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THE CHARTERED ACCOUNTANT JOURNAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

SET UP BY AN ACT OF PARLIAMENT

IFRS and India



All set for New Era of
Accounting Reforms



ICAI International Conference
Bangalore Palace, Bengaluru
29-31 January 2015

MOVING TOWARDS NEW FRONTIERS

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IFRS Convergence and ICAI

With accounting having become the global language of business, the convergence with International Financial Reporting Standards (IFRS) is the need of the hour as an economic imperative for India. This convergence will bring us a golden opportunity to comprehensively reassess financial reporting and a clean sheet of paper approach to financial policies and processes, while helping our economy at large, including our industry and investors. Our capital markets will be more robust and there will be a new flow of foreign investments into our country. Besides, this will unleash a new era of much-needed accounting reforms in India which will ultimately lead to an added global recognition and tremendous demand for IFRS-trained Indian accounting professionals.

Weighing these and many more benefits of the convergence, the ICAI has been an ardent proponent of convergence with IFRS, and its stand was vindicated when Finance Minister Shri Arun Jaitley announced in his maiden Budget speech that Indian Accounting Standards converged with IFRS are to be adopted in India from next year on a voluntary basis and mandatorily a year later, much in line with the roadmap submitted by the ICAI to the Government. The new Companies Act, 2013 has also introduced various new provisions, including the requirement to prepare Consolidated Financial Statements, which would also facilitate the implementation of Ind AS converged with the IFRS.

With more than 100 countries having adopted or permitted the IFRS, and India having already committed at G20 in this regard, we cannot afford to lag behind any further, and the process of implementation of Ind AS converged with IFRS needs to be speeded up further. It is welcome that the Government has reconstituted the National Advisory Committee on Accounting Standards (NACAS) to push the convergence process in India.

On its part, the ICAI has been proactively helping the Government to facilitate convergence and bring the financial reporting practices of Indian corporates at par with the global standards ever since 2007 when the convergence idea was mooted. The ICAI is fully prepared to meet the challenge of the implementation and is ready with the updated Ind AS corresponding to IFRS, besides having started nation-wide exhaustive exercise to train our members.

Post-February 2011 when 35 Ind AS were put on the MCA's website, the ICAI has finalised seven new/revised Ind ASs along with certain amendments to other Ind ASs corresponding to the new/revised IFRSs. These include Ind AS 110 *Consolidated Financial Statements* corresponding to IFRS 10, Ind AS 111 *Joint Arrangements* corresponding to IFRS 11, Ind AS 112

Disclosure of Interests in Other Entities corresponding to IFRS 12, Ind AS 113 *Fair Value Measurement* corresponding to IFRS 13, Ind AS 27 *Separate Financial Statements* corresponding to IAS 27, Ind AS 28 *Investments in Associates and Joint Ventures* corresponding to IAS 28, Ind AS 19 *Employee Benefits* corresponding to IAS 19, Ind AS 41 *Agriculture* corresponding to IAS 41, Ind AS 109 *Financial Instruments* corresponding to IFRS 9, Ind AS 114 *Regulatory Deferral Accounts* corresponding to IFRS 14 and Ind AS 115 *Revenue from Contracts with Customers* corresponding to IFRS 15. These Ind ASs have been submitted to the NACAS for its consideration.

The IFRS-converged Indian Accounting Standards (Ind ASs) only depart from the corresponding IFRSs to maintain consistency with legal, regulatory and economic environment. In some cases, departures are made on account of conceptual differences with the treatments prescribed in the IFRSs. The ICAI, while carrying out the process of convergence with IFRSs, always attempts to keep these departures to the minimum and these are also taken forward and discussed with the International Accounting Standards Board (IASB) from time to time. The IASB has recently amended IAS 41 on the lines suggested by ICAI. Recently, the carve outs/ins have been examined and revised corresponding to new/revised Ind ASs in the context of the amendments made in IFRSs.

Some carve outs relating to 35 Ind ASs placed on MCA's website are proposed to be removed as these have been addressed by the IASB. These are: *'Revenue recognition from real estate sale agreement'*, *'Accounting for Bearer Plants'*, *'Gains on Own Credit Deterioration'*, *'Accounting for Associates'*, *'Investments in Associates through Mutual Funds, etc.'*, *'Forex gains/losses on Long-term Monetary Items'*, and *'Comparatives in First Ind AS Financial Statements'*.

Major carve-outs which are still continuing include *'Foreign currency Convertible Bonds: Exception in the definition 'Financial Liability' and 'Carrying Values of PPEs etc. may be used in First Ind AS Financial Statements.'* The new carve outs proposed to be included are: *'Current/Non-current Classification in case of breach of loan covenants'*, and *'Straight-lining of lease rentals in operating leases.'*

With these fast-paced developments, India's ICAI-initiated convergence drive is fast reaching its culmination and it is hoped that the new/revised Ind ASs converged with IFRS will be notified by December end this year, which will only speed up the ongoing process of India becoming a global hub of accounting professionals. ■

-Editorial Board ICAI – Partner in Nation Building

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From the President



CA. K. Raghu, President, ICAI

“I am happy to share that in a welcome signal to the rising power of India and Brand Indian CA, more than 4,000 accountancy leaders from over 100 countries showed special interest in the Indian viewpoint at the XIX World Congress of Accountants recently organised in Rome, Italy under the auspices of IFAC on the theme ‘2020 Vision: Learning from the Past, Building the Future’. This mega event provided a chance to Indian accounting profession to affirm its fundamental role in serving the public interest and to exchange mutually beneficial ideas. Two of ICAI’s ambitious projects – Women Empowerment and Reading Rooms, were also showcased in ‘WCOA 2014 Project Gallery’.”

Dear Professional Colleagues,

“We are what we repeatedly do. Excellence, therefore, is not an act, but a habit,” rightly said Aristotle, which is worth taking note by all of us. I believe that akin to our profession, excellence is a never-ending forward journey. Excellence, when invested in ‘Today’, leads to an all-the-more excellent ‘Tomorrow’. So, let’s make ‘excellence’ our habit in whatever we do and let it be the hallmark of our profession in both our traditional and new-age roles.

World Congress of Accountants in Rome: India Makes an Impact

I am pleased to inform you that we successfully shared India’s accounting and finance vision at the XIX World Congress of Accountants recently organised at the legendary Auditorium Parco Della Musica in Rome, Italy under the auspices of the International Federation of Accountants (IFAC) on the theme ‘2020 Vision: Learning from the Past, Building the Future’.

I am happy to share that in a welcome signal to the rising power of India and Brand Indian CA, more than 4,000 accountancy leaders from over 100 countries showed special interest in the Indian viewpoint at the event. Chosen as one of the speakers to talk on the theme ‘Facilitating credit in the SME marketplace’ in the Indian perspective, I had the opportunity of sharing the concerns of SMEs in India and how professional accountants can play a proactive role in supporting the SMEs which contribute to growth and development of the nation.

I am happy to note that this mega event provided a chance to Indian accounting profession, to affirm its fundamental role in serving the public interest and to exchange mutually beneficial ideas. I am pleased to share with you that two of ICAI’s ambitious projects—Women Empowerment and Reading Rooms, were also showcased in ‘WCOA 2014 Project Gallery’. In the same spirit of positioning our profession on global platforms, I also participated in the IFAC and CAPA Board meetings in Rome.

ICAI Geared Up for IFRS Convergence

India is set to usher in a new era of accounting reforms with the adoption of the new Indian Accounting Standards (Ind AS) converged with IFRS from 2015-16 on a voluntary basis and from 2016-17 mandatorily. As a long-time ardent propagator of convergence with IFRS, the ICAI is fully responsive to the requirements

of this emerging scenario, and is all geared up to facilitate this convergence process in the country.

Meanwhile, beginning a new era of transparency in our standard setting process, the comments of the members and public to our Exposure Drafts and other documents can now be submitted online which will be uploaded on the website of ICAI for public viewing. We hope that our new/revised Ind AS converged with IFRS will be notified by December end by the Ministry of Corporate Affairs. We have already started a nation-wide exhaustive exercise to train our members in the new Indian Accounting standards and we foresee a global demand of Indian CAs with IFRS expertise.

Implementation of the Companies Act, 2013—ICAI Role

Another important emergent area of national and professional importance on which we are focusing our attention is the implementation of certain crucial provisions of the Companies Act, 2013. In this regard, I would like to apprise you of the following important developments:

(a) **Guidance Note on Reporting on Internal Financial Controls:** I am happy to inform you that the final *Guidance Note on Reporting on Internal Financial Controls Over Financial Reporting* has been approved by the Council of the Institute. The Guidance Note will serve as a guidepost for the members to report on the adequacy and effectiveness of internal financial controls under Section 143(3)(i) of the Companies Act, 2013.

In fact, on a representation made by us, the MCA has amended Rules for Chapter 10 (Audit and Auditors) of the Companies Act, 2013 and Reporting on Internal Financial Control u/s 143(3)(i) has been deferred for one year i.e., up to 31.3.2015. Having regard to the fact that reporting on internal financial controls is a very onerous responsibility cast on the auditors by the Companies Act 2013, in addition to issuing the Guidance Note, we are already working to utilise this time for training the members on how to appropriately implement the requirements of this Guidance Note.

(b) **Study Group To Examine Impact of Companies Act, 2013:** The Auditing & Assurance Standards Board has also constituted a broad based study group to examine the impact of the provisions of the Companies Act, 2013 and the Rules thereunder, particularly those relating to the

duties and responsibilities of the auditors on the existing suite of Standards on Auditing. The Group is evaluating such areas in the existing Standards on Auditing which need revision or enhanced application guidance to meet these requirements.

Partnering with Government Flagship Programmes

Responding to the need of the hour, the Government has rightly launched three important flagship programmes, viz 'Make in India,' 'Pradhan Mantri Jan Dhan Yojana,' and 'Clean India Mission'. In line with our tradition as partner in nation-building, we envisage a vast scope of our involvement in ensuring the success of these ambitious programmes. I feel that our 235,000 Chartered Accountant fraternity and 850,000-strong CA student community can significantly contribute to the success of these schemes. While I have already launched ICAI's 'Clean India Campaign' from Bangalore last month, we have also developed a detailed action-plan on how ICAI can associate with these programmes.

While *Make in India* is aimed at making India a manufacturing hub, facilitate investment, and foster innovation, the *Pradhan Mantri Jan-Dhan Yojana* is a National Mission for Financial Inclusion. The *Clean India Mission* not only aims at correcting the country's reputation for poor public hygiene and rudimentary sanitation but also promises a positive economic impact. I request all of you to give your suggestions and come forward to actively participate in these nation-building initiatives and make them a grand success.

Popularising CA Course in Universities

With a view to popularise the Chartered Accountancy Course among the university students, we have been creating endowment funds with various Universities for the award of "Gold Medal" to the topper of B.Com (Hon.) and B.Com (P). Recently, we have created endowment at Karnataka State Open University, Mysore and Sikkim University, Gangtok for the award of Gold Medal for B.Com (Hons.) examination. With this, we have so far created 54 such endowments.

Mutual Recognition Agreement with ICAEW

As part of my proactive drive to strengthen our Association with International Accounting Bodies, I recently signed a Mutual Recognition Agreement (MRA) with the Institute of Chartered Accountants

From the President

in England and Wales (ICAEW) on the sidelines of the World Congress of Accountants at Rome recently. This MRA will add a new dimension to our relationship with ICAEW to the benefit of the members of both the accounting bodies. You may recall that we had recently renewed our MoU with ICA Australia and MRA with CPA Australia to increase mobility of accounting professionals in India.

I Promise to Push Indian vision as IFAC Board Member

I humbly take pride in joining the league of world accountancy leaders serving the profession globally with my election to the Board of the International Federation of Accountants (IFAC) for a period of three years from November 2014 to November 2017. In this highly responsible and prestigious position, I look forward to proactively link Indian accounting vision and issues with the ultimate vision of IFAC, which is to get global accountancy profession recognised as a valued leader in the development of strong and sustainable organisations, financial markets, and economies. I am thankful to the IFAC for having reposed faith in me to serve accounting profession on a global scale.

