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THE CHARTERED ACCOUNTANT JOURNAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

SET UP BY AN ACT OF PARLIAMENT

Benchmarking CA Education with the Best in the World

NEW CA CURRICULUM

Making of a Global CA— The Way Forward

The changing façade of accountancy profession world over necessitates a periodic introspection of accountancy education to identify barriers, review developments having an impact on the profession, foster fresh thinking and facilitate easy transition. In short, the mantra for any profession to be at the cutting edge and stay in the competitive landscape is being futuristic in its outlook and responding to the trends affecting it.

In the words of Alan Kay, the famous computer scientist, *the best way to predict the future is to invent it*. The world is changing, and it's time for the accounting academia to change with it. The foremost recommendation of *Pathways Commission's Report* advocates building a learned profession for the future by purposeful integration of accounting research, education, and practice for students, accounting practitioners, and educators. Further, with the world economies increasingly becoming one, a future Chartered Accountant needs to be equipped with globally recognised competencies which would be relevant in any part of the world where he wishes to work or practice, that will also enable him to have a panoptic perspective. Interestingly, the unification of accounting and auditing standards may actually lead to uniformity of accountancy qualifications with accountancy becoming a global profession and all accountants sharing the same high standard of qualifications.

Producing a global Chartered Accountant would require development of strong technical and professional competencies, which may not be attainable in the way the CA education is delivered today. A strong conceptual foundation is often linked to on-campus education and considered to be lacking in distance learning education. To strengthen CA education in India, CA syllabi up to IIPCC level may be integrated with university curriculum at graduate level and education imparted in classroom setting by the universities. Exposure to short internships while undergoing a graduation course will help develop application skills in the students. Qualifying the graduation examination conducted by universities will ensure entry to the Final Course of the CA curriculum. This way, the quality of education delivery will improve and students entering the articles will also develop the expected maturity levels. This model of education delivery will also considerably reduce the stress levels of students undergoing graduation and CA course simultaneously.

Besides a model of education delivery, the mode of delivering education will also play a key role in making of a global Chartered Accountant. "The practice of accounting is changing rapidly. Its geographic reach is global, and technology plays an increasingly prominent role. A new generation of students has arrived, who are more at home with technology and less patient with traditional teaching methods" *[Pathways Commission's Report]*. In the coming years, the delivery of CA education in India must gradually progress towards being wholly on-line. The technologies that may be employed to reach out and impart education to the large number of students spread across the length and breadth of the country could be computer based learning systems (CBL), simulations, online tutorials and the like. Students find them advantageous, as they can be repeated as often as necessary to understand the concept being taught. ICAI would also need to rise to the new challenges and opportunities offered by recent interest in Massive Open On-line Courses (MOOCs). Use of IT would not only add value to the delivery of education, it would also increase the credibility of the evaluation of assessment. Further, bringing in technology in the regulation and monitoring of a student's progression in the course will enable both the student and his principal to assess his level of theoretical learning and practical experience at any time.

Education is a lifelong process. We can finish school...but we never finish our education, and it is seldom easy, says Zig Ziggler. It is this learning chartered accountancy education in India has chosen to act upon carefully when it recently set up CRET (Committee for Review of Education and Training), in its bid to respond to the expectations of our times, especially the world economics and commerce. The new CRET is actively considering various aspects of CA education in India, including those discussed above.

Change is the only constant in today's mutable business environment. CA students should be trained to be flexible enough to learn new skills. In fact, going by Tom Hood's brilliant formula, L > C, their rate of learning (L) should always be greater than the pace of change (C). Simply put, this is the future of education; teach students how to learn, and how to *continue* to learn. The professional accountant who constantly adapts and evolves to be able to respond to such mercurial expectations will finally be the one who will succeed in the struggle of professional subsistence. The ones who remain inert will be lost in oblivion. ■

-Editorial Board ICAI – *Partner in Nation Building*

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ICAI Bhawan, Post Box No.7100, Indraprastha Marg,
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V. Kalidasan, Kankshi Mehta, Nilesh Juvalekar, Ganesh Waradkar.
MUMBAI: Spenta Multimedia, Peninsula Spenta, Mathuradas Mill Compound, N. M. Joshi Marg, Lower Parel. Mumbai-400013. Tel: +91 (22) 24811022/24811025, Telefax: -91(22) 24811021.
DELHI: No.7, 1st Floor, Nizamuddin (West) Market. New Delhi-110013. Tel: +91 (11) 4669 9999.
BENGALURU: No.606, 1st Floor, Rear Building, 80 Feet Road, 3rd Cross, Opp. Koramangala Police Station, Bengaluru-560 095. Landmark - Behind Boca Grande Restaurant. Tel: +91(80) 4161 8966/77.
KOLKATA: 206-Jodhpur Park, Kolkata - 700068. Tel: +91(33) 2473 5896. Telefax: +91(33) 2413 7973.
CHENNAI: 1st Floor,#5 Montieth Road Egmore, Chennai 600 028. Tel: +91-44-4218 8984/85
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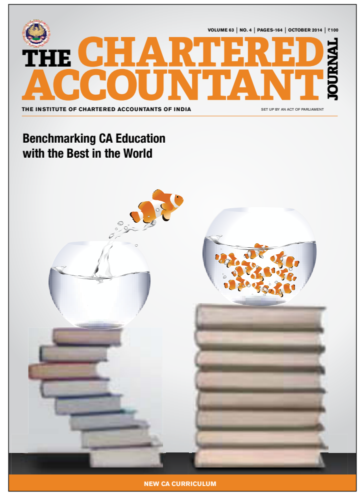

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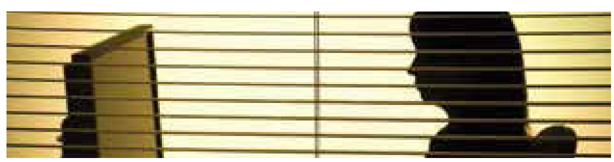

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From the President

CA. K. Raghu, President, ICAI

'My effort has been to facilitate Indian Chartered Accountants to take up global careers. Towards this end, we have particularly set our sights on Australia, where Indian Chartered Accountants have been writing a remarkable success story over the years. To promote this phenomenon further, we are working tirelessly through our three chapters in Sydney, Melbourne and Brisbane while three more chapters will soon be opened at Perth, Adelaide and Canberra. In line with this spirit, I recently signed an addendum to the MoU between ICAI and the Institute of Chartered Accountants in Australia (ICAA) and renewed our MRA with Certified Practicing Accountants (CPA) Australia at Sydney during my visit to Australia.'

Dear Professional Colleagues,

"*There is a higher court than (all) courts of justice and that is the court of conscience*," rightly said the father of our nation Mahatma Gandhi, for whom the professionalism was intertwined with ethics, call of conscience and service to the nation. This messiah of truth and non-violence also had a special knack for learning new things as part of which he even learnt the basics of accountancy while preparing for a legal case. As the world celebrates his birth anniversary on 2nd October, we as Chartered Accountants should be inspired by his learning- and service-oriented idea of professionalism, and people- and nation-oriented leadership. I feel that imbibing these traits will be our real tribute to the father of our nation.

India Set to Become a Global Hub for Accounting Professionals

I am happy to share with you my enthusiasm over the emerging silver lining in the accounting horizon of our country in the years to come. I clearly foresee India emerging as the global hub for accounting professionals since our country is emerging as a preferred destination of global business with a series of economic reforms being launched by our new government.

Further, India is set to usher a new era of accounting reforms with our Finance Minister's announcement in the Union Budget on implementation of Ind AS converged with IFRS, which will put Indian CAs in global demand. To complement this trend, new professional opportunities are emerging in the domains of Companies Act 2013, CSR Reporting, Direct Tax Code, GST, Integrated Reporting, XBRL, Cloud Computing and International Taxation, *etc.* India is now also being preferred as a low cost destination for outsourcing the accounting, pay-roll and tax filing services.

Our position as the second largest accounting body in the world with more than 235,000 members, a big stream of accounting technicians, and 850,000 students is constantly getting strengthened with hundreds of new members getting added every year and it will definitely steer India to become a global hub for accounting professionals.

From the President

Specialisation–The Need of the Hour

A recent study has found that in the wake of growing business complexities, knowledge requirements, regulatory and legal changes and client expectations, specialists will be preferred over generalists in future. As such, it is high time that we specialise and build domain expertise in various emerging areas of our profession also. We at the ICAI are very much alive to this need of specialisation and are offering 14 Post-Qualification Certificate Courses across the country for members to build new skill sets. I hope that these courses will help our members to conquer new frontiers.

Remarks by ITAT Bench Irks our Profession

The comments made about our profession and our members as a whole by a bench of ITAT at Mumbai were totally uncalled for. The Council deliberated on this matter and was of the unanimous view that the comments on our profession and functions of the ICAI were not warranted and totally out of context.

The Institute is conscious of its responsibility to regulate the conduct of its members and whenever it comes across any lapse, the same is appropriately dealt with under the disciplinary mechanism of the Chartered Accountants Act, 1949. The Council reiterates its respect for the judicial system in the country, including the Income Tax Appellate Tribunals. However, the Council has decided to take up the instant matter with appropriate authorities for expunging the aforesaid remarks made against the profession.

With an impeccable track record, our profession has been appreciated for its contribution in the growth and development of the nation and our fraternity has been held in high esteem for its professional excellence in society.

Our Actions in Satyam Case Completed

You would appreciate that as part of a continuous drive to uphold the credibility, integrity and image of the accountancy profession in India, our regulatory mechanism is working assiduously. The Disciplinary Directorate of ICAI has been taking disciplinary action against its errant members as per the provisions of the Chartered Accountants (Amendment) Act, 2006 and Rules framed thereunder. Here, I would like to update you on our actions emanating in the wake of the Satyam case. Soon after the Satyam scam was exposed, disciplinary action was initiated against the Statutory Auditors concerned, the CFO of the Company and the Head of Internal Audit Department. The Disciplinary Committee, after completion of enquiry against the aforesaid persons, has found them guilty of professional misconduct and has awarded the maximum punishment of removal of their names from the Register of Members permanently and also imposed a fine of ₹5 lakh each on them. The Appellate Authority constituted under Section 22A of the Chartered Accountants (Amendments) Act, 2006, in all cases, except one case which is yet to be heard by the said Authority, has also upheld the decision of the Disciplinary Committee of ICAI. With this, the ICAI has fulfilled its resolve to punish its erring members in this case.

Our Profession Scores a Victory in UP

I am happy to share with you that we have achieved a major victory in the state of Uttar Pradesh with regard to appearances in the cases of VAT. The Lucknow Bench of Allahabad High Court had earlier directed that any person, who is not a registered advocate, shall not be permitted to appear before the Authorities under the UP VAT Act, 2008. We took up this matter immediately and filed for impleadment and vacation of the said order dated 6th August, 2014. Consequently, the Lucknow Bench of Allahabad High Court has now modified the order and allowed the Chartered Accountants to appear before the authorities under the VAT Act in the state of Uttar Pradesh.

Expanding our Global Horizons—MoUs with ICAA and CPA Australia

Today's knowledge economy doesn't have any boundaries, and the time is not far when we all have to compete in a globalised environment. My effort has been to facilitate Indian Chartered Accountants to take up global careers. Towards this end, we have particularly set our sights on Australia, where Indian Chartered Accountants have been writing a remarkable success story over the years. To promote this phenomenon further, we are working tirelessly through our

From the President

three chapters in Sydney, Melbourne and Brisbane while three more chapters will soon be opened at Perth, Adelaide and Canberra.

In line with this spirit, I recently signed an addendum to the MoU between ICAI and the Institute of Chartered Accountants in Australia (ICAA) and renewed our MRA with Certified Practicing Accountants (CPA) Australia at Sydney during my visit to Australia. Chief Executive Officers Mr. Lee White and Mr. Alex Malley signed these agreements on behalf of these professional bodies respectively, which was witnessed by NSW Finance & Services Minister Mr. Dominic Perrottet and MP Mr. Charles Cassucelli among a host of dignitaries.

The purpose of these agreements is to recognise the qualification and training of each other, and admit the members in good standing by prescribing a bridging mechanism on principles of reciprocity. I am sure these agreements will provide professional edge and opportunities to our Australia-based and Australia-bound members besides boosting India-Australia bilateral relations by facilitating increased mobility of professionals at either ends.

As you may be aware, the ICAA, with 62,000 members, represents Chartered Accountants in Australia while the CPA Australia is one of the world's largest accounting bodies with a membership of more than 150,000 finance, accounting and business professionals in 121 countries across the globe.

During my visit, I also had the opportunity of meeting and interacting with the members of our Sydney, Melbourne and Brisbane Chapters. I also took part in the 3rd Annual International Conference on *Australia India: Changing Perspective* organised by our Sydney Chapter, where a Global Career e–Kit was also launched as a sequel to such kits already launched at UAE, Kuwait and Muscat to provide panoramic view of the primary information to our members intending to go abroad for professional forays.

Our Role in Checking the Rising Banking Frauds

Recently, the banking frauds have dominated the headlines. You will be surprised to know that public sector banks have cumulatively lost a massive sum of ₹22,743 crore due to cheating and forgery in the last three years alone. Our banking system is also under severe strain because of mounting non-performing assets.

As the keepers of financial discipline in the country with long and strong association with the banking industry, this situation should worry us all the more. Given our training, exposure and skills, we can play a crucial role in reversing the rising trend of banking frauds and NPAs by adopting an approach of preventive vigilance in whatever capacity we serve the banking industry—be it as an auditor, as an employee, or as management consultants. In this context, the conduct of Bank Branch Audit by us and the need for wider coverage of public sector banks under this exercise assumes paramount importance for the banking industry, the banking regulator and the nation as a whole.

As such, pursuing our firm and long held stand, we have recently approached the Reserve Bank of India Governor Shri Raghuram Rajan for considering an increase in audit coverage of branches of public-sector banks under Statutory Audit by restoring the threshold (Advances) limit for audit of branches of public sector banks to ₹6 crore. In view of the rising banking frauds and NPAs, this is the need of the hour. The concerned Finance Ministry is also seriously considering 'policy tightening' and 'strengthening of risk management', and our stand on the threshold (Aadvances) limit for audit of bank branches perfectly gels with the Government move.

Further, our role in Information System Audit in the capacity of ICAI's DISA-qualified members is also very important. We may further enhance our fraud detection and investigative skills by pursuing a specialised Certificate Course of the Institute on Forensic Accounting & Fraud Detection. Let's lend our professional expertise and acumen for a healthy and resilient banking industry in India.

Tremendous Response to CABF in Aid of the Needy

Chartered Accountants Benevolent Fund has been our effective answer to the calls of our members in distress. I am thankful and happy to note your tremendous response to our appeals to strengthen the corpus of this fund to help the families of our fellow professionals in need. We have received an encouraging contribution of ₹56,08,218 so far from 2nd March 2014 to 20th August, 2014. Out of the total corpus, ₹70,16,000 has been granted as financial assistance to the families of deceased members during this period. Let's keep up this benevolent trend.

Network of Reading Rooms Expanded

Many of you may be aware that providing reading facilities to our students has been very close to my heart. Thus, I have laid special emphasis on establishing more and more reading rooms across the country. I am happy to inform you that pushing this initiative forward, we have been able to establish 98 Reading Rooms at various places across the nation. This facility provides a conducive reading environment to students who do not have facility to study at home. This initiative also provides an opportunity to students coming from remote areas to study in metros and bigger cities.

More ITT Centres to Leverage Technology

Considering the importance of Information Technology in the accounting profession and in order to impart synchronised and uniform theoretical and practical IT knowledge to all the aspiring CA students in the IT area, the Institute has established its own IT labs equipped with latest computers, software and other infrastructural facilities at almost all its branches and regional offices. As on date, 156 ITT centres are imparting IT training to our CA students and four of these ITT centres namely Bhavnagar, Anantapur, Ongole and Karimnagar were given accreditation for conducting IT training recently.

Young Members Practitioners Kit

Post-liberalisation of our economy, the demand from industry for young Chartered Accountants has increased manifold in various sectors of the economy. There are endless opportunities for practicing young CAs. To help our young members tap these enormous opportunities, we are all set to launch Young Members Practitioners Kit which would provide young CAs an insight into the various aspects of practice. These aspects include the constitution of the practice entity, areas of specialisation, office infrastructure, branding, staffing and HR management, modern audit tools and techniques, audit programme, *etc.* The information contained in this manual will be very informative and will guide our young members to be effective and successful practitioners.

XIX World Congress of Accountants in Rome

I am glad to inform you that ICAI has been invited to share India's vision at the World Congress of Accountants which will be held in Rome in November this year on the theme *'2020 Vision: Learning from the Past, Building the Future'*. More than 5,000 world accountancy professionals are expected to participate and make use of this platform to address contemporary concerns in global accountancy and discuss the professional challenges and respective solutions. While I am one of those invited to speak in this mega conference, it will be a chance for our profession to affirm its fundamental role in serving the public interest.

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Before I conclude, I would also like to remember another great nationalist leader, freedom fighter and former Prime Minister Shri Lal Bahadur Shastri who was also born on 2nd October and still remembered for his vision and famous slogan of *Jai Jawan Jai Kisan*. A son of the soil and a man of people and principles, he was of the opinion that: *'Hard work is equal to prayer'*, which is worth taking note of by all of us.

Meanwhile, it is time for the onset of the season of festivals which give us a chance to celebrate life with togetherness. I extend my best wishes in advance to all on Dussehra, Diwali, Chhath and Id-ul-Azha festivities.

Best Wishes,

K. Raghu

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

Photographs

Mumbai Convocation Inaugurated

Chief Guest Union Heavy Industries & Public Enterprises Minister Shri Anant Gangaram Geete lights the lamp, while ICAI President CA. K. Raghu and Vice-President CA. Manoj Fadnis along with Guest of Honour Member of Parliament Shri Arvind Sawant, Central Council members CA. Nilesh Shivji Vikamsey, CA. Tarun Jamnadas Ghia, CA. Prafulla Premsukh Chhajed, CA. M. Devaraja Reddy, CA. Shriniwas Y. Joshi and WIRC Chairman CA. Anil Bhandari, among others, share the moment. (19th August, 2014)

Ahmedabad Convocation

Inauguration

ICAI President CA. K. Raghu lights the lamp in the presence of Gujarat Chief Minister Smt. Anandiben Patel, while ICAI Vice-President CA. Manoj Fadnis, Central Council members CA. Dhinal Ashwinbhai Shah, CA. Tarun Jamnadas Ghia, CA. Prafulla Premsukh Chhajed, CA. M. Devaraja Reddy, CA. Jay Ajit Chhaira and WIRC Chairman CA. Anil Bhandari, and Branch Chairman CA. Aniket Talati, among others, share the dais (25th August, 2014)

ICAI President with Gujarat Chief Minister

ICAI President CA. K. Raghu in a candid discussion with Gujarat Chief Minister Smt. Anandiben Patel, during the convocation's proceedings (25th August, 2014)

Pune Convocation Inaugurated

ICAI Vice-President CA. Manoj Fadnis lights the lamp to inaugurate the convocation in the presence of chief guest, Chief of Staff (Southern Command) Lt. Gen. K. Surendranath, while Central Council members CA. Tarun Jamnadas Ghia, CA. Prafulla Premsukh Chhajed, CA. M. Devaraja Reddy and CA. Shiwaji Bhikaji Zaware, among others, share the moments (26th August, 2014)

Photographs

All India Conference in Bhubaneswar

ICAI President CA. K. Raghu lights the lamp to inaugurate the Conference in the presence of Union Petroleum Minister of State (Independent Charge) Shri Dharmendra Pradhan, while ICAI Vice-President CA. Manoj Fadnis, Central Council member CA. Anuj Goyal and EIRC Chairman CA. Subhash Chandra Saraf, among others, share the moments (22nd August, 2014)

Welcome at Guwahati Branch of EIRC

Branch Chairman CA. Kailash Prasad Sarda presents a memento to ICAI President CA. K. Raghu, while Central Council members CA. Sumantra Guha and CA. M. Devaraja Reddy, among others, share the moments (3rd August, 2014)

National Seminar at Ernakulam Branch of SIRC

Inauguration

ICAI President CA. K. Raghu lights the lamp to inaugurate the Seminar, while Central Council members CA. Babu Abraham Kallivayalil and CA. G. Sekar, SIRC members CA. V. X. Jose and CA. Jomon K. George, and Branch Chairman CA. M. O. Poulose, among others, share the moments (10th September, 2014)

ICAI President Addresses

ICAI President CA. K. Raghu addresses the participants, while Central Council members CA. Babu Abraham Kallivayalil and CA. G. Sekar, SIRC members CA. V. X. Jose and CA. Jomon K. George, and Branch Chairman CA. M. O. Poulose, among others, share the dais (10th September, 2014)

Sub-Regional Conference in Aurangabad

Branch Chairman CA. Vijay B. Rathi and WIRC Treasurer CA. Girish Kulkarni present a memento to ICAI President CA. K. Raghu, while Central Council member CA. Prafulla Premsukh Chhajed and WIRC Chairman CA. Anil Bhandari share the dais (23rd August, 2014)

Advertisement

Photographs

International Initiatives

Meeting with SAICA CEO in Johannesburg

ICAI President CA. K. Raghu shakes hands with SAICA CEO Dr. Terence Nombembe, during his visit to Johannesburg ; Central Council member CA. Rajkumar S. Adukia can also be seen sharing the space (14th August, 2014)

Visit to Australia (Melbourne) Chapter of ICAI

ICAI President and Vice-President CA. K. Raghu and CA. Manoj Fadnis stand together with ICAI Australia (Melbourne) Chapter Chairman CA. Amar Dutia, and other members of accounting fraternity (20th September, 2014)

MRA Signing between ICAI and Chartered Accountants Australia and New Zealand

ICAI President CA. K. Raghu signs the documents of MRA with Chartered Accountants Australia and New Zealand in the presence of its Chief Executive Officer Mr. Lee White, while ICAI Vice-President CA. Manoj Fadnis, ICA Australia's Director Asia Mr. Andrew Stringer and ICAI Australian (Sydney) Chapter's Chief Mentor CA. Yateender Gupta can also be seen on the occasion (19th September, 2014)

Exchange of MRA between ICAI and CPA Australia

ICAI President CA. K. Raghu and CPA Australia Chief Executive Mr. Alex Malley exchange signed MRA documents, in the presence of ICAI Vice-President CA. Manoj Fadnis and ICAI Australian (Sydney) Chapter's Chief Mentor CA. Yateender Gupta , among others, on the occasion (19th September, 2014)

Visit to Nairobi (Kenya) Chapter of ICAI

ICAI President CA. K. Raghu happily joins the ICAI members of its Kenya Chapter for a group photograph; Central Council member CA. Rajkumar S. Adukia also accompanies the President on the occasion (17th August, 2014)

Advertisement

Photographs

ICAI Welcomes CBDT Chairman

ICAI President CA. K. Raghu presents a bouquet to the CBDT Chairman Shri K. V. Chowdary to welcome him at Central Council meeting at ICAI headquarters, while ICAI Vice-President CA. Manoj Fadnis shares the moments (27th August, 2014)

Training Programme for Women Directors

ICAI President CA. K. Raghu lights the lamp to inaugurate the training programme, while the Central Council members CA. S. Santhanakrishnan, CA. Vijay Kumar Gupta, CA. Shiwaji Bhikaji Zaware, CA. Babu Abraham Kallivayalil and CA. Charanjot Singh Nanda, among others, share the moments (28th August, 2014)

CBDT Chairman at ICAI Council

ICAI President and Vice-President, CA. K. Raghu and CA. Manoj Fadnis, along with Central Council members join CBDT Chairman Shri K. V. Chowdary for a group photograph during Central Council meeting (27th August, 2014)

Ahmednagar Branch of WIRC Donates to CABF of ICAI

Ahmednagar Branch Chairman CA. Ajay Mutha presents a cheque to ICAI President CA. K. Raghu, of the amount of ₹1,11,000/- towards CA Benevolent Fund of ICAI during a members' meet at the Branch, in presence of Central Council members CA. Dhinal Ashwinbhai Shah and CA. Prafulla Premsukh Chhajed, and WIRC Chairman CA. Anil Bhandari, among others (23rd August, 2014)

Advertisement

Know Your Ethics

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

A. No, it is not permissible for a member to address letters or circulars to persons who are likely to require services of a Chartered Accountant. It would tantamount to advertisement (as per para (g) under clause (6) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 of Code of Ethics, 2009).

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

A. It has been clarified by the Council under proviso (ii) to clause (6) of the part-I of the First schedule of the Chartered Accountants Act, 1949 that if announcements are made for empanelment by the Government, Corporations, Courts, Cooperative Societies, Banks and other similar institutions, the members may respond to such announcements provided the existence of panel is within their knowledge. The Council has further clarified that the quotations of fees can be sent, if enquiries are received by the members in this regard.

Q. Whether Companies in which Chartered Accountants have been appointed as directors on their Board can publish description about the Chartered Accountant's expertise, specialisation and knowledge in any particular field or add appellations or adjectives to their names in the prospectus or public announcements issued by these companies?

A. The Council's attention has been drawn to the fact that more and more companies are appointing Chartered Accountants' as directors on their Boards. The prospectus or public announcements issued by these companies often publish descriptions about the Chartered Accountants' expertise, specialisation and knowledge in any particular field or add appellations or adjectives to their names. Attention of the members in this context is invited to the provisions of Clause (6) and (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949. In order that the inclusion of the name of a member of the Institute in the prospectus or public announcements or other public communications issued by the companies in which the member is a director does not contravene the above noted provisions, it is necessary that the members should take necessary steps to ensure that such prospectus or public announcements or public communications do not advertise his professional attainments and also that such prospectus or public announcements or public communications do not directly or indirectly amount to solicitation of clients for professional work by the member. While it may be difficult to lay down a rigid rule in this respect, the members must use their good judgement, depending upon the facts and circumstances of each case to ensure that the above noted provisions are complied with both in letter and spirit. It is advisable for a member that as soon as he is appointed as a director on the Board of a company, he should specifically invite the attention of the management of the company to the aforesaid provisions and should request that before any such prospectus or public announcements or public communication mentioning the name of the member concerned, is issued, the material pertaining to the member concerned should, as far as practicable be got approved by him.

Q. What is the professional or other misconduct?

A. Section 22 of the Chartered Accountants Act, 1949 defines professional or other misconduct as follows :-

"For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

What constitutes `misconduct under any other circumstances' has to be determined on case to case basis keeping in view the facts of the circumstances of each case. Fraud, intention to deceive and committing an act which affects the public or society at large could be in the ambit of such misconduct. Following are few examples of `misconduct under any other circumstances' by a member :-

1. Conviction by a competent Court for an offence involving moral turpitude punishable with imprisonment or for an offence not of a technical nature committed by a member in his professional capacity.
2. Retention of books and documents of the client and failure to return these to the client on request without a reasonable cause.

* Contributed by the Ethical Standards Board of the ICAI

3. Material misrepresentation e.g. misrepresenting to a firm, while seeking employment as an accountant, that he has worked for three years as a senior assistant with another firm.
4. Publishing an advertisement in a newspaper with malafide intention to malign any person.
5. Using objectionable, derogatory and abusive language or/and making irrelevant, incoherent irresponsible and insane statements in his correspondence with a person.

Q. Can a member in practice indicate in a book or an article, authored/contributed/published by him, his association with any firm of Chartered Accountants?

A. No, as per Para (e) under Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949 as appearing in the Code of Ethics, 2009 a member is not permitted to indicate in a book or an article, authored/contributed/published by him, the association with any firm of Chartered Accountants.

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

A. Yes, in terms of proviso (i) of Clause (6) of Part-I of the First Schedule to the Chartered Accountants Act, 1949, a member is permitted to apply or request for or to invite or to secure professional work from another Chartered Accountant in practice.

The issue of advertisement or a circular by a Chartered Accountant, seeking work from professional colleagues on any basis whatsoever is in violation of Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949. However, classified advertisement in the Journal/Newsletter of the Institute is permissible in this regard. A member is permitted to issue a classified advertisement in the Journal/ Newsletter of the Institute intended to give information for sharing professional work on assignment basis or for seeking professional work on partnership basis or salaried employment in the field of accounting profession provided it only contains the accountant's name, address, telephone, fax number and E-mail address.

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

A. No, Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 prohibits solicitation of clients or performing work either directly or indirectly by circular, advertisement, personal communication or interview or by any "other means". The issuance of circular to persons who are not clients but may likely requires services of a chartered accountant would tantamount to advertisement since it is solicitation of professional work by making roving enquiries. As per Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949, the usage of the words "one of the largest accounting firms of the World" and the specification of specialization in "taxation" would also amount to advertisement and, thus, constitute professional misconduct.

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

A. Yes, under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, there is no restriction in the Code of Ethics for mentioning the word "Chartered Accountant" and also the name of city in an article contributed by a member in the Institute's Journal as well as in newspapers and other periodicals.

Q. Whether the information contained in the website of the Chartered Accountants and/or Chartered Accountants' firms can be circulated on their own or through e-mail or by any other mode or technique?

A. Sub-para (3) & (4) of Para (m) under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 as appearing in the Code of Ethics, 2009 prescribes that the Chartered Accountants and/or Chartered Accountants' firms should ensure that none of the information contained in the website be circulated on their own or through e-mail or by any other mode or technique except on a specific "pull" request. The Chartered Accountants and/or Chartered Accountants' Firms would ensure that their Websites are run on a "pull" model and not a "push" model of the technology to ensure that any person who wishes to locate the Chartered Accountants or Chartered Accountants' firms would only have access to the information and the information should be provided only on the basis of specific "pull" request. ■

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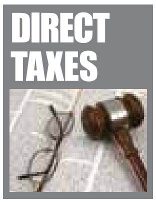
Circulars/Notifications

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



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

I. NOTIFICATIONS

1. Agreement for avoidance of double taxation and prevention of fiscal evasion with Bhutan

In exercise of the powers conferred by Section 90 of the Income-tax Act, 1961, the Central Government has notified that all the provisions of agreement entered into force on 17th July, 2014 between the Government of the Republic of India and the Royal Government of Bhutan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed on 4th March, 2013, shall be given effect to in the Union of India in respect of income derived in any fiscal year beginning on or after the first day of April following the calendar year in which agreement enters into force.

[Notification No. 42/2014, dated 05-09-2014]

The complete text of the above circulars can be downloaded from the link below:

http://law.incometaxindia.gov.in/DIT/Notifications.aspx

II. INSTRUCTIONS

1. Compulsory manual selection of cases for scrutiny during Financial Year 2014-15

In supersession of earlier Instructions on the above subject, the Board has laid down the procedure and criteria for manual section of returns/cases for scrutiny during the financial year 2014-2015. In order to ensure the quality of assessment being framed, Pr. CCsIT/CCsIT/Pr.DGsIT/DGsIT have been directed to evolve suitable monitoring mechanism.

[Instruction No.6/2014, dated 02-09-2014]

The complete text of the above circulars can be downloaded from the link below:

http://law.incometaxindia.gov.in/DIT/Circulars.aspx

III. ORDERS

1. Constitution of a Committee for proper administration of certain clarificatory amendments introduced *vide* Finance Act, 2012

The Finance Minister in his budget speech announced that all fresh cases arising out of the retrospective amendments of 2012 in Sections 2(14), 2(47), 9(1)(i) and 195 of the Act in respect of indirect transfer will be scrutinised by a high level Committee. Accordingly, the Central Board of Direct Taxes has, by exercising its powers conferred under Section 119 of the Act, constituted a Committee to dispose of the proceedings effectively and expeditiously. Where any Assessing officer considers that any income is deemed to accrue or arise in India before 1st April, 2012 through transfer of a capital asset situated in India in consequence of the amendments introduced with retrospective effect, and as on the date of this order,—

(i) no proceeding of assessment or reassessment in relation to the said income is pending; or

(ii) no notice for proposed assessment or re-assessment in relation to the said income has been issued; or

(iii) no proceeding under Section 201 of the Act is pending, or no notice for initiation of such proceeding has been issued in relation to the said income,

then, before proceeding with any action in relation to the said income, the Assessing Officer shall seek prior approval of the Committee for the proposed action by making a reference to the Committee through the Principal Commissioner or the Commissioner concerned. The Assessing Officer shall forward a copy of the reference to the assessee. The Committee, on receipt of the reference from the Assessing Officer, shall examine the proposed action of the Assessing Officer and, after providing an opportunity to the assessee, take a decision on the proposed action. The Committee shall endeavor to decide the reference within 60 days of its receipt by the Secretary of the Committee. However, the

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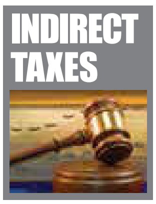
Committee shall have due regard to any limitation period involved in the proposed action. The Assessing officer shall thereafter proceed in accordance with the directions of the Committee. The Committee would be required to submit periodic report in the format prescribed in Annexure (A) to this order, to the CBDT.

[Order, dated 28-08-2014]

The complete text of the above circulars can be downloaded from the link below:

http://law.incometaxindia.gov.in/DIT/Circulars.aspx



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

A. SERVICE TAX

1. Mega Exemption Notification amended to exempt Services related to religious pilgrimage facilitated by 'specified organisations'

Notification No. 17/2014-ST dated 20th August, 2014 amends Mega ExemptionNotification No. 25/2012–ST dated 20th June, 2012 to exempt Services provided by a specified organisation related to religious pilgrimage facilitated by Ministry of External Affairs of the Government of India, under bilateral arrangement vide a new entry 5A.

Specified Organisation here shall mean Kumaon Mandal Vikas Nigam Limited, a Government of Uttarakhand Undertaking or 'Committee' or 'State Committee' as defined in Section 2 of the Haj Committee Act, 2002.

[Notification No. 17/2014–ST, dated August 20, 2014]

2. Amendments in Negative List applicable w.e.f. 1st October, 2014

Finance (No. 2) Act 2014 had proposed certain changes in Negative List which were to be applicable from a future date to be notified. These changes have now been effected from 1st October, 2014 *vide Notification No. 18/2014-ST dated August 25, 2014.*

Consequent to the efficacy of the notification, following shall be the impact:

- Radio Taxi now also fall under the ambit of service tax at par with rent a cab service. Benefit of *abatement Notification No. 26/2012 dated 20th June, 2012* has also been extended *vide* new entry No.9A wherein Taxable portion will be 40% of the amount charged *i.e.* on the services provided by radio taxi, service tax payable will be payable 4.944% of the amount charged.
- Broadening of the tax base by extension of service tax levy on all forms of advertisements except print media such as 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.

Exclusion of Print media advertisement includes sale of space for advertisements in newspapers, book other than business directories/yellow pages/trade catalogues.

[Notification No. 18/2014 - ST dated August 25, 2014]

3. Service Tax Rules, 1994 amended w.e.f 01.10.2014 to provide for determination of Rate of exchange & Power to issue supplementary instructions

In order to calculate the value of taxable services sought to be imported into the taxable territory, the rate of exchange needs to be determined. In this regard, as per the new Rule 11 of the Service Tax Rules, 1994, the rate of exchange shall be taken as per the generally accepted accounting principles for such valuation.

As per the new Rule 12 of the Service Tax Rules, 1994, instructions for any incidental or supplemental matters for the implementation of the provisions of the Act may be issued by the Board or the Chief Commissioners of Central Excise.

[Notification No. 19/2014-ST dated August 25, 2014]

B. CENVET CREDIT RULES

1. Rule 12AAA of CCR, 2004 on misuse of CENVAT Credit amended to include provider of Taxable service

Rule 12AAA of CENVAT Credit Rules, 2004, empowers the Central Government to impose restrictions on manufacturer, first stage and second stage dealer or an exporter in case of misuse of provisions of CENVAT Credit Rules, 2004. These restrictions include restrictions on utilisation of CENVAT Credit, suspension of registration in case of a dealer, type of facilities to be withdrawn, *etc.*

Notification No. 25/2014-CE, (N.T.) dated 25th August, 2014 specifies that the provisions of Rule

12AAA would also be applicable on provider of taxable service with immediate effect.

[Notification No. 25/2014-CE, (N.T.) dated August 25, 2014]

2. CENVAT Credit Rules amended relating to service tax certificate for Transportation of goods by Rail

Notification No. 26/2014-CE, (N.T.) dated 27th August, 2014 amends Rule 9 sub rule 1 of CENVAT Credit Rules, 2004 to include a Service Tax Certificate for Transportation of goods by Rail (STTG Certificate), issued by the Indian Railways, along with the photocopies of the railway receipts mentioned in the STTG certificate, in the list of documents on the basis of which CENVAT Credit can be availed by the assessee.

[Notification No. 26/2014-CE, (N.T.) dated August 27, 2014]

3. Registration of appeals in CESTAT on or after 06.08.2014

Circular No. F.No.15/CESTAT/General/2013-14 dated August 28, 2014 issued by Registrar, CESTAT directing all the DRs/ARs/TOs that the appeals received on or after 06.08.2014 may be registered in following cases:

(i) If the mandatory deposit of duty or penalty, as the case may be, has been made in Cash and evidence thereof is produced at the time of filing appeal.

(ii) If mandatory deposit of duty confirmed is made from CENVAT account and evidence thereof is produced.

(iii) If the appellants have made deposit of the duty assessed subsequently, during investigation and if the same is more than the mandatory deposit as stipulated in the captioned amendments.

Further clarification is also sought from the competent authority regarding confusion of adjustment of CENVAT Credit against mandatory penalty, on the receipt of the same further clarification would be issued.

[Circular No. F.No.15/CESTAT/General/2013-14 dated August 28, 2014]

C. EXCISE

I. Clarification regarding amendment in Appeal provisions made by Finance Act, 2014

Section 35F of the Central Excise Act, 1944/Section 129E of the Customs Act, 1962 have been substituted with new sections to prescribe mandatory pre-deposit as a percentage of the duty demanded where duty demanded is in dispute or where duty demanded and penalty levied are in dispute. However, where penalty alone is in dispute, the pre-deposit shall be calculated on the penalty imposed. The amount of pre-deposit payable would be subject to a ceiling of ₹ 10 crore.

CBEC has issued *Circular No. 984/08/2014-CX dated 16th September 2014* wherein the following issues have been clarified:

1. Quantum of pre-deposit

- In the event of appeal against the order of Commissioner (Appeals) before the Tribunal, 10% is to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeals). This amount may or may not be same as the amount of duty demanded or penalty imposed in the Order-in-Original in the said case.
- In a case, where penalty alone is in dispute and penalties have been imposed under different provisions of the Act, the pre-deposit would be calculated based on the aggregate of all penalties imposed in the order against which appeal is proposed to be filed.
- In case of any short payment or non-payment of the stipulated amount, the appeal filed is liable for rejection.

2. Payments made during Investigation

- Payment made during the course of investigation or audit, prior to the date on which appeal is filed, can be considered to be deposit made towards fulfilment of stipulation under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962. Any shortfall from the amount stipulated under these sections shall have to be paid before filing of appeal before the appellate authority. However, any excess payment will not be treated as deposits under the said sections.
- The date when the deposit is made would be considered as the date of filing of appeal.

3. Recovery of the Amounts during the Pendency of Appeal

- Old instructions issued by the board prior to enactment of the amended Section 35F

of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, would not apply with regard to recovery of amounts due to the Government in this regard.

- If the party/assessee shows the proof of payment of stipulated amount as pre-deposit of 7.5%/10%, subject to a limit of Rs.10 crore and the copy of appeal memo filed with the appellate authority to the jurisdictional authorities, no coercive measures for recovery of the balance amounts can be taken during the pendency of the appeal.
- If the Tribunal decides a case in favour of the Department, recovery action for the amount over and above the amount deposited under the provisions of Section 35F/129E may be initiated provided that the order of the Tribunal is not stayed by the High Court/Supreme court. This amount to be recovered will include the interest amount calculated at the specified rate, from the date duty became payable till the date of payment.

4. Refund of Pre-Deposit

- When an appeal is decided in favour of the party/assessee, he shall be entitled to refund of the amount deposited along with the interest at the rate of 6 % rate from the date of making the deposit to the date of refund. This is to be done within 15 days of receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not. Even if Department is contemplating an appeal against the order of the Commissioner (Appeals) or the order of CESTAT, which is in favour of the appellant, refund along with interest would still be payable unless such order is stayed by a competent Appellate Authority.
- In the event of a remand, refund of the pre-deposit shall be payable along with interest. In case of partial remand where a portion of the duty is confirmed, it may be ensured that the duty due to the Government is collected by adjusting the deposited amount along with interest.
- Refund of pre-deposit made should not be withheld on the ground that Department is proposing to file an appeal or has filed an appeal against the order granting relief to the party.

[Circular No. 984/08/2014-CX dated 16th September 2014]

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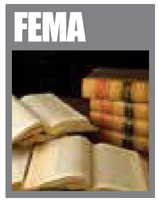

(Matter on FEMA has been contributed by CA. Manoj Shah and CA. Hinesh Doshi)

A. External Commercial Borrowings (ECB) – Simplification of Procedure

A.P. (DIR Series) Circular No. 21 dated August 27, 2014.

Refinancing of existing ECB by raising fresh ECB at lower all-in-cost is permitted subject to condition that the outstanding maturity of the original loan is maintained. The cases where, Average Maturity Period (AMP) of the fresh ECB is more than the residual maturity of existing ECB, the same are examined by RBI under approval route.

On review, to simplify the procedure, powers are delegated to the AD category I banks to approve even those cases where the AMP of the fresh ECB is exceeding the residual maturity of the existing ECB under automatic route subject to certain conditions:

i. Both the existing and fresh ECBs should be in compliance with the applicable guidelines.
ii. All-in-cost of the fresh ECB should not be less that that of all-in-cost of existing ECB.
iii. Consent of existing lender is available.
iv. Refinancing is to be undertaken before the maturity of the existing ECB.
v. Borrower should not be in the default/caution list of RBI and should not be under investigation of Directorate of Enforcement (DOE)
vi. Overseas branches/subsidiaries of Indian banks will not be permitted to extend ECB for refinancing an existing ECB.
vii. All requirements in respect of the reporting are to be followed.

This facility is also available to cases where existing ECBs were raised under the approval route subject to amount of new ECBs being eligible to be raised under the automatic route.

All other aspects of ECB policy shall remain unchanged and the modification will come into force with immediate effect.

B. Purchase and Sale of Securities other than shares or convertible debentures of an Indian Company by a person resident outside India

Notification No. FEMA. 313/2104-RB dated July 2, 2014

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and A.P. (DIR Series) Circular No. 22 dated August 28, 2014.

As per Schedule 5 to FEMA Notification No. 20/2000-RB dated 3^{rd} May, 2000, as amended from time to time, SEBI registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs), Registered Foreign Portfolio Investors (RFPIs) and long term investors registered with SEBI, may purchase eligible government securities directly from the issuer of such securities or through registered stock broker on a registered stock exchange in India, subject to terms and conditions as mentioned by RBI and SEBI from time to time.

On review, with a view to provide flexibility in regard to the manner in which government securities can be acquired by eligible investors, it is decided to remove any stipulation as to manner of acquisition from the said regulations. Consequently, eligible investors can acquire such securities in any manner as per the prevalent/approved market practices.

C. Foreign Exchange Department

A.P. (DIR Series) Circular No.23 dated September 2, 2014.

RBI vide press release dated 17^{th} June, 2014, shifted three divisions of Foreign Investment Division (FID) *viz.* Liaison/Branch/Project Office (LO/BO/PO) Division, Non Resident Foreign Account Division (NRFAD) and Immovable Property (IP) Division to New Delhi w.e.f 15^{th} July, 2014. The new address for correspondence for the three divisions is FED, CO Cell, Foreign Exchange Department, Reserve Bank of India, New Delhi Regional Office, 6, Parliament Street, New Delhi–110 001, India.

All the cases pertaining to these three divisions and the monthly statements as per circulars ibid/ reporting for extension or closure of LOs/BOs [Refer A.P (DIR Series) Circular No. 106 dated 18^{th} February, 2014 and A.P (DIR Series) Circular No. 24 dated 30^{th} December, 2009] shall be sent to the FED CO cell at the address mentioned above. Reporting, by email, for NRFAD shall continue at the same email address.

D. External Commercial Borrowings (ECB) in Indian Rupees

A.P. (DIR Series) Circular No. 25 dated September 3, 2014

As per para 2(ii)(a) of A.P (DIR Series) Circular No. 27 dated 3^{rd} September, 2011, eligible borrowers are eligible to raise ECB in Indian Rupees from foreign equity holders as per the extant ECB guidelines.

With a view to provide greater flexibility for structuring of ECB arrangements, it has been decided that non-resident ECB lenders may extend loans in Indian rupees subject to certain conditions:

a. The lender should mobilise India rupees through swaps undertaken with an AD Category I bank in India.
b. The ECB contract should comply with all other conditions applicable to automatic and approval routes as the case may be.
c. The all-in-cost should be commensurate with prevailing market conditions.

Further, for purpose of executing swaps for ECBs denominated in Indian rupees, the lender, if it desires, may set up representative office in India following the prescribed laid down process.

E. Risk Management and Inter Bank Dealings–Hedging Facilities for Foreign Portfolio Investors (FPIs)

A.P. (DIR Series) Circular No. 28 dated September 8, 2014

Foreign Portfolio Investors (FPIs) can approach any AD Category I bank for hedging their currency risk on the market value of entire investment in equity and/or debt in India as on a particular date subject to certain conditions.

In order to enhance the hedging facilities for the FPIs holding securities under Portfolio Investment Scheme (PIS) in terms of Schedule 2, 2A, 5 and 8 of Notification No. FEMA 20/2000-RB dated 3^{rd} May 2000 and as announced in the Monetary Policy Statement of 1^{st} April, 2014, it is decided to permit FPIs to hedge the coupon receipts arising out of their investments in debt securities in India falling due during the following twelve months. However, the hedge contracts shall not be eligible for rebooking on cancellation. The contract can be rolled over on maturity provided the relative coupon amount is yet to be received.

