VOLUME 63 | NO. 5 | PAGES-148 | NOVEMBER 2014 | ₹100

THE CHARTERED ACCOUNTANT JOURNAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

SET UP BY AN ACT OF PARLIAMENT

DRIVING A NEW ERA OF LEARNING

Technology and Chartered Accountants Today

Technology is one of the globally-tested chief drivers of growth, which plays an important role in running the borderless knowledge economy today. It adds an immense potential to the human productivity. British writer J. G. Ballard informs us: *Science and Technology multiply around us. To an increasing extent they dictate the languages in which we speak and think. Either we use those languages, or we remain mute.* Information Technology essentially empowers us to do what we want to do, while being creative and productive. According to the former Microsoft CEO Steve Ballmer, *it lets people learn things they didn't think they could learn before...* In a way, the story of IT is all about human potential. Knowledge professionals like Chartered Accountants are no exception to this phenomenon.

Chartered Accountants, an integral constituent of Indian economy, have to come to the fore. And if they do not take note of this development and honour the technological advancements, both profession as well as our national economy will suffer. With inherent potential to excel, Chartered Accountants, once suitably IT-invested, can appropriate all unchartered orbits of their profession and conquer all professional challenges.

ICAI has already set out to tap the vast possibilities that technology could offer to its membership community. Objective is to provide them with contemporary and cutting-edge ways to deal with their professional responsibilities. Even our *Action Plan 2014-15* aims at the quest for uncharted professional paradigms with due emphasis on exploiting the technology today. ICAI has the *Mission* to establish the Indian Chartered Accountancy as trustee of internationally-proven competency, governance and competitiveness. It has started promoting the use of technology among its stakeholders, since it understands that IT is the backbone of all modern businesses.

Complexities with regard to the management, governance and compliance of businesses have increased manifold. In this vibrant context, surge of technology adds to the efficiency of our Chartered Accountants and increases their demand and opens new possibilities in the emerging areas of Knowledge Economy. Technology-based domains, *e.g.* XBRL, ERP Control Design and Implementation, Data Analytics & Big Data, Cyber Forensics & Forensic Accounting, Information System Audit, e-commerce, m-commerce, e-governance, *etc.*, have amazing offers in their kitty for the Chartered Accountants. Opportunities are on the rise in the domain of technology-consulting too, which include Web-Trust and IT-Security Audit, Cloud Computing and Cyber Security.

The ICAI has been constantly updating the knowledge base of its members through its *Committee on Information Technology* and *Technology Development Committee,* and *IT Directorate.* Various activities, *e.g.* Post-Qualification Courses, Conferences, Workshops and Training Programmes, have been a huge success with its stakeholders.

ICAI has been taking initiatives to leverage technology not only to serve its member and student communities better, but also to prepare the Indian chartered accountancy towards the fulfilment of its *Vision 2021*, in which year India plans to graduate from developing to a developed economy. ICAI has initiated a series of path-breaking technology initiatives like *Knowledge Gateway, ICAI Now* (a mobile app), e-Learning, Publications Online Store, Digital Library, Cloud Campus, Flexi-Working Portal for Women Members and so on. And then, other innovative initiatives, like ICAI Global Technology Centre and Self-Service Portal, are on the cards too.

ICAI is contemplating a positivistic change in its curriculum too in order to bring its education and training to an international standard. This reformation would in turn prepare its members to face all challenges and expectations in future. It also realises that technology will be of immense help in this mission, by helping its members in day-to-day professional work.

ICAI goes by the recommendations of the Polish-born mathematician and humanist Jacob Bronowski, who believes that human beings must have in them an *irresistible need to explore*, which will help them tread their ways with efficiency and minimalism. ■

-Editorial Board ICAI – *Partner in Nation Building*

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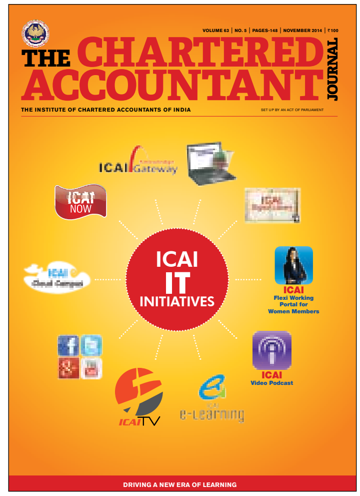

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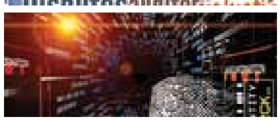

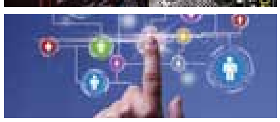

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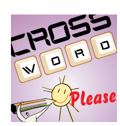

From the President

CA. K. Raghu, President, ICAI

> The recently launched Clean India Mission by our Government not only aims at correcting the country's reputation for poor public hygiene and rudimentary sanitation but also promises a positive economic impact. A World Bank report has estimated that India is losing 6.4% of its GDP annually because of poor access to sanitation which leads to diseases and deaths. Our 235,000 Chartered Accountant fraternity and 850,000-strong CA student community can make a big difference to this worrisome scenario. As such, I recently launched ICAI's 'Clean India Campaign' in Bangalore as a nation-wide initiative involving all our members, students and stakeholders across all our branches to support the five-year National Mission..

Dear Professional Colleagues,

"*Time is not measured by the passing of years but by what one does, what one feels, and what one achieves,*" rightly said our first Prime Minister Jawaharlal Nehru while adding that: *Failure comes only when we forget our ideals and objectives and principles.* As we celebrate his birth anniversary on 14th November, these words of wisdom are worth taking note of by our profession which has a successful track record of 64 years but still has miles to go before it reaches its ultimate destination to the peak of global professional excellence. As a partner in nation building, let's re-invoke and re-emphasise these thoughts in our professional conduct too, which will be the best tribute to this visionary leader.

NACAS to Facilitate IFRS Convergence in India

It is welcome that the National Advisory Committee on Accounting Standards (NACAS) has been recently reconstituted since Indian Accounting Standards converged with International Financial Reporting Standards are to be adopted in India from next year on a voluntary basis and mandatorily a year later. The reconstituted NACAS would advise the Central Government on the formulation of Accounting Standards for adoption by companies in India. I heartily congratulate our past president CA. Amarjit Chopra for being appointed as the Chairman of the NACAS. I too have been nominated as ICAI representative in NACAS and in that capacity I commit myself to help the NACAS achieve its goals.

India's G20 Obligations – ICAI's Role

It is a matter of pride for our profession that a member of our fraternity and former Union Minister CA. Suresh Prabhu has been appointed as our Prime Minister's Sherpa for the G20 summit, the most significant meeting of world leaders, to be held in Brisbane from 15th November, 2014. As a personal emissary of Prime Minister, he will be responsible for preparing the agenda for the Summit.

ICAI has always been supporting the Government in fulfilling its G20 obligations and we will continue to contribute on issues like IFRS convergence, anti-tax evasion, money laundering, governance, risk assessment and litigation besides the strategic function of accounting and auditing.

Leveraging Technology to Reach Out to Members: A Success Story

During the year, I have constantly devoted my energy to leverage technology to reach out to members and students of our profession. I am happy to inform you that over the last eight months, we have launched 12 path-breaking hi-tech initiatives that have been very well received. Our technology initiatives have scripted a success story of their own in a very short span of time. Let me give a quick update on these initiatives:

(1) ***ICAI Mobile App:*** Our Mobile App "ICAI NOW," which provides key updates on ICAI activities on Android, iOS and Windows platforms, is being currently accessed by 160,000 users who have given it a 4-star rating on an average. Our young members have found this App very convenient and useful to get connected with the Institute.

(2) ***ICAI Knowledge Gateway:*** Our knowledge portal *ICAI Knowledge Gateway,* which helps ICAI members, students and other stake-holders to access the knowledge resources of ICAI, has been a big success and has been visited by a mammoth 7,25,508 users so far.

(3) ***Flexi Working Portal for Women:*** Our flexi-working portal to empower the women members to identify jobs with flexi hours has been visited by 20,154 users so far. Presently, it has 1,962 registered jobseekers and 84 registered employers and the numbers are increasing by the day.

(4) ***Embracing Social Media:*** Our social media platform on Facebook, Twitter YouTube and Google+ Hangouts has also been well appreciated. So far, there are more than 32,000 likes on our Facebook page, 1,320 likes on twitter page, 1,422 users on You Tube channel and 3,759 users on ICAI Google+. I request all of you to enthusiastically participate in our social media platform.

(5) ***Cloud Campus:*** Our new next-generation interactive learning management system for students, which enables anywhere and anytime learning, has logged 9,40,589 users so far.

(6) ***ICAI Publications Online Store:*** Our online store, which enables members to purchase ICAI publications and stationary items online, has been utilised by 4,324 members so far.

(7) ***ICAI Digital library:*** Our Digital Library provides access to online resources of ICAI and its various digital publications right at your fingertips.

(8) ***ICAI TV:*** Our ICAI TV provides a platform to view all our webcasts and event videos at one place. This web channel is getting popular by the day with a mammoth 21,90,437 viewers in the last one year.

(9) ***e-Books:*** Our recently introduced e-Books aim to update members on various important professional subjects. So far three e-Books on *Guidance Note on Audit of Banks, Companies Act and Peer Review* Manual have been launched.

(10) ***Video Podcasts:*** Our new initiative to provide a platform to members on the move to access a series of videos on the new Companies Act 2013 has also been widely appreciated.

(11) ***Global Career e-Kits:*** Our Global Career e-Kits, comprising information on career opportunities in various countries to enable young members to take up global careers, have been launched in Muscat, UAE, Kuwait and Australia so far.

(12) ***Independent Directors Repository:*** The repository for Independent Directors, recently developed by us jointly with the Institute of Company Secretaries of India and the Institute of Cost Accountants of India, has also been a success and more than 1,200 professionals have so far uploaded their profile on it, out of which 700 are Chartered Accountants.

Our IT Directorate has set up a team to monitor these IT applications and provide more value-added services on a continuous basis. I am extremely happy with your tremendous response to our IT initiatives, which have been close to my heart. Let's optimise the use of these hi-tech facilities to achieve professional excellence.

ICAI A Partner in Clean India Mission

The recently launched *Clean India Mission* by our Government not only aims at correcting the country's reputation for poor public hygiene and rudimentary sanitation but also promises a

From the President

positive economic impact. A World Bank report has estimated that India is losing 6.4% of its GDP annually because of poor access to sanitation which leads to diseases and deaths. It is sad to note a UNICEF estimate that some 594 million people in India - nearly 50% of its population - defecate in the open. More than 186,000 children under-five die every year from diarrhoeal diseases caused by unsafe water and poor sanitation.

Our 235,000 Chartered Accountant fraternity and 850,000-strong CA student community can make a big difference to this worrisome scenario. As such, I recently launched ICAI's 'Clean India Campaign' in Bangalore as a nation-wide initiative involving all our members, students and stakeholders across all our branches to support the five-year National *Mission*. Given our track-record as a partner in nation building, we all should contribute our individual as well as collective might to make this initiative a success. Let's make this Mission our Social Responsibility and commit ourselves to the Clean India pledge delivered by our Prime Minister to devote at least one hundred hours every year and two hours every week towards cleanliness of our offices and surroundings. I am happy to note that the Institute's employees across India have also joined us in this campaign. Together, we can make a big difference.

SAFA-IFAC Regional SMP Forum

Uplift and development of Small and Medium Practitioners (SMPs), which constitute the majority of our fraternity, has been one of my high priority areas. I am committed to providing and facilitating a level playing field for them and enhance their capacities with global perspective. With this focus in mind, we recently organised a high-profile SAFA-IFAC Regional SMP Forum to make SMPs know about significant developments impacting them worldwide. The forum dwelt upon issues like global and regional trends impacting SMPs, Enhanced Practice Management and New Services for SMPs, Quality Control and Efficient Auditing, *etc*, and provided an opportunity to the participants to explore networking options with SMPs in Europe, ASEAN and SAARC region. SAFA represents over 300,000 accountants in Bangladesh, India, Maldives, Nepal, Pakistan and Sri Lanka. I am sure this event will go a long way in broadening the outlook and global perspective of our SMPs.

Stage Set for Mega International Conference in Bangalore

I am happy to inform you that in line with our annual tradition of bringing together leading global personalities of accounting profession on the ICAI stage to discuss the issues of professional interest in global perspective, we will be organising a 3-day mega International Conference at Bangalore in January, 2015, titled 'Accountancy Profession: Building Global Competitiveness; Accelerating Growth.' This high-profile event, spread over 11 technical sessions and panel discussions, will witness a mammoth gathering of more than 2,500 delegates from across the world. Details of the conference have been published elsewhere in this journal. Since it will be an event which will tremendously enhance our global professional outlook, I request all of you to take time out from your schedule to actively participate in this Conference, which will offer 14 hours CPE credit.

Examination System- User friendly Measures

A robust and effective examination system is the mainstay of the quality of our profession. Our examination system is regarded as one of the toughest and best in the world. The reason is that we have been constantly improvising the same in tune with the times. Taking this drive forward, we have started leveraging technology to improve it further and have recently launched many hi-tech initiatives.

As a green initiative, students are now provided certified copies of their answer books in soft copies. Through a secure login identity and password intimated to them, they can visit the particular site and view their answer books at their convenience. Even after submission of their examination forms, students can now correct their particulars online. Further, nearly 98% of all examination forms are now submitted online. We have also launched three web portals— the first for facilitating all activities relating to observers appointed in examination centres, the second for capturing absentee data online, and the third for checking the "Exemption" status from May 2014 examinations.

With a view to encourage feedback on the question papers from the candidates, a feedback form has also been designed and hosted on our website and a dedicated email ID has also been made operational for the purpose. I am sure these initiatives will go a long way in improving our examination system and make it more convenient for our students.

Good Response to our Campus Interviews

With increasing business complexities and slowly recovering global economy, the industry is putting added emphasis on its finance, risk management and compliance functions. Given the education and training of Chartered Accountants, they are best suited for these as well as other business functions. As such, their demand has been steadily growing in the industry. We at the ICAI are making all efforts to facilitate and further this phenomenon and ensure respectable positions and pay-packages for our newly qualified Chartered Accountants.

Our 40th Campus Placement Programme is being conducted at 20 centres across the country and I am happy to note that it is getting a very good response. Campus interviews have been successfully conducted at 14 smaller centres where 188 offers have so far been made with the highest CTC of ₹17 lakh per annum offered by ITC Ltd. The interviews at bigger centres are underway at Hyderabad, Bangalore, Chennai, Kolkata, Mumbai and New Delhi. A total 4800 newly qualified CAs and 87 highly reputed companies have registered for this Campus Placement Programme. I call upon the young members to take full benefit of this initiative to brighten their career prospects.

Developing Expertise in Intl Taxation: IFA and BNA Bloomberg

With the ever increasing globalisation of world economies, international taxation is getting all the more important and complicated. Expertise in this domain assumes particular importance for our members because India, as a growing hub of international companies, is also fast getting deeply integrated with the world economy. Being fully alive to this urgent need, we have been making continuous efforts to build capacities of our members in international taxation. Taking this drive forward, we recently associated ourselves with the International Fiscal Association (IFA), a Netherland-based highly trusted international organisation representing 110 countries which works for the advancement of international and comparative fiscal law and the financial and economic aspects of taxation. We recently organised an interactive meeting between our members and delegates of IFA, who had gathered for the '68th IFA Congress 2014' in Mumbai.

To further help our members practicing international taxation, we are working for an arrangement with a highly reputed and accessed BNA Bloomberg software, for providing online access to the data base of Global Tax Guides to all members of ICAI free of cost. The Global Tax Guides provide in-depth analysis of tax profiles of over 100 key jurisdictions, and regular updates to tax rate information. I am sure these initiatives will go a long way in building up professional capacities of our members in the domain of International Taxation.

Raising Indian Concerns at World Standard Setters Meeting

As part of our concerted efforts to position ourselves and put across Indian viewpoint on global standard setting platforms, I recently participated in the meeting of World Standard-Setters at London, which had more than 150 delegates participating from various accounting standards setting organisations. We utilised this occasion to raise Indian concerns on various technical issues such as IFRS 15, Revenue from Contracts with Customers, Rate Regulated Activities, *etc.* I also had the opportunity of meeting and interacting with the members of our Chapter in London.

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Before I conclude, let's re-commit ourselves to the power of change in tune with the times for a sustainable future. Recall Pandit Jawaharlal Nehru when he said that it is 'ignorance which is always afraid of change'. It's no longer enough to just respond to changes; we must lead the change or be left behind. Let's strive to build change proficient organisations. Let us be the change agents of the economy.

Best Wishes,

K. Raghu

CA. K. Raghu
President, ICAI
New Delhi, October 21, 2014

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

14 CPE hours

International Conference

Accountancy Profession: Building Global Competitiveness; Accelerating Growth

January, 2015 at Bangalore

Accountancy profession has evolved itself as an enabler in promoting economic development and businesses by putting in place best management models and practices, reporting frameworks, Governance norms and risk management models to attract investment, enhanced economic stability, management of scarce resources, facilitating public revenues and strengthening enterprises The Accountancy profession has constantly innovated and developed competencies to meet the challenges of a high growth economy and competition due to globalisation. The ICAI being amongst the largest accounting bodies in the world has always endeavoured to position brand Indian Chartered Accountancy globally.

The Institute of Chartered Accountants of India (ICAI) has been at forefront in providing quality education and Continuous Professional Education to its members. As part of the continuous professional development of the members, ICAI is organizing 3 days International Conference on "Accountancy Profession: Accountancy Profession: Building Global Competitiveness; Accelerating Growth" in January, 2015 at Bangalore.

Technical Sessions

Accountancy Profession – Meeting Governance Mandate;

Essence of Reporting – Governance and Sustainability

- Moving Towards Integrated Reporting
- IFRS Implementation: Key Learnings

Managing Change: Regulation and Developmental Context

Management & Leadership: Frontiers of Growth

- Paradox of Growth and Governance : Regulatory Perspective
- Empowering Young Leadership – Necessity for India's Growth

Global Problem; Global Solutions: Towards Better Global Governance

- E-Commerce: Legal & Taxation Implications for Borderless World
- Intellectual Property Rights – Valuing the Intangible

Confluence – Profession & Society

- Essence of Leadership and Contours of Holistic Living
- Managing the Governance Mandate – Role of Society, Media and Govt.

Financial Services Sector – Agenda for Sustainable Growth

- Banking Sector - Meeting Governance Mandate; Accelerating Growth
- Developing the Board: Improving the Governance

Profession in the Next Decade: Embracing Change

- International Taxation – Building Industry Competitiveness in the Borderless Economy
- XBRL : Augmenting the Financial Reporting Chain towards Value Creation
- Cloud Computing: Disruptive Innovation through Entrepreneurial Vision
- Data Analytics and Strategy – Opportunity for Profession

Panel Discussion:

Women Leadership – Future of India

Empowering SMEs for Development of Region – Role of Accountants : Country Perspective

Managing Change: Regulation and Developmental Context

Concurrent Session

Women Members Meet

Young Members Empowerment Meet

Particulars	Delegate Fees
Members FCA	₹ 3000
Members ACA	₹ 2500
Non Members	₹ 4000
Foreign Delegates	₹150
SAFA Country members	₹ 3000

For online registration please visit website http://www.icai.org/post.html?post_id=11039

Complete details regarding the Conference will be available on the website www.icai.org shortly.

For further details, please contact:

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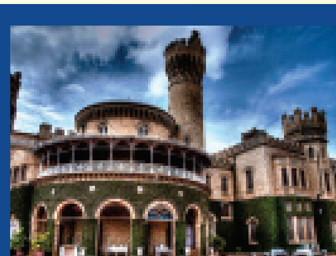


Photographs

36th SAFA Board Meeting in New Delhi

ICAI President CA. K. Raghu along with SAFA President (and ICAI past-President) CA. Subodh Kumar Agrawal, SAFA Vice-President Mr. Arjuna Herath, IFAC SMP Committee Chairman Mr. Giancarlo Attolini, among other members of the Board, during the meeting (11th October, 2014)

SAFA-IFAC Regional SMP Forum in New Delhi

ICAI President CA. K. Raghu presents bouquet and welcomes Rajya Sabha MP CA. K. Rahman Khan, in the presence of SAFA President (and ICAI past-President) CA. Subodh Kumar Agrawal during the occasion (October 10, 2014)

ICAI President Welcomes SAFA Vice-President (and ICA of Sri Lanka President)

ICAI President welcomes the President of Institute of Chartered Accountants of Sri Lanka and SAFA Vice-President Mr. Arjuna Herath, during the SAFA Board meeting and other events held in New Delhi (11th October, 2014)

ICAI President CA. K. Raghu shares the dais with Rajya Sabha MP CA. K. Rahman Khan, SAFA President (and ICAI past-President) CA. Subodh Kumar Agrawal and IFAC SMP Committee Chairman Mr. Giancarlo Attolini, while Central Council members CA. Naveen N. D. Gupta and CA. Mukesh Singh Kushwah, among other delegates and dignitaries of the Forum, are also present on the occasion (10th October, 2014)

Photographs

SAFA Women Empowerment Programme

ICAI President CA. K. Raghu lighting the lamp to inaugurate the programme, while SAFA President (and ICAI past-President) CA. Subodh Kumar Agrawal, ICAI Vice-President CA. Manoj Fadnis, along with Central Council members CA. Charanjot Singh Nanda, CA. Babu Abraham Kallivayalil and CA. Mukesh Singh Kushwah, among others including ICAI women members, on the occasion (10th October, 2014)

ICAI President Welcomes ICA of Bangladesh President

ICAI President welcomes the President of Institute of Chartered Accountants of Bangladesh Mr. Showkat Hossain, during the SAFA Board meeting and other events held in New Delhi (11th October, 2014)

IASB-World Standard-Setters Meet in London

ICAI President CA. K. Raghu and Vice-President CA. Manoj Fadnis along with the members of ICAI during the meet (29th September, 2014)

Visit to Brisbane Chapter of ICAI

ICAI President CA. K. Raghu and Vice-President CA. Manoj Fadnis along with the members of the Chapter during the visit; Chapter Chairman CA. Vineet Aggarwal is also present (21st September, 2014)

Visit to Indonesian Chapter of ICAI

Central Council member CA. Rajkumar S. Adukia gets together with the members of the Chapter on his visit to Jakarta (20th September, 2014)

Photographs

ICAI Past-President is New NACAS Chairman

ICAI President CA. K. Raghu congratulates and welcomes the new NACAS Chairman (and ICAI past-President) CA. Amarjit Chopra in New Delhi, while ICAI Vice-President CA. Manoj Fadnis and Central Council member CA. Sanjeev Krishnagopal Maheshwari join in (11th October, 2014)

ICAI-DPE Joint Workshop in New Delhi

ICAI President CA. K. Raghu intently follows the proceedings of the capacity-building workshop of Independent Directors and Government-nominee Directors of Central Public-Sector Enterprises, while Department of Public Enterprises Secretary Ms. Kusumjit Sidhu and Joint Secretary Ms. Deepti Gaur Mukerjee, accompany him on the dais (24th September, 2014)

Orientation for New Members in New Delhi

ICAI President CA. K. Raghu share the dais with Central Council members CA. Mukesh Singh Kushwah, CA. Vijay Kumar Gupta, CA. Tarun Jamnadas Ghia, CA. Charanjot Singh Nanda, CA. Sanjiv Kumar Chaudhary, CA. Sanjay Agarwal, CA. Babu Abraham Kallivayalil, among others, on the occasion (10th October, 2014)

Clean India Campaign Launched in Bangalore

ICAI President CA. K. Raghu launches the Clean India drive in Bangalore and inspires the members and students to keep the city clean; Branch Chairman CA. Babu K. Thevar also joins in (19th October, 2014)

Visit to Udaipur Branch of CIRC

ICAI President CA. K. Raghu addresses the members while ICAI Vice-President CA. Manoj Fadnis and Central Council member CA. Shyam Lal Agarwal and Branch Chairman CA. Sunil Badala, among others, share the moments at the dais (12th October, 2014)

Seminar on DTC at SIRC in Chennai

ICAI President CA. K. Raghu lights the lamp to inaugurate the workshop, while Central Council members CA. G. Sekar, CA. Babu Abraham Kallivayalil and CA. Mukesh Singh Kushwah, and SIRC Chairman CA. P. V. Rajarajeswaran and SIRC Regional Council members CA. Phalguna Kumar and CA. P. R. Aruloli, among others on the occasion (12th September, 2014)

Photographs

Interactive Meeting of Independent Directors in New Delhi

ICAI President CA. K. Raghu presents a bouquet to Financial Services Secretary of Ministry of Finance Dr. Gurdial Singh Sandhu, while Central Council members CA. Shyam Lal Agarwal and CA. Vijay Kumar Gupta celebrate the moments (8th October, 2014)

ICAI President CA. K. Raghu and ICAI past-Presidents CA. M. M. Chitale and CA. N. D. Gupta share the dais with Financial Services Secretary of Ministry of Finance Dr. Gurdial Singh Sandhu, while Central Council members CA. Shyam Lal Agarwal, CA. Naveen N. D. Gupta, CA. Anuj Goel, CA. Dhinal Ashvinbhai Shah, CA. S. Santhanakrishnan, CA. Vijay Kumar Gupta, CA. Sumantra Guha and CA. Nilesh Shivji Vikamsey, among others, are also present (8th October, 2014)

Infrastructure Inauguration Kolhapur Branch of WIRC

ICAI Vice-President CA. Manoj Fadnis inaugurates the Auditorium, Administration & Technical Blocks of the Branch, in the presence of Central Council member CA. Shiwaji Bhikaji Zaware, WIRC Chairman CA. Anil Bhandari and Branch Chairman CA. Satish S. Dakare, among others (4th October, 2014)

IFA Congress in New Delhi

ICAI President CA. K. Raghu presents bouquet and welcomes ITAT Vice President CA. D. Manmohan, while the ICAI Vice-President CA. Manoj Fadnis and Central Council members CA. Nihar Jambusaria, CA. Sanjiv Kumar Chaudhary and CA. Dhinal Ashvinbhai Shah, among others, look on (15th October, 2014)

Visit to Mysore Branch of SIRC

ICAI President CA. K. Raghu and Vice-President CA. Manoj Fadnis along with the members of Mysore Branch of SIRC after the inauguration of the programme on eye pledge and donation; SIRC Council member CA. P. R. Suresh and Branch Chairman CA. Francis P. W. are also present on the occasion (16th October, 2014)

Know Your Ethics

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

A. Yes, an individual Chartered Accountant or a firm of Chartered Accountants can institute or sponsor prizes, provided that the designation "Chartered Accountant", is not appended to the prize and the Clause (6) of part-I of the First Schedule to the Chartered Accountants Act, 1949 regarding advertisement and publicity is complied with.

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

A. Yes, it is permitted as per proviso (ii) to clause (6) of part-I of the First Schedule to the Chartered Accountants Act, 1949.

Q. Whether a Chartered Accountant in practice can give public interviews and also whether he can furnish details about himself or his firm in such interviews?

A. A Chartered Accountant in practice can give public interviews. While doing so, due care should be taken to ensure that such interviews or details about the members or their firms are not given in a manner highlighting their professional attainments, which may hit clauses (6) & (7) of part-I of the First Schedule to the Chartered Accountants Act, 1949.

Q. Can a Chartered Accountant advertise his professional attainments or services, or can he use any designation or expression other than Chartered Accountants on professional documents, visiting cards, letter heads or sign boards, etc.?

A. No, as per Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant shall be deemed to be guilty of professional misconduct, if he advertises his professional attainments or services, or uses any designation or expressions other than chartered accountant on professional documents, visiting cards, letter heads sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Chartered Accountants or of any other institution that has been recognised by the Central Government or may be recognised by the Council.

However, a member in practice may advertise through a write-up setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council.

Q. A Chartered Accountant in practice during a TV interview, handed over a bio-data of his firm to the Chairperson. Such bio-data detailed the standing of the international firm with which the firm was associated. It also detailed the achievements of the concerned partner and his recognition as an expert in the field of taxation in the country. The chairperson read out the said bio-data during the interview. Is it a professional misconduct? (Case Study)

A. Yes, Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 prohibits solicitation of client or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means since it shall constitute professional misconduct. The member would be held guilty of professional misconduct under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 under the given circumstances.

Q. Can a member put up his photograph on the website?

A. Yes, revised Sub-Para (8) of Para (m) under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 provides that display of passport size photograph on the website of member is permitted.

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

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

The Council has taken the view that the provisions of audit fee made in accounts signed by both the auditor and the auditee shall be

* Contributed by the Ethical Standards Board of the ICAI

Advertisement

considered as 'undisputed' audit fees. In this connection, attention of members is invited to the Council General Guidelines, 2008 dated 08.08.2008

Q. Can a Chartered Accountant in practice accept original professional work emanating from the client introduced to him by another member?

A. No, Para (j) under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 prescribes that a member should not accept the original professional work emanating from a client introduced to him by another member. If any professional work of such client comes to him directly, it should be his duty to ask the client that he should come through the other member dealing generally with his original work.

Q. Can a Chartered Accountant in practice/ firm of Chartered Accountants post the particulars of himself/itself on a website?

A. Yes, the Council has approved the detailed guidelines for posting the particulars on Website by Chartered Accountants in practice and firm(s) of Chartered Accountants in practice.

Q. Can a Chartered Accountant in practice also practice as an Advocate?

A. Yes, Council direction under Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949 prescribes that a Chartered Accountant in practice who is otherwise eligible may practice as an Advocate subject to the permission of the Bar Council but in such cases, he should not use designation 'Chartered Accountant' in respect of the matters involving the practice as an Advocate. In respect of other matters he should use the designation 'Chartered Accountant' but he should not use the designation 'Chartered Accountant' and 'Advocate' simultaneously.

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

A. No, in terms of Clause (10) of Part I of First Schedule to the Chartered Accountants Act, 1949, it is not permitted to a Chartered Accountant or a firm of Chartered Accountant to charge fees on a percentage of turnover, except in the circumstances provided under Regulation 192 of the CA Regulations, 1988.

"192. Restriction on fees

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

Provided that:

(a) in the case of a receiver or a liquidator, the fees may be based on a percentage of the realisation or disbursement of the assets;

(b) in the case of an auditor or a co-operative society, the fees may be based on a percentage of the paid up capital or the working capital or the gross or net income or profits; and

(c) in the case of a valuer for the purposes of direct taxes and duties, the fees may be based on a percentage of the value of the property valued."

(d) in the case of certain management consultancy services as may be decided by the resolution of the Council from time to time, the fees may be based on percentage basis which may be contingent upon the findings, or results of such work;

(e) in the case of certain fund raising services, the fees may be based on a percentage of the fund raised;

(f) in the case of debt recovery services, the fees may be based on a percentage of the debt recovered;

(g) in the case of services related to cost optimisation, the fees may be based on a percentage of the benefit derived; and

(h) any other service or audit as may be decided by the Council.

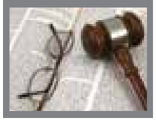
Q. Can a Chartered Accountant in practice give the date of setting up the practice or date of establishment on the letterheads and other professional documents, etc.?

A. No, Council direction under Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949 prescribes that the date of setting up of the firm on the letterheads and the professional documents, etc. should not be mentioned. However, in the Website, the year of establishment can be given on a specific "pull" request. ■

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**

DIRECT TAXES



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

I. NOTIFICATIONS

1. Amendment in part A of new Appendix I relating to tangible assets

In exercise of the powers conferred by Section 295 read with Section 32 of the Income-tax Act, 1961, the Central Board of Direct taxes has through Income-tax (Eighth Amendment) Rules, 2014 amended clause (l) & (m) of item 8(xiii) under the heading III. Machinery and Plant relating to tangible assets in the Part A of New Appendix I of the Income-tax Rules, 1962. In effect, depreciation @ 80% is allowed on renewable energy devices being:

a) Wind mills and any specially designed devices which run on wind mills installed on or after the 1st day of April, 2014

b) Any special devices including electric generators and pumps running on wind energy installed on or after the 1st day of April, 2014

It may be noted that prior to this amendment, depreciation @ 80% was allowed on the aforesaid renewable energy devices installed on or before 31st day of March, 2012. This notification shall come into force on the date of their publication in the official gazette.

[Notification No. 43/2014, dated 16-9-2014]

2. Agreement for avoidance of double taxation and prevention of Fiscal evasion with Columbia

In exercise of the powers conferred by Section 90(1) of the Income-tax Act, 1961, the Central Government has notified that all the provisions of the agreement between the Government of the Republic of India and the Republic of Colombia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed on 13th day of May, 2011 shall have effect in 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 the agreement enters into force and in all other matters, as of the date on which the agreement enters into force.

[Notification No. 44/2014, dated 23-9-2014]

3. Computation of Arm's length price - Notified tolerable limit for determination of ALP

In exercise of the powers conferred by second proviso to Section 92C(2) of the Income-tax Act, 1961, Central Government has notified that where the variation between arm's length price determined under Section 92C and the price at which the international or specified domestic transaction has actually been undertaken does not exceed 1% of the latter in respect of wholesale trading and 3% in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be arm's length price for assessment year 2014-15. Further, the term 'wholesale trading' has been defined for the purpose of this notification.

[Notification No. 45/2014, dated 23-9-2014]

4. Amendment in Rule 28AA and Substitution of Form No. 13

In exercise of the powers conferred by Section 295 read with Section 197 of the Income-tax Act, 1961, the Central board of Direct taxes has through Income-tax (Ninth Amendment) Rules, 2014 amended Rule 28AA and substituted the following for sub-Rule (4) and (5):

"(4) The certificate for no deduction of tax shall be valid only with regard to the person responsible for deducting the tax and named therein.

(5) The certificate referred to in sub-rule (4) shall be issued direct to the person responsible for deducting the tax under advice to the person who made an application for issue of such certificate.

(6) The certificate for deduction of tax at lower rate shall be issued to the person who made

an application for issue of such certificate, authorising him to receive income or sum after deduction of tax at lower rate."

Further, Form No. 13 has been substituted in Appendix-II. The said notification shall come into force on the date of their publication in the Official Gazette.

[Notification No. 46/2014, dated 24-9-2014]

5. Agreement for avoidance of double taxation and prevention of Fiscal evasion with Poland

In exercise of the powers conferred by section 90 of the Income-tax Act, 1961, the Central Government has through this notification directed that all the provisions of the protocol amending the agreements between the Government of the Republic of India and the Government of Polish People's Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income shall be given effect to in the Union of India with effect from the 1st day of April, 2015, being the first day of the fiscal year next following the year in which the Protocol enters into force.

[Notification No. 47/2014, dated 24-9-2014]

6. Insertion of Rule 12D

In exercise of the powers conferred by section 133C read with Section 295 of the Income-tax Act, 1961, the Central Board of Direct taxes has through this notification notified Income-tax (Tenth Amendment) Rules, 2014 which shall come into force on the date of their publication in the Official Gazette. The Board has vide this notification inserted the following Rule 12D–*"Prescribed authority under section 133C"* after Rule 12C of Income-tax Rules, 1962:

Rule 12D: *The prescribed authority under section 133C shall be the Principal Director General or Director General or Principal Director or Director, as the case may be.*

Explanation: *For the purposes of this rule, "Principal Director General or Director General or Principal Director or Director" means the Principal Director General of Income-tax or the Director General of Income tax or the Principal Director of Income-tax or the Director of Income-tax to whom the Central Board of Direct Taxes may authorise to act as prescribed authority for the purposes of section 133C.*

[Notification No. 48/2014, dated 30-9-2014]

The complete text of the above Notifications can be downloaded from the link: http://www.incometaxindia.gov.in/Pages/communications/notifications.aspx

II. CIRCULARS

1. Clarification regarding allowability of deduction under Section 10A/10AA on transfer of technical manpower in the case of Software Industry

The CBDT had earlier clarified *vide Circular No. 12/2014 dated 18th July, 2014* that mere transfer or re-deployment of existing technical manpower from an existing unit to a new SEZ unit in the first year of commencement of business will not be construed as splitting up or reconstruction of an existing business, provided the number of technical manpower so transferred does not exceed 20% of the total technical manpower actually engaged in developing software at any point of time in the given year in the new unit.

In view of the above circular, representations were received by CBDT stating that limit of 20% is inadequate and restrictive since it impacts the competitiveness of Indian Software Industry in global market. Requests were therefore received by CBDT for enhancement of the limit of 20% in line with the recommendation of Rangachary Committee which was set up to review the taxation of IT sector and development centers.

The matter was re-examined by the Board, and hence in supersession of *Circular No. 12/2014 dated 18th July, 2014* decided that the number of technical manpower so transferred as at the end of the financial year should not exceed 50% of the total technical manpower actually engaged in development of software or IT enabled products in the new unit. Alternatively, if the assessee is able to demonstrate that the net addition of the new technical manpower in all units of the assessee is at least equal to the number that represents 50% of the total technical manpower of the new SEZ unit during such previous year, deduction under Section 10A/10AA would not be denied provided the other prescribed conditions are also satisfied.

It is also clarified that the said circular:

a) shall be applicable only in the case if assesses engaged in the development of software or in providing IT enabled services in SEZ units eligible for deduction u/s 10A/10AA of the Act.
b) shall not apply to the assessments which have already been completed. Further, no appeal

shall be filed by the Department in cases where the issue is decided by an appellate authority in consonance with this circular.

[Circular No. 14/2014, dated 8-10-2014]

The complete text of the above circular can be downloaded from the link: http://www.incometaxindia.gov.in/Pages/communications/circulars.aspx

III. PRESS RELEASE

1. Extension of date of payment of September instalment of Advance tax in State of Jammu & Kashmir

Due to natural calamity and large scale destruction in the state of Jammu & Kashmir, the Central Board of Direct taxes has extended the date for payment of second installment of advance tax for companies and first installment of advance tax for others for financial year 2014-15 (A.Y. 2015-16) from 15th September, 2014 to 15th December, 2014 without entailing any consequential interest for deferment.

[Press Release, dated 18-9-2014]

2. Updation of address for delivery of refund cheques to assessees residing in the State of Jammu & Kashmir

In view of the large devastation caused by the recent floods in Jammu & Kashmir, the Income tax Department has taken necessary steps to process expeditiously the refund claims of the taxpayers residing in the state of Jammu & Kashmir who have submitted their returns through electronic mode. Non-Corporate taxpayers of Jammu and Kashmir, who desire to provide a new address for delivery of their refund cheques, may log in to the e-filing site https://incometaxindiaefiling.gov.in, and update their address through the path Profile Setting→My Profile→Address. Alternatively, the taxpayers can contact the helpdesk at Centralised Processing Centre (CPC), Bangalore at 1800 425 2229 and provide the updated address.

[Press Release, dated 15-10-2014]

The complete text of the above press release can be downloaded from the link: http://www.incometaxindia.gov.in/Pages/communications/circulars.aspx

IV. ORDERS/ INSTRUCTIONS

1. Extension of due date for filing of returns of income in state of Jammu & Kashmir

Considering the large scale devastation in the State of Jammu & Kashmir due to heavy rains and floods, the Central Board of Direct taxes in exercise of powers conferred under Section 119 of the Income-tax Act, 1961, extended the due date for filing returns of income from 30th September, 2014 to 30th November, 2014 in the State of Jammu & Kashmir, for those assesses who as per clause (a) of Explanation 2 to Section 139(1) were liable to file their income tax return by 30th September, 2014.

[Order {F. No. 225/268/2014/IT A.II}, dated 16-09-2014]

2. Extension of date of filing of return of income for Assessment Year 2014-15 in case of assesses who have to file tax audit report

The due date for obtaining and furnishing of tax audit report under Section 44AB of the Act for Assessment Year 2014-15 in respect of assesses who are not required to furnish report under Section 92E of the Act was extended from 30th September, 2014 to 30th November, 2014 *vide* Order No. 133/24/2014-TPL dated 20th August, 2014.

After the aforesaid extension, a number of representations were received by the Board requesting for extension of due date of filing return of income for assesses who are required to obtain and furnish tax audit report under Section 44AB and for whom the due date of filing return of income is 30th September, 2014. Writ petitions were filed in various High Courts for directing the Board to extend the due date for furnishing of return of income from 30th September, 2014 to 30th November, 2014 in conformity with the extension of the due date for filing of tax audit report.

In compliance of the judgment of various High Courts and after considering the representations made for extension of due date for furnishing of return of income, the Board, in exercise of power conferred by Section 119 of the Act, has extended the 'due-date' for furnishing return of income from 30th September, 2014 to 30th November, 2014 for the Assessment year 2014-15 for all purposes of the Act, in case of an assessee, who,

(i) is required to file his return of income by 30th September, 2014 as per Explanation 2 to Section 139(1)(a) of the Act; and

(ii) is also required to get his accounts audited under Section 44AB of the Act or is a working partner of a firm whose accounts are required to be audited under Section 44AB of the Act.

Further, it has been clarified that there shall be no extension of the "due date" for the purposes of Explanation 1 to Section 234A (Interests for defaults in furnishing return) of the Act and the assessees shall remain liable for payment of interest as per the provisions of Section 234A of the Act.

It has also been clarified that for an assessee (other than working partner of a firm which is required to obtain and furnish tax audit report), who is required to file its return of income by 30th September, 2014 but not required to obtain and furnish tax audit report under section 44AB, the due date for furnishing of return of income for assessment year 2014-15 shall remain as 30th September, 2014.

[Order [F. No. 153/53/2014-TPL (PT.I)], dated 26-9-2014]

3. Scope of enquiry defined in scrutiny cases selected during financial year 2014-15 on basis of Computer Aided Scrutiny Selection ('CASS')

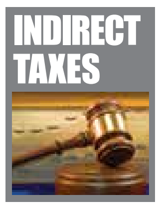
Recently, it was brought to the notice of the Board that during the scrutiny assessment proceedings some of the AOs are routinely calling for information which is not relevant, for enquiry into the issues to be considered. The same causes undue harassment to the taxpayers along with drawing adverse criticism from several quarters. Also the feedback and analysis of such orders indicated that many times the core issues, which formed the basis of selection of the case for scrutiny were not examined properly.