All Set for Mega International Conference in Bangalore

I am happy to inform you that the date and venue of our 3-days mega international conference in Bengaluru on the theme '*Accountancy Profession: Building Global Competitiveness; Accelerating Growth*,' have been finalised. This high-profile event will be held from 29th to 31st January 2015 at the magnificent and historic Bangalore Palace, in Bengaluru which will bring together 3,000 delegates from across the world. Situated at the heart of the Bengaluru city, the Palace, quite similar to the medieval castles of England, was built in the year 1887 by the Wodeyar dynasty and is adorned with magnificent wood-carvings and Tudor-style architecture on the inside.

This high-profile event, spread in 11 technical sessions and panel discussions, will also witness parallel sessions on women and young members, a health session and a spiritual session besides an informative ICAI Project Gallery showcasing two projects of each of our branches and overseas chapters. Special pavilions will be set up for Technology, International Initiatives, IFRS and Small and Medium Practitioners. For the ease of delegates, a Mobile App and a registration website have also been put in place for

this mega Conference. The 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 out time from your schedule to actively participate in this Conference, which will offer 14 hours CPE credit. SAFA meetings will also be organised alongside the Conference.

Pushing the Agenda of Member Benefits and Capacity Building

Providing professional benefits to our members and enhancing their capacities have been very high on my agenda throughout this year. Continuing with this drive, we have recently taken three new initiatives, which include concessional arrangement for Microsoft 365 software license and a unique Accounting software for our members. Another such initiative, which will benefit both our members as well as students, is to provide Quick Heal Total Security anti-virus software for Android enabled mobile phones. I call upon you to make optimum use of these high-utility measures to enhance your professional capacities.

Four New Certificate Courses to Promote Specialisation

The present era is the era of specialisation. In the wake of growing business complexities, knowledge requirements, regulatory & legal changes and client expectations, specialists will be preferred over generalists in future too. Taking due note of this emerging scenario, the ICAI had been offering 14 Certificate Courses for its members. I am delighted to inform you that keeping up the momentum of this drive, we have now launched four more Certificate Courses to help members build new skill sets. These include the courses on '*Corporate Social Responsibility (CSR)*,' '*Financial Markets and Securities Laws*,' '*Wealth Management & Financial Planning*' and '*Information Systems Security*.' These new courses aim to make our members specialise in the emerging new-age domains and tap the vast career opportunities in the respective fields. I am sure that members would find these new courses highly beneficial and rewarding.

Strengthening our Regulatory Mechanisms

Our vigilant and fool-proof regulatory mechanisms make a strong foundation of our profession's credibility. As such, throughout this year, I have paid special attention to ensure that our regulatory mechanisms remain vibrant, robust and effective,

From the President

particularly through our Disciplinary Committee, Financial Reporting Review Board and Peer Review Board.

(a) Disciplinary Committee/Board of Discipline:

Throughout this year, we have been frequently convening the meetings of the Disciplinary Committee under Section (21-B) and Board of Discipline (21-A). A considerable numbers of cases have been taken up and punishments were awarded in these meetings. As you may be aware that we have already completed probe and taken action in Satyam scam, while proceedings are on in ₹ 870 crore Reebok scam. Here, I take this opportunity to allay any perception from any quarters about delay in delivery of justice and re-emphasise that while law takes its own course, the ICAI is committed to ensuring justice in all disciplinary cases and thereby upholding the values of Excellence, Independence and Integrity which form the benchmarks of this noble profession.

(b) FRRB: During this Council Year so far, the Financial Reporting Review Board has reviewed 80 cases referred to it by QARC of SEBI and 24 cases selected on *suo-moto* basis and 36 audited accounts of Political Parties referred by Election Commission of India.

(c) Making Peer Review Mechanism more Robust:

To make our Peer Review Mechanism more effective, the Peer Review Board has developed a Web Form facilitating online updation of Reviewers' details for level wise classification, and so far nearly 800 existing reviewers have uploaded their details online. This will facilitate the matching of Peer Reviewer profile with that of the Practice Unit to be reviewed.

Stage Set for High-Profile ICAI Corporate Forum 2014

I am pleased to inform you that in line with our annual tradition, the stage is set for the ICAI Corporate Forum 2014 on 31st January and 1st February, 2015 at Hotel Sahara Star in Mumbai. This mega event will comprise three concurrent events viz., Corporate Conclave, Financial Services Expo and ICAI Awards, 2014. I request all of you to enthusiastically participate in this knowledge-and-fun-filled gala event.

Working for Welfare of Our Branch Employees

I am of the view that our human resources are pivotal

to effective execution of the policies and programmes of our Council and thus I am very much considerate to their interests and welfare. In this regard, it was for long being noticed that hundreds of employees actively engaged in the ICAI work at the grassroots branch level were not getting their dues as compared to their other colleagues. This year, we at the Council proactively took up their cause and finally, I am happy to inform you that we have launched the long-due 'ICAI Branch Employees Scheme, 2014' to address their concerns and earlier disparities. I am sure that the benefits of this Scheme, which is part of the ongoing administrative reforms, will motivate them to perform their duties more sincerely with an added sense of belonging.

Executive Head of ICAI – Change

Let me inform you that there has been a change at the level of executive head of the Institute with the retirement of Shri T. Karthikeyan as the Secretary, ICAI on 31st October 2014. I take this opportunity to bid a hearty farewell to Karthikeyan ji, who served the interests of the ICAI with impeccable integrity and track record in more than 37 years of dedicated service to the Institute. On behalf of accounting fraternity, I wish him a healthy and peaceful retired life for years to come.

I also welcome Shri V. Sagar as the new Acting Secretary of the ICAI and look upon him to take forward the rich legacy of our Institute. I wish him all the best.

As I conclude, I take this opportunity to welcome the onset of winter. December not only reminds us of celebrations but also about the change as a way of life. Let's keep in tune with changing times in professional realms too. On the eve of Christmas, let us vow to give our heart to friends and our forgiveness to foes. Let us display our tolerance to adversaries, offer our selfless services to nation and charity to the needy. Merry Christmas to all of you!

Best Wishes,



CA. K. Raghu
President, ICAI

New Delhi, November 22, 2014

ICAI President CA. K. Raghu Elected as IFAC Board Member

ICAI President CA. K. Raghu has joined the league of high-profile world accountancy leaders serving the profession globally, with his election to the Board of International Federation of Accountants (IFAC) for a period of 3 years from 7th November, 2014. With this, India has retained the highly responsible and prestigious position on the Board of IFAC, which is a global accounting body now comprising of 179 members and associates in 130 countries and jurisdictions and representing



approximately 2.5 million accountants. The Board position to CA. K. Raghu is a testimony to ICAI's growing stature amongst the global accounting fraternity and the International forums and the role played by the ICAI in India's economic momentum.

A combination of youth, dynamism, experience and excellence with more than 23 years of impeccable professional standing and proven track record, the technology aficionado CA. K. Raghu has held numerous leadership positions within the accountancy profession in India. Driven by a vision to put Brand India CA on the global map, he is also serving as Chairman of the Committee on Education, Training & CPD of South Asian Federation of Accountants (SAFA) and as a member of the Board of Confederation of Asian and Pacific Accountants (CAPA), besides having served as member of the Membership Development Committee of XBRL International.

A tech-savvy accounting visionary, who has been tirelessly striving for inclusive as well as exclusive growth of Indian accountancy profession, CA. K. Raghu is also a member of National Advisory Committee on Accounting Standards, Board of Insurance Regulatory and Development Authority, Audit Advisory Board and Government Accounting Standards Advisory Board of Comptroller and Auditor General of India. He also represents the ICAI in Quality Review Board

which is an independent audit regulator for public interest entities, Governing Council of National Foundation for Corporate Governance, and Governing Body of the National Institute of Public Finance and Policy.

An avid academician and proficient orator, CA. K. Raghu has been the Central Council Member of the ICAI since 2007 and been proactively involved in development of accountancy profession in India through numerous ICAI Committees and Boards, including the Accounting Standards Board, the Disciplinary Committee, and the Finance Committee.

A professional to the core, CA. K. Raghu has varied and distinguished experience in the areas of Taxation, Business and Technology Consulting. He has represented the Institute at various International forums, where he has espoused the concerns of SMPs and the developing nations like India. He has also authored various books and articles on accountancy issues.

With this important election, India looks forward to proactively link Indian accounting vision and issues with the ultimate vision of IFAC, which is to get global accountancy profession recognised as a valued leader in the development of strong and sustainable organisations, financial markets, and economies.

IFAC's mission is to serve the public interest by contributing to the development, adoption and implementation of high-quality international standards and guidance; contributing to the development of strong professional accountancy organisations and accounting firms, and to high-quality practices by professional accountants; promoting the value of professional accountants worldwide; speaking out on public interest issues where the accountancy profession's expertise is most relevant.

It is to be noted that the ICAI had played an active role in the formation of IFAC as one of its founding members in 1977 and is regarded as an enabling arm of IFAC in the implementation of global accounting policies and vision. ■

14 CPE
Hours

Congregation of global accountancy experts

ICAI International Conference 2015

"Accountancy Profession:
Building Global Competitiveness; Accelerating Growth"
Jan 29 - 31, Bangalore Palace, Bengaluru

As part of the Continuous Professional development of the members, the Institute of Chartered Accountants of India is organizing a 3-day International Conference on 'Accountancy Profession: Building Global Competitiveness; Accelerating Growth' from January 29 - 31, 2015 at Bangalore Palace, Bengaluru. The event will be marked by prominent keynote speakers from across the globe who will share their expertise and insights into the latest trends of the profession. The Conference would present a unique opportunity to access the emergence of a new thought process on contemporary issues and to professionally upgrade oneself.

Technical Sessions

- ❖ Accountancy Profession – Meeting Governance Mandate
- ❖ India Emerging as Global Hub for Accounting Professionals
- ❖ Public Sector Enterprise's CSR Strategy – Responsible Growth; Inclusive Development
- ❖ Essence of Reporting – Governance and Sustainability
 - Moving Towards Integrated Reporting
 - IFRS Implementation: Key Learnings
- ❖ Managing Change: Regulation and Developmental Context
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 - Essence of Leadership and Contours of Holistic Living
 - India@2025: Agenda for Growth & Development
- ❖ Empowering SMEs for Development of Region – Role of Accountants : Country Perspective

- ❖ Financial Services Sector – Agenda for Sustainable Growth
 - Banking Sector @2025– Opportunities & Challenges
 - Insurance Sector – Mitigating Risk; Augmenting Growth
 - Developing the Board: Improving the Governance
- ❖ Profession in the Next Decade: Embracing Change
 - Roadmap for GST : Opportunities for Profession
 - Direct Tax Code : Catalyst for Economic Growth

Panel Discussion

- ❖ Wealth Creation: Disciplined Approach; Diverse Demands
- ❖ Women Leadership – Future of India

Registration Fee

Particulars	Delegate fee
Members FCA	₹ 3000
Members ACA	₹ 2500
Non Members	₹ 4000
Foreign Delegates	\$ 150
SAFA Country Members	₹ 3000

For further queries, contact:

Bangalore Branch of SIRC of ICAI

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For online registration, visit website http://www.icalorg/post.html?post_id=11039

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The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

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Moving Towards New Frontiers

Photographs



ICAI President Felicitated for His Election on IFAC Board

ICAI President CA. K. Raghu receives a bouquet from Vice-President CA. Manoj Fadnis in the presence of their Central Council colleagues during Central Council meeting held at Noida Campus (October 29, 2014)

World Congress of Accountants in Rome



ICAI President on IFAC Board

IFAC President Ms. Olivia Kirtley welcomes ICAI President CA. K. Raghu on the IFAC Board, while ICAI Vice-President CA. Manoj Fadnis shares the moment of pride, on the sidelines of the Congress.