(Matter on Corporate Laws has been contributed by CA. Rahul Joglekar)

MCA (www.mca.gov.in)

1. Amendment to Companies (Corporate Social Responsibility Policy) Rules 2014

Sub-rule 6 of Rule 4 of Companies (Corporate Social Responsibility Policy) Rules 2014 provides that Companies may build CSR capacities of their own personnel as well as those of their implementing agencies through Institutions with established track records of at least three financial years but such expenditure shall not exceed five percent of total CSR expenditure of the company in one financial year. This sub-rule has now been amended to provide that such expenditure will also include expenditure on administrative overheads. For complete text of this notification, please refer to the link: http://www.mca.gov.in/Ministry/pdf/NCA_Rules_12092014.pdf

[Notifications No. GSR (E) dated 12th September 2014]

2. Amendment to Schedule VII to the Companies Act 2013

MCA has amended Schedule II dealing with useful lives of assets for calculation depreciation. The said amendments will be voluntary for companies in respect of financial years commencing on or after 01.04.2014 and shall be mandatory from 01.04.2015 and onwards. For complete text of this notification, please refer to the link: http://www.mca.gov.in/Ministry/pdf/Amendment_Notification_29082014.pdf

[Notifications SO 237(E) dated 29th August 2014]

3. Clarification on Accounting Standard 10 (AS 10) – Capitalisation of cost

MCA had received various representations in regard to capitalisation of costs in case of extended delays in commercial production of Competitive Bid power projects where the delay is beyond the control of the developer. MCA has sought opinion of the ICAI on this matter and has clarified that capitalisation of costs is governed by AS-10 and AS-16 based on sound principles which must be invariably followed while considering the capitalisation of various costs. For complete text of the circular please refer to the link: http://www.mca.gov.in/Ministry/pdf/circular_35_27082014.pdf

[Circular No.35/2014 dated 27th August 2014]

4. Amendment to Companies (Meetings of Board and its Powers) Rules, 2014

MCA has issued the above notification to amendment the existing Companies (Meetings of Board and its Powers) Rules. This amendment deals with certain provisions related to Board resolutions for entering into related party transactions under Sec. 188 of the Companies Act 2013 and certain other resolutions. For complete text of this notification, please refer to the link: http://www.mca.gov.in/Ministry/pdf/NCA_Rules_16082014.pdf

[Notification GSR 590(E) dated 14th August 2014]

Legal Update

SEBI (www.sebi.gov.in)

1. Amendments to Clause 49 of the Equity Listing Agreement

SEBI has observed that MCA has issued various circulars in the past few days on matters related to Corporate Governance clarifying certain provisions of the Companies Act, 2013. In view of the same, SEBI felt it appropriate to amend Clause 49 of the Equity Listing Agreement. SEBI has received representations from market participants including companies and industry associations, highlighting certain practical difficulties in ensuring compliance, seeking clarifications on interpretation of certain provisions and suggesting various options to ease the process of implementation. SEBI has issued this Circular to amend certain provisions of Clause 49 viz: exemptions from applicability of Clause 49, appointment of woman director, provisions related to independent directors etc. For complete text of the circular please refer to the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1410777212906.pdf

[Notification No. CIR/CFD/POLICY CELL/7/2014 dated 15th September 2014]

2. Amendments to Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009

SEBI has amended the provisions relating to the Offer for sale by companies and also certain other amendments pertaining to minimum net offer to the public, definition of frequently traded shares, pricing in case of infrequently traded shares etc. For complete text of the circular please refer to the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1409120871432.pdf

[Notification No. LAD-NRO/GN/2014-15/06/1372 dated 25th August 2014]

RBI (www.rbi.gov.in)

1. Inoperative accounts – Certain clarifications

RBI vide circular DBOD. No. LEG. BC. 36/09.07.005/2014-15 dated 1st September 2014 has issues clarifications w.r.t classifying an account as inoperative. There may be instances where the customer has given a mandate for crediting dividend on shares to Savings Bank account and there are no other operations in the Savings Bank account. Some doubts have arisen whether such an account is to be treated as inoperative account after two years. It is now clarified that since dividend on shares is credited to accounts as per the mandate of the customer, the same should be treated as a customer induced transaction. Hence, the account should be treated as operative account as long as the dividend is credited to the account. The account can be treated as inoperative account only after two years from the date of the last credit entry of the dividend, provided there is no other customer induced transaction. For a complete text of the circular refer the link: http://rbi.org.in/scripts/NotificationUser.aspx?Id=9199&Mode=0

[Circular DBOD.No. LEG. BC. 36/09.07.005/2014-15 dated 1st September 2014]

2. Upper age limit for Whole Time Directors on the Boards of Private Sector Banks

Reserve Bank of India vide circular DBOD. APPT. BC.No. 40 /29.39.001/2014-15 dated 9th September 2014 has advised that in line with the provisions of Companies Act 2013, the upper age limit for MD & CEO and other WTDs of banks in the private sector should be 70 years, *i.e.* beyond which nobody should continue in the post. Within the overall limit of 70 years, individual bank's Boards are free to prescribe a lower retirement age for the WTDs, including the MD & CEO, as an internal policy. For a complete text of the circular refer the link http://rbi.org.in/scripts/NotificationUser.aspx?Id=9220&Mode=0

[Circular DBOD. APPT.BC.No. 40 /29.39.001/2014-15 dated 9th September 2014]

3. Timelines for Credit Decisions

RBI has observed that here have been inordinate delays on part of banks in conveying their credit decisions leading to delays in project implementation. RBI acknowledges that while banks are required to carry out necessary due diligence before arriving at credit decisions, timely and adequate availability of credit is a pre-requisite for successful implementation of large projects. Therefore vide Circular DNBS.CC.PD.No. 45/03.10.01/2014-15 dated 1st September 2014 it has directed that banks should clearly delineate the procedure for disposal of loan proposals, with appropriate timelines, and institute a suitable monitoring mechanism for reviewing applications pending beyond the specified period as may be specified in the loan application. For a complete text of the circular refer the link: http://rbi.org.in/scripts/NotificationUser.aspx?Id=9198&Mode=0

[Circular DNBS.CC.PD.No.45/03.10.01/2014-15 dated 1st September 2014]. ■

Legal Decisions[1]

DIRECT TAXES

Income-tax Act

LD/63/11
CIT
vs.
Ingersoll Rand International Ind. Ltd.
30th June 2014 (KAR)
[Assessment Year 2006-07]

Section 32 of Income-tax Act, 1961 - Depreciation

Non-compete fee being in the nature of capital expenditure, depreciation is to be allowed on the non-compete fee as it constitutes a commercial or a business right under Section 32(1)(ii)

The assessee company purchased the business of DETPL for a consideration of ₹11.71 crore which included a sum of ₹54.43 lakh as non-compete fees. The payment of non-compete fees was treated as revenue expenditure in the computation of total income as per the Income-tax Act, while in the books of accounts it was treated as an asset by the assessee. The assessee had also claimed depreciation on the patents under the Income-tax Act,

The Revenue, contended that (i) in order to claim depreciation, the assessee should own and use the asset in the business, (ii) non-compete fee does not constitute a commercial or a business right for allowing depreciation under Section 32(1)(ii). Further, the user-test is not satisfied. Where it is not so non-compete fee cannot be classified as an asset and consequently no depreciation can be allowed. *Per contra,* the assessee submitted, by virtue of payment to the noncompete fee, the assessee could carry on business without any competition for the limited period which inturn results in advantage to his business and as that advantage confers on him a commercial and a business right and once it is held it is of the nature of capital expenditure, the assessee is entitled to depreciation provided under Section 32(1)(ii).

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

The High Court of Karnataka held as follows:

What is to be seen is, what are the nature of intangible assets which would constitute business or commercial rights to be eligible for depreciation. In this regard, it is necessary to notice that the intangible assets enumerated in Section 32 of the Act effectively confer a right upon an assessee for carrying on a business more efficiently by utilising an available knowledge or by carrying on a business to the exclusion of another assessee. A non-compete right encompasses a right under which one person is prohibited from competing in business with another for a stipulated period. It would be the right of the person to carry on a business in competition but for such agreement of non-compete. Therefore the right acquired under a non-compete agreement is a right for which a valuable consideration is paid. This right is acquired so as to ensure that the recipient of the non-compete fee does not compete in any manner with the business in which he was earlier associated. The object of acquiring a know-how, patents, copyrights, trade marks, licences, franchises is to carry on business against rivals in the same business in a more efficient manner or to put it differently in a best possible manner. The object of entering into a non-compete agreement is also the same *i.e.*, to carry on business in a more efficient manner by avoiding competition, atleast for a limited period of time.

On payment of non-compete, the payer acquires a bundle of rights such as restricting receiver directly or indirectly participating in a business which is similar to the business being acquired, from directly or indirectly soliciting or influencing clients or customers of the existing business or any other person either not to do business with the person who has acquired the business and paid the non-compete fee or to do business with the person receiving the non-compete fee to do business with a person who is directly or indirectly in competition with the business which is being acquired. The right is acquired for carrying on the business and therefore it is a business right. The word 'commercial' is defined in Black's Law Dictionary as 'related to or connected with trade and commerce in general', 'commerce' is defined as 'the exchange of goods, productions or property of any kind; the buying, selling and exchanging of articles'. A right by way of non-compete is acquired essentially for trade and commerce and therefore it will also qualify as a commercial right. A right acquired by way of noncompete can be transferred to any other person in the sense that the acquirer gets the right to enforce the performance of the terms of agreement under which a person is restrained from competing. When a businessman pays money to another businessman for restraining the other businessman from competing with the assessee, he gets a vested right which can be enforced under law and without that, the other businessman can compete with the first businessman.

When by payment of non-compete fee, the businessman gets his right what he is practically getting is kind of monopoly to run his business without bothering about the competition. Generally, non-compete fee is paid for a definite period. The idea is that by that time, the business would stand firmly on its own footing and can sustain later on. This clearly shows that the commercial right comes into existence whenever the assessee makes payment for non-compete fee. Therefore that right which the assessee acquires on payment of non-compete fee confers in him a commercial or a business right which is held to be similar in nature to know-how, patents, copyrights, trade marks, licences, franchises. Therefore the commercial right thus acquired by the assessee unambiguously falls in the category of an 'intangible asset'. Their right to carry on business without competition has an economic interest and money value. The term 'or any other business or commercial rights of similar nature' has to be interpreted in such a way that it would have some similarities as other assets mentioned in Clause (b) of Explanation 3. Here the doctrine of *ejusdem generis* would come into operation and therefore the non-compete fee vests a right in the assessee to carry on business without competition which inturn confers a commercial right to carry on business smoothly. When once the expenditure incurred for acquiring the said right is held to be capital in nature, consequently the depreciation provided under Section 32(1)(ii) is attracted and the assessee would be entitled to the deduction as provided in the said provision.

LD/63/12
CIT, Bangalore
vs.
Karnataka Power Corporation Ltd.
12th August, 2014 (KAR)
[Assessment Year 1997-98]

Section 37 of Income-tax Act, 1961–Business Expenditure–Allowable as-Brokerage

Brokerage expenses incurred by assessee for *making payment to agents for rendering service for mobilising the public deposits which was to be returned after a fixed period along with interest, and, thus, did not expand the capital base of the assessee, such brokerage expenses was to be treated as revenue expenditure*

The assessee power corporation mobilised public deposits. The said deposits was made for a fixed period and interest was payable during the period of deposit. After the maturity of the said deposit, the assessee has to return the amount received as deposit. Brokerage paid to the agents was claimed as revenue expenditure.

The High Court of Karnataka held as follows:

The amount/public deposits cannot be construed as a receipt for increasing the capital base. The expenditure takes the colour from the thing on which the expenditure is made. If the money is spent to expand the capital, then the money to the extent is capital, but if the money is spent not for obtaining the capital, then the expenditure takes the colour of the revenue expenditure.

In the instant case, the assessee has borrowed money, brokerage is paid for the services so rendered, the said money does not constitute the capital. On the contrary the said money is utilised for working capital and, therefore, both the Appellate Authorities were justified in holding that the said expenditure partakes the character of a revenue expenditure and not capital expenditure.

LD/63/13

Rajasthan R.S.S. & Ginning Mills Fed. Ltd.
vs.
Deputy CIT, Jaipur
29th April, 2014(SC)
[Assessment Years 1994-95 and 1995-96]

Section 72A read with Section 72 of the Income-tax Act, 1961 read with Section 16(8) of the Rajasthan Co-operative Societies Act, 1965–Losses–Carry forward and set-off of business loss

There was no provision which would permit the amalgamating co-operative society to carry forward and adjust such losses against the profits *of the amalgamated co-operative society though such provision is made for companies and banks*

After the amalgamation of the four cooperative societies into the appellant society, when Income-Tax returns for the assessment years 1994-95 and 1995-96 were filed by the appellant society, it wanted to get the accumulated losses of the four societies, carried forward, so that the same could be set off against the profits of the appellant society under the provisions of Section 72. The main submission of the appellant society society was that being an amalgamated society, it must get benefit of setting off losses of the four co-operative societies which had been amalgamated into the appellant society.

The assessing officer negatived the appellant's claim for the reason that the said societies were not in existence after their amalgamation into the appellant society. As the said four societies were not in existence, according to the assessing officer, their accumulated losses could not have been carried forward or adjusted against the profits of the appellant society.

The Supreme Court held as follows:

For the purpose of getting carried forward losses adjusted or set off against the profits of subsequent years, there must be some provision in the Act. If there is no provision, the societies which are not in existence cannot get any benefit. The losses were suffered by the societies which were in existence at the relevant time and their existence or legal personality had come to an end upon being amalgamated into another society.

The normal principle is that a non-existent person cannot file an income tax return and therefore, cannot carry forward its losses after its existence comes to an end. All those four societies, upon their amalgamation into the appellant society, had ceased to exist and registration of those societies had been cancelled. In the circumstances, those societies had no right under the provisions of the Act to file a return to get their earlier losses adjusted against the income of a different legal personality i.e. the appellant society.

So far as companies are concerned, there is a specific provision in the Act that upon amalgamation of one company with another, losses of the amalgamating companies can be carried forward and the amalgamated company can get those losses set off against its profits subject to the provisions of the Act. This is permissible by virtue of Section 72A of the Act but there is no such provision in the case of co-operative societies.

It is pertinent to note that such a provision has been made only with regard to amalgamation of companies and later on similar provisions were made with regard to banks, etc., but at the relevant time there was no such provision which would permit the amalgamating co-operative society to carry forward and adjust such losses against the profits of the amalgamated co-operative society.

As there is no provision under the Act for setting off accumulated losses of the amalgamating societies against the profits of the amalgamated society, the appellant society could not have got the benefit of carrying forward losses of the erstwhile societies which were not in existence during the relevant Assessment Year.

In all the tax matters one has to interpret taxation statute strictly. Simply because one class of legal entities are given some benefit which is specifically stated in the Act does not mean that the legal entities not referred to in the Act would also get the same benefit. As stated by this Court on several occasions, there is no equity in matters of taxation. One cannot read into a section which has not been specifically provided for.

Note: Judgment of Rajasthan High Court, Jaipur Bench in ITA No. 19 of 2001, dated 19-09-2012, *upheld.*

LD/63/14

Panasonic Energy India Co. Ltd.

vs.

Assistant CIT, Circle-IV

7th January 2014 (GUJ)

[Assessment Year 2003-04]

Section 80-IB read with Section 260A of the Income-tax Act, 1961-Deductions-Profits and gains from industrial undertakings other than infrastructure developments

Claim under Section 80-IB was to be disallowed where Audit Report was not filed before any of the authorities below and it was only filed before the High Court for the first time

During the year under consideration the assessee company had claimed deduction under Section 80-IB. The assessee had not previously furnished the audit report in Form 10CCB before the Assessing Officer prior to completion of the assessment proceedings. He also failed to do so before the Appellate Commissioner or before the Tribunal till

the second appeal was finally decided. It was only at the appellate stage before the High Court that the assessee presented a report requesting that the Section 80-IB claim be granted.

The Gujarat High Court held as follows:

The appellant had not made out any ground why the audit report could not be filed earlier. In the application filed for taking into account the additional document on record also, no valid grounds were made out. Even before the first appellate stage before the Commissioner, though the rules permit production of additional evidence, the same was hedged with certain conditions.

Even to be able to produce additional evidence before the appellate Commissioner, the assessee had to satisfy the conditions of sub-Rule (1) of Rule 46A thereof and further the Rule requires the appellate authority to record his reasons in writing for admitting such additional evidence.

Under the circumstance, without any justification and without any indication of reasons why such report could not be presented earlier, the assessee simply cannot for the first time present such document before the High Court and seek benefit of the deduction on the basis of such document. The appellate jurisdiction of the High Court under Section 260A of the Act permits taking into account the substantial question of law and not examine the factual disputes. Further a mere presentation of report under Form 10CCB would not enable the assessee to claim deduction under Section 80IB. The form and the report would enable the Assessing Officer to examine the claim and different calculations on the basis of which the claim was sought to be substantiated. Such question, surely cannot be gone into in the Tax Appeal before the High Court under Section 260A.

LD/63/15

Pan Asia IGATE Solutions, In Re

9th May, 2014 (AAR)

Section 112 read with Sections 48 and 195 of the Income-tax Act, 1961-Capital gains–Tax on long term Capital gains

Where non-resident company sold eqity shares of an Indian company to another non-resident company, the former i.e. the purchaser non resident company will get the benefit of the proviso of section 112(1)

The Applicant is a Mauritius company. The Applicant purchased equity shares of an Indian company Patni Computer from iSolutions, Inc., a US based company. iSolutions purchased the original equity shares of Patni in foreign currency. iSolutions held the shares of Patni for a period of more than 12 months. The applicant is now approaching the Authority for Advance Rulings to determine the rate at which tax ought to have been deducted under Section 195 of the Act from the payment made to iSolutions for the purchase of equity shares of Patni.

The Authority for Advance Rulings ruled as follows:

The Delhi High Court in *Cairn UK Holdings ltd. vs. DIT, (2013) 359 ITR 268* while setting aside the rulings of the Authority held that the first *proviso* to Section 48 ensures that a non-resident, who utilised his foreign currency, is taxed after taking into consideration the fluctuation in exchange rate. Indian rupee can and has in past appreciated against foreign currencies. In such cases, the long-term capital gains payable can increase. On the contrary, there is no occasion of deflation in India in last two decades and it would be incorrect to hold that the Legislature while enacting the second proviso had in mind or assumed that there would be deflation. The two *provisos* cannot be equated as granting same relief or benefit. They operate independently and have different purpose and objective.

In view of the above, it is difficult to state that benefits under the first *proviso* and the second *proviso* to Section 48 are identical or serve the same purpose.

The *proviso* to Section 112(1) is applicable to listed securities or units or zero coupon bonds. Long-term capital gain is not payable on listed securities sold through stock exchanges as STT is payable. First *proviso* to Section 48 is applicable on sale of shares or debentures in Indian company, whether or not the said shares or debentures are listed or not. Thus, *proviso* to Section 112(1) is more restrictive and will not necessarily apply in all cases covered by the first *proviso* to Section 48. Secondly, the *proviso* to Section 112(1) is not applicable to debentures. Nevertheless, the *proviso* to Section 112(1) is applicable to units and zero coupon bonds, which are not covered by the first *proviso* to section 48 of the Act. Second *proviso* to Section 48 is not applicable on transfer of long-term capital asset being bond, debenture other than the capital index bond. Zero coupon bonds are, however, specifically made eligible for benefit under the *proviso* to Section 112(1).

The purpose and object behind the *proviso* to Section 112(1) and the legislative intention was to tax long-term capital gain on listed shares, bonds and units @ 10%, without benefit of indexation under second *proviso* to Section 48 of the Act.

The petitioner will be entitled to benefit of *proviso* to Section 112(1) of the Act on sale of equity shares in question.

LD/63/16

Sumermal Jain

vs.

Deputy CIT, Central Circle-XVI, Kolkata

24th December 2014 (CAL)

Section 131 read with Section 132 of the Income-tax Act, 1961-Income-tax authorities-Power regarding Discovery, Production of Evidence, *etc.*

Where during investigation into affairs of a company, accommodation entries of abnormally high expenses were found to have been paid to companies controlled by petitioner and further enquiries revealed that such companies 'were merely paper companies not providing any actual services, Deputy Director had 'sufficient reason to believe' so as to issue notices under Section 131(1A) and thus, there was no requirement or any statutory fiat, to disclose therein reasons to suspect

In course of the investigation, it was discovered that abnormally high amounts had been shown to have been paid by EMTA Coal on account of coal raising charges to four companies. Further inquiry of these companies revealed that these four companies were non-functioning entities and existed only on paper and each of four companies had small capital base with insignificant investment in plant and machinery in comparison to their receipts from EMTA Coal. The investigation revealed that the accommodation entries for EMTA coal were arranged by the petitioner through these four companies. These companies were found to be paper companies created for 'booking bogus expenses' by EMTA Coal. Since there was fraud on revenue on a massive scale which was designed, executed and implemented by the petitioners, the Director of Income-tax issued notice under Section 131(1A) for search and seizure under Section 132.

The Calcutta high Court held as follows:
It is evident from the plain language of the provision that there has to be information possessed by such high officer as named in the opening limb of the sub-Section; and, that such information in the possession of the relevant officer should be the basis for the officer to believe that any of the three situations as recognised in clauses (a), (b) or (c) of the sub-Section (1) of Section 132 had arisen or was likely to arise, before such high officer can authorise one of the named subordinate officers to conduct a search and seizure operation in the manner provided.

The "reason to believe" has to be based on the "information" available with the high official for a reasonable person in the position of the high official to anticipate a breach or apprehend non-compliance of the kind envisaged in clause (b) or clause (c) of the sub-Section (1).

The nexus between the information and the situation envisaged in either clause (b) or clause (c) of the provision was the real test; for, if the nexus was discerned, it may be said that the high official had "reason to believe" based on the "information in his possession" to apprehend the breach or failure as contemplated in sub-Section (b) or (c) of the provision. It was the extent of the information that will tell upon the "reason to believe". Again, in exercise of judicial review, the court will only look at the nexus and not assess it either with any degree of mathematical precision or by placing the court in the position of the authorising official. Only if it appears that the subjective satisfaction of the authorising official as implied by the expression "reason to believe" could not have been arrived at on the basis of the "information in his possession", that the court would interdict the process or the consequence of the search and seizure operation that may have been carried out.

The Director General or a Director or a Joint Director or an Assistant Director or a Deputy Director have authority to exercise the powers conferred under Section 131(1) of the Act, provided such officer has "reason to suspect" that any of the situations as envisaged in sub-Section 131(1A) has arisen. On the other hand, if it was the authorised officer referred to in Section 132(1) of the Act who exercises the authority under Section 131(1A) of the Act, such officer was competent to exercise such authority only prior to taking action under clauses (i) to (v) of Section 132(1) of the Act. It was elementary on any reading of Section 131(1A) of the Act that the five categories of officers, other than the authorised officer referred to in Section 132(1) of the Act, may exercise the authority under such provision, subject to meeting the other statutory requisites but without being impaired by the search and seizure process having been conducted under Section 132(1) of the Act. With respect, the provision admits of no other construction or interpretation.

Such distinction was apparent from the proviso to sub-section (3) of Section 131 of the Act. Such sub-section authorises the officers referred to in sub-sections (1), (1A) and (2) to impound and retain books of account or other documents produced in course of any proceedings under the Act. The proviso to Section 131(3) of the Act makes a distinction in the procedure to be adopted for impounding such material and the period for which such material may be retained by the authority, based on the designation of the authority.

Since the notices under Section 131(1A) of the Act were issued in this case by a Deputy Director, he had due authority therefor. Given that such officer possessed the treasure trove of information pertaining to the aforesaid four companies connected with the EMTA group and the petitioners' nexus therewith, he had enough reason to suspect that income had been concealed or was likely to be concealed by the petitioners who were subject to his jurisdiction. There was no requirement, far less any statutory fiat, for the reasons to suspect or the basis for the suspicion to be disclosed in any notice issued under Section 131(1A) of the Act.

LD/63/17
Sumit Devendra Rajani
vs.
Assistant CIT
23rd June, 2014 (GUJ)
(Assessment Year 2010-11)

Section 205, read with Section 221 of Income-tax Act, 1961–Deduction of Tax at Source–Bar against direct demand on assessee

In case the deductor had deducted TDS and for the same Form No.16A has been issued by *the deductor, the credit of the same cannot be denied to the assessee /deductee solely on the ground that such credit does not appear on ITD system of the department and/or same does not match with the ITD system of the department*

According to the petitioner/assessee out of total salary of ₹21,60,000 to be received from his employer/deductor he has received salary after deducting the amount of tax at source by the deductor for which Form No. 16 A has been issued i.e. he has received ₹5,86,606 and on account of said amount deducted at source by the employer/ deductor. In the return of income, the petitioner also claimed the credit of tax deducted at source of total ₹5,86,606 TDS deducted by his employer/ deductor. However, without giving credit of the TDS deducted by his employer/deductor on the salary income as well as on the amount received towards professional and technical fees received from the said employer/deductor, the department has raised the demand of ₹6,82,148 by impugned notice issued under Section 221(1) of the Act. The short question which is posed for consideration of this Court is whether in case the deductor had deducted the TDS and for the same Form No.16 A has been issued by deductor, the credit of the same can be denied to the assessee and deductee solely on the ground that such credit does not appear on ITD system of the department and/or same does not match with the ITD system of the department?

The High Court of Gujarat held as follows:

When the deductor who is liable to deduct the tax at source under Chapter XVII deducts the TDS and issued Form No.16A the assessee/deductee shall be entitled to credit of the same. As stated above and as per Section 205 of the Act whether tax is deductible at the source under Chapter XVII, the assessee shall not be called upon to pay the tax himself to the extent of which tax has been deducted from that income. Meaning thereby, the assessee/deductee is entitled to credit of such amount of TDS. Assuming that in a given case the deductor after deducting the TDS may not have deposited with the department. However, in such situation, the department is to recover the said amount from the deductor and assessee/ deductee cannot deny the credit of the same. The action of the respondent revenue- authority in not giving the credit of the tax deducted at source for which Form No. 16 A have been produced by the assessee–deductee and consequently impugned demand notice issued under Section 221(1) of the Act cannot be sustained. Concerned revenue-authority, therefore, is required to be directed to give credit of tax deducted at source to the assessee/ deductee of the amount for which Form No.16 A have been produced.

In view of the above and for the reasons stated petition succeeds. It is held that the petitioner, i.e., assessee-deductee is entitled to credit of the tax deducted at source with respect to amount of TDS for which Form No.16A issued by the employer/ deductor has been produced and consequently department is directed to give credit of tax deducted at source to the petitioner assessee–deductee to the extent Form No.16 A issued by the deductor have been issued. Consequently, the impugned demand notice is quashed and set aside. However, it is clarified and observed that if the department is of the opinion deductor has not deposited the said amount of tax deducted at source, it will always been open for the department to recover the same from the deductor.

LD/63/18
CIT(C) - III
vs.
Sri Gopal Gupta
16th May 2016 (DEL)
[Assessment Years 2003-04 to 2009-10]

Section 245D of the Income-tax Act, 1961 read with Article 226 of the Constitution of India-Settlement Commission-Procedures on application under Section 245C

Where Settlement Commission has taken the view that the amount of ₹6.00 crore as mentioned in the relevant receipts were loans taken by respondent No.1 payable @1.25% for the period of six months and that it was not a receipt of interest itself and made addition of additional income aacordingly, same could not be interfered in writ petition to tax an bigger principal amount assuming that said ₹6 crore as interest thereon

In this writ petition, the contention of the Revenue was that the respondent No.1 had not made a full and true disclosure and, therefore, the settlement orders were liable to be quashed.

The relevant receipt stated, " I, Sri Gopal Gupta, owner of M/s. Flakes 'N' Flavourz hereby confirm the Receipt of ₹20000000/- (Rupees Two Crore only) from Mr.Ankit Agarwal, Delhi on 07.11.08 A/c

Account of interest payable @1.25% for six months through Mr.Suresh Bansal."

The entire controversy in this case centers around the interpretation given to the receipt. As per the Revenue, the receipt indicates an amount by way of interest whereas as per the respondent No.1 it was not received by way of interest and was the principal amount of loan which was received by the respondent No.1 which he has disclosed as his income before the Settlement Commission because the lender would not come forward to confirm the cash loans.

The Settlement Commission held that the words "A/c Account of interest payable @1.25% for six months" are very important and has to be interpreted considering the totality of circumstances. The words used are "interest payable" and not "interest receivable". The words "interest payable" will be applicable to the person who has signed the receipt and not to the person for whom the receipt is signed. It is seen that the five receipts are the photocopies and not the original receipts. Logically the original receipts will be kept by the person who may need it to use it as a safety in case of any default. The photocopy will be kept by the person who wants to keep it as a matter of record and no original record needed. In case of default, the photocopy of the receipts will not have any legal force. In such situation only original receipts will have legal validity. It is a wide practice that even in cases of unaccounted transactions, proper documents are executed in order to put pressure of legal action on borrower so that he may not default. Such a receipt also acts as a deterrent as any default would seriously affect the borrower's credibility in the market and nobody would do any business with him in future. Therefore, if ₹6 crore is the interest, in that case, Shri Sri Gopal Gupta should have with him original copy of the receipts as well as necessary documents/ papers to support his claim in respect of amounts given as loan. Similarly, if ₹6 crore are loans taken by Shri Sri Gopal Gupta on interest in that case the original receipts as well as original papers/documents in respect of such loans would be kept by lenders. The fact that original copy of the receipts as well as other papers/documents in respect of ₹6 crore were not found from the premises of the applicant, supports the case of the applicant as when he was keeping photocopy of the receipt, there was no reason why he would not have kept original copy of receipts and other papers/documents of loans with him.

The Settlement Commission has taken the view that the amount of ₹6.00 crore as mentioned in the said receipts were loans taken by respondent No.1 payable @1.25% for the period of six months. The Settlement Commission also took the view that, as the respondent No.1 has already offered ₹6.00 crore as additional income, no further action was required on the issue.

The Delhi High Court held as follows:

It is apparent that the power of interference under Article 226 is limited. It is evident that this Court under Article 226 can only interfere with the Settlement Commission if it is found to be contrary to the provisions of the Act and that even if the Court disagrees with an interpretation placed by the Settlement Commission on a document, it cannot substitute its view in place of that of the Settlement Commission unless and until the interpretation given by the Settlement Commission is clearly arbitrary and perverse.

The scope of review under Article 226 of the Constitution insofar as an order passed by the Settlement Commission under Section 245D(4) of the Act is concerned, is a very limited one. This Court certainly cannot substitute its view in place of the Settlement Commission particularly on point of interpretation of a particular document. Interference can only be made if there is a fault in the decision making process and not with the decision itself. Even if this Court feels that it would have arrived at a different decision, it cannot interfere with the conclusion arrived at by the Settlement Commission because this Court does not sit in appeal over the decision of the Settlement Commission.

The interpretation which has been placed by the Settlement Commission on the documents in question, first of all, results in a finding of fact which cannot be interfered with. And, secondly, the interpretation is not so outlandish to be categorised as arbitrary or perverse so as to call for interference. The interpretation sought to be placed by the Revenue may be a possible interpretation but, so, too, would be the interpretation placed by the Settlement Commission which has also been espoused by the respondent. In such a situation no interference with the Settlement Commission's order is warranted.

LD/63/19
CIT (Central) Ludhiana
vs.
Shri Parvinder Singh
14th July, 2014(P&H)
[Assessment Year 2009-10]

Section 271AAA, read with Section 234B of Income-tax Act, 1961 – Penalty – Where search has been initiated

Since the alleged short payment of interest was only on account of incorrect imposition of interest by the Assessing Officer which stands deleted, the basis to impose penalty under Section 271AAA in the form of non-payment of taxes/interest does not survive

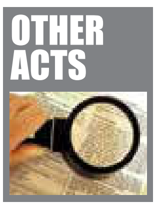
Search and seizure operation was conducted at the business premises of respondent assessee's and cash amounting to ₹89,30,000/- was seized. The same was deposited in the PD account of Commissioner of Income Tax (Central), Ludhiana. On the basis of excess stock and cash found, the assessee made a disclosure of ₹10 crore in the hands of his proprietorship concern. The assessee had also requested for adjustment of seized cash against his advance tax liability. Later a return declaring total income of ₹10,86,88,070/- was filed under Section 139(1) of the Act including the disclosed amount of ₹10,00,00,000/-. No interest under Sections 234A, 234B and 234C of the Act was determined as payable by the assessee in his return of income. The assessee had determined total advance tax of ₹3,51,30,000/- in his return of income. The return was processed creating a demand of ₹1,22,79,290/- including interest under section 234B of ₹22,16,382/-. Penalty proceedings under section 271AAA of the Act were also initiated as the assessee had not paid the due tax on the undisclosed income under the Act.

The Punjab & Haryana High Court held as follows:

Interest under Section 234B was imposed on the assessee for short payment of advance tax due on the income tax return which in turn was caused by inaction on the part of the Assessing Officer to adjust the seized cash towards advance tax liability as requested by the assessee. The assessee's appeal against the order of the Assessing Officer to rectify the order imposing interest under Section 234B was adjudicated by the Commissioner (Appeals). He has held that no interest under Section 234B was leviable in view of the judgment of Hon'ble

Jurisdictional High Court in the case of *CIT vs. Ashok Kumar 334 ITR 355*. This meant that the alleged short payment of interest was only on account of incorrect imposition of interest by the Assessing Officer which stands deleted. Therefore the basis to impose penalty under Section 271AAA in the form of non payment of taxes/interest does not survive and, thus, penalty imposed is to be deleted. The Tribunal upheld the order of the Commissioner (Appeals).

The findings recorded by the CIT(A) and the Tribunal are findings of fact which have not been shown to be illegal or perverse in any manner. Thus, the penalty under Section 271AAA of the Act had been rightly deleted.



Banking Laws

LD/63/20

Dashrath Rupsingh Rathod vs. State of Maharashtra & Another

1st August, 2014 (SC)

Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 read with Section 177 of the Code of Criminal Procedure, 1973-Dishonour of cheque for insufficiency, *etc.*, of funds in the account

In case of dishonour of cheque, the territorial jurisdiction is restricted to the Court within whose local jurisdiction the offence was committed, that means that complaint is to be filed in the court within whose jurisdiction the cheque is dishonoured by the bank on which it is drawn

These Appeals raise a legal *nodus* of substantial public importance pertaining to Court's territorial jurisdiction concerning criminal complaints filed under Chapter XVII of the Negotiable Instruments Act, 1881 (the NI Act) on dishonour of cheque.

The Supreme Court of India held as follows:

A reading of Section 138 NI Act in conjunction with Section 177, CrPC leaves no manner of doubt that the return of the cheque by the drawee bank alone constitutes the commission of the offence and indicates the place where the offence is committed.

Section 142 correctly employs the term "cause of action" as compliance with the three factors contained in the *proviso* are essential for the cognizance of the offence, even though they are not part of the action constituting the crime.

The place, *situs* or venue of judicial inquiry and trial of the offence must logically be restricted to where the drawee bank, is located. The law should not be warped for commercial exigencies. As it is Section 138 of the NI Act has introduced a deeming fiction of culpability, even though, Section 420 is still available in case the payee finds it advantageous or convenient to proceed under that provision. An interpretation should not be imparted to Section 138 which will render it as a device of harassment *i.e.* by sending notices from a place which has no casual connection with the transaction itself, and/or by presenting the cheque(s) at any of the banks where the payee may have an account. In our discernment, it is also now manifest that traders and businessmen have become reckless and incautious in extending credit where they would heretofore have been extremely hesitant, solely because of the availability of redress by way of criminal proceedings. It is always open to the creditor to insist that the cheques in question be made payable at a place of the creditor's convenience. Today's reality is that the every Magistracy is inundated with prosecutions under Section 138 NI Act, so much so that the burden is becoming unbearable and detrimental to the disposal of other equally pressing litigation.

Courts are not required to twist the law to give relief to incautious or impetuous persons; beyond Section 138 of the NI Act. Everybody would be compelled to reiterate empathy with a payee who has been duped or deluded by a swindler into accepting a cheque as consideration for delivery of any of his property; or because of the receipt of a cheque has induced the payee to omit to do anything resulting in some damage to the payee. The relief introduced by Section 138 of the NI Act is in addition to the contemplations in the IPC. It is still open to such a payee recipient of a dishonoured cheque to lodge a First Information Report with the Police or file a Complaint directly before the concerned Magistrate. If the payee succeeds in establishing that the inducement for accepting a cheque which subsequently bounced had occurred where he resides or ordinarily transacts business, he will not have to suffer the travails of journeying to the place where the cheque has been dishonoured. All remedies under the IPC and CrPC are available to such a payee if he chooses to pursue this course of action, rather than a Complaint under Section 138 of the NI Act. And of course, he can always file a suit for recovery wherever the cause of action arises dependent on his choosing.

The interpretation of Section 138 of the NI Act which commends itself is that the offence contemplated therein stands committed on the dishonour of the cheque, and accordingly the JMFC at the place where this occurs is ordinarily where the Complaint must be filed, entertained and tried. The cognisance of the crime by the JMFC at that place however, can be taken only when the concomitants or constituents contemplated by the Section concatenate with each other. The place of the issuance or delivery of the statutory notice or where the Complainant chooses to present the cheque for encashment by his bank are not relevant for purposes of territorial jurisdiction of the Complaints even though non-compliance thereof will inexorably lead to the dismissal of the complaint. It cannot be contested that considerable confusion prevails on the interpretation of Section 138 in particular and Chapter XVII in general of the NI Act.

The Complainant is statutorily bound to comply with Section 177 *etc.* of the CrPC and therefore the place or situs where the Section 138 Complaint is to be filed is not of his choosing. The territorial jurisdiction is restricted to the Court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the bank on which it is drawn.

Companies Act

LD/63/21

Securities and Exchange Board of India
vs.
Sahara India Real Estate Corporation Ltd.
4th June, 2014 (SC)

73 of the Companies Act, 1956 corresponding to Section 40 of the Companies Act, 2013 – Allotment of shares and debentures to be dealt in on stock exchange

Two Sahara-companies were asked by the Court to refund sum collected from investors in form of OFCDs mobilisation of funds under the red herring prospectus (RHP) was not legally permissible: transfer by sale and/or mortgage of nine items of properties situated in nine cities in country whose estimated value was disclosed was allowed but prayer for grant of bail of directors was dismissed

Saharas invited and claimed to have collected deposits from general public in the form of 'Optional Fully Convertible Debentures' (OFCD). SEBI found that the mobilisation of funds under the red herring prospectus (RHP) issued by the two companies was not legally permissible. SEBI directed Saharas not to offer their equity shares/ OFCDS or any other securities to the public or invite subscription. The High Court at Bombay upheld the SEBI directions. It also directed the promoter and directors of Sahara companies to jointly and severely refund the amount collected by Saharas in terms of the RHPs issued by them along with interest. SEBI also issued further directions banning access these companies from the security market for raising funds till the time the aforesaid payments were not made. On appeal, SAT concurred with the view taken by the SEBI and directed Saharas to refund the amount collected from the investors within a period of six weeks. On further appeals, the Supreme Court directed Saharas to deposit with the SEBI the amount collected by them through their RHPs with interest within three months. Saharas deposited ₹5,120 crore with the SEBI but failed to pay the balance amount of ₹12,280 crore exclusive of interest payable on the same. SEBI then filed contempt petitions.

Some proposals appeared to have been explored for compliance with the directions of the Court but were found to be unsatisfactory. The contemnors were put in judicial custody. The promoters and directors filed writ petition challenging the validity of the order of the Court and seeking declaration to the effect that continued incarceration of the promoter in custody was illegal. The said writ petition was dismissed.

In the instant interlocutory applications (IAs) it was prayed the restrictions imposed by the Supreme Court in respect of operation of the bank accounts/deposits/demat accounts/sale of securitiesbe lifted; and the restrictions imposed by the Court in respect of the movable and immovable properties be also lifted.

The Supreme Court held as follows:

The order can be modified only under very compelling circumstances. The total amount to be deposited is between ₹33,000 to ₹35,000 crore. To show their *bona fides*, the contemnors have been directed to deposit less than 1/3rd of that amount as a condition for bail. After all, even when this part of the order is complied with and the contemnors are set free, they will have to arrange the deposit of the balance amount, which again is very substantial. That apart, it is not the case of the contemnors that they or anyone of them suffers from any medical condition that calls for hospitalisation or an atmosphere conducive for recovery from any disease. The Court has already issued directions permitting visitors to meet the contemnors in jail. That arrangement has not been found to be inadequate as at present so to call for any change.

The prayer for modification of the order, accordingly, fails.

However, considerable merit is found in the submission made by the contemnors that the restraint order issued by the SEBI and by the Court forbidding transfer and alienation of moveable and immovable assets by the Sahara group of companies has the effect of preventing the contemnors from complying with the directions of the Court which require them to deposit ₹5,000 crore in cash besides a bank guarantee for a similar amount of ₹5,000 crore. Restraint against transfer of the assets by the contemnors and the companies promoted by them precisely has the effect of doing so. The question, however, is as to what extent should the orders of restraint be modified. The contemnors has pursuant to that observation confined his prayer for permission to sell/transfer only nine items of properties situated in nine different cities in the country and disclosed the estimated value of such property in the statement.

Keeping in view the total number of properties held by Sahara group of companies, transfer of sale and/or mortgage of the nine items of properties situated in nine cities mentioned in the note should, suffice to enable the contemnors to comply with the directions of the Court. In order, however, to ensure that the sale value is fair and reasonable, one need to make it clear that no item of property shall be sold at a price lesser than the circle value of the properties fixed for the area where such property is located.

As regards properties situated in London and New York the Court by an interlocutory order passed directed the contemnors to furnish certain additional information necessary for permitting the sale of the said assets. The information about permission/approval from the Bank of China with whom the said properties are mortgaged and shares held by Saharas for repayment of the loans borrowed from the said bank hypothecated/pledged. The valuation reports regarding the three assets were to be verified and confirmed by the Bank of China, especially because no sale of the assets in question can be permitted at a lesser price.

In the result of the I.As are disposed with the following directions:

- The prayer for modification of the terms granting interim bail to the contemnors is declined.
- Prayer for shifting the contemnors to a guest house is also declined and the I.As dismissed to that extent.
- FDs, bonds and securities held by Sahara Group of companies may be encashed by the holders thereof subject to the condition that the maturity value/sale consideration of such FDs, bonds and securities shall be deposited in the designated bank account of SEBI.
- Immovable properties owned by Sahara Group of companies situated in 9 different cities subject to the condition that such sales are not for a price lower than the estimated value or the circle rates fixed.
- The sale consideration shall be deposited with the SEBI to the extent the same is necessary to make a total deposit of ₹5,000 crore. ■

Advertisement

Accounting Treatment of Raw-materials Sent to Manufacturer by the Company for Getting Finished Product

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

A. Facts of the Case

1. A company (hereinafter referred to as 'the company'), a Government of India enterprise incorporated under the Companies Act, 1956, is engaged in the business of transmission of power from the generating units to different State Electricity Boards (SEBs) through its transmission network. The company owns and operates more than 90% of India's inter-state power transmission system (ISTS). It operates a network of 96,229 circuit kilometers of interstate transmission lines, 158 EHV AC and HVDC sub-stations. The company intends to continue rapidly increasing its capacity to maintain and grow its leadership position and adding more transmission lines and sub-stations.
2. For construction of transmission lines, one of the major material is conductor. The company is not manufacturing the conductor. It is being purchased from various manufacturers in India. Aluminium is the main raw material to manufacture the conductor.
3. To explore the possibilities in reduction in the cost of conductor, the company is undertaking a pilot project of getting conductor manufactured wherein the aluminium will be procured by the company from aluminium manufacturer and supplied to the manufacturer of conductor for conversion into finished product, *i.e.*, conductor.
4. The company is purchasing aluminium from aluminium manufacturer (hereinafter called 'supplier'). The aluminium is being supplied directly to the manufacturer of conductor (hereinafter called 'manufacturer') on endorsement in favour of manufacturer by the company. The company also raises the invoice for sale to the manufacturer. The company does not collect any payment from the manufacturer of conductor at this stage against the aluminium supplied and shows it as trade receivable in the books. Copies of the contract agreement with the manufacturer and the invoice raised for supply of aluminium rods have been supplied by the querist for the perusal of the Committee.
5. The querist has stated that the manufacturer, after processing aluminium along with some other raw materials and consumables (purchased by manufacturer at its own cost) like steel, wire, grease etc., manufactures the conductor and supplies it to the company and raises the invoice with full value of conductor as per the contract entered with the company. The company pays the invoice amount after deducting the cost of aluminium already supplied to the manufacturer for the conductor. The contract agreement is also entered with the manufacturer with complete break-up of cost of conductor and adjustment of cost of aluminium. It may be mentioned that the objective of the company in making this arrangement is primarily to enable it to derive the benefit of cheaper input costs (since the company would get better priced sums due to bulk purchases) and possibly greater assurance of timely delivery since the company itself is a PSU. The fact that the manufacturer is not required to finance the cost of raw material inputs during the production cycle is merely incidental and not the object of the transaction. The value of the invoices raised for sale of aluminium to the manufacturer shall not be significant in comparison to the turnover of the company (less than 5%).
6. The salient features of agreements with the supplier and the manufacturer are given below:
   (i) MOU with the Supplier:
      (a) The company will be giving its annual requirement to the supplier for purchase of aluminium rod. The supplier will deliver the material as per the company's requirements.
      (b) The price of the aluminium rod varies from time to time.
      (c) Under MOU, the company will be eligible to receive quantity discounts on fulfillment of conditions given in MOU and also PSU discount. Such discounts/ rebates given by the supplier may not be passed on to the manufacturer.

(d) The company will make payment to the supplier for the quantity purchased.

(ii) Terms of Letter of Award (LOA) issued to the Manufacturer:

(a) Scope of Work: Design, manufacture including delivery of aluminium rod from the supplier's work located at various places in India to be sold by the company to the manufacturers on 'sale-in-transit' basis on purchase of same from the supplier from time to time during contract execution for manufacturing of ASCR Zebra conductor, matching with agreed work schedule, loading, transportation & insurance, unloading, storage and handling of aluminium at works of manufacturer, arranging all other raw materials and consumables etc., on manufacturer costs, conversion of raw material into finished ASCR Zebra conductor, testing and supply on FOR destination site basis of the conductor(s) as detailed in bidding documents.

(b) Pricing: The total price of the manufacturer includes:

(i) Ex-price for ASCR Zebra conductor

(ii) Total charges for transportation and insurance of conductors from supplier works to destination

(iii) Testing charges

(c) Terms of Payment:

(i) Manufacturer will not make any payment for invoice raised by the company for aluminium rod.

(ii) The company will make payment for invoice amount raised by the manufacturer after deducting cost of aluminium rod supplied by it.

(iii) Terms of Supply Agreement with the Manufacturer:

<u>Points relating to Accounting Treatment</u>

(a) Design, manufacture including taking delivery of aluminium rod from the supplier's work located at the manufacturer's plant to be sold by the company on sale-in-transit basis.