Hence the Central Board of Direct Taxes, by virtue of its powers under section 119 of the Act, in supersession of earlier instructions/guidelines on the said subject directed that the cases selected for scrutiny during the Financial Year 2014-2015 under CASS, on the basis of either AIR data or CIB information or for non re-conciliation with 26AS data, the scope of enquiry should be limited to verification of these particular aspects only. Therefore, in such cases, an Assessing Officer shall confine the questionnaire and subsequent enquiry or verification only to the specific point(s) on the basis of which the particular return has been selected for scrutiny.

However, if during the course of assessment proceedings, it is found that there is potential escapement of income exceeding ₹10 lakh (for non-metro charges, the monetary limit shall be ₹5 lakh) on any other issue(s) apart from the AIR/CIB/26AS information based on which the case was selected under CASS requiring substantial verification, the case may be taken up for comprehensive scrutiny with the approval of the Pr. CIT/DIT concerned. However, such an approval shall be accorded by the Pr. CIT/DIT in writing after being satisfied about merits of the issue(s) necessitating wider and detailed scrutiny in the case. Cases so taken up for detailed scrutiny shall be monitored by the Jt. CIT/Addl. CIT concerned.

[Instruction No 7/2014, Dated 26-9-2014]

The complete text of the above orders can be downloaded from the link: http://www.incometaxindia.gov.in/Pages/communications/circulars.aspx



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

A. SERVICE TAX

1. Levy of service tax on activities involved in inward remittances from abroad to beneficiaries in India through Money Transfer Service Operators (MTSO)

Circular No.180/06/2014-ST, Dated: October 14, 2014 supersedes Circular No. 163/14/2012-ST, dated 10.7.2012 and clarifies service tax applicability where the Indian bank or financial institution provides services on principal to principal basis to the foreign bank/entity, on its own account, and thus the service is covered by the general rule, *i.e.* rule 3 of the Place of Provision of Service Rules, 2012.

The entire sequence of transactions in remittances of money from overseas through the MTSO route is as under:

- Step 1: Remitter located outside India (say 'A') approaches a Money Transfer Service Operator (MTSO)/bank (say B) located outside India for remitting the money to a beneficiary in India; 'B' charges a fee from 'A'.
- Step 2: 'B' avails the services of an Indian entity (agent) (say 'C') for delivery of money to the ultimate recipient of money in India (say 'E'); 'C'is paid a commission/fee by 'B'.
- Step 3: 'C' may avail service of a sub-agent (D). 'D'charges fee/commission from 'C'.
- Step 4: 'C' or 'D', as the case may be, delivers the money to 'E' and may charge a fee from 'E'.

Legal Update

Following has been clarified in the circular:

S. No.	Issues	Clarification
1.	Whether service tax is payable on remittance received in India from abroad?	No service tax is payable *per se* on the amount of foreign currency remitted to India from overseas. As the remittance comprises money, it does not in itself constitute any service in terms of the definition of 'service' as contained in Clause (44) of Section 65B of the Finance Act 1994.
2.	Whether the service of an agent or the representation service provided by an Indian entity/ bank to a foreign money transfer service operator (MTSO) in relation to money transfer falls in the category of intermediary service?	Yes. The Indian bank or other entity acting as an agent to MTSO in relation to money transfer, facilitates in the delivery of the remittance to the beneficiary in India. In performing this service, the Indian Bank/entity facilitates the provision of Money transfer Service by the MTSO to a beneficiary in India. For their service, agent receives commission or fee. Hence, the agent falls in the category of intermediary as defined in rule 2(f) of the Place of Provision of Service Rules, 2012.
3.	Whether service tax is leviable on the service provided, by an intermediary/agent located in India (in taxable territory) to MTSOs located outside India?	Service provided by an intermediary is covered by rule 9 (c) of the Place of Provision of Service Rules, 2012. As per this rule, the place of provision of service is the location of service provider. Hence, service provided by an agent, located in India (in taxable territory), to MTSO is liable to service tax. The value of intermediary service provided by the agent to MTSO is the commission or fee or any similar amount, by whatever name called, received by it from MTSO and service tax is payable on such commission or fee.
4.	Whether service tax would apply on the amount charged separately, if any, by the Indian bank/entity/agent/sub-agent from the person who receives remittance in the taxable territory, for the service provided by such Indian bank/ entity/agent/sub-agent.	Yes. As the service is provided by Indian bank/ entity/agent/sub-agent to a person located in taxable territory, the Place of Provision is in the taxable territory. Therefore, service tax is payable on amount charged separately, if any.
5.	Whether service tax would apply on the services provided by way of currency conversion by a bank /entity located in India (in the taxable territory) to the recipient of remittance in India?	Any activity of money changing comprises an independent taxable activity. Therefore, service tax applies on currency conversion in such cases in terms of the Service Tax (Determination of Value) Rules. Service provider has an option to pay service tax at prescribed rates in terms of Rule 6(7B) of the Service Tax Rules 1994.
6.	Whether services provided by sub-agents to such Indian Bank/entity located in the taxable territory in relation to money transfer is leviable to service tax?	Sub-agents also fall in the category of intermediary. Therefore, service tax is payable on commission received by sub-agents from Indian bank/entity.

[Circular No.180/06/2014-ST, Dated: October 14, 2014]

Advertisement

B. EXCISE

1. Guidelines regarding Structure, Administrative set up and Functions of Audit Commissionerates

Central Board of Excise & Customs (CBEC) vide *Circular No. 985/09/2014-CX, Dated: September 22, 2014* has issued guidelines to be followed while finalising the location and organisational structure of Audit Commissionerate and its subordinate offices, subject to deviations needed to cater to the local requirements. Although the reorganisation under CBEC will take effect from 15th October 2014, to avoid inconvenience to the existing Central Excise and Service Tax assessees, they will continue to be mapped in ACES to the existing location codes (Commissionerate, Division and Range). New location codes would be informed to the assessees via email after the migration to new formations. The same can also ascertained through "know you location code"on ACES website and filling of the registration number.

The detailed guidelines can be viewed at www.cbec.gov.in

[Circular No. 985/09/2014-CX, Dated: September 22, 2014]

2. CBEC clarifies Central Excise Audit has statutory backing

In case of M/s Travelite (India) [2014-TIOL-1304-HC-DEL-ST], Delhi High Court quashed the audit under Rule 5A(2) of Service Tax Rules and CBEC Circular dated January 1, 2008 as *ultra vires* due to lack of statutory backing under Finance Act, 1994. This raised the doubts regarding powers of a Central Excise officer to conduct an audit. It has been clarified by CBEC *vide Circular No. 986/10/2014-CX., Dated: October 9, 2014* that the aforesaid judgment did not deal with the issue of audit in Central Excise and there is sufficient statutory backing *vide* Section 37(2)(x) and rule 22 of the Central Excise Rules, 2002 for an audit to be conducted by the Central Excise Officers.

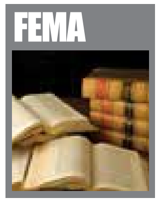
[Circular No. 986/10/2014-CX, Dated: October 9, 2014]

C. CUSTOMS

1. Hosur and Modinagar notified as Inland Container Depots

Central Board of Excise & Customs has notified Modinagar (Uttar Pradesh) & Hosur (Tamil Nadu) as Inland Container Depots for unloading of imported goods and loading of export goods.

[Notification No. 86/2014-Cus (N.T.), Dated: September 18, 2014 & Notification No. 88/2014-CUS.(N.T.), Dated: September 26, 2014]



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

A. Foreign Direct Investment (FDI) Issue of Equity shares under the FDI scheme against legitimate dues

Notification No. FEMA. 315/2014-RB dated July 10, 2014 and A.P. (DIR Series) Circular No. 31 dated September 17, 2014

As per Schedule I of FEMA Notification No. 20/2000-RB dated 3rd May 2000, as amended from time to time, an Indian company under the automatic route may issue shares/convertible debentures to a person resident outside India against lump-sum technical know-how fee, royalty, External Commercial Borrowings (ECBs) and import payables of capital goods by units in SEZs subject to certain conditions.

The guidelines for issue of shares/convertible debentures have been reviewed and accordingly, it has been decided to permit issue of equity shares against any other funds payable by the investee company, remittance of which does not require permission of Government of India or Reserve Bank of India, provided that:

1. The equity shares shall be issued in accordance with extant FDI guidelines as amended by Reserve Bank of India from time to time.
2. The issue of equity shares under this provision shall be subject to tax law as applicable to the funds payable and conversion to equity should be net of applicable taxes.

All other conditions for issue of equity shares under automatic route [para 2(4)(i)(ii)(iii) of schedule 1 of Notification 20/2000-RB dated 3rd May 2000] and government approval route [para 3 of schedule 1 of the notification] shall remained unchanged.

B. Risk Management and Inter Bank Dealings Hedging under Past Performance route

A.P. (DIR Series) Circular No. 34 dated September 30, 2014

As per the extant guidelines relating to hedging of currency risk of probable exposures based on past performance, resident importers are allowed to book contracts upto 50 % of the eligible limit.

On review and with view to bringing at par both exporters and importers for hedging of currency risk of probable exposures based on past performance, it has been decide to allow importers to book forward contracts up to 100 % of the eligible limit. Importers who have already booked contracts up to previous limit of 50 % in the current financial year, shall be eligible for difference arising out of the enhanced limits. All other terms and conditions shall apply *mutatis mutandis.*

C. Review of Policy on Foreign Direct Investment (FDI) in Defence Sector – amendment to 'Consolidated FDI Policy Circular 2014'

DIPP Press Note No. 7 (2014 Series)

Policy on FDI in defence sector has been reviewed and amendments have been made to the same. Earlier sectoral cap for entry route in Defence Sector was up to 26% - under government route and above 26% - by Cabinet Committee on Security (CCS) on case to case basis, wherever it is likely to result in access to modern and 'state of art' technology in the country. The sacvme has been increased and revised as up to 49% - under government route and above 49% - by Cabinet Committee on Security (CCS) on case to case basis, wherever it is likely to result in access to modern and 'state of art' technology in the country.

Accordingly, for giving the effect to the revision, relevant paragraphs in the FDI Policy pertaining to Defence sector have been amended. The amended paragraphs incorporating the respective changes in Policy of FDI in Defence sector are as under:

Revised Para 4.1.3(v)(d):

"In the I & B sector where the sectoral cap is less than 49%, the company would need to be "owned and controlled" by the resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens".

Revised Para 6.2.6:

The whole para pertaining to sectoral cap in defence sector and conditions thereon to be fulfilled has been amended. For details of amended conditions and instructions please refer the Press Note No. 7 of 2014 issued by DIPP at–http://dipp.nic.in/English/acts_rules/Press_Notes/pn7_2014.pdf

D. Policy for Private Investment in Rail Infrastructure through Domestic and Foreign Direct Investment

DIPP Press Note No. 8 (2014 Series) dated 27th August 2014

As per the extant FDI Policy of 2014, FDI in Railway Transport (other than Mass Rapid Transport Systems) is prohibited.

Government of India vide notification No. S.O. 2113(E), dated 22nd August 2014, reviewed its policy for private investment in rail infrastructure and amended the list of industries reserved for public sector under item No. 8 of Schedule I of the Notification No. S.O.477(E) dated 25th July 1991. Accordingly FDI in following activities of railway transport sector has been permitted:

Construction, Operation and maintenance of following:

Suburban corridor projects through PPP, high speed train projects, dedicated freight lines, rolling stock including train sets and locomotives/coaches manufacturing and maintenance facilities, railway electrification, signaling systems, freight terminals, passenger terminals, infrastructure in industrial park pertaining to railway line/slidings including electrified railway lines and connectivities to main railway line and mass rapid transport systems.

FDI beyond 49% of the equity of the investee company in sensitive areas from security point of view, will be brought before Cabinet Committee in Security (CCS) for consideration on case to case basis.

Following amendments are made to the Consolidated FDI Policy Circular of 2014:

Para 6.1(h): Activities/sectors not open to private sector investment *e.g.* atomic energy, railway operations (other than permitted activities mentioned in para 6.2)

Para 6.2.12.1(ii) and (iii) are amended as follows:

"Infrastructure" refers to facilities required for functioning of units located in the Industrial park and includes roads (including approach roads), railway line/slidings including electrified railway lines and connectivities to the main railway line, water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air conditioning.

"Common Facilities" refer to the facilities available for all the units located in the industrial parks, and include facilities of power, roads (including approach roads), railway line/slidings including electrified railway lines and connectivities to the main railway line, water supply and sewerage, common effluent treatment, common testing, telecom services, air conditioning, common facility buildings, industrial canteens, convention/conference halls, parking, travels desks, security service, first aid centre, ambulance and other safety services, training facilities and such other facilities meant for common use of the units located in the industrial park.

A new paragraph **6.2.16** is inserted in the FDI Policy circular as below:

Sl. No.	Sector/Activity	% of Equity/ FDI cap	Entry route
6.2.16	Railway Infrastructure		
	Construction operation and maintenance of the following: (i) Suburban corridor projects through PPP, (ii) high speed train projects, (iii) dedicated freight lines, (iv) rolling stock including train sets and locomotives/coaches manufacturing and maintenance facilities, (v) railway electrification, (vi) signaling systems, (vii) freight terminals, (viii) passenger terminals, (ix) infrastructure in industrial park pertaining to railway line/slidings including electrified railway lines and connectivities to main railway line and (x) mass rapid transport systems.	100%	Automatic

Sl. No.	Sector/Activity	% of Equity/ FDI cap	Entry route
	Note:- (i) Foreign Direct Investment in the abovementioned activities open to private sector participation including FDI is subject to sectoral guidelines of Ministry of Railways. (ii) Proposals involving FDI beyond 49% in sensitive areas from security point of view, will be brought by the Ministry of Railways before the Cabinet Committee on Security (CCS) for consideration on a case to case basis.		

The above decision will take immediate effect. For details of amended conditions and instructions please refer the Press Note No. 8 of 2014 issued by DIPP at–http://dipp.nic.in/English/acts_rules/Press_Notes/pn8_2014.pdf

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

MCA (www.mca.gov.in)

1. Amendment to Companies (Accounts) Rules, 2014

MCA has directed that Rule 6 of the aforesaid Rules dealing with consolidated financial statements shall not apply to an intermediate wholly owned Subsidiary for preparation of Consolidated Financial Statements other than a Wholly Owned Subsidiary whose immediate parent is a company incorporated outside India. It has further directed that this rule is not applicable for F.Y 2014-15 in case of Companies which do not have a subsidiary or subsidiaries but has one or more associate companies or joint ventures or both for the Consolidation of Financial Statement in respect of associate companies or joint ventures or both ,as the case may be. For the complete text of this circular please refer to the link: http://www.mca.gov.in/Ministry/pdf/Amendment_Rules_14102014_I.pdf

[Notification No GSR-E dated 14th October 2014]

2. Amendment to Companies (Audit and auditors) Rules, 2014

MCA has inserted Rule 10A obligating the auditor to report about the existence of adequate internal financial control system and its operating effectiveness in the report of the auditor for the financiay year commencing on or after 1st April 2015. It further provides that the auditor may voluntarily include the same in his report for F.Y 2014-15. For the complete text of this circular please refer to the link: http://www.mca.gov.in/Ministry/pdf/Amendment_Rules_14102014.pdf

[Notification No GSR-E dated 14th October 2014]

3. Amendment to Companies (Appointment and Qualification of Directors) Rules, 2014

MCA has amended the aforesaid Rules whereby it has inserted and deleted certain provisions related to appointment and qualification of Directors. It has also omitted Forms DIR-1, DIR-4, DIR-7. It has introduced new DIR-3, DIR-6 Forms in substitution of the existing ones and has inserted Form DIR-3A, DIR-3B and DIR-3C. For the complete text of this circular please refer to the link: http://www.mca.gov.in/Ministry/pdf/NCA_Rules_18092014.pdf

[Notification No. GSR-E dated 18th September 2014]

4. Clarification on matters related to Consolidated Financial Statements.

MCA in consultation with ICAI has clarified that Schedule III to the Companies Act 2013 read with applicable accounting standards does not envisage that the company, while preparing its CFS merely repeats the disclosure made by it under stand alone accounts being consolidated. In the CFS the company would need to give all the details relevant for CFS only. For the complete text of this circular please refer to the link: http://www.mca.gov.in/Ministry/pdf/General_Circular_39-2014.pdf

[Circular No. 39/2014 dated 14th October 2014]

5. Clarification with regard to refund of deposit under Section 160 of the Companies Act 2013 in certain cases

MCA has clarified that the Board of directors of Section 8 Companies can decide whether to refund or forfeit the deposit accepted under Section 160 of the Companies Act 2013 from the depositor, on account of failure by the depositor to obtain

25% of the total valid votes. For the complete text of this circular please refer to the link: http://www.mca.gov.in/Ministry/pdf/General_Circular_38-2014.pdf

[Circular No. 38/2014 Dated 14th October 2014]

6. Company Law Settlement Scheme, 2014 (CLSS-2014) clarification u/s 164(2) of the Companies Act, 2013

MCA has clarified that in case of companies who have filed their Balance sheets and Annual return on or after 01/04/2014 but prior to launch of CLSS -2014, disqualification under Clause (a) of sub section (2) of Section 164 of the Companies Act 2013 shall apply only for prospective defaults, if any by such companies. For the complete text of this circular please refer to the link: http://www.mca.gov.in/Ministry/pdf/General_Circular_41-2014.pdf

[Circular No. 41/2014 dated 15th October 2014]

7. Company Law Settlement Scheme, 2014 (CLSS-2014)

MCA has extended the date of CLSS 2014 upto 15th November 2014. For the complete text of this circular please refer to the link: http://www.mca.gov.in/Ministry/pdf/General_Circular_40-2014.pdf

[Circular No .40/2014 Dated 15th October 2014]

8. Constitution of National Advisory Committee on Accounting Standards (NACAS).

The Central Government has constituted NACAS to advice the central government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under the Act. For the complete text of this circular please refer to the link: http://www.mca.gov.in/Ministry/pdf/Amendment_Notification_18092014.pdf

[Notification No S.O.2425 (E) dated 18th September 2014]

Legal Update

SEBI (www.sebi.gov.in)

1. Master circular for Mutual Funds

For effective regulation of the Mutual Fund Industry, Securities and Exchange Board of India (SEBI) has been issuing various circulars from time to time. In order to enable the industry and other users to have an access to all the applicable circulars at one place, Master Circular for Mutual Funds has been prepared. This Master Circular shall supersede the previous Master Circular SEBI/IMD/DF/14/2013 dated September 11, 2013. For the complete text of this circular please refer to the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1412152811369.pdf

[Master Circular CIR/MD/DF/18/2014 dated 1st October 2014]

RBI (www.rbi.gov.in)

1. Secondary market transactions in Government Securities-Short Selling

The guidelines relating to short selling have been reviewed and it has been decided to permit scheduled commercial banks and Primary Dealers (PDs) to transact in Government securities subject to certain conditions as laid in the notification. These guidelines shall come into effect from 7th October 2014. For the complete text of this circular please refer to the link: http://rbidocs.rbi.org.in/rdocs/notification/PDFs/CSMSTGS300914.pdf

[Notification no RBI/2014-15/251 dated 30th September 2014]

2. Rating of Fixed Deposits of NBFCs- Eligible Credit Rating Agencies- SME Rating Agency of India Ltd. (SMERA)

RBI has accredited SMERA as approved credit rating agency for the purpose of rating fixed deposit of NBFC'S. Accordingly, NBFCs may also use the ratings of SMERA for the purpose of rating their Fixed Deposits. The Minimum Investment Grade Rating for Fixed Deposits is "SMERA A". For the complete text of this circular please refer to the link: http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=9255&Mode=0

[Notification no RBI/2014-15/243 dated 25th September 2014]. ■

ICAI News

Quick Heal Security for Android Mobile

Arrangement of the 'Quick Heal Total Security for Android enabled Mobile phones' software at special price for the Members & Students of ICAI by the Committee for Capacity Building of CA Firms and Small & Medium Practitioners(CCBCAF&SMP), ICAI

Quick Heal Total Security for Android enabled Mobile phones' software has been arranged for the registered members, students of ICAI from M/S Quick Heal Technologies Pvt. Ltd., Pune at discounted price. The 'Quick Heal Total Security for Android enabled Mobile phones' software is an antivirus software with features like Virus Protection, Call Blocking, SMS Blocking, SMS Spam Protection, Data Protection Anti-Theft, Mobile Tracker (using GPS), Remote Mobile Locking, Device Control through Web Portal (RDM), Scanning and Unlocking Commands, Improved Device Tracing, Multi-SIM support, Web Security, Network Monitor, Performance Monitor, Backup and Restore, Secure Delete, etc. The Price of the aforesaid software is ₹250/- plus applicable taxes for 2 years.

The Members are requested to visit http://www.quickheal.co.in/home-users/quick-heal-total-security-for-android for purchasing the software. The member is required to fill the blank titled 'Duration' by entering the option '2 years' from the drop down menu and click on 'Buy Now'. Thereafter, a window will pop out and the member is required to click 'Buy Now' to confirm the placing of the order. The page will then lead to another page where the member is required to put in the quantity of softwares needed and the coupon code which will be provided by the Committee Secretariat by email and click on 'Apply'. The price of the software will appear at the right hand side. The member should click on 'Buy online' by providing the required information.

Members are requested to get in touch with CCBCAF&SMP Secretariat for the arrangement of the Coupon Code for the same at E-mail: ccbcaf.software@icai.org

For any other queries or feedback, please contact Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI at 0120-3045994 or ccbcaf.software@icai.org.

Chairman,
Committee for Capacity building of CA firms and Small and Medium Practitioners,
ICAI

■

Legal Decisions[1]

DIRECT TAXES

Income-tax Act

LD/63/22

CIT-II

vs.

Shri Jyoti Prakash Dutta

25th July 2014 (BOM)

[Assessment Year 2007-08]

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

If cameraman, editor, sound technicians are engaged by the assessee and they used their own equipments for filming, processing, sound recording and mixing or machines are hired on contract basis but they do not transfer these equipments to assessee, argument that Assessee is disentitled to deduction should not be accepted.

Film production unit or a Company is an industrial undertaking and, therefore, Section 80IB can be invoked by it

The Revenue urges before this Court that firstly a film production unit or a Company is not an industrial undertaking within the meaning of Section 80IB. Assuming it is so and conceding that position, insofar as the present Assessee is concerned, now it is urged that the Assessee does not fulfill the condition which would make it eligible or qualified for deduction in terms of the above provisions.

In upholding the claim of the Assessee, the Commissioner also applies the law laid down by this Court in the case of *CIT vs. D.K. Kondke*, (1991) 192 ITR 128.

It is submitted by the assessee that there is no machinery or plant of the appellant and the business affairs are carried out with hired equipments and machinery. In such circumstances, the assessee is disentitled to the deduction. Section 80-IB applies to any industrial undertaking which fulfills all the conditions and in this case, the Assessee is not fulfilling a very vital condition. The assessee, submits that the Department is bound by the Tribunal's orders and in the case of the very same assessee for prior assessment years.

In the assessment year 1998-99, the Tribunal has extended the benefit and allowed the deduction.

[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

That view was followed by the Tribunal for A.Y. 2001-02. It is that very order which is followed for the current Assessment Year.

The Bombay High Court held as follows:

Where the gross total income of the Assessee in profits and gains derived from any business referred to sub-Section (3) to (11), (11A) and (11B) (such business being hereinafter referred to as the eligible business) there shall, in accordance with and subject to the provisions of this Section, be allowed in computing the total income of the Assessee a deduction from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in this Section. For the deduction to be claimed under sub-Section (3) what is being urged is that the conditions which are specified and set out in sub-Section (2) would have to be fulfilled.

The Assessee fulfilled this condition meaning thereby it is not formed by the transfer to a new business of machinery or plant previously used for any purpose. The argument is rather extreme and that there is no plant and machinery. The argument has, also for some time, gone to another extreme that in film production unit, to qualify as 'industrial undertaking' the unit or company must possess plant and machinery of its own and it cannot be functioning on hired equipments. In the present case, Assessee has not demonstrated any such ownership.

In the present case, if cameraman, editor, sound technicians are engaged by the Assessee and who used their own equipments for filming, processing, sound recording and mixing or machines are hired on contract basis but they do not transfer these equipments to the assessee. In such circumstances, the argument that the assessee is disentitled to the deduction should not be accepted.

In the case of D.K. Kondke (*supra*) this Court held that the film production unit or Company is an industrial undertaking and, therefore, section 80IB of the Act can be invoked by it.

In earlier years, the Revenue brought appeals to this Court but the Appeals were not entertained. This Court held that the Appeals do not raise any substantial question of law.

Thus, the Revenue's appeal in instant case was to be dismissed.

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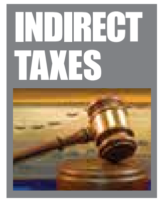


Customs Act

LD/63/23

Gira Enterprises & Anr.
vs.
Commissioner of Customs, Ahmedabad
21st August, 2014 (SC)

Section 14 of the Customs Act, 1962 read with Rules 4 & 5 of the Customs Valuation (Determination of the Price of Imported Goods) Rules, 1988-Valuation of goods for purposes of assessment

In the absence of any material produced by the Revenue in proof of the alleged comparable imports at a higher value, the impugned order of assessment valuing imported goods at a higher rate, cannot be sustained

The appellants imported two consignments of "2-4-6 Tricloro 1- 3-5 Triazine" aggregating 74.10 MT from China under two Bills of Entry, the cost of which is declared by the appellants to be SG $ 750/- PMT equivalent to US $ 500/- PMT. The goods were provisionally assessed and allowed clearance.

Show cause notice was issued to the appellants by the Commissioner on the ground that the chemical name of the goods was verified and it was found to be "Cyanuric Chloride" as known in the International market. It is further stated in the show cause notice that on the basis of certain information obtained through a computer print out from the Customs House, Mumbai, the Commissioner of Customs, Gujarat noticed that a large number of Cyanuric Chloride(100) import transactions (between the months of June 1994 to November 1994) took place and the cost of the unit price in each one of those imports was US $ 1950/- PMT(CIF) as against the value declared by the appellants of US $ 500/- PMT.

The appellant argued that the copy of the alleged printout was not supplied to the appellant. Therefore, the appellant had no means of knowing as to whether any imports of comparable nature were made at the relevant point of time.

The Supreme Court held as follows:

It can be seen from Section 14 that the value of the imported goods is "deemed to be the price at which such goods are ordinarily sold, or offered for sale ……". The Section further stipulates that such price of the imported goods is to be determined in accordance with the rules made in that behalf.

Rule 5 enables the Revenue to determine the value of the imported goods on the basis of the identical imported goods of comparable import transaction. Such a procedure/course of action is authorised notwithstanding the mandate of Rule 4(2) that the transaction value shall be accepted. Obviously, such an alternative mode of valuation is authorised as Rule 4 declares that the transaction value of the imported goods shall be the "price actually paid or payable". Necessarily, the rule implies the need of determination of the price actually paid or payable.

It is not necessary that in every case of import the importer declares the price actually paid by him or payable by him. Therefore, if in a given case the Revenue notices identical goods have been imported by other importers in comparable transactions at a different rate (normally higher rate) then Revenue is enabled by Rules 5 to reject the valuation made by the importer and determine the "price actually paid or payable" by the importer.

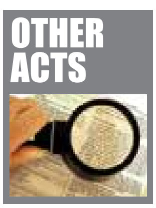
In the case at hand, no doubt the revenue claims to have some information based on certain alleged imports made at the Bombay port at the relevant point of time that the import in question took place. According to the revenue, those imports at Bombay were declared and valued at a much higher rate than the value declared by the appellants herein. Therefore, the valuation of the goods imported by the appellant was found unacceptable. Hence, the procedure under Rule 5 was resorted to.

However, the respondent (revenue) did not supply the information (alleged computer print out) which formed the basis of the conclusion that the appellants herein under-valued the goods imported. In such a situation, the appellants obviously cannot and did not have any opportunity of establishing that the claim of the revenue is unsustainable in law. If the information which formed the basis for the Revenue to reject the appellant's valuation is supplied to the appellants, the appellants perhaps will have an opportunity to dispute the comparability of the import transactions allegedly contained in the computer printout on various counts may not be possible to catalogue.

The appellants, of course, admit that the goods imported by them are known commercially as 'Cyanuric Chloride' as specified in the show cause. Whether Cyanuric Chloride was imported at the relevant point of time by others in comparable transactions, *i.e.*, is "a sale at the same commercial level and in substantially the same quantity" *etc.* is a matter to be considered on the examination of the material relied upon by the Revenue. A reasonable opportunity must be given to the appellant to demonstrate (if at all) that the transactions relied upon by the Revenue are not comparable transactions.

In the absence of any material produced by the Revenue in proof of the alleged comparable imports at a higher value, the impugned order which eventually confirmed the original order of assessment by the Assistant Commissioner of Customs dated 31-03-2001 cannot be sustained for two reasons – (1) the mere existence of an alleged computer printout is not proof of the existence of comparable imports; (2) assuming such a printout exists and the contents thereof are true, the question still remains whether the transaction evidenced by the said computer printout are comparable to the transaction of the appellant. The appellant will have to be given reasonable opportunity to establish (if he can) that the transactions are not comparable.

The impugned order and the original assessment order are therefore, set aside.



Arbitration & Conciliation Act

LD/63/24

Sharad P. Jagtiani

vs.

Edelweiss Securities Ltd,

7th August, 2014 (DEL)

Chapter XI of the NSE By-laws, read with Sections 2(4) and 8 of the Arbitration and Conciliation Act, 1996 and Section 9 of the Securities Contracts (Regulation) Act, 1956–Reference to Arbitration

Where written statement filed is with strings attached by challenging the maintainability of the suit in view of the arbitration clause, said written statement could be treated as an application under Section 8 of the Arbitration and Conciliation Act, 1996

The appellant filed a suit on plea that representatives of the respondent stock broker met him with a request to open a brokerage account with the firm and to trade. He was assured 40% profit on trading. He opened a trading account and transferred ₹48,00,000 in the account. He pleaded that he did not invest the money under any portfolio management scheme. An account was opened in his name. He signed certain blank forms on the assurance that once filled up copies thereof would be sent to him. He raised a grievance that without his instructions 65 transactions (out of total 186 transactions) were effected by the respondent without any confirmed order or instruction from him. He also pleaded that the respondent was bound by the rules of the National Stock Exchange requiring trading members to ensure that confirmed order instructions were obtained from the members.

In the written statement filed, apart from refuting the pleadings and affirming that all transactions were carried out under the instructions of appellant it was pleaded that the High Court lacks the necessary jurisdiction to entertain and decide the present Suit in view of Clause 13 of Part A of the Agreements dated 23.05.2008 entered into between the parties, wherein the parties have agreed to refer any claims/disputes arisen between the parties to be resolved by the mode of Arbitration, as per the Rules, Regulations and bye-laws envisaged by the respective stock exchange.

In the written statement neither specific prayer was made to refer the parties to arbitration nor any application was filed under Section 8 of the Arbitration and Conciliation Act, 1996.

The Delhi High Court held as follows:

Section 9 of the Securities Contracts (Regulation) Act, 1956 provides that any recognised stock exchange may, subject to the previous approval of Securities and Exchange Board of India (SEBI) make bye-laws for the regulation and control of contracts. Section 9(2)(n) of the Act provides the method and procedure for settlement of claims or disputes including settlement by arbitration. Under S.9(2)(n) the National Stock Exchange has framed Bye-Laws which have been approved by SEBI. Section 9(4) provides that the Bye-Laws made under Section 9 shall be subject to conditions with regard to previous publication, and the same shall be published in the Gazette of India, and also in the Official Gazette of the State in which the principal office of the recognised Stock Exchange is situated, and shall have effect as from the date of publication in the Gazette of India.

Chapter XI of the Bye-Laws of the National Stock Exchange of India Limited specifically provides for reference to Arbitration. Thus, the arbitration under the National Stock Exchange Bye-Laws is Statutory Arbitrations would be covered under Section 2(4) of the Arbitration and Conciliation Act, 1996.

The phrase 'not later than when submitting his first statement on the substance of the dispute' in sub-Section (1) of Section 8 is to be highlighted. The requirement is to bring to the notice of the Court at a point not later than when submitting the first statement on the substance of the dispute that there exists an arbitration clause between the parties and that the subject matter of the action brought before the Court by way of the suit falls within the ambit of the arbitration clause.

Section 8 does not specify the manner in which the party has to submit its first statement on the substance of the dispute, and normally with respect to a suit, the first statement on the substance of the dispute by the defendant would be the written statement. Thus, if in the written statement filed it is brought to the notice of the Court that there exists an arbitration agreement between the parties which embraces the subject matter of the suit there would complete compliance with the mandate of the law and the Court would be obliged to refer the parties to arbitration if the plea in the written statement is made good.

On the facts of the instant case, it may be true that in the written statement filed a specific prayer has not been made to refer the parties to arbitration, but in the written statement filed a preliminary objection has been taken that the suit is barred in view of the arbitration agreement. The written statement filed is with strings attached by challenging the maintainability of the suit in view of the arbitration clause and therefore in such circumstance the said objection taken by Edelweiss contained in the written statement could be treated as an application under Section 8 of the Arbitration and Conciliation Act, 1996.

It is trite that it is the substance of a matter contained in a document which matters and not the form thereof.

For three reasons, the appeal has to be dismissed. Firstly the arbitration agreement in the instant case being the result of a statute, there being no estoppel against the statute, required by law to be held; secondly the view taken by us hereinabove relating to the interpretation of Section 8 of the Arbitration and Conciliation Act, 1996; and thirdly Section 89 of the Code of Civil Procedure, 1908 which empowers a Court to refer the parties to arbitration if in the opinion of the Court it appears that there exists element of a settlement which may be acceptable to the parties. There cannot be a better case where such element exists than a case where the parties themselves have agreed for referring the matter to arbitration at the time of entering into the contract itself.

Competition Act

LD/63/25

South Asia LPG Company (P.) Ltd.

vs.

Competition Commission of India

3rd September, 2014 (DEL)

Section 26 of the Competition Act, 2002– Procedure for inquiry under Section 19

At stage of Section 26(7) when an order is passed by CCI during course of investigation by DG, no notice of hearing is required to be given to the appellant-enterprise against whom information was given; further appellant-enterprise is not required to be heard by the CCI before passing the order; such order of CCI not being an order of conducting inquiry after recording satisfaction, is no higher than a prima facie view of contravention having been committed.

The appellant challenged the order of CCI on the ground that the same had been passed without issuing notice to and without hearing the appellant.

The Delhi High Court held as follows:

Section 26 as it stood prior to amendment w.e.f. 20-05-2009, in Sub-Section (5) thereof, provided for giving of an opportunity to the "complainant" to rebut the findings of the DG of there being no contravention. Similarly, Section 26(7) as it stood prior to the said amendment, provided for hearing the complainant before further investigation.

The Statement of Objects and Reasons of the Competition (Amendment) Bill, 2007 given for the amendment does not list any such reason. It thus appears that the reason which prevailed with the legislature to so amend Section 26 was not to provide for notice or hearing to the person/enterprise informed/referred against, before directing further investigation. In the absence of any such reason having been given by the Legislature, we have to interpret the language of the statute as it stands post amendment and on which interpretation, we have concluded that 'parties concerned' would at the stage of investigation not include the person/ enterprise informed/referred against.

Yet another facet which may be noticed is that Section 26(7), besides the expression "further investigation" also uses the expression "further inquiry" either by the DG or by the CCI itself.

The scheme of the Act, the opinion/investigation report of the DG is not binding on the CCI.

The procedure to be followed after the Section 26(1) stage, is as under:-

(I) If the report of the DG referred to in Section 26(3) recommends that there is no contravention, the CCI is to invite objections either from the referring Government/ Statutory Authority if the proceedings under Section 26(1) were commenced on such reference or from the informant if the proceedings under Section 26(1) were commenced on receipt of information and formation of a *prima facie* opinion thereon. [Section 26(5)]

(II) CCI on consideration of the aforesaid objections, may agree with the report of the DG and close the case (see para 24 of *Steel Authority of India Limited*). [Section 26(6)]

(III) However, if the CCI on the basis of the material collected by the DG and the objections, forms an opinion different from that of the DG, the nature of the proceedings changes from 'investigation' to adjudicatory and it is such proceeding which has been labelled by the Supreme Court in Steel Authority of India Limited (supra) as 'inquiry' and of which inquiry notice will have to be issued to the person/enterprise informed/referred against.

(IV) However CCI, if on the basis of the material collected by the DG and after consideration of the objections, is neither able to close the

Advertisement

case nor able to proceed from investigative to the inquiry stage, and is of the opinion that there are lacunae/deficiencies in the report of the DG, may give directions for 'further investigation'. For issuing such directions, no hearing has to be given to the person/enterprise informed/referred against.

(V) A direction, under Section 26(7), of "further investigation", within the meaning of (IV) above, is distinct from "causing further inquiry to be made in the matter or itself proceed with further inquiry....". While at the time of ordering "further investigation", CCI has not formed an opinion of the statute having been contravened, before "causing further inquiry" to be made, formation of opinion (as distinct from *prima facie* opinion under Section 26(1)) by the CCI of the statute having been contravened, is a must. It was so held by the Supreme Court in para 24 of the *Steel Authority of India Limited* by observing that if the CCI is of the opinion that there is contravention of any of the provisions of the Act, it may order further inquiry into the matter.

The order of the CCI does not record any satisfaction having been reached or opinion having been formed by the CCI, of contravention having been committed by the appellant. The same is indicative of the order being merely an order of further investigation in continuation of which investigation the report of 'no contravention' was submitted by the DG, and not being an order of conducting inquiry after recording satisfaction, higher than the *prima facie* view under Section 26(1), of contravention having been committed.

Section 53A(1) though provides for appeal against a direction/decision under Section 26(2) and (6) *i.e.* the decision of the CCI on receipt of reference/information that there is no *prima facie* case and the decision of the CCI on consideration of the report of the DG of no contravention and the objections and suggestions invited thereon, of closure of the case, but not against directions under Section 26(7) for further investigation. For this reason also direction for further investigation under Section 26(7) is not in exercise of adjudicatory but of preliminary/departmental/administrative/inquisitorial functions.

The challenge by the appellant to the order of the CCI on the ground of the same having been passed without giving any opportunity of hearing to the appellant, which is the enterprise informed against, has no merit.

SEBI

LD/63/26

I. P. Holding Asia Singapore (P.) Ltd.
vs.
SEBI
20th August , 2014 (SC)

Regulation 20(8) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 - Offer Price

Ordinarily when there is a gap of 25% between the consideration paid to the outgoing promoters and the non-compete fee, SEBI ought not to conduct any inquiry. However, this cannot be treated an absolute proposition and if it appears ex facie, without any searching questions being asked or any intricate reasoning, that it appears to SEBI that the difference between the offer price and the non-compete fee is less than 25% but that is nevertheless a disguise or a camouflage for reducing the cost of acquisition through a public offer, then SEBI can certainly delve further into the matter.

The appellants entered into two agreements with the Bangur group. In terms of the first agreement, a share purchase agreement, the appellants and the Bangur group agreed that the appellants would acquire the shares of the target company held by the Bangur group by purchasing 2,12,60,008 fully paid up equity shares of ₹10/- each forming 53.46 % of the share capital of the target company. The agreed price per share was ₹523 and the aggregate amount payable to the Bangur group was about ₹1111.9 crores.

The second agreement entered into between the appellants and the Bangur group was a non-compete and business waiver agreement. In terms of this agreement the appellants agreed to pay to the Bangur group an amount of about ₹277.95 crores, inter alia, for refraining from competing with the business of the target company either on their own or through their affiliates for a period of three years, the business of the target company being manufacturing, sale and trading of pulp and paper.

In terms of Regulation 10 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (for short the Takeover Code) the appellants gave an open offer through publication in newspapers on 1st April, 2011 for the acquisition of up to 85,67,521 fully paid up equity shares of the target company from the existing shareholders representing 21.54% of the voting capital. As per the public announcement, the appellants fixed the price of each fully paid up equity share at ₹544.20 (₹523/- + ₹21.20). The public announcement received an overwhelming response.

SEBI informed the appellants through their merchant banker to revise the offer price to the public shareholders from ₹544.20 to ₹674.93. This figure was arrived at by adding to the original offer price of ₹554.20 a sum of ₹130.73 per share. The figure of ₹130.73 per share was arrived at on the basis that the non-compete fee paid to the Bangur group being about ₹277.95 crore would work out to ₹130.73 per share held by the Bangur group. The veiled insinuation was that the non-compete fee of ₹130.73 per share was in fact a part of the negotiated price per share payable by the appellants to the Bangur group. That being so, SEBI required that amount be added to the offer price of ₹544.20 per share to all public shareholders.

SEBI for adding the non-compete fee calculated on a per share basis to the offer price were as follows:-

(1) Of the 20 promoter entities comprising the Bangur group, only 5 of them were eligible to get the non-compete fee.

(2) Of the remaining 15 promoter entities, 2 individuals Yogesh Bangur and Ms. Surbhi Bangur were not eligible to the non-compete fee since they did not have any experience or expertise in the area of operation of the target company and hence they were not capable of offering any competition. They were being given a non-compete fee only because they were shareholders of the target company.

As regards the 13 companies who were promoter entities of the Bangur group, SEBI was of the opinion that none was eligible for getting a non-compete fee since they were not in the business of the target company. Furthermore, according to SEBI these 13 promoter entities did not even have, in their object clause, the business of pulp and paper manufacturing.

(3) The merchant banker was not able to give sufficient justification for the payment of non-compete fee to the 15 promoter entities mentioned above.

(4) Since the exclusivity fee was being paid to the Bangur group and also to the public shareholders, there was no reason why the public shareholders were not given the non-compete fee also.

The Supreme Court of India held as follows:

Regulation 20(8) of the Takeover Regulation provides that any payment made to persons other than the target company in respect of a non-compete agreement in excess of 25% of the offer price arrived at under sub-Regulation (4) or (5) or (6) shall be added to the offer price.

A bare reading of Regulation 20(8) of the Takeover Code makes it quite clear that the jurisdiction of the Tribunal gets triggered only when the non-compete fee is in excess of 25% of the offer price. If the non-compete fee is less than 25% of the offer price (as in the present case), the jurisdiction of SEBI would be exercisable only in an extremely rare case and only if SEBI was in a position to *ex facie* conclude that the transaction involving the takeover of the target company was not *bona fide*.