ICAI Signs MRA with ICAEW

ICAI President CA. K. Raghu and ICAEW Chief Executive Mr. Michael Izza exchange the documents of MRA, in the presence of ICAI Vice-President CA. Manoj Fadnis, on the sidelines of the Congress (November 8, 2014)



ICAI President Addresses

ICAI President CA. K. Raghu addresses at World Congress of Accountants 2014 in Rome on Facilitating Credit in the SME Marketplace (November 13, 2014)



Panel Discussion in Progress

ICAI President CA. K. Raghu, IFAC Board member Ms. Gail McEvoy, Prof. Mike Volker (from Simon Fraser University, Canada), and CPA Australia President Mr. Graeme Wade, during a panel discussion on *Facilitating Credit in the SME Marketplace* (November 13, 2014)

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Farewell to ICAI Secretary

ICAI President CA. K. Raghu presents bouquet to the then ICAI Secretary Shri T. Karthikeyan, in the presence of ICAI Vice-President CA. Manoj Fadnis and Central Council members during Central Council meeting (October 31, 2014)



Employees Get-together

ICAI President CA. K. Raghu and Vice-President CA. Manoj Fadnis get together with the then ICAI Secretary Shri T. Karthikeyan, while the employees of ICAI also join them at the moment (October 31, 2014)



ICAI Council Releases Compendium of Accounting Standards

ICAI President CA. K. Raghu and Vice-President CA. Manoj Fadnis along with their Central Council colleagues release the Compendium of Accounting Standards, during Central Council meeting held at Noida Campus (October 30, 2014)



Meeting with ITAT President in Mumbai

ICAI President CA. K. Raghu presents a copy of ICAI Journal to ITAT President Shri H. L. Karwa, while ICAI Vice-President CA. Manoj Fadnis and Central Council members CA. Sanjay Agarwal, CA. Pankaj I. Jain, and CA. Tarun Jamnadas Ghia, share the moments (November 5, 2014)



Training Programme on RTI in Mumbai

ICAI President and Vice-President CA. K. Raghu and CA. Manoj Fadnis along with Central Council members CA. Sanjay Agarwal and WIRC Chairman CA. Anil Bhandari, among other participants (November 5, 2014)

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Photographs

Members Meet at Coimbatore Branch of SIRC



Standing Tall

ICAI President CA. K. Raghu visits the Branch with ICAI past-President CA. G. Ramaswamy, Central Council member CA. Sanjay Agarwal, while Branch Chairman CA. P. Viswanathan gives them company (October 26, 2014)



Sharing Concerns

ICAI President CA. K. Raghu shares the dais with ICAI past-President CA. G. Ramaswamy, SIRC Chairman CA. P. V. Rajarajeswaran and Branch Chairman CA. P. Viswanathan, among others, on his visit (October 26, 2014)



Members' Meet at Hosur (Tamil Nadu)

ICAI President CA. K. Raghu along with SIRC members CA. P. R. Suresh and CA. C. S. Srinivas, among other members at a Study Circle at Hosur (October 26, 2014)



National Seminar in Tirupati Branch of SIRC

ICAI President CA. K. Raghu along with Central Council member CA. M. Devaraja Reddy and Branch Chairman CA. T. Venkatesh Reddy, among other members of the Branch (November 2, 2014)



Seminar on Companies Act at Hyderabad Branch of SIRC

ICAI President CA. K. Raghu addresses the participants while Chief Guest Andhra Pradesh Chief Secretary Shri I. Y. R. Krishna Rao, Central Council members CA. M. Devaraja Reddy and CA. G. Sekar, Branch Chairman CA. Mathesh Reddy K. and SIRC Vice-Chairman CA. Naresh Chandra Gelli V., among others, share the dais (November 1, 2014)

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Photographs



CIRC Regional Conference in Jaipur

ICAI President CA. K. Raghu lighting the lamp to inaugurate the Conference, while ICAI past-President CA. Uttam Prakash Agarwal, ICAI Vice-President CA. Manoj Fadnis, Central Council member CA. Anuj Goyal, CIRC Chairman CA. Nitish Agarwal and Branch Chairman CA. Gautam Sharma, among other members present on the occasion (October 28, 2014)



National Conference at Indore Branch of CIRC

ICAI President CA. K. Raghu lights the lamp to inaugurate the Conference while Union Railway Minister CA. Suresh Prabhu, Vice-President CA. Manoj Fadnis, Central Council member CA. Anuj Goyal and Branch Chairman CA. Narendra Bhandari, among others, share the dais (October 18, 2014)

CPE Conference in Bengaluru



ICAI President CA. K. Raghu presents memento to Narayana Health Chairman Dr. Devi Prasad Shetty, while SIRC Chairman CA. P. V. Rajarajeswaran and Bangalore Branch Chairman CA. Babu K. Thevar, among others, applaud the moment (November 15, 2014)



ICAI President CA. K. Raghu along with Narayana Health Chairman Dr. Devi Prasad Shetty and Bangalore Branch Chairman CA. Babu K. Thevar, among others, releases the Privilege Card (November 15, 2014)



8th Corporate Accountants Meet in Bengaluru

ICAI President CA. K. Raghu along with Branch Chairman CA. Babu K. Thevar, SIRC members CA. P. R. Suresh and CA. C. S. Srinivas, among other members of management committee of the Branch (November 14, 2014)



Members' Meet at Salem Branch of SIRC

ICAI President CA. K. Raghu addresses the participants while SIRC Chairman CA. P. V. Rajarajeswaran and Branch Chairman CA. Vijaya Prakash, among others, share the dais (October 26, 2014)

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Know Your Ethics

Q. Whether a member can appear on television/Radio or give lectures at forums?

- A. Yes, Council direction under Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949 prescribes that a member may appear on television/Radio or give lectures at forums and may give his name and describe himself as chartered accountant. Special qualifications or specialized knowledge directly relevant to the subject matter of the programme may also be given. But no reference should be made, in the case of practicing member to the name and address or services of his firm. What he may say or write must not be promotional of him or his firm but must be an objective professional view of the topic under consideration.

Q. Whether a Chartered Accountant in practice can use expression like Income Tax Consultant, Cost Accountant, Company Secretary, Cost Consultant or a Management Consultant?

- A. No, Council direction under Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949 prescribes that it is improper for a Chartered Accountant to state on his professional documents that he is an Income-tax Consultant, Cost Accountant, Company Secretary, Cost Consultant or a Management Consultant, whereas it is permitted to mention his degrees.

Q. Whether public notice published in the newspaper by a Chartered Accountant individually or jointly with an Advocate in respect of acquisition of land by their client is permitted.

- A. Yes, in terms of the Council Guidelines under Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949 the public notice published by a Chartered Accountant in the newspaper in respect of acquirement of land by his client is permissible.

Q. Whether a Chartered Accountant/Firm is permitted to use logo on letter-heads, stationery, etc.?

- A. No, the use of logo/monogram of any kind/form/style/design/colour etc. whatsoever on any display material or media e.g. paper stationery, documents, visiting cards, magnetic devices, internet, signboard by the Chartered Accountant,

firm of Chartered Accountants is prohibited. Use/printing of member/firm name in any other manner tantamounting to logo/monogram is also prohibited. However, a common CA logo has been allowed to the members, provided it is used in the correct manner within terms of the Council guidelines.

Q. Can a Chartered Accountant in practice/firm give advertisement in press?

- A. No, However, the members in practice may advertise the services setting out the services provided by him or his firm, and particulars of his firm, through a 'Write-Up', subject to such guidelines as may be issued by the Council.

Q. Whether a Chartered Accountant in practice can engage in any business or occupation other than the profession of Chartered Accountancy?

- A. No, in terms of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949 in general a Chartered Accountant in practice is not permitted to engage himself in any business or occupation other than the profession of Chartered Accountants.

However, there are following exceptions to it:-

- (i) A Chartered Accountant can be a Director of a Company (not being a Managing Director or Whole-Time Director), unless he or any of his partners is interested in such company as an auditor. [Proviso to Clause (11)]
- (ii) A Chartered Accountant in practice may engage in any business or occupation with the permission granted in accordance with a Resolution of the Council. Appendix-9 of the Chartered Accountants Regulations, 1988 contains the above resolutions under two heads (A) permission granted generally and (B) permission to be granted specifically.

Q. Whether a member who is carrying out statutory audit and also rendering management consultancy services to his auditee clients can receive fees for such other services, which are in excess of the audit fees.

- A. Yes. However, in exercise of the powers conferred by clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 the Council of the Institute has issued Guidelines which specify that a member of the Institute in practice shall be deemed to

* Contributed by the Ethical Standards Board of the ICAI

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Know Your Ethics

be guilty of professional misconduct, if he accepts the appointment as statutory auditor of Public Sector Undertaking(s)/Government Company(ies)/Listed Company(ies) and other Public Company(ies) having turnover of ₹50 crore or more in a year and accepts any other work(s) or assignment(s) or service(s) in regard to the same Undertaking(s)/Company(ies) on a remuneration which in aggregate exceeds the fee payable for carrying out the statutory audit of the same Undertaking/company.

Provided that in case appointing authority(ies)/regulatory body(ies) specify(ies) more stringent condition(s)/restriction(s), the same shall apply instead of conditions/restrictions specified under the Guidelines.

Explanation :

The above restrictions shall apply in respect of fees for other work(s) service(s) or assignment(s), payable to the statutory auditors and their associate concern(s) put together;

2. For the above purpose;

(I) The term “other work(s)” or “service(s)” or “assignment(s)” shall include Management Consultancy and all other professional services permitted by the Council pursuant to Section 2(2)(iv) of the Act, but shall not include :-

(i) audit under any other statute;

(ii) certification work required to be done by the statutory auditors; and

(iii) any representation before an authority.

(II) The term “associate concern” means any corporate body or partnership firm which renders the Management Consultancy and all other professional services permitted by the Council wherein the proprietor and/or partner(s) of the statutory auditor firm and/or their “relative(s)” is/are Director/s or partner/s and/or jointly or severally hold “substantial interest” in the said corporate body or partnership;

(III) The terms “relative” and “substantial interest” shall have the same meaning as are assigned under Appendix (10) to the CA Regulations;

3. In regard to taking up other work(s) or service(s) or assignment(s) of the undertaking/company referred to above, it shall be open to such associate concern or corporate body to render such work(s) or service(s) or assignment(s) so long as aggregate remuneration for such other work(s) or service(s) or assignment(s) payable to the statutory auditor(s) together with fees

payable to its associate concern(s) or corporate body(ies) do/does not exceed the aggregate of fee payable for carrying out the statutory audit.

Q. Can a Chartered Accountant in practice use/fix a monogram of the Institute on any column/wall located inside the office or on professional documents?

A. No, in view of the Council directions under Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949 a Chartered Accountant in practice is not permitted to use/fix a monogram of the Institute on any column/wall located inside the office or on any professional documents.

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

A. No, a Chartered Accountant in practice cannot accept a position as auditor previously held by another Chartered Accountant without first communicating with him in writing. It will be in violation of Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

Q. If a member is a partner in more than one firm, is it permissible to print the names of all the firms on visiting cards, letter-heads, stationery etc.?

A. Yes, there is no violation under Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

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

A. No, a mere posting of a letter “Under Certificate of Posting” is not sufficient to establish effective communication with the retiring auditor unless there is some evidence to show that the letter has in fact reached the person communicated with. Members should therefore communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. Communication by a letter sent “Registered Acknowledgement due” or by hand against a written acknowledgement would in the normal course provide such evidence. ■

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Circulars/Notifications

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

DIRECT TAXES



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

I. NOTIFICATIONS

1. Income-tax (Eleventh Amendment) Rules, 2014 – Amendment in Rule 2C, 2CA, 11AA, Form 10A, Form 56 and Form 56D

Section 116 specifying Income tax authorities for the purposes of the Income-tax Act, 1961, has been amended to include Principal Chief Commissioner of Income-tax, Principal Director General of Income-tax, Principal Director of Income-tax and Principal Commissioner of Income-tax within its ambit.

Consequent amendments have been made in the Income-tax Act, 1961, substituting the reference to the Income-tax Authority mentioned in column (1) of the table below *w.e.f.* 1.06.2013

Column (1)	Column(2)
Commissioner	Principal Commissioner or Commissioner
Director	Principal Director or Director
Chief Commissioner	Principal Chief Commissioner or Chief Commissioner
Director General	Principal Director General or Director General

Consequently, Rule 2C and Rule 2CA containing the guidelines for approval under Section 10(23C)(iv)/(v) and under Section 10(23C)(vi)/(via), respectively provide that on or after the specified date, the prescribed authority under the said clauses shall be the Principal Commissioner or Commissioner to whom application in Form No.56/56D has been made. Specified date means the date which the CBDT specifies in this behalf by way of notification in the official gazette. Consequential amendments have also been made in Form No.56 and 56D.

