Phone: 0120-3045994, Email: sambit.mishra@icai.in			
4.	Certificate Course on Indirect Taxes	23rd August, 2014 to 12th October, 2014 (Every Saturday and Sunday) Time: 9.30 am to 5.30 pm	Delhi	70 Hours (50 Structured and 20 Unstructured)
Topics	The Certificate Course covers the following 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	₹20,000			
Contact Person	**Committee Chairman:** CA. Atul Kumar Gupta, Mobile: 09810103611, E-mail: atulservicetax@gmail.com **For Information contact:** Secretariat, Indirect Taxes Committee, Phone: 0120-3045954, 9350799932 E-mail: ccidt@icai.in **For Registration visit:** http://www.icai.org/post.html?post_id=7382			
5.	Two Days National Conference on Indirect Taxes	22nd and 23rd Aug, 2014 Time: 9.30 am to 5.30 pm	Bangalore	12
Contact Person	**Conference Chairman:** CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 09810103611, E-mail : atulservicetax@gmail.com **For Information contact:** • CA. Babu K Thevar, Ph. 09342500855, E-mail: bangalore@icai.org, kbabu74@yahoo.com • Secretariat, Indirect Taxes Committee, Ph: 0120-3045954, 9350799932, E-mail: ccidt@icai.in			
6.	Live Webcast	20th August, 2014 Time: 6.00 pm to 8.00 pm	Online	-
Topics	Point of Taxation Rules, 2011			
Contact Person	**Committee Chairman:** CA. Atul Kumar Gupta, Mobile: 09810103611, E-mail: atulservicetax@gmail.com **For Information contact:** Secretariat, Indirect Taxes Committee, Phone: 0120-3045954, 9350799932, E-mail: ccidt@icai.in			
7.	Seminar on Scope and Opportunities for Young Members in Practice and Service	7th August, 2014	Baroda	2
Topics	• Setting Up of Own Practice And Overview of Opportunities for CAs • Marketing Within Ethical Framework of ICAI • Expectations of Industry from Young CAs • Launch of Young Members Clinic of Baroda & • Open House Discussion			
Fees	₹100			
Contact Person	**Programme Chairman:** CA. Prafulla Chhajed, Chairman, Young Members Empowerment Committee, Mobile: 9821090612 or Email: pchhajed@yahoo.com **Programme Director:** CA. Jay Chhaira, Vice Chairman, Young Members Empowerment Committee, Mobile: 9825196241 or Email: jaychhaira@yahoo.com **For Registration & Information:** • CA. Nayan R. Kothari, Chairman, Baroda Branch of WIRC of ICAI, Programme Co-ordinator, Mobile: 9824433445, Email: nayan.r.kothari@icai.org • YMEC: Phone:(120) 3045945, Email: ymec@icai.in • Baroda Branch of WIRC: Phone: (0265) 2680593, Email: baroda@icai.org			

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
8.	National Residential Seminar on Taxation & Companies Act	15th, 16th and 17th August 2014	Vythiri, Wayanad, Kerala	12
Topics	• Direct Taxes - Profits and Gains of Business and Profession - Including Budget amendments • International taxation with special reference to NRI taxation • Service Tax -Including Budget Amendments • Accounting Standards vis-a-vis Attestation Function • Companies Act with Special reference to Schedule II and applicability of Accounting Standards			
Contact Person	• CA. Sujith Kumar T N, Chairman, Calicut Branch of ICAI, Phone : 0495-2770124, Mobile: 947383666, Email: calicut@icai.org • CA. Mohanan U, Chairman, Cannanore Branch of ICAI, Mobile: 9447016660, Email: umohananfca@yahoo.co.in • CA. Babu Abraham Kallivayalil, Central Council Member of ICAI, Mobile: 9846035333.			
9.	SAFA –IFAC Regional SMP Forum	10th October 2014, (9.00 AM to 6.00 PM)	Hotel Le-Meridian , New Delhi	6
Topics	• Global and Regional Trends and Developments Impacting SMPs • Quality Control and Efficient Auditing • Enhanced Practice Management and New Services			
Fees	₹ 2000 for ICAI Member US$ 75 for Foreign Delegates **For registration kindly visit:** http://www.icai.org/ccm.html?progid=615, http://www.icai.org/ccm.html?progid=616 Note: All payments/remittances should be made in favour of 'Secretary, The Institute of Chartered Accountants of India.'			
Contact Person	CA. Mudit Vashishtha, Assistant Secretary, International Affairs Cell The Institute of Chartered Accountants of India, Phone: +91-11-30110487, Fax: +91-11-30110591, Email: safa@icai.in			
10.	Residential Refresher Course	August 16-18, 2014	Haridwar	18
Topics	• Companies Act, 2013 • Recent developments in income tax • Recent developments in service tax • Capacity Building Measures for CA professionals			
Fees	₹1750/- for Non resident participants ₹1750/- + accommodation charges for resident participants			
Contact Person	**Conference Chairman:** CA. Anuj Goyal, Chairman, CCBCAF&SMP, ICAI and CMA, ICAI, E-mail: anujgoyal@icai.org **Conference Coordinator:** CA. Nitish Agarwal, Chairman, CIRC of ICAI, Mobile: 9414153796, Email: canitishagarwal@yahoo.com **For Registration & Information** • Shri S. K. Khan, Section Officer, CIRC of ICAI, M: 9026811212, Email: circ@icai.in • Dr. Sambit Kumar Mishra, Secretary, CCBCAF&SMP, ICAI, Telephone: 0120-3045994, Email: sambit.mishra@icai.in			