We say this because it is imperative to give sufficient elbow room to commercial entities for entering into a business transaction. There are a host of considerations that go into business relations and transactions between different entities. This applies, perhaps more equally, to the takeover of a target company by another corporate body. It was observed in *G. L. Sultania vs. Securities and Exchange Board*[6] that "For the acquirer the decision to acquire shares is a commercial decision" and in our opinion, that decision must be respected unless there are good reasons not to do so.

It is for this reason that the Takeover Code as originally framed in 1997 did not contain any provision relating to the payment of non-compete fee. The issue was reconsidered by the Reconvened Committee of Substantial Acquisitions of Shares and Takeovers with Justice Bhagwati as the Chair. On the recommendation of the Reconvened Bhagwati Committee, the Takeover Code was amended in September, 2002 providing, *inter alia*, for a regulatory framework for payment of non-compete fee. That regulatory framework is to be found in clause (8) of Regulation 20 which was introduced in the Takeover Code with effect from 9th September, 2002.

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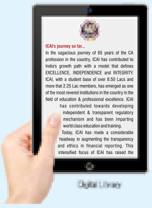

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Moving Towards New Frontiers

While looking into this issue, the Reconvened Bhagwati Committee felt that it is possible that in some cases the offer price per share does not truly reflect the actual consideration paid and this could be used as a ploy for reducing the cost of acquisition through a public offer.

From Bhagwati Committee's report it is quite clear that ordinarily when there is a gap of 25% between the consideration paid to the outgoing promoters and the non-compete fee, SEBI ought not to conduct any inquiry. However, this cannot be treated an absolute proposition and if it appears ex facie, without any searching questions being asked or any intricate reasoning, that it appears to SEBI that the difference between the offer price and the non-compete fee is less than 25% but that is nevertheless a disguise or a camouflage for reducing the cost of acquisition through a public offer, then SEBI can certainly delve further into the matter.

In so far as the present case is concerned, on an *ex facie* reading of the share purchase agreement and the non-compete agreement between the appellants and the promoter entities, no such conclusion is apparent, nor was it canvassed or pointed out. In our opinion therefore, there was no occasion for SEBI to carry out a searching enquiry into the payment of non-compete fee to the Bangur group.

It is nobody's case that the valuation of the shares by the appellants was detrimental to the interests of the shareholders, except to the extent that the shareholders in the public offer were denied the benefit of the non-compete fee paid to the Bangur group. There is no allegation that the valuation of the shares was not in conformity with Regulation 20(5) of the Takeover Code.

The second fundamental error by SEBI was in splitting the non-compete agreement between the appellants and 5 members of the Bangur group on the one hand and 15 members of the Bangur group on the other. If the non-compete agreement was a sham as held by the Tribunal, then the entire agreement would have to be held as a sham and the entire transaction would require to be held as a sham transaction. It cannot be, on a reading of the non-compete agreement as a whole, that a part of it is a sham in respect of some of the contracting parties and it is a genuine agreement in respect of the other contracting parties. There is absolutely no indication given in the non-compete agreement that it is severable or that there was any intention to split it into two or more distinct parts.

The absurdity resulting in splitting-up the non-compete agreement can be better appreciated from a hypothetical example. What if the Tribunal had partially agreed with the appellants and held that the non-compete agreement was valid in respect of say ten or twelve of the promoter entities instead of five? This could happen if the genuineness of the non-compete agreement is examined in relation to each promoter entity, as has been done by SEBI. Does it not, therefore, mean that the non-compete agreement has to be split in twenty ways to decide whether it is genuine or sham in respect of five or ten or twelve of the promoter entities? Can this be said to be a reasonable construction of the non-compete agreement? We are afraid that this surely cannot be the correct way of reading the non-compete agreement and that is why we are of the view that the Tribunal committed a fundamental flaw in holding only a part of the non-compete agreement as a sham. The Tribunal should have either held the entire non-compete agreement as a sham or it ought to have held the entire non-compete agreement as a genuine agreement. The question of a half-way house simply does not arise.

One other minor issue was raised by SEBI, namely, that the non-individual entities did not have the business objectives of manufacturing, sale and trading of pulp and paper in their main object clause. This is only stated to be rejected since the memorandum of association of a corporate entity can always be altered in accordance with the procedure under the Companies Act, 1956.

For completeness, we may mention two events that have occurred since the non-compete agreement was entered into on 29th March, 2011. Firstly, the non-compete period of three years has expired, in a sense rendering this exercise academic. Secondly, the Takeover Code has been repealed with effect from 23rd October, 2011 and substituted by the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The new Takeover Code does away with the concept of a separate non-compete fee, the amount being included in the offer price in terms of Regulation 8 thereof.

On a consideration of the entire facts of the case, that the appeal deserves to be allowed and accordingly it is allowed. The directions and orders passed by SEBI and the Securities Appellate Tribunal are set aside. ■

Disclosure of the Revenue as per AS 9

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

A. Facts of the Case

1. A company (hereinafter referred to as the 'company') is primarily engaged in the business of owning and running hotels and resorts. The company receives bookings for the hotel and resort rooms and related facilities from individuals, corporates and travel agents. The company's primary revenue streams are:
   (a) Revenue from sale of rooms (rent),
   (b) Revenue from sale of food,
   (c) Revenue from other facilities at resort (Departmental stores, health club, laundry, telephone, local tours and sport activities), and
   (d) Revenue from running ayurvedic treatment centre.
2. The company has a tariff card (rate list) for all the room types which is inclusive of all taxes. Ideally, when a customer approaches the company, he is offered the tariff rate.
   (i) However, the company has been using various marketing strategies to attract guests. As a strategy, the company offers discounts to the guest discretionally, based on various factors. The company has observed that when the guest is given discount, he feels happy about it and becomes a loyal customer of the resort. This strategy has given to the company an edge over its competitors and thereby helped the company to increase its turnover year on year.
   (ii) *Revenue recognition policy adopted:* Revenue from sale of rooms, food, facilities and services is recognised as and when the services are rendered.
   (iii) *Billing method adopted :* Currently, the billing method used is as follows:

Particulars	Amount (₹)
Rack rate	9,000/-
Less: discount	2,000/-
Net rate	7,000/-
Add: taxes	1,000/-
Total bill value	**₹8,000/-**

   (iv) *Accounting entry*:

Particulars	Debit (₹)	Credit (₹)
Discount	2,000	
Guest Account	8,000	
Room revenue (rack rate)		9,000
Taxes payable		1,000
	10,000	**10,000**

3. The querist has stated that as per Accounting Standard (AS) 9, 'Revenue Recognition,' notified under the Companies (Accounting Standards) Rules, 2006, revenue has been defined as follows:

   "4.1 <u>Revenue</u> is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of an enterprise from the sale of goods, from the rendering of services, and from the use by others of enterprise resources yielding interest, royalties and dividends. Revenue is measured by the charges made to customers or clients for goods supplied and services rendered to them and by the charges and rewards arising from the use of resources by them. In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables or other consideration."

   Further, the disclosure of sales transaction is mentioned in the Explanation to paragraph 10 of AS 9 as follows:

   "Explanation:

   The amount of revenue from sales transactions (turnover) should be disclosed in the following manner on the face of the statement of profit and loss:

   Turnover (Gross) *XX*
   <u>Less:</u> Excise Duty *XX*
   Turnover (Net) *XX*
   …"

4. The querist has further stated that the company is currently recognising revenue at rack rate and is treating discount as an expense. The company intends to disclose the revenue in the following manner on the face of the statement of profit and loss:

XYZ Limited
Statement of Profit and Loss for the year ended 31st March, 2013

Particulars	Note No.	For the year ended 31st March, 2013	For the year ended 31st March, 2012
I. Gross Revenue from operations		2,00,000	1,75,000
Less : Duties & taxes		20,000	17,500
Revenue from operations net of taxes	21	1,80,000	1,57,500
Less : Discounts		30,000	23,000
Net Revenue from operations		**1,50,000**	**1,34,500**
II. Other Income	**22**	**17,500**	**10,250**
III. Total Revenue (I +II)		**1,67,500**	**1,44,750**

B. Query

5. The querist has requested the Expert Advisory Committee to clarify whether the above disclosure of the revenue would be in compliance with the disclosure required in AS 9.

C. Points considered by the Committee

6. The Committee notes that the basic issue raised by the querist is the accounting treatment of the discount(s) allowed by the company and its presentation in the statement of profit and loss as per AS 9. Accordingly, the Committee has considered this issue only and has not considered any other issue that may arise from the Facts of the Case, such as, timing of recognition of discount and related revenue, presentation of duties and taxes in the financial statements, *etc*.

7. The Committee notes that in order to determine the accounting treatment of the discount(s) allowed and presentation requirements, the nature of discount being allowed in the extant case needs to be determined. For this purpose, the Committee notes the following definitions given in the Guidance Note on Terms Used in Financial Statements, issued by the Institute of Chartered Accountants of India (ICAI):

"3.13 Cash Discount

A reduction granted by a supplier from the invoiced price in consideration of immediate payment or payment within a stipulated period."

"16.04 Trade Discount

A reduction granted by a supplier from the list price of goods or services on business considerations other than for prompt payment."

8. In accordance with the above definitions, any discount allowed on invoice price for prompt payment or for payment within stipulated time is cash discount and any other discount allowed on invoice price is trade discount. The Committee notes that in the extant case, the basic objective of providing discount is to use it as a marketing strategy to attract guests so as to give the company an edge over its competitors and thereby helping the company to increase its turnover year on year. The Committee is of the view that as the discount is not allowed for prompt payment, rather it is allowed for increasing its turnover, therefore, the nature of the discount being allowed by the company is that of a trade discount.

9. With regard to accounting and presentation of trade discount, the Committee notes that Appendix A illustrating the application of AS 9, notified under the Companies (Accounting Standards) Rules, 2006, *inter alia*, provides as follows:

> *"9. Trade discounts and volume rebates*
> Trade discounts and volume rebates received are not encompassed within the definition of revenue, since they represent a reduction of cost. Trade discounts and volume rebates given should be deducted in determining revenue."

The Committee notes from the above that trade discount is not encompassed within the definition of revenue since it represents a reduction of cost and accordingly, the revenue is determined and recognised after deducting the trade discount. Further, the Committee also notes the definition of 'revenue' as reproduced in paragraph 3 above. From this, the Committee is of the view that the revenue is the charge made to customers which in case of trade discount is the amount net of discount. Accordingly, the Committee is of the view that the proposed presentation of the company to present the revenue on gross basis and then to present the trade discount as deduction from the revenue is not correct and is not in accordance with the requirements of AS 9.

D. Opinion

10. On the basis of the above, the Committee is of the opinion that the proposed presentation of the company to present the revenue on gross basis and then to present the trade discount as deduction from the revenue is not correct and is not in accordance with the requirements of AS 9. The amount of the revenue to be presented in the Statement of Profit and Loss should be net of the discount, as discussed in paragraph 9 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 June 6, 2014. The Opinion must, therefore, be read in the light of any amendments and/or other developments subsequent to the issuance of Opinion by the Committee.
3	The Compendium of Opinions containing the Opinions of Expert Advisory Committee has been published in thirty two volumes. A CD of Compendium of Opinions containing thirty two volumes has also been released by the Committee. These are available for sale at the Institute's office at New Delhi and its regional council offices at Mumbai, Chennai, Kolkata and Kanpur.
4	Recent opinions of the Committee are available on the website of the Institute under the head 'Resources'.
5	Opinions can be obtained from EAC as per its Advisory Service Rules which are available on the website of the ICAI, under the head 'Resources'. For further information, write to eac@icai.in.

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2.	Validity period of Life Cover	Three years	
3.	Type of Cover	24 hours Comprehensive Global risk cover for the period of insurance from date of commencement which also includes death due to accident.	
4.	Sum Assured	Rs. 10 Lacs	
5.	Mode of Premium	Single Premium payable for Three years.	
6.	Single premium to be paid in case of Members for the sum assured of Rs. 10 lacs for a term of 3 years.	**Age [Completed Years]**	**Total Amount Rs.**
		18-30	4390
		31-35	4700
		36-40	6240
		41-45	7890
		46-50	11810
		51-55	19880
		56-60	29160
7.	Single premium to be paid in case of spouse for the sum assured of Rs. 5 lacs for a term of 3 years.	18-30	2195
		31-35	2350
		36-40	3120
		41-45	3945
		46-50	5905
		51-55	9940
		56-60	14580

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3. The period of 3 years of coverage starts from the date of insurance coverage given to member.
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7. Any clarification with regard to the scheme may be had from LIC;
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   P&GS Department, Delhi Divisional Office – I, 6th Floor, Jeevan Prakash"
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Big Data – The Next Big Thing: An insight

New ways of capturing data and analytics of the data is being constantly evolving and has now become a field itself. Many terms have been coined for these series of activities. Some of them are Data Warehousing, data analytics and presently being termed as Big Data. The Big Data revolution began immediately after the advent of "www" also known as the Word Wide Web. Ever since the e-platform was built and stabilised, techniques of using the Internet for Business was developed, and thus, a new market-place was born. A CA can diversify his services and provide management consultancy services in providing Big Data Solutions to the client. A CA being exposed to a variety of business, data, knowledge, etc. would be considered the right person to provide solution for a company to implement Big Data Platform. CAs now have the capacity for rendering a new breed of services which would lead to immense growth and development in the society.

CA. Anand Prakash Jangid

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

History

Civilisation has been built on the foundation of preservation of records and dependence on these records. Hence the importance of identification, analysis and storage of records and data was recognised by the dwellers of the past. Ever since, 'Data' has been the next most important resource as

Data includes any piece and bit of information which can be recorded and stored to be put in use in the future.

'Time' being the most important one to mankind. Data has been given high relevance from then on.

Data includes any piece and bit of information which can be recorded and stored to be put in use in the future. Civilisation has realised that efficient utilisation of data would lead to effective growth. Over the years, man has continuously put his efforts to make the best use of data. New ways of capturing data and analytics of the data is being constantly evolving and has now become a field itself. Many terms have been coined for these series of activities. Some of them are Data Warehousing, data analytics and presently being termed as Big Data.

Big Data Analytics

The industry now has a buzzword, "big data," for how we're going to do something with the huge amount of information piling up. "Big data" is replacing "business intelligence," which subsumed "reporting," which put a nicer gloss on "spreadsheets," which beat out the old-fashioned "printouts."

Big Data is a scientific field of information analysis wherein the following processes are part. They are –

- Data Identification
- Data Source Identification
- Data Storage
- Data Categorisation
- Data Analytics
- Data Reporting
- Life of Data

Big Data Analytics is now a huge field of Business itself. Big data is a more complicated world because the scale is much larger. Sophisticated tools have been developed to compliment Big Data Analytics. Open Source tools such as Pentaho, Hadoop, Tableau, Splunk, *etc.* are powerful tools used for Big Data. Companies have been incorporated with the purpose of providing Big Data Solutions.

Who uses Big Data?

The Big Data revolution began immediately after the advent of "www" also known as the Word Wide Web. Ever since the e-platform was built and stabilised, techniques of using the internet for business was developed, and thus, a new market-place was born. Companies who use this market for their business operations use big data to achieve the following objectives –

- Demand and Supply Analysis
- Improvisation of the Product Life cycle
- Better rendering of services
- Market Research
- Customer Behaviour
- Decision Making
- Market Diversification
- Market Penetration
- Product Penetration

There are many classic examples of companies who make data to achieve the growth that they currently have. Some examples are as follows –

- Flipkart, e-bay, Amazon (e-commerce giants) use big data to understand the needs of the consumer and hence, always publishes those products on their respective websites for sale at a price that the customer cannot refuse.
- Google, Microsoft, Yahoo *etc.* use big data to understand the browsing patterns of the customer and make sure to target the correct advertisements that would be needed to the user. Even their search engines provide those results, against the search phrase inputted by the user, which are of high relevance and would solve any problem faced by the buyer.
- Facebook, Google Plus and other social networking sites use big data for the purpose of Consumer behaviour and give those advertisements, communities, pages, *etc.* that would favour the user.
- Telecom companies use Big Data to understand the Calling, SMS, Internet and Roaming Patterns of their customers, in order to provide better call tariffs and plans, so that they can capture the entire market.

From the above, one can conclude that, companies use big data so that they are able to capture the customer and more importantly, retain the customer.

Drawbacks of Big Data

Big data in the present era makes use of a lot of data for analytics and storage. This means that

Big Data Analytics is now a huge field of Business itself. Big data is a more complicated world because the scale is much larger.

Companies use big data so that they are able to capture the customer and more importantly, retain the customer.

the Confidentiality and Privacy of data are now questionable. Privacy concerns have been developing as personally identifiable information that is used for analytics. Big Data no doubt is a powerful tool, but if misused, then the effects can prove hazardous.

Numerous regulations have been passed by the legislation in various countries to protect the integrity and availability of data and thus the confidentiality and privacy of the data is secured. These entire acts of restrictions have given rise to a whole new concept that is called "Data Localisation".

Data Localisation, in simple words, refers to applying of restrictions on the travel and storage of Data to the limit of a geographical boundary.

Analytics from big data may not be always right due to the constantly changing macro and micro factors of environment and change of human behaviour.

Misuse of Big Data Analytics would lead to other drawbacks such as –

- Wrong sale of product and services.
- Advertisement Abuse.
- Sale of Personally identifiably information.
- Financial Losses.

Big Data Analytics as a Fresh area of Consultancy

It is clear that companies harness the power of big data analytics for their growth and Market Presence. It is however not clear to those companies as to "Which is the best way to make use of Data". There was a proliferation of the so-called unstructured data generated by all the digital interactions, from email to online shopping, text messages to tweets, Facebook updates to YouTube videos. According to computer giant IBM, 2.5 Exabyte's - that's 2.5 billion gigabytes (GB) - of data was generated every day in 2012.

Data is only as good as the intelligence we can glean from it, and that entails effective data analytics and a whole lot of computing power to cope with the exponential increase in volume.

Big Data and business analytics are two of the most exciting areas in business and IT these days -- but for most enterprises, they are still developmental. Although the opportunities are boundless, the road to an effective Big Data operation is fraught with challenges. Here are some of the obstacles that companies jave encountered –

- Budget
- Data clean-up
- Data Retention
- Business and IT Alignment
- Developing new talent

A Chartered Accountant plays a vital role in assisting businesses to improve the use of their resources, increase their efficiency and achieve their objectives. As a management consultant the CA can also identify, evaluate and recommend ways to increase revenue and reduce operating costs, analyse operations and suggest changes in structure and individual responsibilities, conduct special studies, prepare recommendations, plans and programs, and provide advice and technical assistance in their implementation. Chartered Accountants, by application of their technical knowledge and business experience have been able to cater to the client's changing needs.

With reference to Big Data Analytics, a CA can render the following Management Consultancy Services –

- Big Data Pre Implementation Preparation
- Big Data Analytics Framework Design
- Big Data Design of Dashboards, Reports and Visuals
- Big Data Assurance

A. Big Data Pre Implementation Preparation

A CA, based on his knowledge, skills and judgement, can first help the company to facilitate a smooth big data implementation. While accomplishing this goal seems realistic given the progression of technology and the commoditisation of infrastructure, there are common pitfalls that companies, in particular, need to avoid when planning and implementing a big data program. By avoiding these drawbacks, outcomes can enhance an organisation's analytical insights and decision support processes. –

- Developing a business case
- Maximising data relevance
- Correct Estimation data quality
- Ensuring data granularity is not overlooked
- Contextualising data in the correct manner

Big Data, no doubt is a powerful tool, but if misused, then the effects can prove hazardous.

Analytics from big data may not be always right due to the constantly changing macro and micro factors of environment and change of human behaviour.

- Grasping Data Complexity
- Facilitating data preparation
- Creating organisational maturity at the correct stage
- Design of data governance methodology
- Consideration of Privacy Laws and Data Localisation Laws
- Leveraging on cloud service vendors for implementation of Big Data platform.

B. Big Data Analytics Framework Design

Preparation for the implementation has to be given the most importance and due care is to be taken for smooth implementation of the Big Data platform. It is the very foundation and depending on the strength that is present in the foundation, further expansion of the platform can be performed smoothly.

The next step is the design of the Analytics Framework. A CA can add maximum value addition as designing the analytics model is the very solution for the Big Data Platform. This model has the following components –

- Data Identification
- Data Categorisation
- Linking of Data
- Analytics on the data – It includes performing calculations, ratio analysis, trend analysis, linking of data *etc.* A CA can leverage the analytical methods that have been given under Standard of Audit 520 which is about Analytical Review Procedures.
- Design of a scoring system and a decision making criteria
- Design of Reports

All of the above constitute the model/framework which would be then tested with data. The data may or may not be live data. However, a CA can facilitate the test.

Upon successful completion of the tests, the framework would have to be implemented in the production/live Big Data Platform. In simple words, the Big Data Analytics tool would be configured to identify the data and capture it from the source, link and categorise the data, perform analytics on the data as per the parameters that have been set, assign scores and ratings on the processed data and generate a report with a conclusion that would facilitate the management to come to a decision regarding a problem.

C. Big Data Design of Reports and Dashboards

As Big Data is an implementation of significant size, it would involve many users using the solution. The users may not be in the same position of the organisation chart. Hence, it is crucial that the employee, in his relevant position of the organisation chart, to have adequate access to data which is sufficient, limited and in a logical presentation manner. A CA can facilitate in design of different types of Reports, Dashboards and Visuals that can be used by the appropriate personnel.

i. **Reports**

A Report is a type of visual which would consist of data which is processed, visuals and a conclusion to which a decision can be made by the user of the report. The structure of the report is usually custom made and this design is loaded to the tool.

It is important to note that only those information which is material to the position is displayed in the report.

ii. **Dashboards**

A Dashboard is a real-time visual display of various data, reports in the home-screen of the user's account in the Big Data Platform. A Dashboard would facilitate the user for smooth navigation among the available Big Data inbuilt tools, reports, open items, pending decisions *etc.* A Dashboard would contain visuals mainly of charts, status updates, links, list of reports to be generated, *etc.*

D. Big Data Assurance

This is completely a new field under Big Data Analytics itself. A CA will be able to provide assurance to the client regarding the following scope of activities –

- Privacy Laws and Data Localisation Laws are complied with.
- Sufficient preventive and detective controls are in place and are continuously monitored against the identified risks.

Big Data and business analytics are two of the most exciting areas in business and IT these days -- but for most enterprises, they are still developmental.

- Ensuring that there is no data leakage from the platform.
- Reviewing the Big Data Analytics platform is loaded with the framework that is actually providing the value that is expected by the company.
- Reviewing the storage controls that is implemented keeping in mind of the various Privacy and Data Localisation laws.
- Reviewing that sufficient and adequate security measures have been deployed to protect the personally identifiable information of others.
- Ensuring that the data which is being captured by the Big Data Platform is legal and is from legal sources.

Conclusion

Diversification as to how the decision making strategies are being influenced, is being witnessed. Reliance on Big Data by companies for decision making is gaining momentum. Hence it is very important to influence all to think analytically, think strategically in a total context, deliver insight through analytics, monitor organisational performance in an analytical context, develop innovative business models, and use analytics to transform finance. A CA can diversify his services and provide management consultancy services in providing Big Data Solutions to the client. A CA being exposed to variety of business, data, knowledge, *etc.* would be considered the right person to provide solution for a company to implement Big Data Platform. Creativity is the main factor for arriving at an able design of the framework. Hence, it is necessary to think 'out of the box'. Chartered Accountants now have the capacity for rendering a new breed of services which would lead to immense growth and development in the society. ■

A CA based on his knowledge, skills and judgement can first help the company to facilitate a smooth big data implementation.

E-Commerce: Dynamic Challenges of Constant Change

E-commerce is the most common buzzword today. We are living in an 'e-age' where the prefix 'e-' impacts us from everywhere and in everything. A few examples of this impact on enterprises and individuals in this regard could be e-governance, e-compliances, e-filing, e-banking, e-payments, e-books, *and now* e-commerce. *With* e-pervasiveness *expected to impact the commerce in a big way, e-advisory services and e-assurance are not very far away. E-commerce refers to the processes by which enterprises conduct business electronically with their customers, suppliers and other external business partners, using the internet as an enabling technology. This includes business-to-business (B2B) and business-to-consumer (B2C)* e-commerce *models. Chartered accountants with their core competency in information systems, compliances and assurance, and in their role as advisors and compliance and assurance experts, have a critical role to play in assessing the risk mitigation and evaluating whether the required business and regulatory controls are implemented to meet business objectives. In this article, the author addresses the concept and practice of e-commerce and tries to identify the key issues, challenges and opportunities for chartered accountants in e-enabling their clients to transition to the expanding world of e-commerce. Read on…*

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Introduction

Recently, two prominent news items were on the front-page headlines of the Indian financial newspapers and media websites. The first was an announcement by *Flipkart* on 29th July that it has raised fresh capital of $1 billion in one of the largest

E-commerce is the process of doing business electronically and involves the automation of a variety of business-to-business and business-to-consumer transactions through reliable and secure connections. E-commerce growth is propelled by the use of internet. E-commerce is not a single technology, but rather a sophisticated combination of technologies and consumer-based services integrated to form a new paradigm in business transaction processing.

funding rounds, and the second was by *Amazon* on 30th July that it will invest another $2 billion in India. These are large numbers for e-commerce operations in India. According to Amazon that launched India operations in June 2013, with the current scale and growth rates, India is on track to become the fastest country ever to reach $1 billion in gross sales. E-commerce is rapidly gaining momentum globally with Asian economies like China, India and Indonesia being the fastest growing e-commerce markets.

As per the www.internetworldstats.com, the top 20 countries on the internet by number of users as on 30th June, 2012, India ranks third after China and U.S. The e-commerce industry is mainly dominated by the travel segment which accounts for more than 70% of the transactions of industry and e-retail's share in e-commerce stands at approximately 12.5%. India has an internet user base of about 250.2 million, as per a June 2014 estimate, and this is expected to grow in a big way with the expected internet connectivity of all villages across India and the launch of the 4G internet. E-commerce in India is thriving, primarily due to the booming online retail industry. According to an ASSOCHAM survey, the Indian e-commerce industry has grown to $16 billion in 2013, showing a staggering growth rate of 88% from the $8.5 billion in the previous year.

One of the unique e-commerce delivery models in India is the *cash on delivery* which is the most preferred method of payment. India has a vibrant cash economy as a result of which 80% of Indian e-commerce tends to be *cash on delivery*. This poses its own unique risks and challenges. However, in the long run, this will gradually shift to online payment mechanism. The amalgamation of providers of internet, telecommunications, cable and entertainment services, along with new technologies, has added to the richness and variety of the e-commerce offerings. However, the e-world is fraught with new risks, issues and challenges and enterprises which are not able to develop appropriate web-based strategies to align with the future of commerce of the e-world will be overtaken by new and mobile enterprises which are able to surge ahead on this technology wave. Hence, the question is no longer *when* the impact will be but *how* the impact will be and what is to be done to survive and thrive in the competitive e-world. CAs with a good understanding of how e-commerce works, the related risks, benefits and the appropriate security and controls can help enterprises make a safe, secure and successful transition to e-commerce world.

What is e-commerce?

E-commerce is the process of doing business electronically and involves the automation of a variety of business-to-business and business-to-consumer transactions through reliable and secure connections. E-commerce growth is propelled by the use of internet. E-commerce is not a single technology, but rather a sophisticated combination of technologies and consumer-based services integrated to form a new paradigm in business transaction processing. E-commerce merges the standards, simplicity and connectivity of internet technologies with traditional IT and business processes to create new business value and relationships for an enterprises, its customers and its industry. E-commerce encompasses all stages of commerce right from raw material procurement to delivery of goods and services to businesses and customers.

As per the AICPA, e-commerce involves individuals as well as enterprises engaging in a variety of electronic business transactions, without paper documents, using computer and telecommunication networks. These networks can be either private or public, or a combination of the two. The definition of e-commerce has now broadened to encompass business conducted over the internet (specifically the web) and it includes entities not previously known to each other. This is due to the web's surge in popularity and the acceptance of the internet as a viable transport mechanism for business information. The use of a public-network-based infrastructure such as the easily available broadband internet reduces costs and provides a *level playing field* for even small and medium businesses. This allows enterprises of all sizes to extend their reach to a broader and expanded customer base transcending the limitations of space and time.

The e-commerce delivery channel has moved a long way from its infancy and has now become a very relevant part of an enterprise's business. The e-commerce business processes extend the reach of products and services from brick and mortar locations to the physical doorstep of prospective customers. Further, the online information system of successful e-commerce implementation provides enterprises with business intelligence about the customers search habits and browsing preferences and thus serves as an invaluable promotional vehicle to drive additional sales through segmented marketing and a personalised experience to each buyer. However, recent failures of massive marketing campaigns show the risks and threats of this business model. This has highlighted the need to not only provide security of information and transactions but also ensure adequate resilience to meet at time the unexpected surge in customer demands.

Why enterprises need to consider e-commerce?

The edifice of a good e-commerce business model is a comprehensive and robust information system coupled with the appropriate logistics and delivery mechanism. The rapid growth of e-commerce in India is being driven by greater customer choice and improved convenience. Having a robust business model coupled with first class of service is critical to success. The internet revolution is making its impact in India with more and more users realising its importance and willing to use it. There are more than 80 million internet users today and this has been growing at a rapid pace. India is among the fastest growing online market and has registered a 41% growth in the last twelve months. This growth has been possible with the Internet usage now reaching almost 10% penetration level. This shows the immense growth potential in the near future as internet reaches more users. Further, mobile internet will drive the growth of e-commerce through mobile commerce, e-banking and e-payments. Despite the challenges and risks involved, e-commerce offers immense benefits to individuals, enterprises, consumers, and society as a whole. Some of the key benefits are:

- Reduced costs to buyers from increased competition in procurement as more suppliers are able to compete in an electronically open marketplace.
- Reduced errors, time, and overhead costs in information processing by eliminating requirements for reentering data.
- Reduced costs to suppliers by electronically accessing online databases of bid opportunities, online abilities to submit bids, and online review of rewards.
- Reduced time to complete business transactions, from delivery to payment.
- Reduced overhead costs through uniformity, automation, and large-scale integration of management processes.
- Reduced advertising costs, delivery cost, notably for goods that can also be delivered electronically and reduced design and manufacturing cost.
- Creation of new markets as it is easy and economical to reach potential customers.
- Easier entry into new markets, especially geographically remote markets, for enterprises of all sizes and locations.
- Faster time to market as business processes are linked, enabling seamless processing and eliminating time delays.
- Equal access to markets to even small and medium enterprises and access to new markets.
- Customer involvement in product and service innovation.

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How to migrate to e-commerce?

There is no doubt that there are immense benefits of enterprise-wide implementation of e-commerce but there are inherent risks which need to be considered and mitigated with appropriate controls. Enterprises have to be cautious not to jump blindly into the e-commerce bandwagon, but instead first develop a comprehensive e-commerce strategy and then organise a corporate-wide team to implement that strategy. Key stakeholders and users throughout the enterprise should be represented on

Chartered accountants have to assess the business effects of e-commerce and assess its impacts on their practices, techniques, skill and knowledge requirements, and the services they offer to enterprises and their stakeholders.

this implementation team. Team members should include representatives from the following corporate departments such as accounting/finance, internal audit, data security, telecommunications, end-user, system analysis and legal. It is advisable to include key trading partners, internal/external auditors, and representatives from other institutions such as banks, trading houses and other third-party services. This team will analyse the risks and benefits and provide valuable insight into the design and deployment of the enterprise's e-commerce initiative. The e-commerce strategy has to be integrated into the very fabric of the enterprise in a cost efficient and timely fashion. Further, appropriate policies and procedures are to be designed and implemented to ensurecomplete and correct processing with overall security and control of the entire e-commerce environment.

What is the impact of e-commerce on chartered accountants?

Chartered accountants have to assess the business effects of e-commerce and assess its impacts on their practices, techniques, skill and knowledge requirements, and the services they offer to enterprises and their stakeholders. The traditional accounting and auditing business models addressed internal controls and control structures whereas the e-commerce business model has to go beyond and focus on integrated information systems and provide assurance on the network reliability and other business to business communications. The key issues and challenges of e-commerce implementation are summarised:

1. Issues relating to accounting and compliances

Accounting for e-commerce will also require enterprises to review current policies and procedures. Accounting concerns such as recording multiple tax payments, which might not be an issue in a paper-based trading environment, could quickly become a nightmare for the unprepared enterprise. These and many additional questions, which affect accounting for e-commerce, will need to be addressed before seamless e-commerce on an enterprise basis is fully and properly implemented. The key to developing a viable e-commerce strategy is for senior management to formulate a comprehensive plan which considers all aspects.

2. Issues relating to security

Enterprises planning a successful foray into the e-commerce arena will have to re-examine the traditional management philosophy of keeping control information private. Policies affecting the release of control procedures will need modification, to make such information available to consumers. Effective privacy policies, openly communicated to consumers, will be the hallmark of a successful e-commerce enterprise. How an enterprise protects consumer information and how it uses that information is critical in establishing the consumer confidence, loyalty, and repeat business. Enterprises have to develop explicit privacy plan especially focused toward the e-customer and this should be posted on the enterprise's website. Use of additional trust mechanisms (or marks) such as WebTrust (developed by AICPA) will further communicate to the consumer a sense that confidential information disclosed will remain confidential and secure. The IT Act, 2000 (amended in 2008) mandates implementation of data privacy measures to protect sensitive personal data and information provided by customers to the enterprises.

3. Issues relating to management

There is no doubt that e-commerce is changing the way business is conducted. Hence, changes to the business process have to be considered not only from an IT perspective but from a business perspective with involvement of senior management in formulating the policies. Senior management has to develop short and long-term business strategies which consider the impact of e-commerce on the entire enterprise, not just for a single business unit. They will have to ask questions such as, how the enterprise will be conducting business three years from now, what changes business processes and procedures will require in philosophy in order to fully embrace business processing in a virtual marketplace. The processes required to market directly to the end consumer, to collect payments and to deliver goods, and services electronically all need to be redefined and reengineered. E-payment methods for e-commerce will vary greatly from their paper-based transactions. Emerging e-commerce concepts such as digital cash, electronic wallets, and micro-payments, should be addressed as part of an evolving e-commerce strategic plan. The e-commerce strategic plan has to be dynamic, open-ended and continually subject to review and revision with continuous input from all key stakeholders.

4. Issues relating to business

The way products and service are designed and delivered undergo a radical change in the e-commerce world. Technology becomes a key enabler for provision of these products and services through automated processes. Hence, business processes might be better re-engineered if designed to support both electronic markets as well as traditional retail channels. Retailers with both traditional and online presence would have to be accept cannibalising sales from their mainstay operations as ultimately, the objective is to maximise sales and revenue from all possible channels. The enterprises which occupy an intermediary position in the distribution chain would have to examine how the e-commerce world is creating new threats or opportunities for them, and which type of new competitors will be attempting to reach their existing customers.

Role of chartered accountants in e-commerce

For commerce, which takes place in a physical world, CAs have played an important role, as they are involved in all aspects of commerce such as accounting, auditing, compliance, consulting, *etc.* As commerce, which earlier based on the brick and mortar model is moving from the physical market place into digital virtual space, the need for services in the traditional areas of accounting, auditing, compliance and consulting will increase on account of the increasing risk and potential. However, as e-commerce is extensively dependent on IT and is internet-based, there is a need to analyse the challenges and opportunities it offers. CAs can play an effective role by understanding and embracing technology. It is important to know the fundamentals of technologies such as operating systems, networking, database, encryption, PKIs, and role of certification authorities. It is not just enterprises but even professionals who are expected to be dynamic so as to provide real-time response and be ready for real-time change. As expectations change, auditors' roles and relationship will also have to move from attestation and taxation to consulting and advisory roles by honing up IT skills so as to remain relevant in the world of e-commerce.

CAs can play an effective role by understanding and embracing technology. It is important to know the fundamentals of technologies such as operating systems, networking, database, encryption, PKIs, and role of certification authorities. It is not just enterprises but even professionals who are expected to be dynamic so as to provide real-time response and be ready for real-time change.

The historical accounting and auditing business models addressed internal controls and control structures. As businesses expand the breadth of their electronic transactions and the diversity of the users of electronic services, there is a corresponding need to provide real-time assurances of the authenticity and reliability of trading partners and the information that both comprises and supports e-commerce. As e-commerce expands and becomes more all-pervasive as recognised electronic marketplace, CAs in their advisory and assurance roles would be called upon to provide a range of services covering all areas of e-commerce implementation from conception to compliances. CAs can assist their enterprises by participating in the evaluation of the enterprise's web activities both pre- and post-implementation. CAs can also participate in identifying potential risks in all aspects of e-commerce operations. If e-commerce is a reality for many businesses, then the e-audit is following closely behind.

Successfully managing the transition to e-commerce demands overcoming a number of significant issues, including not only making the technology work, but also reengineering existing business models and business processes. CAs should understand the client's business philosophy, strategy and business processes. Central to this is a detailed understanding of the impact of technology, the client's underlying information systems and relevant controls. CAs can assist their clients to successfully compete in the virtual marketplace dominated by e-commerce by reengineering their service offering and enhancing their service delivery mechanism using technology. ■

Audit of Automated Systems & Compliance– The Way Forward

The Companies Act, 2013 has two very important Sections, 134 & 143, which are on similar lines to Section 302 & 404 of the Sarbanes Oxley Act. The Governance, Risk & Compliance (GRC) space has generated worldwide interest after the enactment of specific corporate laws by the regulators. Many organisations focus mainly on the "C" part, to ensure that they comply with the laws and regulations of the land. However, when laws specifically prescribe that a governance system must exist, risks identified and controls are tested for its adequacy and effectiveness, the consequences can be far reaching. In order for the Directors or Auditors to pass an opinion on the adequacy and effectiveness of controls it is imperative that controls are monitored on a continuous basis. To achieve this, risks and key risk indicators must be identified and the relevant controls that are required to mitigate the risks must be built into the business processes. Any unwanted or suspicious event must be automatically captured and highlighted to the senior management for taking corrective or preventive action. Read on…

Current Scenario

Section 134 of the Companies Act, 2013 on "Financial statement, Board's report, *etc.*" states *inter alia*:

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

(c) *the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;*

(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

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detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information

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

Section 143 of the Companies Act, 2013 on "Powers and duties of auditors and auditing standards" states *inter alia*:

(3) The auditor's report shall also state:

(i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls.

When we talk in terms of "adequacy and effectiveness of controls" it refers to the adequacy of the control design and whether the control has been working effectively during the relevant financial year. The impact of this statement is that it involves continuous control monitoring during the year and not a review "as at" a particular date.

Challenges

In automated systems, this requires a good understating of the software application supporting the business and the company's information technology environment, in order to pass an opinion on the adequacy and effectiveness of controls.

It is a well-known fact that the IT world thrives on jargon. This has led to many non-IT personnel, getting confused, and avoiding the issue of IT threats and vulnerabilities and addressing the associated exposures and risks. Organisations spend substantial amounts to capture data. Raw data is useless unless it is converted into some meaningful information for decision-making. If this information is not correct or accurate it adds to our problems. The irony of this scenario is that the risks associated with such data processing activities have not been given the importance it deserves.

If we address the following questions to the environment we work in, the answers could be revealing:

- Are the financial statements correct?
- Are the systems that generate these statements secured?
- Data, a company's most valuable asset, is it protected?
- Is the information being obtained in the most effective and efficient manner?
- Is the information reliable and available when needed?
- Are laws and regulations being complied with?
- Is the information accurate?
- Is the company management aware of the potential exposures and risks?

As the saying goes "ignorance is bliss," but in Information Technology driven organisations such ignorance can be costly.

In the olden days of manual accounting, any changes made to the books of accounts was visible. Computer data is not visible and reports generated always look neat and correct. In very simple terms, data is processed by computers using programmes written by human beings - who do make mistakes! This can have grave consequences, since computers have the uncanny ability to keep doing the same mistake again and again until detected and corrective action taken. CAs who normally play a very important role in any organisation should identify the risks of all business processes, define the security policies and procedures and ensure adequate controls are in place to mitigate the risks. There is a school of thought that feels that controls can be unproductive and there is no real value added to the business. This is not true. Controls ensure that unwanted events are prevented, detected and corrected.

Opportunities

Major corporations worldwide have used Information Technology (IT) to stay ahead in business. The competitive edge in terms of fast information flow, to support the business, can be an important factor between success and failure.

The efficiency of an enterprise depends on the quick flow of information across the complete supply chain, *i.e.*, from the customer to manufacturers to the suppliers. With the globalisation of the market place coupled with competition and increasing customer expectations organisations have to address certain fundamental areas like lowering costs in the supply chain, reducing throughput times, optimising stock levels, improving product quality, improving service to the customer, efficiently handling cross border data flow *etc*. Today's IT systems achieve all this.

The core to any organisation's success is to have an efficient and effective financial information system to support decision-making and monitoring. As CAs we have to be involved, in order to ensure that the organisation's information architecture has been designed properly to meet the business objectives. The risks, controls and security of such systems should be clearly understood if we have to pass an objective opinion about the adequacy of control in an IT environment.

The gruelling training of the CA course has created CAs with an excellent understanding of business processes and its impact on the financial statements. From the time of articleship, tracing source documents to financial statements is a daily phenomenon. Understanding data flow within or across an organisation is part of the DNA of any CA. This is a very powerful skill set. The world today is looking for Business Process Experts who can use their domain knowledge to make business processes efficient, effective and risk free. The most logical professionals to fill this gap are Chartered Accountants.

Organisations would prefer to talk to consultants that see the 'big picture.' Today, many organisations work in two 'silos': domain, and technology! Communicating across silos is not easy since CAs may talk "debits & credits" while technologists in terms of "Java, .Net, JBoss, Linux, ABAP," *etc.*! There has to be a cross over for things to happen efficiently andeffectively. If CAs go that extra mile in understanding technology the returns to the organisation and the individual can increase manifold!

Audit of Automated Systems–The Way Forward

CA's should leverage on the fact that all information in today's corporate world is digitised. This makes it easier for auditors to use machines to do the "number crunching" and analytics and use the results generated to pass an opinion.

Organisations today capture hoards of raw data. Data must be converted to meaningful information for the management to make the right decisions. Interpretation of data and its usefulness can only be effectively done by persons with domain knowledge. CAs can contribute extensively in this area.