Rule 11AA provides for request for approval of institution or fund under Section 80G. Sub-

Rule (6) providing for the time limit of six months within which the Commissioner shall pass an order either for granting approval or rejecting the application, has been amended to reckon the said time limit from the end of the month in which such application was made.

The particulars to be furnished in Form No. 10A containing the application for registration of charitable or religious trust or institution under Section 12A(i)(aa) have also been amended.

[Notification No. 61/2014, dated 10-11-2014]

2. Bank term Deposit (Amendment) Scheme, 2014 – Amendment in Para 3

In exercise of the powers conferred by Section 80C(2)(xxi) of the Income-tax Act, 1961, the Central Government has amended Bank Term Deposit Scheme, 2006. As per Para 3 of the said scheme, the maximum amount an assessee can invest in the term deposit of a scheduled bank is ₹1,00,000. The maximum investment cap has been increased to ₹1,50,000 *vide* Bank Term Deposit Scheme, 2014 which shall come into force on the date of its publication in the Official Gazette.

[Notification No. 63/2014, dated 13-11-2014]

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

II. CIRCULARS

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

The Finance (No. 2) Act, 2014 has amended Section 194LC *w.e.f.* 1st October, 2014 to extend the concessional rate of withholding tax on the borrowings by way of long term bonds, not only limited to long term infrastructure bonds. Further, the concluding date of period of borrowings eligible for such concessions has

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been extended to borrowings made before 1st day of July, 2017. Considering the fact that a large number of bond issues have to be undertaken by Indian companies, the Government is providing an approval mechanism to avoid approval for each & every specific case, which would lead to compliance burden on the borrower/issuer of bond. Accordingly, the CBDT conveys the approval of Central Government for issue of bonds by Indian companies which satisfy the following conditions:

- The bond shall be issued at any time on or after 1st October, 2014 but before 1st July, 2017.
- The bond issue shall comply the relevant provisions of Foreign Exchange Management Act, 1999 read with relevant ECB regulations either under automatic route or approval route.
- The bond issue should have Loan Registration Number issued by Reserve Bank of India.
- The term “long term” means that the bond to be issued should have original maturity term of three years or more.

Further, the Central Government has also approved, the interest rate for the purpose of section 194LC in respect of borrowing by way of issue of long term infrastructure bond as any rate of interest which is within the All-in-cost ceilings specified by the RBI under ECB regulations as is applicable to the borrowing through a long term bond issue having regard to the tenure thereof.

In view of the above, any bond issue satisfying the above conditions would be treated as approved by the Central Government for the purpose of section 194LC. Further, it has also been clarified that the amendment regarding approval of Central Government contained in Circular No. 7/2012, shall be valid for the borrowings made on or before 30/06/2017 instead of 30/06/2015.

[Circular No. 15/2014, dated 17-10-2014]

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

III. PRESS RELEASE

1. Scope of enquiry in cases selected for scrutiny—Further steps towards a non-adversarial tax regime

CBDT has directed supervisory officers to play a more pro-active role in monitoring and guiding assessments towards ensuring that high-pitched assessments without proper basis are not made and lengthy questionnaires or summons without due

application of mind are avoided. They have directed to ensure inspections and reviews in accordance with guidelines issued to enable capacity building within the Department and accountability of the officers. In limited scrutiny cases selected on the basis of AIR/CIB/26AS information, the enquiries will ordinarily be restricted to such information. Refunds will be granted in accordance with instruction already issued by the Board which provide the grant of credit of TDS on the basis of evidence submitted by the assessee.

Further, Senior officers have been directed to ensure that appeals are filed only on the merits thereof and not merely on the tax effect involved. It has also been decided that in multi-CCIT charges, the decision to file a reference before the High Court would be taken by two CCsIT.

All supervisory authorities have been directed to enable an effective grievance redressal system in their jurisdiction and follow the timelines prescribed under Citizen's Charter, CPGRAMS etc. for redressing grievances.

[Press Release, dated 7-11-2014]

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

IV. LETTERS

1. Framing of scrutiny assessments in cases of fish farmers involved in running inland fresh water fish tanks

Many representations have been received by Board regarding difficulties being faced on account of surveys and income-tax scrutiny assessments by fish farmers, being involved in business and profession of running inland fresh water fish tanks specifically in cases where the books of accounts are not being maintained by concerned assessee. While conducting scrutiny, Assessing Officer is required to assess the income from activity of fish farming on estimated basis as the books of accounts are unavailable. It has been reported that estimation on the basis of ‘per Acre water spread area’ brings wide disparities in the figure of income being so estimated as non-uniform yardsticks/benchmarks adopted by the different Assessing Officers.

The Central Board of Direct Taxes is of the view that uniform and appropriate norms may be applied while computing income from fish culture on basis of ‘per Acre of water spread area’. To ensure

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consistency in approach, a Committee comprising of two Commissioners and two representatives of the fish farmers or fish farmers association may be constituted by Principal Chief Commissioner to determine reasonably the income that may be estimated for the financial year. A suitable standard benchmark may also be adopted for estimating water spread area as percentage of total land area so that Assessing officers may apply the prescribed benchmark while passing scrutiny assessment in cases of fish farmers.

Further, it has been clarified that deduction under Sections 30 to 38 of the Act shall not be allowed to the taxpayers concerned as the income from activity of fish farming is being estimated on net basis after due consideration of allowable business expenses in such estimation.

Further, Section 133A of the Act may not be invoked indiscriminately for the purpose of mere estimation of income of fish farmers. The above said guidelines are applicable only to fish farmers running inland fresh water fish tanks, who are not maintaining books of accounts as per the requirement in Section 44AA(2) of the Act, whose cases are under scrutiny in the current financial year and subsequent years.

[Instruction No. 8/2014, dated 27-10-2014]

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

INDIRECT TAXES



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

A. EXCISE

1. Splitting up of rebate claims to avoid pre-audit

As per CBEC Circular No. 869/07/2008-CX dated 16-05-2008 related to procedure relating to sanction and post-audit of refund/rebate claims, all refund/rebate claims involving an amount of ₹5 lakh or above should be subjected to pre-audit at the level of Deputy/Assistant Commissioner (Audit) in the Commissionerate Headquarter Office.

CBEC has noticed instances wherein the assesses have submitted rebate claims by splitting up the amounts of rebate claims below ₹5 lakh to avoid pre-audit.

In this regard, CBEC has authorised the rebate sanctioning authority that they may order a pre audit by clubbing such artificially spilt claims. However, it is clarified that such power may be exercised only in exceptional cases.

*[Instruction No. F. No. 206/05/2014-CX.6,
Dated: November 3, 2014]*

2. CENVAT credit not available on Tower Parts & Pre-fabricated buildings

In case of M/s Bharti Airtel Ltd. vs The Commissioner of Central Excise, Pune III, Bombay High Court has rejected the appeal regarding availability of CENVAT Credit of duty paid on Tower Parts & Pre-fabricated buildings to a Cellular Mobile Service Provider.

It has been observed by the Bombay High Court that the appellant is a service provider and not a manufacturer of capital goods. The appellant can avail the credit of the duty paid only if the subjected items fall within the ambit of the definition of capital goods under Rule 2(a)(A) or inputs under Rule 2(k) of the Credit Rules. The Tower Parts & Pre-fabricated buildings are in the nature of immovable goods and are non-marketable and non-excisable. Thus it was held that the subjected items were neither capital goods nor inputs and hence CENVAT credit of the duty paid thereon was not admissible to the appellants.

*[Instruction No. - F. No. 267/60/2014-CX.8, Dated:
November 11, 2014]*

3. Condition of six months does not apply in case of re-credit of amount reversed

Notification No. 21/2014-Central Excise (N.T.) Dated: July 11, 2014 amended Rule 4(1) & 4 (7) CENVAT Credit Rules, 2004, to provide that a manufacturer or a service provider shall take credit on inputs and input services within a period of six months from the date of issue of invoice, bill or challan with effect from 1st September, 2014.

In this regard, CBEC vide Circular No: 990/14/2014-CX-8 dated November 19, 2014 has clarified that the purpose of the amendment made by Notification No. 21 is to ensure that after the issuance of a document under Rule 9(1) of the CENVAT Credit Rules, CENVAT credit is taken for the first time within six months of the issue of the document. Once this condition is met, the limitation would not apply for taking re-credit of amount

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reversed under Rule 3(5B), Rule 4(5) (a) and Rule 4(7) of CENVAT Credit Rules, 2004.

[Circular No. 990/14/2014-CX-8 dated. November 19, 2014]



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

A. Compounding of Contraventions under FEMA, 1999

A.P. (DIR Series) Circular No.36 dated

October 16, 2014

In partial modification to A.P. (DIR Series) Circular No. 117 dated April 4, 2014, RBI has decided to delegate further powers to the Regional Offices of RBI to compound the contraventions of FEMA as under:

- Delay in submission of form FC-TRS on transfer of shares from Resident to Non-resident.
- Delay in submission of form FC-TRS on transfer of shares from Non-resident to Resident.
- Taking on record transfer of shares by investee company, in absence of certified form FC-TRS.

The work of three divisions of Foreign Investment Division (FID) viz. Liaison/Branch/Project Office (LO/BO/PO) division, Non Resident Foreign Account Division (NRFAD) and Immovable Property Division (IP) has been transferred to FED, CO Cell, Reserve Bank of India, 6, Sansad Marg, New Delhi-110001 w.e.f. July 15, 2014. Accordingly, the officers attached to FED, Co Cell are authorised to compound contraventions as under:

- Contraventions relating to acquisition and transfer of immovable property outside India.
- Contraventions relating to acquisition and transfer of immovable property in India.
- Contraventions relating to establishment in India of Branch office, Liaison office or Project office.

(d) Contraventions falling under Foreign Exchange Management (Deposit) Regulations, 2000.

The powers to compound the above contraventions have been delegated to all regional offices (except Kochi and Panaji) and FED, CO Cell, New Delhi respectively without any limit on the amount of contravention. Kochi and Panaji Regional offices can compound the above contraventions for amount of contravention below Rupees one hundred lakh (₹1,00,00,000/-). The contraventions above Rupees one hundred lakh (₹1,00,00,000/-) or more under the jurisdiction of Panaji and Kochi Regional Offices and all other contraventions of FEMA will continue to be compounded at Cell for Effective Implementation of FEMA (CEFA), Mumbai, as hitherto.

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

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

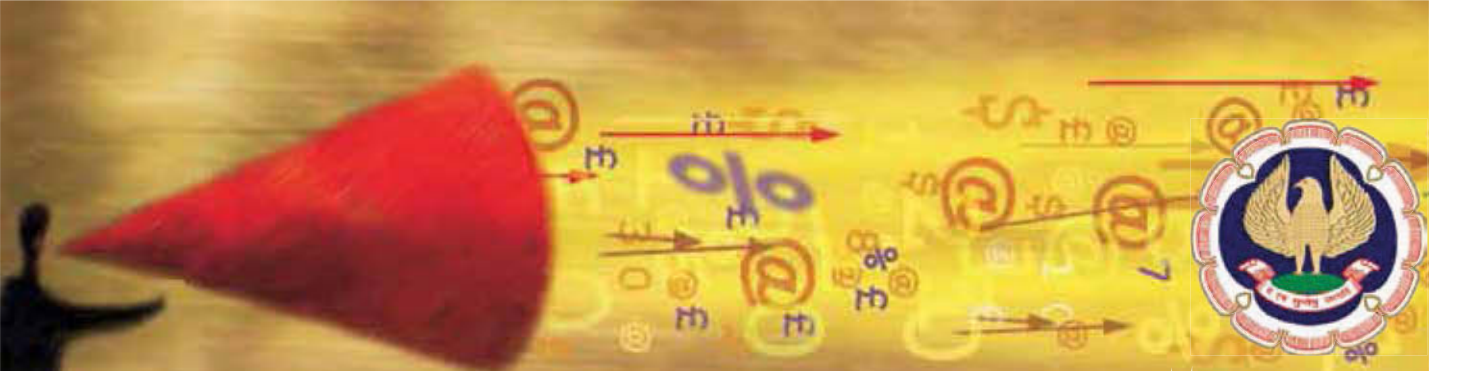
B. Review of Foreign Direct Investment (FDI) Policy on the Construction Development Sector

The Union Cabinet on 29th October 2014 amended the existing FDI Policy on the 'Construction Development Sector' in line with the Budget Announcement of the Government.