(b) Loading, transportation & insurance, unloading, storage and handling *etc.*

(c) Conversion of aluminium rod into finished ASCR Zebra conductor and supply on FOR destination site of the company as per contract.

(d) Pricing

1. Ex-work cost of price for ASCR Zebra Conductor.
2. Add :
   a. Transportation and insurance from supplier work to destination site.
   b. Type test charges for test to be conducted.

(e) The ex-work cost of price for ASCR Zebra Conductor shall be determined based on following:

(i) Cost of aluminium rod supplied by the company

(ii) Inward freight and insurances

(iii) Cost of steel wires, grease and other consumables

(iv) Conversion cost (after set-off of input tax paid/CENVAT Credit availed on aluminium rod)

(iv) Terms of Post-Bid Discussion with the Manufacturer:

(i) The manufacturer further confirms that in no case he will use aluminium from any other source other than that of the company under this contract. It also confirmed that the aluminium rod sold to him by the company under this contract on 'sale-in-transit' basis shall be utilised by him for supplies to be made under this contract only.

(ii) As per the provision of bidding documents, a quantity of 1.1860 MT of aluminium rod per km of finished ASCR Zebra conductor, will be sold by the company to the manufacturer on sale-in-transit basis. However, in case of actual tonnage of aluminium rod in different lot(s) exceeds the tonnage requirement worked out as above for finished Zebra conductor manufactured from corresponding lots(s), such excess quantities shall be considered to be sold by the company to manufacturer at extra cost.

(iii) The manufacturer also confirms that in the event of award, it shall not enter into any hedging/forward contract for aluminium.

(iv) The manufacturer is responsible to take necessary insurance policies in its own name for the aluminium rod to be sold to the manufacturer by the company during contract execution from time to time. Such policies shall adequately cover the manufacturer's risks during transit of material to its works, storage, processing *etc.* till ex-works despatch of the finished conductor from its works.

(v) The manufacturer confirmed that it shall raise his invoice for payment of different price component as per the provision of bidding documents. It further confirmed that for determining other cost components in ex-works price, it will mention the following distinctly and separately:

(a) Cost of aluminium rod (worked out at proportionate value while raising invoice for progressive payment and final payment *i.e.*, 90% of the cost and 10% of the cost respectively) (sale price of aluminium rod inclusive of excise duty and CST paid, as applicable sold from time to time to manufacturer by the company on sale-in-transit basis) for manufacturing of different lots of conductors; plus

(b) Inward freight

(c) Set-off of additional CENVAT Credit

Based on the aforesaid, the company will recover the sale price of aluminium rod (inclusive of excise duty and CST paid) sold to the manufacturer on sale-in-transit basis from time to time during the contract execution from the manufacturer's respective invoices raised for payment of ex-works price component at different stages on proportionate basis.

vi) Material (aluminium rod) traceability and accounting

"The material accounting involves (i) receipts of raw material at stores (ii) issuing for production/work in progress and (iii) despatches of finished product. Relevant records will be maintained for identification/traceability of material received from the company at every stage and the procedure."

As regards the insurance requirement in respect of raw material (*viz.*, aluminium rods) and finished good (*viz.*, conductor), the querist has seperatley informed that the bid documents basically cover selling of conductor by the manufacturer to the company, *i.e.*, ex-works supply from the supplier to the site and relevant clause for insurance requirement is provided in clause 28 of the 'General Conditions of Contract' of the Contract Agreements with the Manufacturer, a copy of which has been supplied by the querist for the perusal of the Committee. As regards insurance requirements in respect of raw material, the querist has referred to Appendix -3 (Insurance Requirements) to the contract agreement which while providing insurance requirements in respect of finished goods provide as follows:

"In addition to aforesaid insurance, the supplier shall also be responsible to take necessary insurance policies in its own name for the Aluminium Rod to be sold to the Supplier by the Purchaser during contract execution from time to time. Such Policies shall adequately cover the Supplier's risks during transit of material to its works, storage, processing *etc.*, till ex-works despatch of the finished conductor from its works."

In view of above, for raw material, the manufacturer has to take insurance to cover his risk in his own name from the time the materials sold and during manufacture and upto despatch.

7. The querist has also stated that considering the above facts, the transactions can be accounted for by one of the following methods:

Alternative 1:- Procurement of aluminium from the supplier be accounted for as 'purchase of goods' and aluminium given to the manufacturer may be accounted for as 'sale of goods' in the statement of profit and loss. Purchase of conductors from the manufacturer may be accounted for as construction material in the balance sheet.

Alternative 2:- Procurement of aluminium may be accounted for as input raw material as 'construction stores' in the balance sheet. Additional cost charged by the manufacturer for conversion of aluminium into conductor may be included under 'construction stores' as and when charged or simply as contract costs as and when incurred.

8. *Arguments in favour of Alternative 1:*

a. The entire documentation right from inception of tender procedure as well as contract agreement and other supplementary documentation consistently refers to sale of the aluminium rods by the company to the manufacturer.
In accordance with the above arrangement, Form 'C' will be issued with concessional payment of sales tax. CENVAT Credit will be taken by the manufacturer which reduces the cost of conductor. All this is on the presumption that the transaction will be depicted as purchase and sale. Returns of sales tax and excise will be filed considering transaction as purchase and sale. In case the transaction is not accounted as per Alternative 1, the company will have to pay higher taxes.

b. The requisite compliances under the indirect tax laws referred to in the said documentation also consistently treat the said transaction as a transaction of sale of aluminium rods. The company through the contract agreement, has in fact entered into a contract whereby the manufacturer has agreed to supply certain conductors to the company. The said contract agreement has certain in-built safeguards to ensure use of appropriate material.

c. It is noted that aluminium rods sold by the company as 'sale-in-transit' to the manufacturer falls under a different tariff chapter under excise regulations from the chapter dealing with conductors which are sold by the manufacturer to the company.

d. The manufacturer has to take insurance of aluminium rods in its name and not in the name of company. This would indicate that the risk has already passed on to the manufacturer.

e. Accounting Standard (AS) 9, 'Revenue Recognition', contains certain illustrations which do not form part of the Accounting Standard. One of the illustrations deals with the situation sale/repurchase agreements *i.e.*, where seller concurrently agrees to repurchase the same goods at a later date. This illustration does not squarely apply to the facts of the case as the goods (namely the conductor) supplied by the manufacturer to the company are distinct from aluminium rods sold by the company to the manufacturer in terms of their physical forms as well as their characteristics (apart from different excise categorisation) and therefore, the analogy of sale and buyback of the same goods may not be directly applicable.

f. The querist has also mentioned that in case of *Rashtriya Ispat Nigam Ltd. vs. State of A.P.*(1998) 109 STC 425(SC); *N.M. Goel & Co. vs. STO* (1989) 72 STC 368(SC); *CST vs. Mohammad Zahoor* (1975) STC 414(SC); and *Hindustan Steel Ltd. vs. State of Orissa*(1970)26 STC 302(SC), it has been held that "Material supplied by the contractee: This has been a controversial question. In building contracts, materials such as bricks, coal and cement, when supplied to contractor and value of such supplies deducted from the contract value, was held to be a sale. By use or consumption of materials in the work of construction, there is passing of the property in the goods from the contractee to the contractor. By appropriation and by the agreement, there is a sale, which is liable to tax." However, in case of Cooch Behar *Contractors Asso. vs. State of West Bengal* (1996) 103 STC 477 (SC), it has been further held that "there could be a works contract where the customer supplies material free of cost to the contractor, with the condition that such material is supplied to the contractor on bailment, where the ownership of the material always vests with the contractee. The cost is nowhere reflected in the contract and consequently, no deduction is made from the running bills of the contractor. In such a situation, as there is no transfer of property in goods passing from the contractee to the contractor, there shall not be a sale. On the other hand, if prices of such goods are deducted from or adjusted against the bills or dues of the contractor, it will be considered as sale and their value form part of the contractual transfer price, for the purpose of the tax."

9. *Arguments in favour of Alternative 2:*

(i) On examination and analysis of above clauses of LOA, Post Bid documents and agreement between the manufacturer and the company, a view emerges that, by endorsing purchase of aluminium rod on the invoice documents of supplier in favour of the manufacturer, terming the same as 'sale-in-transit,' do not constitute sale of aluminium rod by the company to manufacturer.

(ii) By endorsement of documents, rights in the goods do not pass to the manufacturer, right in goods is transferred when there is no encumbrance to the buyer. That is to say the buyer has all the rights to use the goods, in the manner it likes. It can use it for own consumption or re-sell the same to any person at the price, time and venue, as it likes.

(iii) Paragraph 5 to 'A. Sale of Goods' of Illustrations to AS 9 clearly, *inter alia*, states as given under: *"5. Sale/repurchase agreements i.e. where seller concurrently agrees to repurchase the same goods at a later date."*

To apply the above paragraph, it is not necessary that re-purchase material should be same material which has been sold earlier. Substance is more important than form as given in the Accounting Standard (AS) 1, 'Disclosure of Accounting Policies' of the Institute of Chartered Accountants of India.

(iv) The agreement/arrangement between the manufacturer and the company involves delivery of material to the manufacturer with restricted use and repurchase agreement for follow-on product.

Since there is no actual sale to and purchase from manufacturer, the company should not account in books as sales and purchase.

B. Query

10. On the basis of the above, opinion of the Expert Advisory Committee is sought by the querist on the correct accounting treatment between alternative 1 or 2 mentioned in paragraph 7 above or any other alternative.

C. Points considered by the Committee

11. The Committee notes that the basic issue raised by the querist is whether the supply of raw material (*viz.*, aluminium rod) by the company to the manufacturer for manufacturing conductors to be supplied back to the company should be regarded as sale by the company. In other words, whether the supply of raw material to the manufacturer can be considered as an independent transaction from the transaction of purchase of the conductors from the manufacturer given the fact that such conductors would be manufactured only by using the raw material supplied by the company. The Committee has, therefore, considered only this issue and has not examined any other issue that may be contained in the Facts of the Case, such as, accounting treatment of other costs incurred to manufacture conductors, accounting treatment in the books of the manufacturer, *etc*. Further, the Committee wishes to point out that the opinion expressed hereinafter is purely from accounting point of view and not from the view point of interpretation of any legal enactment, such as, Sale of Goods Act, 1930 and enactments relating to Excise, CENVAT, VAT, *etc*., since in accordance with Rule 2 of its Advisory Service Rules, the Committee is prohibited from doing so.

12. The Committee notes that in the extant case, the aluminium rods are procured by the company and supplied to the manufacturer of conductor for conversion into finished product, *i.e.,* conductor. As regards the issue whether the aluminium rods sent to the manufacturer can be treated as sales by the company to the manufacturer, the Committee notes paragraph 17(b) of Accounting Standard (AS) 1, 'Disclosure of Accounting Policies', which states as follows:

"b. *Substance over Form*

The accounting treatment and presentation in financial statements of transactions and events should be governed by their substance and not merely by the legal form."

The Committee notes from the above that the transactions and events are accounted for and presented in accordance with their substance, *i.e.*, the economic reality of events and transactions, and not merely in accordance with their legal from. In other words, it is the 'economic reality' that is important in accounting and not only the 'legal reality'.

13. The Committee further notes that Accounting Standard (AS) 9, 'Revenue Recognition', notified under the Companies (Accounting Standards) Rules, 2006, provides as follows:

"6.1 A key criterion for determining when to recognise revenue from a transaction involving the sale of goods is that the seller has transferred the property in the goods to the buyer for a consideration. The transfer of property in goods, in most cases, results in or coincides with the transfer of significant risks and rewards of ownership to the buyer. However, there may be situations where transfer of property in goods does not coincide with the transfer of significant risks and rewards of ownership. Revenue in such situations is recognised at the time of transfer of significant risks and rewards of ownership to the buyer. Such cases may arise where delivery has been delayed through the fault of either the buyer or the seller and the goods are at the risk of the party at fault as regards any loss which might not have occurred but for such fault. Further, sometimes the parties may agree that the risk will pass at a time different from the time when ownership passes."

"10. Revenue from sales or service transactions should be recognised when the requirements as to performance set out in paragraphs 11 and 12 are satisfied, provided that at the time of performance it is not unreasonable to expect ultimate collection. If at the time of raising of any claim it is unreasonable to expect ultimate collection, revenue recognition should be postponed.

…"

"11. In a transaction involving the sale of goods, performance should be regarded as being achieved when the following conditions have been fulfilled:

(i) the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership; and

(ii) no significant uncertainty exists regarding the amount of the consideration that will be derived from the sale of the goods."

The Committee notes that as per the principles enunciated above, revenue should be recognised when all significant risks and rewards of ownership are transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership. From the Facts of the Case, the Committee notes that although the legal form of the transaction is that the company is raising invoice on the manufacturer for the supply of raw material to it and the manufacturer has also taken an insurance policy in his name for the goods supplied to him, the substance of the transaction is that the company still retains effective control on the aluminium rods transferred to the manufacturer and the significant risks and rewards relating to ownership of raw material (aluminium) are not transferred to the manufacturer, as explained below:

(i) The 'Terms of Post-Bid Discussion with the Manufacturer' as given in paragraph 6 above provide that the aluminium rods transferred to the manufacturer can only be used for the manufacturing of conductor of the company and cannot be used for any other purposes. In other words, the manufacture will not use aluminum from any other source other than that supplied by the company. It clearly indicates that the manufacturer has no control on the aluminum rods to be used in the manufacture of conductor and the company controls the usage of aluminium rods.

(ii) As per the provision of bidding documents as given in paragraph 6(iv) above, "a quantity of 1.1860 MT of aluminium rod per km of finished ASCR Zebra conductor, will be sold by the company to the manufacturer on sale-in-transit basis. However, in case of actual tonnage of aluminium rod in different lot(s) exceeds the tonnage requirement worked out as above for finished Zebra conductor manufactured from corresponding lots(s), such excess quantities shall be considered to be sold by the company to manufacturer at extra cost." From this provision, it is clear that an estimated quantity of aluminium rod is sent to the manufacturer for use in the manufacture of finished product and if there is excess consumption of material, then that excess quantity only is considered as sale to the manufacturer. In other words, the company does not sell aluminium rods to the manufacturer rather it issues raw materials on estimated basis in proportion to finished goods.

(iii) As per the 'Terms of Post-Bid Discussion with the Manufacturer' as given in paragraph 6(iv) above, the manufacturer will maintain relevant records for identification/traceability of material received from the company at every stage and the procedure. Further, it is noted from the contract agreement between the company and the manufacturer that the company will also receive a declaration from the manufacturer regarding utilisation of aluminium rods supplied to it by the company. These facts further provide evidence that the company is controlling the material sent by it to the manufacturer.

(iv) While raising ex-works invoice, the manufacturer mentions different price components stating separately the price charged for aluminium rods, inward freight, insurance, cost of other consumables and conversion cost (after set-off of the CENVAT Credit on account of aluminium rods and scrap value of raw materials). Hence, the invoice raised basically segregates the various components being reimbursed by the company alongwith the conversion cost. Thus, the manufacturer is not charging for the end product but is primarily charging for the conversion cost and other cost being incurred by him for conversion of aluminium rods into conductor.

(v) It was further noted from the price break-up on invoice as per the contract agreement that the same price of aluminium rod is being charged by the manufacturer as is being incurred by the company in respect of the aluminium rods. Thus, the manufacturer does not possess any price risk or reward associated with the ownership of aluminium rods.

(vi) The manufacturer cannot enter into any hedging/forward contract for aluminium rods, which indicates that the manufacturer neither has any control on the aluminium rods nor it can hedge its risk, if any, arising in respect of raw material or obtain any benefit out of it.

14. From the above, the Committee is of the view that in the extant case, the manufacturer does not have control on the use of aluminium rods supplied to it by the company. The Committee is also of the view that even though invoices may be raised for raw materials transferred to the manufacturer, significant risks and rewards of ownership and effective control on the goods still vest with the company. Therefore, in the view of the Committee, there is no sale to the manufacturer. In fact, the company pays to the manufacturer only for conversion of aluminum rod into conductor. Accordingly, the Committee is of the view that no revenue from sales should be recognised on despatch of raw materials to the manufacturer rather, the company should treat them as its own inventory and should account for it accordingly. The company should also make adequate disclosures so as to clearly disclose that such inventory is lying in the premises of the manufacturer for finished product, viz., conductor.

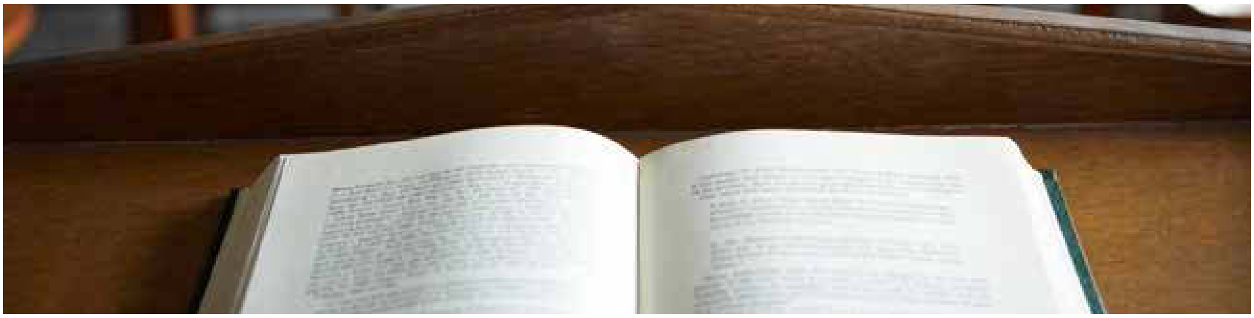
15. The Committee also wishes to point out that the treatment of transactions under MoU arrangements as purchase and sales of the company for the purposes of taxation cannot be the criteria for determining the true nature of the transactions and their correct accounting treatment.

D. Opinion

16. On the basis of the above, the Committee is of opinion that that to account for the raw material supplied by the company to the manufacturer as its own inventory is the appropriate alternative. However, the company should also make adequate disclosures so as to clearly disclose that such inventory is lying in the premises of the manufacturer of the conducter, as stated in paragraph 14 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 November 15, 2013. The Opinion must, therefore, be read in the light of any amendments and/or other developments subsequent to the issuance of Opinion by the Committee.
3	The Compendium of Opinions containing the Opinions of Expert Advisory Committee has been published in thirty two volumes. A CD of Compendium of Opinions containing thirty two volumes has also been released by the Committee. These are available for sale at the Institute's office at New Delhi and its regional council offices at Mumbai, Chennai, Kolkata and Kanpur.
4	Recent opinions of the Committee are available on the website of the Institute under the head 'Resources'.
5	Opinions can be obtained from EAC as per its Advisory Service Rules which are available on the website of the ICAI, under the head 'Resources'. For further information, write to eac@icai.in.

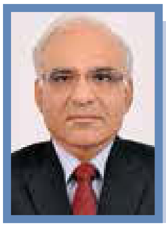
Building Competent Professional Accountants: A Strategic Perspective



India's progressive evolution as a knowledge economy is primarily attributable to its intelligent and able human resource. Globalisation has had a positive impact and opened new avenues for the country to establish its distinctive position in the knowledge world. The accelerated economic growth within the country has also increased the demand for skilled and competent human resource. At this juncture, it is critical for India to respond to the continually changing dynamics of the knowledge economy. Universally, it is now well established that acquisition of knowledge does not always result in development of competence. Practical application and Skills development are the sine qua non *to bridge the gap between knowledge and competence.*

A recent survey conducted as an annual initiative of Pearson Education, India, focuses on our education system's ability to drive improvements in learning and the challenges being faced in achieving the same. According to the survey, India's assessment system primarily concentrates on results of written examinations. Skill development, which is an important benchmark for measuring learning, does not feature prominently in our scheme of education or assessment. These findings reflect the urgent need for skills and competencies to be developed as an integral part of our learning curriculum.

The global accountancy profession has been particularly conscious of this need and is working towards integration of knowledge and skills to develop competent professional accountants to keep pace with the growing demands of the knowledge economy. The best way for a professional accountant to leverage knowledge economy is to imbibe its traits - innovation, dynamism and change management being the most significant. Constant learning and development of skills and competencies should be part of the DNA of professional accountants. It is also critical for professional accountants to keep a tab on the technological developments. Finally, they should be able to "MAP the GAP" by integrating their knowledge with the requisite professional skills and values to evolve as competent professional accountants.



Mr. Vijay Kapur* and CA. Priya Subramanian**

(*The author is Director, Board of Studies and Secretary, CRET of the ICAI. **The author is Deputy Director, Board of Studies, ICAI)

Professional Accounting Education: Transition to Competence-based approach

In the context of professional accounting education, "competence" can be defined as the ability to perform the tasks and roles expected of a professional accountant to the defined standard, with reference to real working environments. In fact, the strength of the accountancy profession stems from the underlying confidence and trust reposed by stakeholders in the "competence" of professional accountants, demonstrated through the work performed by them. "Competence" is, therefore, not a static measure for a professional accountant; it evolves over his lifetime of learning, since it is associated with the actual working environments.

Globally, professional accounting education has been moving from a knowledge-based approach to competence-based approach, which focuses on developing the desired level of competence required to perform a role as a professional accountant. Over the last decade, leading professional accounting bodies, like the South African Institute of Chartered Accountants, the Institute of Chartered Accountants of England and Wales, Chartered Accountants Ireland, to name a few, have transitioned to the competence-based approach.

The focus of professional accounting education programmes of these bodies is development of "competent" professional accountants and adoption of competence-based approach offers a systematic and

The views and opinions expressed or implied in this article are those of the authors and do not necessarily reflect those of the ICAI.

effective way of achieving this objective. This approach requires demonstration of competence as a necessary condition for award of professional qualification. The development and implementation of this approach as part of the scheme of education and training requires professional accountancy organisations to work in co-ordination with the practical experience supervisors and the stakeholders, including employers and public.

Objective of Periodic Review of Scheme of Education & Training: Enhancing Knowledge & Upgrading Skills & Values

The ICAI, one of the premier professional accountancy organisations in the world, has spared no efforts to strengthen the system of education and training to enable its students to acquire the competence (*i.e.,* the skills and expertise) which the profession requires. Towards this end, the Scheme of Education and Training has been reviewed periodically by various Committees of ICAI set up from time to time. The objective of periodic review is to ensure that the scheme continues to be contemporarily relevant and provides a professional environment in which students upgrade their skills and values in addition to enhancing their professional knowledge.

Introduction of Competence-based Approach in the ICAI Scheme of Education and Training: A significant item on the agenda of the new CRET.

Continuing its efforts in this direction, the Council of ICAI has now constituted a new Committee for Review of Education and Training (CRET) including Five Regional Committees for Review of Education and Training. Its task list includes the following high-priority items:

- To review the existing scheme of theoretical education including the stages of professional accountancy education, classification and coverage of subjects at each stage in light of **relevant international education standards and good practices adopted by international accountancy bodies**.
- To review the effectiveness of the scheme of practical training, including supervision and monitoring, to ensure inculcation of professional values, ethics and attitudes as well as professional skills necessary for development of **versatile and competent professional accountants**.
- To review and modify the existing methods of assessment to ensure **objective evaluation of professional competence** achieved at each stage of professional accountancy education.

Thus, the new CRET has, through these clearly laid down objectives, paved way for adoption and implementation of competence-based approach in the scheme of education and training of chartered accountancy course.

Revised IESs : Shift from Knowledge-based Approach to Competence-based Approach

The International Accounting Education Standards Board (IAESB) of the International Federation of Accountants (IFAC) is an independent standard-setting body that serves the public interest by establishing standards in the area of professional accounting education. These standards are referred to as International Education Standards (IESs). ICAI, being a member body of IFAC, has to comply with the membership obligations laid down by IFAC through its Statements of Membership Obligations (SMOs). SMO 2 sets out the requirements of an IFAC member body with respect to international standards and other pronouncements issued by IAESB. It mandates IFAC member bodies to adopt and implement the IESs.

The IAESB has undertaken to revise and redraft its IESs as part of its project to improve the clarity of its standards. The details of Revised IESs are briefed hereunder –

IES	Title	Effective Date
1	Entry requirements to Professional Accounting Education programmes	1st July, 2014
2	Initial Professional Development–Technical Competence	1st July, 2015
3	Initial Professional Development-Professional Skills	1st July, 2015
4	Initial Professional Development–Professional Values, Ethics & Attitudes	1st July, 2015
5	Initial Professional Development-Practical Experience	1st July, 2015
6	Initial Professional Development–Assessment of Professional Competence	1st July, 2015
7	Continuing Professional Development (CPD)	1st January, 2014

The revised standards incorporate the competence-based approach of learning and assessment in the place of knowledge-based approach, thereby shifting the focus from inputs to work outcomes. This has been necessitated on account of continuous and extensive changes in the accountancy profession's body of knowledge. Though knowledge specifications change with time, the key set of competences will have a much longer currency. Hence, the move to transition to competence-based approach.

IPD & CPD: Stages of development of Professional Competence

The revised IESs on Initial Professional Development (IPD) and Continuing Professional Development (CPD) establish the level of "competence" of a professional accountant, which is the bedrock upon which public trust is built. IPD is the learning and development through which individuals first develop competence leading to performing a role in the accountancy profession. IPD continues until the aspiring professional accountants[1] can demonstrate the professional competence required for their chosen roles in the accountancy profession.

Revised IESs 2, 3 & 4 lay down the desired level of technical competence, professional skills and professional values, ethics and attitudes, respectively, to be achieved by aspiring professional accountants by the end of IPD. These three individual components together constitute professional competence.

CPD is the learning and development that maintains and develops competence to enable professional accountants to perform their roles. CPD enables continuous development of the professional competence achieved during IPD. Further, professional accountants are likely to assume new roles during their career that require new competences. In such cases, CPD would be essential for roles demanding additional breadth and/or depth of knowledge, skills and values achieved during IPD.

Constituents of Competence-based Approach: Learning Outcomes, Competence Areas & Level of Proficiency

Each component of professional competence, namely, technical competence, professional skills and professional values, ethics and attitudes, is further described by a set of learning outcomes within a competence area.

- **Competence** area is a category for which a set of learning outcomes can be specified.
- **Learning outcomes** establish the content and the depth of knowledge, understanding and application required for each specified competence area.
- **Level of proficiency** specified for each competence area identifies the level to be achieved by the end of IPD. It indicates the context in which the relevant learning outcomes are expected to be demonstrated. Proficiency levels that are assigned to competence areas under Revised IESs 2, 3 & 4 indicate what should be reasonably expected of candidates at the end IPD.

Professional Competence requirements under the Revised IESs

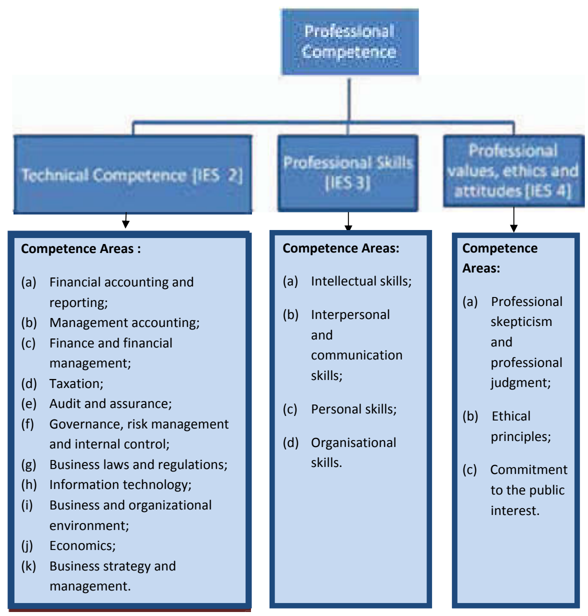


Table A of Revised IESs 2, 3 & 4 lists the learning outcomes for each of the above competence areas to be achieved by aspiring professional accountants by the end of IPD, irrespective of their intended future accounting specialisation or role. These learning outcomes lay the base for enabling professional accountants to develop specialisations. An intermediate level of proficiency has been prescribed for most of the competence areas. Professional accounting education programmes may include further competence areas, increase the level of proficiency for certain competence areas or specify further learning outcomes that are not laid down in the IESs.

[1] An aspiring professional accountant is an individual who has commenced a professional accounting education program as part of IPD.

Competency Framework: Identification of Professional Competencies

A competency framework identifies the professional competencies (*i.e.*, technical competence, professional skills and professional values, ethics and attitudes) which a professional accountant should possess at the point of qualification. Once the competence requirements are identified, the content of the education and training programme can be suitably developed and learning strategies can be formulated for facilitating achievement of these competencies. Thus, a competency framework provides the foundation upon which education, training and assessment programmes can be developed.

Building Technical Competence : Effective Application of Professional Knowledge in Practical Situations

As per Revised IES 2, "Technical competence" is the ability to apply professional knowledge to perform a role to a defined standard. Professional knowledge refers those topics that make up the subject of accountancy as well as other business disciplines that, together, constitute the essential body of knowledge for professional accountants.

In order to achieve technical competence, it is essential to link professional knowledge in each competence area (*i.e.*, financial reporting, audit and assurance, governance *etc.*) to the real-life context. If the learning in each area of professional knowledge, more commonly referred to as a subject area, is linked to the practical context, students would be able to effectively grasp the significance of the concepts as well as their application. This would enable them to gain the requisite technical competence by the end of IPD.

Thus, developing technical competence involves –

- **Acquiring professional knowledge**-A strong knowledge-base of the subjects provides the foundation for development of technical competence;
- **Comprehension**-Comprehension of knowledge refers to complete understanding of the subject in the real sense, and not mere rote learning or memorizing and reproducing; and
- **Acquiring the ability to execute a task applying such knowledge in real life/practical situation**-Knowledge and comprehension would result in development of "competence" only if a student is able to apply such knowledge effectively in the real-life/practical context.

Developing Technical Competence: Role of Academic Programmes *vis-à-vis* Practical Training

- **Academic Programmes:**
  Academic programmes generally include application-oriented scenarios and simulated case studies in the study modules to facilitate students in understanding the application of concepts. In the Indian context, the ICAI includes application-oriented questions in its various publications – Study Materials, Practice Manuals, Revision Test Papers, Mock Test Papers, to name a few. In the subject of taxation, judicial rulings interpreting provisions of law are discussed in some length in the publication "Select Cases in Direct and Indirect Tax Laws" to aid students' understanding of interpretation of the provisions of tax statutes. Students are also tested by way of analytical questions in written examinations, where they can demonstrate the achievement of learning outcomes under the different areas of technical competence. Academic programs, however, do have their limitations when it comes to providing opportunities for application of knowledge in real-life context. It is here that the role of practical training assumes significance.
- **Practical Training:**
  An effective practical training in core areas of the accountancy profession would help students acquire the ability to execute a task applying professional knowledge gained through academic education. This requires students to have an in-depth understanding of the concepts and principles as well as the ability to apply the concepts in problem solving. Significant further learning may be required for application of knowledge in practical work situations.
  For example, one of the learning outcomes under the core competence area "Financial accounting and reporting" is to prepare financial statements, including consolidated financial statement, in accordance with IFRSs or other relevant standards. The study module on this topic may, in addition to explaining the accounting principles, concepts and relevant accounting standards, incorporate illustrations dealing with preparation of financial statements applying IFRSs and/or other accounting standards. However, it is in the real-life context, that a student actually learns to distinguish between relevant and irrelevant data, apply the relevant data in accordance with the accounting standards and prepare financial statements. The issues he may encounter in practical training may be wider and far more complex than the issues dealt with in the course of his theoretical education. Thus, a student gains technical competence in financial reporting only when he is actually involved in preparing financial statements of entities. Likewise, he would be able to learn and demonstrate the application of accounting principles to transactions

and other events, evaluate the appropriateness of accounting policies used to prepare financial statements and interpret financial statements and related disclosures more effectively in the course of practical training. Thus, practical training provides the students' a suitable platform to demonstrate their ability to use the academic knowledge acquired through theoretical education in a range of practical work contexts, and thereby achieve the desired level of technical competence.

Learning Outcomes under Revised IES 2 which can be effectively demonstrated through Practical Training - Some Examples

Financial reporting and accounting
- Evaluate the appropriateness of accounting policies used to prepare financial statements.
- Interpret reports that include non-financial data, for example, sustainability reports and integrated reports.

Management accounting
- Analyse financial and non-financial data to provide relevant information for management decision making.

Finance and Financial Management
- Evaluate the appropriateness of the components used to calculate an organisation's cost of capital.

Audit and Assurance
- Apply relevant auditing standards and applicable laws and regulations to an audit of financial statements.
- Assess the risk of material misstatement in the financial statements and consider the impact on the audit strategy.

Governance, risk management and internal control
- Analyse an organisation's risks and opportunities using a risk management framework.

Information technology
- Analyse the adequacy of general information technology controls and relevant application controls.

It may, however, not be practically feasible for a student to get an opportunity for exposure to all areas of professional knowledge during his training period. Therefore, the need for distinction between "essential areas" and "other non-core areas" arises. Whereas practical experience in "essential areas" (like Financial Reporting & Audit and Assurance) must be considered as "mandatory", practical experience in "other non-core areas" (like, Management Services) may be considered "desirable". However, even in "essential areas" like Financial Reporting and Audit and Assurance, a student's exposure during the practical training period may be limited to certain aspects and may not always cover the entire range of topics. In this context, secondment schemes may prove to be a beneficial arrangement enabling a student to gain practical experience in areas where the practical experience supervisor may not be in a position to provide the same.

- **Industrial Training:**
In the Indian context, where a significant percentage of the professional accountants opt to work in industry, the role of industrial training is assuming critical importance. Industrial Training would aid students in applying professional knowledge gained through theoretical education in the context of corporate and business environment and achieve the desired level of technical competence. It would, also facilitate a student's progress within the industry and set his career graph soaring.
However, in India, a student cannot choose to undergo industrial training for his entire tenure of practical training. A student who has completed his intermediate level examination (*i.e.*, IIPCE) may undergo industrial training for a period of 9 to 12 months during the last year of practical training, in any financial, commercial, industrial undertaking with specified minimum fixed assets/ total turnover/paid-up share capital.
Considering the global trends in professional accounting education, the limitation of industrial training to a maximum of one year may be a viewed as a restrictive condition. There is an urgent need for reviewing this aspect, especially because, in India, imbalances arise in the range and depth of practical experience imparted to students due to the differences in the type of work available with chartered accountant firms on account of their size, clientele, location *etc.*, which ultimately affects the development of technical competence of the students.
Industrial organisations which are eligible to impart training are, on the other hand, generally large entities which organise their training programmes in a well-structured manner. This would ensure that students develop the desired level of technical competence and also provide them an opportunity for speedy progress within the industry.

Developing Professional Skills & Professional Values, Ethics and Attitudes: A Mixture of Learning and Development Activities

Professional Skills

Professional skills refer to the intellectual, interpersonal and communication, personal and organisational skills necessary to perform a role as a professional accountant. These four skills constitute the competence areas under Revised IES 3.

Competence Areas	Competence Requirement
Intellectual	Ability to solve problems, make decisions and exercise professional judgment
Interpersonal and Communication	Ability to work and interact effectively with others *i.e.*, display co-operation and teamwork, communicate clearly and concisely *etc.*
Personal	Personal attitudes and behavior *i.e.*, exercising initiative, striving to add value, demonstrating leadership
Organisational	Ability to work effectively with or within an organisation to obtain optimal results or outcomes from the people and resources available.

As per Revised IES 3, an appropriate approach for learning and development for professional skills should include a mixture of activities which combine structured learning programmes and practical experience. Work-based simulations or group exercises are examples of activities that enable aspiring professional accountants to develop and demonstrate achievement of learning outcomes related to professional skills.

General Management and Communication Skills (GMCS):

The objective of the ICAI's two stage General Management and Communication Skills Course (GMCS) for fifteen days each is to sharpen the interpersonal and communication skills of chartered accountancy students. The course content, however, is too generic and needs to be made more effective by linking it with the domain competence areas. Further, considering that the course is being organised by the regional offices and branches of ICAI spread across the length of the country and delivered to a substantially large number of students, the delivery mechanism needs to be ameliorated to ensure consistency in quality. To address these concerns, the course needs to be metamorphosed to orient the same towards the demands of the profession, *i.e.*, to develop leadership skills, consultative skills as well as the higher level skills of synthesis and evaluation which are necessary for achieving professional competence. Simultaneously, the duration of these courses has to be increased sufficiently to facilitate intensive training for enabling effective delivery of the enhanced content and at the same time, for providing sufficient opportunities for the students to upgrade their skills and demonstrate the same during the course period.

Towards this end, residential training programmes may be designed in the pattern of "Academies of Accounting" for developing the requisite professional skills of students by integrating them with the core technical competencies. One may recall that way back in 1968-70, a Special Committee of ICAI recommended for the first time, the concept of compulsory intensive training at "Academies of Accounting" to be set up by the Institute. The Committee had suggested the duration of training to be for a period of three months after a student completes 33 months of practical training. This recommendation was endorsed by the Review Committees set up in 1972-73 and 1975-78. In October, 1978, the Council decided in favour of the recommendations of these Committees and three Academies of Accounting were set up in Madras, Bombay and Calcutta in succession. However, in December, 1984, the Council recommended the discontinuance of the Academies on account of, *inter alia,* benefits not matching the costs.

In the current context of development of professional skills in integration with technical competencies, intensive training programmes for a period of say, three to six months, on the model of "Academies of Accounting" may be developed. Such training programmes should ideally be delivered by Management Institutes of repute and emphasis should be more on the participative method. The training may be imparted to students who have qualified the final examination, which would also ensure administrative feasibility as the numbers to be trained would be comparatively less. Award of professional qualification should require successful completion of such training for which students need to demonstrate professional skills by integrating the same with the core technical competencies. In the alternative, the period of training may also be integrated with the last three to six months of practical training.

Such intensive training programmes would give the course a professional orientation and serve as an ideal platform for effective development and demonstration of professional skills envisaged under Revised IES 3.

Role of Practical Training in developing Professional Skills:

Practical experience also enables aspiring professional accountants to participate in assessment activities to demonstrate their professional skills. Revised IES 3 particularly emphasises the role of practical experience supervisors in helping students develop professional skills within the workplace.

Learning Outcomes under Revised IES 3 which can be effectively demonstrated through Practical Training - Some Examples

Intellectual Skills

- Evaluate information from a variety of sources and perspectives through research, analysis and integration.

Interpersonal and Communication Skills

- Display co-operation and teamwork when working towards organisation goals.

Personal Skills

- Apply professional skepticism through questioning and critically assessing all information.
- Set high personal standards of delivery and monitor personal performance, through feedback from others and through reflection.

Organisational Skills

- Apply appropriate tools and technology to increase efficiency and effectiveness and improve decision-making.

Professional Values, Ethics & Attitudes

Professional values, ethics and attitudes refer to the professional behavior and characteristics that identify professional accountants as members of a profession. It includes the ethical principles which are essential in defining the distinctive characteristics of professional behavior.

As per Revised IES 4, professional values, ethics and attitudes include a commitment to–

(a) technical competence and professional skills;
(b) ethical behaviour–independence, objectivity, confidentiality, and integrity;
(c) professional manner–due care, timeliness, courteousness, respect, responsibility and reliability;
(d) pursuit of excellence; and
(e) social responsibility–awareness and consideration of public interest.

Professional Accountants are expected to abide by the highest standards of integrity. They are required to carry out assignments objectively and independently, in accordance with ethical values. Acting with integrity, through adherence with these values, is, in fact, fundamental to the profession's commitment to excellence and public interest.

Learning and Development Activities for the Competence Areas of Revised IES 4

	Competence Area	Learning and development activities
(1)	Professional skepticism and professional judgmentw	Learning methodologies in which mentoring and reflective activity play a significant role constitute the learning and development activities in this area. Reflective activity is the iterative process by which professional accountants, at all stages of their career, continue to develop their professional competence by reviewing their experiences, real or simulated, with a view to improving their future actions. The most realistic experiences on which to reflect may occur in the workplace.
(2)	Ethical principles	Learning and development on ethical principles focus on – (a) ethical issues which all professional accountants are likely to encounter; (b) specific ethical issues which are more likely to be faced by professional accountants in their respective roles; (c) main considerations in developing suitable responses to such ethical issues. During the course of practical training, aspiring professional accountants may be exposed to ethical issues and potential dilemmas. They may be encouraged to – (a) identify any obvious ethical implications and conflicts in their work; (b) form initial opinions on such issues; and (c) discuss them with their practical experience supervisors.
(3)	Commitment to the public interest	Establishment of learning and development activities that include professional values, ethics and attitudes foster a commitment for aspiring professional accountants to act in public interest. Acting in public interest includes developing an awareness and concern for the impact on the public and developing a sensitivity to social responsibilities.

Learning Outcomes under Revised IES 4 which can be effectively demonstrated through Practical Training - Some Examples

Professional skepticism and Professional judgment
- Apply a questioning mindset critically to assess financial information and other relevant data;
- Identify and evaluate reasonable alternatives to reach well-reasoned conclusions based on all relevant facts and circumstances.

Ethical Principles
- Identify ethical issues and determine when ethical principles apply;
- Apply the fundamental ethical principles of integrity, objectivity, professional competence and due care, confidentiality and professional behavior to ethical dilemmas and determine an appropriate approach.

Commitment to the public interest
- Analyse the interrelationship of ethics and law, including the relationship between laws, regulations and the public interest.

Practical Training, thus, plays a vital role not only in developing professional skills and technical competence of aspiring professional accountants, but also ingraining in them professional ethics.

Development of Professional Competence: Role of Practical Training

The above discussions bring to light the critical role of Practical Training in bridging the gap between acquisition of knowledge and development of professional competence. Academic education is, no doubt, useful for acquiring professional knowledge. However, acquisition of such knowledge does not necessarily demonstrate achievement of professional competence required for performing the role of a professional accountant. Practical experience closes this gap by equipping aspiring professional accountants with the professional skills and values needed to become a competent professional accountant.

Taking into consideration the significant role of practical experience, Revised IES 5 requires aspiring professional accountants to undertake **sufficient practical experience** to demonstrate that they have gained technical competence, professional skills and professional values, ethics and attitudes necessary for performing a role as a professional accountant. Completion of sufficient practical training is, thus, critical for ensuring achievement of professional competence expected from a professional accountant.

Sufficient Practical Experience : A blend of Breadth and Depth

As per Revised IES 5, "sufficient practical experience" is one which has a blend of depth and breadth, knowledge and application and where appropriate, integration of material from different areas applied to a range of situations and contexts.

Factors affecting the Breadth of Practical Experience:
- Nature of role;
- Level of proficiency;
- National or local laws:
- Requirements of regulatory authorities; and
- Public expectation of professional competence.

Factors affecting the Depth of Practical Experience:
- The variety and complexity of tasks; and
- The level of supervisory and mentoring support.

Revised IES 5 emphasises the role of practical experience in development of competent professional accountants. Practical training provides the aspiring professional accountants an exposure to the professional environment in which services are provided. Further, it enhances their understanding of organisations and the manner of functioning of businesses. It also helps them in relating accounting work to other business functions and activities. Most importantly, it enables development of professional values, ethics and attitudes in real life situations.

Competency Integration: Pre-requisite for demonstration of Professional Competence

Professional Accountants need to have the ability to integrate the competencies and demonstrate the same. Such integration can take place –
- ➔ within a component of professional competence, like technical competence; and
- ➔ across components, like between –
  - ⇨ technical competence and professional skills; or
  - ⇨ technical competence and professional values, ethics and attitudes; or
  - ⇨ technical competence, professional skills and professional values, ethics and attitudes.

Integrated Demonstration of Competence within a Component: An Example

Within the component "technical competence", the learning outcomes under different competence areas may have to be demonstrated in an integrated manner. The learning outcomes under Competence Area "Information Technology" (for example, use of information technology for data analysis and decision making) have to be integrated with the learning outcomes under Management accounting and Finance and Financial management (for example, to analyse the current and future financial position of an organisation using techniques including ratio analysis, trend analysis and cash flow analysis). The role of information technology in decision-making, processing and reporting of information has to be demonstrated in the tasks performed by professional accountants by integrating the same with the specific technical competencies.

Integration of Learning Outcomes across components of Professional Competence : A few examples

Technical competence also needs to be integrated with professional skills and professional values, ethics and attitudes to demonstrate professional competence. Therefore, the knowledge, skills and abilities required for professional accounting education should be developed within the curriculum as integrated competencies and demonstrated through a combination of academic education programmes and practical training.

Professional Skills [Revised IES 3]	Professional Values, Ethics and Attitudes [Revised IES 4]	Technical Competence [Revised IES 2]
Intellectual skills Apply professional judgment, including identification and evaluation of alternatives, to reach well reasoned conclusions based on all relevant facts and circumstances	**Professional skepticism and professional judgment** Identify and evaluate reasonable alternatives to reach well-reasoned conclusions based on all relevant facts and circumstances.	**Management Accounting** Analyse financial and non-financial data to provide relevant information for management decision making. **Governance, risk management and internal control** Analyse an organisation's risks and opportunities using a risk management framework. **Finance and financial management** Compare the various sources of financing available to an organisation, including bank financing, financial instruments and bond, equity and treasury markets.
Intellectual skills Apply reasoning, critical analysis and innovative thinking to solve problems + **Personal skills** Apply professional skepticism through questioning and critically assessing all information.	**Professional skepticism and professional judgment** Apply a questioning mindset critically to assess financial information and other relevant data	**Management accounting** Apply techniques to support management decision making, including product costing, variance analysis, budgeting and forecasting. Evaluate the performance of products and business segments. **Finance and Financial management** Analyse the current and future financial position of an organisation, using techniques including ratio analysis, trend analysis and cash flow analysis. **Business Strategy and Management** Analyse the external and internal factors that may influence the strategy of an organisation.
Intellectual skills Evaluate information from a variety of sources and perspectives through research, analysis and integration + **Interpersonal and Communication skills** Communicate clearly and concisely when presenting, discussing and reporting in formal and informal situations, both in writing and orally.	**Professional skepticism and professional judgment** Apply a questioning mindset critically to assess financial information and other relevant data	**Financial accounting and reporting** Interpret financial statements and related disclosures. Interpret reports that include non-financial data, for example, sustainability reports and integrated reports. **Management accounting** Prepare reports to support management decision making, including reports that focus on planning and budgeting, cost management, quality control, performance measurement and benchmarking.

The integrated demonstration of learning outcomes under different competence areas, through practical training programmes and written examinations, would reflect the student's overall level of proficiency, which is the ultimate test of achievement of professional competence.

Competence integration requirements increase with the growing complexity in the accountancy field. For example, the demands of integrated reporting necessitate presenting accounting information about an organisation's strategy, governance, performance and future prospects in a manner that mirrors its commercial, social and environmental context. Therefore, accounting competencies have to be integrated with technological competencies as well as intellectual competences, skills and values to meet the demands of integrated reporting.