A number of organisations today have disparate systems co-existing and a number of tools have evolved to make these systems talk to each other. So in reality, we have an abundance of base software to do business, analytics and integration.

Organisations have spent millions to implement high-end ERP systems and Business Intelligence tools. However, the irony is that as the information moves higher up the organisation structure it starts moving into Excel spreadsheets for consolidation and decision-making. Does this make sense? I call this the 'Excel Syndrome!' Data is taken from these high-end systems and entered in an excel sheet for MIS reporting. Why? With all the tools that we have today why isn't information consolidation happening the way it should? How is data integrity maintained? It is absolutely important that the decision-makers get the information from the same systems where the data is captured and all users should access the same data source. These are fundamental questions that CAs should ask.

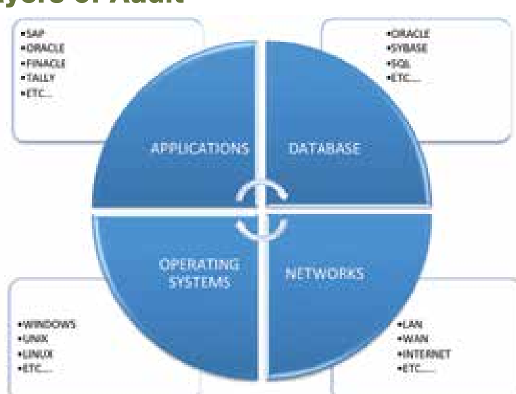
Is it because:

- the base systems are not aggregating the information in the manner in which the decision-makers want to see it?
- the consultants have not understood the requirements?
- the comfort level of using Excel is much more than using high-end systems?
- the terminology and jargon that keeps evolving in the tech world is confusing senior management?
- the functional and technology gap is widening?
- systems and solutions are growing at such a fast pace that it becomes difficult for persons at the top to comprehend the real benefits?
- of different technologies, protocols, formats, communication channels, *etc.*?
- entities are scattered across different geographies across the globe and this makes consolidation very difficult?

These questions could go on and on, but what is the answer? CAs can definitely contribute substantially in addressing these problems and finding solutions.

I would like to highlight below some important areas that need to be covered in the audit of automated systems:

Layers of Audit



At the very outset it is important to know the scope of audit, in the context of automated systems. In order to pass an opinion on the adequacy and effectiveness of controls, an auditor should cover the above layers. As you will appreciate, it is not possible for me to cover all the layers in an article. I will restrict myself to some important areas in Application Control.

Application Control

The "application" represents the software that supports the business. This can be SAP (© Copyright SAP AG) or any other software.

Application controls are required by the business and forms an integral part of each business process. This is generally implemented through normal business process mapping and system customisation processes. The major business processes must be audited and a review of the controls must cover three parts, namely Configuration, Transaction, and Master Data. In high-end applications these controls can be continuously monitored by defining data sources and business rules. Based on the number of deficiencies found, the system will automatically give a score on the adequacy and effectiveness of the controls. Control self-assessment is also provided so that the business process owner can answer a questionnaire on the control design, which basically refers to the adequacy of the control. The advantage of the automated monitoring is that if the business process owner indicates that the control design is adequate but the continuous control monitoring shows that a number of deficiencies have been identified, then the auditor can come to the conclusion that the control is not effective.

The table below indicates some sample automated controls:

BUSINESS PROCESSES					
Order Management	Set up policies & procedures	Enter sales orders			
Inventory & Shipping			Ship goods & perform services		
Accounts Receivable				Manage billing & receipts	
General Ledger					Recognise revenue
SAMPLE AUTOMATED CONTROL TO BE MONITORED					
Configuration		Monitor tolerances for customer order volume	Monitor tolerances for returns	Analyse receipts posting & document change rules	Monitor posting tolerances for revenue journals
Transaction		Analyse order amounts over company specific thresholds	Evaluate shipments without proper sales documents	Detect excessive returns & credits	Monitor adjusting journals for bad debts over company specific threshold
Master Data		Monitor customer creation and changes	Monitor goods receipts of unauthorized returns	Monitor pricing & exchange rate adjustments	Analyse changes to revenue accounts

CAs who normally play a very important role in any organisation should identify the risks of all business processes, define the security policies and procedures and ensure adequate controls are in place to mitigate the risks. There is a school of thought that feels that controls can be unproductive and there is no real value added to the business. This is not true. Controls ensure that unwanted events are prevented, detected and corrected.

The advantage of Continuous Control Monitoring & Event Monitoring is that, for all scenarios configured, the monitoring is done for the complete population and is not based on a sample. Further, if an Auditor's Role is created in a company with only "Read" rights, the auditor will be able to pass an opinion on the adequacy and effectiveness of controls, by reviewing exception reports, dashboards and heatmaps.

Access Controls

This represents the technical controls within an application that allow functions (business and technical) to be restricted to appropriate personnel, on a "need to know" basis. This includes access controls to various operating system and database technologies. This can be quite a complex review if the auditor is unaware of the company's system landscape. If users of systems have unauthorised access the potential of fraud can be high.

I would like to highlight my point of view by taking an example on Segregation of Duties (SOD) from the SAP (© Copyright SAP AG) environment.

Let us first try and understand the scenario in which most organisations work in. The responsibility for Security and Authorisations has evolved over a period of time and the staff that normally handles this function have been 'upgraded' from a technical background. Most of them are hard-core techies and excel in the tech space. Business transaction codes for them is nothing but a jumble of alphanumeric characters! It can be MM01, FB01 or VK01; it does not matter since they are normally not aware of the business process and the impact of the related risk, if there is an SOD violation. The reality is that they do not have business exposure and we do not expect them to know. Some techies have picked up this business knowledge over the years and I give them full credit for going that extra mile!

The fundamental principle of SOD is to ensure that in any business process the tasks of "Initiating", "Authorising," "Recording," "Processing," and "Reporting" are segregated so that no employee has access to any two tasks. The underlying assumption being that if they do, the potential of doing any fraudulent activity increases.

Let me give you an example to drive my point. Create Material Master Record 'MM01' conflicts with Create Purchase Order 'ME21', as per the globally accepted SOD rules. The risk is that the employee who has this access can create a Material in the Material Master and create a Purchase Order, to favor a specific vendor. The Mitigation Control could be that a Release Strategy has been configured for the Purchase Order to be released, which is given to another employee. It is extremely important that the individual who is reviewing this and granting the authorisations is aware of the risk and whether the mitigation control actually mitigates the risk. If the individual granting authorisation is not aware, the possibility of the organisation living with this risk cannot be ignored.

I am only trying to highlight the importance of individuals responsible for "Authorisations" being fully aware of business processes and its related risks. If this does not happen the organisation could be exposed to potential risks and as auditors will definitely have to highlight this as an audit finding.

The convergence of a CA's domain knowledge with the knowledge of the technology supporting access control can be an excellent combination for passing an opinion on the control design and effectiveness, as required by Section 143 of the Companies Act, 2013.

Pattern Recognition

Section 134, of the Companies Act 2013, talks about *"….preventing and detecting fraud and other irregularities…."*

I do believe that, as much as auditors check the effectiveness of controls, fraudsters check the

The gruelling training of the CA course has created CAs with an excellent understanding of business processes and its impact on the financial statements. From the time of articleship, tracing source documents to financial statements is a daily phenomenon. Understanding data flow within or across an organisation is part of the DNA of any CA. This is a very powerful skill set.

ineffectiveness of controls! The reality is that fraudsters commit their fraudulent activities over a period of time, till they are detected. This temporal nature of their behavior makes it essential that auditors should look for suspicious patterns occurring over a period of time. Today, with the use of technology like Neural Networks and Artificial Intelligence, pattern recognition software is available which can identify suspicious activities and highlight such transactions in exception reports. This is particularly relevant when auditors have to handle 'big data'.

A changing environment requires an adaptive solution. It is necessary to pin point non-obvious relationships among transactions, accounts, customers and other entities. Machine learning algorithms coupled with data mining techniques are essential to discover the hidden truth behind each and every transaction for building the holistic intent across all channels and legal entities.

Given below are some technologies available for digital forensics:

- Business Intelligence
- Data Analytics
- Data Mining
- Statistical Analysis
- Rules
- Rule Builder
- Geo Spatial Analysis
- Artificial Intelligence
- Neural Networks
- Burst Detectors
- Pattern Analysis
- Clue Detectors
- Fraud Scenario Library
- Memoriser
- Link Analysis
- Profile Behavior
- Risk Profiling

These technologies can filter out suspicious transactions from large volumes of data, which the auditors can verify, with supporting evidence, to establish the genuineness of the transaction.

The world today is looking for Business Process Experts who can use their domain knowledge to make business processes efficient, effective and risk free. The most logical professionals to fill this gap are Chartered Accountants.

Conclusion

The Companies Act, 2013 has the vision of bringing in the best practices in the areas of Governance, Risk Management & Compliance, in the corporate sector. In my opinion, this will immensely benefit companies, the stake holders and of course the whole nation. In this environment, it is absolutely essential that organisations utilise the power of automated solutions to effectively monitor the GRC health of an organisation.

In order for the Directors or Auditors to pass an opinion on the adequacy and effectiveness of controls it is imperative that controls are monitored on a continuous basis. To achieve this, risks and key risk indicators must be identified and the relevant controls that are required to mitigate the risks must be built into the business processes. Any unwanted or suspicious event must be automatically captured and highlighted to the senior management for taking corrective or preventive action. I do believe that in the near future senior management will continuously get information, through dashboards or heatmaps, on their iPads, tablets or smart phones, on the GRC health of their organisation. May be, we could call this "MOM" – Monitoring on the Move!

Automated GRC solutions provide the functionalities to meet the requirements of the regulations and seamlessly integrates across modules. An enterprise GRC platform approach will allow companies to have complete management of all risks and controls from a single repository, which should give comfort to Directors, Auditors and other stakeholders. ■

Emerging Need for Standards on Information Systems Audits—*How Can India Lead This Initiative*

Over time, the demand for investors and regulators to require assurance as regards the integrity and reliability of financial reports by an independent qualified professional, is now an accepted tradition worldwide. Such demands for assurance have progressively placed increasingly significant demands on the accounting and audit profession. There has always been the implied trust placed by various stakeholders on audited financial reports. Amongst the fundamental factors that help maintain the quality of audits and hence, provides the foundation for trust are the standards for auditing.

With trade and commerce in for an explosion led by a critical deployment of IT-enabled business models and increasing businesses proliferating the cyberspace; more often referred to as the emerging Digital Age, public and private investments out there, not far into the future, are in for a geometric rise. As a natural outcome, information systems, along with the value and risks that they bring in, are increasingly woven into the fabric of every organisation and have assumed centre-stage in their success and survival.

CA. R. Vittal Raj

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The need for a re-look at Indian Auditing Standards

Auditing standards for audit of financial assertions have held recognition for their codification of baseline best practices. Such standards have helped set the uniform expectations, both from what is expected of a professional practitioner in his ensuring optimal discharge of his duties.

It is a fundamental expectation for auditors to observe utmost professional care, and to sincerely uphold the stakeholders' trust and faith.

On the other hand, the standards also provide a benchmark of what constitutes minimal professional performance from the perspective of the user for placing reliance on the work of auditors. Hence, it is a fundamental expectation for auditors to observe utmost professional care, and to sincerely uphold the stakeholders' trust and faith.

In the emerging new world order, driven significantly by technology, we are witness to the rapidly transforming landscape, rules are being re-written and traditional theories tossed out. This has significant and multi-dimensional factors that include; how accounting information is generated, its critical dependence on information technology, integration with operational and e-commerce systems.These emerging technologies are defining the way business gets done with intensely inter-connected stakeholders in real time.

Business technologies today, comprise not only of ERPs, mail systems and legacy applications but include active engagement with emerging technologies, more prominently cloud computing, social media, mobility, big data and analytics, not to mention the next big revolution waiting around the corner…the Internet of everything! From an audit standpoint, these present tremendous challenges with inherent risks of the connected cyberspace, complex system inter-operations, burgeoning cybercrime, *etc.* to name a few.

India is no doubt in the global spotlight more than ever, and is counted amongst the top digital economies with other larger business dimensions expected to take off. The recent slew of policy initiatives by the Indian government, with accent on "India as a world IT destination", "India as a connected economy" with smart cities and national data grid, "Greater governance with e-governance" and "Make in India", while on one hand hold immense potential for global investment, on the other hand, with the burgeoning multi-faceted risks, there is also need for providing the foundation of trust through quality assurance.

For the auditing profession in India, this signifies a great opportunity with the business community, government and regulators across the globe, who will look for independent professional assurance on multi-various dimensions of business risk with a view to protect stakeholder interests. However, the auditor today faces an increasingly complex audit universe, while the expectations of trust and faith from audited works remain unchanged or even amplified. Besides the radical changes in the Indian legal and regulatory landscape, more specifically the corporate and cyber laws, place further unfathomable demands on auditors. Both auditors and consumers of their work are often feel lost on getting the right confidence for want of a well-knit framework of auditing standards and professional guidance that considers the intricacies of today's technology driven business environments and related control considerations.

With the right moves, India with its enormous talent in IT & auditing, through its flagship and globally recognised accounting body, the Institute of Chartered Accountants of India is potentially well positioned to take this lead and harness the emerging potential for information systems assurance services. Such services will be in demand to cater to the trust and assurance expectations of stakeholders with interests in India. One of the urgent and critical needs for both the profession as well as the consumers thereof, is the need for a framework of auditing standards integrated with systems audit standards that considers harmonisation with relevant global standards.

Need for a harmonised framework for audit standards

To enable a better understanding of the imminent need for holistic audit standards framework, that includes financial, internal and systems audit standards, it would be useful to consider the contemporary audit and assurance needs, which can be broadly categorised into the following:

a) Financial Audits: includes all types of audits that provide assurance on historic financial information (financial reports) and related aspects.
b) Strategic and Operational Audits: includes all types of audits related to various aspects of business strategic requirements and operations, these include GRC (Governance, risk and compliance) audits, audit of business functions and processes such as production audits, human resource audits, sales to cash *etc*., special purpose audits such as quality

audits, environmental audits, energy audits *etc*.

c) Information Systems Audits: IS audits can further be categorised into (1) Application and database audits (2) Audit of IT governance and general controls.

d) Forensic audits: forensic audits are emerging as a separate need with their special purpose and nature of such audits and includes digital forensics.

Further types of audits, by dimension can be classified as:

a) External or Statutory Audits: these include audits mandated by laws and regulations, sector specific mandated audits, mandated compliance audits, customer sponsored audits *etc*.

b) Internal or Management Audits: these include a range of audits sponsored by management, either required by regulation or otherwise.

In each of the above, what needs to be understood is the intertwined nature of the information systems and the way businesses operate today. Hence the need for financial audit standards to consider internal controls over processes and information systems, as well as the need for special audit of information systems or aspects thereof. Every audit needs to take into account the risks and controls considerations at every layer, that have either a direct or indirect bearing on the audit and thereby the design of audit procedures that will achieve the objectives with an eye on the audit risk.

Today, business operations are critically dependent on various kinds of business technologies. Hence, a not so uncommon scenario could include the following, that highlights the pervasive nature of IT and information systems that in turn deliver to business processes and strategic needs:

- financial and management information reports generated either directly or indirectly from ERP (Enterprise Resource Planning) systems
- financial systems including finance and accounting modules of ERPs, in turn draw data from integrated enterprise operational modules of the ERP or even possibly connected or disparate legacy systems that automate specific processes.
- ERPs could also in-turn connect to either entity owned or external or customer, vendor and partner extranets, outsourced arrangements, payment mechanisms using e-commerce and CRM platforms that include social media, e-governance (e-filing) systems, *etc.*
- all of these systems find their foundations in IT infrastructure that includes a host of technology components such as servers, end points, networks and network devices, the Internet, related systems software utilities, facilities and people required to run these.

Emerging technologies are defining the way business gets done with intensely inter-connected stakeholders in real time.

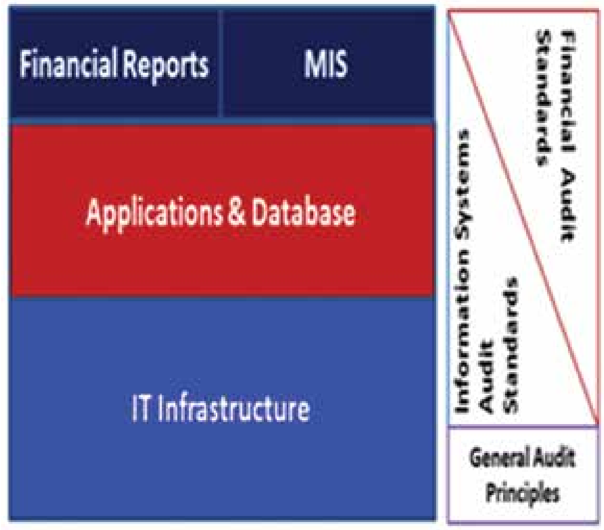

Figure highlighting the integrated nature of information systems audit considerations

A suitable holistic framework for auditing standards will need to inter-weave the overlapping components of standards for financial auditing, internal audit and information systems audit on the canvas of generally accepted audit principles. The framework also needs to be aligned with global movement for convergence of auditing standards, so as to deliver globally acceptable audit performance with quality and reliability in results of audit work while ensuring reduced cost of compliance.

ICAI has demonstrated its commitment to global convergence, by joining the global Clarity Project for convergence of standards on the accounting and financial auditing with the release of revised Standards on Auditing (SA) and Standards on

India is no doubt in the global spotlight more than ever, and is counted amongst the top digital economies with other larger business dimensions expected to take off.

Assurance Engagements (SAE) aligned with IAASB's standards on auditing and assurance.

Following the direction of convergence for professional bodies, is also the adoption of the standards of their counterparts who are globally recognised for standards setting in areas of internal auditing, management systems auditing and information systems auditing. These together

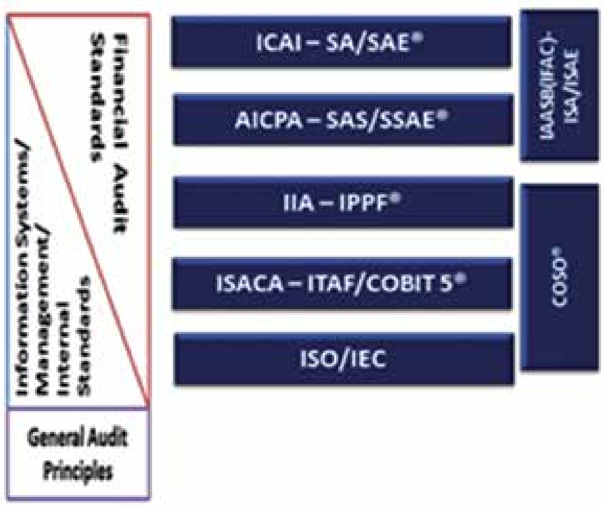

Fig: Need for integrated framework for auditing standards

represent the components of inter-woven nature of auditing, where again the global movement is to move towards integrated audits and not in silos. On the standards on internal audit, the International Professional Practices Framework (IPPF) from the Institute of Internal Auditors and the standards of audit of management systems from the International Organisation for Standardization (ISO/IEC) respectively are an accepted global benchmark. On Information Systems Audit, the Information Technology Audit Framework (ITAF) and COBIT 5 from ISACA are widely recognised and adopted.

With information systems auditing as a critical component of every audit, what is required for a holistic auditing framework for India is the integration of ICAI's globally aligned financial

audit standards with existing global standards for information systems, management systems and internal auditingfrom contemporary professional bodies such as the Institute of Internal Auditors(IIA), ISACA and ISO/IEC. By reason of the largely country and compliance neutral nature of information systems, management systems and internal auditing standards, these can be effectively and efficiently adopted and integrated to achieve the objectives.

The work of ICAI in this area, holds a great potential for collaboration with government agencies that include various regulatory bodies such as the RBI, SEBI, NSE, IRDA, and the Office of the Comptroller and Auditor General of India, where CAG of India holds the privilege of chairing the global workgroup on IT Audit at INTOSAI. Some of the potential areas where such an auditing standards framework can help address the needs include e-governance audits, audit of service organisations (on the lines of SSAE16/SOC of AICPA), audit for applications such as banking applications, e-commerce systems and payment mechanisms under RBI norms, to name a few.

In one of the recent OECD summits at Tokyo, nations discussed on building trust in the data-driven economy and recognised the need to uphold trust of individuals as a fundamental value. They also emphasised the importance for risk-based approaches as regards information systems with the goal of ensuring measurable transparency, with accent on protecting security, ethics and privacy. The participants recognised the need for ensuring greater transparency and accountability.

ICAI leading the effort in this direction, while being an imperative necessity of re-looking at systems auditing standards that support integrated audits, will also enable standing up as a demonstrable example to the world in meeting the expectations of the stakeholders, while actively contributing to India's and its members growth, in the changing world order. ■

Cyber Forensics, Forensic Accounting/ Auditing and Chartered Accountants

According to the 2010, 2012 and the 2014 reports to the Nations on Occupational Fraud & Abuse, the Association of Certified Fraud Examiner's (ACFE) survey has consistently found that a typical organisation loses 5% of its revenue every year to fraud, with a median loss of approximately ₹ 90 lakh. Forensic accounting is the need of the hour, and this represents an opportunity where we, as chartered accountants, can contribute the most on the basis of financial, audit and analytical skills we have. Forensic accounting is the integration of accounting, auditing and investigative skills with a view to obtain legal evidence for the arrived at result. It is important to note that a forensic accountant needs to act as bloodhound, trying to sniff out fraud and criminal financial transactions through documentary evidence. Read on to know more…

The 2014 *Report to the Nations on Occupational Fraud and Abuse* provides an analysis of 1,483 fraud cases as reported by Certified Fraud Examiners (CFEs) who investigated them. This includes 41 cases in India.

As per the report:

- Average loss was $1,45,000 (approx. ₹90 lakh)
- More than 22% of these cases caused losses of at least $1 million (approx. ₹6 crore) as compared to 20% in 2012.

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It has been observed in the recent studies and fraud cases:

1. Card fraud in Asia costs banks $400 million a year, and is rising by 20%-25% a year.
2. Approximately 50% of the frauds have been initially detected by whistleblowing (tips). External audits have succeeded in detecting only about 3% of frauds.
3. Ranbaxy had never been tested for its drugs, and most of the drugs test documentation were fake. Besides, many approvals for the Indian market were based on fraudulent data.
4. Gowex, a fast growing technology company based out of Spain and leader in creating wi-fi cities in four different subcontinents, filed for bankruptcy in July 2014 after its founder and CEO Jenaro Garcia resigned on 5th July, taking responsibility for the accounting fraud.

5. Scientists at Iowa State University of USA had successfully tested the HIV vaccine on rabbits. An incredibly promising outcome, as it suggested that a human vaccine could also be created. However, recently it was found that the research team's remarkable results were faked.

These are disturbing facts and statistics 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. In fact, in a path-breaking decision by a Canadian court in 2014, auditors of Livent (a high-flying theatre company in the 1990s) have been ordered to pay $84.8 million for failing to detect fraud.

To think that statutory auditors are not bloodhounds, but only watchdogs is not acceptable any longer. Stakeholders expect auditors to plan and perform reasonable efforts to detect frauds and manipulations. The work of an auditor is no longer limited to ensure that the financial statements are true and fair; rather the focus is now on fraud risk, fraud-detection, fraud prevention and investigation.

This presents a vast opportunity for all of us, as chartered accountants, in this area where we can provide significant value-added services to our clients (current/prospective) by performing fraud risk assessments, defining controls to detect fraud in almost real time and to prevent them from happening in future.

Difference between Traditional Auditing & Forensic Accounting

Description	Traditional Auditing	Forensic Accounting
Nature	Mandatory in nature	In response to a fraud or manipulation reported or detected
Scope	Measures compliance with reporting standards	Involves financial investigation
Number game	Looks at the numbers	Looks beyond numbers
Materiality	Focuses on material transactions	May focus on immaterial transactions
Reporting	Provides reasonable assurance on financial statements	Findings can be used in the court or to resolve dispute.

Focus Areas

Generally, forensic accounting assignment falls under following three areas:

a) **Cyber forensics**→To investigate by examining computer hard disk and other information sources.

b) **Data analytics for fraud detection**→It involves use of technologies and methodologies for detection of fraud.

c) **Financial statement analysis**→Use of ratio analysis and other methods of finding financial statement fraud.

Cyber Forensics

In a fraud or dispute case, a cyber forensic expert is normally called to assist. It is a branch of forensic accounting that deals in the scientific examination and analysis of digital evidence in such a way that the information can be used as evidence in a court of law.

- Cyber forensics generally include the following steps:
  - Secure collection of computer data
  - Identification of suspect data
  - Examination of suspect data to determine details such as origin and content
  - Presentation of computer-based information to courts of law
  - Application of a country's laws to computer practice.

- The basic methodology consists of three As:
  - **Acquire** the evidence without altering or damaging the original data/source
  - **Authenticate** the image/source
  - **Analyse** the data without modifying it.

Data Analytics for Fraud Detection

The primary reason of increased popularity of data analytics to detect fraud is because a lot of internal control systems are inadequate in preventing and detecting frauds. In order to effectively test and monitor internal controls,to look at every transaction that takes place and test them against company policies and procedures, organisations have started looking at data analytics mechanism to compliment internal controls.

One of the key aspects of data analytics is the ability for the technology to maintain comprehensive logs of all activities performed. You can run an application (MS Excel, MS Access or a script), enter some data, and find some anomalies. That's not sufficient as you're going to need some sort of proof of what you did to uncover that fraudulent activity. That proof has to be specific and detailed enough tostand up to further fraud investigation, perhaps even prosecution. There are automated data analytic tools available, like ACL, IDEA, *etc.*, which have these capabilities.

Besides, many organisations are implementing continuous analysis for fraud detection, which involves defining scripts and then running those predefined scripts on periodic basis like daily, weekly, monthly, *etc.*, as the case may be. This method can really improve the overall efficiency and consistency and quality of an organisation's fraud detection processes.

Financial Statement Analysis

Financial statement fraud is defined as a deliberate misrepresentation of the financial condition of an enterprise accomplished through the intentional misstatement or omission of amounts or disclosures in the financial statements to deceive financial statement users.

Beneish Model is a mathematical model that uses financial ratios and eight variables to identify if a company has manipulated its earnings. The variables are constructed from the data in the company's financial statements and, once calculated, create an M-Score to describe the degree to which the earnings have been manipulated.

Stakeholders expect auditors to plan and perform reasonable efforts to detect frauds and manipulations. The work of an auditor is no longer limited to ensure that the financial statements are true and fair; rather the focus is now on fraud risk, fraud-detection, fraud prevention and investigation.

Why Beneish Model?

1. World Bank uses and advices the use of the Beneish model.
2. ACFE suggests the use of the Beneish model-"fraud magazine" in the March/ April 2005 issue.
3. Taught at universities such as those of Berkeley, Chicago, Cornell, Dartmouth, New York and Indiana.
4. Used by analysts at Merrill Lynch and Prudential Securities, among others.
5. Success rate is up to 50%; better than random or stratified random testing.

The eight constituents of Beneish Model are:

- **Days' Sales in Receivables Index (DSRI)**- This sales index measures whether receivables and revenues are in or out of balance in two consecutive reporting periods. A material increase in the index could indicate a company's receivables are phony.
- **Gross Marin Index (GMI)**- This index is designed to alert you that the risk of earnings manipulation is higher when gross margins drop. But, if the company is already engaging in attempts to inflate earnings, gross margins will be just the opposite: higher than normal.
- **Asset Quality Index (AQI)**- This index measures the proportion of total assets for which future benefits may be less certain. For the purpose of evaluating earnings manipulation, an increase in the asset quality index may indicate a company's propensity to capitalise costs.
- **Sales Growth Index (SGI)**- Growth does not imply manipulation, but growth firms are viewed by professionals as more likely to commit financial statement fraud as their financial position and capital needs put pressure on managers to achieve earnings targets. In addition, concerns about controls and reporting tend to lag behind operations in periods of high growth.
- **Depreciation Index (DepI)**- A DepI greater than 1 indicates that the rate at which assets are depreciated has slowed down, raising the possibility that the firm has revised upwards the estimates of assets useful lives or has adopted a new method that is increasing income.
- **Sales, General & Administrative Index (SGAI)**- This index is used because analysts

would interpret a disproportionate increase in sales as a negative signal about firms future prospects. If sales increase faster than expenses there needs to be an explanation. If not, the SGAI may be pointing to overstated revenues.

- **Leverage Index (LeVI)**- This index captures the increasing reliance on debt financing, as this increases the firm's financial risk and the likelihood of earnings manipulation (*e.g.,* debt agreement constraints).
- **Total Accruals to Total Assets (TATA)**- An increase in accruals from one period to the next may indicate management is attempting to manipulate earnings through its discretionary authority over accrual policy. The presence of higher accruals and a corresponding decrease in cash often can be an attempt by management to internally finance its losses.

Finally, M-score needs to be calculated which is:
M Score = M = -4.84 + 0.92*DSRI + 0.528*GMI + 0.404*AQI + 0.892*SGI + 0.115*DepI – 0.172*SGAI + 4.679*TATA – 0.327*LevI

A score greater than -**2.22** (*i.e.*, less negative than this) indicates a strong likelihood of a firm being a manipulator.

Fraud Triangle and Its Use as Forensic Accountant

The first quantitative study of embezzlement was done in the late 1940s by Donald R. Cressey, who interviewed approximately 300 convicted fraudsters who had been confined to state prisons in an effort to determine if the offenders had any commonality in their crimes.

He observed the presence of three things in his study— opportunity, motivation and rationalisation.

This is an important correlation because if an organisation succeeds in interrupting one of these three elements of the triangle then it can prevent and deter frauds. Although it is difficult to totally eliminate the elements of fraud, if they are minimised, the likelihood of occurrence of fraud can also be minimised.

You can run an application (MS Excel, MS Access or a script), enter some data, and find some anomalies. That's not sufficient as you're going to need some sort of proof of what you did to uncover that fraudulent activity. That proof has to be specific and detailed enough to stand up to further fraud investigation, perhaps even prosecution.

Role of Chartered Accountants in Forensic Accounting

With a growth of Indian economy, financial statement frauds are rising. Every year, investors loose thousands of crores of rupees due to white-collar crimes. The infamous Satyam scam of 2008, followed by the CWG, 2G Spectrum and Ranbaxy scams have heightened the need for the development of forensic accounting as a profession in India. These financial scandals have shaken the investor's confidence and have made forensic accounting an attractive career opportunity for finance professionals to combat fraud. This makes forensic accounting a fastest growing area of accounting today.

Conclusion

With the ever-increasing pressure on employeesto achieve targets and on the management to show growth of bottom line only increases the probabilities to fraud being committed in any organisation. Traditional auditing is getting less effective day by day to keep a check over the employees and top management. To manage this ever-increasing risk, many multinational organisations are employing experts in forensic accounting for early and timely detection of frauds. Time has come for us to recognise that accounting and finance world need fraud-specific methodologies in order to be effective in fighting against fraud. ■

Digital Forensics: New Opportunities

Generally, digital forensics is considered as the application of science to the identification, collection, examination, and analysis of data while preserving the integrity of the information and maintaining a strict chain of custody for the data. Digital forensic tools are used to respond to an event by investigating suspect systems, gathering and preserving evidence, reconstructing events, and assessing the current state of an event. It can also be used for operational troubleshooting, log monitoring, data recovery, data acquisition, due diligence/regulatory compliance. The process for performing digital forensics comprises the four basic phases; viz., collection, examination, analysis and reporting. Read on to know more…

Dr. Onkar Nath

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Introduction

According to the Oxford dictionary, the word forensic is defined as *"relating to or denoting the application of scientific methods to the investigation of crime"* and *"or relating to courts of law"*. The first definition is that scientific methods are used in the investigation, and the second definition emphasises the fact that forensic activity usually relates to courts

Over the last decade, there has been an increase in the number and variety of crimes that involve computers. Computer crime investigators and law enforcement is using computer-based evidence to determine who, what, where, when, why and how for crimes. Digital forensic tools are used to respond to an event by investigating suspect systems, gathering and preserving evidence, reconstructing events, and assessing the current state of an event.

of law. But not all cases investigated end up in court. It is important that when a forensic investigation is launched it is conducted in a scientific way, and with a legal base as support.

In the organisations there are various data sources, hence, the digital forensic techniques can be used for many purposes, such as investigating crimes and internal policy violations, reconstructing information security incidents, troubleshooting operational problems, and recovering from accidental system damage. The organisation investigating the suspicious behaviour often lacks the tools and skills required to successfully gather evidence. The organisation needs to have the capability to perform digital forensics without such a capability; an organisation will have difficulty determining what events have occurred within its systems and networks.

What is Digital Forensics?

As per NIST (National Institute for Standards and Technology, USA), digital forensics is considered as the application of science to the identification, collection, examination, and analysis of data while preserving the integrity of the information and maintaining a strict chain of custody for the data.

Techopedia defines digital forensics as the process of uncovering and interpreting electronic data for use in a court of law. The goal of the process is to preserve any evidence in its most original form while performing a structured investigation by collecting, identifying and validating the digital information for the purpose of reconstructing past events.

Digital Forensic Research Workshop has defined digital forensics as *"The use of scientifically derived and proven methods toward the preservation, validation, identification, analysis, interpretation, documentation and presentation of digital evidence derived from digital sources for the purpose of facilitating or furthering the reconstruction of events found to be criminal, or helping to anticipate unauthorised actions shown to be disruptive to planned operations."* This definition is comprehensive and encompasses all the practical aspects of digital forensics.

The Need for Digital Forensics

Over the last decade, there has been an increase in the number and variety of crimes that involve computers. Computer crime investigators and law enforcement is using computer-based evidence to determine who, what, where, when, why and how for crimes. Digital forensic tools are used to respond to an event by investigating suspect systems, gathering and preserving evidence, reconstructing events, and assessing the current state of an event. However, digital forensics is also useful for the following:

- **Operational Troubleshooting:** Digital forensic tools and techniques can be applied to troubleshooting operational issues, such as resolving a functional problem with an application, recording and reviewing the OS and application configuration settings for a host.
- **Log Monitoring:** Digital forensic tools can assist in log monitoring, such as analysing log entries and correlating log entries across multiple systems. This can also assist in incident handling, identifying policy violations, auditing, and other efforts.
- **Data Recovery:** Digital forensic tools can recover lost data from systems, including data that has been accidentally or purposely deleted or otherwise modified. The volume of data that can be recovered varies on a case-by-case basis.
- **Data Acquisition:** Digital forensic tools are used to acquire data from hosts or remote systems such as in the event of a user leaves an organisation, the data from the user's systems can be acquired and stored in case it is needed in the future. The system's media can then be sanitised to remove all of the original user's data.
- **Due Diligence/Regulatory Compliance:** The laws of the land or regulations require many organisations to protect sensitive information and maintain certain records for audit purposes. In the event of protected information is exposed to other parties, organisations may be required to notify other agencies or impacted individuals. Forensics can help organisations exercise due diligence and comply with such requirements.

Process of Digital Forensics

As per the National Institute of Standards and Technology (NIST), the process for performing digital forensics comprises the four basic phases:

1. **Collection:** Identifying, labeling, recording, and acquiring data from the possible sources of relevant data, while following procedures that preserve the integrity of the data.
2. **Examination:** Use manual and automated methods to assess and extract data of particular interest, while preserving the integrity of the data.
3. **Analysis:** Use legally justifiable methods and techniques to derive useful information.
4. **Reporting:** Describe actions used, explain how tools and procedures were selected, and determine what other actions need to be performed, recommend improvements to policies, guidelines, procedures, tools and other aspects of the forensic process.

Potential Sources of digital forensics are hard disks, tapes, external/removable media, network infrastructure logs (Firewall, IDS, proxy, *etc.*), application, audit log files, e-mail, other server content (Windows shares, web servers, databases, *etc.*) and Captured network traffic.

eDiscovery

eDiscovery, also known as electronic discovery, is the aspect of identifying, collecting and producing Electronically Stored Information (ESI) in response to a request for production in a law suit or investigation. ESI includes, but is not limited to, emails, documents, presentations, databases, voicemail, multimedia files, social media, and web sites. The processes of eDiscovery are often complex because of the sheer volume of electronic data produced and stored. Additionally, electronic documents are more dynamic and often contain metadata such as time-date stamps, author and recipient information, and file properties. Preserving the original content and metadata for electronically stored information is required in order to have acceptability in the court of law.

Pre-requisite for Digital Forensics *(Policy, Standard, Procedures and Guidelines)*

Organisation should have digital forensics policy duly approved by the appropriate authority and disseminated to the concerned audience. Digital forensic policy should clearly define the roles and responsibilities of all people performing or assisting with the organisation's forensic activities. The policy should include all internal and external parties that may be involved and should clearly indicate who should contact which parties under different circumstances. The organisation should adopt some standard to have consistency and acceptability digital evidences in the court of law and develop supporting procedures and guidelines to implement digital forensics policy.

Tabletop exercises that focus on how forensic tools and techniques can be used in various scenarios provide an effective way of building and maintaining skills and identifying problems with guidelines, procedures, and policies.

Digital Forensic Tools

Digital forensic tools are being developed at a brisk pace in response to the ever increasing variety of forensic targets. Most tools are created for specific tasks—file system analysis, memory analysis, network analysis, *etc.* and make little effort to interoperate with one another. Following are the commonly used digital forensics tools. Some of them are freeware too.

- Forensic Disk Controller
- SANS SIFT
- AccessData
- ProDiscover Basic
- EnCase
- FTK Imager
- PTK Forensics
- The Sleuth Kit
- CAINF
- Xplico

The admissibility of digital evidence in the court of law relies on the tools used to extract it. In the US, forensic tools are subjected to the Daubert standard, where the judge is responsible for ensuring that the processes and software used were acceptable.

DFF (Digital Forensics Framework) is a free and Open Source computer forensics software built on top of a dedicated Application Programming Interface (API). It advertises that the capability to be used both by professional and non-expert people in order to quickly and easily collect, preserve and reveal digital evidences without compromising systems and data. Following are some of the digital forensics frameworks are DFF, PyFlag, FACE, DIALOG, and FORZA.

Apart from the computer/cyber crime investigation, there are several financial forensic engagements which extensively use the digital forensics. Some of the engagements are: 'economic damages calculations whether suffered through tort or breach of contract post-acquisition disputes such as earn outs or breaches of warranties,' 'bankruptcy, insolvency, and reorganisation,' 'securities fraud,' 'business valuation,' 'computer forensics/e-discovery,' etc.

Guidelines for Effective and Efficient Digital Forensic Activities

- Organisations should ensure that their policies contain clear statements addressing all major digital forensics considerations, such as contacting law enforcement, performing monitoring. There should be regular reviews of forensic policies and procedures.
- Organisations should create and maintain procedures and guidelines for performing forensic tasks, based on the organisation's policies and all applicable laws and regulations.
- Organisations should ensure that their policies and procedures support the reasonable and appropriate use of forensic tools.
- Organisations should ensure that their IT professionals are prepared to participate in forensic activities.

Challenges in Digital Forensics

The leading challenge for digital forensic investigations is that of scale. This has a significant impact on digital forensics. However, a deeper and more significant implication of recent trends is the escalating complexity of scenarios of digital investigations. As the capabilities of individual applications, the size of forensic targets, and the number of networked systems all increase, the number of possible interactions and possible outcomes of forensic interest grows exponentially. Some of the commonly faced problems in digital forensics are as under:

Hard to get

- Duplicating or preserving the digital evidence is very difficult, without knowing the duplication itself inherently changed the data?
- Time lines are critical for showing who did what, and when. But digital time stamps are absent, can easily be spoofed, in digital data or the digital time provided by NTP (Network Protocol Server) is incorrect.
- In order to be able to state conclusively that action A caused result B, the concept of repeatability must be introduced. This is very difficult with digital forensics.
- Anti-forensic activity may prevent collection.

Easy to destroy

- Starting a PC/Server, updates hundreds of timestamps and modifies many files
- Attaching a hard disk or USB stick will modify file system timestamps
- Volatile memory is lost when a machine is powered off

Support and Awareness

Support from top management for digital forensics set up in the organisation is of paramount importance. There should be defined and established process of escalation and additional support. It should be included in the work flow and the business processes. Awareness must take place at all levels in the organisation; rather it should be beginning with top management. The awareness may take place online or off-line. If awareness campaign is linked with performance, then it will work like catalyst.

Supporting Forensics in the Information System Life Cycle

NIST has stated in its special publication 800-86 "*Guide to Integrating Forensic Techniques into Incident Response*" that many incidents can be handled more efficiently and effectively if forensic considerations have been incorporated into the information system life cycle. Examples of such considerations are as follows:

- Performing regular backups of systems and maintaining previous backups for a specific period of time.
- Enabling auditing on workstations, servers, and network devices.
- Forwarding audit records to secure centralised log servers.
- Configuring mission-critical applications to perform auditing, including recording all authentication attempts.
- Maintaining a database of file hashes for the files of common OS and application deployments, and using file integrity checking software on particularly important assets.

- Maintaining records (*e.g.*, baselines) of network and system configurations.
- Establishing data retention policies that support performing historical reviews of system and network activity, complying with requests or requirements to preserve data relating to ongoing litigation and investigations, and destroying data that is no longer needed.

Use of Digital Forensic by Practicing CAs

Apart from the computer/cyber crime investigation, there are several financial forensic engagements which extensively use the digital forensics. Some of the engagements are:

- Economic damages calculations, whether suffered through tort or breach of contract
- Post-acquisition disputes such as earn outs or breaches of warranties
- Bankruptcy, insolvency, and reorganisation
- Securities fraud
- Business valuation
- Computer forensics/eDiscovery.
- Investigate network intrusions to determine the cause and extent of the breach

Standard for Digital Forensics

ISO/IEC 27037:2012 provides guidelines for specific activities in the handling of digital evidence, which are identification, collection, acquisition and preservation of potential digital evidence that can be of evidential value. It provides guidance to individuals with respect to common situations encountered throughout the digital evidence handling process and assists organisations in their disciplinary procedures and in facilitating the exchange of potential digital evidence between jurisdictions.