The amendment to the extant FDI Policy as contained in the Consolidated FDI Policy Circular 2014 is as under:

Sr. No.	Particulars	Existing	Proposed
1.	Minimum area to be developed		
	-in case of developed service plots (earlier it was serviced housing plots)	10 hectares	No condition of minimum land (Note: Serviced plots can be commercial)

Sr. No.	Particulars	Existing	Proposed
	-in case of construction development projects	Any one of the above two conditions need to be complied with	Any one of the above two conditions need to be complied with (Note: Does it mean that in case of combination project, which could be say housing/commercial serviced plots and construction, there is no need for even minimum area requirement of 20,000 sq. mts. Intention doesn't seem to be so, but language leads to such interpretation)
2.	Minimum Capitalisation	\$ 10 million for wholly owned subsidiaries and \$ 5 million for joint ventures with Indian partners	\$ 5 million
2.1	Period for bringing the funds	Within six months of commencement of project.	Within six months of commencement of project. (Commencement of project will be the date of the approval of the building plan/lay out plan by the statutory authority). Subsequent tranches of FDI can be brought up to 10 years from the commencement of project or before completion of project, whichever expires earlier.



Commencement of Registrations for Certificate Course on Wealth Management and Financial Planning: An initiative of the Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP), ICAI

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) of ICAI has initiated to commence the first batch of The Certificate Course on Wealth Management and Financial Planning in Noida/ Delhi & Mumbai tentatively in the month of January, 2015.

A. General

The Certificate Course on Wealth Management and Financial Planning shall comprise of a course sessions and a certificate in the appropriate form shall be granted to those who qualify for the same.

The objective of this Course is to equip the members with the principals of Management of Wealth as well as devising effective Investment Strategy and the practical procedural aspects and to build the competency level of the members of the Institute to position them as multi disciplinary financial consultants. This Course is intended at enlightening the members of the SMP segment & CA Firms.

The emphasis is on developing skill sets which would be required for advising clients to make sound financial decisions while practicing and serving clients in diverse practice areas as compliance, taxation etc.

Broad objectives:

- To enable the candidate to have enhanced career opportunities in Financial Services Investments guidance and wealth management.
- To enable the candidate to have Global league of the best Financial Planning professionals.

The curriculum includes

1. Introduction to financial planning
2. Risk Analysis & Insurance Planning
3. Retirement planning & employee benefits
4. Investment planning
5. Tax & estate planning
6. Advanced financial planning and HNI Wealth Management
7. Technical Analysis

B. Duration of the Course

Course Sessions: 20 days

C. Eligibility for Admission

No candidate shall be admitted to the said course unless he/she is a member of the ICAI / Chartered Accountant at the time of admission.

D. Registration

Joining can be done through payment of prescribed fees - Register through online payment at ICAI Website link: <http://www.icai.org/ccm.html?progid=715> and sending the hard copy of the duly filled registration form to NOIDA address.

Alternatively, make Demand Draft of Rs. 15,000 in favour of 'The Secretary, The Institute of Chartered Accountants of India' payable at New Delhi and fill the registration form downloaded from the Institute's website and send the same to below given address.

It is suggested that kindly make an on line payment at ICAI website so that registration is confirmed on the spot.

It may be noted that due to limitation of seats, the registration will be on 'first come first serve' basis.

E. Overall Scheme

The participants would be required to attend the course sessions on weekends (Saturday and / or Sunday). They would also be required to devote time for self study.

F. Course Fee

Rs. 15000/- (Rupees Fifteen Thousand only)

G. No. of seats

For every batch - 60. However, the Chairman of the committee has the discretion for waiver of no. of seats

H. CPE Hours

100 CPE Hours will be provided to all the registered members as per the CPE guidelines

I. Methodology of teaching:

Apart from the comprehensive theoretical aspects, this course, will sharpen the expertise and excellence of our members through case studies. Participants will have to undergo a test at the end of the course for getting a completion certificate.

J. Faculty

Faculty will be drawn from the practicing fraternity, members and other academicians from the field who have in-depth theoretical and practical knowledge in the subject.

For any clarification, kindly contact:

Secretary, Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP), The Institute of Chartered Accountants of India (ICAI), ICAI Bhawan, First Floor, Administrative Block, A-29, Sector-62, Noida, Distt.-Gautam Budh Nagar (U.P.), P.C.-201309; E-mail: certificate.wmfp@icai.in, Telephone: 0120-3045994

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

Sr. No.	Particulars	Existing	Proposed
3.	Repatriation of investment/Exit (Note: Existing policy uses the term 'Repatriation' whereas new documents uses the term 'Exit'. Exit should include transfer between two non residents also)	Repatriation: On completion of project or after three years from date of completion of minimum capitalisation. (Three years will apply from date of receipt of each tranche of FDI or from date of completion of minimum capitalisation whichever is later.)	Exit: On completion of project or after three years from date of final investment, <i>subject to the development of trunk infrastructure.</i> Repatriation of FDI or transfer of stake by one NR to another NR investor permitted (on a case to case basis) in case where project is not completed with prior approval of FIPB. Note: This could pose new requirement for existing incomplete projects where NR to NR transfer is envisaged
4.	Minimum completion criteria	At least 50% of project must be developed within 5 years from date of obtaining all the approvals. Also sell of undeveloped plots not permitted.	No percentage prescribed, however, sell of undeveloped plots not permitted. Developed plots mean- where trunk infrastructure including roads, water supply, street lighting, drainage and sewerage, have been made available.
5.	Approvals	The investor/investee company shall be responsible for obtaining all the necessary approvals.	The Indian investee company shall be responsible for obtaining all the necessary approvals.

Note:

- a. The conditions at (1) and (2) above will not apply to the investee/joint venture companies which commit at least 30 % of the total project cost for low cost affordable housing.
- b. An Indian company, which is the recipient of FDI, shall procure a certificate from architect empanelled by any authority authorised to sanction building plan to the effect that the minimum floor area required has been fulfilled.
- c. Projects using at least 60 % of the FAR/FSI for dwelling units of Carpet Area not more than 60 sq. meters will be considered as Affordable Housing Projects. In addition, 35 % of the total number of dwelling units constructed should be of carpet area 21-27 sq. meters for Economically Weaker Section (EWS) category. Such projects can have a mix of EWS/Lower Income Group (LIG)/Higher Category DUs and commercial units. Provision of servant's quarter along with the main dwelling unit will not be counted as dwelling units for EWS/LIG under Affordable Housing (AH) project.
- d. It is clarified that 100 % FDI under the automatic route is permitted in completed projects for operation and management of townships, malls/ shopping complexes and business centres.

For details of amended conditions and instructions please refer the Cabinet decision issued by government at: <http://pib.nic.in/newsite/pmreleases.aspx?mincode=61>

CORPORATE LAWS



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

[MCA \(www.mca.gov.in\)](http://www.mca.gov.in)

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

MCA has extended the date of CLSS 2014 upto 31st December 2014. For the complete text of this circular please refer to the link: http://www.mca.gov.in/Ministry/pdf/General_Circular_44-2014.pdf

[Circular No.44/2014 Dated 14th November 2014]

2. Issue of Foreign Currency Convertible Bonds (FCCBs) and Foreign Currency Bonds (FCBs) -

Clarification regarding applicability of provisions of Chapter III of the Companies Act, 2013.

Chapter III of the Companies Act 2013 deals with various provisions related to prospectus and issue of securities. The MCA had been receiving representations regarding applicability of these provisions to the issues of FCCBs and FCBs by Indian corporates in accordance with the extant sectoral regulatory provisions. It has been clarified that the provisions of Chapter III will not apply to such issues unless the relevant schemes under which these securities are issued specifically require such compliance. For the complete text of this circular please refer to the link: http://www.mca.gov.in/Ministry/pdf/General_Circular_43-2014.pdf

[Circular 43/2014 dated 13th November 2014]

3. Clarification on matters relating to the Companies(Cost Records and Audit) Rules, 2014

The MCA has extended the date for filing of Form CRA-2 in electronic mode pertaining to appointment of cost auditor for F.Y. 2014-2015 to 31st January 2015. For the complete text of this circular please refer to the link: http://www.mca.gov.in/Ministry/pdf/General_Circular_42-2014.pdf

[Circular No.42/2014 dated 12th November 2014]

4. Amendment to Schedule VII of Companies Act 2013

MCA has notified two more avenues for incurring eligible expenditure under CSR requirements for companies. According to the said notification, the contributions to the Swachh Bharat Kosh set up for the promotion of sanitation and contributions to the Clean Ganga Fund set up for rejuvenation of river Ganga will also be considered as eligible expenditure qualifying for CSR. For the complete





text of this notification please refer to the link:
http://www.mca.gov.in/Ministry/pdf/Amendment_Notification_24102014.pdf

[Notification No GSR-E dated 24th October 2014]

SEBI (www.sebi.gov.in)

1. Securities and Exchange Board Of India (Share Based Employee Benefits) Regulations, 2014

SEBI has formulated the SEBI (Share Based Employee Benefits) Regulations which deal with various provisions relating to employee stock option schemes, employee stock purchase schemes, stock appreciation rights schemes, general employee benefits schemes and retirement benefit schemes formulated by listed companies. The regulations deal with definition of eligible employees, formation of compensation committee, shareholders approvals, variation of terms of issue, listing, compliances *etc.* For the complete text of this notification please refer to the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1414568485252.pdf

[Circular No. LAD-NRO/GN/2014-15/16/1729 dated 28th October 2014]

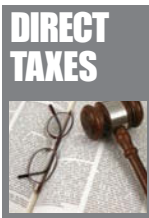
RBI (www.rbi.gov.in)

1. Revised Regulatory Framework for NBFCs

RBI has revamped the regulatory provisions relating to the functioning of NBFCs (except primary dealers) in India. The revised provisions deal with widespread aspects like Requirement of Minimum NOF of ₹200 lakh, Deposit acceptance, definition of systemically important NBFCs prudential norms for NBFCs, asset classification, provisioning, disclosures in financial statements *etc.* For a complete text of the circular please refer to the link: <http://rbi.org.in/scripts/NotificationUser.aspx?Id=9327&Mode=0>

[Circular No. DNBR (PD) CC.No. 002/03.10.001/2014-15 dated 10th November 2014]. ■

Legal Decisions¹



Income-tax Act

LD/63/27

North Karnataka Expressway Ltd.

vs.

CIT

October 14, 2014 (BOM)

Section 32 of the Income-tax

Act, 1961 - Depreciation

Where assessee, an infrastructure development company, constructed and maintained a toll road on the national highway on Build, Operate and Transfer (BOT) basis on the land owned by the Government, the claim of Depreciation on toll roads by the Assessee would be untenable in law.

The Appellant/Assessee is a company engaged in the business of infrastructure development in view of an agreement with the National Highway Authority of India (NHAI) constructed and maintained on Build, Operate and Transfer (BOT) basis on the land owned by the Government. In terms of this agreement, the Appellant had to construct the toll road and thereafter maintain and operate it for a period of 17 years and 6 months which is known as the concession period. It claimed depreciation at the rate of 10% on the capitalised cost of the toll road.

The Commissioner proposed to revise the assessment order as in his opinion the Assessing Officer had erred in allowing depreciation on the toll road constructed on Build, Operate and Transfer basis.