Assessment of Professional Competence: Keystone of Competence-based Approach

Assessment of learning outcomes under different competence areas is the linchpin of competence-based approach. Competence-based assessments measure a candidate's ability to demonstrate achievement of specified competences required to perform a role as a professional accountant. An individual is said to be competent if he demonstrates that he can perform the tasks to the expected standard. Competence may be assessed through a variety of methods, which are referred to as assessment activities.

Principles of Assessment:

Assessment activities have to be designed to have high levels of reliability, validity, equity, transparency, and sufficiency. These, in effect, are the principles of assessment laid down under Revised IES 6.

- **Reliability**–If an assessment activity consistently produces the same result, the circumstances remaining constant, it would have a high level of reliability.

An assessment activity would have high reliability if the judgment of a large number of independent assessors is consistent, given the same set of circumstances. For example, if an essay-type answer of a candidate is evaluated by, say, five different assessors, and the marks awarded by all of them are more or less equal or within a certain tolerance range, it can be inferred that the assessment activity has a high reliability. It may, however, be practically difficult to ensure high reliability in scenario based questions having more than one correct answer.

- **Validity**–If an assessment activity measures what it was intended to measure, it would have a high level of validity.
  - **Face validity** would be high if the assessment activity is perceived to measure what it intends to measure;
  - **Predictive validity** would be high if the assessment activity's content pertains to the specific area of professional competence that it intends to measure;
  - **Content validity** would be high if the assessment activity adequately covers the particular area of professional competence sought to be measured.

A written examination on business laws is perceived to measure a candidate's technical competence on the subject. If the questions set in the written examination on the subject are such that they test the application and interpretation of the provisions of business laws, then the assessment activity i.e., the written examination on business laws can be said to have a high face validity. Its predictive validity would also be high since the questions in the written examination test the specific area of professional competence that it intends to measure i.e., technical competence in business laws.

If an examination tests the competence of the student to apply accounting standards, its content validity would be high if it covers application of more rather than a few standards and also includes integrated application of different standards. Likewise, the content validity of the income-tax paper would be high if it tests the integrated application of provisions of income-tax law under different heads of income, clubbing provisions, set-off and carry forward of losses and deductions from gross total income to compute the total income and tax liability of an entity.

- **Equity**–If an assessment activity is fair and without bias, it would have a high level of equity.

If the written examination in Direct Taxes contains a question involving application of, say, practical aspects of international transfer pricing provisions, in respect of which only a small fraction of the students in India have practical exposure, the examination would not have a high level of equity, since it would tend to be biased in favour of a handful of such students undergoing practical training in large-sized firms.
Likewise, the written examination on Indirect Taxes may be biased in favour of students belonging to a particular State in India, if it includes a question(s) on application of a VAT law of that State, since it would not be fair to students who belong to the other States of India. If the question happens to be compulsory, the extent of bias would be higher. The ICAI ensures that there is no such bias in written examinations by clearly indicating in its syllabus of Indirect Taxes that students shall not be examined with reference to any particular State VAT law, thus, ensuring that the written examination on Indirect Taxes has a high level of equity

- **Transparency**–Public disclosure of details of an assessment activity, for example, the competence areas to be assessed and the timing of the activity, would ensure high level of transparency. Transparency in the setting and conduct of an examination may be increased by making information relating to the development, scoring and management of the examination publicly available.

The ICAI, makes known to its students, well in advance the subject areas to be assessed as well as the schedule of written examinations, thus ensuring transparency in written examinations. Transparency can be further increased by making publicly available the relative weightings of different topics covered in the syllabus of each paper for the purpose of assessment as also the detailed marking scheme which forms the basis of such assessment.

- **Sufficiency** – If an assessment activity has the right balance of depth and breadth, knowledge and application and combines material from different areas applied to a range of situations and contexts, it is said to have a high level of sufficiency.
Sufficiency can be increased by including a range of assessment activities across different levels of IPD testing the different components of professional competence.

Under the present scheme of education of ICAI, examinations are being conducted at three stages – CPT, IIPCE & Final Examinations. There are 4 papers at CPT and 7 papers at IIPCE and 8 papers at the Final Examination. The depth of knowledge tested depends upon the level of proficiency expected at each stage i.e., basic knowledge at CPT, working knowledge at IIPCC and advanced knowledge at Final. In effect, the level of proficiency expected at each stage indicates the depth of knowledge to be examined at that stage.
The written examinations of ICAI have adequate breadth since almost all the subject areas are covered within the nineteen papers at all stages put together. It can, therefore, be inferred that the current assessment scheme tests the professional knowledge of students adequately. However, acquisition of professional knowledge would result in achievement of technical competence only if the students have demonstrated application of the professional knowledge adequately through these written examinations as well as through practical training.
Further, it is not possible to test certain professional skills, like inter-personal and communication skills and professional values through written examinations. These skills and values can be effectively demonstrated in the course of practical training. However, due to the varying range and depth of practical training imparted by firms across India, the benchmarks for assessment set by practical experience supervisors may differ significantly. Therefore, considering this limitation, appropriate assessment activities have to be devised to assess these skills and values, to the extent possible, in the written examinations at the Final level.

It is noteworthy that reliability, validity, equity, transparency and sufficiency are not absolute measures and their relative levels, i.e., whether high or low, would depend on the type of assessment activity. Though the principles of assessment apply to all assessment activities, it may not be possible to achieve high levels of reliability, validity, equity, transparency and sufficiency for each individual assessment activity.

Assessment Activities: Evaluation of Professional Competence

Revised IES 6 requires formal assessment of whether aspiring professional accountants have achieved an appropriate level of professional competence by the end of IPD, on the basis of the outcomes of a range of assessment activities that are undertaken during IPD. It also requires the assessment of professional competence to be based on verifiable evidence, *i.e.*, evidence that is objective, capable of being proven and stored in written or electronic form.

Assessment activities refer to the activities which have been devised to evaluate specific areas of professional competence. The type of assessment activity would depend on the particular area of professional competence sought to be assessed. Under Revised IES 6, the examples of assessment activities include -

- ⇨ Written Examinations;
- ⇨ Oral Examinations;
- ⇨ Objective Testing;
- ⇨ Computer-assisted Testing;
- ⇨ Workplace assessment of competence; and
- ⇨ Review of a portfolio of evidence on completion of workplace activities.

Design of Assessment Activities under Competence-based Approach:

A Professional Accountancy Organisation following competence-based approach should design is assessment activities in a manner to assess:

- √ Achievement of learning outcomes for each subject area
- √ Ability to apply professional knowledge in problem solving, both in written examinations as well as in practical situations
- √ Ability to distinguish between relevant data and irrelevant data
- √ Ability to effectively communicate ideas and draw logical conclusions
- √ Ability to identify ethical dilemmas and form opinions

- √ Ability to demonstrate, in an integrated manner, professional knowledge, professional skills and professional values, ethics and attitudes.

Assessment Activities in the current Scheme of Education & Training of ICAI

Assessment Activity	Area of Professional Competence assessed
Written Examinations (at Intermediate and Final level)	• Professional knowledge in subjects constituting competence areas under • "Technical Competence"; Intellectual Skills & Written • Communication Skills; and Professional Ethics.
Objective Testing (CPT)	Professional knowledge in certain subjects, which constitute competence areas under "Technical Competence" – Accounting, Economics & Law.
Objective Computer-assisted Testing (100 hours Information Technology Training)	Technical Competence – Information Technology
35 hours Orientation Programme GMCS – I & II	Interpersonal & Communication Skills

The following conclusions emerge from a perusal of the assessment activities given above:

(1) The written examinations are based on verifiable evidence *i.e.*, they are objective, capable of being proven and stored in written form.

(2) The written examinations assess the acquisition of professional knowledge adequately since the papers at the three levels cover almost the entire range of competence areas under Technical Competence. However, achievement of technical competence would depend on the ability of the student to demonstrate such knowledge in the real-life context, which can be effectively assessed through work place assessments.

(3) Only certain aspects of professional ethics can be assessed through written examinations. For example, learning outcomes which require explaining the nature of ethics and the role of ethics within the profession can be demonstrated through written examinations. However, other learning outcomes requiring exercise of professional skepticism and professional judgment can be demonstrated only in the course of practical training and this necessitates appropriate workplace assessment activities to be in place.

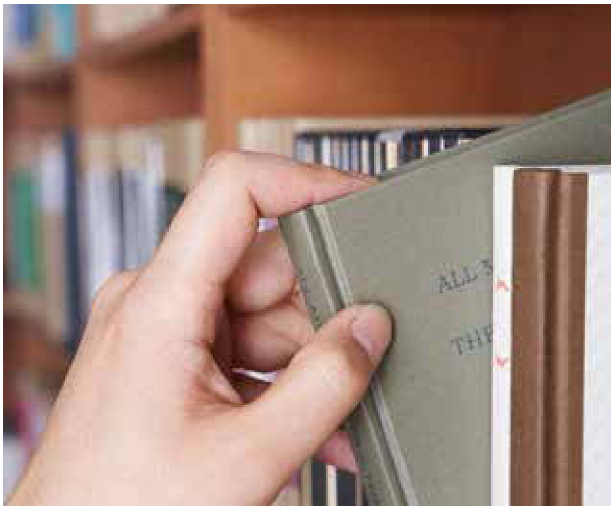
(4) Personal and organisational skills, being the competence areas under Professional Skills, can be assessed judiciously only through workplace

assessments. Likewise, intellectual skills and leadership skills can be well demonstrated only in the course of practical training.

Adoption and Implementation of Competence-based Approach : Challenges Ahead

Successful implementation of competence-based approach is ultimately dependent on the effectiveness of assessment. Assessment of professional competence should ideally include assessment of outcomes demonstrated in the real working environment *i.e.*, in the course of practical training. Considering that in India, the breadth and depth of the practical training largely depends on the size of the firms imparting training and its clientele, which varies considerably across the country, the opportunities for effective practical training may be limited. Further, the diversity in the size and clientele of firms may lead to differences in the standards and benchmarks set for assessment of professional competence by the practical experience supervisors. Also, the involvement of practical experience supervisors in assessment may pose concerns relating to the extent of objectivity as well as the fairness of on-the-job assessment. Another apprehension is the practical difficulty in ensuring that such workplace assessment is based on verifiable evidence. Apart from these difficulties in assessment of outcomes demonstrated in the course of Practical Training, the cost of such assessment may also act as an impediment. Therefore, considering the practical difficulties in establishing effective workplace assessment methods in the current Indian scenario, suitable mechanism should be devised to assess the development of skills and values imbibed in the course of practical training, as far as possible, in the written examinations at the Final level of the chartered accountancy course. Appropriate scenario-based questions can also be included in the written examinations to assess integrated application of competencies.

Another area of concern is that, under the competence-based approach, academic courses are expected to contribute significantly to development of technical competence. This necessitates that the learning outcomes in all subject areas, constituting the various competence areas under technical competence, be clearly defined. The content of academic education as well as the assessment of technical competence must be directed towards achievement of these learning outcomes. Sufficient care has to be taken to ensure that the learning outcomes are objective so that they are capable of being assessed. Subjectivity in defining learning outcomes would hamper effective assessment. The mechanism for delivery of academic education also needs to be suitably refined to orient the same towards facilitating achievement of learning outcomes for development of professional competence of students.

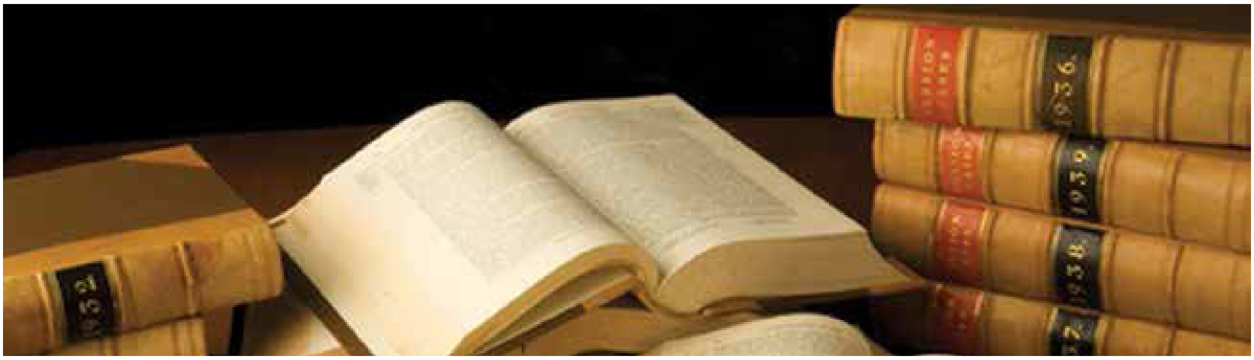


The competence-based approach requires integration of learning outcomes across the different components of professional competence and a comprehensive assessment plan to be developed concurrently. The highly integrated competencies are likely to pose a significant challenge in development of reliable and cost-effective assessment methods.

However, all these concerns may be viewed as the initial glitches, which can be overcome by foreseeing the problems and planning appropriate strategies to tackle them. Experience of international professional accounting bodies which have transitioned to competence-based approach are proof of the fact that the advantages of this approach far outweigh its perceived drawbacks.

Transition to competence-based approach is, undoubtedly, the need of the hour. It is the Institute's firm belief that public interest would be protected and credibility of the profession would be enhanced only when those who meet the profession's competence requirements are permitted to be chartered accountants. The ICAI, thus, has the onerous responsibility to ensure that chartered accountants have the competence expected of them by the public, employers and clients. Further, the chartered accountants have a continuing duty to ensure that clients, employers and other stakeholders receive competent professional service. Adoption of competence-based approach in the scheme of education and training would pave way for orientation of learning and development towards the various facets of professional competence. This would, in turn, lay the firm base for the ongoing development of professional competence throughout the career of a chartered accountant, thereby enhancing the credibility of the profession. ■

Professional Accountancy Education in India: The Way Forward



INTRODUCTION

Nudged by a number of factors, the stereotypical image of a professional accountant, tirelessly adding and subtracting figures, is fast changing. The chief factors responsible for the change being, borderless economies leading to increase in corporate mergers and restructuring, rapid developments in information and technology, financial scams underscoring the strategic role of professional accountants as watchdogs and need for a stringent regulatory set up, plethora of financial instruments, increasing business complexities, increased emphasis on corporate social responsibilities and the like. These factors warrant that the competence level of accountants should be bolstered. Present accounting education and the skill levels of professional accountants ought to be in sync with the requisites of the dynamic global business environment. There is a need to formulate a strategic plan for closing the gap between the accomplished and mandated skills.

PROPELLERS OF CHANGE

The role of a professional accountant is evolving continually to assume newer responsibilities in a dynamic environment. There has been a marked shift towards strategic decision making and entrepreneurial roles that add value beyond traditional financial recording and reporting. Professional Accountants in the emerging scenario need more than excellent core accounting skills.

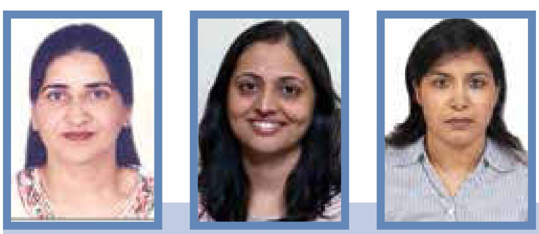
The key propellers of change prompting the accountancy profession to reinvent itself are:

(a) Globalisation

Business and accounting being concomitant, no discussion on professional accountants and accountancy education can begin without referring to the ubiquitous term 'globalisation'. With the advent of globalisation, world economies are increasingly becoming one eliminating barriers to trade, communication, and cultural exchange.

Globally accepted accounting standards: The dissolution of national boundaries driven by globalisation and facilitated by technological advances has brought diverging accounting and financial reporting standards together. As a part of G 20, India is committed that its national accounting standards will converge with International Financial Reporting Standards (IFRS) with certain carve outs. Finance Minister, Shri Arun Jaitely, while presenting the Union Budget 2014-15, has declared that new Indian Accounting Standards (Ind AS) would be adopted by the Indian companies from the financial year 2015-16 voluntarily and from the financial year 2016-17 on a mandatory basis.

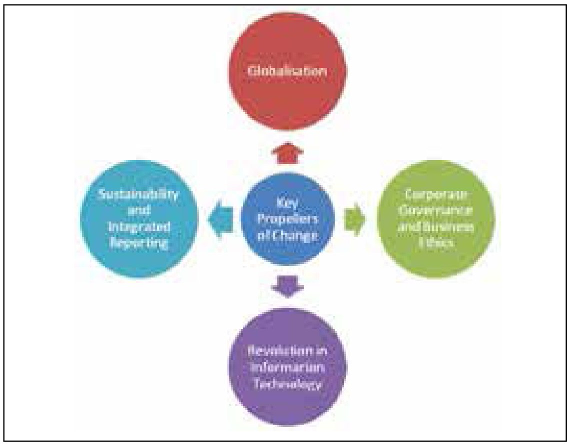
International taxation: Further, with increased international mobility and whole world virtually becoming one market there is a need for the accountancy professionals to enhance their knowledge base in international tax codes and ethics. In a highly advanced IT enabled business scenario where one



Ms. Prem Bhutani, CA.Smita Mishra, Ms. Nidhi Singh

(The authors are Deputy Director, Deputy Secretary and Assistant Secretary respectively at Board of Studies, ICAI. They may be reached at prem@icai.in.)

(Conceptualised by and prepared under the guidance of Director, Board of Studies and Secretary, CRET of ICAI Mr Vijay Kapur)



company operates from multi-establishments spread throughout the globe, professional accountants can no longer find solace in the knowledge of local tax laws. Countries across the globe are entering into tax treaties to avoid double taxation of a single transaction. Only a professional accountant who is well versed with the nuances of international taxation will be able to give an informed and correct advice to its multi-national clients and ensure compliance with tax laws of the countries from where it operates.

XBRL: As companies acquire and partner with overseas companies, they need an accurate, uniform and reliable real time technique to exchange financial information. They need a universal data language like XBRL to report lengthy and complex financial information to one another, regulators and other stakeholders. XBRL is a language for the electronic communication of business and financial data which is revolutionising business reporting around the world.

In India also, filing of balance sheet and statement of profit and loss account in XBRL has been mandated for companies having turnover or paid up capital above a certain limit. To keep pace with the dynamic global financial reporting requirements, professional accountants need to be thorough with this new digital business language and at the same time it needs to be ensured that future accountants are trained in this upcoming area.

Knowledge process outsourcing: In the new knowledge economy, organisations across the globe are facing shortage of professionals in various knowledge intensive high skill sectors. Globalisation has provided a solution to this problem in the form of 'knowledge process outsourcing' to lower cost countries. This trend will continue to grow in coming years as well. India, for example, already attracts global accounting and taxation work and other countries are also moving into this field. This would require accountancy professionals to master new skills, knowledge and standards which are relevant in the international context.

Merger of accountancy bodies: The prospect of a stronger, united accountancy profession adept to meet the evolving needs of accountants and the business community as a whole is actuating professional accountancy bodies to join hands. The recent merger between professional accountancy bodies of Australia and New Zealand to create a Trans-Tasman institute under the name of Chartered Accountants of Australia and New Zealand is the first cross-border merger of professional accountancy bodies. In the past, Canadian Institute of Chartered Accountants (CICA) and the Certified Management Accountants of Canada (CMA Canada) have merged at a national level to form the Institute of Chartered Professional Accountants of Canada (CPA Canada). These mergers result in mutual recognition of qualifications of the constituent bodies and allow more exchange between the merged bodies. It is to be seen as to how such mergers will affect the global professional accountancy education and professional accountants.

(b) Corporate Governance and Business Ethics

Good corporate governance practices are a *sine qua non* for sustainable business that aims at generating long term value to all its shareholders and other stakeholders. Strong governance standards focusing on fairness, transparency, accountability and responsibility are important not only for the healthy and vibrant corporate sector growth but also for inclusive growth of the economy. The past global financial crisis, along with some of the large corporate failures and frauds, has put a question mark not only on the corporate governance framework but also on the ethos of companies worldwide. Thus, there

is a need to develop more 'pro-active' approach to prevent fraudulent cases. The new incumbents into the profession need to be trained in good corporate governance practices and ethics must be ingrained in all aspects of professional education and training. The capacity to reason before, during, and after any ethical consideration needs to be activated and enhanced so that the profession upholds the esteem and value attached to it.

In India, the high influx of foreign investment has necessitated the introduction of a regulated and universal corporate governance model. SEBI proposal on adoption of a corporate governance model is the starting point. Knowledge of emerging markets, corporate governance guidelines, relevant SEBI guidelines and the like would add value to the profession in the years to come.

(c) Revolution in Information and Technology

The revolution in information technology has completely changed the ways in which businesses are being conducted. Cloud computing platforms and applications combined with advanced analytical tools, ever-larger data sets and social and mobile computing will remodel the profession and will shift the spotlight of accounting from computation to consulting and strategic decision making. Data analysis tools and software will greatly increase the opportunities to provide clients with analysis, performance management and decision-support services. However, with increasing incidences of cyber crime, there is a need to strengthen audit and risk assessment process. Thus, future professional accountants will have to recast themselves as cloud savvy professionals who have a greater understanding of data integrity, security and privacy concerns as well as the broader use of decision-support systems.

(d) Sustainability and Integrated Reporting

Although making profits is always the top agenda of most of the businesses, the non economic factors, in the light of increased concern for environment and society, have also gained significance. The businesses now need to identify and reduce the environmental impact of their current operations and put in place sustainable operating models. Similarly, parameters like working conditions, human rights, fair trade, public policy, safety and anti corruption measures have become important in the light of increased societal concern. Incorporating Corporate Social Responsibility (CSR) in the corporate strategy is yet another way of businesses showing their greater level of commitment towards society. In a nutshell, companies need to ensure stakeholders, suppliers and governmental institutions that they are managing their resources so as to accomplish sustainable development. The growing quest for sustainable value is expected to open up new avenues for the profession, such as carbon accounting, CSR accounting and auditing, and environmental reporting.

The professional accountant would have a role in **creating** (strategies, plans, policies, mission statements, value propositions, governance structures), **enabling** (use of tools and resources to implement and realise the strategic plan for sustainable value), **preserving value** (strict adherence to professional standards, codes of conduct, and accepted governance and procedures) and **reporting** (formal communication to stakeholders and the general public on how the organisation has delivered sustainable value, drafting of financial reports, shareholder communications, etc. by way of financial analysis through the application of accepted conventions, ratios and benchmarks).

An integrated reporting format which captures, gauges and communicates the holistic picture of the organisation giving its financial and non -financial performance data is becoming a great challenge to the accountancy profession. The accountancy profession will have to gear up and address vital issues relating to presentation and weightage of financial and non financial information in annual accounts and the training of future professionals in the light of broader integrated reporting role.

EDUCATION AND TRAINING: ROLE OF ICAI

In the given dynamic scenario, the potentiality of the professional accountancy education system to meet the diverse range of demands of various stakeholders and the professions becomes the focal point. Hence, there is a need to devise a whole new approach for developing, updating and delivering professional accountancy education and training of the future accountants. As per *ACCA's Report on 100 Drivers of Change for the Global Accountancy Profession,* characteristics such as entrepreneurial spirit, curiosity, creativity and strategic thinking skills could assume far more significance in the selection of tomorrow's accountants.

In India, the responsibility for the administration of the Chartered Accountancy (CA) curriculum and imparting theoretical education to students undergoing CA course rests with the Board of Studies of the Institute of Chartered Accountants of India (ICAI) under the supervision of the Council. With the adoption of distance education mode by the ICAI in

1955 and successful implementation of the same for nearly six decades, ICAI has emerged as a pioneer in the field. The mission of ICAI's Board of Studies is to provide a strong foundation of knowledge, skills and professional values and ethics that enables students to grow as wholesome professionals and adapt to change throughout their professional career. By integrating theoretical education and practical training, ICAI has been able to facilitate the development of both professional knowledge and skills as also inculcate professional values, ethics and attitudes.

Delivery of education

The academic function of Board of Studies is to prepare, revise and update the course material and other relevant literature. The principal academic resources include subject specific Study Materials and Practice Manuals, Revision Test Papers, Suggested Answers, Supplementary Study Papers, Select Cases in Direct and Indirect Tax Laws, Mock Test Papers, Compilations etc. Delivery of education is both paper based and web-based. All the publications of BoS are also made available at BoS knowledge portal on the website of ICAI.

ICAI has introduced **Cloud Campus** - a next generation interactive learning management system for students to provide quality education at the doorsteps of students, enabling them to learn anytime and from anywhere at the click of a button and that too, free of cost. The Cloud Campus, apart from integrating various existing resources including BoS Knowledge Portal, e-Learning, e-Books, Webcasts, Articleship Placement Portal, Examination Portal, Forms and Announcements provides incremental value added facilities including Articleship Training Resources, Online Mentoring and Video Lectures on practical problem solving in different subjects.

e-learning: Education is now being increasingly imparted to students through e-learning which provides quality self-learning/development facility to students so that they can concentrate on their practical training. Now, students can also access the online e-Learning through mobile phones and tablets also.

Video Lectures: These lectures aim to teach step-by-step practical problem solving process – a key skill required today from the examination perspective. Video lectures on all subjects are also being made available as a part of the Cloud Campus.

On-line mentoring: The Board also leverages technology to mentor students on strategies to succeed and excel in the examinations and answer their subject related queries. Faculty at Board of Studies guide students on how to study different subjects of the curriculum so that they can face the examination with confidence.

With introduction of e-learning, video lectures and on-line mentoring, the education delivery by BoS has almost become synonymous with class room teaching.

ICAI Cloud Campus

REVIEW OF EDUCATION AND TRAINING OF ICAI: ROLE OF CRET

ICAI's education and training system has evolved throughout the sixty five years since the enactment of Chartered Accountants Act in 1949. Beginning with 1953, ICAI has reviewed the scheme of education and training by constituting special review committees from time to time. The existing system of education and training is based on the recommendations of Committee of Review of Education and Training (CRET) constituted in the year 2004-05. Keeping with the objective of periodic review of system of education and training, CRET has been reconstituted in the year 2013 by the Council of ICAI. For the first time, Five Regional CRET have been constituted under the umbrella of main CRET to ensure wider participation and capture panoramic views and thought processes of members of the CA fraternity.

As in the earlier committees, the present CRET is also considering the appropriateness of the existing scheme of education and practical training – Entry Requirements, Practical Training, Theoretical Instructions and Methods of Assessment and would formulate a new scheme having regard to anticipated changes in the global economic environment and requirements of various stakeholders. In addition, the present CRET would also review the existing Accounting Technician Course.

REVIEW PROCESS

The Committee is adopting a multi-pronged approach for appraising the present system of education and training in terms of its strengths and weaknesses.

Step I – Identification and prioritisation of issues

First of all, the issues arising out of the dynamic nature of economic environment and rapid technological developments which have an impact on the existing scheme of education and training were identified. Further, a wide range of research papers and articles dealing with accounting education published in the international academic journals were also reviewed to identify possible issues. Besides, studies were also undertaken to examine the system of education and training being followed in other international accountancy bodies. The relevant International Education Standards (IESs) issued by International Federation of Accountants (IFAC) were also studied in detail in this regard.

The emerging issues were then deliberated and prioritised for examination in detail.

Step II – Eliciting opinions/suggestions of stakeholders on issues

The comments/suggestions of various stakeholders were solicited in the following ways:

(i) Issue of questionnaires for four identified segments of the society connected with the profession viz., members, students, users of professional services and academicians.

(ii) Meetings with select group of academicians/ experts and users of the professional services.

Apart from the above, the views and suggestions received from other members and experts from time to time have also been considered.

Step III – Analysis of opinions/suggestions received

The suggestions/opinions so received were deliberated at length in the respective meetings of the Regional CRET and Council meeting specially convened for this purpose.

Step IV – Findings and Recommendations

Based on the discussions held at various meetings, CRET will come out with its recommendations which will be further deliberated by the Council and thereafter, the new scheme of education and training will be formulated and implemented.

KEY FOCUS AREAS

The key focus areas for discussion and review are :

(i) Entry requirements

The goal of professional accountancy education and practical experience is to produce competent professional accountants. IES 1 on Entry Requirements stipulates that candidates with a reasonable chance of success should only be allowed entrance to Professional Accountancy Education (PAE) but at the same time, the requirements should not represent excessive barriers to entry. For instance, prescribing specific subject qualifications from certain institutions or a minimum length of specific work experience will tantamount to creating excessive barriers to entry. A professional accountancy education programme should be flexible inasmuch as having a range of entry and exit routes and different ways of completing initial professional development (IPD).

The entry requirements adopted by an accountancy body may be such that are justified with reference to the technical competence, professional skills and professional values, ethics, and attitudes needed to successfully complete a professional accounting education programme. But pursuing such a programme should not hamper the entrants from acquiring a university degree or any other qualification needed to commence a university degree.

ICAI's entry requirements should be designed to attract talented, bright and mature students from all sections of the society irrespective of their economic position. ICAI has a duty towards the society to provide qualified accountants of the requisite standard and in adequate numbers. It must also endeavour to minimise the incidences of failure in examinations and drop-out cases. All this would be possible only if entry requirements ensure that only those candidates join the CA course who have at least a reasonable chance of completing it successfully. It is necessary that rationale of the principles of entry requirements is also disclosed to the candidates considering a career as a CA and relevant information (various entry routes, pass percentages *etc.*) is made publicly available to help them assess their own chances of successfully completing the CA course. A candidate should be made aware of the expected level of skills, knowledge, and attitudes required for successful completion of the CA course so that he can make an honest assessment of his chances of qualifying the course.

As the quality of future members depends to a great extent on entry requirements, quality needs to be emphasised at the point of entry also. There are two aspects to this issue. Firstly, a student joining CA course should have the requisite degree of maturity. Secondly, the entrant should have the aptitude for the course – an attribute which can be evaluated only by a uniform common examination. Candidates who are unlikely to qualify are best weeded out at the entry stage itself so as to minimise the high cost which is otherwise incurred in human terms through failures and drop-outs.

At present, a student who enters the course can commence practical training after nine months on qualifying first group of the Intermediate (Integrated Professional Competence) Course (IIPCC). The time gap between the entry to course and the Intermediate (Integrated Professional Competence) Examination (IIPCE) needs to be sufficiently increased to ensure a reasonable level of maturity in the students commencing their practical training. Further, it is essential that all students joining practical training must possess some uniform knowledge base irrespective of their route of entry to the course. Such a system would be equitable and ensure uniform input to practical training as also the requisite maturity levels.

(ii) Theoretical instructions

Core competence areas: Theoretical instructions lay the foundation on which the whole edifice of education stands. Therefore, making the foundation strong should be the aim of any education system. The Pathways Commission's Report on "Charting a National Strategy for the Next Generation of Accountants" in USA recommends developing curriculum models, engaging learning resources, and mechanisms for easily sharing them in support of sustaining a robust curriculum.

The first step in this direction is to lay down the technical competence which an aspiring professional accountant (APA) must achieve at the end of the CA course. "All too frequently the students are exposed to technical material in a vocation-focused way that is disembodied from the complex, real-world settings to which the students are bound and from the insights that research can bring to practice" *[Pathways Commission's Report].* Therefore, the theoretical instructions provided by ICAI should be such which arm the professional accountant to perform his duties efficiently and effectively in actual practice.

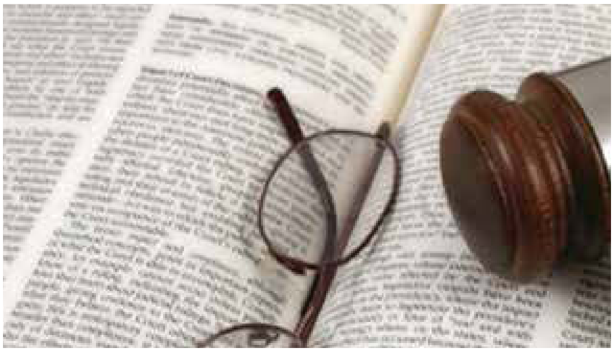
There is also a need to identify core competence areas *i.e.*, areas which are essential for a professional accountant and warrant high level of competency and areas which are desired to be strengthened but which are as such not core competence areas. It may be mentioned here that, as per IES 2 on Technical Competence, the competence areas are: Financial accounting and reporting, Management accounting, Finance and financial management, Taxation, Audit and assurance, Governance, risk management and internal control, Business laws and regulations, Information technology, Business and organisational environment, Economics, Business strategy and management. Care needs to be taken that there is no overlapping of the content across papers relating to a competence area covered at different levels of CA course. For instance, topics covered in paper on Taxation at IIPC level may not be repeated in papers on Direct Tax Laws and Indirect Tax Laws at Final level.

Learning outcomes: Once the core competence areas have been identified and prescribed, the learning outcome for each core areas needs to be laid down. Learning outcomes establish the content and depth of knowledge, understanding and application required for each specified competence area. The expected level of proficiency for each level of CA examination and/or each paper (competence area) also needs to be prescribed. It may also be mentioned here that, in the light of recent frauds, the accountancy profession is being challenged to ensure that accounting regulations and standards prevent their recurrence. Some type of re-engineering needs to done in the audit and accounting subjects to ensure that such frauds are captured at the earliest.

Specialisation vis-à-vis generalisation: In one study it has been found that in the wake of growing business complexity, knowledge requirements, regulatory and legal changes and client expectations, accounting specialists will be preferred over generalists and that specialisation would be essential for effective performance. Knowledge of international taxation, international law, XBRL, insurance, financial technology, WTO conventions and other economic laws, sustainability reporting and the like would become imperative. However, it would not be justifiable to add all the subjects in the core curriculum as it would make the curriculum too vast and expansive and may not prove to be relevant for all the professional accountants later on. The solution to this lies in specialization as in the changing scenario educational curricula cannot be designed for a "one size fits all" practitioner.

While offering an option to select subjects to students may appear to be quite exciting from their perspective in the short-run but may be self-defeating in the long-run since it may be counter-productive for certain set of qualified chartered accountants who may not be favoured by the industry. Moreover, it is also a fact that it is better to produce well-rounded chartered accountants who can be moulded to any career than a specialist who becomes quite inflexible and unfit in non specialisation areas. The accountancy education's objective should be to produce an accountant who can be casted to specific requirements based on a general body of knowledge and experience.

Therefore, ICAI needs to ponder whether specialisation should be introduced and in which subjects. The whole question necessitates very serious consideration. If at all it is decided that specialisation would be introduced, a decision has to be taken as regards the subjects which will be compulsory for all and for which reasonable level of knowledge would be



imparted, and subjects in which specialisation would be offered and in which advanced level of knowledge would be instilled. In fact, the Final Level could be divided into two groups in which one group may consist of compulsory subjects and the other group consists of a list of subjects in which the option may be given to choose two subjects of specialisation. Another view is that it is more appropriate to introduce specialisation at the post qualification level as by that time it would be sufficiently clear to a Chartered Accountant that in which area of specialisation he wants to pursue his career.

Delivery of theoretical instructions: ICAI also needs to decide the mode and period of imparting theoretical instructions in view of increasing importance of technology enabled learning. These are cost efficient and to a greater extent reduce the handicap of distance learning, and therefore, these can be increasingly utilised to impart theoretical instructions to CA students.

Soft skills: Besides, a decision also needs to be taken as regard the training in soft skills. There have been diverse views as regards soft skills training. According to one view, since communication skills are a very important component of overall personality of a professional accountant, there should be a proper blend of these trainings in the overall curriculum of CA course. The other view is, that soft skills are inherent and cannot be taught and therefore, the ICAI need not diverge from its core curriculum. It needs to be emphasised here that since the soft skills are important, soft skills training needs to be imparted but it should be designed in such a manner that it does not hamper the practical training of a CA student.

(iii) *Practical Training*

The compulsory provision of practical training is an integral feature of the scheme of education and training of the CA course. Such a provision, indeed, goes much deeper to the roots of professional ethics and outlook and is the foundation of the Institute's high standing. IES 5 on Practical Experience stipulates three approaches to establish a measurement for practical experience. One of the approaches is based on time, total duration of practical experience or hours spent on relevant activities. APAs should undergo sufficient practical experience to demonstrate that they have gained technical competence, professional skills and professional values, ethics and attitudes necessary for performing a role of a professional accountant. Further, the IES states that there should be appropriate assessment activities (including workplace assessments of learning outcomes in IES 2, IES 3 & IES 4) to assess that sufficient practical experience has been completed by APAs.

In the present system, candidates of IIPCC have to undergo eight months study course, 100 hours Information Technology Training (ITT) and 35 hours Orientation Programme before they commence their practical training. The present system of practical training has stood the test of time but having regard to growth of the profession, it needs a fresh look. Though the Training Guide brought out by ICAI guides members to impart training in specified areas, the nature of practical training may vary because of the great diversity that exists in the nature and size of the practice of different practitioners.

There are two approaches to take care of this aspect of inadequate training. First, it may be regulated by the profession in such a manner that practitioners having inadequate or non-diverse practice may not be permitted to impart training. For this purpose, ICAI will have to review the practice of its members, both in terms of magnitude and diversity, before granting permission to train students. Alternatively, there should be a compulsory requirement to maintain progress report for each trainee which may be reviewed by ICAI from time to time to ascertain as to whether the training actually imparted conforms to the expected minimum standard. Whilst this approach may be more workable than the earlier approach, it would still be subject to numerous practical difficulties; but despite these difficulties, the system may lead to at least an objective assessment of the training being actually imparted. It needs to be emphasised here that the principal is responsible for directing and facilitating CA students in acquiring sufficient practical experience and guiding and providing mentoring support in their journey towards becoming a professional accountant.

(iv) ***Assessment of Professional Competence***

"What you measure is what you get" is a business adage. Psychologists and economists believe that human beings change their behaviour based on the parameters they are held against. Anything which is measured impels a person to optimise his score on that parameter. This phenomenon unequivocally applies to assessment of professional competence. The competency level of a professional accountant discernibly depends upon the assessment methods applied to evaluate the achievement of professional competence. Therefore, if one wants to raise the competency level of the professional accountants, one needs to change the way one measures *i.e.*, the assessment methods.

In comparison to regular education, the role of assessment becomes more crucial in distance learning education owing to relatively less interaction with the students while imparting theoretical instructions. Under any regular education course, the educator can get a cue through the body language of the students and other topic related interactions during the class itself, that whether students have been able to imbibe the concept being taught. However, this instant feedback is not available under distance learning programmes which places heavy reliance on assessments to ensure the achievement of desired level of professional competence.

Assessment of professional competence of aspiring professional accountants is essential to protect the public interest, and enhance the credibility of the profession by permitting only those to be the professional accountants who meet the profession's competence requirements. IES 6 on Assessment of Professional Competence lays down that IFAC member bodies will have to design assessment activities that have high levels of reliability, validity, equity, transparency, and sufficiency within professional accounting education programmes and base the assessment of the professional competence of aspiring professional accountants on verifiable evidence. Although the assessment of professional competence during IPD is the responsibility of IFAC member bodies, other stakeholders may provide substantive input into assessment activities.

Chartered Accountancy Examinations in India have a quintessential legacy of being termed as one of the most rigorous and difficult professional examinations to qualify. The hard work and the dedication needed to clear CA examination is what distinguishes Chartered Accountants as professionals par excellence who are looked upon with high degree of reverence by the society. To live up to this faith reposed in the profession by the public, strengthening of assessment mechanism becomes imperative.

At present, ICAI conducts examination at three levels as under:

Examination	CPT	IIPCE	Final
Online/paper based	Paper based	Paper based	Paper based
Open book/closed book	Closed book	Closed book	Closed book
Level of proficiency	Basic knowledge	Working	Advanced
Type of questions	Multiple choice questions	Knowledge based and application oriented questions	Knowledge based, application oriented questions and questions involving interpretation of laws, standards of accounting, auditing etc.
Time of examination	Prior to commencement of practical training	First group or both groups before commencement of practical training. In the alternative, second group during continuation of practical training [Direct entry students can give both the groups during continuation of practical training.]	During the last six months of practical training or after practical training
Frequency	Twice in a year	Twice in a year	Twice in a year
Topic-wise weightage in syllabus	Not prescribed	Not prescribed	Not prescribed

(a) Restriction on number of attempts: Many argue that ICAI examinations give a relatively easy entry to a large number of students who later find it difficult to qualify the Final exams. It is being said that no restriction on the number of attempts to appear in the examination makes the situation worse as a student is impelled to continue in the programme. Thus, introducing an upper limit on the number of attempts to appear in the Common Proficiency Test (CPT) and IIPCE may be given a serious consideration. Restricting attempts at Final level may not be desirable considering that a student has reached the last leg of the professional qualification. Another moot point to consider here would be the appropriate number of attempts to be allowed for appearing in the examination. Following the principle of difficult entry, less number of attempts may be allowed at the CPT level than IIPCE level.

(b) Newer ways of assessment:

- **Online or computer assisted assessment:** Introducing online or computer assisted assessment in CA examination makes a strong case with technology making inroads in all aspects of professional accountancy education. IES 6 also mentions computer-assisted testing as one of the examples of assessment activities. These measures provide flexibility, increased efficiency, objectivity in evaluation and administrative ease. Another factor in favor of online assessment is the sheer number of students appearing for the CA examination which will increase with every passing year. Such assessments will better equip ICAI to deal with increasing number of CA aspirants. However, such assessments generally are able to accommodate only multiple choice questions, which can be seen as an impediment by many.
- **Open book examination:** This mode of assessment is gradually being adopted by many international accountancy bodies. This assessment focuses on evaluation of application and higher professional skills and not the knowledge and memorizing capacity of the students as they are allowed to bring and use any material including books, technical literature, own notes and the like during the examination. Under such assessments, candidates are generally evaluated through case studies – multi disciplinary or subject specific. IES 6 also lays down that the assessment may be by way of *inter alia* a single multi-disciplinary

examination conducted by the end of IPD. Considering that case studies may have more than one correct answer, evaluation assumes critical significance under this mode of assessment. Further, framing of questions for this assessment is a very convoluted task involving higher order intellectual and thinking skills and requires far more time and efforts.

Since it is being perceived that there is a mismatch between the expected skills and acquired knowledge of newly qualified Chartered Accountants, there would be many takers of the open book examination system as it seeks to fill the very gap between the knowledge and the application skills of the aspiring professional accountants. However, as explained above, this mode may not be conducive to a set up with large number of candidates owing to the high subjectivity involved in evaluation and administrative bottlenecks. Another point to remember here is that such assessments will also require substantial change in the way theoretical education is imparted.

Perhaps what is required at this point of time is a gradual progression towards case study based open book examination at Final level. This can be achieved by doing away with the knowledge based assessment and making a transition towards application based subject specific assessments, and then to integrated assessments. The level of questions can be raised over a period of time paving way for case study based open book examination.

This way students and the administrative machinery will also get time to seamlessly shift to the new dispensation. Also, if entry requirements are also fine tuned to allow only the students who have at least a reasonable chance of completing the programme successfully - thereby reducing the number of students in the programme in due course of time - introducing open book assessment could be a preferred option.

- **Workplace assessments:** As per IES 6, the aspiring professional accountants can also be assessed by way of a series of examinations and workplace assessments conducted throughout IPD. In Indian context, workplace assessments are difficult to implement as they require strong monitoring and regulation which may not be administratively feasible in view of the large number of students and firms/members being involved. However, the objective of assessing the professional skills and competence gained during practical training can be achieved by including application oriented questions based on reasonable practical experience expected to be gained by a student, in the examinations. This way the issue of disconnect between practical training and examinations can also be addressed.

(c) Topic-wise weightage: Under the existing scheme, the relative weightings of different topics of the syllabus of a particular paper are not specified. However, where the syllabus is divided into different sections or parts, marks allocated for each section or part are provided therein. For example, in case of indirect tax laws, the revised syllabus prescribes the marks distribution between the three sections namely, Central Excise, Service Tax and Customs and Foreign Trade Policy. However, the relative weightage of different topics covered under each of the section is not provided in the syllabus.

IES 6 advocates that an assessment activity should be transparent. It elaborates that an assessment activity will be considered to have a high level of transparency when details of an assessment activity, such as the competence areas to be assessed and timing of the activity, are disclosed publicly. Internationally also, many accountancy bodies disclose the relative weightings of different topics in the syllabus of a particular paper.

Here in India also, ICAI may now consider introducing and disclosing publicly the relative range of weightings of different topics in the syllabus to guide the study time spent on each of them. Ideally, marks allotted to the subject should also be brought within the range of such weightings, though slight variations

may occur to enable suitable rigorous questions to be set. This would bring in an element of transparency in our assessments also and would be conducive to the present scenario where information can now be sought as a right.

(d) Evaluation: Another important facet of examination which needs a review is the evaluation of answer sheets. IES 6 provides that an assessment activity has high reliability if the majority of assessors, acting independently, consistently come to the same judgement, given the same set of circumstances. Since it may not be possible to ensure complete objectivity in the evaluation of a professional examination - where there are high chances of more than one correct answer - achieving such high reliability in the assessment may not be feasible in real life settings.

However, efforts should be made to make the evaluation as fair as possible. The probability of fairness being compromised increases significantly when a student fails or qualifies by narrow margins. The impact of unfairness of evaluation in such narrow ranges of marks may jeopardize the career of deserving students and on the other hand may also create false impression about one's capabilities. One way to increase the credibility of the evaluation can be reassessment of the answer sheets where marks allotted are within the range of say 20% on either side of the pass mark. To illustrate, in a case where pass mark is 50, all answer sheets with marks in the range of 40-50 and 50-60 should be re-evaluated to ensure correct and fair evaluation within these ranges of marks as this ranges ultimately decide the future of a student.

(v) Accounting Technician Course (ATC)

Globally, many accountancy bodies/countries have the course on Accounting Technician; Ireland, South Africa, Hong Kong, United Kingdom, Sri Lanka, to name a few. Accounting Technicians are qualified accountancy professionals performing middle level accounting functions and providing technical support roles across the areas of accounting.

IFAC's Education Committee has prepared the *"Good Practice Guide: The Education, Training, and Development of Accounting Technicians"* which serves as a guide to assist professional accountancy organisations in developing qualified accounting technicians through education, training, and assessment of skills and competence. It also recommends professional accountancy organisations to provide ongoing professional development of accounting technicians and have activities in place to monitor their compliance with ethical requirements. The Guide prescribes requirements for pre-qualification, qualification, and post qualification stages. It also discusses the opportunity for technicians to develop their skills further and progress to a professional accountancy qualification.