Certifications for Digital Forensics

Following are the International standard certifications considered for digital forensics:

- Certified Forensic Computer Examiner (CFCE)

The need for effective and efficient digital forensics analysis has been a major driving force in the development of digital forensics. Presently it is supported by ISO standard and guidelines issued by several internationally recognised agencies. Large number of digital forensics tools is available to support in-depth analysis of digital evidence.

- Certified Hacking Forensic Investigator (CHFI)
- Global Information Assurance Certification (Forensics Certifications)
- Certified Cyber Forensics Professional (CCFP)
- Certified Computer Forensics Examiner (CCFE)

Conclusion

The need for effective and efficient digital forensics analysis has been a major driving force in the development of digital forensics. Presently, it is supported by ISO standard and guidelines issued by several internationally recognised agencies. Large number of digital forensics tools is available to support in-depth analysis of digital evidence. The success of digital forensics depends upon the admissibility of digital evidences in the court of law.

Key Words:

Anti-Forensic: *A technique for concealing or destroying data so that others cannot access it.*

Daubert standard: *The Daubert standard provides a rule of evidence regarding the admissibility of expert witnesses' testimony during United States federal legal proceedings.*

Forensic Disk Controller: *A forensic disk controller or hardware write-block device is a specialised type of computer hard disk controller made for the purpose of gaining read-only access to computer hard drives without the risk of damaging the drive's contents.*

References:

1. *"Guide to integrating forensic techniques into incident response", National Institute of Standards and Technology Special Publication 800-86 (August 2006).*
2. *Andrew Cristina, Lodovico Marziale, Golden G. Richard and Vassil Roussev, "FACE: Automated digital evidence discovery and correlation Andrew Case", Digital Investigation 5 (2008), S65-S75.*
3. *http://cdslegal.com/knowledge/the-basics-what-is-e-discovery/ accessed on 10 October 2014.*
4. *http://www.formalforensics.org/publications/thesis/chapter3.pdf accessed on 10 October 2014.*
5. *http://icsa.cs.up.ac.za/issa/2006/Proceedings/Full/101_Paper.pdf accessed on 10 October 2014.*

Leveraging Technology to Leap Into a Future of Enormous Possibilities—The ICAI Way

"Information technology and business are becoming inextricably interwoven. I don't think anybody can talk meaningfully about one without talking about the other," rightly says Bill Gates. Indeed, technology has emerged as one of the primary drivers of globalisation, growth, service to society, and borderless knowledge economy comprising professionals. It has particularly increased the productivity and potential of professional human race manifold, making them explore hitherto unchartered territories of knowledge and conquer new professional frontiers. The Chartered Accountants, an important constituent of India's knowledge society, are no exception to this phenomenon—thanks to the multi-pronged futuristic actions and initiatives by their alma mater, the Institute of Chartered Accountants of India (ICAI). The process speeded up this year with proactive push and propagation by ICAI's IT-oriented President CA. K. Raghu. Read on...

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(*With inputs from ICAI President's Secretariat, Technical Development Committee, Committee on Information Technology, Board of Studies, Examination Department and XBRL India*))

"Our intuition about the future is linear. But the reality of information technology is exponential, and that makes a profound difference. If I take 30 steps linearly, I get to 30. If I take 30 steps exponentially, I get to a billion," aptly says Ray Kurzweil, the futurist American author, computer scientist and inventor. Former CEO of Microsoft Steve Ballmer says, *"The number one benefit of information technology is that*

CAs & Technology

With the increasing business complexities and added stress on risk management and compliance, the amount of financial information requiring professional management continues to multiply. This scenario and the surge of technology has been not only optimising the core capabilities of Indian Chartered Accountants but also increasing their demand and opening new vistas of opportunities in various emerging areas of the knowledge society.

*it empowers people to do what they want to do. It lets people be creative. It lets people be productive. It lets people learn things they didn't think they could learn before, and so in a sense it is all about **potential**.”* Of late, the ICAI has firmly set its sight on this vast potential and possibilities that technology offers to its members, the Chartered Accountants. The aim has been to give a cutting edge to the profile of all Chartered Accountants while pursuing future-driven and technology-enabled competence in tune with the times.

Action Plan 2014-15

Today, technology is increasingly being seen as the engine of modern economy and CA’s workplace. As such, the ICAI’s ‘*Action Plan 2014-15: Moving Towards New Frontiers*,’ which aims at the potent and path-breaking pursuit of new professional paradigms, also lays a special emphasis on harnessing technology as a strategic and enabling professional, imperative to fast-track the goals in different dimensions, and give more and more momentum to the much needed underlying processes. The ultimate idea has been to not only promote but also push up to the hilt the ICAI Mission, that is: *‘The Indian Chartered Accountancy Profession will be the valued Trustees of World Class Financial Competencies, Good Governance and Competitiveness.’*

Leveraging Technology

The 21st Century is the Century of Information Technology & Knowledge Revolution. Information Technology is now regarded as the backbone of modern business efficiency. Meanwhile, with the increasing business complexities and added stress on risk management and compliance, the amount of financial information requiring professional management continues to multiply. This scenario and the surge of technology has been not only optimising the core capabilities of Indian Chartered Accountants but also been increasing their demand and opening new vistas of opportunities in various emerging areas of the knowledge society. The technology-based domains that offer such opportunities include ‘XBRL,’ ‘e-Commerce,’ ‘M-commerce,’ ‘BPO/KPO & Outsourcing of payroll accounting and tax filing services,’ ‘ERP Control Design and implementation,’ ‘data analytics & big data,’ ‘cyber forensics & forensic accounting,’ ‘digital forensics,’ ‘information system audit,’ ‘e-Governance,’ *etc*. Excellent opportunities for CAs are emerging in the domain of Technology consulting, which include ‘Web Trust Audit,’ ‘Cloud Computing,’ ‘IT security audit,’ and ‘Cyber Security.’ The accounting profession in India and its regulator the ICAI are both very much alive to these existing and emerging professional avenues.

Particularly, CAs can play a key role as functional ERP consultant in any ERP implementation involving financials and their demand in that role is constantly rising. Opportunities in E-Governance exist in MCA-21, E-Filing of Tax Returns under the Income Tax Act, Central Excise, Customs and Service Tax while under Information Security and Audit domain, CAs can be effective in Information System Security Audit under ISO 27001, BS7799, IT Control Audit under COBIT, Legal Compliance Audits, SDLC review, Cost Benefit Analysis, Disaster Recovery and Business Continuity and Web Trust Assurance, *etc*. In the fast emerging Cloud Computing domain, CAs can provide consulting services on migration to cloud, assurance services for cloud deployment and Cloud Computing Audit, *etc*. Let’s realise that one who fails to catch up with this Information Technology phenomenon, fails in the race for a sustainable future.

The ICAI has also been giving focused attention to putting technology to optimum use for efficient delivery of services and betterment of the professional capabilities, with the objective of raising a generation of global professionals. Timely realising the importance of technology as a stepping stone to the future, the ICAI has successfully put in place an interactive learning environment for its members and students by leveraging technology. The process speeded up this year with a series of new initiatives like Knowledge Gateway, ICAI Now-Mobile App, E-learning, Publications Online Store, Digital Library, Webcasting, Cloud Campus, Video Podcasts, embracing Social Media platforms, Flexi-working portal for women, and Independent Directors Repository *etc*. Meanwhile, a host of other initiatives, including an e-Governance project, ICAI Global Technology Centre, Self Service portal for students and members, *etc.*, are on the cards.

Let us have a recap and updates on some of the major IT initiatives of the ICAI:

Some Important IT Initiatives of the ICAI—an Update

Committee on Information Technology

A non-standing Committee on Information Technology of the ICAI is working to map IT developments and convert them into gainful professional opportunities. It aims at training and development of the members in the field of Information Technology besides developing Computer-Based Learning (CBL).

The Committee has recently 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 able to utilise and leverage technology in the area of Governance of Enterprise IT, GRC, Assurance, risk, security and controls.

The Committee also runs a Certificate Course on Forensic Accounting and Fraud Detection with the aim to develop investigative skills required to uncover corporate/business frauds, measure resultant damage, provide litigation support/outside counsel by applying accounting, auditing principles for the detection of frauds. As many as eight batches of the Course have been conducted at various cities so far this year. Training programmes on Forensic Accounting and Fraud Detection for bank officials are also set to start soon.

The Committee has identified IT Enabled Services (ITeS), particularly ERP, as the next area for the development of the profession. It has also started offering ERP Courses through leading OEM vendors-SAP, Oracle & Microsoft on the finance/control module. The Committee is also all set to launch a Certificate Course on Information Systems Security.

The committee's vision is: '*The Indian Chartered Accountancy Profession will be the Valued Trustees of World Class Financial Competencies in Information Technology, Good IT Governance and Best IT Practice.' The mission of the committee has been to Provide World Class IT Governance, IS Audit, ERP Consulting and Assurances Services to Maintain Reliability, Confidentiality, Security and Availability of Information and Systems.*'

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Technology Development Committee

This year, a special non-standing 'Technology Development Committee' has been formed to give specific impetus to the technological initiatives of the ICAI, put ICAI members and students on a new technology roadmap, and take ICAI's IT capabilities and competence to the next level of excellence.

XBRL Initiatives

The technology-based Extensible Business Reporting Language (XBRL), which has emerged as an immensely beneficial alternative for effective reporting and analysis, is offering vast global opportunities for Chartered Accountants. To promote this phenomenon, the ICAI has established XBRL India, the Indian Jurisdiction of the XBRL International Inc. (XII), to disseminate and develop XBRL in India. The XBRL India has been spearheading the XBRL revolution in the country with the active participation of the Ministry of Corporate Affairs (MCA), SEBI, IRDA and RBI. A separate website *www.xbrl.org/in* is dedicated to the XBRL India Jurisdiction, to make members and other users aware of the Indian XBRL Jurisdiction.

In India, XBRL has been implemented as mandate reporting requirements by the Ministry of Corporate Affairs from the year 2011 onwards for a selected class of companies. SEBI has adopted the XBRL for various data regulatory filings (voluntary) by mutual funds. RBI has mandated the Banking Companies for filing with the RBI in XBRL format–template based-from the year 2012-13. The format of XBRL has also been recognised as a standard reporting language under the Companies Act, 2013 for filing of financial statements.

CAs & Technology

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XBRL was initiated by the ICAI way back in the year 2007 by developing the XBRL taxonomy for Commercial & Industrial (C&I) Companies based on Schedule VI under the erstwhile Companies Act, 1956. Later a separate entity *viz.* XBRL India, a Company registered under the Companies law, was incorporated by the ICAI to support the development and promotion of XBRL.

XBRL India has developed the taxonomy for Commercial & Industrial (C&I) companies on the basis of Revised Schedule VI, the taxonomies for Power Sector Companies, Non-Banking Financial Companies (NBFCs) and Insurance Companies. XBRL India is also exploring the feasibility of implementing XBRL for having Income-Tax filings with involvement of Central Board of Direct Taxes. Further, an XBRL Foundation Certificate Course of XBRL International has been launched in India at a discounted price for the members of XBRL India.

ICAI Now

A major technological milestone, ICAI's Mobile Application "ICAI NOW," has been launched this year, which connects students and members to ICAI anytime anywhere (*http://www.icai.org/mobile*). It brings together key up-to-date ICAI contents on Android, iOS and Windows platforms. The ICAI Now is available free of cost on Google Play, iTune and Window phone store for Members, Students and other stakeholders. ICAI Now is currently listed in top free application in education category and currently accessed by 1,60,000 users, most of whom have given it a 4-star rating.

ICAI Knowledge Gateway

Keeping pace with the latest trends and technologies, a knowledge portal ICAI Knowledge Gateway has also been recently launched to help ICAI members, students and other stake-holders access vital information from wherever, whenever. (*http://www.icaiknowledgegateway.org/*). There have been a mammoth 7,25,508 visitors to the Knowledge portal so far.

ICAI Social Networking

India's digital landscape is evolving fast. Our country has 243.2 million Internet users and 106 million active social media users. And a very big section of these social media users are the members of India's emerging knowledge society, including the Chartered Accountants. The ICAI could not afford to lag behind in reaping the immense benefits of the social media, which has a big potential to serve our professional fraternity. With this perception and vision, the ICAI has recently embraced social media platforms.

The ICAI has recently set up a Google Hangout (Webinar System), which enables ICAI to broadcast Live Events on Air (HD) on Google Plus, YouTube and ICAI Website. The Google Hangout platform is also used for Weekly E-Mentoring session for Students. The ICAI has also created official YouTube Channel (*https://www.youtube.com/icaiorgtube*) and Google Plus (*https://plus.google.com/+IcaiOrgtube*) pages, where live or recorded events hosted for ICAI students and members are available free of cost. The recently launched ICAI Facebook (*https://www.facebook.com/theicai*) and Twitter (*https://twitter.com/theicai*) pages provide the opportunity to ICAI students and members to connect with ICAI on social media. The ICAI Facebook page has 32,000 likes so far, while the Twitter page is also gradually gaining popularity. Our Prime Minister Shri Narendra Modi had tweeted on it on 'CA Day' and the ICAI tweeted back. The ICAI Google+ has 3,759 followers whereas the ICAI You Tube has 1,422 subscribers so far.

Flexi Working Portal for Women

Pressing technology to push the agenda of professional uplift and empowerment of ICAI women members, the ICAI has launched a flexi working portal for women this year (*http://womenportal.icai.org/*). It provides them a platform where they can explore suitable opportunities with option for part time jobs, jobs with flexi hours or jobs with work-from-home facility just at the push of a button. It also helps the industry to tap the talent pool which might not be accessible otherwise in the normal course. There have been 20,154 visitors to this portal so far, wherein there are a total of 1,962 registered jobseekers and 84 registered employers.

ICAI Publications Online Store

To facilitate members across the country to order publications online, the ICAI has recently launched a Publications Online store (*https://icaionlinestore.org/*). This new e-initiative enables members and students to purchase all ICAI publications online. It has so far been visited by 4,324 people while total number of registered users is 1,322.

Digital Library

To facilitate a large section of ICAI members in remote areas to access the online ICAI library, a 'Digital Library' has also been launched recently. This provides access to all the ICAI e-resources (24x7) at the comfort of one's home or office (*www.icaidigitallibrary.org*).

E-books

Recently, the ICAI has introduced the concept of e-Books to update its members on various important professional issues. The aim is to facilitate a speedy and convenient communication to the Chartered Accountants anytime and anywhere at the click of a button. So far, three such e-Books have been brought out, which include *Guidance Note on Audit of Banks, Companies Act* and *Peer Review Manual*.

Global Career e-Kits

In another move to leverage technology to build capacities of Chartered Accountants, the ICAI has recently launched Global Career e-Kits in Oman, UAE, Kuwait and Australia. These e-Kits contain exhaustive information on career opportunities in respective foreign lands.

New Portal for Young ICAI Members soon

Exploiting technology for professional betterment of its young members, the ICAI is set to launch a portal for them. It will provide them a single-window of information on new practice opportunities, networking, employment avenues and new areas of specialisation.

Independent Directors Repository

Making use of technology in playing its role as a partner in nation building, the ICAI, jointly with Institute of Company Secretaries of India and Institute of Cost Accountants of India, has operationalised a repository for Independent Directors. This repository (*http://independentdirector.in*) provides the opportunity to individuals who are willing to act as independent directors as well as the companies which wish to select independent directors for their Board. So far, this portal has 1,200 registrations out of which 700 are Chartered Accountants.

E- Learning

As many as eight eLearning courses are available at *http://elearn.icai.org/* at a concessional fee of ₹500, which are becoming increasingly popular. Besides, there are many free courses for young CAs.

ICAI TV and Webcasts

The page views on ICAI TV (*http://www.icaitv.com*) has touched a figure of 21,90,437 in the last one year with our webcasts getting increasingly popular. All webcasts are archived on '*http://icaitv.com/*' on ICAI website: *www.icai.org*.

Video Podcasts

Launched this year, this initiative facilitates members to watch a series of educational videos on their mobiles. The first such series has been on the Companies Act, 2013.

PD Portal

The Professional Development portal (*http://pdicai.org/*) of ICAI provides timely and necessary information on practice development and professional opportunities to the members to enrich their own practice and provide value added services to their clients. This portal concentrates on various existing as well as upcoming opportunities in the economy and consolidation of the news and related information from various sources of print and

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electronic media. ICAI has recently revamped this portal to keep up with the technology.

Some Important e-Services:

The ICAI has made available more than 29 e-Services, most of which are listed and hosted on the link (*http://www.icai.org/new_post.html?post_id=5509*) under e-Services icon on the ICAI website homepage. These services include: Pay Balance Membership Fee Online, Online Membership Payment, e-Journal, Digital Certification Centre, Online Payments-Certificate Courses for Members/Conferences/Seminars/Journal, Member Records & Firm Name Search (Trace a Member), Compendium of Opinions, Contribute for CABF, Unique Document Identification Number for Practicing Chartered Accountants, Download Firm Constitution Certificate, Online Ordering of Publications, List of Members as on 1st April 2014, Restore your Membership, *etc.*

Technology to the Advantage of CA Students

The Board of Studies of the ICAI, in its continuous endeavour to provide quality education to students, has been actively leveraging technology to facilitate effective distance education for the CA Course. Some of its important IT initiatives to the advantage of students are as follows:

(a) ICAI Cloud Campus

Leveraging technology for the uplift of the CA students and enable the entire CA student community to connect together, the ICAI has recently launched 'Cloud Campus'–a revolutionary and futuristic next generation interactive learning management system (*http://cloudcampus.icai.org/*). It is a virtual campus where e-learning courses, audio lectures, video lectures, webcasts, online mentoring, articleship training resources, course information, course enrollment, online education, administrative support, examination forms/results *etc.*, are provided to the students free of cost. The ICAI Cloud Campus has so far logged an astounding number of 9,40,589 visitors.

(b) Advanced Course on IT Training

ICAI has been making earnest efforts to develop a contemporary body of knowledge and skill sets for its students by updating its curriculum from time to time. Considering the importance of IT, ICAI is going to implement a 100-hours Advanced IT Training course for its students. It is proposed that students who have registered for their practical training on or after 1st August, 2012 would be required to undergo the IT any-time after completing the 2nd year of practical training but before appearing in their Final Examination. The course would include hands-on-training on Advanced features of MS-Access, MS Excel, CAAT using Idea 8.5, Core Banking Solution, ERP using Tally ERP 9 and Office automation application & IT security in a CA's office.

(c) ITT Centres

In order to impart synchronised and uniform IT knowledge to all the aspiring CA students in the IT area, the ICAI has set up IT labs equipped with the 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 CA students.

(d) Video Lectures on practical problem solving subjects

The Board of Studies of the ICAI has now started recording of practical problem solving Video-Based Training (VBT) lectures for practical subjects like Accounts, Taxation, Financial Management, Advanced Management Accounting, SFM, Quantitate Aptitude, etc .which is a part of Cloud Campus. These video lectures are available on http://cloudcampus.icai.org

(e) Online Mentoring

Online mentoring session enables students across the country and abroad, to get online mentoring Subject Wise for CPT, Intermediate (IPC) and Final Courses. Students are also able to ask queries on the session/event topic. Students can get registered for online mentoring session through http://cloudcampus.icai.org

(f) Webcast

The Board of Studies of the ICAI has organised

Leveraging technology for the uplift of the CA students and enable the entire CA student community to connect together, the ICAI has recently launched 'Cloud Campus' – a revolutionary and futuristic next generation interactive learning management system.

60 Webcasts for the respective subjects of the Common Proficiency Course (CPC), IPC Course and Final Course; and on "Accounting Standards" and on "How to Prepare for CA Exams" for the benefit of Students. Recordings of these Webcasts/Video on Demand are available on the link: *http://www.icai.org/new_post.html?post_id=9630&c_id=344*

(g) **e-Learning**

Free-of-cost online e-Learning facility has been launched for the benefit of Students of CPT, Intermediate (IPC) and Final Courses on the Students Learning Management System (LMS) at *http://studentslms.icai.org* to enable them to learn anytime and anywhere. Students study the same lectures uniformly on pan India basis, with a dashboard tracking their e-Learning progress. The e-Lectures on the Students LMS are also mobile-enabled-students can now access the online e-Learning even on their smart phones and tablets, while on the move. The e-Learning initiative has received a very encouraging response and acceptance by Students, as may be noted from the table below:

Particulars	**29-Sep-14**
Student Learning Hours Clocked	40,28,188
Students Registered Till Date	1,19,123
Students have studied Average hours	33.82
Visitor Count on Home Page	18,17,069
Face Book Likes	7,184

(h) **e-Learning DVDs for CA course**

e-Learning DVDs have been provided to the students as a part of the Study Material (printed henceforth) issued to Students of CPT Course, Intermediate (IPC) Course Group-I, Intermediate (IPC) Course Group-II, Final Course Group-I and Final Course Group-II, to enable students to study at their convenience anytime and anywhere without the need for Internet, waiting for files to download and costs thereto.

(i) **BoS Knowledge Portal**

BoS Knowledge Portal in the ICAI Cloud Campus offers Chapter Wise Study Material, Practice Manual, Podcast (MP3 Audio lecture), and PowerPoint Presentation serving as short notes. Soft copies of Revision Test Papers, Suggested Answers, Supplementary Study Material and Mock Test Papers are also available on the BoS Knowledge Portal.

As a green initiative, students are now provided certified copies of their answer books in soft copies. Through a secure login identity and password intimated to them, they can visit the particular site and view their answer books at their convenience.

(j) **Digital Language Lab**

A language lab has been set up as a communication-skill development initiative for our students. This serves as a tool to teach a language by interactive methods using available software, and thereby help the CA students to learn phonetics including acceptable (standard) pronunciation and accent using self-assessment modules.

Improving Examination System: Hi-tech Initiatives

(a) **Online Answer Books:** As a green initiative, students are now provided certified copies of their answer books in soft copies. Through a secure login identity and password intimated to them, they can visit the particular site and view their answer books at their convenience. With effect from November 2013 examination, scanned copies of evaluated answer books of those examinees who sought them, are now made available, online, on website, which can be accessed through a secure user ID and password by the respective examinee.

(b) **Online Corrections in Examination Forms:** Students after submission of their examination forms are now given another opportunity to correct their particulars and option of changing examination centre, group and medium opted *etc.* by visiting *http://icaiexam.icai.org*. This link called *"Correction Window"* enables students to communicate online with the Examination Department for making corrections in the examination forms already submitted by them.

(c) **Online Correction Post-Submission:** Even after submission of examination forms, students have another opportunity to correct the particulars online, *i.e.* at *http://icaiexam.icai.org*, including change of examination centre, group and medium, *etc.*

(d) **Online Examination Application Form:** The facility of submission of examination applications forms online and payment of exam fees online through payment gateway, at *http://icaiexam.icai.org* was introduced in 2009. Nearly 98% of all examination forms submitted are online.

(e) **Admit Cards:** Downloading of Admit cards with scanned photographs and specimen signatures of the students concerned from the website has been facilitated with effect from November 2012 CA Examinations and CPT December 2012 and continued for November/ December 2013 May/June 2014.

(f) **Verification Applications:** Effective from the examinations held in November 2011, submission of requests for verification of marks, by candidates desirous of verification of their marks, post declaration of results, online, at *http://icaiexam.icai.org* has been facilitated. The outcome of their request also continues to be hosted on the same website.

(g) **Automation:** Examination processes covering, *inter alia*, coding, capture of absentee data, reconciliation and capturing of marks (after evaluation by examiners) *etc.*, are automated.

(h) **Observers web Portal:** A web portal *http://observers.icaiexam.icai.org* was developed and put in place for facilitating all activities relating to Observers appointed in examination centres, including registration, hosting of details of assignments allotted, *etc.*, effective from May, 2014 examinations.

(i) **Examination Centre web portal:** A web portal *http://centres.icaiexam.icai.org* was operationalised for the May/June 2014 CA examinations for capture of absentee data online, on the day of the exam, on a daily basis.

(j) **Results:** The result, immediately after declaration, can be accessed through the designated site. The same is also facilitated through SMS. Besides, downloading of CPT result card (with photo and signature) has also been facilitated.

(k) **Introduction of a web site for checking the "Exemption" status:** Candidates who fail in a Group in the examination but secure a minimum of 60% marks in one or more papers, are granted "Exemption" in that paper or in those paper/s subject to certain criteria. The status of such exemption is indicated in their statement of marks issued to them. With a view to provide further clarity and to remove difficulties/doubts that the candidates may face, a website *http://exemption.icaiexam.icai.org* has been operationalised wherein the status of those who are eligible for exemption in the forthcoming examination is also made available to them online.

(l) **Feedback form:** With a view to encourage feedback on the question papers from the candidates, a feedback form has been hosted at *www.icai.org* through which the candidates can give their opinion on the question papers of the CA examinations to the exam department within a week from the date of the last exam. A dedicated email ID *examfeedback@icai.in* has also been made operational for the purpose.

e-Sahaayataa

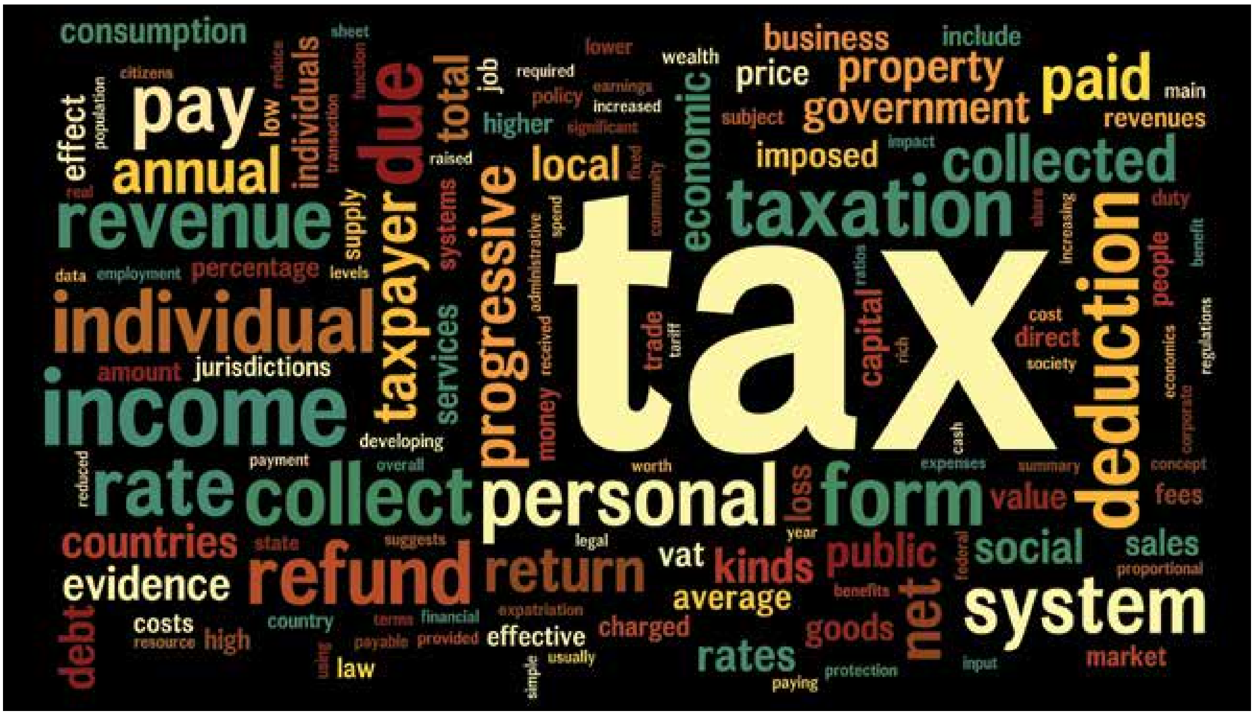
e-Sahaayataa, an online grievance management system of the ICAI, provides prompt and trackable services to all the stakeholders of accountancy profession including our members and students. The number of members and students who avail this service to resolve their queries pertaining to day-to-day functioning of the Institute has greatly increased over the time.

Conclusion

Discussed above are some of the major initiatives taken by the ICAI to leverage technology, not only to better serve its member Chartered Accountants and students, but also take accounting profession across new and emerging hi-tech professional frontiers. The aim is to prepare accounting profession take a big and successful leap into a future, which will be dominated by technology. The ICAI's *'Vision 2021,'* the year when India is likely to graduate from developing to developed economy, also puts high emphasis on Information Technology.

ICAI's new Committee on Review of Education and Training, which has been formed to develop a new CA curriculm benchmarking Indian accounting education with the best in the world, is also giving IT the due importance in the future scheme of things. IT is the future and the ICAI, the regulator-cum-facilitator of accounting profession in India, is very much alive to this fact. Indeed, the Information Technology is the stepping stone to a sustainable future. ■

Income Computation and Disclosure Standards (*erstwhile Tax Accounting Standards*)—Transforming the Way of Computing Income under Tax Laws



Section 145(2) of the Income-tax Act, 1961 has empowered the Central Government to notify Accounting Standards that should be followed by any class of person or in respect of any class of income. However, it has notified only two Accounting Standards, i.e., those on Disclosure of Accounting Policies and Disclosure of Prior Period Items and Extraordinary Items and Changes in Accounting Policies till date. Because of the absence of notifications on desired Accounting Standards, uncertainty continues to haunt with regard to various accounting issues, especially where the views of income tax authorities are not consistent with the guidance on Accounting Standards issued by The Institute of Chartered Accountants of India (ICAI)/the Ministry of Corporate Affairs (MCA) of the Government of India. In this article, the authors discuss the Disclosure Accounting Standards that have transformed the way of computing income under the tax laws. Read on…

CA. Archana Bhutani and CA. Akshat Kedia
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Background

It is generally accepted that income tax should be levied on profits determined as per GAAP with specific provisions under the Income-tax Act, 1961 providing for exemptions/additions to be adjusted for computation of taxable income. The Central Government is also empowered under Section 145(2) of the Income-tax Act, 1961 to notify Accounting Standards that should be followed by any class of person or in respect of any class of income. However, only two Accounting Standards, on *'Disclosure of Accounting Policies'* and *'Disclosure of Prior Period Items and Extraordinary Items and Changes in Accounting Policies'* have been notified till date.

In the absence of notification of Accounting Standards under the Income-tax Act, 1961, uncertainty and litigation continues on various accounting related issues, where the views of the income-tax authorities may not be consistent with the guidance in Accounting Standards (AS) issued by ICAI/MCA. With the impending convergence with IFRS in India (Ind AS) this issue assumes greater importance.

In order to address some of these issues and bring greater clarity around computation of taxable income, the CBDT constituted the Accounting Standard Committee in December 2010, with the following terms of reference:

- To study the harmonisation of AS issued by ICAI with the direct tax laws in India, and suggest AS which need to be adopted under the Section 145(2) of Income-tax Act, 1961 along with the relevant modifications
- To suggest a method for determination of tax base (book profit) for the purpose of *minimum alternate tax* (MAT) in case of companies migrating to Ind AS
- To suggest appropriate amendments to the Income-tax Act, 1961 in view of the transition to Ind AS regime

Accounting Standards not covered	Rationale
AS 6, AS 14 and AS 15	Covered by specific provisions of Income-tax Act, 1961
AS 3, AS 17, AS 18, AS 20 and AS 24	For disclosures only; no impact on income tax computation
AS 21, AS 23 and AS 27	Deal with consolidated financial statements; not relevant for Income-tax Act, 1961
AS 22, AS 25 and AS 28	Not relevant for tax computation
AS 30, AS 31 and 32	Presently voluntary in nature with limited applicability due to conflicts with notified Standards

The Committee has finalised 14 Standards on topics considered immediately relevant after considering the public comments on the drafts issued by it earlier.

Final Recommendations

Key recommendations of the Committee are summarised as:

- Draft Income Computation and Disclosure Standards (referred as 'ICDS') would need to be in harmony with the provisions of the Income-tax Act, 1961. Further, ICDS would need to lay down specific rules which would enable computation of taxable income with certainty and clarity. Similarly, to ensure horizontal equity and uniformity, ICDS should eliminate alternatives, to the extent possible. Based on these objectives, it was concluded that AS issued by ICAI could not be notified under the Act without modification. Accordingly, ICDS modifies the AS to achieve the above objectives.
- ICDS should be applicable only to computation of taxable income and taxpayers will not be required to maintain separate books of accounts on the basis of ICDS. Profits as per the financial statements would be adjusted for specific requirements of ICDS for determining the taxable income.
- ICDS should apply to all taxpayers following mercantile system having profits/gains from business/profession or income from other sources without specifying any thresholds relating to turnover/income in order to bring certainty and uniformity in computation of taxable income.
- In case of a conflict between the Income-tax Act, 1961 and ICDS, provisions of the Act will prevail.
- Transition provisions will be notified with each ICDS as relevant, in order to prevent any tax leakage or any double taxation.

Draft Income Computation and Disclosure Standards (referred as 'ICDS') would need to be in harmony with the provisions of the Income-tax Act, 1961. Further, ICDS would need to lay down specific rules which would enable computation of taxable income with certainty and clarity.

ICDS does not recognise the concept of materiality for the purpose of computation of taxable income. This would lead to various interpretation issues such as whether the company's accounting policies would be applicable even to an immaterial item of income/ expenditure/asset/liability.

- To monitor the compliance with ICDS, appropriate modifications should be made to the return of income. For entities subject to tax audit, form 3CD should be modified so that a tax auditor is required to certify that computation of taxable income is in accordance with ICDS.
- Suitable amendments will be made to the Income-tax Act, 1961 to provide certainty on the following issues:
  - Allowability of depreciation on goodwill arising on amalgamation
  - Allowability of the provision made for the payment of pension on retirement or termination of an employee

Impact of Standards

Significant divergences exist between ICDS and Accounting Standards issued by ICAI/MCA. Objective of the Committee was to adhere to the principles of *'reduction of litigation', 'minimisation of alternatives'* and *'giving certainty to issues'*. However, the net effect of the Standards as compared to the position obtaining now would be:

- In many cases, timing of taxable income would be preponed
- In some cases, there would be an increase in taxable income
- Quite a few judicial decisions favouring assessee would become non-operative
- Penalties under tax laws would clearly be leviable even if amounts involved are not material from accounting perspective

Timeline showing various stages of formulation of ICDS (earlier known as *TAS*):

1995	The Finance Act, 1995 empowered the Central Government to notify Accounting Standards for computation of income under 'Profits and Gains of Business or Profession' or 'Income from Other Sources'.
1996	Two Accounting Standards relating to 'Disclosure of Accounting Policies' and 'Disclosure of Prior Period and Extraordinary Items and Changes in Accounting Policies' were notified.
2002	The Government constituted a Committee for formulation of Accounting Standards for the purposes of notification under the Income-tax Act, 1961.
2003	The Committee submitted its final report. The Committee recommended notification of the Accounting Standards issued by the ICAI without any modification along with consequential legislative amendments to the Income-tax Act for preventing any revenue leakage.
2010	CBDT constituted another 'Accounting Standards Committee'. The Committee recommended harmonisation of Accounting Standards with provisions of the Income-tax Act, 1961; be teamed as 'Tax Accounting Standards', to distinguish the some from 'Accounting Standards' issued by the ICAI

2011	• The Committee submitted drafts of two Standards namely 'Construction Contracts' and 'Government Grants'.
2012	• The Committee submitted drafts of remaining 12 Standards.
2014	• Shri Arun Jaitley, Minister of Finance, in his budget speech for 2014-15 mentioned that standards for computation of tax would be notified separately. Subsequently, *vide* the Finance (No. 2) Bill, 2014, suitable amendments have been made to Section 145 of the Income-tax Act including change of team 'Accounting Standards' to 'Income Computation and Disclosure Standards'. These amendments will take effect from 1st April, 2015, *i.e.*, assessment year 2016-17.

Significant Impact Areas of ICDS

Some of the areas where ICDS makes a significant divergence from the existing GAAP are:

No concept of 'materiality' and 'prudence' in selection and application of accounting policies

ICDS does not recognise the concept of materiality for the purpose of computation of taxable income. This would lead to various interpretation issues such as whether the company's accounting policies would be applicable even to an immaterial item of income/expenditure/asset/liability, *e.g.* in a company with, say, ₹10,000 crore of fixed assets, would it be necessary to depreciate even an asset of, say, ₹3,000 which meets the definition of fixed asset?

ICDS has also not considered the '*prudence*' principle for computing the taxable income. This is also evident in various ICDSs:

ICDS	Manner of Computation of Taxable Income
Accounting Policies	ICDS prohibits recognition of MTM loss/expected loss except required by any other Standard
Construction Contracts	ICDS requires contract revenue to be recognised even if there is uncertainty in collection (unlike AS 7). As per the ICDS, debtor may be later claimed as a deduction as bad debt expense. However, many experts have represented that under ICDS also, contract revenue should be recognised only when there is reasonable certainty of collection.
	Under ICDS, expected losses on construction contract should not be recognised as an expense.
Revenue Recognition	In case of uncertainty regarding collection, revenue recognition is postponed under the ICDS only in case of claim for escalation of price and export incentives. Subsequently, amounts not collected may be claimed as bad debt expense. However, a large number of experts have represented that the position as per the AS 9 should not be disturbed and revenue should be recognised only when there is reasonable certainty of its ultimate collection.
	Completed service contract method is not permitted for revenue recognition in case of services.
Government Grants	Under the ICDS, recognition of government grant is not postponed beyond the date of actual receipt even though the conditions attached to the grant are not fulfilled.

ICDS	Manner of Computation of Taxable Income
Securities	Under the ICDS, securities, which are held as stock-in-trade and not listed on a recognised stock exchange or listed but not quoted on a recognised stock exchange with regularity, are valued at actual cost initially recognised.
Provisions, Contingent Liabilities and Contingent Assets	ICDS does not deal with accounting for onerous contracts, thus, provision for loss on onerous contract is not permitted.

(This is not an exhaustive list)

***Not a strict application of* 'accrual concept'**

Even though the ICDS on *'Accounting Policies'* mentions *accrual* as one of the fundamental accounting assumptions, unrealised foreign exchange gain or losses (even though accrued in accounts) are not recognised as an allowable expense under the ICDS.

No change in accounting policy without a reasonable cause

Under the ICDS, an accounting policy cannot be changed without a reasonable cause, *e.g.*, change in method of valuation of inventory would require a reasonable cause. This position is different from the Indian GAAP wherein an accounting policy can change, *inter alia*, on account of a more appropriate presentation of the financial statements of the enterprise. The term *reasonable cause* has been not been defined and would involve exercise of judgement by management and tax authorities. However, it seems that the condition of *reasonable cause* is stricter as compared to the condition of 'more appropriate presentation of financial statements' under Indian GAAP.

Inventory valuation in case of service provider

AS 2 on *'Valuation of Inventories'* is silent on valuation of inventories of a service provider. General practice indicates that inventory is valued by service provider on the basis of principles under AS 2. The ICDS specifically requires inventory to be valued in case of service provider. However, unlike the principles of AS 2, it requires inventory to be valued at cost. Many experts have represented that such inventory should also be valued at lower of cost or net realisable value (as in the case of AS 2).

ICDS requires exchange differences on translation of non-integral foreign operations to be recognised as income or expense, instead of their recognition in foreign currency translation reserve (FCTR) as required under the AS 11. This seems to be based on the analysis that the Income-tax Act, 1961 does not distinguish between the tax treatment incorporating the results of branches that may qualify as non-integral from those that qualify as integral.

Basis for valuation of opening stock

As per the ICDS on *'Valuation of Inventories,'* opening inventory is valued at amount of closing inventory of immediately preceding previous year. This requirement nullifies the impact of judicial decisions as per which the opening stock is valued on the *same basis* as closing stock, in cases where there is a change in the accounting policy for inventory valuation during the year.

Allowability of prior period expense

As per the ICDS, prior period expense would be allowed as deduction only in the year to which it pertains, thus, revised return needs to be filed in such cases, wherever permissible. However, many experts have represented that prior period expense should be allowed in the year of recognition, i.e. the current year.

Specific revenue transactions

AS 9 contains certain illustrations that provide more clarity on application of revenue recognition principles to specific types of transactions, *e.g.,* a sale and repurchase agreement may be in substance a financing arrangement, or an upfront membership fee may be consideration for future discounted products or services. Since similar illustrations are not included in the ICDS, the position around such specific transactions requires guidance.

Reporting of foreign currency transactions at transaction date

As per the ICDS on *'The Effects of Changes in Foreign Exchange Rates'*, foreign currency transactions are recorded by applying to the foreign currency amount the exchange rate between the reporting currency and the foreign currency at the date of the transaction. The option given under the AS 11 for using the weekly or the monthly exchange rate has not been considered under the ICDS which may cause a lot of practical difficulties with no significant benefits in reporting especially in case of enterprises having high volume of foreign currency transactions. The application of the requirement under the ICDS does not seem viable and, thus, a large number of experts have represented that the option to use average rates as per the AS 11 should be retained, since it would otherwise lead to undue compliance burden.

Accounting for foreign currency option contracts akin to forward exchange contracts

Accounting prescribed by the ICDS for foreign currency option contracts is similar to that for forward exchange contracts. This may have accounting implications, *e.g.,* computation of discount/premium in case of option contracts, when there is no obligation under an option contract to buy/sell foreign currency unlike a forward exchange contract.

Though efforts have been done to harmonise AS with the direct tax laws, various significant differences exists between AS and ICDS. Some of the provisions of the ICDS also represent a significant change or clarification in the tax position as compared to currently prevailing practices.

No provision similar to Para 46/ 46A of AS 11

There is no provision under the ICDS on *'The Effects of Changes in Foreign Exchange Rates'* corresponding to the Para 46/46A of AS 11. This will have significant differences in way the exchange differences are recognised in the books of accounts and those recognised for taxation purposes.