The High Court of judicature at Bombay held as follows:

A perusal of the different section of the National Highways Act would indicate as to how in furtherance of the National Highways Act, 1956 and the vesting of the National Highways in the Union, that the Central Government can issue a notification from time to time in the official Gazette so as to vest in, or entrust to the National Highway Authority of India, such National Highway or any stretch thereof as may be specified in such notification. It is, therefore, apparent that the superior or higher right of the union is, then, capable of being further entrusted or vested in such authority and which is a creation of the Central Government itself. Therefore, at best, a National Highway vesting in the Union may vest in such authority in terms of a notification under Section 11 but merely because the Central Government or a authority causes

development and maintenance of the National Highway by involving a private entity or private party does not mean that the said private party can enjoy or claim the rights of the Central Government or this authority in the National Highway. This is apparent from a plain reading of these relevant statutory provisions. It is well settled that when the language of the statute is plain and clear, then, there is no scope for interpretation. The Court must apply such language and which is clear. That is what is called the rule of literal interpretation. Then, there is no scope for interpretation.

The functions that are to be discharged by the authority are enlisted from clause (a) to (f) and (i) to (l). However, that does not in any manner mean that this person who is engaged or entrusted with any of the functions by the authority can be said to be the owner of the National Highway. The ownership being that of the Union, it can never be said to be divested of that absolute right by engagement of any person or by entrusting any of the functions of the authority to him.

It would not be proper, therefore, to read into Section 32 of the Income-tax Act, 1961 something which is defeating and frustrating the mandate of these laws. It can never be intended by the legislature that the broad and wide definition of the term "owner" as appearing in the Income-tax Act, 1961 would interfere with or take away the absolute rights of the above nature conferred in the union of the National Highways. This is too well settled and to require a reference to any judgment. That a provision in one statute or a definition in one statute cannot be interpreted so as to defeat and frustrate another law or statute or any definition therein and when that another statute is a special legislation. The words and definitions in a general enactment can never be held to be contradicting, overriding the stipulations and provisions in a special statute. The National Highways Act and the National Highways Authority of India Act are, therefore, special statutes and when the concept of ownership and vesting therein is of absolute nature that cannot be said to be in any manner restricted or curtailed by a general definition or understanding of the term owner as appearing in the Income-tax Act, 1961. The term is defined widely and broadly in the Income-tax Act, 1961 so as not to allow anybody to escape the provisions thereof by urging that he has a limited right or which is not akin to ownership. Therefore, his income should not be brought to tax.

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

Similarly, if he can claim any deductions from his income which is comprising of profits and gain from his business, then, that deduction can be availed by him. It is for that limited purpose that the term 'owner' is defined in this manner Income Tax Act, 1961. However, as held above, that cannot control leave alone overreach The National Highways Act, 1956 or the National Highways Authority of India Act, 1988.

Merely, because the road is laid out does not mean that the Assessee is the owner thereof. He has laid it out for the purpose of the union and for its ultimate vesting in the public.

LD/63/28

The Jindal Aluminium Limited
vs.

Deputy Commissioner of Income Tax
June 16, 2014(KAR)

Section 32AB of Income-tax Act, 1961 – Investment deposit account

Where assessee did not agree with levy of customs duty and moved to High Court and High Court did not set aside said order and merely

stayed recovery of levy subject to condition of payment of 25% of duty, even if in profit and loss account said 25% had been deducted, as it is a contingent liability and not ascertained liability, it has to be added while computing profit under Section 32AB

The entire raw material imported by the assessee manufacturer of aluminium extrusions, was consumed in the production within the accounting period. The Department of Customs levied duty. The assessee did not agree with the levy and moved to the High Court. The High Court did not set aside the order levying the duty, it merely stayed the recovery of the levy subject to certain conditions, and one of them was the due payment of 25% of the duty. That 25% of the duty amounts to ₹32,33,067. The assessee claimed deduction under Section 32AB. While computing the profit under Section 32AB, the assessee did not deduct ₹32,33,067 out of the profit. The Revisional Authority was of the view that the assessee ought to have debited to the profit and loss account this amount of ₹32,33,067 according to the accountancy principles.

The High Court of Karnataka held as follows:

Section 32AB provides an incentive to an assessee who is carrying on business or profession, a deduction out of the total income 20% of the profits and gains of business or profession.

The profits of business or profession of an assessee for the purposes of sub-Section (1) is to be arrived at on the basis of the profits computed in accordance with the requirements of Part II of Sixth Schedule to the Companies Act. Therefore, it is clear, the said profits of business or profession is not computed in accordance with the provisions of the Income-tax Act. Further, it provides, for deduction of an amount equal to the depreciation computed in accordance with the provisions of sub-Section (1) of Section 32 from the amounts of profits computed in accordance with the requirements of Part-II of Sixth Schedule to the Companies Act. To that income, the amounts mentioned in clauses (i) to (vii) has to be added. One such amount to be added is the amount or amounts set aside as the provisions made for meeting liabilities, other than ascertained liabilities. Therefore, the contingent liability or unascertained liability has to be added to the profits for the purpose of Section 32AB.

Part II of Sixth Schedule to the Companies Act deals with the requirements as to profit and loss account. Clause (3) of Part-II provides that the profit and loss account shall set out the various items relating to the income and expenditure of the company arranged under the most convenient heads; and in particular, shall disclose the information mentioned therein in respect of the period covered by the account. One such information to be disclosed is the expenditure incurred on the items mentioned therein, separately for each item which includes rates and taxes, excluding taxes on income. Therefore, the requirement of law is, profit and loss account should disclose the information regarding expenditure incurred in respect of rates and taxes. It does not provide that the rates and taxes incurred as expenditure is to be deducted from the income.

The scheme of the Income -tax Act read with Part-II of Sixth Schedule of the Companies Act makes it clear that both of them are not dealing with the deductions at all. The provisions of the Companies Act expressly states what the assessee is expected to do is to disclose the information. What is deductible out of rates and taxes is the ascertained liability. If the liability is disputed and still the amount is paid in terms of the court order, that is the amount to be

added under sub-Section (3) of Section 32AB for the purposes of determining the profits of business or profession for the purposes of Section 32AB. Therefore, computation of profits under the Income Tax Act is totally different from the computation of profit under the Companies Act.

While deciding the benefit to which the assessee is entitled to under Section 32AB of the Act, the Assessing Officer has only power to examine whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. Therefore, he cannot apply the principles under the Income-tax Act for the purpose of determining the profit of the assessee from business or profession for the purpose of Section 32AB. In other words, there cannot be two incomes one for the purpose of Companies Act and another for the purpose of Income Tax Act maintained under the same Act for the purpose of Section 32AB. After arriving at profits of business or profession of the assessee, as stipulated in sub-Section (3) of Section 32AB, the said provision also provides for addition to such income as stipulated therein. After such additions, the authority has to determine the profits of business or profession for the purpose of extending the benefit under Section 32AB.

Dealing with the provision for tax liability when the same is disputed, it is observed that where a company disputes its liability on valid and bona fide reasons in regard to the tax demand raised, it is not probable that a liability has been incurred on the balance sheet date; and it is not necessary to provide for the liability. A disclosure thereof by way of a note to the accounts would be sufficient. A note regarding disputed tax liability can be explanatory in nature if the auditor is satisfied about the validity of the reasons of the company for contesting the liability.

In the instant case, even if in the profit and loss account a sum of ₹32,22,067/- paid as customs duty had been deducted by virtue of sub-Section (3) of Section 32AB as it is a contingent liability and not ascertained liability, it has to be added. In the instant case, as the said amount was not deducted, the question of adding would not arise. The Assessing Authority was justified in upholding the claim of the assessee who had not excluded the same from the profit of business of profession. Hence, the orders passed by the Revisional Authority as well as the Appellate Authority are not in accordance with law.

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LD/63/29

CIT

vs.

V and V Caplease Pvt. Ltd.

September 8, 2014 (GUJ)

Section 37(1) of Income-tax Act, 1961– Business Expenditure–Allowable as

Where loss from business of commodity and future trading was allowed in similar circumstances, loss arising out of trading of future and option was also to be allowed

The assessee claimed trading loss of ₹14 lakh from trading of future and options. On the ground that the assessee had colluded with connected and interested parties to create an artificial loss, the assessing Officer disallowed the said loss. On appeals, the Commissioner (Appeals) and the Tribunal allowed the loss claimed by the assessee.

The Gujarat High Court held as follows:

In the case of the assessee, when it claimed loss in Commodity Future Trading in the appeal preferred by the Revenue, it was held to be essentially based on factual matrix, by detailed reasons, which is not

found necessary to ingeminate at this stage and The High Court had dismissed such appeal. Since the facts in this appeal were also similar in nature, there was no reason to interfere. There arose no question of law much less any substantial question of law to interfere. Hence, the Tax Appeal was, resultantly, dismissed.

LD/63/30

CIT – Central-I, New Delhi

vs.

Vatika Township Private Limited

September 15, 2014 (SC)(FB)

[Block Period April 1, 1989 to February 10, 2000]

Section 113 of the Income-tax Act, 1961–Block assessment of search cases–Tax in case of

Proviso appended to Section 113 which was inserted in this Section by the Finance Act, 2002 is to operate prospectively; it is neither clarificatory nor curative in nature and, therefore, has no retrospective operation

The position prior to the amendment of Section 113 of the Act whereby the proviso was added,

whether surcharge was payable in respect of block assessment or not, was totally ambiguous and unclear. Some assessing officers had taken the view that no surcharge is leviable. Others were at a loss to apply a particular rate of surcharge as they were not clear as to which Finance Act, prescribing such rates, was applicable. It is a matter of common knowledge and is also pointed out that the surcharge varies from year to year. However, the assessing officers were in-determinative about the date with reference to which rates provided for in the Finance Act were to be made applicable. They had four dates before them *viz.*: (i) Whether surcharge was leviable with reference to the rates provided for in the Finance Act of the year in which the search was initiated; or (ii) the year in which the search was concluded; or (iii) the year in which the block assessment proceedings under Section 158 BC of the Act were initiated; or (iv) the year in which block assessment order was passed. The position which prevailed before amending Section 113 of the Act was that some Assessing Officers were not levying any surcharge and others who had a view that surcharge is payable were adopting different dates for the application of a particular Finance Act, which resulted in different rates of surcharge in the assessment orders. In the absence of a specified date, it was not possible to levy surcharge and there could not have been an assessment without a particular rate of surcharge. There were four different dates which were bothering the assesseees as well as the Department. The choice of a particular date would have material bearing on the payment of surcharge. Not only is the surcharge different for different years, it varies according to the category of assesseees and for some years, there is no surcharge at all. Further, the rate at which the tax is to be imposed is an essential component of tax and where the rate is not stipulated or it cannot be applied with precision, it would be difficult to tax a person. In absence of certainty about the rate because of uncertainty about the date with reference to which the rate is to be applied, it cannot be said that surcharge as per the existing provision was leviable on block assessment *qua* undisclosed income. Therefore, it cannot be said that the *proviso* added to Section 113 defining the said date was only clarificatory in nature. Choice of date has to be formed as in some of the years, there would not be any surcharge at all. During the Conference, Chief Commissioners accepted the position, in no uncertain terms, that as per the language of Section 113, as it existed, it was difficult to justify levy of surcharge. It was also acknowledged that even if