In the backdrop of growing demand for second tier accounting personnel for large as well as medium and small enterprises, ATC was introduced by ICAI in December, 2008. Presently, a candidate may register for ATC after he has appeared in the Senior Secondary Examination (10+2 examination). Such a candidate has to undergo a study course of eight months, 35 hours Orientation Programme and 100 hours Information Technology Training before appearing in Accounting Technician Examination (ATE) consisting of four papers and a requirement of 12 months of work experience. ICAI needs to assess the efficacy of such scheme and evaluate if the ATCs are able to provide any value added services to the stakeholders. The changing economic scenario also warrants a fresh appraisal of the scheme.

STEP FORWARD

In the next stage, the basic framework of scheme of education and training will be firmed up by CRET and thereafter, the incidental matters relating to number of papers, detailed syllabi, expected competency level at each stage of CA course, nature of assessment, frequency of examination during a year and all other relevant and relataed aspects will be put in place. ICAI will endeavour to ensure that the resultant structure is dynamic, contemporary and commensurate with the requirements of the stakeholders and at the same time, stable. ■

Guidance Note on under Section 44AB of the Income-tax Act, 1961-2014 Edition -
A glimpse of certain important additional guidance

(Comments may be sent at dtc@icai.in)

Direct Taxes Committee of ICAI

The month of July, 2014 witnessed notification of new formats of tax audit reports i.e. Form No. 3CA, 3CB and 3CD, thereby expanding the scope of tax audit tremendously. Since significant changes have been made in the format of tax audit reports for which members were to be guided, the Direct Taxes Committee of ICAI has released the seventh edition of the "Guidance note on tax Audit under Section 44AB of the Income tax Act, 1961". *This is an effort of ICAI to enable its members to effectively discharge their responsibilities with regard to the additional requirements. Additional guidance with regard to certain important as well as newly inserted/amended clauses is given in the following pages. Members are advised to refer to the publication "Guidance Note on Tax Audit under Section 44AB of the Income-tax Act, 1961" for complete guidance.*

Audit Procedures

The ICAI had, pursuant to the issuance of the Revised SA 700, *Forming an Opinion and Reporting on Financial Statements*, prescribed a revised format of the auditor's report on financial statements, which has been made effective in respect of audits of financial statements for periods beginning on or after 1st April, 2012. Since Form No. 3CA and Form No. 3CB are required to be filed online in a preset form and the same are not in line with the requirements of SA 700, there is no specifically allocated field for providing information relating to the respective responsibilities of the assessee and the tax auditor as required in terms of the principles laid out in SA 700. However, having regard to the importance of these respective responsibility paragraphs from the perspective of the readers of the tax audit report, it is suggested that these respective responsibility paragraphs relating can be provided in the space provided for giving observations, *etc.*, under Clause (3) of Form No. 3CA or Clause (5) of Form No. 3CB, as the case may be. The illustrative Assessee's responsibility paragraph and Tax Auditor's responsibility paragraphs in respect of Form No. 3CB are also provided in the detailed Guidance Note.

Guidance regarding some of the important additional clauses of Form No. 3CD

Clause 4: **Whether the assessee is liable to pay indirect tax like excise duty, service**

tax, sales tax, customs duty, etc. if yes, please furnish the registration number or any other identification number allotted for the same.

Part A of Form No. 3CD generally requires the auditor to give the factual details of the assessee. Thus, the auditor is primarily required to furnish the details of registration numbers as provided to him by the assessee. The reporting is however, to be done in the manner or format specified by the e-filing utility in this context.

The term "Indirect taxes" is neither defined in the Income-tax Act, 1961 nor under any other law. The levy of different types of indirect taxes on various transactions may differ from State to State. Thus, it is recommended that the auditor should obtain from the assessee the list of indirect taxes applicable to him. Once the auditor obtains this management representation, he is required to obtain a copy of the registration certificate clearly mentioning the registration number under that relevant law. For example, Service tax registration number, Excise registration number, VAT registration number/Central Sales tax Registration number *etc.* The assessee may have multiple registrations for various manufacturing units, service units, godowns *etc.* under the same law. In such circumstances also, a copy of all registration certificates is to be obtained from the assessee for appropriate disclosure under this clause. Where the indirect tax law does not require any registration, appropriate identification number may be reported in this clause. For example, in Customs Act, 1962, since there is no registration number, a copy of Export Import Code (IEC) may be obtained and information be accordingly furnished. The information may be obtained and maintained in a particular format provided in detailed Guidance Note. The auditor has to keep in mind the provisions of SA 580 "Written Representation." In case the auditor *prima facie* is of the opinion that any indirect taxes laws is applicable on the business or profession of the assessee but he is not registered under the said law, he should report the same appropriately.

Clause 11(b): List of books of account maintained and the address at which the books of account are kept.

From AY 2014-15, the address at which the books so maintained are kept is also required to be mentioned under Clause (b). In case the books of accounts are kept at more than one location then the auditor is required to mention the details of address of each such location along with the detail of books of account maintained thereof. The auditor is advised to obtain from the assessee a list in the particular format (provided in detailed Guidance Note) and accordingly report the same in Clause 11(b). In case of a company assessee, auditor should also verify as to whether any forms are filed under the Companies Act for maintenance of books of accounts at a place other than the registered office. In case, where books of accounts are maintained and generated through computer system, the auditor should obtain from the assessee the details of address of the place where the server is located or the principal place of business/ head office or registered office by whatever name called and mention the same accordingly in Clause 11(b).

Clause 17: Where any land or building or both is transferred during the previous year for a consideration less than value adopted or assessed or assessable by any authority of a State Government referred to in Section 43CA or 50C, please furnish:

Details of property	Consideration received or accrued	Value adopted or assessed or assessable

In the column requiring the details of property, the auditor has to furnish the details about the nature of property *i.e.,* whether the property transferred by him is land or a building along with the address of such property. If the assessee has transferred more than one property, the detail of all such properties is required to be mentioned. The auditor should obtain a list of all properties transferred by the assessee during the previous year. He may also verify the same from the statement of profit and loss or balance sheet, as the case may be. Attention is invited to the meaning of the term "transfer" as defined in Section 2(47) of the Act.

Under the heading "consideration received or accrued," the auditor has to furnish the amount of consideration received or accrued, during the relevant previous year of audit, in respect of land/

building transferred during the year as disclosed in the books of account of the assessee.

For reporting the value adopted or assessed or assessable, the auditor should obtain from the assessee a copy of the registered sale deed in case, the property is registered. In case the property is not registered, the auditor may verify relevant documents from relevant authorities or obtain third party expert like lawyer, solicitor representation to satisfy the compliance of Section 43CA/Section 50C of the Act. In exceptional cases where the auditor is not able to obtain relevant documents, he may state the same through an observation in his Report 3CA/3CB. Auditor would have to apply professional judgment as to what constitutes land or building, for *e.g.,* whether leasehold right/ development rights/TDR/FSI *etc.,* would fall under this provision or not, would require to be evaluated based on facts and circumstances of transactions.

Clause 21(d): Disallowance/deemed income under Section 40A(3):

(A) On the basis of the examination of books of account and other relevant documents/evidence, whether the expenditure covered under Section 40A(3) read with Rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not, please furnish the details:

Serial number	Date of payment	Nature of payment	Amount	Name and Permanent Account Number of the payee, if available

(B) On the basis of the examination of books of account and other relevant documents/evidence, whether the payment referred to in Section 40A(3A) read with Rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft If not, please furnish the details of amount deemed to be the profits and gains of business or profession under Section 40A(3A);

Serial number	Date of payment	Nature of payment	Amount	Name and Permanent Account Number of the payee, if available

The tax auditor has to take into account the technological advancements in the field of banking and information technology where payments have been taken other than through an account payee cheque or bank draft. Rule 6DD specifically exempts the cases where the payment is made by any letter of credit arrangements through a bank; a mail or telegraphic transfer through a bank; a book adjustment from any account in a bank to any other account in that or any other bank; a bill of exchange made payable only to a bank; the use of electronic clearing system through a bank account; a credit card; a debit card.

Practically, it may not be possible to verify each payment, reflected in the bank statement, as to whether the payment has been made through account payee cheque, demand draft, pay order or not, it is thus desirable that the tax auditor should obtain suitable certificate from the assessee to the effect that the payments for expenditure referred to in Section 40A(3) and Section 40A(3A) were made by account payee cheque drawn on a bank or account payee bank draft, as the case may be. Where the reporting has been done on the basis of the certificate of the assessee, the fact shall be reported as an observation in Clause (3) of Form No. 3CA and Clause (5) of Form No. 3CB, as the case may be.

Clause 28 : Whether during the previous year the assessee has received any property, being share of a company not being a company in which the public are substantially interested, without consideration or for inadequate consideration as referred to in Section 56(2)(viia), if yes, please furnish the details of the same.

Since Section 56(2)(viia) is applicable to firms and companies in which public is not substantially interested, reporting under this clause is required only for them and not for other assessees The auditor should obtain from the auditee, a list containing the details of shares received, if any, by him from any other company and verify the same from the books of accounts and other relevant documents. Such shares, if received will be reflected in the books of accounts either as investments or as stock in trade. In case such shares are received without consideration, the same may not be reflected in the books of accounts. Such shares may be verified from the relevant documents such as share certificates issued, if any, demat account statement etc. In either case, the same have to be reported under this clause. Attention is invited to the provisions of section 2(18) which defines the company in which public are substantially interested.

Clause 29: Whether during the previous year the assessee received any consideration for issue of shares which exceeds the fair market value of the shares as referred to in Section 56(2)(viib), if yes, please furnish the details of the same.

Since Section 56(2)(viib) is applicable to companies in which public is not substantially interested, reporting under this clause is to be done only for corporate assessees. The auditor should obtain from the auditee, a list containing the details of shares issued, if any, by him to any person being a resident and verify the same from the books of accounts and other relevant documents. Attention is invited to the provisions of Section 2(18) which defines the company in which public are substantially interested.

Clause 31(c): Whether the taking or accepting loan or deposit, or repayment of the same were made by account payee cheque drawn on a bank or account payee bank draft based on the examination of books of account and other relevant documents.

Practically, it may not be possible to verify each payment, reflected in the bank statement, as to whether the payment/acceptance of deposits or loans has been made through account payee cheque, demand draft, pay order or not, it is thus desirable that the tax auditor should obtain suitable certificate from the assessee to the effect that the payments/ receipts referred to in Section 269SS and 269T were made by account payee cheque drawn on a bank or account payee bank draft as the case may be. Where the reporting has been done on the basis of the certificate of the assessee, the same shall be reported as an observation in Clause (3) of Form No. 3CA and Clause (5) of Form No. 3CB, as the case may be.

Clause 32(c): Whether the assessee has incurred any speculation loss referred to in Section 73 during the previous year, If yes, please furnish the details of the same.

Having regard to the definition of "speculative Business," the tax auditor has to verify from the books of account and other relevant documents as to whether the assessee is carrying on any speculation business. On verification if the auditor is of the opinion that the auditee is carrying on speculation business, under this clause, the tax auditor has to furnish the details regarding speculation loss referred to in Section 73, if any incurred by the assessee during the previous year.

Clause 32(d): Whether the assessee has incurred any loss referred to in Section 73A in respect of any specified business during the previous year, if yes, please furnish details of the same.

Under Clause 32(d), the tax auditor has to verify from the books of accounts and other relevant documents as to whether the assessee is carrying on specified business as referred to under Section 35AD. In case the auditor is of the opinion that the assessee is carrying on such specified business, he has to furnish the details of the loss incurred, if any, in respect of any specified business during the previous year. In case the assessee carries on more than one specified businesses and loss has been incurred in both the businesses, the details of the loss incurred with respect of each business is to be specified separately.

Clause 32(e): In case of a company, please state that whether the company is deemed to be carrying on a speculation business as referred in explanation to Section 73, if yes, please furnish the details of speculation loss if any incurred during the previous year.

Under this clause, the tax auditor has to furnish the details regarding the speculation losses incurred, if any, as referred in explanation to Section 73. The auditor may obtain information in a particular format (refer to complete text of the Guidance Note) from the assessee and verify the same from the books of account, income tax returns of earlier years and other relevant documents.

Clause 34(a): Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, if yes please furnish:

Tax deduction and collection Account Number (TAN)	Section	Nature of payment	Total amount of payment or receipt of the nature specified in column (3)	Total amount on which tax was required to be deducted or collected out of (4)	Total amount on which tax was deducted or collected at specified rate out of (5)	Amount of tax deducted or collected out of (6)	Total amount on which tax was deducted or collected at less than specified rate out of (7)*	Amount of tax deducted or collected on (8)	Amount of tax deducted or collected not deposited to the credit of the Central Government out of **(6) and ***(8)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

*** Should be read as (5) for proper reporting/ ** Should be read as (7) for proper reporting/ *** Should be read as (9) for proper reporting**

While reporting under this clause the tax auditor may exercise his judgement in the light of the applicable laws and report accordingly about the applicability of the provisions of Chapter XVII-B or XVII-BB with regard to the auditee. The tax auditor may rely upon the judicial pronouncements while taking any particular view. While answering the issue of applicability of the provisions of Chapter XVII-B and/or XVII-BB, a number of debatable issues may arise before the assessee as well as the tax auditor. Where it is not possible to say yes/no, the answer to the question may have to be qualified depending upon the facts and circumstances of each case. Having verified the applicability of the provisions of Chapter XVII-B and Chapter XVII-BB, the tax auditor should answer the question as "Yes" and thereafter provide further details. Where the tax auditor is of the opinion that provisions of Chapter XVII-B and Chapter XVII-BB are not applicable he should answer the question as "No."

Once the tax auditor gives his affirmation with regard to applicability of the provisions of Chapter XVII-B and/ or Chapter XVII-BB, he is required to furnish further details in Clause 34(a). The auditor should obtain a copy of the TDS/TCS returns filed by the assessee which shall form the basis of reporting under this clause, to the extent possible. Further, in view of the voluminous nature of the transactions, the tax auditor can apply test checks and compliance tests on the transactions reported in the TDS return by the assessee for verifying the information required to be provided under this clause. For detailed guidance regarding reporting under each column, the members are advised to refer to the complete text of the Guidance Note.

Clause 34(b): Whether the assessee has furnished the statement of tax deducted or tax collected within the prescribed time. If not, please furnish the details:

Tax deduction and collection Account Number (TAN)	Type of Form	Due date for furnishing	Date of furnishing, if furnished	Whether the statement of tax deducted or collected contains information about all transactions which are required to be reported

Under Clause 34(b), the tax auditor has to ascertain and report as to whether the assessee has furnished the statement of tax deducted or tax collected at source within the prescribed time. If all the TDS/TCS statement(s) relating to the previous year have been filed within the prescribed time, the auditor has to mention "yes." In case the assessee has not filed any of the quarterly TDS/TCS statement(s) within the prescribed time, the auditor has to mention "no" in this clause. In such a case, the auditor shall provide further details in Clause 34(b) only with regard to the statement not filed within the prescribed time. Clause 34(b) requires the auditor to report the transactions with regard to each TAN for which tax has been deducted but the return has either not been filed or has been filed after the expiry of the prescribed time. With regard to each TAN, the auditor is required to mention the "Type of form" that was applicable like Form 24, 24G, 24Q, 26, 26A, 26B, 26Q *etc.*, due date of furnishing such statement and the actual date of furnishing, if the statement(s) has been furnished. Lastly, the auditor is required to state as to whether the statement of tax deducted or collected, which has been furnished beyond prescribed time contains information about all the transactions which are required to be reported. As stated earlier, it is extremely difficult for the tax auditor to verify each and every transaction in this regard. Therefore, while verifying such transactions, the tax auditor can apply the concepts of materiality and audit sampling. The reporting requirement in Clause (b) arises only where the assessee has either not furnished or furnished the statement of tax deducted or tax collected after the expiry of prescribed time.

Clause 34(c): Whether the assessee is liable to pay interest under Section 201(1A) or Section 206C(7). If yes, please furnish:

Tax deduction and collection Account Number (TAN)	Amount of interest under Section 201(1A)/206C(7) is payable	Amount paid out of column (2) along with date of payment.

Where the assessee is liable to pay interest u/s. 201(1A) or 206C(7), the auditor should verify such amount from the books of account as on 31st March of the relevant previous year and also from PART G of the statement generated by the Department in Form No.26AS. In case the assessee had disputed the levy or calculation of interest under TRACES, in Form No. 26AS, the auditor may re-calculate the amount of interest under section 201(1A) or Section 206C(7) up to the date of audit report for reporting under this clause and also mention the fact in his observations paragraph provided in Form No. 3CA or Form No. 3CB, as the case may be.

Clause 39: Whether any audit was conducted under Section 72A of the Finance Act, 1994 in relation to valuation of taxable services, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.

The tax auditor should ascertain from the management whether any audit was conducted under Section 72A of the Finance Act, 1994 and if such audit was carried out, obtain a copy of the report. Even though the tax auditor is not required to make any detailed study of such report, he has to take note of the details of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor. The tax auditor need not express any opinion in a case where such audit has been ordered but the same has not been carried out. In cases where service tax audit, which might have been ordered is not completed by the time the tax auditor gives his report, he has to report appropriately in this report stating that since service tax audit is not completed and the service tax audit report is not available with the assessee.

The tax auditor should examine the time period for which the service tax audit, if any, has been required to be carried out. Information is required to be given only in respect of such service tax audit report the time period of which falls within the relevant previous year. In effect the information is required to be given in respect of that service tax audit report which is received upto the date of tax audit report.

Since changes have been made in Clauses 37(cost audit) and 38 (excise audit), members may note that the guidance provided in these clauses are in line with guidance provided in Clause 39 above. ■

Note: It is not possible to cover each and every change made in the text of the "Guidance Note on tax audit under section 44AB of the Income-tax Act, 1961," and therefore, guidance relating to only important new/amended clauses has been touched upon in the above matter. Members are requested to refer to the complete text of the Guidance Note, which has been hosted on the ICAI's website at the link below:
http://220.227.161.86/34728gn-taxaudit-dtcicai.pdf

Forensic Accounting -Contemporary Relevance with Special Reference to India

The increase in the corporate scandals and revenue leakage in the recent past has forced professional accounting bodies to think beyond statutory audit. Forensic Accounting is that branch of accounting which uses investigative skills to determine the accuracy of a company's financial statement. Forensic Accounting can be defined as the science of gathering and presenting financial information in a manner that will be accepted by a court of jurisprudence, against perpetrators of crimes related to finance. This concept assumes significance for institutions willing to put in efforts to fight frauds and striving to build a strong and ethical reputation.Its application extends in industries like telecom, infrastructure, IT, pharmaceuticals as well as in sorting disputes over hidden assets in divorce cases. The author strongly feels that Forensic Accounting, being the need of the hour, should not only be incorporated as a usual process in an organisation but also be introduced in courses having Accountancy as the principal subject.

Neha Desai

(The author is a lecturer in the Department of Accountancy at H. L. Institute in Ahmedabad, who may be contacted at neha.desai@ahduni.edu.in.)

Introduction

Xerox (USA, 2000), Enron (USA, 2001) and Worldcom's (USA, 2002) falsifying of financial results, Nortel's (Canada, 2003) ill-advised distribution of corporate bonuses to top 43 managers, Lehman Brothers' (USA, 2010) failure to disclose Repo 105 transactions to its investors, Olympus Corporation's

(Japan, 2011) loss-hiding arrangements, and, in India, names like UTI (2000), Ketan Parekh and Harshad Mehta stock market scams, and Satyam (2008), *etc.*, have been raising questions on the credibility of the accounting and auditing fraternity.

Such unrelenting series of national and international corporate scandals and embarrassing audit failures in the past few decades have led the experts in the field of accounting and auditing to think beyond their traditional roles. To say that *auditors are not bloodhounds but only watchdogs* is passé now. Stakeholders expect auditors to take responsibility for fraud detection which demands an auditor to perform the role of a thorough investigator to find material frauds in the financial statement. The work of an auditor is no longer limited to ensure that the financial statements show a true and fair picture; rather the spotlight is now on fraud-detection, investigation and solution-seeking.

The ever-increasing expectations from the auditor are only fair in cases where the fraud is detectable, and where such frauds or corruption could have been identified in the regular audit process. But where fraud is consciously concealed, detection of fraud is hard to come by and it is difficult to pin the auditors due to the very limitation of the audit scope. It is important to fill in the gap between the expectation of the public and the regular audit scope. This leads to a demand for a new skill-set amongst the accountants and the auditors. Considering this need, Maurice Paulobet coined the term *Forensic Accounting*, with tripartite skills – accounting, auditing and investigative techniques – to assist in legal matters.

In India, *Kautilya* was the first person to mention 40 ways of embezzlement in his famous *Arthashastra*. It was then that these people had recognised the need for experts to detect frauds in the business world. Though the concept of *forensic accounting* is not new, there has been a serious lack of awareness in this regard. A plethora of high-profile corporate scandals and stricter reporting and internal control regulations have brought to light the importance of *forensic accounting* in business.

Traditional auditing has a focus on error identification and prevention. It is a process to ensure that accountants have followed the prescribed accounting policies, principles and practices. This determination is based on evidence and is a matter of fact. But this process has, time and again, proved insufficient in detecting frauds.

Forensic Accounting: Need of the Hour

Traditional auditing has a focus on error identification and prevention. It is a process to ensure that accountants have followed the prescribed accounting policies, principles and practices. This determination is based on evidence and is a matter of fact. But this process has, time and again, proved insufficient in detecting frauds. *Forensic accounting* is the science that deals with the relation and application of financial, accounting, tax and auditing knowledge to analyse, investigate, inquire, test and examine matters related to white collar crimes. *Forensic accounting* offers the highest level of assurance that is suitable for legal review.

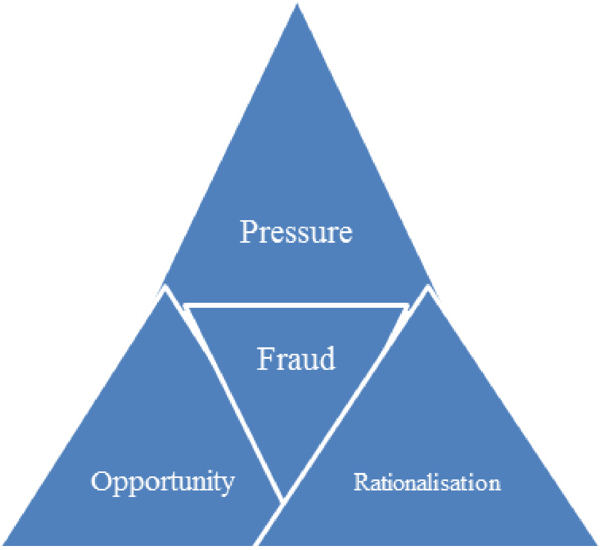
Forensic accountants are financial detectives with an investigative mind who aim at pulling out latent truths from financial statements. They are expected to provide impartial/unbiased evidence to assist in court proceedings. They are not expected give their opinions. Instead, the reports issued often provide answers to questions like how, where, what, why and who. It is important to note that it is the Court that determines frauds and not the forensic accountant. (David Malamed)

Fraud vs. Forensic Accounting

The primary work of a Forensic Accountant (FA) is to detect frauds. So it becomes important to understand what fraud means. A deliberate false representation of a matter of fact by issuing false or misleading statements, or by concealment of what should have been disclosed, with an intention to deceive another and illegitimately gain something at the loss of another is considered to be a fraud. According to the Association of Certified Fraud Examiners (ACFE), fraud is *'deception or misrepresentation that an individual or entity makes knowing that the misrepresentation could result in some unauthorised benefit to the individual or to the entity or some other party.'*

At this stage, it is inevitable to understand the circumstances that lead to fraud, to be able to identify them. These are popularly fitted in to the concept of

Fraud Triangle (Hansen & Peterson, 2010[1]), which portrays the coexistence of three main elements that may push a person to commit a fraud:



Any person who is observed to be entrapped in these circumstances can be a prospective fraudster. Deterring and detecting fraud becomes easy, if the pressures that fraudsters may face which might drive them to commit fraud are well understood. These are the motivating factors behind the crime. Knowing the most likely places to look for fraud on an organisation's financials will also increase our likelihood of detecting these white-collar crimes. An FA is expected to identify what the risk areas of an organisation are and how these risks can be exploited, and collect information, perform certain investigations based on different techniques using different tools, analyse the results and present them with recommendations of protecting the organisation from such exploitation of risks.

Of the many frauds in the corporate world, *financial statement frauds* affect a large number of people. When the financial statements of an organisation are manipulated to hide certain happenings or to show the kind of position of a business which does not exist, are called *financial statement frauds*. The most significant factor leading to this fraud is pressure on the management to show earnings of the business. Commonly-observed financial statement frauds are showing inflated revenue, round-tripping, asset overstatement, concealing the liabilities, reserve manipulation, understatement of expenses, embezzlement of cash, misappropriation of goods, omission of a material

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information, improper disclosure, adopting cookie-jar accounting practices, wherein a firm understates the revenue and maintains it as a reserve for future periods to cover a bad performance, *etc.* Such practices enable the management to remove the appearance of volatility from the operations from the records.

An FA may be appointed to detect and prevent such frauds. An FA starts identifying the *red flags* in the financial statements and probes into the root of such items/transactions to uproot the fraud, if any. *Red flag* is a term used to denote a warning sign for those items in a financial statement, which lead to scepticism over the authenticity of an item, a transaction, or an activity. It is a set of circumstances that are unusual in nature or are different from regular/usual activity. Some prominent *red flags* are increased revenues without corresponding increase in the cash flow over time, strong revenue growth when peer companies are experiencing weak sales, significant unexplained increases in fixed assets, recurring negative cash flow from operation while reported earning show an increasing trend and the earnings growth rate is positive, *etc.* On identifying the possible fraud activities, an FA then gathers all possible information about that activity from different sources, investigates that matter, using various computer applications and tools he/she reaches certain conclusions and prepares a report to assist the legal action to be taken.

In the US, *medicare frauds* are a growing problem. Some of them were detected because of the suspicious manner in which they were billed. An ENT doctor billing for pregnancy ultrasounds, a dermatologist billing for heart tests, a psychiatrist billing for MRIs, *etc.* (Sanchez, 2012)

Insurance frauds are not unheard of in India. Frauds like staging an event of loss or accident, claiming exaggerated amount, illegitimately obtaining health insurance when people are not qualified to get an insurance cover, providing

[1] A Comparison of Auditors' and Accounting Students' Ability to Identify Fraud Risk ! *Journal of Forensic Studies in Accounting and Business*, pp. 11–19.

false information of a pre-existing illness and then claiming refund of the expenses incurred towards its treatment, multiple claims for same event/illness/loss *via* different insurance policies, fire insurance frauds where obsolete stock are set to fire by the company itself and then insurance companies are called upon to fill in the loss, goods are insured against theft and then they are staged to have been stolen, *etc.*, are observed in India.

The Times of India (2004) reported a case of insurance fraud in Ahmedabad, where a CID (Crime and Railways) official Deputy Superintendent of CID (Crime and Railways) was charged with fraud for facilitating a fake insurance claim racket where natural deaths were proved as unnatural and insurance was claimed on them.

In such cases, a team of FAs could perform computer-assisted audit techniques (CAATs) to search databases for suspicious billings such as the ones mentioned above, *e.g.* where an ENT doctor billed for pregnancy ultrasounds and dates on which a doctor performed many more procedures than would be possible to perform in a day. If such transactions are found, they would warrant further investigation. Such CAATs, clubbed with other procedures, may help uncover the extent of fraud. Once the extent of the fraud is determined, an FA would need to prepare a case for the court. Here, an FA has to perform a difficult task of presenting complex financial data in a way that is easily understandable to the judge or the jury. This information is accepted as valid evidence in the court of law. (Sanchez, 2012)

Another popular white-collar crime is *banking frauds*. In the financial year 2010-11, banks in Mumbai reported 787 cases of fraud involving ₹1,049 crore according to a document obtained under Right to Information (RTI) Act from the Reserve Bank of India, reported DNA in 2012. Commonly-observed frauds in this sector are fraudulent investments by bankers, fraudulent loans granted, wire frauds, forging documents, accounting frauds, money laundering, credit/debit card frauds, misreporting of NPAs, *etc.* By appointing a team of FAs, banks can bring down the extent of frauds. FAs constantly work towards detecting frauds which enables its early detection and implementation of remedial measures.

Fraud examination has three dimensions– fraud detection, fraud investigation and fraud prevention. *Detection* is the process to be carried out by an auditor, *investigation* is the work of law enforcement officials and *prevention* is expected by the management. An FA may be appointed by different institutions to carry out all these processes.

FA: Skill-Set

Forensic accounting work can be broadly divided into two categories: investigative accounting covering fraud investigation and *litigation support* that requires skills from valuation to technology assessment. This would require photographic and video support, witness statements, evidence collection, police interviews, history usage, *etc.*

Services of an FA can be taken for all kinds of corruption litigates, enterprise assessments, damage and loss estimations, insurance disputes, rising problems from contracts, issues concerning patent, copyright and trademark, parting or merger litigates concerning enterprises, bankruptcy litigates, financial fraud litigates, financial disputes concerning divorce, *etc.* (Bozkurt, 2000) Such a wide range of applicability and expectation-set calls for a specialisation on the part of an FA.

While engaging a team of FAs, it is important to consider the following three areas:

Forensic accounting work can be broadly divided into two categories: *investigative accounting* covering fraud investigation and *litigation support* that requires skills from valuation to technology assessment. This would require photographic and video support, witness statements, evidence collection, police interviews, history usage, *etc.*

With the rise in the Indian economy, *financial statement frauds* are rising. In the year 2002, investors must have approximately lost a whooping ₹3,000 crore due to white-collar crimes, reported *The Indian Express* in 2002.

These are essential to ensure that expected results are delivered. An FA team fluent in financial statements for a manufacturing or retail company at a national level might be lost trying to navigate through the information of a multi-national engineering company to identify possible fraud of oil and gas reserve.

An FA needs to have a thorough knowledge in subjects like accounting, auditing, law, research techniques, psychology, criminology, *etc.* Soft skills that are a must are independence and objectivity, an ability to sort through unnecessary and nonsensical responses, a willingness to be cross-examined in the court, investigative persistence, knowledge of the situation under dispute, an eye for a possible alternative perspective, analytical techniques, evaluation abilities, effective communication skills to present complex information in an understandable manner, patience, for some court proceedings can spread over many years, knowledge of many aspects of law to be able to communicate efficiently with lawyers, *etc.* Role of an FA is proactive and reactive both. All in all, an FA needs to be *street-smart* and be able to think *out-of-the-box*.

Forensic Accounting in India– Prospects and Problems

With the rise in the Indian economy, *financial statement frauds* are rising. In the year 2002, investors must have approximately lost a whooping ₹3,000 crore due to white-collar crimes, reported *The Indian Express* in 2002. We are a decade ahead in time and the increase in these figures can only be imagined. The infamous Satyam scam of 2008 followed by the CWG scam and the 2G Spectrum scam heightened the need for the development of Forensic Accounting as a profession in India.

The reported financial scandals have eroded investor confidence and have made Forensic Accounting an attractive career opportunity for accountants to combat fraud. This makes Forensic Accounting a fastest growing area of accounting today.

Forensic Accounting developed as a profession in the U.S. in the 1990's, but India took its first step in this direction only a few years back. India has established The Forensic Research Foundation for the investigations of frauds. SFIO (Serious Fraud Investigative Office) is a multi-disciplinary division of Department of Corporate Affairs of the Government of India, which looks into violation of laws like IT, FEMA, RBI Act *etc.* SFIO recognises CFE (Certified Forensic Examiner) as a qualification for the purpose of recruitment. 'Economic Offenses Wing' is a specialised department of the CBI (Central Bureau of Investigation) to deal with financial frauds. CVC (Central Vigilance Commission) handles the occupational frauds like corruption.

Some big private firms provide consultancy to their clients in fighting fraud. They have a dedicated team of forensic accountants to cater to the requirement of these clients. Going by the age-old proverb, *prevention is better than cure*, some giant companies like HDFC, Standard Life, Bharti Airtel, Tata Motors, *etc.*, have started appointing FAs to keep a check on the organisation's working and financial records. This strongly suggests good employment opportunities for FAs in the coming years, which in turn demands professional courses to create such experts. But this has not yet been acknowledged by institutes imparting education in India as there are barely any courses developed in this regard. Institutions, therefore, have an opportunity too to introduce and offer courses in forensic analysis.

India Forensics, founded in the year 2005, is a Pune-based training and education centre engaged in fraud examination, security, risk management and forensic accounting in India. In India FAs are called Certified Forensic Accounting Professionals. ICAI (The Institute of Chartered Accountants of India) too had launched a Certificate course on Forensic Accounting and Fraud Detection in the year 2009.

Problem diagnosis and evaluation skills often are barely taught in many courses (Rosen, 2006). An FA needs to know the strengths and especially, the limitations of different aspects of Accounting and Finance. Teaching these days revolves around scoring high in exams rather than proper and broader understanding and implications of the subject. Memorising accounting concepts, principles and standards without proper understanding of the same is a huge problem with today's youth. Another glaring problem faced is the lack of knowledge of the world around. Most students when poised with a question on accounting or finance are able to respond with their crammed knowledge but if they are asked any application based question, only a few are able to connect to the practical nuances. So is the case past or present happenings in the field of commerce. It is of utmost importance to stay connected with the recent developments as well as have sound information about the past happenings and judgements by the court to become an expert FA.

Also, it was observed during the literature review for the given paper that there is a great deficiency of existing literature related to forensic accounting in the Indian context. Indian literature related to frauds focuses largely on *bank frauds* and *money laundering*. There is an urgent need to fill the lacuna caused by the absence of literature related to forensic accounting.

Conclusion

With the ever-increasing pressure on employees to achieve targets and on the management to show growth of earning only increases the probabilities to fraud being committed in any organisation. Traditional auditing is getting less effective day by day to keep a moral check over the employees and the management. Hence, to fight this ever-increasing risk, some organisations have now recognised the importance of employing experts in the field for early and timely detection of frauds. When an organisation suspects a fraud, it may hire an FA to investigate the matter, document the findings and make recommendations. Qualified FAs have the required technical and legal experience to investigate a given concern, follow leads, establish audit trials of questionable transactions, organise evidence for external review and law enforcement bodies and to testify in court. These accountants use specialised software tools to help them perform their task. Each fraud investigation is unique and requires strong critical thinking skills. So, a multidisciplinary investigative team can be developed by selecting individuals who possesses skills in electronic evidence gathering and preservation, interviewing techniques, *etc.*

This in turn increases the demand of FAs which is not met due to lack of academic facilities. It is of great importance that the courses developed must include

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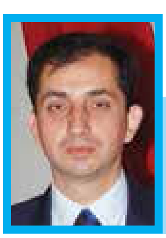
training and hands-on experience to tackle fraud examination and forensic accounting investigation assignments.

In 1996, *The Wall Street Journal* called forensic accountants *accounting profession's new glamour kids*. Primary obstacles in the delivery of forensic accounting education are institutional in nature, *i.e.* faculty, administration, curriculum structure, and not a perceived lack of demand by employers and students. It is also believed that exposure to Forensic Accounting will promote ethical behaviour. It will teach FAs to think in a certain way that is needed to detect major frauds sooner and more often, reducing the cost of fraud to society and freeing up taxpayer and other resources for more productive uses. (Sedaet al, 2008)

It is time that accounting profession recognises that accounting and finance world need fraud-specific education in order to be effective in fighting against fraud. New courses concentrating on sharpening the ability of the accountants to fight such frauds need to be developed. While it is encouraging to note the emergence and depth of forensic accounting programs in the higher education systems in foreign countries, there still appears a gap between the demand for FAs and its supply in India due to lack of university-based education in this field. With our country being embroiled in financial frauds of serious magnitudes, the time seems just right for us to take a step forward and introduce FA as an essential, if not a core area of learning and research. ■

Global Consolidated Requirements of Internal Control over Financial Reporting

Nowadays, organisations are under tremendous pressure to achieve revenue and profit growth while constantly exploring the cost-effective geographies, untapped lucrative markets, different models of operations to reduce their own operational costs and achieve higher efficiency. Such competitive conditions have resulted in more mergers and acquisitions, joint ventures, and off-shoring and outsourcing. CEOs and CFOs quite justifiably face a dilemma and a need to certify the true and fair consolidated financial statements, while being geographically dispersed. The author in this article explores the statutory provisions in the cases of US, European Union, India, etc., vis-à-vis various issues revolving internal control. Read on…



CA. Rohit Munshi

(The author is a member of the Institute who may be contacted at munshi.rohit@gmail.com.)

In today's competitive scenario, while organisations are under constant pressure to achieve growth both in terms of revenue and profit, they are constantly exploring cost-effective geographies, untapped lucrative markets, different models of operations to reduce costs and achieve higher efficiency. These competitive conditions have resulted in more and more acquisitions, joint ventures, mergers, off shoring and outsourcing. The dilemma faced by CEOs and CFOs is well conceived as they are required to certify the true and fair consolidated financial statements while, in most instances, they are geographically dispersed from ground zero.

The unscrupulous practices adopted by large corporate entities, *e.g.* Enron and WorldCom, to inflate their revenue and asset position lead to multimillion dollar frauds. The Enron scandal (October, 2001) and WorldCom bankruptcy (July, 2002) were instrumental in the acceleration of passing SOX legislation, which lays increased focus on internal control over financial reporting, to ensure that the figures reported represent true and fair view of the affairs of the organisation. Similar legislations are framed in various countries, to ensure that the financial figures are best representation of the affairs of the organisation.

Internal Control–Integrated Framework developed by Committee of Sponsoring Organizations of the Treadway Commission (COSO) provides the tools and methodologies to develop an effective and efficient internal control framework over financial reporting.

Relevant extracts of the legislations adopted by various countries are elaborated below:

United States of America—Sarbanes–Oxley Act

The Sarbanes-Oxley Act of 2002 (hereinafter referred to as SOX) came into effect from July 30, 2002, applicable to all companies listed on national securities exchange (hereinafter referred to as exchange). The underlying purpose of SOX was to prevent shareholders and investors from losing money and erosion of general public confidence in the US security markets by laying greater stress on the top management of public listed companies to ensure that adequate steps are adopted to prevent financial misstatements.

The underlying purpose of Sarbanes-Oxley Act of 2002 was to prevent shareholders and investors from losing money and erosion of general public confidence in the US security markets by laying greater stress on the top management of public listed companies to ensure that adequate steps are adopted to prevent financial misstatements.

The SOX consists of 69 sections divided in 11 chapters. The Sections 302 (corporate responsibility for financial reports) and 404 (management assessment of internal controls) are those sections which have clearly identified the responsibility of the management to certify that the financial statements contain no material misstatements and establish an internal control structure for financial reporting procedures and assess the effectiveness of established internal control structure.

<u>Section 302 of SOX (Corporate Responsibility for Financial Reports):</u>

Relevant extracts from Section 302 (a) are:

"... that the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, certify in each annual or quarterly report filed or submitted under either such section of such Act that—

(1) the signing officer has reviewed the report;

(2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statementswere made, not misleading;

(3) based on such officer's knowledge, the financial statements,and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report;

(4) the signing officers—

(A) are responsible for establishing and maintaining internal controls;

(B) have designed such internal controls to ensure that material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared;

(C) have evaluated the effectiveness of the issuer's internal controls as of a date within 90 days prior to the report; and

(D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

The Companies Act, 2013 came in to force on 29th August, 2013. Section 134 of the Act deals with preparation of financial statements and responsibilities for the Board of Directors.

(5) the signing officers have disclosed to the issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function)—

(A) all significant deficiencies in the design or operationof internal controls which could adversely affect the issuer's ability to record, process, summarise, and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and

(B) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

(6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses."

To put the requirements of Section 302 in simple words, it requires CEOs and CFOs to certify in each annual and quarterly submission of financial data to the U.S. Securities and Exchange Commission (*Commission*), the following:

- There are no material misstatements or omission of any facts.
- Financial data portrays the true and fair view of financial conditions and operations.
- Internal control systems over financial reporting have been established and all material information regarding the company and other consolidated entities are made available to CEOs and CFOs.
- Effectiveness of internal control systems is evaluated once every quarter and conclusions are reported.
- Auditors and audit committee have been informed about the deficiency of internal control systems over the financial reporting including any fraud (irrespective of materiality) identified.
- Any change in internal control systems, including change to rectification of deficiency or material weakness, or any other change that could render controls weak or ineffective.

Section 404 of SOX (Management Assessment of Internal Controls):

Relevant extracts of Section 404 are:

"(a) ...each annual report required by ....to contain an internal control report, which shall—

(1) state the responsibility of management for establishing and maintaining an adequate internal control structure andprocedures for financial reporting; and

(2) contain an assessment, as of the end of the most recentfiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

(b) INTERNAL CONTROL EVALUATION AND REPORTING.—With respect to the internal control assessment required by sub-section (a), each registered public accounting firm that prepares or issues the audit report for the issuer shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this subsection shall be made in accordance with standards for attestation engagements issued or adopted by the Board."

To put the requirements of Section 404 in simple words:

- Annual reports or data filed with the *Commission* must contain a report stating that the responsibility of establishing the internal control over financial reporting is the responsibility of management.
- Effectiveness of the control system must be assessed annually and results must be reported to the *exchange*.
- Assessment of internal control system done by the management must be verified by an auditor responsible for auditing the books of accounts of a company.

Compliance to SOX

Compliance to the requirements of Sections 302 and 404 primarily requires:

- CEOs and CFOs must certify that financial statements including operational information are free from any material misstatements.
- CEOs and CFOs must certify that an internal

control system over financial reporting is established and evaluated once every quarter and also annually for effectiveness. Any deficiency must be reported to the *Commission*.

- Any instance of fraud must be reported to the *Commission*.
- Any change in internal control system or such change which may render the system ineffective or deficient must also be reported.

In addition to the self-assessment of control system, the system must also be verified by statutory auditors for effectiveness and adequate functionality.

India—Companies Act and Clause 49 of Listing Agreement

The Companies Act, 2013 came in to force on 29th August, 2013. Section 134 of the Act deals with preparation of financial statements and responsibilities for the Board of Directors. The details are:

Sub Section 3 of Section 134:

"There shall be attached to statements laid before a company in general meeting, areport by its Board of Directors, which shall include—

....

(c) Directors' Responsibility Statement;....

(l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;...

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

Sub Section 5 of Section 134:

" The Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shallstate that—

....

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

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

To put the requirements of Section 134 in simple words:

- Procedures must be set up to identify any material changes occurred between the end of the period and the date of reporting.
- Setting up of risk management policy and procedures to identify risks existing at all levels including existential risks.
- Procedures must be set up for running the operations of the organisation efficiently.
- Procedures must be set up for safeguarding of assets.
- Prevention and detection of fraud and errors.
- Financial information and statements must be reliable.

Organisations seeking listing of their securities in the stock exchanges regulated by the Securities and Exchange Board of India (SEBI) must enter into a listing agreement with the stock exchange. Clause 49 of the listing agreement mandates the organisation to comply with the provisions related to corporate governance provisions. Relevant provisions of Section V of Clause 49 are:

"The CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act,1956 and the CFO i.e. the whole-time Finance Director or any other person heading the finance function discharging that function shall certify to the Board that:

a. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:

i. these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;

ii. these statements together present a true and fair view of the company's affairs and are in compliance

European Parliament and Council of European Union have issued the said *Directive* to the member states dealing with the annual financial statements and consolidated financial statements including management reporting and corporate governance.

As per the *Internal Control– Integrated Framework* by COSO, internal control system is a continuous and ongoing process that requires contributions from employees at each level to keep the system efficient and effective. It is the responsibility of management to ensure that a control environment exist in the organisation to ensure control over financial reporting.

with existing accounting standards, applicable laws and regulations
b. There are, to the best of their knowledge and belief, no transactions entered into by thecompany during the year which are fraudulent, illegal or violative of the company's codeof conduct.
c. They accept responsibility for establishing and maintaining internal controls for financialreporting and that they have evaluated the effectiveness of internal control systems of thecompany pertaining to financial reporting and they have disclosed to the auditors and theAudit Committee, deficiencies in the design or operation of such internal controls, if any,of which they are aware and the steps they have taken or propose to take to rectify thesedeficiencies.
d. They have indicated to the auditors and the Audit committee
i. significant changes in internal control over financial reporting during the year;
ii. significant changes in accounting policies during the year and that the same have beendisclosed in the notes to the financial statements; and
iii. instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in thecompany's internal control system over financial reporting."

To put the requirements of Section V of Clause 49 in simple words, CEOs and CFOs require to certify:

- There are no material misstatements or omission of any facts.
- Financial data portrays the true and fair view of the financial conditions and operations.
- There are no fraudulent/illegal activities or transactions during the year.
- An internal control system over financial reporting is established and evaluated annually for effectiveness. Deficiency must be reported to both statutory auditors and audit committee.
- Significant change in internal control system or such change which may render the system ineffective or deficient must also be reported to both statutory auditors and audit committee.

European Union—Directive 2013/34/EU of the European Parliament and the Council of June 26, 2013

European Parliament and Council of European Union have issued the said Directive to the member states dealing with the annual financial statements and consolidated financial statements including management reporting and corporate governance. Relevant extracts of the *Directive* are:

Article 19 (Contents of Management Report):
1. The management report shall include a fair review of the development and performance of the undertaking's business and of its position, together with a description of the principal risks and uncertainties that it faces.
The review shall be a balanced and comprehensive analysis of the development and performance of the undertaking's business and of its position, consistent with the size and complexity of the business.
To the extent necessary for an understanding of the undertaking's development, performance or position, the analysis shall include both financial and, where appropriate, non- financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters. In providing the analysis, the management report shall, where appropriate, include references to, and additional explanations of, amounts reported in the annual financial statements.

Article 20 (Corporate Governance Statement):
Undertakings referred to in point (1) (a) of Article 2 shall include a corporate governance statement in their management report. That statement shall be included as a specific section of the management report and shall contain at least the following information:
......
(c) a description of the main features of the undertaking's internal control and risk management systems in relation to the financial reporting process;

Article 29 (Consolidated Management Report):
1. The consolidated management report shall, as a minimum, in addition to any other information

required under other provisions of this Directive, set out the information required by Articles 19 and 20, taking account of the essential adjustments resulting from the particular characteristics of a consolidated management report as compared to a management report in a way which facilitates the assessment of the position of the undertakings included in the consolidation taken as a whole.

2. *The following adjustments to the information required by Articles 19 and 20 shall apply:*

……

(b) in reporting on internal control and risk management systems, the corporate governance statement shall refer to the main features of the internal controls and risk management systems for the undertakings included in the consolidation, taken as a whole.