Let us analyse the impact on long-term foreign currency monetary item under the ICDS by taking an example of an asset which is not a qualifying asset under the AS 16. Following table indicates the impact:

Exchange differences	**Relating to**	**Under AS 11** *(not a qualifying asset)*		**Under ICDS**
		Companies not opting for Para 46/ 46A of AS 11	**Companies opting for Para 46/ 46A of AS 11**	
Unrealised exchange differences	Depreciable capital assets	Recognise in P&L	Capitalise & depreciate over useful life of asset	Disallowed
	Others	Recognise in P&L	FCMITDA; amortise over period of loan	Allowed
Realised exchange differences	Depreciable capital assets	Recognise in P&L	Capitalise & depreciate over useful life of asset	Capitalise if fixed asset acquired from outside India
	Others	Recognise in P&L	FCMITDA; amortise over period of loan	Allowed

Exchange differences on translation of non-integral foreign operation

ICDS requires exchange differences on translation of non-integral foreign operations to be recognised as income or expense, instead of their recognition in foreign currency translation reserve (FCTR) as required under the AS 11. This seems to be based on the analysis that the Income-tax Act, 1961 does not distinguish between the tax treatment incorporating the results of branches that may qualify as non-integral from those that qualify as integral. However, it may be noted that there does exist a measurement difference in quantification of impact of exchange differences between integral and non-integral foreign operation per ICDS, *e.g.,* fixed assets and other non-monetary assets of non-integral foreign operation are restated using the exchange rates on each balance sheet date whereas in case of an integral operation, these are not restated at subsequent balance sheet date.

Use of FIFO method for securities

Under the ICDS on *'Securities',* cost of security (held as stock-in-trade) would be determined on the basis of FIFO method, where application of specific identification method is not feasible. This is unlike the AS 13 where, ordinarily, the appropriate cost formula would be based on average costs.

Formula for capitalisation of borrowing costs in case of general borrowings

ICDS on *'Borrowing Costs'* gives a specific formula for capitalisation of borrowing costs in case of general borrowings, which is:

Borrowing costs incurred during the previous year (except on specific borrowings) × Average cost of qualifying asset* (other than those funded out of specific borrowings) ÷ Average of total assets* (other than those funded out of specific borrowings)

** as appears in the balance sheet of a person on the first day and the last day of the previous year*

It is not clear whether the term *qualifying asset* as mentioned in the formula should include all qualifying assets, even though they were put to use in the past years, or should it be construed to mean only those qualifying assets which are under process, i.e. not yet put to use. This issue becomes more complex with definition of *qualifying asset* wherein no minimum period has been prescribed for classification as a qualifying asset, other than in case of inventories, *e.g.,* qualifying assets include tangible assets and intangible assets which are ready to use at the time of acquisition. Consider for example a case where a company has started construction of a fixed asset on 2nd April, 2014, using general borrowings and the asset is completed on 30th March, 2015. Capitalisation of borrowing costs in such cases may result in significant practical challenges.

Also, as per the formula, assets funded out of equity would not be excluded from the computation of capitalisation of borrowing costs, which will lead to absurd results in cases where equity is utilised for the purpose of funding qualifying assets/other assets.

Lessee to be entitled to depreciation in case of finance lease

Income-tax Act, 1961 currently allows depreciation only on those assets that are owned by the assessee. As such, for a finance lease arrangement, it is the lessor that is entitled to the depreciation deduction and the lease rentals are taxed as its income. Now, ICDS provides that assets covered by a finance lease would be capitalised and depreciated by the lessee. Accordingly, the lessor would not be entitled to depreciation on assets that are given on finance lease. However, since the Income-tax Act, 1961 overrides the ICDS, suitable amendments may be required to the Act to facilitate this provision of ICDS.

Also, under the ICDS, lease payments under an operating lease would be recognised as an expense on straight line basis over the lease term. Similar is the case with lessor for lease income under an operating lease. These provisions of ICDS would also have a consequential impact on various other provisions, *e.g.* TDS and benefits under the *Double Taxation Avoidance Agreements* (DTAA) would need to be considered prior to implementation of these requirements under ICDS.

Classification as a finance lease

Under the ICDS on *'Leases'*, though the indicators for classification of leases are similar to that under the AS 19, the Standard provides that meeting even a single indicator would classify the lease as a finance lease, whereas, under the AS 19, a single indicator may not necessarily classify the lease as a finance lease. Thus, in certain cases, this may lead to different classification of leases for accounting and taxation purposes.

Joint confirmation for same lease classification

ICDS requires that the lessor and the lessee should have the same lease classification for a lease transaction and a joint confirmation needs to be

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.

documented in this regard. Further, in case a joint confirmation is not available, the lessee would not be entitled to a depreciation deduction on such assets.

Reasonable certainty for creation of provision

AS 29 requires recognition of a provision if its existence is considered *probable*. However, under the ICDS, the recognition of a provision is mandated when the existence is *reasonably certain*. This change from *probable* to *reasonably certain* for recognition of provision would result in higher profit for taxation.

Next Steps

Impact assessment

Companies should also compare the provisions of the ICDS with their current tax positions and practices and also identify gaps between current tax and accounting practices and requirements of the ICDS. This will enable companies to better evaluate the future impact of the ICDS on their taxable income, tax liabilities, tax policies and positions, tax planning strategies, cash flows optimisation opportunities, reporting and information processes and GAAP alignment. Companies may also decide to review the terms of their business contracts and practices to determine whether any changes may be required to minimise adverse implications.

Implementation plan

Companies should prepare a *pro-forma* template for the computation of income based on the ICDS requirements including preparation of list of relevant information required for disclosure purposes.

Changes to information systems and processes

Finally, companies should evaluate their information, documentation and contracting systems and processes to ensure that they are sufficient to meet the new requirements of the ICDS. There may arise a need for designing and implementing certain changes to IT systems including the chart of accounts. This will be essential to obtain the information required for computation of income under the ICDS without maintaining two separate books of account.

Trainings

Training needs of personnel in the tax and finance departments should also be considered. Customised training sessions should be provided to help tax and financial reporting teams to gain an in-depth understanding of requirements of the ICDS and evaluate the practical issues that the team will face in implementation of ICDS.

Conclusion

ICDS represents a significant move towards providing a uniform basis for computation of taxable income. Though efforts have been done to harmonise AS with the direct tax laws, various significant differences exists between AS and ICDS. Some of the provisions of the ICDS also represent a significant change or clarification in the tax position as compared to currently prevailing practices. These are broadly intended to cover aspects that have historically been a subject matter of litigation and diversity. Depending on the practices currently followed, a company may be affected significantly by these changes.

On transition to ICDS from a specific date, a situation may arise where income arising from a particular transaction may neither be taxable in the pre-ICDS period nor in post-ICDS period or may be taxable in both the periods. In order to mitigate such situations, transitional provisions, wherever required, should be prescribed on an immediate basis for effective implementation of ICDS from assessment year 2015-16. Additional guidance is expected to be provided through separate ICDS on specific areas such as accounting for real estate, service concession arrangements, financial instruments, share based payments and exploration activities. This will further strengthen the ICDS framework.

The ICDS has also removed one of the significant impediments to adoption of Ind AS since the ICDS provide an independent framework for computation of taxable income regardless of the accounting framework adopted by companies, *i.e.*, whether the companies follow AS or Ind AS. However, there is a need to consider the impact on computation of MAT when Ind AS comes into force since MAT is based on the accounting profits. Transition to Ind AS should be closely monitored and appropriate amendments relating to MAT should be considered in the future based on these developments.

The real benefit of providing a uniform framework for computing taxable income will only be achieved through a uniform and impartial implementation of ICDS by the tax authorities and the judiciary. The tax authorities may consider issuance of internal implementation guidelines and training to ensure that the ICDS are correctly applied and implemented at the field level. ■

Subsidiary as a Permanent Establishment

The taxation of Permanent Establishments (PE) is one of the most important concepts in International Taxation. The potential exposure to a PE is a major concern amongst corporate houses. PE determination is highly fact-sensitive and subjective and it cannot be assumed that any entity by virtue of being a subsidiary of a non-resident holding/parent company could be classified as a PE of the same. The onus to prove that the assessee has a PE rests with the Revenue. Unless it is established that the assessee has a PE in India, the AO should not ideally proceed to determine the profits attributable to such PE. The author has referred some recent decisions in this write-up, where a subsidiary is being determined as a PE.

(Contributed by Committee on International Taxation, of ICAI. Comments can be sent on citax@icai.in)

Introduction

The taxation of Permanent Establishments (PE) is one of the most important concepts in International taxation. The potential exposure to a PE is a major concern amongst the corporate houses. Business process outsourcing, cross-border travel of employees, and various other transactions between associated enterprises is an inherent part

Whether or not a foreign company has a PE in India, is function of several factors.

of the globalised corporate set-up and the imbuing 'Multinational 'culture. This trend has also flared up the litigation around PE.

Whether or not a foreign company has a PE in India, is function of several factors like carrying on of business in India through:

- a fixed place
- a dependent agent
- Employees/other personnel visiting India, *etc.*

The aforesaid is determined, having regard to the relevant tax treaty in consideration. A holding–subsidiary set up, is a most conventional multinational structure. In a number of cases, an Indian subsidiary of a foreign company has been alleged to be a PE. Is subsidiary also a type of PE? Or, in other words, does having a subsidiary in India by itself leads to a PE in India?

As we go along in this article, we will explore the aforesaid questions and discuss some of the recent important decisions that throw light on this issue.

Subsidiary as a PE

In the 1920s, the domestic tax laws of a few countries including Germany, Italy and Spain regarded subsidiary as a Permanent Establishment of its parent. In fact, under the German law until 1934, a subsidiary was automatically considered as a PE[1].

However, with the increase in globalisation and to meet the need of the hour, the default PE taxation of a subsidiary was withdrawn. **Attention is invited to Article 5(7) of the OECD Model convention** which reads as under:

> *"The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other."*

Article 5(7) of the OECD Model Convention is identical to Article 5(8) of UN Model Double Taxation Convention, 2011 and Article 5(7) of US Model Income Tax Convention, 2006.

The Article as reproduced above, is clarificatory. It clarifies that a company is not deemed to have a PE in the other contracting state, merely because, it controls, or is controlled by the other. A subsidiary can become a PE of the holding or the controlling company, if it satisfies the postulates and requirements of other paragraphs of the Article 5 notwithstanding and negating the protection provided under paragraph 6 of Article 5 which recognises the legal independence of the two entities.

While the term control has not been specifically defined in this context, Paragraph 40 of the OECD Model Convention Commentary refers to the term "subsidiary" while discussing this Article. It reads as under:

> *"40. It is generally accepted that the* ***existence of a subsidiary company*** *does not, of itself, constitute that* ***subsidiary company*** *a permanent establishment of its parent company. This follows from the principle that, for the purpose of taxation,* ***such a subsidiary company*** *constitutes an independent legal entity. Even the fact that the trade or business carried on by the* ***subsidiary company*** *is managed by the parent company does not constitute the* ***subsidiary company*** *a permanent establishment of the parent company".*
>
> (Emphasis supplied)

Thus, a subsidiary is generally construed as an independent legal entity and unless the other conditions in relation to existence of a PE are not fulfilled (like fixed place PE, agency PE, service PE *etc.*), a subsidiary by itself shall not be regarded as a PE.

Thus, a subsidiary in a way, unlike a branch or a project office, is a guarded structure, for carrying on business in India. Having a subsidiary does not by itself constitute a PE. In other words, a subsidiary is not a type of PE, but can be regarded as a PE if other applicable conditions are fulfilled.

It may be noted that the identification of a PE is not generally easy in circumstances where the PE maybe concealed behind a dependent operating

A subsidiary is generally construed as an independent legal entity and unless the other conditions in relation to existence of a PE are not fulfilled, a subsidiary by itself shall not be regarded as a PE.

[1] Source–International Taxation–A compendium by CTC Mar 2013-Third Edition

company carrying on other company's business in guise of an independent legal entity. As per the jurisprudence on the issue, the technical basis for PE determination involving subsidiary companies hovers around the "disposal test", "agency test", "place of management test", or a combination thereof.

The technical basis for PE determination involving subsidiary companies hovers around the "disposal test", "agency test", "place of management test", or a combination thereof.

Recent Indian Jurisprudence

In the context of deliberating on the issue of subsidiary being determined as a PE of the non-resident holding company, the Author has referred to some recent decisions which may be worthwhile to note.

Note: Though numerous issues have been deliberated by the courts in the rulings discussed in this article, we have restricted our discussion to the part of the ruling which deals with the aspect of subsidiary being construed as a PE.

A. Delhi High Court- E Funds Corporation & E Funds IT Solutions[2]

Facts of the Case

- E Funds Corporation and E Funds IT Solutions Group Inc. (taxpayers) are companies incorporated in USA and E Funds India is a wholly owned subsidiary of the taxpayers.
- The subsidiary performed back office operations in respect of ATM management services, electronic payments, decision support services *etc.*
- Income Tax Appellate Tribunal (ITAT) determined the subsidiary as a PE, since all the activities in India were carried out by the subsidiary and had not been remunerated on arm's length basis.

Issue before the High Court

- Whether the Indian subsidiary would be deemed as a PE of the taxpayer in India and how much could be attributed and taxed in the hands of the taxpayer?

High Court Ruling

- **Subsidiary as a PE:-** The Delhi HC opined that the subsidiary company constitutes an independent legal entity and the holding or the subsidiary company by themselves would not become a PE of each other. A subsidiary can become a PE of the holding/controlling company only if it satisfies the requirements stipulated in article 5 of the treaty.
- **Fixed Place PE:** - The fact that the subsidiary company was carrying on core activities as performed by the foreign taxpayer does not create a fixed place PE. Also there was no material to hold that the business of the taxpayers was carried out wholly or partly through a fixed premises and that the taxpayers used any premises belonging to the subsidiary.
- **Service PE-** The High Court observed that employees of E-fund India were their employees, *i.e.*, employees of the Indian subsidiary and not employees of the taxpayers. Though the employees of the taxpayer were deputed to the Indian subsidiary, the control and supervision over the employees rested with E fund India. Therefore Service PE did not exist in India.
- **Agency PE-** Subsidiary by itself cannot be construed to be a dependent agent PE of the Principal unless the conditions stipulated in Article 5(4) and (5)[3] are satisfied. Since transactions between the taxpayers and the Indian subsidiary were taxed on an arm's length principle and therefore requirements of article 5(5) are not satisfied and hence, there was no agency PE in India.

Comments

- This is a welcome ruling of the Delhi High Court laying down exhaustive principles in relation to determination of a PE, which have been internationally accepted by OECD as well as several benches of the Income Tax Appellate Tribunal. The High Court has taken a well-considered view clarifying concepts surrounding the issue of PE. The High Court has gone ahead to spell out various factors which in its opinion have no bearing on determination of PE and also reiterated that merely because a foreign company has a subsidiary in India would not create a permanent establishment.

[2] DIT vs E Funds IT Solutions (2014) 42 taxmann 50(Delhi)
[3] Article 5(4) & 5(5) of the India-USA DTAA stipulate criterion for classification of dependent agent PE

B. ITAT Delhi -Nortel Networks India International Inc.[4]

Facts of the Case

- M/s Nortel Group is a leading supplier of hardware and software products for GSM cellular radio telephone systems.
- The taxpayer, Nortel Networks India International Inc., a group concern of Nortel Group is a company incorporated in USA.
- The Nortel India (Indian subsidiary) installed the hardware supplied by the taxpayer and pre-negotiated the contracts.
- The Indian subsidiary of the Nortel group entered into an agreement with Reliance Infocom for supply of hardware and immediately after it's signing, the contract was assigned to the taxpayer.

Issue before the Tribunal

- Whether the taxpayer constitutes a Permanent establishment in terms of Article 5 of the DTAA between India and the USA?

Tribunal's Observations & Ruling

- The contract awarded was an indivisible contract involving supply, installation, testing, commissioning etc.
- M/s Nortel India undertook the responsibility for negotiating and securing the contracts as also the contract for installation and commissioning. The Tribunal agreed that the taxpayer executed the said work through Nortel India.
- Tribunal observed that the taxpayer is merely a shadow company of Nortel Group.
- All the facilities and services available to the Nortel Group were made available to the taxpayer. The installation works was executed as also the negotiation of the contracts was done by the Indian subsidiary.
- Nortel India was determined the subsidiary as a Fixed PE and Dependent Agent PE.

While the Revenue Authorities in India, in several cases, have been promiscuously leveling PE allegations, notwithstanding the independent subsidiary, whether the subsidiary is in fact a PE of the foreign enterprise is a question which is dependent on facts of each particular case.

- The Tribunal held that *"the activities carried out by the PE are the core activities of the assessee resulting in generation of income to the assessee and they cannot be considered to be preparatory and auxiliary and therefore, the contention of the assessee that it do not have PE in India is rejected."*

Comments

- Based on the facts of the case, the Delhi Tribunal held that, under the DTAA, the taxpayer had a fixed place PE as well as dependent agent PE by virtue of activities carried on by the Indian subsidiary. The ruling indicates the possible existence of a PE exposure while executing a turnkey contract (which are indivisible) which involves supply of equipment as well as provision of installation and commissioning services.

C. Mumbai Tribunal-Lubrizol Corporation USA

Facts of the Case[5]

- Lubrizol Corporation USA(assessee)engaged in manufacturing and sales of chemicals and lubricants, had a subsidiary[Lubrizol India Pvt. Ltd. (LIPL)]in India with 50% stake held by the assessee and balance 50% stake held by Indian Oil Corporation.
- The subsidiary is engaged not only in manufacture of products developed by the assessee but also in the marketing of products manufactured by the assessee.
- AO observed that the subsidiary maintained stock of various products, it was involved in procurement of order, had complete rights and liabilities in respect of marketing and sales activities on behalf of the assessee and was a virtual projection of the assessee in India. In view of the above factors, the AO held that assessee has a PE in India and the income is taxable in terms of Article 5(1), 5(2) and 5(4) of the India-USA DTAA.

Issue before the Tribunal

- Whether the Indian subsidiary would be deemed to be a PE in terms of India-USA DTAA?

Tribunal's Observation/Ruling

- The Tribunal in the case of the assessee for AY 2006-07 observed that LIPL was carrying

[4] Nortel Networks India International Inc. vs. DDIT (ITA Nos 1119,1120 & 1121 of 2010) dtd 13/06/2014

[5] Lubrizol Corporation USA vs. ADIT [2013] 33 taxman 424 (Mumbai-Trib)

The mode and manner in which functions are carried out by the subsidiary, the precision with which the documentation is done would, go a long way in determining /fighting a PE situation.

on independent manufacturing activities, own marketing network of sales, the commission received from the assessee constituted only a small portion of the total sales. Neither did LIPL had any authority to conclude contracts on assessee's behalf nor had any right to use LIPL premises. Also, LIPL did not had any authority to negotiate the terms of the contract and the authority to make final decision making authority rested with the assessee. The above mentioned facts are similar to the facts of the present case. In view of the above facts, the Tribunal held that the assessee does not have a PE in India.

- The Tribunal while holding non-existence of PE for AY 2006-07 relied on the decision of Daimler Chrysler[6] wherein it was held that *"there should be some definite activity of the PE to which profits can be attributed and merely acting for a non-resident principal would not by itself render an agent to be considered as PE for the purpose of allocating profits taxable in the hands of the principal….."*
- The Tribunal in the present case (following the decision of the co-ordinate bench of the Tribunal in the assessee's own case) held that the assessee did not have a PE in India in terms of Article 5(1), 5(2), 5(4) and 5(5) of the Indo-US Treaty.

Comments

- On factual analysis of the case, the Mumbai Tribunal primarily placing reliance on the decision of the Tribunal in its own case for AY 2006-07 and in absence of any other distinctive feature brought on record by the Revenue, held that the subsidiary of the assessee shall not be determined as a PE. Enormous reliance was also placed on the decision of the Mumbai Tribunal in case of Daimler Chrysler *(supra)*, wherein it has been held that mere existence of a subsidiary does not by itself constitute the subsidiary as a PE of the parent company and it is imperative for the subsidiary to carry on business in India for constitution of a PE. On various occasions it has been held essentially that, subsidiary cannot be recorded as a PE if the subsidiary has its own independent business operations. However if the functions of the subsidiary are not independent of the business of the parent company, there could be a reasonable belief that PE exists.

In the light of the above judgments, it is evident that such arrangements often raise peculiar tax issues under the applicable Double Taxation Avoidance Agreements as well as the Indian Tax Laws. It can be thus concluded that PE determination is highly fact sensitive and subjective and it cannot be assumed that any entity by virtue of being a subsidiary of a non-resident holding/parent company could be classified as a PE of the same.

Onus to prove existence of PE

It may be pertinent to note that there are numerous factors associated with determination of PE and also PE determination is fact intensive exercise. It has also been held in various judgments[7] that the onus to prove that a PE exists rests with the Revenue. There should be some evidence or justification from the Revenue to substantiate the existence of a PE.

In the case of Sofema SA[8] the Tribunal observed that in the absence of any evidence on record with regard to commercial activity having been done by the assessee company in India, its liasion office cannot be considered to be permanent establishment. The order passed by the Tribunal has been confirmed by the jurisdictional Delhi High Court and moreover, the SLP filed by Revenue was dismissed by the Apex Court. The Apex Court observed that:

> *"…. In the present case, there is a concurrent finding that Sofema SA, respondent herein is not a PE under the DTAA. However we find that this finding has been given on the basis that there is no evidence or justification forthcoming from the side of the Department to show that the respondent is a PE. On that account alone we do not wish to interfere in this matter."*

[6] DDIT vs. Daimler Chrysler A.G. [2010] 39 SOT 418 (Mum)
[7] Daikin Industries Ltd ITA No 3005/Del/2011; Meta One Corporation ITA No 5377/Del/2011
[8] Sofema SA ITA No 3900/Del/2002of 2006, affirmed by Delhi HC *vide* ITA No 1764/2006

The controversy that persists is whether the AO possesses sufficient material to demonstrate that the assessee has a PE in India. It is reiterated that the onus to prove that the assessee has a PE rests with the Revenue. Unless it is established that the assessee has a PE in India, the AO should not ideally proceed to determine the profits attributable to such PE.

Conclusion

While the Revenue Authorities in India, in several cases, have been promiscuously leveling PE allegations, notwithstanding the independent subsidiary, whether the subsidiary is in fact a PE of the foreign enterprise is a question which is dependent on facts of each particular case. While the Delhi High Court in the case of E Funds (*supra*) has elaborately considered all facets of possible PE determination and held that a subsidiary would not be classified as a PE, the Tribunal in the case of Nortel (*supra*) on the basis of facts of the case, has classified the subsidiary as a PE of the taxpayers. It appears from the reading of the judgment in the case of Nortel (order pronounced on 13th June'14) that the Delhi High Court's decision in case of E Funds (order pronounced on 5th Feb'14) has not been brought to the attention of the Hon'ble ITAT Bench.

As stated in earlier paragraphs, since subsidiary is not as such a type of PE, there are no unique features associated with subsidiary being reckoned as a PE. The mode and manner in which functions are carried out by the subsidiary, the precision with which the documentation is done would, go a long way in determining/fighting a PE situation. Nonetheless the following factors can be generally categorised as associated risks for classifying the subsidiary as a PE:

- Non-resident holding Companies employees regularly using the Indian subsidiary's facilities.

Since the subsidiary has always been classified as an independent and distinct legal entity for the purpose of taxation, there cannot be any thumb rule for classification of the subsidiary as a PE of the holding company unless factual analysis proves to be contrary.

- Indian subsidiary habitually exercises authority to conclude contracts on behalf of the non-resident holding company.
- Employees seconded from the non-resident holding company perform activities to promote/assist the business of the holding company, working under the control of and is compensated by the holding company.
- Non-seconded employees of the holding company perform services both for the non-resident holding company as well as the Indian subsidiary.

In sight of the above factors and the Indian jurisprudence, it is critically important to have continued diligence on permanent establishment front. A detailed risk matrix is essential to determine the possible risk areas. The good practices that may be followed to mitigate the risks could be in the form of having consistent supporting documentation, not retaining lien over the employment by the parent company, clear definition of roles and responsibilities *etc.* It is reiterated that factual matrix should be reviewed regularly in view of the judgments of the Courts as it can help in mitigating the risk to PE exposure as well as taking corrective action in a timely manner.

Since the subsidiary has always been classified as an independent and distinct legal entity for the purpose of taxation, there cannot be any thumb rule for classification of the subsidiary as a PE of the holding company unless factual analysis proves to be contrary. It would be interesting to see in times to come as to how this issue would be dealt in by the higher courts. ■

Independent Director Models in India and the United States:A Comparative Assessment

The role of independent directors features prominently in corporate governance codes. US public companies continue to adopt the best practices within the framework of strengthened securities market listing standards and legal requirements that developed, beginning with the passage of the Sarbanes-Oxley Act and have continued with the financial crisis and the passage of the Dodd-Frank Act. In India, key corporate governance laws had not kept pace with the changing contours of the economy until the recent enactment of the Companies Act of 2013, which completely revamps the country's corporate governance code. In this research study, the author presents a comparative assessment on the independent director models both in India and the US on several key parameters, i.e. definition and selection, board and committee composition, manner of appointment, term of office, remuneration, and duties and liabilities. Here, he has considered only those laws which are applicable to publicly-listed companies in India and the US. Read on…

Introduction

Corporate governance generally places a fair amount of emphasis on the independence of a Board. Corporate governance models in India borrow heavily from those in the US and the UK. For example, most corporate governance norms in India have been largely borrowed from the recommendations of Cadbury Committee (1992) of the UK and the Sarbanes-Oxley Act of 2002 of the US. Governance in the US aims at disciplining the management, while this aims at disciplining the dominant shareholder and protecting interests of minority shareholders in India. Independent directors, who are truly independent, can be an effective barricade against corporate frauds. Active oversight and prudent judgment may suffer when large numbers of directors are closely associated with the executive leadership.

Let us compare and assess independent director models in India and the US on the parameters of

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definition and selection, board and committee composition, manner of appointment, term of office, remuneration, and duties and liabilities, without considering disclosure obligations, while considering all laws applicable to publicly-listed companies in India and the US and ignoring the specific exceptions.

Independent Director Model in India

Corporate governance-related regulatory-framework in India concerning director independence is based on:

- The Companies Act, 2013 (hereafter referred to as "2013 Act"), which came into existence on 29th August, 2013, is a landmark legislation in India that replaced the old Companies Act, 1956 (hereafter referred to as "1956 Act"). Not all provisions of the 2013 Act came into force immediately, as a number of them require the Government of India to draft rules and regulations for their implementation. These rules will be drafted in the coming months in consultation with stakeholders.
- Clause 49 of the Listing Agreement, 2005 (hereafter referred to as "Listing Agreement") by the SEBI.

Independent Director Model in the US

Corporate-governance-related regulatory framework in the US concerning director independence is based on:

- Statutory law of the state in which the company is incorporated. Most US public companies are incorporated in the state of Delaware. The majority of other states base their legislation on Delaware law, or on the Revised Model Business Corporations Act (RMBCA) of 2002.
- Federal Securities laws, such as:
    - Rules and regulations promulgated by the Securities and Exchange Commission (SEC).
    - Sarbanes-Oxley Act of 2002 (hereafter referred to as "SOX Act") and Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (hereafter referred to as "Dodd-Frank Act")
- Listing standards published by registered stock exchanges, most notably, the New York Stock Exchange Listed Company Manual (NYSE Listing Manual) and the National Association of Securities Dealers Automatic Quotations Stock Market Rules (NASDAQ Stock Market Rules).
- Company's certificate of incorporation and bye-laws.

In India, the 1956 Act did not contain any reference to independent directors and the definition of independent directors in the Listing Agreement was applicable to listed companies only. The definition in the 2013 Act, which is wider in scope than the one in the Listing Agreement, defines an *independent director* and draws the criteria for becoming the one.

Comparative Assessment of Independent Director Models in India and the US

1. Definition and Selection Criteria

In India, the 1956 Act did not contain any reference to independent directors and the definition of independent directors in the Listing Agreement was applicable to listed companies only. The definition in the 2013 Act, which is wider in scope than the one in the Listing Agreement, defines an *independent director* as:

An independent director, means a director other than a managing director or a whole-time director or a nominee director,—

(a) who, in the opinion of the Board, is a person of integrity, and possesses relevant expertise and experience;

(b) who is or was not a promoter of the company or its holding, subsidiary or associate company and who is also not related to the promoters or directors of those companies;

(c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the current or 2 immediately preceding financial years;

(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to 2% or more of its gross turnover or total income or $80,000[1], whichever is lower, during the current or 2 immediately preceding financial years;

(e) who, neither himself nor any of his relatives—

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding,

[1] US $1 has been considered as equivalent to ₹62.50 here and in all subsequent instances.

subsidiary or associate company in any of the 3 immediately preceding financial years;

(ii) is or has been an employee or proprietor or a partner, in any of the 3 immediately preceding financial years, of a firm of auditors or company secretaries of the company or its holding, subsidiary or associate company; or any legal or a consulting firm that has or had any transaction with those companies amounting to 10% or more of the gross turnover of such firm;

(iii) holds together with his relatives 2% or more of the total voting power of the company; or

(iv) is a chief executive or director, of any non-profit organisation that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company.

In the US, NYSE and NASDAQ listing standards and SEC rules have established mandates for director independence. The SEC rules do not impose any additional independence criteria. Rather, the rules simply seek to elicit additional disclosures.

NYSE proposes the following standards for independent directors:

a) A director is independent only if the Board affirmatively determines that he or she has no material relationship with the company.

i. This assessment is fact specific, since there are several circumstances that might signal potential conflicts of interest, or that might bear on the materiality of a director's relationship to the company.

ii. When assessing the materiality of such relationship, the Board should consider the issue not merely from the standpoint of the director, but also from that of persons or organisations with which the director has an affiliation.

iii. Material relationships can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships, among others. However, as the concern is independent from management, NYSE does not view ownership of even a significant amount of stock, by itself, as a bar to an independence finding.

b) A director is not independent if:

i. The director is, or has been within the last 3 years, an employee of the company.

ii. A family member is, or has been within the last 3 years, an executive officer of the company.

iii. The director or a family member has received more than $120,000 in direct compensation from the company during any 12-month period within the last 3 years (other than Board and committee fees, pension or other forms of deferred compensation for prior service, provided such compensation is not contingent in any way on continued service and compensation paid to a family member employed by the company (other than as an executive officer)).

iv. The director is an employee, or a family member is an executive officer, of a company that has made payments to the company or received payments from the company for property or services in an amount which, in any of the last 3 fiscal years, exceeds the greater of 2% of the other company's consolidated gross revenues and $1 million. (For NASDAQ, these figures are 5% and $200,000 respectively)

v. The director or a family member is, or was within the last 3 years, a partner or employee of a firm that is the company's internal or external auditor.

vi. The director or a family member is, or has been within the last 3 years, employed as an executive officer of another company where any of the company's present executive officers serve or served at the same time on that company's compensation committee.

As per the NASDAQ listing standards, a director is independent only if the Board affirmatively determines that he or she has no relationship with the company that would interfere with the director's exercise of independent judgment in carrying out his or her responsibilities. NASDAQ listing standards have more or less similar independence criteria as the NYSE listing standards.

In the US, Section 301 of the SOX Act requires that the audit committee of each listed issuer be composed of independent directors. Current NYSE and NASDAQ rules rely heavily on SEC Rule 10A-3, which requires that each member of the audit committee of the company be independent in accordance with 2 criteria, one which bars any compensation from the company or its subsidiary, and the other which bars any control relationship ("affiliation") with the company or its subsidiary (other than by reason of service as a director).

2. Board and Committee Composition

a. Board Composition

In India, the Listing Agreement requires that the number of independent directors in the Board would depend on whether the chairman is executive or non-executive. In case of a non-executive chairman, at least 1/3rd of the Board would comprise of independent directors and in case of an executive chairman, at least 1/2 of the Board would comprise of independent directors. The 2013 Act relaxes this requirement by mandating that only 1/3rd of the Board of publicly listed companies is to comprise of independent directors.

In the US, as per NYSE and NASDAQ listing standards, companies must have a majority of independent directors in the Board. State laws do not place any restrictions on the Board composition.

b. Audit Committee Composition

In India, the Listing Agreement requires that 2/3rd of the members of audit committee be independent directors. The 2013 Act states that majority of directors in audit committees are to be independent.

In the US, Section 301 of the SOX Act requires that the audit committee of each listed issuer be composed of independent directors. Current NYSE and NASDAQ rules rely heavily on SEC Rule 10A-3, which requires that each member of the audit committee of the company be independent in accordance with 2 criteria, one which bars any compensation from the company or its subsidiary, and the other which bars any control relationship ("affiliation") with the company or its subsidiary (other than by reason of service as a director).

c.Remuneration/Compensation Committee Composition

In India, the 2013 Act requires that at least ½ of the total directors in the Remuneration Committee are to be independent (applicable to listed companies only).

In the US, NYSE and NASDAQ listing standards require companies to have a compensation committee composed entirely of independent directors and have more or less similar independence criteria. The NYSE listing standards on independence criteria of compensation committee members state as follows:

A director is independent only if the Board affirmatively determines that he or she has no material relationship with the company that adversely affects his or her ability to be independent from management in connection with the duties of a compensation committee member. This assessment is fact specific and when assessing the materiality of such relationship, the Board should consider:

- The source of the director's compensation, including any consulting, advisory or other compensatory fees. This includes consideration of whether the director receives compensation from any person or entity that would impair his ability to make independent judgments about the company's executive compensation.
- Any affiliate relationships between the director and the company. This includes consideration of whether an affiliate relationship places the director under the direct or indirect control of the company or its senior management.

The 2013 Act establishes an elaborate code of conduct which independent directors are expected to abide by and also lays down broad guidelines for their duties. Under the provisions of the 2013 Act, the independent directors of the company would have to meet at least once in a year, without the presence of non-independent directors and members of management.

3. Manner of Appointment

In India, as per the provisions of the 2013 Act, the appointment process of independent directors shall be independent of the company management. The appointment of an independent director shall be approved at the annual shareholders' meeting. Constitution of nomination committees is not mandated by the 1956 Act or the Listing Agreement. The 2013 Act, for the first time, requires all listed companies to constitute a Nomination committee that has at least ½ of its members as independent directors and that formulates the criteria for selection of directors.

In the US, generally, independent directors are nominated by the board for election at the annual shareholders' meeting. Companies listed on the NYSE normally must have a nominating committee, composed entirely of independent directors, that identifies individuals qualified to become board members and recommends their nomination to the board. NASDAQ has similar requirements, but does not require a formal committee.

An independent nomination committee may be effective for the US companies, where shareholding is dispersed. But such a system may not apply to Indian companies, where shareholding tends to be concentrated. Although a nomination committee may recommend candidates, the election of such candidates is still subject to voting at shareholders' meetings, where the controlling shareholders dominate.

4. Term of Office

In India, as per the 2013 Act provisions, the term of independent directors is to be non-rotational, *i.e.* independent directors shall not be liable to retire by rotation. They will have upto 5 years (original term) and 5 years (additional term subject to a special resolution). After the expiry of term, an individual is ineligible for re-appointment for 3 years. The same person can be considered for re-appointment after a lapse of the 3 years period. This relaxation is obviously provided since the lawmakers wish to address the shortage of independent directors in India.

In the US, the term limits for directors are relatively uncommon, although Delaware's General Corporation Law allows a company's certificate of incorporation or bye-laws to prescribe various qualifications for directors, including the term of appointment. As per the 2012 Shearman and Sterling LLP's Corporate Governance Survey, while 72 of the Top 100 US companies discuss the topic of term limits for directors in their proxy statements, only 5 have adopted mandatory term limits.

5. Remuneration

In India, as per the 1956 Act, an independent director could be remunerated by way of grant of stock options in addition to fees/commissions. The 2013 Act prohibits the issuance of stock options to independent directors, in a bid to address the concern that it might be causing a conflict of interest. It would have been more relevant instead, to place restrictions either on the total amount of stock options or put a time limit on exercising these options, rather than having a complete ban.

The corporate governance systems in the US tend to foster a more equitable distribution of information and place a stronger emphasis on the protection of shareholders rights and, in particular, those of minority investors.

Apart from the restriction on stock options, the remuneration of independent directors has also been limited to sitting fees, reimbursement of expenses for participation in the board and other committee meetings and profit-related commission as may be approved by the shareholders. The 2013 Act does not eliminate profit-related commission, which could create a conflict of interest, since the commission is linked to the company's performance.

In the US, an independent director's compensation may include cash, the company's shares or options on, or other derivatives of, the shares. NYSE and NASDAQ listed companies must obtain shareholder approval of equity remuneration plans covering directors. The equity compensation component better aligns independent director interests with shareholders, however, independent directors could be motivated to game the financial reporting system. SOX Act does not permit payment of a profit-related commission to independent directors. In response to the Dodd-Frank Act, the SEC adopted rules providing shareholders with a non-binding advisory Say-on-Pay vote on most highly compensated executives (Say-on-pay is a rule whereby a firm's shareholders have the right to vote on executive remuneration)as well as a non-binding advisory vote on "golden parachute" compensation (a golden parachute is agreement between a company and a top executive specifying that the employee will receive certain significant benefits if employment is terminated). The results of the votes will not be binding on the Board. However the Compensation Committee will take into account the outcome of the vote when considering future executive compensation arrangements.

6. Duties and Liabilities

In India, the 1956 Act looks at all directors alike. Neither the Listing Agreement nor the 1956 Act precisely define the duties and liabilities of an independent director. The 2013 Act establishes an elaborate code of conduct which independent directors are expected to abide by and also lays down broad guidelines for their duties. Under the provisions of the 2013 Act, the independent directors of the company would have to meet at least once in a year, without the presence of non-independent directors and members of management.

The 2013 Act also seeks to provide immunity to independent directors by making them liable only in respect of such wrongdoings which had occurred with their knowledge, attributable through Board processes, and with their consent or connivance or for lack of due diligence.

In the US, both the NYSE and NASDAQ require that independent directors have regularly scheduled meetings, referred to as executive sessions. NYSE and NASDAQ listing standards differ slightly on this point. The NYSE rules require either non-management directors or independent directors to meet at regularly scheduled executive sessions. In addition, if a company chose to include all non-management directors, it should hold an executive session including only independent directors at least once a year. The NASDAQ listing standards require executive sessions of independent directors only to occur at least twice a year.

Directors of the US companies generally have some liability protection coverage in their bye-laws and/or in indemnification agreements with the corporation as well as through Directors and Officers liability insurance coverage. Negligence on the part of a director does not result in personal liability unless the director failed to act in good faith. Most states allow a company to eliminate or limit directors' personal liability to the company or its shareholders for breach of their fiduciary duty.

Conclusion

There is no single model of corporate governance and each country has through time developed a variety of mechanisms to overcome the agency problems arising from the separation of ownership and control. India has imported its independent director regulatory framework from abroad and tried to mould it to suit the Indian corporate scenario. The 2013 Act greatly empowers independent directors in India and also makes them accountable. The corporate governance systems in the US tend to foster a more equitable distribution of information and place a stronger emphasis on the protection of shareholders rights and, in particular, those of minority investors. Both the Indian and the US corporate governance approaches are rule-based and they differ on several key parameters as highlighted above. What is required at this stage is that companies in both countries follow the laws in spirit and not in letter alone. ■

Nuances Relating to External Commercial Borrowings in India

The economic boom in the last decade was initiated by the IT sector, followed by the resurgence in the manufacturing and service industries. While the boom was accompanied by a substantial foreign direct investment, Indian enterprises also accessed significant amounts of foreign debt. Presently, the Indian companies are permitted to access funds from abroad through four routes, namely, External Commercial Borrowing (ECB), Foreign Currency Convertible Bond (FCCB), Preference Shares and Foreign Currency Exchangeable Bond (FCEB). Since ECBs are a part of FDI, they vitally affect the foreign capital inflow to the country. This has formed the basis in this article, to examine this phenomenon, and the author here has attempted to develop the trends and establish the determinants of ECBs. Read on...

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Introduction

Have you ever borrowed money? Of course you have! Whether we as children asked our parents for a few rupees to buy chocolates or the bank for a mortgage, most of us must have borrowed money at some point in our life. Just as people need money, so do companies. Amidst numerous fund-raising options available in the era of globalisation, a country like India with high finance cost in domestic banking industry compared to overseas market, there is a natural inclination by the business houses to explore the possibility of mobilising funds internationally and leverage their interest burden.

An ECB is an instrument used in India to facilitate the access to foreign currency borrowings by Indian corporations and PSUs. In other words, an ECB refers to a commercial loan in the form of a bank loan, buyers' credit, suppliers' credit, securitised instruments, *e.g.* floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares, availed from non-resident lenders with a minimum average maturity of three years.

Significance

Investor

- An ECB is for a specific period which can be as short as three years.
- It provides a fixed return as the rates of interest are usually fixed.
- Interest and borrowed amount are repatriable.
- Minimal risk as in the case of equity investment.

Borrower

- Very economical source of raising funds, since the interest rate is far less as compared to the Indian debt market.
- No dilution in ownership of the entity.
- Large funds can be raised as per requirements of borrower which may not be possible in the domestic market.
- Rate of interest paid is fixed, thereby giving definitive cash outflow projections.
- There exists an easy availability of funds as an ECB is more appealing to investors.
- It provides foreign currency funds to the corporate sector that are necessary for import of capital goods, *etc.*

Other Side of the Coin

- Since the interest and redemption proceeds of ECBs are payable in foreign currency, the issuing company has to hedge its foreign currency exposure, which in volatile markets is a costly affair. On the other hand, if a company opts to keep its foreign currency exposure unhedged, it carries a huge risk due to foreign exchange fluctuations as witnessed under the current market conditions.
- Funds raised through ECBs cannot be utilised for other than specified purposes under the guidelines like working capital, *etc.*
- In case of raising ECBs under an approval route, obtaining consent from the RBI/the Government of India may sometimes be a time-consuming process, which might significantly influence the overall contours of fund raising as originally envisaged.

An external commercial borrowing (ECB) can be accessed under two routes, viz. automatic and approval. In case of raising funds through automatic route, the permission of RBI/Government of India is not required.

Salient Features

1. Accessibility

An ECB can be accessed under two routes, *viz.* automatic and approval. In the case of raising funds through automatic route, the permission of RBI/Government of India is not required. However, in case of approval route, eligible borrowers must obtain a prior approval from the RBI/ the Government of India as detailed in the RBI Master Circular on ECB and Trade Credits ("Master Circular") bearing no. 12/2013-14 dated 1st July, 2013.