THE CHARTERED ACCOUNTANT JOURNAL
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
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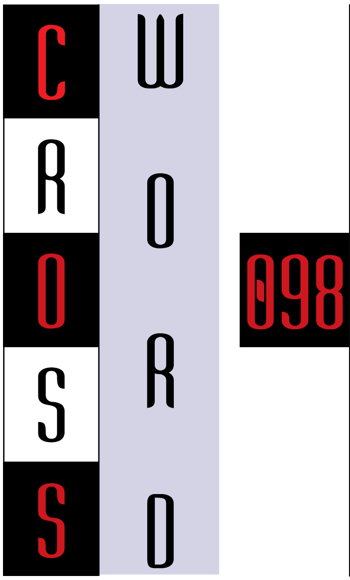
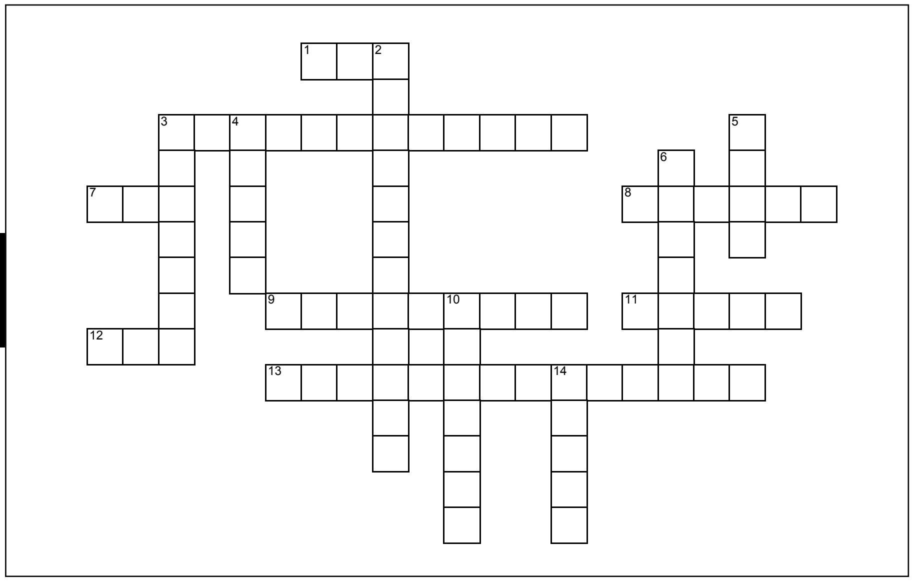
Please inform the respective regions immediately after you change the address to ensure regular and timely delivery of journals to you. Members can also update their address online in the 'Members' section placed on the top bar of ICAI website. The required link in the 'Members' section is titled 'Members: Update Your Residential and Professional Addresses' (http://www.icai.org/addupdate/). After updating the address online, the member is also required to download the update form and submit the same at their respective regional headline with their signature. Please note that once updated in the respective regional head offices' records, the new address gets automatically updated in the centralised data base of the Institute, from where the journal mailing list is prepared. Any queries or complaints in this regard can also be sent by email at journal@icai.in (for members), and eb@icai.in (for students) or contact at 0120-3045921.

Backpage





ACROSS

1. Mandatory wage ceiling of subscription to ____ raised from ₹6,500 to ₹15,000.
3. Proposed program to be launched by the Government to ensure broad band connectivity at village level.
7. Investment limit in ______raised to ₹1.5 lakh from ₹1 lakh.
8. Transport of organic ________ by vessel, rail or road (by GTA) is being exempted.
9. National Savings Certificate with ______cover to be launched.
11. Life micro-insurance schemes for the poor, approved by IRDA, where sum assured does not exceed rupees ________ thousand to be exempted from service tax.
12. Exemption limit for investment in financial instruments under 80C raised to ₹1.5 lakh from ₹ ____ lakh.
13 Income tax exemption limit raised by ₹50,000 to ₹2.5 lakh and for _______________to ₹3 lakh..

DOWN

2. Deduction limit on interest on loan for _____ ________ house raised to ₹2 lakh from ₹1.5 lakh.
3. Composite cap of foreign investment to be raised to 49 per cent in _______and Insurance sectors.
4. Taxable portion in respect of transport of ________by vessel has been reduced from 50% to 40% with effect from October 1, 2014.
5. Under administrative reforms of the Government, ______ development to be included in the list of Corporate Social Responsibility.
6. Export duty on ________increased from 10% to 20%.
10. Levy of an additional duty of Excise at 5% on _______waters containing added sugar.
14. The lock-in period for Long term capital gains for mutual funds increased to _____ years.

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.

Friend A: Why did you beat your wife so much?

Friend B: Doctor told me to "beat properly" before administering the medicine to her!

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