In various segments of the *Directive*, it is mentioned that financial statements must present true and fair view of the operations of the organisation. In other words, the requirement of various articles and clause of the *Directive* is that the management of any organisation whose securities are admitted for trading on a regulated market of any member state must confirm in their management report:

- Review of the risks faced by the organisation both financial and non-financial.
- Key features of internal control over financial statements for both individual and consolidated statement.

Compliance with the *Directive*

Compliance with the requirement of the said *Directive* can be ensured when the management must:

- Establish a risk management policies and procedures
- Set up an internal control system over financial reporting to ensure reliable financial statements

Internal Control – Integrated Framework:

As per the *Internal Control–Integrated Framework* by COSO, internal audit is defined as:

"Internal control is broadly defined as a process, effected by an entity's board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- *Effectiveness and efficiency of operations.*

The first step towards establishing a robust control environment is to ensure that organisational goals and objectives are well established and broken into periodic milestones. Also important is that these goals are communicated to each member of the organisation.

- *Reliability of financial reporting.*
- *Compliance with applicable laws and regulations..."*

An internal control system is a continuous and ongoing process that requires contributions from employees at each level to keep the system efficient and effective. It is the responsibility of management to ensure that a control environment exist in the organisation to ensure control over financial reporting.

The *Framework* consists of following components which will help management to develop a robust internal control system which can be relied upon to enable achievement of the objectives of internal control as per the definition above and in turn comply with the requirements of SOX, Indian Companies Act (Clause 49 of the listing agreement) and Directive of European Union:

1. Control Environment
2. Risk Assessment
3. Control Activities
4. Information and Communication
5. Monitoring

Control Environment:

Oxford Dictionary defines *environment* as *setting* or *condition in which a particular activity is carried on*. In the business context, the control environment is a setting where top-down cultural tone is established so that the dealings, transactions and overall business is conducted in an ethical, disciplined and structural manner. It is the responsibility of top management and senior executives to establish a controlled environment which is conducive to achieve organisational goals along with the compliance.

To establish a *control environment*, following steps must be considered among others:

- Establish an ethical code of conduct encompassing employees at all levels.
- Establish a fraud prevention, detection and reporting policy.

- Have a policy to hire and retain competent personnel with adequate back ground checks and verification.
- Establish an authority matrix for all major and critical transactions and decisions, *e.g.* payments, procurements, investment, supplier selections, etc.
- Organise trainings and sessions periodically for employees to regularly stress upon the benefit and importance of above said policies, procedures and codes.

Risk Assessment:
Organisations today are operating in multinational, multi lingual environments. Different countries have different set of rules and regulations, which coupled with geographical differences pose varied categories of risks to organisations in their daily operations. These risks can be both internal and external. Organisations must set up a procedure to identify and assess all the risks that organisations may confront and identify relevant mitigating procedures for such risks. Organisations must set up risk management process and categorise the risks in the following categories:

- ***Operational Risks:*** Risks that organisations may face on day-to-day basis in performing their operations are referred to as *operational risks*, which include natural disasters, accidents, lack of business and functional understanding of employees, weak employee background checks, weak hiring and appraisal procedures, frauds, *etc.*
- ***Strategic Risks:*** Risks which pose threat to long-term organisational goals can be considered as *strategic risks*, *e.g.* loss of key customer, concentration of revenue or profits from one revenue or business stream, delayed projects, risk of key personnel or director's liability (especially in case of pharmaceutical or consumer products), change in government policies or other related laws, *etc.*
- ***Existential Risks:*** Risks such as war, nationalisation (especially in times of war), *etc.*, which pose threat to continuity of business in a key locations may be termed as existential risks.

The first and most important step is to establish the short and long-term goals and objectives of an organisation and map these risks against those goals and objectives. It is the responsibility of top management to assemble the key personnel with relevant experience to keep a track of all such risks and identify mechanism to counter those risks as and when they appear or there is a possibility of appearance of these risks.

Control Activities:
Organisational goals such as profit, output or productivity, are a sum total of various transactions and activities performed at various levels and various employees throughout a period of time. These activities are performed by various functions such as Operations, Commercial, Sales & Marketing, Human Resource, Finance & Accounts, Stores, Procurement, *etc.* All such activities must have proper and documented standard operating procedures (SOP) containing management directives on how an activity will be performed, when the activity will be performed and who will perform the activity. Control activities are those procedures that ensure that these directives are carried out. Another purpose of control activities is to ensure that any risk of error or fraud that may exist in execution or recording of any transaction is identified and rectified. These control activities include approvals, authorisations, reconciliations, periodic performance reviews, ratio and trend analysis, authority matrices, segregation of duties, physical verifications, assets security and safeguarding. The SOP must be prepared in such a manner that the above mentioned control activities are embedded in the SOP itself.

Information and Communication:
The first step towards establishing a robust control environment is to ensure that organisational goals and objectives are well established and broken into periodic milestones. Also important is that these goals are communicated to each member of the organisation. The level of details may depend on the professional maturity and place of the member in the hierarchy but the key factor is correct understanding of the goals and objectives by all.

Next step is to lay down the steps to achieve those goals by defining process and sub processes. The processes must be dissected into clear and understandable SOPs including control activities embedded within, which must be communicated to all concerned. It is also imperative that any change in the process must also be communicated and

SOPs modified on a real time basis. Any change in organisational policies which may or may not be resultant of change in government policies, external markets, competition, new risks identified by risk management committee, *etc.*, must be effectively communicated along with clear definition of responsibility or change in responsibility resultant of such change.

Apart from the above said decision-making and strategic communication, it is equally important that the following information must also flow without any bottleneck in the organisation:

- Operational performance and alignment with goals and objectives;
- Communication regarding outcome of any audits conducted;
- Communication with external stakeholders such as suppliers, customers, shareholders, statutory agencies, *etc.*, to ensure smooth journey towards overall goals; and
- Regular communication to explain business dynamics and inter dependant functional dynamics.

The top management must also effectively communicate the duty and responsibility each department must perform with respect to the overall control environment of the organisation.

Monitoring

Monitoring can be defined as an activity to provide reassurance to the management that the processes and related control activities are performing adequately and as envisaged. It involves periodic evaluation of control activities.

Monitoring of processes and control activities can be done concurrently or on defined intervals internally or through external independent agencies. The extent and periodicity of evaluation may depend on the risk assessment of activities. Activities that are fraud prone or contain risk of financial loss must be considered critical. An example of such activities is bank reconciliation and relevant control activity is segregation of duties. Another example can be payment to suppliers and control measure can be up to date delegation of authority matrix. Similarly, activities that have direct impact on legal and statutory compliance must be deemed critical.

Monitoring is performed by studying and undertaking process walk through and comparing the same with the defined SOPs. Along with it, a study must be done that control steps identified in the SOPs are also complied with. It is also important that the SOPs are relevant and duly updated to capture the current operating process and procedures.

Results of monitoring must be recorded and communicated to the process owner and operator. If any deviation or discrepancy is observed, adequate remediation plan must be prepared and implemented to ensure compliance in foreseeable future so that books of accounts represent true and fair position of affairs of the organisation. Such remediation plan must be followed up regularly until implemented.

Conclusion:

ICAI must also develop guidelines to pave the way and assist the management to establish systems and procedures for internal control over financial reporting in lines with the COSO. There are internal audit standards but they are from the perspective of compliance with the requirements of Companies Act and these set the path for auditors to perform their tasks. Similarly, ICAI must also develop guidelines for organisations to achieve the desired controls over financial reporting to ensure accuracy and reliability of figures reported to various external agencies which in turn are used by public in general. ■

Penalty u/s. 271(1)(c): Initiation, Satisfaction & Levy – The Unwritten Mandates

Section 271(1)(c) of the Income-tax Act, 1961 prescribes two faults or omissions which exposes the assessee to concealment penalty. These are, concealment of particulars of income and furnishing inaccurate particulars of such income. This article critically analyses the unwritten procedural route for making the assessee liable to face the penal consequences.The procedural mandates regarding initiation of penal proceedings, recording of satisfaction regarding concealment/furnishing of inaccurate particulars of income and finally levy of penalty for specifically any of the two faults are discussed with the help of judicial precedents.

A. Initiation of Penalty Proceedings u/s 271(1)(c):

Clause (c) of Section 271(1) reads as follows:

271. (1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person—

(a) ……

(b) ……,or

(c) has concealed the particulars of his income or furnished inaccurate particulars of [such income, or

(d)……

he may direct that such person shall pay by way of penalty………….

Before we discuss the hidden mandates in the above written letters of penal provisions, it is necessary to dwell upon the provision of Section 271(1B) as inserted by Finance Act 2008 w.r.e.f. 01-04-1989 as follows:

(1B) Where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment and the said order contains a direction for initiation of penalty proceedings under Clause (c) of sub-Section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceedings under the said Clause (c).

There is no direct mandate prescribed under the Act or Rules regarding how and where to initiate the penalty proceedings under Section 271(1)(c).However, the combined reading of both the above provisions makes it clear, that an assessment order should contain at least a direction for initiation of penalty proceedings to constitute satisfaction of the AO for initiation of penalty proceedings under Section 271(1)(c). Even post Section 271(1B), still a *prima facie* satisfaction of Assessing Officer that the case may deserve imposition of penalty should

CA. Vinay V. Kawdia

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

be discernible from order passed during the course of assessment proceedings. *(Madhushree Gupta vs. Union of India [2009] 183 TAXMAN 100 (DELHI)]*

Thus, to initiate a penalty proceedings or not is a matter of application of mind and satisfaction to that effect by the assessing officer. If after applying his mind, the AO made himself satisfied that there was no concealment/furnishing of inaccurate particulars of income and accordingly, did not initiate the penalty proceedings in the body of assessment order, he cannot proceed for penalty proceedings. The absence of direction for initiation of penalty proceedings under Section 271(1)(c) in the body of assessment order, cannot even be ratified by issue of notice under Section 271(1)(c) r.w.s. 274 along with assessment order or by taking recourse to Section 154/292B otherwise it will render Section 271(1B) meaningless and *otiose.*

The recent decision in the case of *CIT vs. Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565 (Kar.)* also affirmed the above stand and clarified as follows:

i) That existence of conditions stipulated in Section 271(1)(c) is a *sine qua non* for initiation of penalty proceedings.
ii) The existence of such conditions should be discernible from the assessment order or the order of the appellate authority.
iii) Even if there is no specific finding regarding the existence of the conditions mentioned in Section 271(1)(c), at least the facts set out in explanations 1(A) and 1(B) should be discernible from the said order *which would by legal fiction constitute concealment because of deeming provisions.*
iv) Even if these conditions do not exist in the assessment order, at least a direction to initiate proceedings under Section 271(1)(c) is a *sine qua non* for the AO to initiate the proceedings because of the deeming provision contained in Section 271(1B).
v) Notice under Section 274 r.w.s. 271(1)(c) should specifically state grounds mentioned in Section 271(1)(c) *i.e.,* whether it is for concealment of income or for furnishing of inaccurate particulars of income.
vi) Sending printed form where all the grounds mentioned in Section 271 are mentioned would not satisfy the requirement of law.

The view that initiation of penalty proceedings in assessment order is a precondition for levy of penalty has also been affirmed by various tribunals in past in *Lalit Calendaring Works vs. ITO (1998) 60 TTJ (Ahd) 12, ITO vs. Bhagwandas (1982) 13 TTJ (DEL) 261, ITO vs. Audyogik Tantra Shikshan Sanstha (ITA No. 106/PUNE/2010) etc.*

As observed by the Court, post-amendment the mandates of penal provisions u/s 271(1)(c) remained intact. The Court saw no merit in the argument of the Department that prior to the impugned amendment "satisfaction" both at the initiation stage and at the stage of imposition was required, however, with the insertion of the Section 271(1B), 'satisfaction' only at the stage of imposition of penalty is required.

Recently, the Hon'ble Bombay High Court in *Gangadhar N. Agrawal, HUF vs. ITAT [2013] 35 taxmann.com 292 (Bombay)* held that where core issue raised before the Tribunal was about the jurisdiction of the Assessing Officer to levy penalty without initiation of penalty proceedings, without deciding the said issue, the matter of penalty could not be remanded to Commissioner (Appeals) on merits.

Who Can Initiate Penalty Proceedings?

As a general rule the authority making additions/disallowances can only initiate the penalty proceedings under Section 271(1)(c) during the course of assessment/reassessment proceedings. As a natural corollary, if CIT(A) makes the enhancements, he shall be authorised to initiate the penalty proceedings in respect of the enhanced portion. Same is the case for CIT for order passed under Section 263. However, if the AO has not recorded any satisfaction or has not issued any direction to initiate the penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority & not the assessing officer. [*CIT vs. Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565 (Kar.).*] Probably, the court has taken this view, in view of the principle that powers of CIT(A) are coterminous with that of assessing officer and the entire assessment is open before him.

Exception to the above mandate: Explanation 2 r/w section 271(1A):

Where the source of any receipt, deposit, outgoing or investment in any asst. year is claimed to be out of the amount added to the total income of any preceding year but no penalty was initiated/imposed thereon then to the extent of such adjustment, the assessee shall be deemed to have concealed or furnished inaccurate particulars of income of that year in which the said addition was made and the AO would be entitled to initiate penalty proceedings notwithstanding that the assessment of that year has been completed/completed without initiating the penalty proceedings.

B. Recording of Satisfaction:

Legislative history: In the context of levy of penalty under Section 271 of the Income-tax Act, 1961, there has been an ongoing dispute between the Income-tax department and the taxpayers on whether an Assessing Officer is required to record his satisfaction before initiating penalty proceedings. The Income-tax department has held the view that no separate satisfaction is required to be recorded before initiating penalty proceedings. In the case of *CIT vs. S.V. AngidiChettiar (1962) 44 ITR 739 (SC)*, the Supreme Court has, while dealing with penalty under Section 28 of the Indian Income-tax Act, 1922, held that "satisfaction before conclusion of proceeding under the Act, and not the issue of a notice or initiation of any step for imposing penalty is a condition for the exercise of the jurisdiction." Following this decisions, wherever additions are made, the Assessing Officers have, without separately recording any satisfaction, been issuing directions for initiating penalty proceedings.

However, interpreting the aforesaid Supreme Court decision, the Delhi High Court has, in the case of *CIT vs. Ram Commercial Enterprises Ltd. (2001) 167 CTR (Del) 321* held that *"It is the assessing authority which has to form its own opinion and record its satisfaction before initiating penalty proceedings."*

If there is no explanation at all from the assessee as required by explanation (1A) or (1B) to Section 271(1), no burden lies on the AO to record separate satisfaction/prove concealment to the hilt and accordingly by simple mentioning of the fact position of no explanation from the assessee in view of explanations 1(A) and 1(B) would by legal fiction constitute satisfaction as to concealment because of deeming provisions.

Subsequently, the Allahabad High Court went into this issue in the case of *ShyamBiri Works (P) Ltd. vs. CIT (2003) 185 CTR (All) 510.* After considering all the above decisions, it has held that *"With profound respect to the Delhi High Court decision, we are unable to agree.... We are, therefore, of the opinion that although the Assessing Officer must have satisfaction as required under section 273 of the Act, it is not necessary for him to record that satisfaction in writing before initiating penalty proceedings under section 273 of the Act."*

In view of conflicting judicial opinion on this issue, a new sub-Section (1B) in Section 271 of the Income-tax Act, 1961 has been inserted by Finance Act 2008 w.r.e.f. 01-04-1989 to protect the interest of the revenue. As per the amendment, a mere direction for initiating of penalty proceedings under sub-Section (1) of Section 271, shall be deemed to constitute satisfaction of the Assessing Officer for initiating penalty proceedings under sub-Section (1) of that Section. *[CBDT circular No. 1/2009 dated 27-03-2009]*

However, the Hon'ble Delhi High Court in the case of *Madhushree Gupta vs. Union of India (2009) 317 ITR 107 (Del.)* has clearly held that the Position of law both pre and post amendment [*i.e.* pre and post Section 271(1B)] is similar, in as much, the *AO will have to arrive at a prima facie satisfaction during the course of proceedings with regard to the assessee having concealed particulars of income or furnished inaccurate particulars, before he initiates penalty proceedings.* At the stage of initiation of penalty proceedings, the order passed by the AO need not reflect satisfaction *vis-a-vis* each and every item of addition or disallowance if overall sense gathered from the order is that a further prognosis is called for.

To summarise, as observed by the Court, post-amendment the mandates of penal provisions under Section 271(1)(c) remained intact. The Court saw no merit in the argument of the Department that prior to the impugned amendment "satisfaction" both at the initiation stage and at the stage of imposition was required. However, with the insertion of the Section 271(1B), 'satisfaction' only at the stage of imposition of penalty is required.

The High Court pointed out that Section 271 S(1) (c) has to be read in consonance of Section 271 (1B). If Section 271(1B) is read in isolation, the Assessing Officer would in such a situation be in a position to pick a case for initiation of penalty merely because

Initiation of penalty proceedings in the assessment order is a sine qua non for initiation of penalty proceedings u/s 271(1)(c). Further, the initiation of proceedings should be clear i.e. whether it is for concealment of income or for furnishing of inaccurate particulars of income.

there is an addition or disallowance without arriving at a *prima facie* satisfaction with respect to infraction by the assessee of clause (c) of sub-Section (1) of Section 271 of the Act: A requirement which is mandated by the provision itself.

The above decision has been followed by the Hon'ble ITAT Delhi in *Global Green Company Ltd. vs. DCIT (ITA No.1390/Del/2011) Dt. 13.07.12* and held that: *"Despite the insertion of sub-section (1B) to s.271, the necessity for "prima facie satisfaction" for initiation of penalty proceedings continues to be a jurisdictional fact. The AO has to record the finding that there was concealment of income. In the s. 43(3) assessment order, the AO has not mentioned a word that there was furnishing of inaccurate particulars or concealment of income. He made the addition merely on the ground that the assessee was not able to produce any evidence for writing off of the amount in the books of account. As the satisfaction that the assessee had concealed income or furnished inaccurate particulars of such income is not discernible from the assessment order, the penalty order suffers from lack of jurisdiction."*

What amounts to prima facie satisfaction as discernible from assessment order?

The issue is very peculiar and can be decided, depending on the facts and circumstances of each case. However, as guided by the Hon'ble Karnataka High Court in case of *Manjunatha Cotton (supra)*, even if there is no specific finding regarding the existence of the conditions mentioned in Section 271(1)(c), *at least the facts set out in explanations 1(A) and 1(B) to section 271(1)(c) should be discernible from the assessment order which would by legal fiction would constitute concealment because of deeming provisions.*

The latest and startling judicial view on the issue is that of the Hon'ble Karnataka High Court in *CIT vs. MWP Ltd. [2014] 41 taxmann.com 496* wherein the term ***direction*** as appearing in Section 271(1B) has been interpreted by the court and held as follows:

Held:

...Merely saying that penalty proceedings are being initiated will not satisfy the requirement. The direction to initiate proceedings should be clear and not be ambiguous. It is well settled law that fiscal statutes are to be construed strictly and more so the deeming provisions by way of legal fiction are to be construed more strictly. They have to be interpreted only for the said issue for which it has deemed and the manner in which the deeming has been contemplated to be restricted in the manner sought to be deemed. As the words used in the legal fiction or the deeming provisions of Section 271(1B) is Direction, it is imperative that the assessment order contains a direction. Use of the phrases like (a) penalty proceedings are being initiated separately and (b) penalty proceedings under Section 271(1) (c) are initiated separately, do not comply with the meaning of the word direction as contemplated even in the amended s. 271(1B). A direction by a statutory authority is in the nature of an order requiring positive compliance. When it is left to the option and discretion of the ITO whether or not take action, such writing cannot be described as a direction. [RajinderNath vs. CIT [1979] 120 ITR 14(SC) followed]

Exception to above mandates regarding recording of satisfaction:

As in case of Explanations (1A)/(1B) (discussed above), the above mandate need not be followed by the AO if the case being squarely covered by and the AO invokes any of the explanations [Expln. 2 read with Section 271(1A), Expln. 3, 5, 5A or 7] to Section 271(1) because of deeming fictions created by the respective explanations. [*It is to be noted that Explanation being part of the main provision, can be invoked by the AO at the time of levy of penalty even if it is not invoked at the time of initiation of penalty proceeding/in the notice u/s. 271.—K. P. Madhusudhanan vs. CIT 251 ITR 99 (SC)*]

C. Levy of Penalty under Section 271(1)(c)

This is the last stage of the penalty proceedings (which is independent of assessment proceedings) and as a general rule; authority initiating penalty proceedings can only levy the same by way of separate order to that effect. Obviously, it is incumbent upon the Assessing Officer to record his satisfaction beyond doubt before levying the penalty, as clarified by CBDT *vide* its *circular No. 1/2009 (supra)*.

To elaborate, the Hon'ble Allahabad High court in the case of *Crossings Infrastructure (P.) Ltd. vs. CIT [2014] 41 taxmann.com 474 (Allahabad)* went a step further and clarified that *AO's satisfaction isn't enough to levy penalty, he should state reasons for his being satisfied in his order*. It was held that, "reasons" and "conclusions" are two different things and "reasons"must show mental exercise of authorities in arriving at particular conclusion. It is not enough for the AO to merely state his "satisfaction" *i.e.* conclusion that conditions attracting penalty under Section 271AAA are satisfied. The AO should also state his "reasons" for the 'conclusion'/'satisfaction'.

Though the decision was in the context of penalty under Section 271AAA, the ratio can be applied to penalty proceedings under Section 271(1)(c) in view of the various precedents of the Hon'ble Apex court on the subject matter discussed by the High Court in its order.

However, Explanation (A)/(B) to Section 271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income by recording a satisfaction to that effect. And, the question of recording of separate satisfaction at the time of initiation or levy of penalty does not arise if assessee has not discharged the initial onus placed on him as above. *[MAK Data Pvt. Ltd. vs. CIT, Oct. 30, 2013, (SC)]*

In other words, if there is no explanation at all from the assessee as required by explanation (1A) or (1B) to Section 271(1), no burden lies on the AO to record separate satisfaction/prove concealment to the hilt and accordingly by simple mentioning of the fact position of no explanation from assessee in view ofexplanations 1(A) and 1(B) would by legal fiction constitute satisfaction as to concealment because of deeming provisions.

Who can levy the penalty under Section 271(1)(c)?

The penalty can be levied by the assessing officer, the CIT(Appeals) and/or the commissioner of Income Tax.

The AO shall levy the penalty for concealment of income on account of additions/disallowances *etc*. made by him in assessment order. The CIT(A) shall levy penalty for concealment of income on the enhancements made by him in his appellate order passed under Section 250. And the CIT shall levy the penalty for concealment of income on the additions/disallowances *etc*. made by him in an order passed under Section 263.

The Hon'ble Allahabad High Court in case of *ShadiramBalmukund (1972) 84 ITR 183* held in clear terms that, the Assessing officer can levy penalty under Section 271(1)(c) on the additions made by him and not on the additions made by CIT(A). Similarly, the CIT(A) can levy penalty on the additions made by him.

Penalty should be levied for specific default:

In the order levying the penalty, there should be clear finding and satisfaction to that effect as to whether penalty is levied for *"Concealment of Income"* or for *"Furnishing inaccurate particulars of income".* Initiating the penalty proceedings for one limb of the Section and levying the penalty by finding assessee guilty for another limb is illegal. In other words, if proceedings are initiated on charge of concealment then penalty cannot be levied for furnishing of inaccurate particulars of income and *vice versa*. [*Penalty under Section 271(1)(c) having been initiated for concealment, cannot be sustained on the ground of furnishing of inaccurate particulars of income- Padma Ram Bharali vs. CIT, 110 ITR 54 (Gau.)*]

In the case of *CIT vs. Jyoti Ltd. [2013] 34 taxmann.com 65*, the assessing officer in his penalty order noted as under:-

"In view of the above facts, it is clear that the assessee concealed income/furnished inaccurate particulars of income. I, therefore, consider it a fit case for levy of penalty under Section 271(1)(c)"

The Hon'ble Gujrat High Court in the above case held that, where the Assessing Officer in order of penalty did not come to a clear finding regarding the penalty being imposed on concealment of income or on furnishing inaccurate particulars of income, the

In the order levying the penalty, there should be clear finding as to whether penalty is levied for "Concealment of Income" or for "Furnishing inaccurate particulars of income". Initiating the penalty proceedings for one limb of the Section and levying the penalty by finding assessee guilty for another limb is bad in law.

Tribunal was justified in setting aside the impugned penalty order. [*New Sorathia Engg. Co. vs. CIT [2006] 282 ITR 642 (GUJ) followed*]

Similar views:

- **The Hon'ble ITAT, Jodhpur bench in the case of *Kansara Bearings Ltd vs. ACIT [2013] 35 taxmann.com 188.***

Held:*Whether Assessing Officer has to clearly show-cause assessee as to which of two defaults, [i.e., assessee has concealed particulars of his income or furnished inaccurate particulars of such income] have been committed by assessee and only when assessee is put to that defence penalty under Section 271(1)(c) can be imposed - Held, yes*

- ***DCIT vs. B.J.D. Paper products [2012] 17 taxmann.com 11 (Luck.)***

Held: *In case of imposition of penalty under Section 271(1)(c), it is incumbent upon the Assessing Officer to come to a positive finding as to whether there was concealment of income by assessee or whether any inaccurate particulars of such income had been furnished by assessee.*

Conclusion

Initiation of penalty proceedings in the assessment order is a *sine qua* non for initiation of penalty proceedings under Section 271(1)(c). Further, the initiation of proceedings should be clear *i.e.* whether it is for concealment of income or for furnishing of inaccurate particulars of income.

Despite the insertion of sub-Section (1B) to Section 271, the necessity for *"prima facie satisfaction"* for initiation of penalty proceedings continues to be a jurisdictional fact & the same should be discernible from the body of assessment order.

In the order levying the penalty, there should be clear finding as to whether penalty is levied for "Concealment of Income" or for "Furnishing inaccurate particulars of income". Initiating the penalty proceedings for one limb of the Section and levying the penalty by finding assessee guilty for another limb is bad in law.

References:

1) *Income-tax Act, 1961*
2) *CTR Encyclopedia on Indian Tax Laws by CCH*
3) *www.taxmann.com* . ■

Base Erosion & Profit Shifting ('BEPS') – Digital Economy and Virtual PE

With the advancement of hardware and software resources, network connectivity and usage of virtual servers located in the cloud, many multinational companies ("MNC") have effectively adopted tax friendly business structures to avoid taxable presence in a foreign land, through fragmenting business functions among multiple group entities in different geographical locations. While doing so, the MNC ensures that each of the fragmented business locations falls below the permanent establishment threshold[1]. This can be achieved through ensuring the categorisation of each of such business locations as being preparatory and auxiliary in nature. Such types of tax structures result in the erosion of tax base of the market/source jurisdiction[2]. As the name suggests, Base erosion and profit shifting ("BEPS") means shifting of taxable profits from one jurisdiction to another through taking advantage of the gaps and mismatches in the tax rules of different countries, where the other tax jurisdiction has low tax, with no real business activity happening in such low tax jurisdiction resulting in the avoidance of corporate tax at an overall level. Read on...

E-commerce has gained substantial significance in most economies of the world. In the backdrop of information explosion and the ever expanding reach of the internet, businesses have become global, culminating into the advent of digital economy. Digital economy can be defined as an economic setting conceived through the interplay of business models primarily based on information and communication technology. Such an economically advantageous situation can be achieved by business houses, by utilising worldwide broadband connectivity, mobility of intangibles and business functions, utilising network effects *etc.* Few of such novel businesses *viz.* digital content trading, online advertising, cloud computing, e-services, app stores *etc*. were not heard of a decade ago. This has also resulted in a change in business models from the "traditional brick and mortar set ups" to "commercial existence through virtual presence".

As there are two sides to a coin, similarly the so called 'boon' of digital economy also has its own set of perils/challenges, especially in establishing tax-

CA. Parul Mittal

(The author is a member of the Institute. She can be reached at ca.parulmittal@gmail.com)

[1] 'Preparatory and auxiliary activities' are defined in the exceptions contained in Para 4 of Article 5 of OECD Model Convention

[2] Market jurisdiction refers to government of the country where the market for goods/ services is present

trail for e-transactions from the tax perspective. This can be explained through a simple example where the concept of permanent establishment can become completely obsolete with the arrival of new technological developments. The traditional concept of permanent establishment is focused on the identification of substantial physical presence in a foreign country to establish qualification. These days, it is possible to be heavily involved in the economic life of another country without having a fixed place of business or a dependent agent therein.

It is an established international tax principle hailing from model tax treaty that tax residency of a corporate can be established through meeting either the test of place of incorporation or the place of management. This principle was based on peculiar business circumstances that existed in the 'pre-digital' age, when the tax treaties were negotiated. In that point in time, a company would have compelling reasons to carry out its business activities through physical presence from the place of its incorporation. Also, the fixed place of management could be established with ease in the yesteryears, due to such meetings being conducted through forming a quorum of all the board members present at one location at a single point of time. Today, the situation has reversed with the presence of the technologically advanced video conferencing tools that have posed as game changers in the business world. Today, conducting a virtual board meeting is possible, irrespective of the geographical location of the quorum forming key board members who can connect through video chats and can discuss and take important business decisions without there being any need for travelling to a particular location. Hence, in the present scenario, OECD has also emphasised the need for "place of effective management".

BEPS – A Case of Double Non-Taxation

Base erosion and profit shifting (BEPS) concerns have mostly arisen due to the application of complex tax avoidance structures by transnational corporations to earn 'stateless'[3] income, primarily resulting in double non taxation. It is an accepted international tax principle that business income is taxed in the home country unless the taxpayer has a permanent establishment in another country. The concept of permanent establishment is geographical in nature and entails qualification either through a physical existence or the presence of an agent in the host country. However, with technological advancements and arrival of e-commerce, establishing business nexus by way of physical presence has become a difficult task.

Base erosion and profit shifting (BEPS) concerns have mostly arisen due to the application of complex tax avoidance structures by transnational corporations to earn 'stateless' income, primarily resulting in double non taxation. It is an accepted international tax principle that business income is taxed in the home country unless the taxpayer has a permanent establishment in another country.

This can be explained by way of an example. A typical e-commerce company ('Company A') plans its operations in such a way that it can sell its products in any country through operating a worldwide website. Company A intentionally holds its server at a remote tax haven jurisdiction so that it doesn't have any physical presence in the market jurisdiction. Apart from the server being located in a tax heaven, Company A also undertakes certain research activities in the market country either through a wholly owned subsidiary or a liaison office. Such subsidiary undertakes research activities in order to understand the tastes and preferences of customers in the market country, so the products on the website can be placed accordingly. Such research activities fall under the exceptions contained in para 4 of Article 5 of the tax treaty.

Through designing its operations in the above fashion, Company A avoids taxable incidence in the market country by virtue of not having any physical presence there. Physical presence is done away with through planting the server that hosts the website, in a remote tax friendly jurisdiction. The Indian subsidiary of Company A also escapes becoming a permanent establishment, since it undertakes preparatory and auxiliary activities like market research and stock maintenance functions. The stated functions fall under exceptions to Article 5. In this way, the corporate tax from sale of products in the market country is completely absolved, irrespective of the mega revenues earned by the e-commerce company from such country.

In the set up discussed above, other taxes are escaped too, like no VAT is paid on the effected

[3] A stateless income suggests that a cross border transaction is planned in a way to escape getting taxed by any of the involved taxing states/ jurisdictions

online sales. Also, websites attract a lot of viewers as also online advertisement revenue from various local businesses. In the above example, Company A earns substantial advertisement revenue also from the market jurisdiction. No wonder why companies like Facebook and Youtube have a free user access worldwide. Their main revenue stream is online advertisements. Since online advertisements do not involve any use or right to use any industrial, commercial or scientific equipment and no technical service is being made available, such payments neither fall under the definition of fee for technical services nor equipment royalty. Resultantly, payments are made by the advertisers without deducting any withholding tax in the market country. Though the revenue from such advertising services constitutes business income of Company A, such revenue does not get taxed due to the absence of permanent establishment of Company A in market jurisdiction. Presently, under the Indian domestic tax law, there is no statutory provision that can impose withholding tax on foreign companies earning online advertisement revenue through operating websites in India.

Many multinationals have devised novel ways of abusing tax loopholes/favourable tax regimes, to avoid payment of taxes on their worldwide income with the support of advanced wireless communication networks. One such instance is the contractual allocation of risks and legal ownership of intangibles among intermediate subsidiaries in low or no tax jurisdictions. In this way, multinationals generate excessive deductible payments towards such intermediate subsidiaries as payments for rights of using such intangibles. Such multinational corporations generally demonstrate that the functions performed, assets used and risks assumed by the parent company is limited in nature and hence, profits get parked in low tax jurisdictions. Alternatively, an intermediate subsidiary can be created in market jurisdiction that may make substantial payments to its head office located in a low tax jurisdiction for use of centralised services received therefrom. Such centralised services could be head office expenses/management fees.

In a nutshell, many multinational companies in the recent past have taken advantage of the boom in digital technological advancements by planning their business in such a way that they can take advantage of gaps in the tax rules and treaty provisions. In this way, such multinational corporations either avoid paying taxes completely, popularly called *'double non-taxation'* or end up paying a miniscule amount of collective taxes on their global income which in most cases is less than what they would have paid in a single country in a normal scenario.

In a nutshell, many multinational companies in the recent past have taken advantage of the boom in digital technological advancements, by planning their business in such a way that they can take advantage of gaps in the tax rules and treaty provisions. In this way, such multinational corporations either avoid paying taxes completely, popularly called *'double non-taxation'* or end up paying a miniscule amount of collective taxes on their global income which in most cases is less than what they would have paid in a single country in a normal scenario. This is not a happy situation for governments of many jurisdictions, as it results in loss of valuable corporate tax revenue and other taxes. Besides, this also provides undue competitive advantage to MNCs over their counterparts, due to them having bigger pockets than other companies. This may also urge the investor community to invest in such MNCs, thereby distorting their investment decision in favour of tax avoiding enterprises.

In the background of the above repercussions, in February 2013, the OECD published a report on "Addressing Base Erosion and Profit Shifting" iterating the need for analysing the issue of tax base erosion and profit shifting by global corporations. The OECD followed it up with publishing an Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan) in July 2013. The BEPS action plan identifies fifteen actions to address BEPS in a comprehensive manner and sets a deadline to implement those actions. BEPS has identified digital economy as challenging, both from direct and indirect tax aspects and has considered setting up a task force for addressing concerns posed by digital economy as one of its action steps.

Indian scenario

In the Indian scenario, permanent establishment is recognised through establishing 'business connection'. Though the definition of 'business connection' has not been changed much, for the limited purpose of interest, royalty and fee for technical services, an amendment[4] to the concept

[4] Explanation to section 9 of the Income Tax Act, 1961

The traditional business models are changing and hence our traditional international tax law also needs overhauling. Conducting business through a website cannot be taxed by adopting traditional tax methodologies since a website is not tangible and it has no location. Hence, a newer concept of virtual permanent establishment should be manifested.

of 'deemed to accrue and arise in India' has been brought about in Finance Act 2010. As per the amendment, the income of a non resident shall be deemed to accrue or arise in India whether or not such services are rendered in India or such resident has a place of business or business connection in India. In this limited way, the Indian legal law is slated for a ramp up to mitigate the criterion of establishing physical nexus for advancing taxability. However, even a change in domestic law can be overridden by virtue of treaty benefit being available. Therefore, the need to recognise virtual permanent establishment as an internationally accepted concept is of prime importance.

Further, the Indian jurisprudence is filled with cases that analyse the position as to whether the existence of a computer server outside India can result in a creation of a permanent establishment. Most of such decisions are decreed by the Tribunals of different states and are largely fact based. Contrary views on the same matter can also be found in abundance, that leaves the taxpayers in an ambiguous situation. Few of such cases are analysed in this article for putting forward the revenue's perspective on the matter.

In case of *Galileo International Inc.*[5], Galileo maintains and operates Computer Reservation System (CRS) services through maintaining a master computer system consisting of many mainframe computers connected to its main server located in USA. This main server is connected to airline servers in different countries including India that regularly exchange data. The airlines pay part of booking fees generated through use of such CRS services to Galileo. The Tribunal held that by virtue of computer systems being placed in India and used by the subscribers of CRS, there exists a fixed place of business and a business connection in India. Hence, the presence of permanent establishment could be established. The stated findings of the Delhi Tribunal that Galileo has a permanent establishment in India has been upheld by the Delhi High Court and has also found favour in case of *Amadeus Global Travel Distribution SA*[6], where it was held that business connection was established due to the presence of computer systems in India that constituted equipment permanent establishment in India.

However, contrary views were expressed by the Delhi Bench of ITAT in case of *Western Union Financial Services*[7]. It is important to note that the facts of this case were a little different from Amadeus and Galileo. One such difference was that the taxpayer operated in India through establishing a Liaison office with RBI's approval, which as per the Tribunal were preparatory and auxiliary in nature and fell under the negative list of Article 5 of the India-US tax treaty. The Tribunal further observed that mere use of software from the premises of its agents cannot lead to the conclusion that premises cum software constitute permanent establishment of the taxpayer in India.

On the other hand, in the case of *Right Florists (P) Ltd*[8], the Indian taxpayer, a florist, used the search engines of Google and Yahoo for advertising its business and generating revenue therefrom. The revenue challenged that the payments made by the Indian taxpayer to Google and Yahoo, stating that it should be subject to withholding taxes on account of online advertisement revenue earned by the two enterprises in India. The Tribunal held that Google's and Yahoo's presence in India could not be constituted as a permanent establishment in India. The Tribunal relied on the OECD Model Convention in stating that permanent establishment would not be created unless the servers on which websites are hosted are also located in India since websites are intangible in nature. In the case of *Pinstorm Technologies (P) Ltd.*[9], similar advertisement charges were paid by an Indian taxpayer, Pinstorm to Google. The Mumbai Tribunal decided the matter in favour of the Indian taxpayer. However, the revenue's appeal against the stated Mumbai Tribunal's ruling has been admitted by the Bombay High Court on taxability of online advertisements.

5 *Galileo International Inc. and Maruthi Info. and Tech Centre vs. DCIT [(2007)(114TTJ 289)(Delhi ITAT)]*
6 *Amadeus Global Distribution S.A. vs. DCIT and DDIT [(2007) 113 TTJ 767 (Delhi ITAT)]*
7 *DDIT vs. Western Union Financial Services Inc. [TS-5-ITAT-2012 (Delhi)]*
8 *ITO vs. Right Florists (P) Ltd [(2013) 32 taxmann.com 99 (Kol' ITAT)]*
9 *Pinstorm Technologies (P) Ltd vs. ITO [(2010) 54 SOT 78 (MUM)]*

It is clear from the above analysis that conventional permanent establishment tests fail in virtual world and contrary views by different Tribunals further complicate the matter. Hence, verdict from higher courts could provide the much needed clarity on the issue in hand.

Virtual PE - Concept in the Making

The above discussion is deficient without concluding that the traditional business models are changing and hence our traditional international tax law also needs overhauling. Conducting business through a website cannot be taxed by adopting traditional tax methodologies, since a website is not tangible and it has no location. Hence, a newer concept of virtual permanent establishment should be manifested. Virtual permanent establishment as a concept entails the envisioning of a deemed permanent establishment that overrides the evidencing of a physical nexus to establish business presence. Governments of different jurisdictions need to take suitable remedial measures, to protect the revenue base of their respective countries through devising principles around identification and taxation of virtual permanent establishments. Few of such alternative options suggested by OECD discussion draft on issues faced by digital economy are:

- Identification of ***'virtual fixed place permanent establishment'*** in cases where enterprise carries on business through a website and maintains its server with an enterprise located in a different jurisdiction; or
- Identification of ***'virtual agency permanent establishment'*** in cases where cross border contracts are habitually concluded through technological means rather than through a person.

Though the above mentioned suggestions are in the preliminary stages of conception, BEPS action plan is endeavored to provide a finishing line and course of action towards the achievement of internationally uniform tax practices in relation to the tax challenges posed by digital economy. ■

Why Your Practice Can't Afford to Ignore the Cloud Any Longer

The Indian accounting industry is undergoing a paradigm shift. Regulatory requirements are increasing and the business environment is getting more complex. Businesses are looking at practitioners not just as financial and tax experts, but as their trusted business partners who will help them navigate and succeed in a complex and rapidly changing world. Today, more and more practices are adopting cloud technologies, in order to gear up for the future, as it will enable them to collaborate better with their clients, access financial data real time and expand their service portfolio. And it all starts with your vision for your practice. Read on to have some clarity on the benefits of cloud practices in profession…

3 steps to check if you are ready

The Indian accounting industry is undergoing an immense paradigm shift. This shift is taking place at both the regulatory and the client levels. A recent study[1] conducted with 201 accountants across India brought this to the forefront, where 88 % of respondents agreed that they expected significant changes to come in compliance. Some of the major ones cited were, the proposed transition of accounting standards to Ind ASs, the new Companies Act and impending overhaul of the tax structures. Although these would require a considerable overhaul of the services being offered by the practitioners, only 17 % are confident of keeping up with these changes.

Clients now not only expect their accountants to provide them with complete compliance support but also require more of advisory services in real time. In the same study, 59% of the respondents said that meeting their client's increasing expectations and finding good employees to serve these customers are the primary challenges that need to be addressed, to accelerate their growth.

These are seismic shifts, bound to change the

Aditya Tulsian

(The author is a strategy and corporate development professional, who may be contacted at tulsian.aditya@gmail.com.)

entire practice model – the way accountants acquire their clients and serve and manage them and their practice. Accountants now have to think differently.

It's not only in India, it's a global phenomenon

Similar paradigm shifts are affecting the worldwide accounting industry. This is because, globalisation of trade is leading to stringent compliance requirements and the need for quick decision making.

These are a direct result of the way businesses, both big and small, are dramatically overhauling their operating models and processes, thus affecting the way they will serve these clients. Some of the trends[2] being observed are:

- Compliance across borders – businesses are getting global today- accountants' existing clients are expanding outside India, *i.e.* getting clients from different geographies. These clients would expect accountants to know and advise them on global compliance.
- Everything is online - Potential clients are going through the accountants' website, LinkedIn profile, blogs, *etc*., before even contacting them.
- Mobile – Clients are on the move, and want to take real time decisions, hence they expect 24X7 accessibility to their financial data.
- An advisor, not just an accountant - Small businesses/clients look to the accountants not just to balance their transactions and file returns, but rather analyse the data and provide strategic business advice.

Now, the challenge is to make sure that accountants are ready to take advantage of these changing trends. How do they go about it?

Cloud computing is empowering accountants like never before

Globally, technology is becoming the greatest factor ensuring the success of an accountant's practice in the new world. Cloud is making access to data – easy, real time, affordable and secure. Practices can better collaborate with their clients and make entering business data seamless. The data can be accessed in real time from anywhere, enabling quick decision-making. And, more importantly, it opens up new avenues for accountants to offer myriad of services to their clients.

Today, more and more practices are showing interest in gearing up for the future and this will be especially beneficial to firms predominantly serving small businesses which, unlike big corporations, can't invest in customised workflow automation solutions. Cloud is where everyone is shifting to; so, the question this poses is not *why or when, but how.*

Similar paradigm shifts are affecting the worldwide accounting industry. This is because globalisation of trade is leading to stringent compliance requirements and need for quick decision making.

Are you ready to take your practice to the cloud?

Darren Root in his recent white paper *Building Your Virtual Office – A Comprehensive Look at How to Get Started* addresses this issue of cloud very well, making this paper a must read for all practicing accountants. He identifies three simple steps to help accountants plan their transformation to the cloud:

1. Develop a clear vision for your practice
2. Focus on the services you want to offer to achieve your vision
3. Choose solutions that will help you deliver the services.

1. Develop a clear vision for your practice:

Root describes creating a vision statement for practice as *starting with the end in mind.* Accountants today must first be able to envision the business they want to operate in. When that is done, only then can they start work on building that vision.

Creating a vision is not always easy for everyone; it requires a lot of retrospection and introspection. Here are a few things to consider:

- Accountants should ask what their practice stands for — What are their practice's core competencies? What do their employees and they themselves like doing the most? What are their clients asking for?
- Which segment of clients do accountants predominantly want to serve — large corporations/banks or small businesses, clients expanding globally or global clients entering India, clients from specific industries or in industry agnostic?
- How would they like to serve their clients? Do they want to be one-stop solution for the clients' all financial management needs or do they want

to offer only specialised services? Do they want to host the financial management solutions or do they expect their clients to manage their own?

These are just a few examples which accountants may consider while developing their practice's vision. From here, it takes some dedication to craft their unique vision. They can see *Root's approach* on how he comes up with a complete vision statement in his white paper.

2. **Focus on the services you want to offer to achieve your vision**
With a clear strategic vision, accountants can begin to think about building their service offerings. Let's take a look at how various services can be offered through cloud:
- Paperless, Collaborative Accounting—Collaborate with clients to enable them to share their accounting records in real-time. As the clients' trusted advisor, accountants can take the next step and help them move towards a more real-time decision-making system.
- Paperless Tax Workflow—No one should be operating within a paper-heavy tax space anymore. Tax workflow has evolved immensely over the past few years with all filings becoming online.
- Paperless Payroll—Simplified and robust employee self-serve modules combined with seamless integration with accounting, will be a big boost to the accountants' service offering.
- Online Document Management—Portals enable accountants to deliver documents to their clients that they traditionally deliver manually. Whether it is tax returns, financial statements, or payroll journals—every document can be made available to clients 24/7 within a secure, private portal.
- Virtual CFO Service–Businesses consider accountants as their most trusted advisors. With access to real time data, practitioners can help their clients take data driven informed decisions.

Root describes creating a vision statement for practice as *starting with the end in mind.* Accountants today must first be able to envision the business they want to operate in. When that is done, only then can they start work on building that vision.

One important aspect that should be kept in mind is that accountants can phase out their offerings, i.e. instead of thinking about a complete overhaul of their practice in one go, they should implement changes or additions in phases.

Along with that they can offer budgeting, tracking and financial planning services, with all these while sitting in their offices.
- Accountants' Website as "Place to Do Business"—Accountants' website is a new front door to their firm. It's a place to do business with clients on a 'daily basis'. Firms should be maximising the potential of their websites, and not just creating a website for use as a static online brochure. Practitioners can have a dedicated *Client Centre* on their website where clients can easily log in and access their information, enter data, and communicate with the firm's staff.