2. Eligible Borrowers

RBI explicitly mentions the category of borrowers eligible to raise funds *vide* an ECB and further bifurcates them under the automatic route and approval route as summarised hereunder:

Automatic Route

- Corporations, except financial intermediaries like banks, housing finance companies and Non-Banking Financial Companies (NBFC)
- Units in Special Economic Zones (SEZ)
- Non-Government Organisations (NGOs) and Micro-Finance Institutions (MFIs) engaged in micro-finance activities
- Small Industries Development Bank of India (SIDBI)

Approval Route

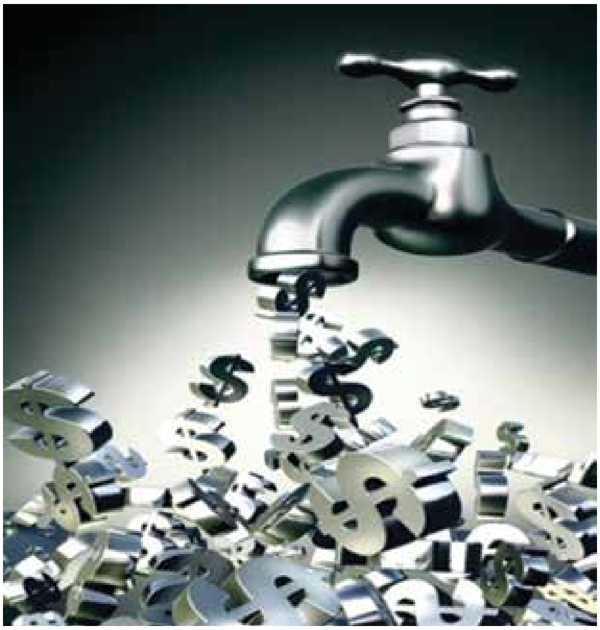
- Eligible borrowers under automatic route other than corporations from service-sector, *viz.* hotel, hospital and software, can avail an ECB beyond $ 750 million per financial year.
- Corporations from services sectors are allowed to avail an ECB beyond $ 200 million in a financial year.
- Other specified classes of borrowers (as mentioned in the RBI Master Circular) falling outside the purview of the automatic route limits.

It should be noted that individuals, trusts (other than those engaged in micro-finance activities) and non-profit making organisations are specifically excluded from the eligibility to raise an ECB.

3. Recognised Lenders

Borrowers can raise an ECB from internationally-recognised sources like:

- International banks and capital markets
- Multilateral financial institutions, *e.g.* IFC, ADB and CDC, government-owned development financial institutions, export credit agencies
- Suppliers of equipments and foreign collaborators
- Foreign equity holders (other than erstwhile overseas corporate bodies (OCBs) provided that the minimum holding of paid-up equity in the borrower companyis as set out below;
  - i. For an ECB up to $ 5 million-at least 25% to be held directly by the lender.
  - ii. For an ECB more than $ 5 million- at least 25% to be held by the lender and proposed ECB should not exceed 4 (7 for ECB under approval route) times direct foreign holding (ECB liability-equity not exceeding 4:1 (7:1for ECB under approval route)).



4. Amount and Maturity

Maximum amount (In $ or its equivalent) of an ECB which can be raised by a corporate during a financial year is:

- Companies other than those in hotel, hospital and software sectors – $ 750 million.
- Companies in service-sector, *viz.* hotel, hospital and software sector – $ 200 million.
- NGOs engaged in micro-finance activities and Micro-Finance Institutions (MFI's)– $ 10 million.

Minimum maturity period of an ECB

- ECB up to $ 20 million– 3 years
- ECB more than $ 20 million and up to $ 750 million – 5 years

An ECB up to $ 20 million or its equivalent can have call/put option provided the minimum average maturity of three years is complied with before exercising call/put option.

5. All-in-Cost Ceilings

All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fees payable in Indian rupee. Payment of withholding tax in INR is excluded for

In the case of fixed-rate loans, the swap cost plus margin should be the equivalent of the floating rate plus the applicable margin. The above mentioned all in cost ceilings are applicable till 31st December, 2014.

calculating the all-in-cost. All-in-cost ECB ceilings are:

Average Maturity Period	All-in-cost ceilings over 6 month LIBOR
Three years and up to five years	350 basis points
More than five years	500 basis points

In the case of fixed-rate loans, the swap cost plus margin should be the equivalent of the floating rate plus the applicable margin. The above mentioned all in cost ceilings are applicable till 31st December, 2014.

6. End-Uses Permitted

ECB can be raised for utilisation for the following purposes:

- Investment such as import of capital goods, new projects, modernisation/expansion of existing production units in industrial sector.
- Overseas Direct Investment (ODI) in Joint Ventures (JV) and Wholly-Owned Subsidiaries (WOS).
- First stage acquisition of shares in the disinvestment process and in the mandatory secondstage offer under the government's disinvestment programme of PSU shares.

7. End-Uses not Permitted

An ECB shall not be utilised for any other purpose including the following purposes:

- On-lending or investment in capital market or acquiring a company.
- Investment in real estate.
- Working capital, general corporate purpose and repayment of existing rupee loan (subject to amendments mentioned below).
- Issue of guarantee, standby letter of credit, letter of comfort by banks, FI's and NBFCs from India relating to an ECB is not permitted.

8. Security

Choice of security to be provided to a lender/supplier is left to the borrower. Designated banks have been delegated powers to convey no objection under the Foreign Exchange Management Act (FEMA), 1999 for creation of charge on immovable assets, financial securities and issue corporate/personal guarantees in favour of overseas lender/security trustee, to secure the ECB raised by borrower.

RBI Circular No. 111 dated 20th April, 2012, further allowed Indian companies in the power sector to utilise 40% of the fresh ECB raised towards refinancing of the rupee loans availed by them from the domestic banking system, under the approval route, subject to the condition that at least 60% of the fresh ECB to be raised should be utilised for fresh capital expenditure for infrastructure project(s).

9. Parking of ECB Proceeds

Borrowers are permitted to either keep an ECB proceeds abroad or to remit these funds to India, pending utilisation for permissible end-uses. However, the proceeds of an ECB raised abroad meant for INR expenditure in India, should be repatriated immediately for credit to the borrowers' INR accounts with designated banks in India. In other words, ECB proceeds meant only for foreign currency expenditure can be retained abroad pending utilisation.

10. Prepayment

Pre-payment of ECB up to $ 500 million may be allowed by designated banks without prior approval of the RBI subject to compliance with the stipulated minimum average maturity period as applicable to the loan.

11. Refinancing of Existing ECB

Existing ECB may be refinanced by raising a fresh ECB subject to the condition that the fresh ECB is raised at a lower all-in-cost and the outstanding maturity of the original ECB is maintained. An existing ECB may, however, be refinanced by raising a fresh ECB at a higher all in-cost under the approval route.

12. Conversion of ECB into Equity

Conversion of ECB into equity is permitted subject to the following conditions:

- Activity of a company is covered under the automatic route for FDI or the approval of Government of India for foreign equity participation has been obtained by the company, wherever applicable.

- Foreign equity holding after such conversion of debt into equity is within the sectorial cap, if any.
- Pricing of shares is as per the pricing guidelines issued under the FEMA, 1999 in the case of listed/unlisted companies.

13. Procedure

Borrowers may enter into loan agreement complying with the ECB guidelines with recognised lender for raising ECB under the automatic route without the prior approvalof RBI. The borrower must obtain a loan registration number (LRN) from the RBI before drawing down the ECB. The procedure for obtaining LRN is detailed in the RBI Master Circular (as mentioned above).

Recent Amendments/Clarifications by RBI

In order to encourage ECB in India, the RBI in consultation with the Government of India has made certain relaxations in the ECB policy by way of the amendments from time to time. Major amendments made in the recent past are highlighted below:

1. **Permission to raise ECB for project use in Special Purpose Vehicles (SPVs)**

   RBI circular no. 78 dated 3rd December, 2013, permits holding companies to raise ECB under the automatic route/approval route, as the case may be, for project use in SPVs with the following terms and conditions:
   - Business activity of the SPV should be in the *infrastructure* sector where infrastructure is defined as per the extant ECB guidelines;
   - Infrastructure project is required to be implemented by the SPV established exclusively for implementing the project;
   - ECB proceeds is utilised either for fresh capital expenditure or for refinancing of existing Rupee loans (under the approval route) availed of from domestic banking system for capex as per the extant norms on refinancing;
   - ECB for SPV can be raised up to three years after the commercial operations date of SPV;
   - ECB proceeds should be kept in a separate escrow account pending utilisation for permissible end-uses and use of such proceeds should be strictly monitored by the ADs for permissible uses;
   - In case of holding companies that come under the core investment company (CIC) regulatory framework of the RBI, the additional terms and conditions for raising the ECB for project use in SPVs will be:

     a) The ECB availed is within the ceiling of leverage stipulated for CICs, *i.e.,* their outside liabilities including ECB cannot be more than 2.5 times of their adjusted net worth as on the date of the last audited balance sheet; and

     b) In case of CICs with asset size below ₹ 100 crore, the ECB availed of should be on fully hedged basis.

In the past few years, ECBs have proved to be very effective source of raising funds economically. However, the financial turmoil and liquidity crunch in the global markets witnessed during the past five years coupled with depreciating rupee has made it difficult for the corporate sector to raise funds through ECBs.

2. **Use of ECB proceeds for general corporate purpose**

   RBI Circular No. 31 dated 4th September, 2013 permits eligible borrowers to avail ECB under the approval route from their foreign equity holder company with minimum average maturity of seven years for general corporate purposes subject to following conditions:
   - Minimum paid-up equity of 25% should be held directly by the lender.
   - Such ECBs would not be used for any purpose not permitted under extant the ECB guidelines.
   - Repayment of the principal shall commence only after completion of minimum average maturity of seven years. No prepayment will be allowed before maturity.

3. **Use of ECB proceeds for repayment of rupee loans: *USD 10 Billion Scheme***

   Initially repayment of existing rupee loans were not a permissible end-use for ECB. However, certain relaxations made by the RBI in this regard are:
   - Pursuant to the RBI Circular No. 25 dated 23rd September, 2011, Indian companies in

the infrastructure sector where allowed to utilise 25% of the fresh ECB raised by the corporate towards refinancing of the rupee loan/s availed by them from the domestic banking system, under the approval route, subject to the following conditions:

(i) At least 75% of the fresh ECB proposed to be raised should be utilised for capital expenditure towards a new infrastructure project(s), where *infrastructure* is as defined in terms of the extant guidelines on ECB.

(ii) In respect of remaining 25%, the refinance shall only be utilised for repayment of the rupee loan availed of for *capital expenditure* of the earlier completed infrastructure project(s); and

(iii) The refinance shall be utilised only for the rupee loans which are outstanding in the books of the financing bank concerned.

- RBI Circular No. 111 dated 20th April, 2012, further allowed Indian companies in the power sector to utilise 40% of the fresh ECB raised towards refinancing of the rupee loans availed by them from the domestic banking system, under the approval route, subject to the condition that at least 60% of the fresh ECB to be raised should be utilised for fresh capital expenditure for infrastructure project(s).
- RBI Circular No. Circular No. 134 dated 25th June, 2012, clarified that Indian companies are allowed to avail ECBs for repayment of rupee loan(s) availed of from the domestic banking system and/or for fresh rupee capital expenditure, under the approval route, subject to them satisfying the following conditions:

  i. Only companies in manufacturing and infrastructure sector will be eligible to avail of such ECBs;

  ii. Such companies shall be consistent foreign exchange earners for the past three financial years;

  iii. Such companies are not in the default list/caution list of the RBI; and

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

  The overall ceiling for such ECBs shall be $ 10 billion. The maximum permissible ECB that can be availed of by an individual company will be limited to 50% of the average annual export earnings realised during the past three financial years.The companies should draw down the entire facility within a month after taking the LRN from RBI.
- Pursuant to the RBI Circular No. Circular No. 48 dated 18th September, 2013, the definition of *infrastructure* has been liberalised. Initially, infrastructure sector for the purpose of availing ECB included power, telecommunication, railways, road, sea port and airport, industrial parks urban infrastructure, mining, exploration and refining, cold storage or cold room facility. The expanded definition of infrastructure will now also include:

  i. Energy including electricity generation, transmission & distribution, oil/gas pipelines, Liquefied Natural Gas (LNG) storage facility,

  ii. Communication services including services related to telecommunication towers,

  iii. Transport services including inland waterways,

  iv. Water and sanitation services, and

  v. Social infrastructure.
- RBI Circular No. 26 dated 11th September, 2012 provided some relaxation to the RBI circular No. 134 dated 25th June, 2012 as mentioned above, to include:

  i. Enhancement in the maximum permissible limit of ECB that can be availed to 75% of the average foreign exchange earnings realised during the immediate past three financial years or 50% of the highest foreign exchange earnings realised in any of the immediate past three financial years, whichever is higher;

  ii. In case of SPVs, which have completed at least one year of existence from the date of incorporation and do not have sufficient track record/ past performance for three financial years, maximum permissible ECB that can be availed of will be limited to 50% of the annual export earnings realised during the past financial year; and

iii. However, the maximum ECB that can be availed by an individual company or a group, as a whole, under this scheme will be restricted to USD 3 billion.

- Pursuant to the RBI Circular No. 12 dated 15th July, 2013, $ *10 Billion Scheme* was extended to Indian companies in the manufacturing, infrastructure and hotel sector which are consistent foreign exchange earners and have established JV/ WOS in overseas subject to conditions as under;

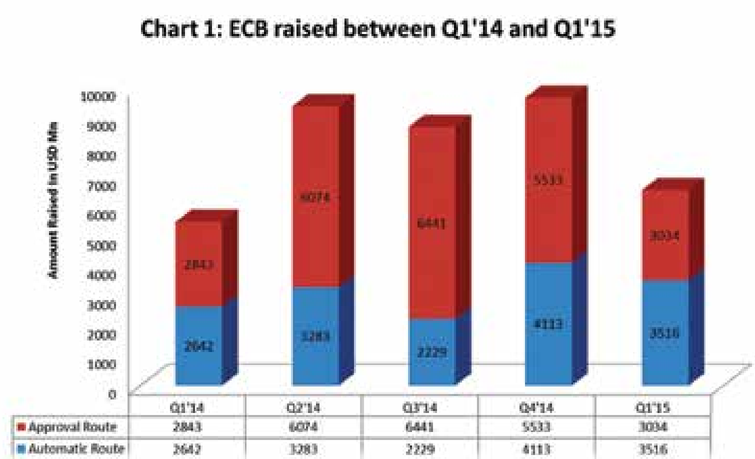
i. ECB can be availed of for repayment of all term loans having average residual maturity of 5 years and above/credit facilities availed of by Indian companies from domestic banks for overseas investment in JV/WOS, in addition to 'Capital Expenditure';

ii. ECB can be availed of within the scheme based on the higher of 75% of the average foreign exchange earnings realised during the past three financial years and/or 75% of the assessment made about the average of foreign exchange earnings potential for the next three financial years of the Indian companies from the JV/WOS/ assets abroad as certified by statutory auditors/chartered accountant/certified public accountant/ Category I merchant banker registered with the SEBI/ an investment banker outside India registered with the appropriate regulatory authority in the host country;

iii. ECB availed of under the scheme will have to be repaid out of forex earnings from the overseas JV/WOS/assets.

Fact Sheet

In the past few years, ECBs have proved to be a very effective source of raising funds economically. However, the financial turmoil and liquidity crunch in the global markets witnessed during the past five years, coupled with depreciating Rupee has made it difficult for the corporate sector to raise funds through ECBs. The share of ECBs as in March, 2014 continued to be the highest at 33.3% of the total external debt, followed by the NRI deposits (23.6%) and short-term debt (20.3%). Chart 1 shows ECB raised by Indian companies between June and December, 2013 under the automatic route and approval route.



Conclusion

Undoubtedly, ECB policy should be proactive so that the Indian economy can have a phenomenal growth. While ECBs can be a blessing for some companies, it raises the issue of sustainability of external debt at the macro-level. External debt of the country stood at $440 billion by the end of March, 2014, against $390 billion a year before thereby exceeding the ball park number for our forex reserves by $150 billion as in March, 2014. In view of these problems, it has become necessary for the corporations to maintain a balance between the funds to be raised through ECBs and funds to be raised from domestic borrowings. ■

Roadmap to Incorporation of Private and Public Limited Company under Companies Act, 2013 and Companies Rules, 2014

The Companies Bill was passed by the Lok Sabha on 18th December, 2012 (called Companies Bill, 2012) and then passed by the Rajya Sabha on 8th August, 2013 (became Companies Bill, 2013), and eventually, it got the assent of the President of India on 29th August, 2013, and became the Companies Act, 2013 (Act 18 of 2013). The Companies Act, 2013 is rule-based, since a large part of the Act is dependent upon the allied rules. In the first phase of its implementation, the Ministry of Corporate Affairs (MCA) has notified 98 Sections on 12th September, 2013. In the second phase of implementation, MCA has notified vide notification dated 26th March, 2014, 183 Sections and 13 sub-Sections of the already notified sections and all the Schedules of the Companies Act, 2013 which are effective from 1st April, 2014. With Notification dated 26th March, 2014, the MCA has till date notified 282 Section of the Act, out of a total of 470 Sections. In this article, the author explains a detailed procedure for incorporation of private or public limited company. She has not included one-person company, small companies and Section 8 companies, i.e. companies incorporated for charitable purposes in her article. Read on…

***CA. Harsha Ramnani and **Ashu Agarwal**

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** The author is a student of ICAI.)

Formation of Company [Section 3]

A company may be formed for any lawful purpose by-

- 7 or more persons, in case of public company;
- 2 or more persons, in case of private company; or
- 1 person, in case of one-person company.

By subscribing their names or his name to a Memorandum and complying with the requirement of this Act related to registration.

A company may be either-

(a) A company limited by shares; or
(b) A company limited by guarantee; or
(c) An unlimited company

Step 1: Obtain DSC for proposed Directors: Obtain Digital signature certificate from authorised DSC issuing authority.

Step 2: Obtain DIN for Proposed Directors: Person who wishes to become a director of the company and if he/she does not have DIN than he/she must make an application in form DIR-3 [Rule 9 of Chapter XI]. Following is the checklist for obtaining DIN:

- Self attested copy of PAN card and address proof
- One colour photograph
- Area of occupation
- Educational qualification certificate
- Valid e-mail address and mobile no.
- Form DIR 4 (pursuant to Section 153 and Rule 9 (3)(a)(iv) of Companies (Appointment and Qualification of Directors) Rules, 2014) on ₹ 10 stamp paper duly authorised.

Step 3: Register DSC in the name of director on MCA Portal.

Step 4: Apply for Reservation of Name of the Company: Applicant can propose six names in the order of their preference. Rules and regulations regarding name reservation under the Companies Act, 2013 are:

[Section 4(2)]

The name stated in the memorandum shall not-

a) be identical with or resemble too near to the name of an existing company registered under this Act or any previous company law; or
b) be such that its use by the company—
   i. will constitute an offence under any law; or
   ii. is undesirable in the opinion of the Central Government.

[Section 4(3)]

A company shall not be registered with a name which contains-

a) Any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of: -
   i. Central Government (CG);
   ii. Any State government;
   iii. Any local authority;
   iv. Corporation or body constituted by the CG or any State government under any law for the time being in force.
b) Such word or expression, as may be prescribed;

Company may use such words or expression with the prior approval of the Central Government.

A person may make an application, in *Form No. INC.1* along with a fee, to the ROC for the reservation of a name set out in the application – (a) The name of the proposed company; or, (b) The name to which the company proposes to change its name.

Undesirable Names (Rule 8)

In considering whether a proposed name is identical or not, the below mentioned points shall be disregarded:

- Private, pvt., Pvt., (P), Limited, Ltd., LLP, limited liability partnership;
- Company, and company, co., co, corporation, corp., corpn., corp.;
- Plural version of any of the words
- Type and case of letters, punctuation marks, spacing between letters;
- Joining words or separating the words
- Use of different tense or number of the same word
- Using different phonetic spellings of spelling variations (*e.g.* P. Q. written as Pee Que Industries Limited)
- Misspelled words (like Concept or Koncept)
- Addition of internet related designation (like .com, .edu, .net, .gov, .org, .in)
- Addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, The, *etc.* or adding the name of the place (may be allowed if NOC from Existing Co. by way of Board Resolution)
- Different combination of the same words (*e.g.* Builders & Contractors Limited/ Contractors & Builders)
- Hindi or English Translation/ Transliteration of existing Company/LLP
- If it attracts the provisions of Section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950
- Includes the name of a registered trade mark
- Includes any word or words – offensive to any Section of People
- Includes the name of a TM which is the subject matter of application for registration

In case of any company registered after the commencement of this Act and the registered articles of such company do not exclude or modify the regulations contained in the model articles, then those Regulations will apply as registered Regulations.

- Not in consonance with the principal objects of the Co.
- Identical or too closely resembles the name of the Company/LLP incorporated outside India and reserved by such Company (In case of Subsidiary Co. in India of a Foreign Company, the Original name of Holding Co. with addition of word 'India' may be allowed).
- Indicating a separate type of business constitution, *e.g.* sehkari, trust, HUF, society, Plc., Inc, firm, *etc.*
- Implying connection with embassy or consulate, *etc.*
- Implying patronage of a national hero/ persons held in high esteem
- Is vague, *e.g.* ABC Limited
- Is abbreviated, *e.g.* DJMO Limited *etc.*
- Subsidiary/JointVenture/Associate company can use but shall carry the object of the Company
- A period of two years have not elapsed from the date of dissolution of the company
- If company struck off, then only after an elapse of 20 years
- Identical with/too clearly resembles the name of a LLP in liquidation or the LLP which has been struck off up to five years
- Includes 'Insurance', 'Bank', 'Stock Exchange', 'venture capital' *etc.* unless a declaration that the mandated requirements of the respective Act(s) have been complied with
- If the name 'State' – allowed only in case of Govt. Co.
- If it only contains the name of a continent, country *etc.*, *e.g.* Germany Limited
- The name is only a general one, like Cotton Textile Mills
- Misleading impression regarding the scope/ scale
- Name of any foreign country or any city of foreign country (allowed if MOU produced showing business relations)
- Cannot use name of an enemy country
- Names combining the name of a foreign country with the use of India, *e.g.* India Japan (shall be allowed, if government to government participation)

[Section 4 (4),(5)]

A person may make an application, in *Form No. INC.1* along with a fee, to the ROC for the reservation of a name set out in the application –

(a) The name of the proposed company; or

(b) The name to which the company proposes to change its name.

Upon receipt of an application, the ROC may reserve the name for a period of 60 days from the date of the application.

Effect of wrong/incorrect information in Application [Section 4(5) (ii)]

After reservation of name, if it is found that name was applied by furnishing wrong or incorrect information, then-

a) if the company has not been incorporated, the reserved name shall be cancelled and the person making application shall be liable to a penalty which may extend to ₹1 lakh;

b) if the company has been incorporated, the ROC may, after giving the company an opportunity of being heard-
   - o Either direct the company to change its name within a period of three months, after passing an ordinary resolution;
   - o Take action for striking off the name of the company from the register of companies; or
   - o Make a petition for winding up of the company.

Step 5: Adoption of Memorandum of Association [Section 4]: The memorandum of a company shall state:

a) The name of the company with the last word-
   - ✓ "Limited" in the case of a public limited company;
   - ✓ "Private Limited" in the case of a private limited co.

   Above clause is not applicable for company registered under Section 8, *i.e.*, company with charitable object.

b) The State in which the registered office of the company is to be situated;

c) The objects of the company:-
   - ✓ is proposed to be incorporated, *i.e.* main objects and
   - ✓ Incidental objects to attain main object.

d) The *liability* of members of the company, whether limited or unlimited, and also state-
   - ✓ In the case of a *company limited by shares* that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and
   - ✓ *In the case of a company limited by guarantee* that liability of its members is limited to the amount up to which each member undertakes to contribute–
     - ➢ To assets of the company in the event of its winding up, while is a member or within one year after he ceases to be a member.
     - ➢ To the cost, charges and other expense of Winding up

e) In the case of a company having a share capital,—
   - ✓ The *amount of share capital* with which the company is to be registered and the division thereof into shares of a fixed amount; and
   - ✓ the number of shares each subscriber to the memorandum intends to take;

Section 4(6):

The memorandum of a company shall be in respective forms specified in Schedule I :

- ➢ Table A : MOA of a company limited by shares
- ➢ Table B : MOA of a Co. Limited by guarantee and not having share capital
- ➢ Table C : MOA of a Co. Limited by guarantee and having share capital
- ➢ Table D : MOA of an Unlimited Co. and not having share capital
- ➢ Table E : MOA of an Unlimited Co. and having share capital

Section 4 (7):

In case of company limited by the guarantee and not having share capital, any provision in MOA or AOA for division of profit to person other than members of the company shall not be permissible.

Step 6: Adoption of Articles of Association [Section 5]

i. The articles shall contain:
   - ✓ The regulations for management of the company, and
   - ✓ Such matters, as may be prescribed.

ii. The company can also include such additional matters in its articles as may be considered necessary for its management.

iii. The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a Special Resolution are met or complied with.

iv. Entrenchment provisions can be made:
   - Either at the time of formation of the company; or
   - By an amendment in the AOA agreed by all the members of the company in case of private company and by special resolution in case of public company.

v. Entrenchment notice to ROC
   - ✓ At the time of Incorporation, the company is to give notice to the ROC in *Form No. INC.2 or Form No. INC.7*
   - ✓ In case of Amendment, the company to give notice to the ROC in *Form No. MGT.14* within 30 days from the date of entrenchment of Articles.

vi. Formats of AOA [Section 5(6)]: Article of the company shall be in the respective forms specified in schedule I in the following tables:
   - ➢ Table F : AOA of a company limited by shares
   - ➢ Table G : AOA of a Co. Limited by guarantee and having share capital
   - ➢ Table H : AOA of a Co. Limited by guarantee and not having share capital
   - ➢ Table I : AOA of an Unlimited Co. and having share capital
   - ➢ Table E: AOA of an Unlimited Co. and not having share Capital.

vii. Company may adopt all or any of Regulations of Model AOA applicable to such a company.

An affidavit in *Form No. INC.9* on ₹ 20 stamp paper duly notarised to be submitted by the subscribers and first directors of the company.

The Registrar on the basis of documents and information filed shall register all the documents and information in the register and issue a certificate of incorporation in the *Form INC.11* and shall allot CIN to company.

Applicability of Model AOA [Section 5(8)]

- In case of any company registered after the commencement of this Act and the registered articles of such company do not exclude or modify the regulations contained in the model articles, then those Regulations will apply as registered Regulations.
- Nothing in Section 5 shall apply to AOA of Co. registered under any previous Company Law unless amended under this Act.

Step 7: Incorporation of Companies [Section 7]: An application for incorporation of company is to be submitted in Form No. INC 7. List of documents to be filed with the ROC for registration:

1. **Signing of MOA and AOA by all subscribers of the company:**

i. Where a subscriber to the MOA :
  - ✓ He shall affix his thumb impression or signature.
  - ✓ The number of shares taken by him shall be written against his name (by the person writing for him).

  Such person shall also read and explain the contents of the MoA/AoA to the subscriber and make an endorsement to that effect on the MoA/AoA

ii. Where the subscriber to MOA is body corporate: The memorandum and articles of association shall be signed by the director, officer or employee of the body corporate duly authorised in this behalf by a resolution of the BOD.

iii. Where the subscriber to MOA is LLP: The memorandum and articles of association shall be signed by the partner of LLP duly authorised in this behalf by a resolution approved by all the Partners of LLP.

Witness of MOA and AOA

- Witness by any person in whose presence the subscriber has signed MOA and AOA
- "I witness to subscriber/subscriber(s) who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their identity details (ID) for their identification and satisfied myself or his/her/their identification particulars as filled in."

2. **Declaration by Professionals/Directors:** A declaration in Form No. INC.8 by-
   - ✓ an advocate; or
   - ✓ a chartered accountant; or
   - ✓ a cost accountant; or
   - ✓ a company secretary in practice,

   who is engaged in the formation of the company on ₹20 stamp paper duly notarised;
   - Declaration also to be given by a person named in the articles as a director; manager, or secretary of the company;
   - Declaration to be made that all the requirements of this Act and the rules have been complied with.

3. **Affidavit by Subscribers and First Directors:** An affidavit in Form No. INC.9 on ₹20 stamp paper duly notarised to be submitted by the subscribers and first directors of the company. Affidavit contains that he :-
   - ✓ Has not been convicted of any offence in connection with the promotion; formation; or management of any company;
   - ✓ Has not been found guilty of any fraud or misfeasance or of any breach of duty to any company during the preceding five years.
   - ✓ All the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief.

4. Address for correspondence till establishment of registered office.

5. **Particulars of Subscribers [Section 7(1)(e)]**
   - Name including surname or family name
   - Recent photograph affixed and scan with MoA and AoA
   - Father's/Mother's/Spouse's name
   - Nationality
   - Date of birth
   - Place of birth (District and State)
   - Occupation
   - Income-tax permanent account number

- Permanent Residential Address and Present Address
- Email id of subscriber
- Phone no. of subscriber
- Fax no. of subscriber
- Proof of Identity
- Residential proof such as bank statement, electric bill, telephone/mobile bill
- Proof of nationality in case subscriber is a foreign national
- If the subscriber is already a director or promoter of a company(s), the particulars relating to:-
  - Name of Company
  - CIN No.
  - Whether interested as Director or promoter
- Specimen signature and latest photograph duly verified by the banker or notary in Form No. INC.10 on ₹20 stamp paper duly notarised.
- If the subscriber is a body corporate, then the following particulars shall be filed with the ROC:
  - CIN of the company/registration no. of the body corporate
  - GLN, if any
  - Name of the body corporate
  - Registered office address/principal place of business
  - Email Id
  - Certified true copy of board resolution specifying:
    - Authorisation to subscribe MOA
    - To make investment in proposed company
    - No. of shares to be subscribed
    - Name, address and designation of the person authorised to subscribe MOA.

6. **Particulars of First Directors [Sec. 7(1)(f)]**
   - Names, including surname or family names
   - Director identification number
   - residential address
   - nationality and such other particulars and
   - proof of identity

7. Particulars of Interests in other firms or body corporate along with consent to act as Director in *Form No. DIR 12.*

Issuance of Certificate of Incorporation [Section 7(2)]

The Registrar on the basis of documents and information filed shall register all the documents and information in the register and issue a certificate of incorporation in the Form No. INC.11 and shall allot CIN to company.

If any person furnishes any:

- ✓ false or incorrect particulars of any information and/or
- ✓ suppresses any material information;

In any of the documents filed with the ROC in relation to the registration of a company that Person shall be liable for action under Section 447 (fraud).

Step 8: Registered Office of Company (Sec. 12): Verification of registered office in *Form No. INC.22* shall be submitted to ROC within 30 days from Incorporation. Documents to be attached to *Form No. INC 22*:

- ➢ Registered document of title of the Premises in name of Co., or,
- ➢ Notarised copy of lease/rent agreement in name of Co.;

a) The authorisation from the owner/ authorised occupant of the premises along with proof of ownership/occupancy authorisation, to use the premises by the company as its registered office.
b) Proof of evidence of any utility service like telephone, gas, electricity, *etc.* having address of premises in the name of owner.

Every company shall:-

- Paint or affix its name and address of its Regd. Office on outside of every office or place of business.
- Have its name engraved on its Seal.
- Get its name, address of its Regd. Office, CIN, Telephone no., Fax no.

Where no declaration is filed with ROC within 180 days of incorporation and the ROC has sufficient reasons to believe that the company is not carrying any business or operations, ROC may initiate action for removal of the name of the company from the Register of the Companies.

(if any), email and website address (if any) printed in all its business letters, billheads, letter papers and all its notices, and other official publications.

- Have its name printed on hundies, promissory notes, Bill of exchanges and other documents as may be prescribed.

In case of change of name, each company is required to mention its old name for a period of two years, at its registered and other offices and other stationery as mentioned above.

Intimation of change of registered office is required to be given to ROC within 15 days of change. In case of default in complying with the section, the company and every officer who is in default shall be liable to a penalty of ₹1,000/- for every day during which the default continues but not exceeding ₹1 lakh.

Step 9: Commencement of Business (Section 11): For commencement of business by company, the following documents are required to be submitted with ROC:

a) A declaration by Directors in prescribed form providing that the subscribers have paid the value of shares agreed to be taken by them and the paid up share capital is not less than the minimum capital required to incorporate the company. (In *Form No. INC.21*)

b) Declaration shall be verified by CS or a CA or a Cost Accountant in Practice.

In case of default in complying with requirements, the Company shall be liable to Penalty which may extend to ₹5,000 and every officer who is in default shall be punishable with the fine which may extend to ₹1,000 for every day of continuing default.

Removal of Name from Register of Companies: Where no declaration is filed with ROC within 180 days of incorporation and the ROC has sufficient reasons to believe that the company is not carrying any business or operations, ROC may initiate action for removal of the name of the company from the Register of the Companies.

Now, this section is also applicable to private limited company.

Particulars of Fees for Incorporation of Company

S. No.	Particulars	Amount in INR
Fee for Incorporation of Other Companies		
1.	Nominal share capital does not exceeds ₹1, 00,000	₹5,000/-
2.	Nominal share capital after the first ₹1,00,000 up to ₹5,00,000	₹400 for every ₹10,000/- or part thereof
3.	Nominal share capital after the first ₹5,00,000 up to ₹50,00,000	₹300 for every ₹10,000/- or part thereof
4.	Nominal share capital after the first ₹50,00,000 up to ₹one crore	₹100 for every ₹10,000/- or part thereof
5.	Nominal share capital after the first ₹one crore	₹75 for every ₹10,000/- or part thereof
Filing Fee of Documents to ROC		
6.	In respect of a company having a nominal share capital of up to ₹1,00,000.	₹200
7.	In respect of a company having a nominal share capital of ₹1,00,000 or more but less than ₹5,00,000.	₹300
8.	In respect of a company having a nominal share capital of ₹5,00,000 or more but less than ₹25,00,000	₹400
9.	In respect of a company having a nominal share capital of ₹25,00,000 or more but less than ₹1 crore or more.	₹500
10.	In respect of a company having a nominal share capital of ₹1 crore or more.	₹600

Disclaimer: The article is meant for a general guidance for the readers, who should not use this as a substitute for specific consultations. ■

Principal Officer under the Income-tax Act, 1961

This article discusses different aspects relating to a principal officer under the Income-tax Act, 1961 (the Act) in the light of some important related case laws. The term "principal officer" is defined in Section 2(35) of the Act as the secretary, treasurer, manager or agent of the company and any person connected with the management or administration of the local authority, company, association or body upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer thereof. Further, this article seeks to analyse some relevant Indian case laws, highlighting key terms, and noting some practical issues.

Principal Officer

As per Wikipedia, the free encyclopedia describes the Principal Officer as the highest uniformed rank, above senior officer and below the grades of governor. A Principal Officer traditionally headed each wing of a prison.

As per sub-Section (35) of Section 2 of the Act, the principal officer means:

> *"Principal Officer" used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals, means-*
>
> *(a) the secretary, treasurer, manager or agent of the authority, company, association or body, or*
>
> *(b) any person connected with the management or administration of the local authority, company, association or body upon whom the Assessing Officer[1]* has served a notice of his intention of treating him as the principal officer thereof.*
>
> ** Prior to 01-04-1988, it was Income-tax Officer who would serve a notice of his intension of treating him as the principal officer thereof.*

CA. Amit Rustogi

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Whereas the Income-tax Act, 1922 (Act of 1922) provides the meaning of principal officer as follows:

> *"Section 2(12) "Principal Officer" used with reference to a local authority or a company or any other public body or association, means*
> *(a) the secretary, treasurer, manager or agent of the authority, company, body or association, or*
> *(b) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the Principal Officer thereof."*

[1] *Substituted for "Income- tax" by the Direct Tax Laws (Amendment) Act, 1987, w. e. f. 1- 4- 1988.*

Section 2(35)(b) is wide enough to take in any person connected with the management or administration of the company.

Under the Act of 1922, connection with the company as such would have been sufficient whereas under the present Act, 1961, in order to make a person the "Principal Officer," the connection must be for the management or administration of the company.

The key differences in definition of principal officer under the Act, 1922 and 1961 are as follows:

Sl. No.	Income-tax Act, 1922	Income-tax Act, 1961
1	*any person connected with the authority,......*	*any person connected with the management or administration of the local authority,......*
2	*Prior to 01-04-1988*	*After 01-04-1988 & onwards*
	Income tax officer has served a notice of his intention of treating him as the principal officer thereof.	*Assessing Officer has served a notice of his intention of treating him as the principal officer thereof.*

Now, let us clarify some critical issues relating to the aforesaid section along with some case laws in this regard.

Conditions must be cumulatively satisfied

In order that a person can be said to be a 'principal officer' as defined under Section 2(35)(b), the following two ingredients must be satisfied :

(*i*) he must be a person connected with the management or administration of the company; and

(*ii*) the assessing officer must have served upon him a notice of his intention of treating him as the principal officer of the company.

The satisfaction of any one of the two conditions or ingredients will not attract this clause-*ITO vs. Official Liquidator*[2].

Sub-clause (b) of Clause (35) of Section 2 is wide enough to take in any person connected with the management or administration of the company.

The words "management" and "administration" are not defined anywhere in the Income-tax Act or the Companies Act.

The ordinary dictionary meanings of those words may be noticed.

1. "Manage" means "conduct (undertaking, *etc.*); control (household, institution, state); take charge of (cattle, *etc.*)."
2. "Administration" means "the action of administering or serving in any office; attendance; performance of duty."

The words "management" and "administration" are of broad import.

It is pertinent to notice that the expression used is "any person connected with the management or administration of the company" but not "a person in management or administration of the company."

There is a lot of difference between the two expressions. What the law makers intended is some kind of connection or nexus of the person to be called the principal officer, with the management or administration of the company.

They did not intend the person to be in actual management or administration of the company. The person who is in actual management or administration of the company may have a direct and proximate hand in the affairs of the company during the period of management. Such a person would fall within the provisions of sub-clause (a) itself which takes in a manager or agent of the company. For the purpose of bringing a person within the meaning of Section 2(35), he need not actually manage or administer the affairs of the company but suffice it if he has some connection with the management or administration of the company.

Prior notice of hearing is not necessary

Before treating a person concerned as a principal officer under Section 2(35)(b) by the ITO, it is not necessary to determine that question upon hearing the submission or representation of the person concerned.-*Hungerford Investment Trust Ltd. vs. ITO*[3].

In the case of *M. M. Ipoh vs. CJT*[4], it was observed that (p. 120);

> *"There is, in our judgment, nothing in the Act which supports the contention of counsel for the assessee that before proceedings in assessment can commence against an association of persons a notice must be issued and an order passed after*

[2] [1977]106 ITR 119 (AP)
[3] [1983]142 ITR 601 (Cal)
[4] [1968]67 ITR 106 (SC)

> *giving opportunity to the person proposed to be treated as the principal officer, to show cause why he should not be so treated. It is open to the Income-tax Officer to serve a notice on a person who is intended to be treated as the principal officer. The person so served may object that he is not the principal officer or that the association is not properly formed. The Income-tax Officer will then consider whether the person served is the principal officer and whether he has some connection or concern with the income sought to be assessed."*

So, it is not necessary to give a hearing before treating a person as the principal officer of a company. The question whether a person is a principal officer of the company should be determined in the assessment proceeding.

Liquidator is a 'manager'

The word 'manager' in Section 2(12) of the 1922 Act includes liquidator of a company-*CIT vs. Official Liquidator of the Agra Spg. &Wvg. Mills Co. Ltd*[5].

Official Liquidator is the principal officer

In *Hari Prasad Jayantilal and Co. vs. V. S. Gupta, Income-tax Officer, Ahmedabad*[6], the Supreme Court, in dealing with the case of a company in voluntary liquidation, explained the position of the liquidator thus:

> *"A company which has resolved to be voluntarily wound-up may be dissolved in the manner provided by Section 497(5); till then the company has corporate existence and corporate powers. The property of the company does not vest in the liquidator; it continues to remain vested in the company. On the appointment of a liquidator, all the powers of the board of directors and of the managing or whole-time directors, managing agents, secretaries and treasurers cease, and the liquidator may exercise the powers mentioned in Section 512, including the power to do such things as may be necessary for winding-up the affairs of the company and distributing its assets. The liquidator appointed in a members' winding up is merely an agent of the company to administer the property of the company for purpose prescribed by the statute. In distributing the assets including accumulated profits, the liquidator acts merely as an agent or administrator for and on behalf of the company."*

For the purpose of bringing a person within the meaning of Section 2(35), he need not actually manage or administer the affairs of the company but suffice it if he has some connection with the management or administration of the company.

It is not necessary to give a hearing before treating a person as the Principal Officer of a company. The question whether a person is a principal officer of the company should be determined in the assessment proceeding.

The fact that there are no assets of the company in his hands and that ex-directors were liable for the income-tax arrears of the company, will not alter this legal position-*ITO vs. Official Liquidator*[7].

Even after a winding up order was passed, a company continued to be a "person" within the meaning of Section 4 of the Income-tax Act, 1961, and the liquidator would be the principal officer of such company within the meaning of Section 2(35)(a) of the Income-tax Act.-*Mysore Spun Silk Mills Ltd. vs. CIT*[8].

In *Knowles vs. Scott Romer J. [1891]* has stated that, in his view, a voluntary liquidator is more rightly described as the agent of the company.

In Palmer's Company Law, twenty-first edition, at page 754, the position of a liquidator in winding up by court has been stated as that of an agent employed for the purpose of winding-up the company. The said statement relies on *Knowles vs. Scott.*

So, official liquidator can be rightly termed as the agent of the company. Therefore, the liquidator, on an order for winding-up being made, becomes the "Principle Officer" of the company within the meaning of Section 2(35)(a) of the Income-tax Act, 1961.

Prosecution in the absence of Principal Officer

A company is not a natural person but legal or juristic person. But that would not mean that it is not liable to prosecution under the Act.

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[5] *[1934] 2 ITR 79 (All)*
[6] *[1966] 59 ITR 794 (SC)*
[7] *[1977] 106 ITR 119 (AP)*
[8] *[1971] 79 ITR 399 (KN)*

Even after a winding up order was passed, a company continued to be a "person" within the meaning of Section 4 of the Income-tax Act, 1961, and the liquidator would be the Principal Officer of such company within the meaning of Section 2(35)(a)

In *Greatway (P) Ltd. & Ors. vs. Assistant CIT*[9], the Punjab & Haryana High Court has held that in the absence of appointment of a Principal Officer by issuing a notice by the department, the prosecution, if any, could only be launched against the company.