Section 113 empowered to levy surcharge, since block assessment tax is levied on the undisclosed income of the block period, absence of specific assessment year in the block assessment would render the levy suspect. In view of the aforesaid difficulties pointed out by the Chief Commissioners in their Conference, it becomes clear that as per the provisions then enforced, levy of surcharge in the block assessment on the undisclosed income was a difficult proposition. It is for this reason retrospective amendment to Section 113 was suggested. Notwithstanding the same, the legislature chose not to do so, as is clear from the discussion hereinafter. "Notes on Clauses" appended to Finance Bill, 2002 while proposing insertion of proviso categorically states that "this amendment will take effect from 1st June, 2002". These become epigraphic words, when seen in contradistinction to other amendments specifically stating those to be clarificatory or retrospectively depicting clear intention of the legislature. It can be seen from the same notes that few other amendments in the Income-tax Act were made by the same Finance Act specifically making those amendments retrospectively. For example, clause 40 seeks to amend S.92F. Clause iii (a) of S.92F is amended "so as to clarify that the activities mentioned in the said clause include the carrying out of any work in pursuance of a contract." This amendment takes effect retrospectively from 01.04.2002. Various other amendments also take place retrospectively. The Notes on Clauses show that the legislature is fully aware of 3 concepts: (i) prospective amendment with effect from a fixed date; (ii) retrospective amendment with effect from a fixed anterior date; and (iii) clarificatory amendments which are retrospective in nature. Thus, it was a conscious decision of the legislature, even when the legislature knew the implication thereof and took note of the reasons which led to the insertion of the *proviso*, that the amendment is to operate prospectively. Learned counsel appearing for the assesseees sagaciously contrasted the aforesaid stipulation while effecting amendment in Section 113 of the Act, with various other provisions not only in the same Finance Act but Finance Acts pertaining to other years where the legislature specifically provided such amendment to be either retrospective or clarificatory. In so far as amendment to Section 113 is concerned, there is no such language used and on the contrary, specific stipulation is added making the provision effective from 1st June, 2002. (e) There is yet another very interesting piece of evidence that clarifies the provision beyond any pale of doubt,

viz. understanding of CBDT itself regarding this provision. It is contained in CBDT circular No. 8 of 2002 dated 27th August, 2002, with the subject "Finance Act, 2002–Explanatory Notes on provision relating to Direct Taxes". This circular has been issued after the passing of the Finance Act, 2002, by which amendment to Section 113 was made. In this circular, various amendments to the Income Tax Act are discussed amply demonstrating as to which amendments are clarificatory/retrospective in operation and which amendments are prospective. When it comes to amendment to Section 113 of the Act, this very circular provides that the said amendment along with amendments in Section 158BE, would be prospective *i.e.* it will take effect from 1st June, 2002. (f) Finance Act, 2003, again makes the position clear that surcharge in respect of block assessment of undisclosed income was made prospective. Addition of this *proviso* in the Finance Act, 2003 further makes it clear that such a provision was necessary to provide for surcharge in the cases of block assessments and thereby making it prospective in nature. The charge in respect of the surcharge, having been created for the first time by the insertion of the *proviso* to Section 113, is clearly a substantive provision and hence is to be construed prospective in operation. The amendment neither purports to be merely clarificatory nor is there any material to suggest that it was intended by Parliament. Furthermore, an amendment made to a taxing statute can be said to be intended to remove 'hardships' only of the assessee, not of the Department. On the contrary, imposing a retrospective levy on the assessee would have caused undue hardship and for that reason Parliament specifically chose to make the *proviso* effective from 1.6.2002. 40. The aforesaid discursive also makes it obvious that the *proviso* cannot be treated as clarificatory and hence it cannot be given retrospective effect.

Note: Conclusion of Division of the SC in CIT-Central II vs. Suresh N. Gupta, (2008) 4 SCC 362, overruled.

LD/63/31

Royal Bank of Scotland, In re
May 9, 2014 (AAR)

Section 192 read with, 17 of the Income-tax Act, 1961–Deduction of tax at source

Where applicant bank established a

superannuation scheme for purpose of providing pension to its eligible employees and amount standing to credit of funds would continue to remain invested till employees become entitled to receive it and vesting right to receive any amount under said scheme did not occur, no tax is required to be deducted at source under Section 192 by the Applicant on contribution to superannuation fund as perquisite

The Indian branch of the Applicant Dutch bank has established a superannuation scheme ('the Scheme') for the purpose of providing pension to its eligible employees. The aforesaid Scheme, which is a *defined benefit* plan has been approved by the Commissioner of Income-tax under Rule 2(1) of the Part B of the Fourth Schedule of the Act, on 26 December 1975. Employees who have joined the Applicant up to 31 December 2004 are eligible for the pension benefit under the aforesaid Scheme. Employees, who have completed 10 years of continuous services, are eligible for pension on resignation/retirement.

Advance Ruling was sought on question as to whether tax is required to be deducted at source under section 192 of the Act, by the Applicant on the contribution to the superannuation fund (for an amount exceeding one lakh rupees per employee) as perquisite and where the same is not so deducted, whether the Applicant would be treated as a 'assessee in default'.

The Authority for Advance Rulings held as follows:

The employees do not get a vested right at the time of contribution to the fund by the employer. The amount standing to the credit of the funds like the pension and fund account, social security of medical or health insurance would continue to remain invested till the employees become entitled to receive it. The vesting right to receive the amount under the scheme or plan did not occur.

The judgment of the Supreme Court in *CIT vs. L. W. Russel*, AIR 1965 SC 49 applies to the facts of the present case. There, it was held that one cannot be said to allow a perquisite to an employee if the employee has no right to the same. It cannot apply to contingent payments to which the employee has no right till the contingency occurs. The employee must have a vested right in the amount. In this context, the decision of the Delhi High Court in *CIT vs. Mehar Singh*

Sampuran Singh Chawla, [1973] 90 ITR 219 (Delhi) can be noted, where it was held that the contribution made by the employee towards a fund established for the welfare of the employees would not be deemed to be a perquisite in the hands of the employees concerned as they do not acquire a vested right in the sum contributed by the employer. Similar view was expressed in *Yoshio Kubo vs. Commissioner of Income Tax*, [2013] 36 *Taxman Con.* 1. The Supreme Court in Russel's case (*supra*) spelt out a wider and fundamental principle, i.e. when the amount does not result in a direct present benefit to the employee who does not enjoy it, but assures him a future benefit, in the event of contingency, the payment made by the employer, does not vest in the employee. The new Act does not make any significant departure from this aspect.

Therefore, no tax is required to be deducted at source under Section 192 of the Act by the Applicant on the contribution to the superannuation fund as perquisite and the Applicant would not be treated as a 'assessee in default'.

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Interest-tax Act

LD/63/32

CIT

vs.

Golden Investments Ltd.

September 10, 2014 (MAD)

[Assessment Years 1993-94 and 1994-95]

Section 2(7), read with Section 4, of the Interest-tax Act, 1974 - Interest

Where two companies amalgamated to form a new company and new company issued debentures in respect of shares held by assessee in one of the amalgamated company as well as in respect of interest earned on debentures held in amalgamated company, latter amount related to (interest on debentures) would not form part of chargeable interest

The assessee was engaged in the business of investment and share broking. They held shares in a company called Sona distillers, which got amalgamated with Herbertson Limited. On such amalgamation, debentures were issued by the new company in respect of the interest earned on debentures held by the assessee in Sona Distilleries.

The assessee was also allotted convertible debentures in the above company in respect of shares held by the assessee in Sona Distilleries. The assessee claimed exemption in respect of interest on the ground that the nature of new investment was not chargeable under the Interest-tax Act. The Assessing Officer declined to accept such a claim and included the interest on debentures in the chargeable interest.

The Madras High Court held as follows:

The contention of the Department that interest earned on debentures was liable to interest did not hold good any more. A faint plea was made by the Revenue that post 1st October, 1991, consequent to amendment, interest under Section 2(7) would include interest from debentures as well. Such an argument had also been considered by the Supreme Court against the Revenue.

Therefore, the Tribunal was right in law in following the judgment rendered in the case of *CIT vs. Lakshmi Vilas Bank*, (1997) 228 ITR 697 (MAD) and in holding that interest on debentures will not form part of chargeable interest.

Section 2(7), read with section 4 of Interest Tax Act, 1974 - Interest

Notional Interest cannot be considered as part of chargeable interest

The assessee had given money to 4 companies for issue of shares. While computing the chargeable interest, the Assessing Officer added interest receivables to it. The Commissioner (Appeals) came to the clear conclusion that the notional interest brought to tax under Interest Tax Act has never been considered as part of interest accrued or arisen in the books of account, namely, profit and loss account and therefore, the question of adding notional interest was declined

The Madras High Court held as follows:

It can be found from the objects and reasons of the Interest Tax Act, 1974 and from the definition of "interest" under Section 2(7) of the Interest Tax Act, that the word "notional interest" does not figure anywhere. Therefore, the Commissioner of Income Tax (Appeals) was correct in deleting the addition of notional interest. Unless the statute provides for adding notional interest for the purpose of tax, it cannot be

made applicable by implication. The Revenue has not shown any provision whereby, notional interest can be included for the purpose of tax. Therefore, the Tribunal was not right in law in holding that addition of notional interest are to be reckoned with for the purpose of calculating the chargeable interest under the Interest Tax Act.



Securities Laws

LD/63/33

Raj Kumar Gursahani

Vs.

Securities & Exchange Board of India
October 16, 2014 (DEL)

Section 10 of the Securities

Contracts (Regulation) Act, 1956, read with Section 34 of the Arbitration and Conciliation Act, 1996 – SEBI to make or amend bye-laws of recognised Stock Exchanges

Circular No. PR No. 03/2011 dated 06.01.2011 issued by SEBI advising recognised stock exchanges to make amendments in their relevant byelaws, rules and regulations to ensure that period for invoking arbitration clause is in conformity with settled law, was valid

The petitioner impugns the Circular No. PR No. 03/2011 dated 06.01.2011 issued by the respondent (SEBI). The grievance of the petitioner is that the impugned circular (PR No. 03/2011) modifies the period of limitation for invoking the arbitration from six months to three years.

According to the petitioner, the circulars issued by SEBI are detrimental to the interest of the investors and have been issued at the instance of brokers and thus, are contrary to the object of the 'SEBI Act'.

The High Court of Delhi held as follows:

A plain reading of the impugned circular also indicates that the increase in the period of limitation is available to both parties and is not limited only to claims made by brokers against their clients. Thus, no mala fides can be attributed to SEBI in framing the impugned circular. In *Biba Sethi v. Dyna Securities Ltd.* 2009 (112) DRJ 512, a Single Judge of this Court had held that Byelaws of the National Stock Exchange of India (NSE) prescribing a limitation period of six months for making a reference of disputes/claims to arbitration were

void as the relevant byelaw restricting the period of limitation would run contrary to the provisions of Section 28 of the Indian Contract Act, 1972.

In this view, the impugned circular issued by SEBI which advises the recognised stock exchanges to make amendments in their relevant byelaws, rules and regulations only ensures that the period for invoking the arbitration clause is in conformity with the settled law. Thus, there is no infirmity with the impugned circular.

LD/63/34

Suresh Gupta
vs.

Securities and Exchange Board of India
September 1, 2014 (DEL)

Section 11B, read with sections 15Y, 20A and 21 of the Securities and Exchange Board of India Act, 1992 – Powers and Functions of the Board – Power to issue directions

Certain shares held by petitioner in dematerialized form were transferred to respondent no. 2 investment company who was not registered as

a broker/sub-broker with SEBI and transactions were not relating to securities markets as all these transactions were not transacted on any of recognised Stock Exchange but "off market transactions" and thus these shares transfer was private arrangement between two parties; SEBI was justified in not entertaining complaint of petitioner

The petitioner alleged that it had entered into certain transactions whereby certain shares held by the petitioner in dematerialised form were transferred to respondent no. 2 investment company. The petitioner's complaint alleged that respondent no.2 had purportedly acted as a sub-broker. The complaint made by the petitioner before the SEBI was for imposition of penalty upon respondent no. 2. SEBI declined to entertain the complaint made by the petitioner against the respondent no.2.

The High Court of Delhi held as follows:

The transactions in question are alleged to have been entered into in the year 1999-2000 and

2000-2001. Admittedly, these transactions were not transactions relating to securities markets as all these transactions were not transacted on any of the recognized Stock Exchange but were stated to be "off market transactions". This means that the shares alleged to have been transferred by the petitioner to respondent no. 2 were on the basis of a private arrangement between the two parties. Concededly, respondent no. 2 is not registered as a broker/sub-broker with the SEBI. Further, the SEBI found that the petitioner could not substantiate that respondent no.2 had approached the petitioner as a broker.

The functions of SEBI under the SEBI Act include regulating of business in Stock Exchange and other security market and regulating the working of Stock brokers, sub-brokers and other market intermediaries. And, the facts of the present case do not indicate that the transactions entered into between the petitioner and respondent no. 2 were transactions either related to the securities market or transactions between an investor and a broker. The transfer of shares alleged to have been affected by the petitioner in favour of respondent no. 2 were, plainly, in the nature of private transactions between two parties, which were unrelated to the securities market.