After deciding on how to serve clients, accountants only then, should focus on technology, infrastructure and solutions. One important aspect that should be kept in mind is that accountants can phase out their offerings, *i.e.* instead of thinking about a complete overhaul of their practice in one go, they should implement changes or additions in phases.

3. **Choose the appropriate technology infrastructure and solutions**
Once clear on offerings, the next step is to map out the internal infrastructure required to support their business, *e.g.* to support a completely online, collaborative client accounting service or a paperless tax workflow. The SaaS-based solution seems to clearly be the direction most vendors are moving, especially for practitioners focusing on the SMBs. It takes away the entire burden of owning and maintaining an expensive infrastructure on behalf of clients.

Thinking about the solutions to leverage, evaluate their solution/software based on the facilities it provides and ensure that they meet their needs, some of the fundamental aspects the solutions should deliver are:
- *Electronic data collection:* It should support the ability to collect source documents digitally up front or enable the client to enter the data directly into the software from their premises.

- *Simple Processing:* Once the accountants have client data, it should allow them or their team to effortlessly process and check the data in real-time.
- *Paperless preparation and filing:* Once the processing is done, the solution should facilitate the review and preparation of the returns and file it at the press of a button.
- *Electronic document delivery:* Once tax returns are complete, documents are delivered within the client's portal for review and signature.
- *Simplifying practice management:* The system should be able to easily track projects and tasks as they electronically move through the accountants' office. This is another key component of what is needed in their solution.

And while accountants are assessing the right solution, due diligence should be done to avoid some of the obvious risks inherent with any technology change.

- *Credibility of vendor* – Most established vendors implement high levels of security and redundancy to ensure our data is safe and available 24/7. Previous track records can help assess the quality of performance.
- *High levels of security* – Evaluate the security standards implemented by the service providers. It's critical to have a bank-like security standards when dealing with client's financial data.
- *High-speed internet access* – Assess the internet speed required to seamlessly access the data. Most cloud solutions require high speed internet, as anything below that will give sub-optimal results.

Conclusion

The next decade will see the world evolve into a cloud-enabled anytime, anywhere connected network. Regulatory and compliance requirements will increase as the business environment becomes more complex.

Technology proficiency will be even more important than today. Automation of manual processes will continue to increase, transforming the traditional business lines and creating new untapped opportunities. Businesses will look at accounting and tax professionals not just as financial and tax experts, but as their trusted business partners who will help them navigate and succeed in a complex and rapidly-changing world. However, it all starts with the accountants' vision: where accountants want to take their practice. ■

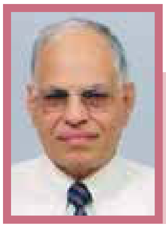
Alternative Dispute Resolution (ADR) Mechanism and Role of Professionals-Legal and Regulatory Framework

Alternative Dispute Resolution (ADR) mechanism is a holistic concept of a "consensus-building" to resolve almost all disputes of compoundable nature, including minor criminal cases. The process of ADR aims at arriving at a workable solution to the disputes rather than going into legalities and raising merits and demerits. At the same time, in ADR process, rules of natural justice are followed and contractual rights of the parties are protected. In India, both the legislature and judiciary promote ADR mechanism, comprising arbitration, conciliation, mediation Lok Adalat or and judicial settlement through courts. In this context, the author attempts to discuss the legal and regulatory framework of the ADR mechanism and role of professionals in India. Read on…

"I realise that the true function of a lawyer was to unite parties.... A large part of my time during the 20 years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby – not even money, certainly not my soul."-**Mahatma Gandhi**

Introduction

Alternative Dispute Resolution (ADR) mechanism is a holistic concept of *consensus-building* to resolve almost all disputes of compoundable nature—contractual, mercantile, commercial, banking, property, labour, compensation and family, including minor criminal disputes. The process of ADR aims at arriving at a workable solution to the disputes rather than going into legalities and raising merits and demerits. In ADR mechanism rules of natural justice are followed and contractual rights of the parties are protected. There is less of law and lawyers and more of common sense and goodwill. The emphasis is on win-win settlement rather than win-lose situation for the parties. Other advantages of ADR include speed, economy, and convenience, simplicity of procedure, secrecy and encouragement of healthy relationship between the parties. As such, the legislature, judiciary and executive promote ADR methods—arbitration, conciliation, mediation, *Lok Adalat* and/or judicial settlement through courts, without litigation. In this context, an attempt is made to discuss the legal and



Naresh Kumar
(The author is an advocate (business laws), who may be contacted at nareshadvocate08@yahoo.com.)

regulatory framework of the ADR mechanism and role of professionals in India.

Legal and Regulatory Framework

The ADR mechanism is founded on the letter and spirit of the Constitution of India. The preamble to the Constitution provides to all its citizens *"JUSTICE, social, economic and political."* Article 14 guarantees fundamental right of *"equality before law or equal protection of law."* Further, Article 39A of the Directive Principles of State Policy enunciates, *"Equal justice and free legal aid."*

The object of the Legal Services Authority Act (LSAA), 1987 is *"to provide free and competent legal service to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity."* The NLSAA accordingly provides legal aid and ensures equal opportunities and equal justice to all by free legal services throughout the country through the state, district and Taluk legal services authorities and the High Court and the Supreme Court Legal Services Committees.

Section 89 of the Code of Civil Procedure (Code), 1908, empowers the court to refer certain disputes, where there exist elements of settlement by the parties, for settlement either by way of arbitration, conciliation and judicial settlement, including settlement through *Lok Adalat* or mediation. The pre-condition of reference is that the Court shall formulate the terms of settlement and give them to the parties for their observation, and, after receiving their observations, again formulate the terms of settlement and refer the same for settlement to any of the aforesaid forums.

The procedure of resolution of dispute under Section 89 of the Code is laid down under Order 10, Rule 1A, 1B, and 1C. Simply stated, the Court shall, after recording the admission and denial of parties to the suit, direct the parties to opt for either of the above modes of settlement outside the court and fix the date of appearance before the forum opted by them (Order 10 Rule 1A). The parties thereafter appear before the forum opted by them (Order 10 Rule 1B). The presiding office of the forum shall try to settle the issue, failing which refer the matter back to the court and direct the parties to appear before the court on the given date (Order 10 Rule 1B).

Section 89 of the Code of Civil Procedure (Code), 1908, empowers the court to refer certain disputes, where there exist elements of settlement by the parties, for settlement either by way of arbitration, conciliation and judicial settlement, including settlement through *Lok Adalat* or mediation.

The Supreme Court of India in Salem *Advocate Bar Association vs. Union of India [2003(1)SCC 49]* considering the laudable object of Section 89, upheld its validity with all its imperfections, but referred it to a committee in the hope that it would be implemented by ironing the creases.

Subsequently, the Apex Court in *Salem Advocate Bar Association vs. Union of India [2005(6) SCC 3440]* applied the principle of purposive construction in interpreting Section 89 to make it workable. This was done by equating "terms of settlement" to a "summary of dispute" meaning thereby that the court is only required to formulate a `summary of disputes and not terms of settlement.' Further, the Apex Court adopted the following definition of `mediation' suggested in the model mediation rules, in spite of a different definition in Section 89(2) (d):

> *"Settlement by `mediation' means the process by which a mediator appointed by parties or the Court, as the case may be, mediates the dispute between the parties to the suit by the application of provisions of Mediation Rules, 2003 in Part II, and in particular, by facilitating discussion between parties directly or by communicating with each other the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasising that it is the parties' own responsibility for making decisions which affect them."*

The Supreme Court of India, while deciding *Afcons Infrastructure Ltd. & Anr. vs. Cherian Varkey Const. Co. (P) Ltd. & Anr. (Civil Appeal No.6000 of 2010)*, framed the following issues:

(i) What is the procedure to be followed by a court in implementing section 89 and Order 10 Rule 1A of the Code of Civil Procedure (Code)?

(ii) Whether consent of all parties to the suit is necessary for reference to arbitration under Section 89 of the Code?

The Apex court remarked that the wordings of Section 89 *"puts the cart before the horse and lays down an impractical, if not impossible, procedure in sub-Section (1). It has mixed up the definition in sub-Section (2). In spite of these defects, the object behind Section 89 is laudable and sound."* The Apex Court in Para 31 of the judgment summarised the procedure to be adopted by a court under Section 98 of the Code as:

(a) When the pleadings are complete, before framing issues, the court shall fix a preliminary hearing for appearance of parties. The court should acquaint itself with the facts of the case and the nature of the dispute between the parties.

(b) The court should first consider whether the case falls under any of the category of the cases which are required to be tried by courts and not fit to be referred to any ADR process. If it finds the case falls under any excluded category, it should record a brief order referring the nature of the case and whey it is not fit for reference to ADR processes. It will then proceed with the framing of issues and trial.

(c) In other cases (that is, in cases which can be referred to ADR processes) the court should explain the choice of five ADR processes to the parties to enable them to exercise their option.

(d) The court should first ascertain whether the parties are willing for arbitration. The court should inform the parties that arbitration is adjudicatory process by chosen private forum and reference to arbitration will permanently take the suit outside the ambit of the court. The parties should also be informed that the cost of arbitration will have to be borne by them. Only if both parties agree for arbitration, and also agree upon the arbitrator, the matter should be referred to arbitration.

(e) If the parties are not agreeable for arbitration, the court should ascertain whether the parties are agreeable for reference to conciliation which will be governed by the provisions of the Arbitration and Conciliation Act. If all the parties agree for reference to conciliation and agree upon the conciliator(s), the court can refer the matter to conciliation in accordance with Section 64 of the Arbitration and Conciliation Act.

(f) If parties are not agreeable for arbitration and conciliation, which is likely to happen in most of the cases for want of consensus, the court should, keeping in view the preferences/options of parties refer the matter to any one of the other three ADR processes: (a) Lok Akalat; (b) mediation by a neutral third party facilitator or mediator; and (c) a judicial settlement, where a Judge assists the parties to arrive at a settlement.

The Apex court remarked that the wordings of Section 89 *"puts the cart before the horse and lays down an impractical, if not impossible, procedure in sub-Section (1). It has mixed up the definition in sub-Section (2). In spite of these defects, the object behind Section 89 is laudable and sound."*

(g) If the case is simple, which may be completed in a single sitting, or cases relating to a matter where the legal principles are clearly settled and there is no personal animosity between the parties (as in case of motor accident claims), the court may refer the matter to Lok Adalat. In case where the questions are complicated or cases which may require several rounds of negotiations, the court may refer the matter to mediation. Where the facility of mediation is not available or where the parties opt for the guidance of a Judge to arrive at a settlement, the court may refer the matter to another judge for attempting settlement.

(h) If the reference to the ADR process fails, on receipt of the Report of the ADR Forum, the court shall proceed with hearing of the suit. If there is a settlement, the court shall examine the settlement and make a decree in terms of it, keeping the principles of or Order 23 Rule 3 of the Code in mind.

(i) If the settlement includes disputes which are not the subject matter of the suit, the court may direct that the same will be governed by Section 74 of the Arbitration and Conciliation Act (if it is a Conciliation Settlement) or Section 21 of the Legal Services Authorities Act, 1987 (if it is a settlement by Lok Adalat or by mediation which is a deemed Lok Adalat). This will be necessary as settlement agreements deal with not only the disputes which are the subject matter of the suit or proceeding in which the reference is made, but also other disputes which are not the subject matter of the suit.

(j) If any term of the settlement is ex-facil illegal or unenforceable, the court should draw the attention of the parties thereto to avoid further litigations and disputes about execution of settlement.

ADR Methods

Arbitration

The legal and regulatory framework of *"arbitration"* is governed by the Arbitration and Conciliation Act (Act), 1996. Arbitration method is statutory, speedy, economical method of resolution of civil dispute. The basis of arbitration is an agreement between the parties to submit their present or future disputes of civil nature to named arbitrator(s) or institutional arbitrator. Further, all national and international disputes, which are of civil nature, can be referred to arbitration. The obvious advantages of arbitration are party autonomy, procedural flexibility, speed, economy, simplicity, confidentiality, neutrality and impartiality of empire. The business community has itself created the institution of arbitration and, therefore, the basic principles of arbitration are almost universally acceptable.

The parties may also opt for fast track arbitration and request the arbitral tribunal to decide their dispute within a fixed time schedule. The arbitral tribunal can in fast tract arbitration, if the parties to dispute so desire, decide the dispute on written pleadings, documents and written submissions filed before him without or with minimum hearings. The final outcome of arbitration proceedings is *"award"*– interim and final. The final award under Section 31 is a reasoned award settling all issues and signed by the arbitrator(s) and delivered to each party. An arbitration award is as good as a decree of a court for enforcement.

Section 5 of the Act restricts judicial interventions except under Section 9 of the Act for interim measures; Section 11(5) for appointment of arbitrator; Section 27 for taking evidence; and Section 34 of the Act for setting aside arbitral award and Section 36 of the Act for enforcement of arbitral award.

Supreme Court's Interpretation in *Afcons Infrastructure Ltd. & Anr. vs. Cherian Varkey Const. Co. (P) Ltd.*

If there was a pre-existing arbitration agreement between the parties, in all probability, even before the suit reaches the stage governed by Order 10 of the Code, the matter would have been referred to arbitration either by invoking Section 8 or Section 11 of the Act and there would be no need to have recourse to arbitration under Section 89 of the Code.

Section 89 of the Code, therefore, presupposes that there is no preexisting arbitration agreement. Even if there was no preexisting arbitration agreement, the parties to the suit can agree for arbitration when the choice of dispute resolution processes is offered to them by the court under Section 89 of the Code. Such agreement can be by means of a joint memo or joint application or a joint affidavit before the court, or by record of the agreement by the court in the order sheet signed by the parties. Once there is such an agreement in writing signed by the parties, the matter can be referred to arbitration under Section 98 of the Code, and on such reference, the provisions of the Act will apply to the arbitration. In such a situation, the case will go out of the stream of court permanently. If there is no agreement between the parties for reference to arbitration, the court cannot refer the matter to arbitration under Section 89 of the Code without their consent. Reference to arbitration under Section 89 of the Code could only be with the consent of the parties.

It emerges from the above that in the absence of preexisting arbitration agreement between the parties, the consent of all the parties to the suit will be necessary, for referring the subject of the suit to arbitration under Section 89 of the Code. Further, the award of the arbitrator(s) is binding on the parties under Section 36 of the Act and is executable/ enforceable as if a decreed of a court.

Conciliation

The legal and regulatory framework of *"conciliation"* is also governed by the Arbitration and Conciliation Act (Act), 1996. Conciliation is a statutory but non-adjudicatory method in nature. If the parties want to resolve their dispute by conciliation, they have to reach an agreement to appoint a conciliator(s) and submit to him their dispute under Section 62 of the Act. The conciliation shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute under Section 67 of the Act.

The conciliator is guided by principles of objectivity, fairness and justice, giving consideration

The legal and regulatory framework of *"arbitration"* is governed by the Arbitration and Conciliation Act (Act), 1996. Arbitration method is statutory, speedy, economical method of resolution of civil dispute. The basis of arbitration is an agreement between the parties to submit their present or future disputes of civil nature to named arbitrator(s) or institutional arbitrator.

Section 89 of the Code, therefore, presupposes that there is no preexisting arbitration agreement. Even if there was no preexisting arbitration agreement, the parties to the suit can agree for arbitration when the choice of dispute resolution processes is offered to them by the court under Section 89 of the Code.

to, among other things, the rights and obligations of the parties, the usage of the trade concerned and the circumstances surrounding the parties, including any previous business practices between the parties. The parties in good faith co-operate with the conciliator and provide the required information and documents for settlement of disputes. The conciliator suggests solutions and persuades the parties to consider make amendments to make solution acceptable to them.

The conciliator, after settlement of disputes between the parties, draws the *'Settlement Agreement'* under Section 73 of the Act. The settlement so drawn is enforceable Section 30 of the Act as if it is an arbitral award under Section 30 of the Act. The conciliation proceedings are terminated on signing the settlement agreement, and if conciliation do not succeed, a written declaration of termination of the conciliation proceedings by the parties. Conciliation, being a consensus agreement, cannot be challenged and leads to personal empowerment of parties in mutual settlement.

Section 77 of the Act provides that the parties to the dispute shall not initiate arbitration or judicial proceedings during the conciliation proceedings.

Supreme Court's Interpretation in *Afcons Infrastructure Ltd. & Anr. vs. Cherian Varkey Const. Co. (P) Ltd.*

If the parties are not agreeable for arbitration, the court should ascertain whether the parties are agreeable for reference to conciliation, which will be governed by the provisions of the Arbitration and Conciliation Act. Under Section 98 of the Code, if all parties agree for reference to conciliation and agree upon the conciliator(s), the court can refer the matter to conciliation in accordance with Section 64 of the Arbitration and Conciliation Act.

In case parties to the dispute do not agree for conciliation, there can be no conciliation. As such, court cannot refer the parties to conciliation under Section 98 of the Code without consent of all the parties. As contrast from the arbitration, when a matter is referred to conciliation, the matter does not go out of the stream of court process permanently. If there is no settlement, the matter is returned to the court for framing of issues and proceeding with trail.

Mediation

Mediation is governed by the LSAA. The philosophy of mediation is that conflict belongs to the parties and, therefore, the solution must emerge from the parties in a democratic and collaborative manner. It is a structural negotiation process for voluntary resolving a wide range of civil disputes and minor criminal disputes.

In mediation, an impartial and neutral mediator tries to bring together the disputant parties to arrive at a mutually-agreeable solution. The parties in dispute ventilate their grievances and feelings and thereafter work out the solutions to meet their requirements. The prerequisite of conciliation is the confidence reposed by the parties in their mediator as the right person whom they can disclose their issues in confidence. The mediator(s) make parties to feel at ease and encourage them to communicate freely and share information and facts with each other to reach an amicable settlement. He is a patient listener but has no authority to take decisions and does not impose his views on what should be a fair settlement.

The mediator makes talk work, who allows the volcano of accumulated feelings of parties to burst. Once, the parties find emission of their feeling, they cool down and start negotiations in a constructive manner. The mediator then acts as a facilitator encourages parties to focus on their future, generate options and come out with probable solutions to their disputes and help them selecting the best one which meets their requirements. The thrust is on harmony by creating win-win situation for the disputing parties. The mediator with the consent of the parties settles all the disputes and drafts a compromise and settlement. Mediation settlement, being a consensus agreement, cannot be challenged in a court of law.

Supreme Court's Interpretation in *Afcons Infrastructure Ltd. & Anr. vs. Cherian Varkey Const. Co. (P) Ltd.*

For *'mediation'*, the court shall refer the parties to a suitable institution or person and such institution or person shall be deemed to be a *Lok Adalat* and all the provisions of Legal Services Authorities Act shall apply as if the dispute were referred to a *Lok Adalat* under the provisions of the Act.

Judicial Settlement

The judicial settlement is not governed by any enactment. The court adjudicating the matter, if the parties are agreeable, may refer the parties to reach an amicable settlement with the assistance of another Judge nominated by the court for helping the parties reach mutual settlement of their disputes. In practice, the court refers the matter to *Lok Adalat* for judicial settlement, if mediation process is not available (for want of mediation centre or qualified mediators) or where the parties opt for the guidance of a Judge to arrive at a settlement. Where the matter is referred to another judge for assisting parties and mutual settlement is reached, such a settlement agreement have to be placed before the court to make a decree in terms of the settlement reached.

With regard to matters/disputes which are not the subject matter of the suit/proceedings, the court will have to direct that the settlement to be effective will be governed by Section 21 of the Legal Services Authority Act as in respect of *Lok Adalat* or Mediator. In case where the cases are complicated or may require several rounds of negotiations, the court may refer the matter to mediation, where the facility of mediation is available.

In case, the court refers the matter to an ADR process (other than arbitration), it keeps track of the matter by fixing a hearing date for the ADR Report. The period allotted for the ADR process can normally vary from a week to two months (which may be extended in exceptional cases, depending upon the availability of the alternative forum, nature of the case, *etc*).

Lok Adalat

Lok Adalats have been set up under the LSAA as ADR mechanism where parties are encouraged to reach amicable settlement of their cases outside the court system. The *Lok Adalats* are organised by the National Legal Services Authority, State Legal Services Authority and District Legal Services Authorities all over India for the settlement of disputes.

Section 19(5) of the LSAA provides that a *Lok Adalat* shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute relating to:

(i) any case pending before; or

(ii) falling within the jurisdiction of a court,

but not brought before any court for which the LA is organised. *Lok Adalats*, however, have jurisdiction only in respect of cases which are compoundable under any law civil and criminal law.

In mediation, an impartial and neutral mediator tries to bring together the disputant parties to arrive at a mutually-agreeable solution. The parties in dispute ventilate their grievances and feelings and thereafter work out the solutions to meet their requirements.

Supreme Court's Interpretation in *Afcons Infrastructure Ltd. & Anr. vs. Cherian Varkey Const. Co. (P) Ltd.*

The award of *Lok Adalat* in terms of the settlement agreed between the parties is deemed to be a decree of the civil court and executable as such under Section 21 of the LSAA. The settlement award may not require the seal of approval of the court for its enforcement when they are made in direct reference by parties without the intervention of court. However, if the settlements are reached by reference of a court in pending suit/proceedings, the court will continue to retain control and jurisdiction over the cases referred by it to *Lok Adalat* and the settlement award will have to be placed before the court for disposing of the matter in terms of the settlement reached.

In case, a court refers a case to a neutral third party for mediation, it will be deemed to be reference to *Lok Adalat*. The court will retain its control and jurisdiction over the matter and the settlement reached by mediation will have to be placed before the court for recording the settlement and disposal.

In case, a settlement is reached before non-judiciary ADR forum and placed before the court, it will be treated as *'compromise of suit'* under Order 23 Rule 3 of the Code, and the court shall make a decreed order in terms of the settlement. The consensual settlement as the award made by LA is final and cannot be appealed to any court. Section 21 of the LSAA states that an award of the LA is deemed to be a decree or an order of a court and where a compromise or settlement has been reached, the court-fee paid in such a case has to be refunded under the Court Fees Act.

So far, more than 11,00,000 *Lok Adalats* have been organised resolving 3.76 crore cases. *Lok Adalats* have been successfully handle cases where parties can reach an amicable settlement. The National Legal Services Authority (NLSA) on 23rd November, 2013 organised *Lok Adalats* throughout the country and disposed of over 28,26,000 cases out of 39,00,000 cases in less than seven hours. In Delhi alone, 300 benches including at the High Court cleared 3,66,000 cases, which implies that each bench cleared more than three cases every minute on average. This was possible because many cases were bunched together and much of the legal work was done in advance. It is, however, noteworthy that most of the litigants expressed a sigh of relief over the settlement reached, whereas some requested that their cases be sent back to courts.

In the final analysis, adjudicative or determinative processes are not dispute resolution processes. Judges adjudicate disputes coming before their courts without focusing on resolving disputes. They simply decide or adjudicate disputes as per law through adversary method. Judges have wide powers under the law to decide the dispute brought them, but a conciliator or mediator has to use his knowledge and skills to facilitate resolution of the disputes by the parties themselves. Litigation leads to a win-lose situation and aggravates animosity between the parties. On the other hand, ADR methods are holistic concepts of a consensus-building and deal with not only with actual but also potential disputes and conflicts between the parties, leading to win-win situation by preserving goodwill. This is, however, no easy task because consensus-oriented approach is fundamentally different from adjudication. In fact, conflict avoidance, management and resolution are simply three closely related sequential approaches each of which has relevance and application within the broad field of social, commercial and personal interaction.

Please refer to the following table for comparative rating on ADR methods:

Comparative Rating on ADR Methods

Sl. No.	Rating criterion	Litigation	Arbitration	Conciliation	Mediation	Lok Adalat
1	**Statutory**	Yes	Yes	Yes	Yes	Yes
2	**Adversarial**	Yes	Yes	No	No	No
3	**Role**	Judge adjudicates	Arbitrator Gives award	Conciliator prepares conciliation settlement	Mediator help Parties in mutual settlement	Judge provides settlement
4	**Outcome**	Verdict/ Judgment	Award	Conciliation Settlement	Mutual Settlement	Settlement Order
5	**Scope**	Enforcement of rights	Commercial Disputes	Wider	Widest	Wide
6	**Parties' Participation**	Nil	Yes	Yes	Total	Limited
7	**Appeal**	Appealable	Appealable	No Appeal	No Appeal	No appeal
8	**Language**	Legal	Technical	Technical	Simple	Legal
9	**Technicality/ Legality**	Very High	High	Low	Minimum	Low
10	**Cost**	Very High	High	Low	Nil	Nil
11	**Time**	Very Long	Long	Shorter	Short	Shortest
12	**Parties' Satisfaction**	Lowest	Low	Average	Highest	Lower
13	**Approach**	Easiest	Easier	Difficult	Most difficult	Easy
14	**Relationship**	Aggravates hostile relationship	Remains strained	Remains harmonious	Remain harmonious	Remains normal
15	**Advocate**	Required	Required	Not required	Not required	Not required

Role of Professionals

Profession is a body of knowledge, intellectual skills, training and having a regulatory body with code of conduct to regulate members. The professional characteristics include:

- Body of specialised of knowledge and skills within a framework of values;
- Observing self-subordination, honesty, uprightness at work place and profession and rendering service to the society;
- Thrust on expertise to excel rather than monetary gains;
- Relationship of trust and beneficence with client;
- Institution to regulate admission and conduct of professionals on legal and ethical standards; and
- Commanding public recognition for the independence, integrity, credibility and authority in professional services.

Professionals are members of a professional body, possessing domain expertise and ethical values with a code of conduct. Professional ethics are the values comprising spirit of service and care to society, contract of commitment and confidentiality with clients. A distinguishing characteristic of a professional is his ability to combine the technical skills with high ethical standards in practice as per the *'Code of Conduct'* in discharge of their responsibilities.

Professionals play significant role in the functioning of corporate sector by advising and assisting the management. In recognition of the multi-disciplinary knowledge and expertise of professionals in resolution of business and commercial disputes, the Companies Act, 2013, provides opportunities for professionals to assisting Company Liquidator and empanel in the *'Mediation and Conciliation Panel.'* Under Section 291 of the Companies Act, company liquidator may, with the sanction of the Tribunal, appoint chartered accountants, company secretaries, cost accountants, legal practitioners, or such other professionals, to assist her/him in the performance of duties and functions under the Act. Under Section 442 of the Companies Act, the Central Government shall maintain a penal of experts to be called as Mediation and Conciliation Panel having prescribed qualifications for mediations between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate.

The professionals can contribute in the following areas:

(i) Acting as arbitrators, conciliators and mediators in resolution of business and commercial disputes;
(ii) Representing clients before the ADR tribunals and assisting in reaching at win-win-situation;
(iii) Advising on conflict resolution and dispute management to save time, cost and cordial business relationship;
(iv) Enhancing satisfaction level of parties by encouraging and helping them to find practical solutions to their disputes ; and
(v) ADR advocacy to empower society, avoid litigation and reducing the burden of judiciary.

The professional bodies can also interact and persuade the Government to provide for the ADR mechanism under other business and corporate laws to carve out a niche for themselves.

Conclusion

In India, the backlog of cases as per official record on 30th March, 2012 are 2,86,29,605 in district courts, 44,07,861 in high courts and 65,893 in the Supreme Court of India. Further, about 1.8 crore cases are filed every year and the average disposal rate is almost equivalent to the filing rate. Consequently, there is no decrease in the arrear.

The ADR mechanism is, therefore, of practical utility in providing speedy and effective relief to the litigants and reducing the pending cases in courts. *Lok Adalts* are particularly successful in cases where parties reach amicable settlements, particularly for the poor, weaker and illiterate people, who are often intimidated and confused by the courts and procedures. The awards of *Lok Adalats* are also executable decrees in courts.

Ex-Justice Sandra Day O'Conor of the US Supreme Court rightly remarked: *"The courts should not be the places where resolution of disputes begins. They should be the places where the disputes end, after alternative methods of resolving disputes have been considered and tried."* In fact, many parties prefer ADR because they want to avoid court proceedings, disclosing their confidential information, appearing as witness, uncertainty of time and consequences of any un-favourvable judgment. The ADR methods, therefore, provide fair and workable alternatives to the traditional judicial system. As such, in the emerging business scenario, professionals can make a significant contribution towards final resolution of business disputes within agreed time and budget by offering better and qualitative results than the adversarial system. ■

Reference

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5 Law

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Full Texts of the above articles are available with the Central Council Library, ICAI, which can be referred on all working days. For further inquiries please contact on 011-23370154 or by e-mail at library@icai.in

CA (Amendment) Regulations, 2014

[PUBLISHED IN THE GAZETTE OF INDIA , EXTRAORDINARY PART III, SECTION 4, DATED 10th SEPTEMBER, 2014]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

New Delhi, the 10th September, 2014

NOTIFICATION

No.1-CA(7)/167/2014- The following draft of certain regulations further to amend the Chartered Accountants Regulations, 1988, which the Council of the Institute of Chartered Accountants of India proposes to make, is hereby published, as required by sub-Section (3) of Section 30 of the Chartered Accountants Act, 1949 (38 of 1949) for the information of all persons likely to be affected thereby; and notice is hereby given that the said draft regulation shall be taken into consideration after the expiry of a period of forty-five days from the date on which the copies of the Gazette of India, in which these draft regulations are published, are made available to the public;

Any person desiring to make any objection or suggestion in respect of the said draft regulations, may forward the same to the Council of the Institute of Chartered Accountants of India within the period so specified addressed to the Secretary, the Institute of Chartered Accountants of India, ICAI Bhawan, Indraprastha Marg, New Delhi – 110 002;

Any objection or suggestion which may be received from any person with respect to the said draft regulations before the expiry of the period so specified shall be taken into consideration by the Council.

Draft Regulations

1.
   (1) These regulations may be called the Chartered Accountants (Amendment) Regulations, 2014.
   (2) They shall come into force on the date of their final publication in the Official Gazette.
2. In the Chartered Accountants Regulations, 1988 (hereinafter referred to as the said regulations), in regulation 28E, in sub-regulation (1), clause (b), for the words "nine months", the words "eight months" shall be substituted.

3. In regulation 39 of the said regulations, in sub-regulation (4), -
   (a) in clause (i) for the words "rupees five hundred", the words "rupees two thousand five hundred" shall be substituted;
   (b) after clause (iii), the following proviso shall be inserted, namely:-

   "Provided that where a candidate is required for the purpose of passing to obtain section-wise minimum prescribed marks, section-wise marks shall be supplied."

4. After regulation 39 of the said regulations, the following regulation shall be inserted, namely:-
   "39A. Inspection or supply of certified copy of evaluated answer book.- Inspection of an evaluated answer book or supply of a certified copy of an evaluated answer book or both in any particular paper or papers of any examination conducted under these Regulations shall be made to a candidate, in accordance with the norms as may be decided by the Council from time to time, on his submitting an application, in such manner and within such time as may be decided by the Council, along with such fee as may be fixed by the Council which shall not exceed rupees five thousand in the case of inspection of answer book and rupees eight thousand in case of supply of certified copy of evaluated answer book."

5. In regulation 48 of the said regulations, in sub-regulation (1), for the Table, the following Table shall be substituted, namely:-

" Table

Classification of the normal place of service of the articled assistant	During the first year of training	During the second year of training	During the remaining period of training
(1)	(2)	(3)	(4)
(i) Cities/towns having a population of twenty lakhs and above	₹2,000/-	₹2,500/-	₹3,000/-

(ii) Cities/towns having a population of four lakhs and above but less than twenty lakhs	₹1,500/-	₹2,000/-	₹2,500/-
(iii) Cities/towns having a population of less than four lakhs	₹1,000/-	₹1,500/-	₹2,000/-; "

6. In regulation 204 of the said regulations, for the words "and International Trade Laws and World Trade Organisations" the words, "International Trade Laws and World Trade Organisation and International Taxation" shall be substituted.

File No. 1-CA(7)/167 /2014
(T. KARTHIKEYAN)
SECRETARY

Note:The principal regulations were published in the Gazette of India, Extraordinary, dated the 1st June, 1988 vide number 1-CA(7)/134/88 dated 1st June, 1988 and subsequently amended by the following numbers:-

(i) Notification No.1-CA(7)/1/89 published in the Gazette of India, dated 7th October, 1989
(ii) Notification No.1-CA(7)/10/90 published in the Gazette of India, dated 19th January, 1991
(iii) Notification No.1-CA(7)/11/90 published in the Gazette of India, dated 19th January, 1991
(iv) Notification No.1-CA(7)/12/91 published in the Gazette of India, dated 23rd February, 1991
(v) Notification No.1-CA(7)/13/90 published in the Gazette of India, dated 2nd February, 1991
(vi) Notification No.1-CA(7)/19/92 published in the Gazette of India, dated 7th March, 1992.
(vii) Notification No.1-CA(7)/28/95 published in the Gazette of India dated 1st September, 1995
(viii) Notification No.1-CA(7)/30/95 published in the Gazette of India, Extraordinary dated 13th March, 1996
(ix) Notification No. 1-CA(7)/31/97 published in the Gazette of India, dated 16th August, 1997
(x) Notification No. 1-CA(7)/44/99 published in the Gazette of India dated 26th February, 2000
(xi) Notification No.1-CA(7)/45/99 published in the Gazette of India, dated 26th February, 2000
(xii) Notification No.1-CA(7)/51/2000 published in the Gazette of India, Extraordinary, dated 17th August, 2001
(xiii) Notification No.1-CA(7)/59/2001 published in the Gazette of India, Extraordinary dated 28th September, 2001
(xiv) Notification No.1-CA(7)/64/2002 published in the Gazette of India, Extraordinary dated 31st March, 2003
(xv) Notification No.1-CA(7)/64A/2003 published in the Gazette of India, Extraordinary dated 4th December, 2003
(xvi) Notification No.1-CA(7)/83/2005 published in the Gazette of India, Extraordinary dated 28th July, 2005
(xvii) Notification No.1-CA(7)/84/2005 published in the Gazette of India, dated 17th June, 2006
(xviii) Notification No. 1-CA(7)/92/2006 published in the Gazette of India, dated 13th September, 2006
(xix) Notification No. 1-CA(7)/102/2007(E) published in the Gazette of India, dated 17th August, 2007
(xx) Notification No.1-CA(7)/116/2008 published in the Gazette of India, dated 25th September, 2008
(xxi) Notification No.1-CA(7)/123/2008 published in the Gazette of India, dated 3rd December, 2008
(xxii) Notification No. 1-CA(7)/145/2012 published in the Gazette of India, Extraordinary dated 1st August, 2012
(xxiii) Notification No. 1-CA(7)/154/2014 published in the Gazette of India, Extraordinary dated 22nd July, 2014

Important Announcement regarding ISA Course

The Committee on Information Technology has brought out the Information systems Audit 2.0 Course with an objective to equip CAs with a unique body of knowledge and skill-sets so that they can become Information Systems Auditors who are technologically adept and are able to utilize and leverage technology in the area of Governance of Enterprise IT, GRC, Assurance, risk, security and controls. The updated ISA 2.0 course will also meet the increasing market needs of CAs with solid IT skills that can provide consulting/assurance services. The ISA 2.0 course is a blend of e-learning (online and facilitated), class room training, hands-on training with practical case studies and project work to ensure practical application of knowledge. The study material has a companion DVD which includes all the reading material, E-learning, supplementary reference materials and checklists in soft copy.

Classes with the new course have already been started. Batches details are available at the link http://cit.icai.org/ForthcomingPTPWISAMeets.aspx.

ISA Eligibility Test and Assessment test will be held under the Old Course as well as New ISA 2.0 course simultaneously till November & December, 2015 respectively. Members who have already completed their Professional training classes under the old course can appear for the Eligibility Test and Assessment Test under old syllabus till November & December, 2015 respectively. For assistance, please contact 0120- 3045992.

Certificate Course on Concurrent Audit of Banks

The concurrent audit system of banks has become very crucial and important for banks. The main objective of the system is to ensure compliance with the audit systems in banks as per the guidelines of the Reserve Bank of India and importantly, to ensure timely detection of lapses/irregularities. In view of the core competence of the chartered accountants in the area of finance and accounting, risk management, understanding of the internal functioning and controls of banks, *etc.*, the banking sector has been relying extensively on them to comply with these requirements of the regulator. The Internal Audit Standards Board of ICAI conducts six days ***Certificate Course on Concurrent Audit of Banks***. The purpose of the Certificate Course on Concurrent Audit of Banks is to provide an opportunity to the members to understand the intricacies of concurrent audit of banks thereby improving the effectiveness of concurrent audit system in banks, and also the quality and coverage of concurrent audit reports.

The course is open for the members of the Institute of Chartered Accountants of India as well as the students who have cleared CA final examinations.

Please refer link for further details of the Course: http://www.icai.org/post.html?post_id=8236

Course Fees: For metro cities: ₹15,000 per participant, for non-metro cities: ₹12,500/- per participant *(Cheque may be drawn in favor of "Secretary, ICAI" Payable at Delhi and should be submitted to respective branch)*

The details of the forthcoming batches of the Certificate Course on Concurrent Audit of Banks, organised by the Internal Audit Standards Board at various places in October and November, 2014 are as follows:

Location	Scheduled Dates	Registration and Course Details
Trichur	October 4 & 5 , 11 & 12 and 18 & 19,2014	http://220.227.161.86/33419iasb-trichur-109.pdf
Rourkela	October 4 & 5 , 11 & 12 and 18 & 19,2014	http://220.227.161.86/33420iasb-rourkela-108.pdf
Mysore	October 10 ,11 & 12 & 17,18 and 19, 2014	http://220.227.161.86/34463iasb-mysore-144.pdf
Ahmedabad	October 11 & 12, 18 & 19 and November 1 & 2,2014	http://220.227.161.86/33437iasb-ahmedabad-110.pdf
Surat	October 11 & 12, 18 & 19 and 25 & 26,2014	http://220.227.161.86/33438iasb-surat-111.pdf
Trivandrum	October 18 & 19 , 25 & 26 and November 1 & 2,2014	http://220.227.161.86/33439iasb-trivandrum-112.pdf
Bhopal	October 11 & 12, 18 & 19 and November 1 & 2,2014	http://220.227.161.86/33440iasb-bhopal-113.pdf
Pune	October 18 & 19 and November 1 & 2, 8 & 9, 2014	http://220.227.161.86/33441iasb-pune-114.pdf
Patna	October 18 & 19 , 25 & 26 and November 1 & 2,2014	http://220.227.161.86/33668iasb-patna-128.pdf
Gwalior	November 1 & 2, 8 & 9 and 15 & 16 ,2014	http://220.227.161.86/33442iasb-gwalior-115.pdf
Hubli	November 1 & 2 , 8 & 9 and 15 & 16,2014	http://220.227.161.86/33447iasb-hubli-116.pdf
Belgaum	November 1 & 2 , 8 & 9 and 15 & 16,2014	http://220.227.161.86/33669iasb-belgaum-129.pdf
SIRC	November 7,8 & 9 and 14,15 & 16,2014	www.icai.org/post.html?post_id=9611
Udaipur	November 8 & 9 , 15 & 16 and 22 & 23,2014	http://220.227.161.86/33448iasb-udaipur-117.pdf
Ernakulam	November 15 & 16 , 22 & 23 and 29 & 30,2014	http://220.227.161.86/33495iasb-ernakulam-123.pdf
Sriganganagar	November 22 & 23, 29 & 30 and December 6 & 7,2014	http://220.227.161.86/33449iasb-sriganganagar-118.pdf
Coimbatore	November 29 & 30 , December 6 & 7 and 13 & 14,2014	http://220.227.161.86/33450iasb-coimbatore-119.pdf

Chairman
Internal Audit Standards Board, ICAI
E-mail: cia@icai.in; concurrentaudit@icai.in

Certificate Course on Master in Business Finance

Announcement for New Batch of Master in Business Finance Certificate Course

Finance is the life blood of any economic activity. The discipline of finance has undergone a sea change in recent years. The economic growth has not only brought changes in this business environment throughout the world but at the same time has created turmoil and turbulence in economic activities. Keeping in view the same, the Institute of Chartered Accountants of India is running Master in Business Finance (MBF) Certificate Course for the last 6 years to impart the nitty-gritty's of finance to the members of the Institute. Presently, the Committee on Management Accounting is running its 7th Batch. This course extensively covers various topics of advanced financial management with an aim to provide knowledge and skill required for tomorrow's CFO and high end consultancy in finance.

We are getting regular mails regarding members showing interest for MBFCC at different centres. Thus seeing the demand of the course, we would like to invite the applications of the members interested in the MBF course for different centres. We may start MBF new batch on getting sufficient number of participants for a particular centre.

For Prospectus and other details refer to the link below: http://www.icai.org/post.html?post_id=4092 Those who are interested may send his/her interest in the given email ids.

For further clarification you may contact the Committee Secretariat vaishalijaggi@icai.in or chandniagarwal@icai.in, 0120-3045905

Chairman,
Committee on Management Accounting (CMA),
ICAI, New Delhi

Research Scholars under Flexi-Working Arrangement

ICAI Accounting Research Foundation (ICAI ARF) Invites Research Scholars under Flexi-Working Arrangement

ICAI Accounting Research Foundation (ICAI – ARF) was established by the Institute of Chartered Accountants of India (ICAI) in January 1999, as a Section 25 Company – a core research body in the areas of accounting, auditing, capital markets, fiscal policies, monetary policies and other related disciplines. Over the years, it has accelerated its work programme as an academy for imparting, spreading and promoting knowledge, learning, education and understanding in the various fields related to the profession of accountancy. ICAI ARF has undertaken and completed many projects in the past involving basic and applied research. ICAI ARF believes that proper research inputs are necessary for raising the level of corporate governance, management, accounting and financial reporting. High quality research projects based on practical experience with theoretical extrapolations also provide valuable inputs in formulation of policies and implementation thereof at macro and micro levels.

ICAI Accounting Research Foundation invites proposal from dedicated scholars, academics/researchers, preferably chartered accountants, to undertake research projects/assignments under flexi-working in the focus research areas of ICAI ARF. We encourage the interested researchers to visit www.icaiarf.org to know more about us and our focus research areas.

The interested researchers are requested to send their curriculum vitae along with relevant papers/documents at arf@icai.in, for quick appraisal at our end, and taking further appropriate steps.

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 October, 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

Examinations: IPC: May/June 2014

TOPPERS IN CHARTERED ACCOUNTANTS INTERMEDIATE (IPC) EXAMINATION HELD IN MAY/JUNE - 2014

PRESS RELEASE

The result of the Chartered Accountants Intermediate (IPC) Examination was declared recently.

The details of percentage of candidates passed in the above said examinations are given below:

EXAMINATION	GROUP	No. of candidates appeared	No. of candidates passed	% of pass
Intermediate (IPC)	Both Group	66625	6326	9.49%
	Group-I	125187	20537	16.41%
	Group-II	121855	16878	13.85%

The details of top three rank holders on the all India basis for the Intermediate (IPC) Examination held in May/June-2014 with the marks secured by them are also given herewith.

TOPPERS OF CHARTERED ACCOUNTANTS - INTERMEDIATE (IPC) EXAMINATION – MAY / JUNE - 2014

PRESS RELEASE	ALL INDIA TOPPER FIRST RANK	ALL INDIA TOPPER SECOND RANK	ALL INDIA TOPPER THIRD RANK
			
NAME	GEETHIKA HARIDAS	GAURAV ANAND	AGATHISWARAN S.
CITY	BANGALORE	SECUNDERABAD	VELLORE
ROLL NO.	317670	377359	477155
MARKS	568	566	565
%	81.14%	80.86%	80.71%
PHONE	09886725187	09396529296	09443211462

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

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

On Line Articles Placement Portal

Announcement for Publication in the Members and Students Journal

On Line Articles Placement Portal for selection of Articled Assistants by CA Firms/ Individual Chartered Accountants in practice

The Board of Studies of the ICAI has been providing Optional Online Placement facility for selection of Articled Assistants by CA Firms/ Individual Chartered Accountants in practice through its Articles Placement Portal on pan India basis. It provides a platform to the firms of Chartered Accountants/ Individual Chartered Accountants in practice having vacancies for Articled Assistants to shortlist eligible students for selection of articled assistants, and call them for Interview at their offices, as per date and time convenient to them. The eligible candidates who have passed Group-I or both Groups of the Intermediate (Integrated Professional Competence) Course or have been admitted under the Direct Entry Scheme and are willing to join articled training can register themselves on the portal. The services to the Online Placement Portal are available free of charge for both CA Firms/ Individual Chartered Accountants in practice and students and they can register themselves online through the Portal at http://bosapp.icai.org.

The services on the Portal would be available for two months, twice a year from the date of registration by the firms/ Individual Chartered Accountants in practice. Similarly the biodata of a student will also be available on the portal for a maximum period of 2 months from student's registration. The candidates shortlisted by CA Firms/ Individual Chartered Accountants in practice would be informed by e-mails through the Portal, to appear for interview at their respective Offices, at the designated date and time.

Detailed guidelines are available at the institutes' website www.icai.org and on the Portal. In case of any further clarification, please contact the Board of Studies, ICAI Bhawan, A-29, Sector-62, Noida-201309, Tel. No. 0120-3045930/931; eMail: bosapp@icai.org.

Chairman, Board of Studies

Exposure Draft of ASLB 19: For Comments

Announcement

The Committee on Accounting Standards for Local Bodies (CASLB) was constituted as a separate Committee in March, 2005, with the main objective of formulating Accounting Standards for Local Bodies (ASLBs). So far, the Committee has issued seven ASLBs and ASLB 31, *'Intangible Assets'* is likely to be issued shortly. Moving forward in this direction, the Committee has finalised the Exposure Draft of ASLB 19, *'Provisions, Contingent Liabilities and Contingent Assets.'*

This ASLB deals with the accounting principles in respect of provisions, contingent liabilities and contingent assets. It also deals with the identification of the circumstances in which provisions should be recognised, how the same should be measured and disclosures that should be made about them. This Standard also prescribes certain disclosure requirements for contingent liabilities and contingent assets in the notes to the financial statements to enable users to understand their nature, timing and amount.