In *Standard Chartered Bank vs. Directorate of Enforcement*[10], Crl. A. No. 109/2011, the Supreme Court held that juristic person is also subject to criminal liability under the relevant law. Only thing is that in case of substantive sentence, the order is not enforceable and juristic person cannot be ordered to suffer imprisonment.

As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment, the court can impose the punishment of fine which could be enforced against the company.

Managing director cannot be equated with 'manager'

In *ITO vs. Joseph*[11] (p. 7 & 8) it was held that:

> *"7. The managing director is not one of the persons falling under the category enumerated under Section 2(35)(a) or 2(35)(b). The persons taken in under clause (a) are "the secretary, treasurer, manager or agent." Under the Indian Companies Act, manager and managing director are two different entities. So the managing director cannot be equated with the manager. The learned appellate judge, it appears, has brought the respondent under clause (b) as "a person connected with the management or administration of the company. "The "managing director," under the Indian Companies Act, means; "A director who by virtue of an agreement with the company..... is entrusted with powers of management..."*
>
> *8. Even if the respondent is construed as one entrusted with or entitled to the management of the company, he should have been served with a notice by the Income-tax Officer of his intention to treat him as the Principal Officer in order that he may be brought under clause (b) of Section 2(35) of the Act. Such a notice was evidently not given in the instant case. It would, therefore, be wrong to say that the respondent, C. L. Joseph, was the principal officer of the company at the relevant time."*

The Hon'ble Supreme Court in *Municipal Corporation of Delhi vs. Ram Kishan Rohtagi*[12], held that (at page 70):

> *"So far as the manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence; vicarious liability being an incident of an offence under the Act. So far as the directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the directors (accused Nos. 4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed."*

Hence, a managing director is not one of the persons falling under the category of principal officer enumerated under sub-clause (a) or (b) of Section 2(35). The managing director cannot be equated with the manager. Even if he is construed as one entrusted with or entitled to the management of the company, he should have been served with a notice by the ITO of his intention to treat him as the principal officer in order that he may be brought under sub-clause (b) of Section 2(35).

A company is not a natural person but legal or juristic person. But that would not mean that it is not liable to prosecution under the Act.

[9] [1993] 199 ITR 391 (P&H)
[10] [2005] 8 SCC 530 (SC)
[11] [1972] 83 ITR 362 (Ker)
[12] 1983 AIR 67 (SC)

Partners of firm

In *Shital N. Shah And Others vs. Income-Tax Officer*[13], the petitioners, stated to be partners, do not fall within the category of the secretary, treasurer, manager, or agent of the authority, company, or body, and further, they had also not been served with any notice by the Income-tax Officer divulging his intention of treating any one of them as the Principal Officer connected with the management or administration of the firm.

Section 2(35) would then step in to find out as to who the principal officer would be. This section has been extracted earlier and it appears to be clear that the partners of the firm do not fall within that fold unless the Income-tax officer had served a notice on any of them of his intention of treating them as the principal officer of the firm, connected with the management or administration thereof.

In *M. A. Unneerikutty and Ors. vs. Deputy Commissioner of Income Tax*[14], it was held that by virtue of Section 2(35) of the Act, partners do not come within the definition of "Principal Officer" unless the Income-tax Officer had served notice of his intention to treat them or any one of them as the principal officer of the firm connected with the management or administration.

No bar for treating more than one person as the Principal Officer

The Supreme Court in the case of *Madumilan Syntex Ltd. & Ors vs. Union of India [2007]*[15], held that as under:

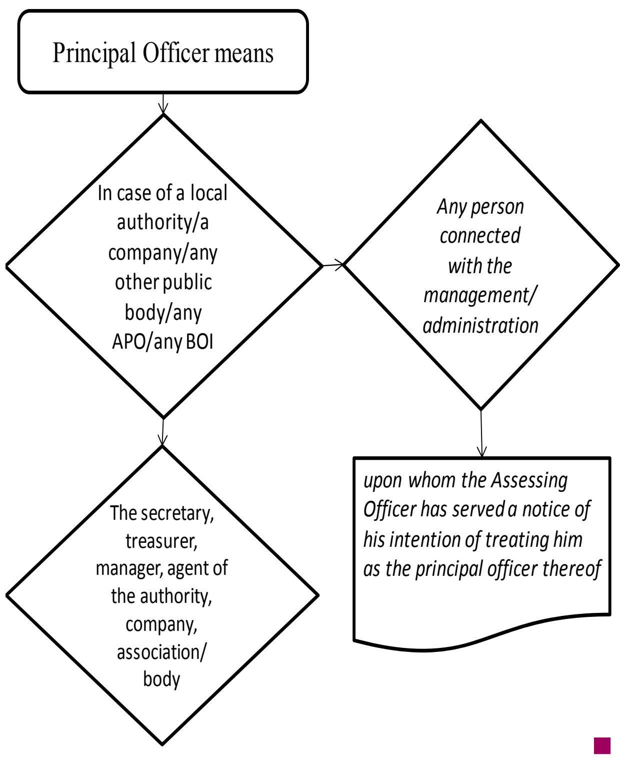
> *"27. So far as the directors are concerned, it is alleged in the show-cause notice as well as in the compliant that they were "Principal Officers" of the company. In the show-cause notice, it was assessed that the appellants were considered as principal officers under Section 2(35) of the Act. In the complaint also, it was stated that the other accused were associated with the business of the company and were treated as principal officers under Section 2(35) of the Act and hence they could be prosecuted. Dealing with an application for discharge, the trail court observed that accused no. 1 was the company whereas the other accused were the directors. Whether they could be said to be Principal Officers or not would require evidence and it could be considered at the stage of trail and the application was rejected. In revision, the first additional session's judge took a similar view."*

The Hon'ble High Court of Karnataka in the case of *M/s Kingfisher Airlines Ltd. vs. The Income tax Department*[16], held that the subsequent event treating one Shri. T. R. Venkatadri as the Principal Officer of the petitioner company will not result in quashing of the proceedings against the main accused-Shri Vijay Mallya–Chairman and Managing Director of M/s Kingfisher Airlines Ltd. It is open for the respondent authorities to proceed against the company, its directors or any other principal officer/s responsible for the default.

A reading of Section 2(35) of the Act specifies that there is no bar for treating more than one person as the Principal Officer for initiation of criminal proceedings.

Conclusion

It is a part of the machinery provision and must be construed and viewed in that light. The flow chart below summarises the position of principal officer as per the Income tax law.



[13] [1991] 188 ITR 376
[14] [1996] 218 ITR 606
[15] Appeal (crl.) 1377 of 1999
[16] TS - 677-ITAT-2013

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals received during September-October, 2014 for the reference of Faculty/Students & Members of the Institute.

1 Accountancy

Charity Accounting Changes by Nigel Davies. *Accounting and Business*, September 2014, pp.54-56.

Forensic Accounting Eliminates Epidemic Ills in Business: A Conceptual Framework by R. Suresh. *The Management Accountant*, September 2014, pp.52-55.

IFRS 15 Revenue from Contracts with Customers by Gerald Low. *IS Chartered Accountant*, September 2014, pp.64-67.

New Era Under IFRS 9 by Andrew Marshall. *Accountancy*, September 2014, pp.57.

Role of Accounting in High-Technology Investments by Julia A. Smith and Renzo Cordina. *The British Accounting Review*, September 2014, pp. 309-322.

Why Banks Should Go For Forensic Accounting-Needs and Applicability by Pooja. *The Management Accountant*, September 2014, pp.46-51.

2 Auditing

Audit Expectation Gap: Existence, Causes, and the Impact of Changes by Klaus Ruhnke and Martin Schmidt. *Accounting and Business Research*, October 2014, pp.572-601.

Fair Value Measurement and Audit Fees: Evidence from the Banking Industry by Michael L. Ettredge and Yang Xu. *Auditing: A Journal of Practice & Theory*, August 2014, pp.33-58.

Multidimensional Approach to Investigating Frauds and Scams: A Study in the Global and Indian Context by Anandaraj Saha. *The Management Accountant*, September 2014, pp.29-36.

Section 45 of the Auditing Profession Act: Blowing the Whistle for Audit Quality? By Warren Maroun and Jill Atkins. *The British Accounting Review*, September 2014, pp.248-263.

UK Audit Reform, FRC Criticizes IASB Over Stalling Tactics on Going Concern by Katharine Bagshaw. *Accountancy*, September 2014, pp.64-65.

3 Economics

Emerging Trends in Revival of Non-Performing Assets in the Indian Banking System by Ankita Sharma. *Company Law Journal*, September 2014, pp.156-171.

WTO Upside Down: Trade Facilitation vs. Agriculture by D. Ravikanth. *Economic & Political Weekly*, September 2014, pp.21-25.

4 Investment

Squeezing-out of Minority Shareholders: A Comparative Analysis between Companies Act, 1956 and 2013 by Aditya Pratap Singh and Ashu Garg. *Company Law Journal*, September 2014, pp.147-155.

5 Law

Extraterritorial Application of Competition Law in India: An Analysis by Kanchan Modak. *Company Law Journal*, September 2014, pp.133-146.

6 Management

Supplier/Customer Considerations in Corporate Financial Decisions by Jayant R. Kale and Costanza Meneghetti. *IIMB Management Review*, September 2014, pp.149-155.

Using Corporate Social Responsibility Performance to Evaluate Financial Disclosure Credibility by Lei Wang and Brad Tuttle. *Accounting and Business Research*, October 2014, pp. 523-544.

7 Taxation & Finance

Analysis of Major Changes Made in Tax Audit Report by Paresh P. Desai and Kush Paresh Desai. *Ahmedabad Chartered Accountants Journal*, September 2014, pp. 335-339.

CSR Expenditure of Companies is Not Deductible in Computing Income Taxable Under the Income -tax Act by T. N. . *Company Law Journal*, September 2014, pp.129-132.

International Transfer Pricing-Issues and Challenges Faced by MNCs and Regulators by Pradip Banerjee. *The Management Accountant*, September 2014, pp.96-102. ■

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

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 the same in view, 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-gritties 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

ANNOUNCEMENT

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set-up by an Act of Parliament)

CONVOCATION – 2014 (II ROUND)

As you are aware, for promoting a sense of bonhomie among members, and also for bringing them closer to the Institute, the Institute of Chartered Accountants of India organizes Convocations for distribution of Certificates. This is an occasion to mark the entry of new members into the CA fraternity.

ICAI invites members enrolled during the period of June, 2014 to November, 2014, to participate in the Convocation wherein Certificate of Membership will be awarded amidst the august gathering of the President, ICAI and other dignitaries.

The schedule of the proposed Convocations is as under:

ICAI CONVOCATION – 2014 (II ROUND)

- Mumbai- 3rd January, 2015 (Saturday)
- Bangalore – 11th January, 2015 (Sunday)
- Indore – 31st January, 2015 (Saturday)
- Kolkata – 3rd February, 2015 (Tuesday)
- Jaipur – 6th February, 2015 (Friday)
- New Delhi – 7th February, 2015 (Saturday)

This schedule has been released for the advance information to the participants. Further details about the Venue and Timing of the Convocation Programme schedule will be intimated separately to the participants by the concerned Regional Office of ICAI.

Members, who are enrolled during February, 2014 to May, 2014, due to any reason, could not attend the last Convocation held in July and August, 2014 may also participate in the proposed Convocation. They are advised to be in touch with concerned Regional Office of ICAI to register their participation.

10th October, 2014

Joint Secretary
MC & MSS Section

Invitation for the Articles

The Committee on Management Accounting (CMA) invites research articles, write-ups and other similar materials in the areas of Management accounting and Financial Management for publishing in its journal. The Institute proposes to publish a quarterly Journal "Management Accounting and Business Finance" with an object of spreading the advanced knowledge on Management Accounting and allied areas which are relevant for the members of the profession and others concerned. The Journal is to focus on practical articles for advanced and research oriented knowledge.

The articles submitted for consideration of publication should be of 4,000-6,000 words typed double space on A4 size paper with 1 inch margin all around. In order to facilitate the blind review process, the author should not mention his/her name on the body of the manuscript. Three hard copies of manuscript along with a soft copy (MS Word) may be sent at the following address:

Secretary,
Committee on Management Accounting (CMA),
3rd Floor, Administration Block,
A-29, Sector 62, Noida- 201309 (UP)
Phone No: 0120-3045905
Email id: cma@icai.in; akagrawal@icai.in

Authors may note that in appreciation of their contribution to the MABF journal an honorarium of ₹5,000/- per article would be paid to them.

Detailed Guidelines for writing the articles are available on the website of Committee at http://www.icai.org/new_post.html?post_id=10667&c_id=240

The editorial Board hopes that professionals and other experts will come forward to share their expertise and practical experience with our readers by preparing the papers in view of the specific requirements of the accounting profession.

Chairman,
Committee on Management Accounting (CMA),
ICAI, New Delhi

Residential Programme on Professional Skills Development

Announcement

ICAI Four Weeks Residential Programme on Professional Skills Development
at the Centre of Excellence,(COE), Hyderabad

The Board of Studies is pleased to announce the special batch (es) of Four Weeks Residential Programme on Professional Skills Development at the Centre of Excellence, (COE), Hyderabad as under:

S.No	Batch No.	Date of the Programme	Eligibility	Link for Registration -Online
1.	27th and 28th Batch	28th November, 2013 to 24th December 2014	For Men Participants	http://220.227.161.86/34902bos24606fwrp-m.pdf
2.	29th Batch	29th December, 2014 to 24th January, 2015	For Women Participants	http://220.227.161.86/34901bos24606fwrp-w.pdf

The programme offers a unique opportunity and would focus on development of communication skills, leadership skills, personal traits for effective functioning in business organisation and profession. More emphasis is given on soft skills, developing personality traits and communication skills of the participants.

Men/Women (as applicable) students who have passed Chartered Accountancy IPCC/ PCC/ PE- II/ Intermediate (IPC) examination and pursuing last year of article training or completed Articleship training are invited to join the course. Recently qualified Men Chartered Accountants are also welcome to join the course.

Registration may be made by paying 20% of fees, *i.e.*, ₹8,000/- or full fees, *i.e.*, ₹40,000/- through Credit card or Net Banking facility using online payment portal.

In view of **limited seats** please send your registration as early as possible. Registration is normally on ***First-come-First-serve basis,*** subject to logical criteria.

All eligible Men students/Men members interested to pursue this programme may visit: ICAI website www.icai.org for details of programme.

Chairman, Board of Studies

Discounted subscription rate of Ace TP

ICAI has entered into an arrangement with Accord Fintech Pvt. Ltd. to offer a deep discounted subscription rate of Ace TP online version of their transfer pricing database

Dear Members,

This is to inform you that ICAI has entered into an arrangement with Accord Fintech Pvt. Ltd. to offer a deep discounted subscription rate of Ace TP online version of their transfer pricing database for our esteemed members. Ace TP is available for subscription to all our members at ₹14,000/- (Excluding all Taxes) per annum.

Following are the most unique features they have demonstrated and listed for your ready reference:

- Database of more than 38,000 Indian listed and un-listed Companies.
- Historical data of over 15 years.
- More than 25,000 products/services.
- 1,750 unique financial data fields.
- NIC Activity Classification for each company as per NIC 2008.
- Business Activity classification for each company based on balance sheet abstract and Products.
- Business description, *i.e.,* one paragraph brief profile about company updated for listed and un-listed companies.
- 13 Different industry specific financial format presentation on Profit and loss, Balance sheet and cash flow

For more features you may follow the link: http://www.acetp.com/ACETPOnline_Presentation.pdf

To subscribe to Ace TP product by following the web link: http://www.acetp.com/icai/register.aspx

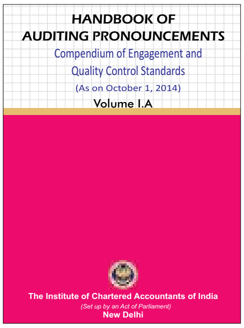
For any query, you may contact:
Mr. Savio
acetp@accordfintech.com
Mobile: 08879088848

New Publications

Handbook of Auditing Pronouncements 2014 Edition

The Auditing and Assurance Standards Board has recently brought out the 2014 edition of the Handbook of Auditing Pronouncements. The significant features of the Handbook are as follows:

- It contains the text of all the Engagement and Quality Control Standards, Statements on Auditing and Guidance Notes on Auditing in force as on 1st October, 2014.
- It is divided in three volumes:
  - **Volume I.A: Compendium of Engagement and Quality Control Standards** (Contains text of the Announcements of the Council regarding Status of Various Documents



issued by ICAI, Preface, Glossary of Terms, Framework for Assurance Engagements, Standards on Quality Control, Standards on Auditing, Standards on Review Engagements, Standards on Assurance Engagements and Standards on Related Services)

- **Volume I.B: Compendium of Statements** (Contains text of various Statements on Auditing)
- **Volume II: Compendium of Guidance Notes** (Contains text of various Guidance Notes on Auditing)

Price

All the three volumes of the Handbook come in a single box pack alongwith a CD containing text of the entire Handbook. The complete Box pack of the Handbook is priced at ₹900/-.

Ordering Information

The publication can be purchased directly from the Sales Counters at the ICAI's Regional Offices or at the Head Office. To order by post, requisition may be sent to the Postal Sales Department of the ICAI at postalsales@icai.in

Arrangement of Accounting Software

Arrangement of the Accounting Software by the Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP), ICAI for the Members of ICAI

This Accounting Software is loaded with features like Day Book/Sales Register/Purchase Register/ Cash and Bank Book/General Ledger/Receipts and Payments, Outstanding Reports with Ageing for Bills Outstanding, Trial Balance, Balance Sheet & Profit & Loss A/C, Ratio Analysis, Comparison with Budget and prior periods, Funds Flow and Cash Flow etc, Enhanced Cost center views with option to edit Cost Centres in Bulk, Transactions Register for Purchase Order, Sales Order, Job Order, Stock journals *etc.*, Customisable PO/Delivery Challan/ Quotation/Invoice/DC out/*etc.*, Quotation vs. Billed and Pending, sales Order Received vs. Billed and pending, DC out vs. Billed, Stock Summary, Stock Ledger, Stock List, Stock Ageing *etc.*, in Primary and Alternate Units, TDS Certificates Received, *etc.* The initial license of the aforesaid software is free of cost for 2 financial Years' and thereafter would be available at a special price of ₹1,200/-.

Added Benefits

- Quick Navigation, easy to understand and remember
- Multi-taking Dash board with a real-time view of your business
- Search from anywhere, Document Management to Manage word/excel/peg files
- Multiple securities provision user level wise/module wise scheduled/Auto back-up provision, Auto web updates
- Open MS word, MS Excel from within the Application, print Envelop Labels *etc.*
- Reliable Training and Support services via Online (live chat & call back), Onsite, Telephone & Mail
- Export/Import to MS Excel

The detail of the downloadable link & other details of the aforesaid software as follow:

Download Link – www.relyonsoft.com/caoffer
Email ID- support.sai@relyonsoft.com
Support No.- 1860-425-5570
Live chat – www.relyonsoft.com

Corporate Office: Relyon Softech Ltd, #73, Shreelekha Complex, WOC Road, Bangalore, Karnataka, India. Pin: 560086

For requesting CD for the aforesaid software: Contact Person–Pushpa K. S., Mobile No- 09538898906

For any other queries or feedback, please contact Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI at 0120-3045994 or ccbcaf.software@icai.org

Chairman,
Committee for Capacity building of CA firms and Small and Medium Practitioners,
ICAI

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 favour 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 November & December, 2014 are as follows:

Location	Scheduled Dates	Registration and Course Details
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
NIRC	November 1 & 2 , 8 & 9 and 15 & 16, 2014	http://220.227.161.86/35012iasb-nirc-148.pdf
SIRC	November 7,8 & 9 and 14,15 & 16, 2014	http://220.227.161.86/34940iasb-sirc-146.pdf
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	December 6 & 7 ,13 & 14 and 20 & 21, 2014	http://220.227.161.86/33450iasb-coimbatore-119.pdf
Kota	December 6 & 7, 13 & 14 and 20 & 21, 2014	http://220.227.161.86/33859iasb-kota-129.pdf
Siliguri	December 13 & 14 ,20 & 21 and 27 & 28, 2014	http://220.227.161.86/34107iasb-siliguri-141.pdf
Amritsar	December 20 & 21,27 & 28,2014 and January 3 & 4, 2015	http://220.227.161.86/33860iasb-amritsar-130.pdf
Vasai	December 27 & 28,2014 and January 3 & 4 and 10 & 11, 2015	http://220.227.161.86/33863iasb-vasai-131.pdf

Chairman
Internal Audit Standards Board, ICAI
E-mail: cia@icai.in; concurrentaudit@icai.in

Microsoft Office 365 Software License

Committee for Capacity Building of CA firms and Small and Medium Practitioners (CCBCAF&SMP), ICAI has arranged Microsoft Office 365 Software License to the Members of ICAI from Microsoft Corporation India through airtel business along with mobile, fixed line and internet connectivity solution packages etc. offered by the aforesaid vendor for the practitioners & CA Firms. Members of ICAI to receive wide range of offers to choose from along with Microsoft Office 365.

The offers available for ICAI members till 31st March, 2015 are as follows:

	Components	ICAI Special Offer *(per user per month)*	DELIVERY SLA
MICROSOFT OFFICE 365 SINGLE USER PACK	**Genuine Microsoft Office 365** License can be installed on 5 PC/MAC + 5 Smart Devices (Tablets/Mobile Phones) per user **1 TB Secure Online file backup and storage:** Backup key documents and access them from any device **50 GB mailbox** with company name. For example: yourname@yourbusiness.com (domain name not included) **Business website** in minutes without coding **Anti-SPAM** and **Anti-VIRUS** protection **On-boarding** Services and **24/7 Help Desk** **T&C**: Maximum limit of 25 employees per organisation	₹321	Delivery within 72 hours* of placing order
In addition to this core offer, the following offers# for ICAI members can also be availed till 31st March, 2015:			
BUSINESS ESSENTIALS PACK	• 1 Microsoft Office 365 user service • Tally Silver: Single user license • 2GB data pack for dongle	₹1,025	Delivery within 72 hours* of placing order for Microsoft Office 365. For other products, delivery will vary based on feasibility.
BUSINESS PREMIUM PACK	• 1 Microsoft Office 365 user service • Tally Silver: Single user license • 2GB data pack for dongle • Postpaid myPlan for mobiles	₹1,300	
BUSINESS ULTIMATE PACK	• 1 Microsoft Office 365 user service • Tally Gold License: Unlimited (site) license • 2GB data pack for dongle • Postpaid myPlan for mobiles • 4MBPS broadband connection	₹3,000	
BUSINESS UBER PACK	• 1 Microsoft Office 365 user service • Tally Gold License: Unlimited (site) license • 2GB data pack for dongle • Postpaid myPlan for mobiles • Dedicated internet leased line • Multi user fixedline voice services (30 Channel PRI)	₹20,900	

To avail these offers -
Call 1800 102 5293 (toll free)
OR SMS "AC" to 56161 OR
Visit website: **http://www.airtel.in/ICAI**
Escalations: airtelforbusiness@airtel.com

For any other queries or feedback, please contact Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI at 0120-3045994 or ccbcaf.software@icai.org

Chairman,
Committee for Capacity building of CA firms and Small and Medium Practioners, ICAI

*# T&C apply. For detailed terms & conditions please log on to http://www.airtel.in/ICAI/terms-condition.html.
For detailed information on the products, please log on to http://www.airtel.in/ICAI

Classifieds

5179 Jamshedpur (Jharkhand) based CA firm, is looking for work on assignment, partnership basis. Jaluka& Associates, jalukaandassociates@gmail.com, 9709138711, 8406000707.

5180 Bangalore based young Chartered Accountant is looking for association with existing firms on sharing/assignment/partnership/similar basis. Contact: aca.bangalore@gmail.com

5181 Inviting fresh and young CAs, to join members having capital and 20+ years of audit and industry work experience, as Partners in a new firm and training/coaching entity, in Bangalore. Email CVs: caapbangalore@gmail.com, Call 09663794900

5182 Chandigarh based CA firm looking for Alliance/ Partnership/Assignment/Sub-contracting. FCA with 18+ years in practice/industry (Banking). www.arorarajivassociates.com, 9988847159, arorarajiv655@gmail.com

5183 Vacancy-Fresh & experienced CA's are required for Audit-Pre Audit, Taxation-Project finance work by a Professional firm at Raigarh, Raipur (Chhattisgarh). Apply rksca@icloud.com, M-9300678720

5184 Hyderabad based peer reviewed Firm with 7 partners and in practice for more than 22 years having Branches in Nagpur, Bengaluru & Raipur invites proposals from proprietary CA firms/ Individual CA's/small & midsized CA firms in Andhra Pradesh, Karnataka, Kerala, Tamil Nadu & Telangana for partnership/merger of existing firm with ours for mutual benefits. Proposals are also invited from senior members willing to retire from active practice. Members with DISA qualification would be preferred. Contact: sarva.pragna@gmail.com

5185 A CA firm with 8 partners, in practice since 57 years invites a partnership firm older than 15 years to merge/partnership. Contact 09830268455, firm2merge@gmail.com

5186 We are providing Taxation, Audit and Assurance, Valuations and Business Advisory Services to National and Multinational Companies. We require Chartered Accountants/Semi-Qualified for our Tax and Advisory Practice for our Delhi and/or Mumbai office. Compensation package will be given as per the experience and knowledge. Those interested may email their CVs to Mr. Ankit Agrawal at: ankit.agrawal@bsmco.net

5187 FCA, CISA seeks assignments/partnership with CA firms for clients in Russia/ Kazakhstan/Uzbekistan/ CIS only. Contact: sathi231@gmail.com

5188 CA firm having exposure in VAT, CST, ET, PT and other States Taxes relating to Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Tripura, Sikkim, West Bengal & Odisha seeks professional work on sharing/assignment/ subcontract/retainer-ship/partnership basis. Contact: 98648-57565. E-mail: mohanagarwalca@gmail.com

5189 Ahmedabad based CA Partnership Firm is looking for professional work- Audit, IT Audit (CISA qualified partners), Management Consultancy, Project Management and liaising on assignment, JV, Partnership basis. Contact–09727367997 or info@brsin.com

5190 A CA firm with 2 partners, based in Bangalore in existence for about 10 years is looking for veteran chartered accountants willing to retire from their practices and form partnership. Contact: kamatca2002@yahoo.com

5191 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 email at carecruitsicai@gmail.com

5192 Chennai based FCA, seeks professional work on sub-contract/assignment basis. Email: madhavan.ca2008@gmail.com, Contact:9865691436

5193 26 years established Lucknow based CA firm invites proposals for partnership, preferably from experienced retired members from industry or other service sectors. Interested candidates may please contact CA. S. N. Gupta, senior partner at 09415101759 or 07607424536 Email: shivnarainabha@yahoo.co.in

5194 Bareilly based CA having 25 years industrial experience in sugar sector in UP and Uttarakhand wants to join CA firm in Bareilly, Moradabad, Rudrapur, Agra. Contact- 9837045021.

Events

Forthcoming Events[1]

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
1.	Workshop on Auditing Standards	22^{nd} Nov., 29^{th} Nov., 13^{th} Dec., & 20^{th} Dec., 2014	Mumbai	12
Topics	Workshop covers the following topics: • SQC 1: Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements • SA 210 : Agreeing the Terms of Audit Engagements • SA 230 : Audit Documentation • SA 300 : Planning an Audit of Financial Statements • SA 240 : The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements • SA 315 : Identifying and Assessing the Risks of Material Misstatement Through Understanding the Entity and Its Environment • SA 250 : Consideration of Laws and Regulations in an Audit of Financial Statement • SA 330 : The Auditor's Responses to Assessed Risks • SA 320 : Materiality in Planning and Performing an Audit • SA 450 : Evaluation of Misstatements Identified During the Audit • SA 500 : Audit Evidence • SA 580 : Written Representation • SA 700 : Forming an Opinion and Reporting on Financial Statements • SA 705 : Modifications to the Opinion in the Independent Auditor's Report • SA 706 : Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report			
Fees	₹1,200/			
Contact Person	**For registration visit:** https://www.wirc-icai.org/EventsCalendarNew.aspx?id=forth **For Information Contact:** • CA. Abhijit Bandyopadhyay, Chairman, Auditing & Assurance Standard Board, • CA. Prafulla Chhajed, Chairman, Young Members Empowerment Committee, Email: pchhajed@yahoo.com **For Registration Contact:** • WIRC: Phone: (022) 3367 1421 & 24, Email: wirc@icai.in • AASB : Phone:(0120) 3045 920, Email: aasb@icai.in • YMEC: Phone: (0120) 3876 877, Email: ymec@icai.in			
2.	National Seminar on Valuation at the backdrop of Companies Act, 2013	14^{th} November, 2014 - 10 am to 5 pm	Hotel Orchid (Mumbai)	6
Topics	• Business Valuation and Valuation of Immovable Property - Indian peculiarities • Intangible and Brand Valuation - Recent Global Trends • Mergers and Acquisition and Share based payments/ Stock options • Legal position and judicial pronouncements under various Acts			
Fees	₹2,500/			
Contact Person	**Programme Chairman** • CA. S. Santhanakrishnan, Chairman, Corporate Laws & Corporate Governance Committee of ICAI, Mobile: 09841073008, Email: sk@pkfindia.in **Programme Director** • CA. Nilesh Vikamsey, Vice-Chairman, Corporate Laws & Corporate Governance Committee of ICAI, Mobile: 09323332552, Email: nilesh@kkc.in **For Registration and Information, contact:** Secretariat, Corporate Laws & Corporate Governance Committee of ICAI, Phone: 0120-3045971, Email: clcgc@icai.in			
3.	One Day Training Programme for Peer Reviewers	7^{th} November, 2014	Jalandhar	6
Topics	• Rationale & Significance of Peer Review • Compliance With Audit Documentation • Compliance With Technical Standards • Compliance With Framework Of Quality Control General & Specific Controls • Review Procedures and Reporting by Peer Reviewer			

[1] For more details about the forthcoming events please refer the detailed announcements hosted on the ICAI website www.icai.org

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
Fees	₹1,000/- per participant			
Contact Person	• Chairman/Secretary, Jalandhar Branch of NIRC of ICAI, Phone: 0181-4631711, 4625832, Email: jalandhar@icai.org • Peer Review Board, Phone: 0120-3045941/970, Email: peerreviewboard@icai.in			
4.	Live Webcast	10th November, 2014 Time: 6.00 pm to 8.00 pm	Online	-
Topics	Works Contract Provisions under VAT			
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			
5.	Two Days Programme on Service Tax	11th and 12th November, 2014 Time: 9.30 am to 5.30 pm	Durgapur	12
Contact Person	CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 09810103611, E-mail: atulservicetax@gmail.com **For Information contact:** • CA. Manoj Sharma, Phone: 9933057025, E-mail: manojsharma1976@gmail.com • Secretariat, Indirect Taxes Committee, Phone:0120-3045954, 9350799932, E-mail: ccidt@icai.in			
6.	Two Days Programme on Service Tax	7th & 8th November, 2014 Time: 9.30 am to 5.30 pm	Akola	12
Contact Person	CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 09810103611, E-mail: atulservicetax@gmail.com **For Information contact:** • CA. Vikram Golechha, Mobile: 9823127159, 9422160590, Email: vikram.golechhaca@gmail.com • Secretariat, Indirect Taxes Committee, Phone:0120-3045954, 9350799932, E-mail: ccidt@icai.in			
7.	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			
Fees	₹500/-			
Contact Person	• CA. Vijay Garg, CCM, Chairman, CPF&GA and COBIP of ICAI, Email: vijaymgarg@yahoo.com; vijaymgarg@gmail.com, Mobile: 09414041872 • 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** • Secretary, CPF&GA, ICAI, Phone: 0120-3045950/968, Mobile: 9312207439, Email : cpf_ga@icai.in, Website-www.cpfga.icai.org • Secretary, COBIP, ICAI, Phone: 011-30110566, Mobile : 8130577979 , Email: cobip@icai.in • 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, Website: jaipur-icai.org, www.natconjaipur2014.com, Email: jaipur@icai.org; jaipur@icai.in			

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
8.	Two Days Conferences on International Taxation	1st & 2nd November, 2014	Thane	12
Topics	• Basic of International Taxation (Residence, DTAA, Chargeability), • Royalty and Fees for Technical Services, Most Favour Nation, Force of Attraction, AAR, Treaty Shopping, • Law and Procedure (15CA & 15 CB) u/s. 195, • Permanent Establishment and Business Profit, • International and Domestic Transfer Pricing, • How to Read and Interpret Tax Treaties, • Independent and Dependent Personal, Income from Immovable Properties			
Contact Person	**For more information:** Thane Branch WIRC of ICAI, Phone: 022-25382451/53/54/56			
9.	Two Days Conference on International Taxation	1st & 2nd November, 2014	Coimbatore	12
Topics	Topic on International Taxation			
Contact Person	**For more information:** • Coimbatore Branch of SIRC of ICAI, Phone: 0422-4270056/58 • CA. P. Viswanathan, Chairman, Coimbatore Branch SIRC of ICAI, Mobile : 09487894957			
10.	National Conference on International Taxation	7th and 8th November, 2014	Bangalore	12
Topics	• Global Trends in tax policy and tax Administration • Case Studies in International Taxation • Highlights of research paper on Fees for • Technical Services • Taxation of Non-Corporate Entities • Tax and Financial Reporting • Requirements for US Citizens • Taxation of Digital Commerce • BEPS and International Tax Policy Developments • Highlights of research paper on Transfer Pricing • Divergence in Judicial Trend in International Taxation • Transfer Pricing-Economic Adjustments			
Fees	Members: ₹4,000/- upto 6th November 2014, Spot Registration ₹5,000/- on 7th November 2014, Non Members: ₹10,000/- + Service Tax			
Contact Person	**Conference Chairman:** CA. K. Raghu, President, ICAI **Conference Co-Chairman:** CA. Nihar N. Jambusaria, Chairman, Committee on International Taxation, ICAI **Conference Director:** CA. Babu K. Thevar, Chairman, Bangalore Branch of SIRC of ICAI **Conference Coordinator:** CA. Gurunath N. Kanathur **For more information:** Bangalore Branch SIRC of ICAI, Phone: 080-30563500			
11.	Two Days Workshop on International Taxation	8th and 9th November, 2014	Rajkot	12
Topics	• Basic of International Taxation (Residence, DTAA, Chargeability), • Royalty and Fees for Technical Services, Most Favour Nation, Force of Attraction, AAR, Treaty Shopping, • Law and Procedure (15CA & 15 CB) u/s. 195, • Permanent Establishment and Business Profit, • International and Domestic Transfer Pricing, • How to Read and Interpret Tax Treaties, • Independent and Dependent Personal, Income from Immovable Properties			
Contact Person	**For more information:** Rajkot Branch WIRC of ICAI, Phone: 0281-2490908			
12.	National Conference - 2014 Theme: Role of CA's in Make in India	26th& 27th December, 2014	Saheed Bhawan, Cuttack, Odisha	12
Topics	• Service Tax – Emerging Opportunities & Challenges • Fraud Detection under IT Environment • Capacity Building Measures -Panel Discussion on Role of CA's in Make in India. • Companies Act, 2013 – Accounts & Audit • Companies Act, 2013 – Compliances • Issues on Direct Taxes • Capacity Building Measures-Networking, Merger & Other forms of Consolidation			

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
Fees	Members: ₹2,000/- Non Members Includes Corporate Delegates: ₹3,000/- (Including S. Tax) Students: ₹500/-			
Contact Person	**Programme Chairman:** CA. Anuj Goyal, Chairman, CCBCAF&SMP, ICAI and CMA, ICAI, Email: anujgoyal@icai.org **Programme Co-ordinator:** CA. Pawan Kumar Udaypuria, Chairman, Cuttack Branch of EIRC of ICAI, Email: pudaypuri@yahoo.com, Mobile: 09937166049 **For Registration & Information:** • Dr. Sambit Kumar Mishra, Secretary, Committee for Capacity Building of CA Firms and Practitioners, ICAI, Phone: 0120-3045994, E-mail: ccbcaf.event@icai.org • Dr. Amit Kumar Agrawal, Secretary, CMA, ICAI, New Delhi, Email: dr.amitagrawal@icai.in, Phone: 0120-3045905			
13.	National Summit on Networking & Capacity Building Measures of Practitioners	29th November, 2014	Bangalore	6
Contact Person	**Programme Chairman:** CA. AnujGoyal, Chairman, CCBCAF&SMP, ICAI and CMA, ICAI, Email: anujgoyal@icai.org **Programme Co-ordinator:** CA. Babu K. Thevar, Chairman., Chairman, Bangalore Branch of SIRC of ICAI, Mobile: 9342500855, E-mail: kbabu74@yahoo.com **For Registration & Information:** • Bangalore Branchof SIRC of ICAI, 'ICAI Bhawan', No.16/O, Millers Tank Bed Area, Vasanth Nagar, Bangalore–560 052, Phone: 080-30563511/512, Email: blrprogrammes@icai.org • Dr. Sambit Kumar Mishra, Secretary, Committee for Capacity Building of CA Firms and Practitioners, ICAI, Phone: 0120-3045994, E-mail: ccbcaf.event@icai.org			
14.	46th Regional Conference of SIRC of ICAI	12th & 13th December 2014 (Friday & Saturday)	Madurai College Grounds, Madurai	12
Topics	**Day-1: December 12, 201(Friday)** **Inaugural Session** • Smt. Nirmala Sitharaman, Hon'ble Union Minister of State for Finance & Minister for Corporate Affairs • Shri Pon Radhakrishnan, Hon'ble Minister of State for Heavy Industries & Public Enterprises Sector Enterprises • CA. Piyush Goyal (*Confirmation Awaited), Hon'ble Minister of State with Independent Charge for Power, Coal and New & Renewable Energy • Presidential Address: CA. K. Raghu, President, ICAI • Special Address: CA. Manoj Fadnis, Vice-President, ICAI **Technical Session–1:** Issues in Assessment Procedure: Shri Firoze B. Andhyarujina, Mumbai **Technical Session–2:** Recent Amendments in Companies Act: CA. Ashish Makhija, New Delhi **Technical Session–3:** International Taxation with Special Reference to NRI Taxation: CA. Rashmin Sanghvi, Mumbai **Technical Session–4:** Taxation of Charitable Trusts/Non-Profit Organisation: CA. Dr. Manoj Fogla, Cuttack **Day-2: December 13, 201(Saturday)** **Technical Session– 5:** Recent Changes in Service Tax: CA. Ashok Batra, New Delhi **Panel Discussion:** Challenges and Opportunities for Members • *Panelists:* CA. R. Balakrishnan, Past President, ICAI, CA. B. P. Rao, Past President, ICAI, CA. G. Sitharaman, Past President, ICAI • *Moderator:* CA. G. Ramaswamy, Past President, ICAI **Technical Session– 6:** Rotation of Auditors under Companies Act, 2013: Padma Shri Awardee CA. T. N. Manoharan, Past President, ICAI **Technical Session– 7:** Taxation of Real Estate Transactions: CA. R. Bhupathy, Past President, ICAI & CA. Dr. Girish Ahuja, New Delhi			
Fees	Members: ₹3,500/- Non-Members: ₹5,250/-			
Contact Person	Madurai Branch of SIRC of ICAI			

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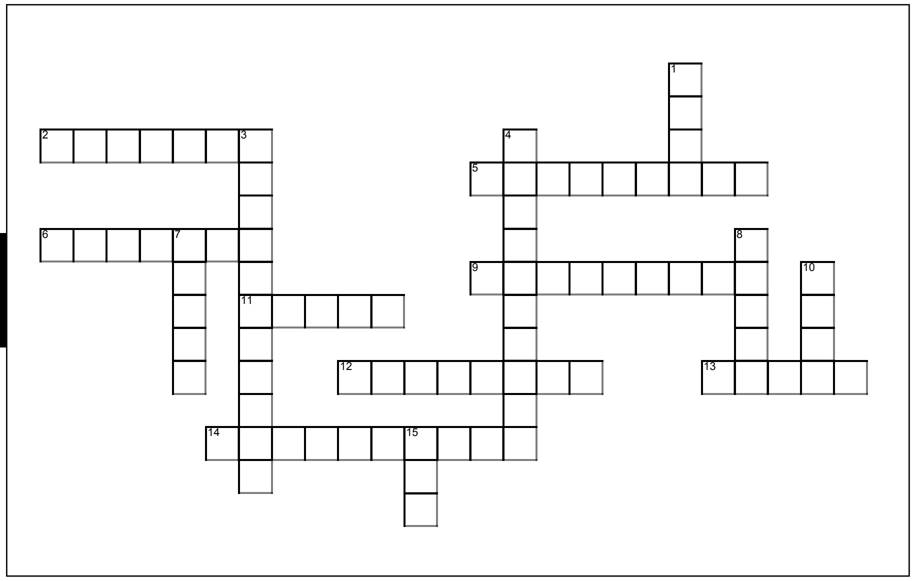
CROSS WORD 101



ACROSS

2. In MS Word spelling and__________ errors can be detected by pressing F7.
5. Atanasuff and Berry developed the first all electronic _________ by 1940.
6. The icon that cannot be deleted, but can be made invisible.
9. Boot Viruses aim at the boot sector of a _____ _____ are infecting a very crucial component of the boot process.
11. In 1972, the symbol '@' was chosen for its use in_______ address.
12. _________ is the acronym for Simultaneous Peripheral Operation On-line.
13. The _______Special command in MS Excel lets you copy and paste the resulting values of a formula instead of the actual formula.
14. Developing of systems by IT specialists within an organisation is called_________.

DOWN

1. ______infector virus attaches themselves to EXE files, compressed files like ZIP files and driver files.
3. Getting data from a cell located in a different sheet is called__________.
4. Changing the appearance of a document is called________.
7. In 1983, _________was the first person to offer a definition of the term 'computer virus'.
8. MAC is _______ Access Control.
10. Superscript, subscript, outline, emboss, engrave are known as ______ effects.
15. The most appropriate file format when saving the spreadsheet file which is to be used for importing into a database package.

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.

Some people ask the secret of our long marriage.
We take time to go to a restaurant two times a week.
A little candlelight, dinner, soft music and dancing.
She goes Tuesdays, I go Fridays!

SOLUTION CROSSWORD 100