Comments are invited on the Exposure Draft of the above ASLBs. The text of the Exposure Draft is also available at the following link on the website of the Institute for your valuable comments and suggestions:http://www.icai.org/post.html?post_id=424

Comments can be submitted in writing to the Secretary, Committee on Accounting Standards for Local Bodies, 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 November 5, 2014. Comments can also be sent by e-mail at caslb@icai.in

Classifieds

5167 Wanted CA/Inter CA for Outstation Internal Audit. Knowledge of Taxation preferred, Primary location Vasai Road, interested please contact: rsp.vasai@gmail.com

5168 We are Kolkata based Peer Reviewed Firm with 5 Partners established more than 22 Years ago invites proposal from all over India for partnership / merger of existing firms with ours for mutual benefits. Contact: sant3051@yahoo.com

5169 Delhi based CA Firm is looking for a partner on long term basis to head branch in Bhubaneshwar. info@uccglobal.in

5170 Chennai based FCA, seeks professional work on sub-contract/assignment basis. Email: madhavan.ca2008@gmail.com,Contact: 9865691436

5171 27 years established Lucknow CA firm invites proposals for partners for partnership from experienced retired/new members. Contact:- CA. S.N. Gupta at 09415101759, 07607424536; e-mail: shivnarainabha@yahoo.co.in

5172 Partnership firm with 28 years of PSU banking/insurance audit experience having offices in Chennai/Mumbai/Pune looking for merger proposals with other firms. Send offers to: jayvijay49@gmail.com

5173 A Mumbai based firm with eight partners and in practice for 42 years is looking to merge proprietory CA firm/Individual CA's and open branches at Delhi, Kolkata, Bangalore, Chennai, Bhopal, Trivandrum, Hyderabad, Ahmadabad, Lucknow, Nagpur, Nashik and Pune. Contact: 9820031346 or e-mail: carecruitsicai@gmail.com

5174 Women members of ICAI with passion to build long term practice, but seeking flexible working in the short term, can send their brief profile to womenmembers@gmail.com. Members who are working full time in Industry or Partner or Qualified Paid Assistant in other CA firms need not apply.

5175 Maharashtra – Nagpur based CA Firm with 27 years of standing, having 8 FCA Partners {2 partners-DISA, 1 partner-ISO lead Auditor, 2 partners-LLB}, invites proposal for networking and professional assignments. Areas of Interest - Audit (including Management, Internal and Operations Audits), Taxation and Consultancy. For Contact and Details, visit - www.kprkca.com.

5176 Gurgaon based CA (59 Years) having 35 years industrial experience seeks employment in companies/NGOs. Mobile: 9910173100

5177 Jamshedpur (Jharkhand) based CA firm, is looking for work on assignment, partnership basis. Jaluka& Associates, jalukaandassociates@gmail.com, 9709138711, 8406000707.

5178 Delhi based 35 years old 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

Corrigendum:

Attention of readers is invited to Announcement pertaining to New Publication "Technical Guide on Internal Audit of IT Software Industry" issued by the Internal Audit Standards Board, published in August, 2014, issue of the Journal at page no. 136. In this context, we would like to inform that the price ₹150/- as mentioned in aforesaid announcement should be read as ₹165/-.

Forthcoming Events[1]

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
1.	National Conference on "New Environment, New Challenges"	12th & 13th October, 2014	ICAI Bhawan, G Block, Sector 14, Hiran Magari, Udaipur (Raj.)	12
Topics	• Issues on Companies Act, 2013 & an Overview of LLP/Conversion of Companies to LLP; • Cenvat Credit Rules and Reverse Charge and Partial Reverse Charge Mechanism; • Issues on Wealth Tax; • Service Tax on Works Contract • Practical Approach to Auditing Standard; • Reporting of Auditors under Companies Act, 2013 and Annual Filling of Returns; • Scrutiny, Survey, Search and Seizure; • Real Estate Transaction U/s 50C, 40CA & 56			
Fees	For Members: ₹1,200/-; Spot Registration: ₹1,400/-. Cheque /DD should be drawn in favour of ***"Udaipur Branch of CIRC of ICAI"*** and sent to Udaipur Branch			
Contact Person	**Conference Chairman:** CA. Shyam Lal Agarwal, Central Council Member and Chairman, Professional Development Committee, ICAI, New Delhi, Mobile: 9414053163, Email: shyamjpr@gmail.com **Conference Co-ordinator:** CA. Sunil Badala, Chairman, Udaipur Branch of CIRC of ICAI, Phone: (0294)2641515, 2641616, email: udaipur@icai.org **For Registration and Information:** CA. Yogesh Chandra Pokharna, Secretary,Udaipur Branch of CIRC of ICAI, Mobile: 9414169739 Email: yogassociates@yahoo.co.in			
2.	National Conference on "Enriching Knowledge - Empowering Profession"	18th & 19th October, 2014	Laabh Ganga Convention Centre, Near bypass, Indore(M.P.)	12
Topics	• Re-assessment and Revision under Income tax • Controversies and Issues in Domestic Transfer Pricing • Appeals, Adjudication and Audit under the Service Tax • Cyber Security • Audit and Accounts under the Companies Act, 2013 • Opportunities and Challenges under the Companies Act, 2013 • Issues in first time adoption of IFRS and Ind-AS • Merger, Networking and LLP for CA's • Taxation of Real Estate Transaction and Joint Development Agreements • Professional Opportunity in changing Scenario			
Fees	For Members: ₹2,000/-; Spot Registration: ₹2,200/-. Cheque /DD should be drawn in favour of ***"Indore Branch of CIRC of ICAI"*** and sent to Indore Branch			
Contact Person	**Conference Chairman:** CA. Shyam Lal Agarwal, Central Council Member and Chairman, Professional Development Committee, ICAI, New Delhi, Mobile: 9414053163, Email: shyamjpr@gmail.com **Conference Co-ordinator:** CA. Narendra Bhandari, Chairman, Indore Branch of CIRC of ICAI, Mobile: 9425066440, Email: bhandarica@yahoo.com **For Registration and Information:** CA. T. S. Kothari, Secretary, Indore Branch of CIRC of ICAI, Mobile: 09893284638, Email: tejsinghkothari@gmail.com			
3.	Certificate Course on Indirect Taxes	11th October 2014 to 16th November 2014(Every Saturday and Sunday) Time: 9.30 am to 5.30 pm	Ernakulam	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	₹15,000/-			
Contact Person	CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Email: 09810103611, E-mail: atulservicetax@gmail.com **For Information contact:** • CA. Rajasekharan V, Mobile: 9847032937, Email: services@rajandmat.in • CA. Luke Paul, Mobile: 9447023956, Email: lukepaulkurias@yahoo.co.uk • Ernakulam Branch, Email: ernakulam@icai.in **For Registration visit:** http://www.icai.org/post.html?post_id=7382			

1 For more details about the forthcoming events please refer the detailed announcements hosted on the ICAI website www.icai.org

Events

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
4.	Certificate Course on Indirect Taxes	11th October to 23rd November, 2014 (Every Saturday and Sunday) Time: 9.30 am to 5.30 pm	Vasai (Mumbai) & Ludhiana	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	₹15,000/-			
Contact Person	CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 09810103611, E-mail: atulservicetax@gmail.com **For Information contact:** • **Vasai (Mumbai)**- CA. Umesh Mestry, Mobile: 9320473468, Email: mestryassociates@gmail.com; CA. Vimal Agarwal, Mobile: 9320617447, Email: vimalpagarwal@rediffmail.com; vasaibranch@gmail.com • **Ludhiana**- Shri Mandeep Singh, Mobile: 09855000563; Email: ludhiana@icai.org; CA. Hitesh Goyal, Mobile: 9814925846; Email: hiteshgoyal.ca@gmail.com **For Registration visit:** http://www.icai.org/post.html?post_id=7382			
5.	Live Webcast by Indirect Taxes Committee	17th October, 2014 Time: 6.00 pm to 8.00 pm	Online	-
Topics	Refunds under Indirect Taxes			
Contact Person	CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 09810103611, E-mail: atulservicetax@gmail.com **For Information contact:** Secretariat, Indirect Taxes Committee, Phone: 0120-3045954; E-mail: ccidt@icai.in **Link to visit:** www.icaitv.com/live/icai171014			
6.	One Day Training Programme for Peer Reviewers	11th October, 2014	Mumbai	6
Topics	• Introduction of Peer Review and Peer Review Process • Compliance with Audit Standard • Compliance with Accounting Standard and Professional Ethics • Off-site/On-site Procedures and Review of Records • Compliance/Substantive Review Procedures and Review of Systems • Quality of Documentation & Reporting			
Fees	₹1,000/- per participant			
Contact Person	Peer Review Board, Phone: 0120-3045941/970, Email: trainingprb@icai.in, peerreviewboard@icai.in			
7.	National Conference on "XBRL - Expectations & Challenges in Data Analysis"	9th October, 2014 [Time: 4 pm to 8 pm] followed by dinner	Le Meridien Hotel, New Delhi	4
Topics	• Benefits of XBRL- an overview • Opportunities of XBRL for professionals • Future of XBRL- Way towards SBR (Standard Business Reporting) • Efficient usage of XBRL data for analyses- a review of data in use today and what's ahead • Extension in XBRL taxonomies (Pros & Cons)- Panel Discussion • Role of technologists in XBRL Implementation in the country • Working with XBRL Tools for creating XBRL documents			
Fees	₹2,500/- per participant for Members & ₹2,809/- for Non Members. No fees for all Study Group annual members (2014-15) of NIRC			
Contact Person	• XBRL Secretariat, Phone: 011-30110449/457, 9350572221, Email: xbrl@icai.in • Anil D. Lal (NIRC of ICAI), Mobile: 09891044010, Phone: 011-30100507 **For registration, visit:** http://www.icai.org/new_post.html?post_id=10925&c_id=240			
8.	Residential Refresher Course	12th-14th October, 2014	Hotel Bliss, Tirupati	12
Topics	• Recent Developments in Income-tax • Issues in Companies Act • Trends in Auditing • Emerging issues in Accounting Standards etc.			

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
Fees	Members: ₹7,500/- Children: ₹2,500/- (below 12 years) Spouse: ₹5,000/- Non Residential Member: ₹1,500/- Fees payable by DD/Cheque in favor of '***Tirupati Branch of SIRC of ICAI***' payable at Tirupati. Send it to: The Chairman, Tirupati Branch of SIRC of ICAI, 'ICAI Bhawan', 590, Bodhi Enclave, Balaji Colony, Tirupati-517502, Phone : 0877 - 2231308 , E-mail: tirupathi@icai.org			
Contact Person	**Programme Chairman:** CA Anuj Goyal, Chairman, CCBCAF&SMP, ICAI and CMA, ICAI, E-mail: anujgoyal@icai.org **Programme Director:** CA. M. Devaraja Reddy, Central Council Member, ICAI, Mobile: 9399935799, E-Mail: devarajareddy@yahoo.com **For Registration & Information:** • Dr. T. Paramasivan, Joint Director, SIRC of ICAI, E-mail: sirc@icai.in, Mobile: 09940008755 • Dr. Sambit Kumar Mishra, Secretary, Committee for Capacity Building of CA Firms and Practitioners, ICAI , Phone: 0120-3045994, E-mail: ccbcaf.event@icai.org			
9.	National Conference on Audit, Risk and Governance	8th November, 2014 (Saturday)	New Delhi	6
Fees	₹1,500/- for members, ₹2,000/- for non-members, (Corporate Delegates)			
Contact Person	CA. Charanjot Singh Nanda, Chairman , Internal Audit Standard Board, Mobile: 9811130985, 9311130986, E-mail: cysnanada1@gmail.com CA. Radhey Shyam Bansal, Chairman, Northern India Regional Council of ICAI, Mobile : 9811019657, Email: rsbansalca@gmail.com **For registration, please contact:** • Internal Audit Standards Board Secretariat, Phone: (0120) 3045995, Email: mailsauditing@icai.in • Northern India Regional Council of the ICAI, Phone: (011)30100532, 30100501, (0120)3045995, Email: nirc_seminar@icai.in			
10.	Conference on Foreign Exchange Management Act (FEMA) and Competition Act	18th October, 2014	NDMC Convention Centre, Opp. Jantar Mantar, Connaught Place, New Delhi	6
Topics	• FEMA- New Vision & Approach • Cross Border Investments including Contemporary Regulatory & Tax Environment • Impact Assessment of Competition Law • Mergers & Acquisitions and Competition Law (Cross Border Mergers & Acquisitions, Regulatory and Taxation Regime)			
Fees	₹1,500/- for Members ₹2,000/-for Non Members All Study Group Annual Members of Northern India Regional Council–No fee			
Contact Person	CA. Sanjay Agarwal, Chairman, Committee on Economic, Commercial Laws & WTO of ICAI, Mobile: 09811080342, Email: agarwal.s.ca@gmail.com CA. Radhey Shyam Bansal, Chairman, Northern India Regional Council of ICAI, Mobile: 09811019657, Email: rsbansalca@gmail.com For Information Contact: • Committee on Economic, Commercial Laws & WTO Secretariat, Phone: 011-30110499/09312085029, Email: ctlwto@icai.in; • Northern India Regional Council, ICAI, Phone: 011-30100532/507/09540999199, Email: nirc_seminar@icai.in			
11.	Two Days National Conference on the theme 'Rising to the Challenges – Redefining our Role'	30th and 31st December, 2014	B. M. Birla Auditorium, Statue Circle, Jaipur	12
Topics	• Assessment Proceedings under I.T. Act : An Insight • Prospects under Government Accounting • Company vis-a-vis LLP : Planning & Scope • Opportunities in Banking, Insurance & Pension • Scope under Wealth Tax Act/Planning through HUF/Exemptions under Capital Gains • Panel Discussion -Challenges & Opportunities for Profession • Companies Act 2013 with special reference to ICAI Guidelines • Challenges under Service Tax Act			

Events

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
Contact Person	• CA. Vijay Garg, CCM, Chairman, CPF&GA and COBIP of ICAI, Mobile : 09414041872, Email : vijaymgarg@yahoo.com; vijaymgarg@gmail.com • CA. C. S. Nanda, Vice-Chairman, CPF&GA of ICAI, Mobile : 09212700353, Email : csnanda@gmail.com • CA. J. Venkateswarlu, Vice-Chairman, COBIP of ICAI, Mobile : 09392017738, Email : jv@icai.org • CA. Gautam Sharma, Chairman, Jaipur Branch of CIRC of ICAI, Mobile : 09829032565 • CA. Shailendra Agarwal, Secretary, Jaipur Branch of CIRC of ICAI, Mobile : 09314412945 **For Registration and Information:** Mr. Manish Jain, Jaipur Branch of CIRC of ICAI, ICAI Bhawan, D-1, Institutional Area, Jhalana Doongari, Jaipur-302004. Phone: 0141-3044200 to 230, Mobile : 0966755065, Email: jaipur@icai.org ; jaipur@icai.in			
12.	Two Days National Conference on Indirect Taxes	18th and 19th October, 2014 Time: 9.30 am to 5.30 pm	Hotel Country Inn, Near Vaishali Metro Station, Sahibabad, Ghaziabad	12
Fees	For Members: ₹1,250/-, For Spot Registration: ₹1,500/- Cheque/DD should be drawn in the favour of ***"Ghaziabad Branch of CIRC of ICAI"*** and send to Ghaziabad Branch.			
Contact Person	Conference Chairman: CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 09810103611, E-mail : atulservicetax@gmail.com **For Information contact:** • CA. G.C. Misra, Chairman, Ghaziabad Branch, Mobile: 9810816012, E-mail: gpa001@gmail.com; misragyan@yahoo.co.in • CA. Ankur Tayal, Secretary, Ghaziabad Branch, Mobile: 9818830255. E-mail: caankurtayal79@gmail.com • Secretariat, Indirect Taxes Committee, Ph:0120-3045954, 9350799932, E-mail: ccidt@icai.in			

ICAI News

Information Systems Audit (ISA) Course: Eligibility Test

Notification for Eligibility Test (ET) for
Post Qualification Course on Information Systems Audit (ISA)
on Saturday the 15th November, 2014

Last Date for Online Form Submission 31st October, 2014 till 5:30 PM

1. The next Eligibility Test for ISA PQC is scheduled to be held on Saturday the 15th November, 2014 from 08:00 a.m. to 12.00 p.m for old syllabus and 8.00 to 10:30 am for new syllabus. A detailed notification giving list of centers would be hosted on Committee Portal at http://cit.icai.org by 10th October, 2014.
2. A list of candidates, who have completed ISA Professional Training from 1st July 2014 to 30th September 2014, would also be hosted by 10th October 2014. In case you do not find your name in the list, kindly forward your request giving requisite details (ISA No, Membership No., Name, ISA PT Date and City) to isa@icai.org, by October 20, 2014.
3. Candidates desirous of taking this ISA ET have to submit the Online ISA ET Form (by giving their ISA No. and password) that would be available on the Committee Portal at http://cit.icai.org from 15th to 31st October, 2014.
4. ISA Eligibility Test November 2014 will be conducted with both revised (as effective from 1st July 2014) and old syllabus. Members, who have completed PT Classes by 31st March, 2014 will be required to take exam in old syllabus and members who have undergone ISA PT classes for ISA Course 2.0, will be required to take exam as per new syllabus.
5. Candidates filling form B or C (2nd or subsequent attempt) have to ensure that their ISA ET Fee of ₹1,000/- (Rupees One Thousand only) reaches the following address latest by 31st October, 2014 through Demand Draft/ Pay Order in favour of "The Secretary, ICAI", payable at Delhi. Members can also opt for online payment link that will be available on CIT Portal.
   The Secretary
   Committee on Information Technology
   The Institute of Chartered Accountants of India
   5th Floor, Hostel Block, ICAI Bhawan, A-29,
   Sector-62, Noida - 201309, India
   Phone: 0120-3045 992 / 963 / 961
   E-mail ID: isa@icai.in
6. Applications received after the aforementioned last date would not be entertained under any circumstances and candidates would have to take the ISA ET in May, 2015 attempt.
7. Result of ISA Eligibility Test to be held on 15th November, 2014 would be announced by 5.00 P.M. on Monday the 24th November, 2014.

New Trends in Tax Evasion under CBDT Lens

Tax authorities are planning to look more actively into suspicious transaction reports (STRs) that provide information on dubious funds as they step up efforts against the menace of black money. It has asked field formations to provide feedback on what kind of relevant information these reports should include to "to facilitate detection of new trends or modus operandi of tax evasion adopted in recent times". This is part of a larger exercise by the Central Board of Direct Taxes (CBDT) for feedback from its field offices on how to make these reports more efficient and targeted.

"STRs constitute a strategically important source of information for Income Tax department…The department has not been able to investigate all STRs promptly," the CBDT has said in a recent missive to field offices. Accordingly, it is planning to improve the management of such reports so that it is able to investigate them properly to look into sources of hawala funds. STRs are one of the sources of information with tax authorities on dubious transactions. Reporting agencies such as banks are mandated under law to provide information every month on such transactions that are worth over ₹10 lakh to the Financial Intelligence Unit.

*(**Source:** http://www.business-standard.com/india/)*

Single Window Website for Paying Taxes

Taxpayers are now be able to perform their I-T related works like filing returns or applying for a PAN card from an enhanced single website launched by Finance Minister Arun Jaitley recently. An updated version of the existing website of the Income Tax department–www.incometaxindia.gov.in–now acts as a "single window" for all activities and online services offered by the I-T department. The website is more user-friendly and robust, so that it can handle many hits at a time. The website also allows taxpayers to know about the I-T Act, various notices and circulars being issued from time to time and regular developments in the department.

*(**Source:** News Agencies)*

G20 Commits to Automatic Exchange of Tax Information by 2017

Committing to a global response to deal with cross border tax avoidance and evasion, the G20 has decided to put in place a mechanism for automatic exchange of tax information by 2017. "We endorse the finalised global Common Reporting Standard for automatic exchange of tax information on a reciprocal basis which will provide a step-change in our ability to tackle and deter cross-border tax evasion. We will begin exchanging information automatically between each other and with other countries by 2017 or end-2018," said the communique released after the two-day G20 meeting of Finance Ministers and central bank governors recently. The communique further said that the G20 leaders are strongly committed to a global response to cross-border tax avoidance and evasion so that the tax system supports growth-enhancing fiscal strategies and economic resilience. It said that action plan to tackle Base Erosion and Profit Shifting (BEPS) to make sure companies pay their fair share of tax would be finalised in 2015.

*(**Source:** www.thehindubusinessline.com/)*

Govt to Tweak GST Bill, with Petro Products in Ambit

The government is planning to reintroduce the Constitution (115th Amendment) Bill for Goods and Services Tax (GST) in the winter session of Parliament with some significant changes from a previous version that lapsed: Petroleum products will be subjected to GST but they will be zero-rated initially; all entry taxes levied by states except octroi will be subsumed in the proposed comprehensive direct tax. By keeping petroleum products, a major source of revenue for the Centre and states, in the GST ambit, the government wants to ensure that the integrity of GST (and with that its ability to militate against cascading of taxes) is not compromised. Petroleum being the building material for many downstream industries, its inclusion in GST would keep the tax trail (and the facility of input tax credit) intact. But the Centre and states will, till the latter agree that all taxes on these products can be collapsed into GST, continue to tax these products outside the GST system.

*(**Source:** Press Trust of India)*

Double Taxation in VAT and Service Tax under HC Scanner

The practice of charging value-added tax (VAT) and service tax on the entire bill amount by hotels and restaurants has come under the scanner of the Punjab and Haryana high court. On the basis of a public interest litigation (PIL), a division bench of the high court has issued a notice to the central government, UT administration, Punjab and Haryana, Chandigarh service tax commissioner, excise and taxation commissioner of Punjab and Haryana as well as Chandigarh Hotel and Restaurant Owners' Association. The PIL challenged the practice of charging both VAT and service tax on 100% of the bill amount. It accused hoteliers and restaurant owners in Chandigarh, Punjab and Haryana of "fleecing innocent customers and citizens". The petition pointed out that customers were being taxed twice on the same amount – for sale of goods and for provision of service.

*(**Source:** http://www.economictimes.com)*

Service Tax Might Push School Fees Up

School fees are likely to rise further if the institutions pass on the 12.36% service tax burden charged by third parties that provide content aids to schools. The Union Budget has brought such services under the ambit of service tax. Today, many schools engage with various providers who give content that enriches the overall learning experience. That is a key part which is still not exempt from service tax. Not only that. Even certain extracurricular activities conducted on the school premises during afterhours are expected to come under the ambit of service tax.

*(**Source:** http://www.business-standard.com/)*
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Service Tax on Online Order for Eatables is Illegal

Service tax is supposed to be levied when someone uses the services while eating or drinking in a restaurant or hotel. But what if you order eatables online? Do you still have to pay the service tax? No, say tax experts, but most of the companies charge 4.94% service tax every time you order food or beverages online -- in violation of the rules. According to a tax lawyer, who has written to finance minister Arun Jaitley in this regard, the ministry of finance in 2012 had amended the Service Tax (Determination of Value) Rules, 2006, making charging of service tax where no service is involved unlawful.

*(**Source:** http://www.expressindia.com)*

Companies can Avail Tax Benefits for Expenditure on CSR

Firms spending money on corporate social responsibility (CSR), which has been made mandatory under the new Companies Act, have more reasons to cheer. Though CSR provisions do not offer any great tax savings, companies can claim deductions towards depreciation on assets created for CSR purposes and on expenditure for skill development projects. The Finance Minister has clarified that deductions specifically allowed under Sections 30 to 36 of the Income Tax (IT) Act, 1961 could be availed. In effect, Section 30 of the IT Act can be used for availing deductions against expenditure incurred on repairs and insurance in respect of machinery, plant and furniture used for CSR activities. Rent, rates, taxes and repairs incurred on buildings or other assets taken on lease earmarked for CSR activity would also qualify for deductions. Companies can also claim deduction towards depreciation on assets used for CSR purposes. Funds spent on skill development projects gives the assessee the benefit of claiming 150% deduction in their books. In fact, the CSR Rules issued by MCA (Ministry of Corporate Affairs) read with the MCA circular dated June this year clarifies that CSR activities should be undertaken by the companies in project/ programme mode.

*(**Source:** www.profit.ndtv.com)*

I-T to Look into Credit History, Loan Repayment Pattern of Taxpayers

To recover maximum tax arrears with the optimum use of manpower, the income-tax department has decided to look into the credit history and loan repayment pattern of taxpayers and prioritise cases for recovery of past dues based on a defaulter's ability to pay. For this, the department would consult the Credit Information Bureau of India (Cibil) that assigns credit scores and maintains details of loans taken by individuals, partnerships and corporations, along with their PAN. Sources said tax officials would be able to get an idea of the assets and the financial health of an assessee against which a tax arrears recovery demand has to be pursued vigorously.

*(**Source:** www.thehindubusinessline.com)*

IASB publishes a Discussion Paper on reporting the financial effects of rate regulation

The International Accounting Standards Board (IASB) recently published for public comment the Discussion Paper *Reporting the Financial Effects of Rate Regulation*. Many governments regulate the supply and pricing of particular types of activity by entities. These activities usually involve providing goods or services that are considered in that jurisdiction to be essential to customers, including transport services, some types of insurance policies, and utilities such as gas, electricity and water. Some forms of rate regulation can significantly affect not only the amount of revenue and profit that a rate rate-regulated entity can earn, but also the timing of the related cash flows. The Discussion Paper describes a type of rate regulation that contains elements of both cost recovery and incentive approaches—this type of rate regulation is termed defined rate regulation. The paper seeks comments on whether or not the distinguishing features of defined rate regulation, as identified by the IASB, sufficiently capture the type(s) of rate regulation that have the most significant financial effects and does not include any specific accounting proposals. Instead, it explores what information about rate-regulated activities is most useful to users of financial statements and outlines possible approaches (and the accompanying advantages and disadvantages) that the IASB could consider in deciding how best to report the financial effects of rate regulation. Also, it seeks comments on whether the presentation and disclosure requirements of IFRS 14 *Regulatory Deferral Accounts* should form the basis of any future proposals that the IASB may develop as a result of feedback from this consultation. IFRS 14 was issued in January 2014 as a temporary measure until the IASB concludes this project. The Discussion Paper *Reporting the Financial Effects of Rate Regulation* is available for comment until 15 January 2015. A high level 'Snapshot' summary of the Discussion Paper is available here.

***(Source:** http://www.ifrs.org/)*

Issue 2 of the IASB Investor Update: our newsletter for the investment community

Investor Update aims to make it easy for investors to keep up with changes in the world of International Financial Reporting Standards (IFRS) and how those changes may affect an investor's day job. Each issue profiles the impact that recently introduced Standards may have on your analysis of performance. The changes that are in the pipeline and signal how they might alter the way in which you look at companies will be highlighted. The September 2014 Investor Update can be access from www.ifrs.org/Updates.

***(Source:** http://www.ifrs.org)*

IPSASB Approves Public Sector Conceptual Framework

The International Public Sector Accounting Standards Board (IPSASB) has approved its *Conceptual Framework for General Purpose Financial Reporting by Public Sector Entities* (the Conceptual Framework). The Conceptual Framework establishes the concepts that will guide the IPSASB's approach to standard-setting and guidance. It addresses concepts applicable to both public sector financial statements and a wider set of public sector financial reporting needs and identifies and responds to the key characteristics of the public sector, notably that the primary purpose of most governments and public sector entities is to deliver services to citizens and others. Therefore, the purpose of financial reporting in the public sector is to provide useful information for service recipients and resource providers. The completed Conceptual Framework is expected to be issued by the end of October 2014. The final four chapters were approved by the IPSASB during its September meeting. The Conceptual Framework project has been the key strategic priority for the IPSASB in recent years. Its successful completion allows the IPSASB to focus on projects to be identified through its public consultation on strategy for 2015 forward and work program for 2015-2019, along with projects already initiated, including social benefits. The Conceptual Framework will provide a solid basis for future standard setting by the IPSASB. The IPSASB will continue to work in the public interest, responding to the global financial reporting needs of governments and other public sector entities as appropriate.

***(Source:** http://www.ifac.org/)*

IAESB Releases 2013 Annual Report: Enhancing Professional Accounting Education

The International Accounting Education Standards Board (IAESB) has released its 2013 Annual Report, *Enhancing Professional Accounting Education.* The annual report highlights the IAESB's work in the public interest to enhance the quality and consistency of professional accounting education practices throughout the world and to strengthen the public's confidence in the competence and judgment of professional accountants. Enhancing Professional Accounting Education covers the release of three revised International Education Standards (IESs) during the year, as well as the board's progress on its adoption and implementation projects and activities to support the revised IESs. The report also summarizes the IAESB's outreach efforts designed to bring greater awareness to its projects and activities. The document also includes a report from Prof. Aileen Pierce, Chair of the IAESB Consultative Advisory Group (CAG), which outlines the CAG's work in providing input to the IAESB. The 2013 IAESB annual report can be downloaded at www.iaesb.org

***(Source:** http://www.ifac.org/)*

Women in Profession: Expectations and Challenges

We must accept and even celebrate our successful women. They take our homes ahead and our country forward. We may have less hot phulkas, but we will have a better nation—these words are quite grave and important for our times and we will have to appreciate the concerns. Popular fiction writer Chetan Bhagat makes an appeal to the people of India. It is indeed time to understand that women now have to be given space so that they have some more space at workplace and they could release some at home. It is not in vain that someone had advised the world to educate women if we want a real change in a generation. The author, being a woman herself, lets out her understanding by presenting facts, arguing against the existing workplace and societal realities and dares to ask questions. She lets us understand that women need an understanding today from men of their society. Read on to know about some crucial aspects of women-at-work...

They say, *educate a man and you educate a person... educate a woman and you educate a generation.* According to a survey by an international executive research firm, EMA Partners International, around 11 % of Indian companies have women CEOs, while in the case of Fortune 500 list from the US, the women CEOs just account for 3 % of the total consideration set.

CA. Chinki Jalan

(The author is a member of the Institute who may be contacted at chinkijalan@yahoo.in.)

But are these just statistics? Though the number in India is almost 4 times of that in the US, are the women in India still considered incapable of handling their roles of a bread-earner as well as that of a homemaker satisfactorily? Do Indian families still find it difficult to send their daughters and daughters-in-law to work despite their high potential at the workplace and immensely great management skills to handle both work and home? Do co-workers at the workplace find it difficult to accept female workforce? Do women find it difficult to match up with their male counterparts or manage work and family? The list of questions is almost endless...

A study has found that working women in India are the most ambitious. Their ambition is twice of that of the US women, for that matter. They fare remarkably well in the difficult act of balancing their household and walking up the career ladder. But what good can such ambition do if one cannot convert that to reality.

Working women in India face lot more challenges than their counterparts in other parts of the world. In India, men do not contribute to most of the household chores; it is women who have to cook, clean the house, do the dishes, wash the clothes, get the children ready for school, *etc.* Men take care of some chores that have to do with outside-the-home affairs. So, a major burden of running a family is on the shoulders of women. It was alright for women to handle all the chores as long as they were just homemakers. Now, with the increasing need to get some income for their family, women work all the more harder. They take up a job and handle their household chores as before, *i.e.* as they handled as a homemaker, while men's role has not changed much.

Therefore, the following statement of Forbes magazine founder B. C. Forbes, applies to women who wish to achieve something in life: *Think not of yourself as the architect of your career but as the sculptor. Expect to have to do a lot of hard hammering and chiselling and scraping and polishing.*

NEED FOR CAREER: A WOMAN'S PERSPECTIVE

Women in today's world are eloquent, ambitious and forceful, and they are exhilarated about being part of the transfusion of the country. They understand the opportunities and they are quite keen to exploit them. Women nowadays make good use of all the opportunities of getting educated. Families too appreciate this situation and take pride in the fact that women are excelling in education. But the problem arises when women decide to work. Even in many developed and educated families, women are not encouraged to work. But such families that do not appreciate women who work, must try to understand the women's perspective and their degree of frustration, when they are not able to work despite having the potential to do that. Ultimately this adds to their stress, which affects both their mental and physical conditions.

Working women scramble to run two lives— one at home and another at work. They want to be good wives and mothers, but they also want to be intellectually stimulated by a challenging career or at least bring in a second income to help their households get by. Things are tough for women in India, but, as Sylvia Ann Hewlett, the founding president of the Center for Talent Innovation, says: *they certainly aspire.* If proofs are required, consider, for example, three major banks in India— Axis, ICICI and HSBC India—are headed by women; no one could imagine women here once upon a time.

Women nowadays make good use of all opportunities of getting educated. Families too appreciate this situation and take pride in the fact that women are excelling in education. But the problem arises when women decide to work.

The status of Indian women has undergone a considerable change. Indian women are far more independent and a majority of them are unaware of their legal rights, such as right to work, equal treatment, property and maintenance. There are other factors that affect their quality of life such as age of marriage, extent of literacy, role in the family and so on. In many families, women do not have a voice in anything, while some may have a dominating role. The result is: *empowerment of women in India is highly unbalanced and with huge gaps.* Economically, the independent and literate live a kind of life that other women tend to envy about. This disparity is a cause for worry because there is no balanced development.

STAGES IN A WOMAN'S CAREER LIFE CYCLE:

Stage 1: Preparing for a career: This is a phase where girls as students, are very enthusiastic about their studies and career prospects that await them consequent to the successful completion of studies and professional education they strive for. Generally, parents and the families, barring some, are more than supportive towards the girls in the completion of their studies and excelling in their examinations.

Stage 2: Work and family life: As soon as the girls qualify with their degrees so that they earn after a lot of hard work, patience and determination, they are in their mid or late 20s and about to enter the job market and, at this stage, they at times face resistance from their families, parents and in-laws, and sometimes even by their society. They at times face a discriminatory behaviour at workplace too.

Stage 3: Decision- the bolder step: At this stage, they enter a phase when they have to decide if they should pursue what they wish to pursue and to what extent they should pursue, while they juggle between various factors including dreams, career, family, health, society, *etc.* At times, they fall prey to the unjustified demands and expectations of their society and family. However, a few, keeping in mind their potential and skill, decide to take up the task of handling the two with utmost sincerity and hard work.

WORKPLACE CHALLENGES:

1. Mental Pressure: At the workplace, women often find people with a preconceived notion that women can never be at par with their male counterparts and that they will not be able to undertake some of the work which men can accomplish easily. Such ready perception at a workplace creates a negative mental attitude in the minds of women employees and, as a result, they find it difficult to continue their work in this environment, where already there is a question mark on their potential. This decreases their professional drive to some extent.

2. Sexual Harassment: Mostly, women employees tend to be concentrated in middle and lower level services where generally men are their immediate superiors, and such a situation gives men an opportunity to exploit their female subordinates. It is a very difficult situation for women when they get a hint of getting sexually harassed and exploited. Once they refuse such advancements, their professional life may suffer. There have been several cases of sexual harassment at a workplace recently, even involving women from senior management. If women are praised for their work or promoted on merit, their colleagues do not hesitate to attribute such success to their gender and, in some cases, sexual advantages too. Women at the workplace have to undergo similar and many more psychological pressures and, at times, these lead to difficult professional situations.

If women are praised for their work or promoted on merit, their colleagues do not hesitate to attribute such success to their gender and, in some cases, sexual advantages too. Women at workplace have to undergo similar and many more psychological pressures and, at times, these lead to difficult professional situations.

3. Discrimination: Women are often deprived of promotions and growth opportunities at workplace in India. A majority of them continue to be denied their right to equal compensations, under the Equal Remuneration Act, 1976 and are often underpaid in comparison to their male counterparts even when they are equally competent. Such situations often occurs in the labour-oriented industry.

CHALLENGES IN FAMILY:

1. Conservative attitude of society: Very often, society tries to impose its outdated and self-proclaimed diktats on ambitious women who strive to achieve great heights.

2. Age-old assigned rules: The typical age-old myth that men are the bread-earners and women are the home-makers, is still being observed in many families and this lowers the morale of their women members and brings down their ambitions, especially in cases where women are mentally not strong and not aware of their fundamental rights.

3. Unsupportive attitude of family members: Often families do not support their women in moving out and achieving what they deserve and this puts a major hindrance in the way of their growth and professional development.

4. Status symbol: Allowing women to work outside a family is often associated by traditional families with the fact that male members are not able to earn enough or the desired amount. This attitude stops families to allow women to work, where male members earn a lot.

5. Self-induced guilt: Indian women face another issue of self-induced guilt as they are not able to give enough time to their families due to their professional commitments. This again has to do with the traditional myth about gender and its associated roles, *i.e.* that women are homemakers. Such situations demand some understanding and cooperation from their relevant families and society.

ORGANISATIONAL CONSEQUENCES DUE TO PROBLEMS FACED BY WOMEN:

Due to various problems faced by women at workplace, organisations also face bad consequences:

- Increased absenteeism and dropout rate
- Reduced efficiency

Relationships are very important part of our lives. But relationships do not end with our family members. Yes, we need to be a good daughter, sister, wife and a mother, but at the same time we need to fulfil our duty towards our own self. Yes, we have to love our self.

- Additional recruitment and training cost due to employee attrition
- Loss of professional image in the market
- Lawsuits and high legal costs involving court fees, settlements, *etc.*

CONSEQUENCES OF PROBLEMS FACED, TO WOMEN THEMSELVES:

1. **Mental stress:** Ambitious women with enormous potential and skills are often seen to suffer from mental stress when their spouse, family or workplace colleagues are not supportive professionally. The unsafe work environment adds to their plight even more.

2. **Loss of health:** Working women face health issues to a much greater extent than others because of the hectic schedule accompanied by unsupportive attitude of people in their circle. Due to the pressure of handling a lot of duties together, women often tend to lose the most important asset, *i.e.* their health.

3. **Frustration:** Women in profession ultimately face a lot of frustration due to denial, especially when they know that what they desire is something which belongs to them by right. There is nothing wrong in demanding or wanting to achieve these.

RESPONDING TO CHALLENGES:

1. **Let it be:** Do not think too much about what others would say. Be yourself and do your best in both the sectors. It is better to be an average in both than zero in one and best in others. So plan things that way. To pick and savour the happy moments from your life or give in to the stress—choice is entirely yours.

2. **Ask for help:** Do not try to be a superwoman...you are not one. Don't try and do all things by yourself. Ask for help from your spouse and family in daily work. It is not necessary to score an A+ in everything. Just an A or a B+ is not bad either, when you have so many things to manage.

3. **Respect yourself:** For others to respect us, we have to first respect ourselves and also the other women folk around us. No matter what others have to say, we need to believe in ourselves and strive for our betterment.

4. **Don't lose yourself:** Relationships are a very important part of our lives. But relationships do not end with our family members. Yes, we need to be a good daughter, sister, wife and a mother, but at the same time we need to fulfil our duty towards our own self. Yes, we have to love our self.

5. **Learn to say 'NO':** Whether it's a co-worker asking you to spearhead an extra project or your child's teacher asking you to organise a class party, remember that it's OK to respectfully say a no. When you quit accepting tasks out of guilt or some false sense of obligation, you'll have more time for the activities that are meaningful to you.

6. **Nurture yourself:** Eat a healthy diet, include physical activity in your daily routine and get enough sleep. Set aside time each day for an activity that you enjoy, such as practicing yoga or reading. Better yet, discover activities you can do with your partner, family or friends— such as hiking, dancing or taking up some extracurricular activities.

7. **A word for the family:** In families, people living together understand each other and be each other's strength. So, next time when you sit with your eight-year old daughter, do give her examples of great women like Chanda Kochar and Indra Nooyi, besides talking about very social grannies and aunts being such good cooks. You never know, she may be one of them tomorrow.

Let's have a reading of what Chetan Bhagat has to say about Indian working women:

> *"My mother worked for 40 years. My wife is the COO at an international bank. It makes me proud. She doesn't make phulkas for me. We outsource that work to our help, and it doesn't really bother me. If my wife had spent her life in the kitchen, it would have bothered me more.*
>
> ***One**, a man who marries a career woman gets a partner to discuss his own career with. A working woman may be able to relate better to organisational issues than a housewife. A*

> **...a working woman is better exposed to the world. She brings back knowledge and information that can be useful to the family. Whether it's the latest deals or the best mutual fund to invest in, or even new holiday destinations, a working woman can add to the quality of life.**

spouse who understands office politics and can give you good advice can be an asset. ***Two****, a working woman diversifies the family income streams. In the era of expensive apartments and frequent lay-offs, a working spouse can help you afford a decent house and feel more secure about finances.* ***Three,*** *a working woman is better exposed to the world. She brings back knowledge and information that can be useful to the family. Whether it's the latest deals or the best mutual fund to invest in, or even new holiday destinations, a working woman can add to the quality of life.* ***Four****, the children of a working woman learn to be more independent and will do better than mollycoddled children.* ***Five****, working women often find some fulfilment in their jobs, apart from homes. Hence, they may have better life satisfaction, and feel less dependent on the man. This in turn can lead to more harmony.*

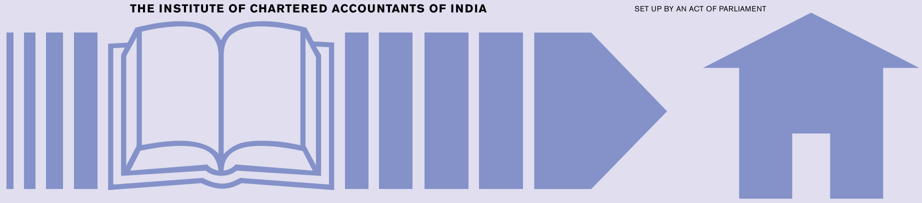
We must accept and even celebrate our successful women. They take our homes ahead and our country forward. We may have less hot phulkas, but we will have a better nation."

To conclude, I would say a few words depicting the insight of women today: Trust me...we can... we can manage a sick child, our lined-up meetings and our sleepless nights at the same time...but of course, we need people at the workplace who should believe that we can, and need people at home who could share the daily chores and understand that there has to some sharing and some fair equality when it comes to work and responsibility...we do not want anybody to judge us by the fact that we are women...like others, we are proud of who we are... ■

THE CHARTERED ACCOUNTANT JOURNAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

SET UP BY AN ACT OF PARLIAMENT



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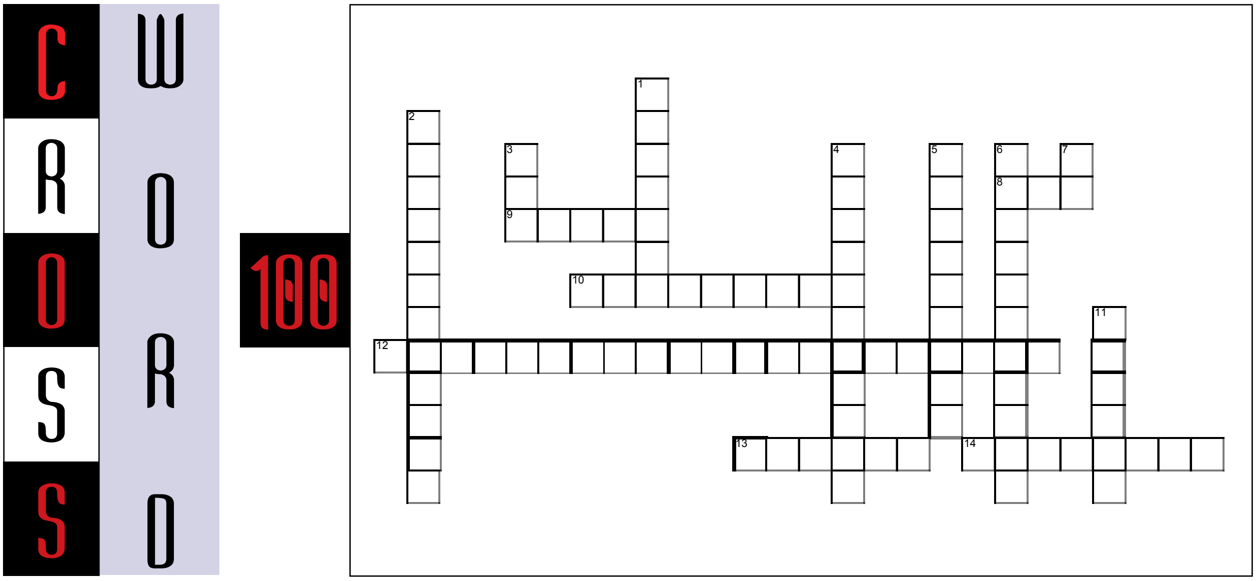


ACROSS

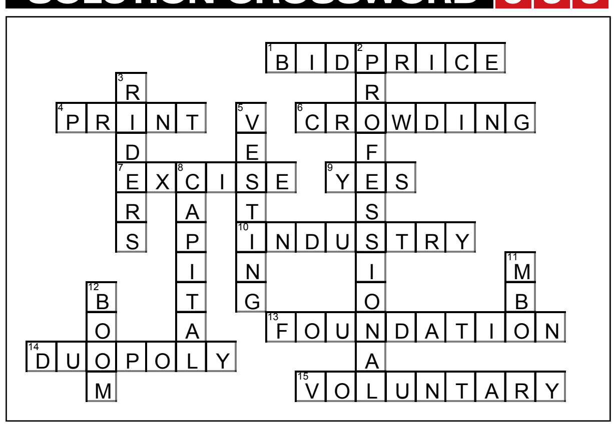
8. Bank that organised the "The Banking and Economics Conclave 2014" during June 2014.
9. BCSBI, associated with country's banking industry, stands for Banking ______Standards Board of India.
10. During July 2014 the FDI limit in ____________sector in India was raised from 26% to-49%.
12. India's first all-women bank.
13. National Insurance Company Ltd. during June 2014 introduced "insurance on ______" concept in the city of Kolkata for faster renewal of policies.
14. The Committee whose recommendations paved the way for establishment of IRDA as the regulator for Indian insurance sector.

DOWN

1. IT company that developed Finacle e-Banking solution to provide wide range of banking services to banks including CBS.
2. The newest policy launched by LIC (during September 2014).
3. _____ started charging around 3% service tax on its policies from 1st Oct 2013, as a result of which its policies became costlier.
4. ATMs with no Bank logos.
5. City where the head office of Insurance Regulatory and Development Authority (IRDA), the regulatory body for Indian insurance industry is situated.
6. First woman Managing Director of a PSU insurance company, associated with LIC.
7. The Reserve Bank of India (RBI) announced its first ___-monthly monetary policy statement on 1st April 2014, as an alternative to the traditional monetary policy statement.
11. PSU entity that became the 17th company to be accorded the coveted Navratna status by the Union Government during July 2014.

NOTE: Members can claim one hour – CPE Credit – Unstructured Learning for attempting this crossword by filling the details in the self-declaration form to be submitted to your regional office annually to avail CPE hours credit for Unstructured Learning activities under the activity 'Providing Solutions to Questionnaires/puzzles available on Web/Professional Journals'. There is no need to individually send this crossword in hard copy or email.

SOLUTION CROSSWORD 099



A teacher is talking to a student.
Teacher: Did your father help you with your homework?
Student: No, he did it all by himself.

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[1] No(s) in italics after each entry denotes Page No(s)

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[2] Entries in italics after each entry denotes page No(s).

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