Thus, SEBI would have a very limited role to play in respect of such transactions.

The petitioner's contention that the jurisdiction of Civil Courts is barred in respect of the allegations relating to the alleged transaction entered into between the petitioner and respondent no. 2 is misconceived. The jurisdiction of Civil Courts to enforce the provisions of the SEBI Act in respect of matters, which are vested with the adjudicating authority, is barred by virtue of Sections 15Y and 20A of the SEBI Act.

The complaint made by the petitioner before the SEBI was for imposition of penalty upon respondent no. 2. However, the SEBI found that petitioner had failed to provide any material to conclude that respondent no. 2 had approached the petitioner as a broker. Consequently, the SEBI held that the disputes related to entities, which were not regulated by SEBI. There is no infirmity with the SEBI's decision. The impugned order passed by SEBI is neither patently erroneous nor ill-informed by reason. Accordingly, the present petition is dismissed as bereft of any merits.

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LD/63/35

SRG Infotech Ltd.

vs.

Securities and Exchange Board of India

September 23, 2014 (DEL)

Regulation 6, read with regulation 7, of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 1995 read with Section 26 of SEBI Act, 1992 and Section 492 of the Criminal Procedure Code – Prohibition on unfair trade practice relating to securities

Complaint was filed against petitioners alleging offence of violation of Regulation 6(d) which was purported to have been committed by petitioners on 04.01.2000 on 09.10.2003 and cognizance order was passed on 8-4-2004, held, cognizance order was not barred by limitation under section 468(2) of Code of Criminal Procedure

SEBI filed complaint against the petitioners alleging violation of Regulation 6(d). The complaint was originally filed in the Court of ACMM who had passed the impugned order summoning the petitioners.

The petitioner submitted that (as per the un-amended Act) the offence for which the complaint was filed was punishable with imprisonment up to 1 year and in terms of Section 468 (2) (b) of the Cr.P.C. the period of limitation for taking cognizance of such an offence is one year. It is pointed out that even as per the averments made in the complaint the SEBI was aware of the offence purported to have been committed by the petitioners on 04.01.2000; limitation for taking cognizance of such an offence expired on 04.01.2001; impugned order passed on 08.4.2004 taking cognizance of an offence which had taken place on 04.01.2000 suffers from the vice of limitation. It is pointed out that under Section 469 of the Cr.P.C. the period of limitation has to commence from the date of the offence and in the alternate where the commission of the offence first comes to the knowledge of such a person; submission being reiterated that in this case admittedly knowledge about the offence was known to the Board on 04.01.2000 and cognizance having been taken four years later *i.e.* on 08.4.2004 is clearly time barred.

The High Court of Delhi held as follows:

Section 26 clearly stipulates that no court shall take cognizance of any offence punishable under this Act except on a complaint made by the Board.

Under Section 30 of the Act, the Board by a notification may make regulations which are consistent with this Act.

Sub-Section (2) of Regulation 7 states that the Board may cause an investigation to be made into the conduct and affairs of any person dealing in securities by Investigating Officer whom the Board considers fit to ascertain whether there are circumstances which would render any person guilty of having contravened any regulations as also to investigate into any complaint of any contravention (of any regulations) by any persons. Regulation 9 casts a duty upon such a person to produce records.

Under Regulation 10, the Investigating Officer shall upon completion of the investigation after taking into account all relevant facts and submissions made by the persons concerned, submit a report to the Board.

The wholesome reading of these Regulations thus clearly specify that the Board has the power to order an investigation; this is a preliminary investigation carried out by the Board after giving notice to the suspected person and this is for the purpose of ascertaining whether any *prima facie* case of guilt is made out against such a person. It does not necessarily mean that the investigation must end into finding of guilt. It can also be the converse. It is only after the investigation is complete and the report has been submitted to the Board that a complaint can be filed under Section 26 of the Said Act and it is the Board alone which can file a complaint.

In the case at hand, the complaint specifically states that the Board had approved the investigation report on 09.10.2003. Thus the competency of the Board to file the complaint under Section 26 of the said Act arose only on 09.10.2003.

The second submission of the petitioner that there is no specific role attributed to the present petitioners is also negated. Petitioner no.1 is the company of whom admittedly petitioner nos.3 and 4 are directors. The complaint specifically states that accused no. 1 is a company incorporated under the Indian Companies Act of whom the three petitioners before this Court are the persons in-charge and responsible for the conduct of its affairs. They, admittedly, are the working directors of the company. It is also not the case of the petitioners that they were not the directors of the company during the period when the alleged offence was committed. ■

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(Set up by an Act of Parliament)

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ruchi_gupta@icaai.in; campus@icaai.in; placements@icaai.in



EOI from POUs to host Programme

Invitation for Expression of Interest from POUs to host the CCBCAF& SMP's programme with the theme "CA Professionals & SMEs in Make in India" in the month of December, 2014

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) has therefore, taken this initiative to bring the CA Professionals and SMEs together on a common platform and encourage them to join hands for their mutual benefit.

The Small & Medium Enterprises (SMEs) represent over 90% of enterprises in most countries, worldwide. They are the driving force behind a large number of innovations and contribute to the growth of the national economy through employment creation, investments and exports.

Chartered Accountant (CA) professionals play a significant role in providing business advisory services to the SMEs in Indian economy. SMPs are the most popular source of external advice and support to SMEs. Historically, the SME-CA Professionals relationship is regarded as being underpinned with need for SMEs to have statutory audit and taxation, advisory work etc.

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) has therefore, taken this initiative to bring the CA Professionals and SMEs together on a common platform and encourage them to join hands for their mutual benefit.

The CCBCAF&SMP proposes to commemorate December 2014 as the month for "CA Professionals & SMEs in Make in India" wherein CA professionals shall interact with Small & Medium Enterprises for

facilitating the national vision make in India for economic growth of our nation.

The Indicative topics for the aforesaid programme:

- Panel Discussion on SMEs & SMPs in Economic Development in India
- CA professionals & SMEs in Make in India
- CAs in Skill Development & Capacity Building in SME Sector for facilitating make in india
- Networking amongst CA professionals & SMEs for Make in India
- Any other relevant topics

POUs therefore requested to host the programmes to be organised by CCBCAF&SMP at their place.

Please contact *Secretary, Committee for Capacity Building of CA Firms and Small & Medium Practitioners(CCBCAF&SMP), The Institute of Chartered Accountants of India(ICAI), ICAI Bhawan, First Floor, Administrative Block, A-29, Sector-62, Noida, Distt.-Gautam Budh Nagar (U.P.), P.C.-201309, E-mail: sambit.mishra@icai.in, Phone: 0120-3045994, Mobile: 09312085025 for hosting the programme for the same.*

Chairman
Committee for Capacity Building of CA Firms and
Small & Medium Practitioners, ICAI

Events

Forthcoming Events¹

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
1.	WORLD CA WOMEN SUMMIT AT DUBAI-TWO DAYS INTERNATIONAL CONFERENCE (Open For All CA's)	15 th January to 16 th January, 2015	Hotel 'Crown Plaza', Dubai	10
Contact Person	Conference Chairman: CA. C. J. S. Nanda, CCM & Chairman, Women Members Empowerment Committee (WMEC), Mobile: 09212700353, E-mail: cjsnanda1@gmail.com Conference Vice Chairman: CA. Babu Abraham Kallivayalil, CCM & Vice Chairman, Women Members Empowerment Committee (WMEC), Mobile: 09846035333, E-mail: babucentralcouncil@gmail.com For Information Contact: • CA. Raju Menon, Chairman, Dubai Chapter of ICAI, Mobile: +971506542030 E-mail: chairman@icaidubai.org • CA. Ashu Shah, Secretary, Women Members Empowerment Committee (WMEC), Phone: 0120-3876873, Mobile: 8527197171, E-mail: wmec@icai.in, info.wmec@icai.in For details visit: www.womenportal.icai.org			

¹ For more details about the forthcoming events please refer the detailed announcements hosted on the ICAI website www.icai.org

Determination of Stage of Completion in Construction Contracts

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

A. Facts of the Case

1. A company was incorporated under the Companies Act, 1956 on 24.05.1980. It is a state public sector undertaking (PSU) and is owned by the Government of Odisha. The total paid-up equity capital of the company is ₹5.63 crore, which is entirely held by the Government of Odisha. The company is an unlisted public company.
2. The primary objects of the company are as follows:
 - (i) To undertake construction of buildings for the housing of police personnel of the Government of Odisha.
 - (ii) To formulate and execute housing schemes for the benefit of serving police personnel of the Government of Odisha.
 - (iii) To undertake construction of buildings for residential and non-residential purposes for the police, vigilance, prison and fire service departments of the Government of Odisha.
 - (iv) To undertake construction of buildings necessary for conducting schools, hospitals, clubs and other welfare measures for the benefit of the police personnel of the Government of Odisha.
3. The querist has stated that the head office of the company is located at Bhubaneswar, the state capital of Odisha. There are nine divisions spread all across Odisha to execute the works. Each division is headed by a civil engineer with a rank of executive engineer and designated as Joint Manager/division head. The company executes projects spread all over Odisha through these nine divisions. The average number of projects executed by the company is more than two thousand at any time during a year (emphasis supplied by the querist).
4. The querist has further stated that since the company has been incorporated specifically for execution of projects of Home Department of the Government of Odisha, it does not participate in tender for obtaining orders from various Government departments (called as user departments). The procedures of obtaining orders from user departments are as follows:
 - a. The Government departments, that intend to undertake a project, request the company to submit an estimate for the project as per Odisha Public Works Department (OPWD) Schedule of Rates (SoR).
 - b. The company prepares estimates as per OPWD SoR and submits them to the user departments. These estimates include costs of material, labour, other overheads and supervision charges of the company. The amount of supervision charges are calculated at a certain percentage of estimated project cost (presently 10% of estimated cost). The supervision charges are included in the project estimate to meet the salary, administrative and other overheads of the company as it does not get any budgetary support from the Government.
 - c. Upon getting the estimates, the user departments accord approval for the project, known as 'Administrative Approval' and release the funds limited to the amount of 'Administrative Approval'.
 - d. OPWD SoR are uniform for projects spread all over Odisha, whereas, the market prices of material, labour and other overheads vary from location to location and are generally higher than the OPWD SoR.
 - e. Contract value is fixed to the amount of 'Administrative Approval' received. Contract value will not be increased unless otherwise the scope of work increases and the cost overrun, if any, attributable to the user departments.
 - f. After receipt of Administrative Approval, the company decides to execute the project either of its own, known as departmental execution (Contract K-2) or through e-tender process (Contract F-2).
 - i. Under K-2, divisional heads of the company procure materials and engage labour contractors for execution of the project. Costs of materials and labour are finalised through yearly tenders.

- ii. Under F-2, the company invites open tenders and allots the project to eligible contractor on a turnkey basis.
- g. Once it is finalised whether the project is to be executed under K-2 or F-2, work orders are accordingly issued to the respective division head for execution either under K-2 or to the eligible contractor for execution under F-2.
- h. Subsequently, works are executed as per work orders issued under K-2 and F-2 and handed over to the clients / user agencies after completion.
- i. Due to variation in the market price and estimated price of construction cost (material, labour and other overheads) of a project, the outcome of a project cannot be estimated reliably unless and until the project is completed and handed over.

5. *Revenue recognition by the company:*

The contracts executed by the company are in the nature of fixed price contracts. Since the company is executing more than 2000 projects at a time, it is not practically possible for the company to estimate the contract cost to complete the balance work and calculate the stage of

contract completion as on the balance sheet date. Further, since there is no correlation between the estimated cost and actual cost of execution, it is not practically feasible to derive the outcome of such huge number of projects unless and until the projects are completed and handed over to the user departments.

6. Due to the aforesaid reasons, the company is recognising its revenue and expenditure in its annual financial accounts as per paragraphs 31(a), 31(b) and 32 of Accounting Standard (AS) 7, 'Construction Contracts', issued by the Institute of Chartered Accountants of India (ICAI) as follows:
 - (i) Revenues are recognised only to the extent

of contract costs incurred of which recovery is probable.

- (ii) Contract costs are recognised as expenses in the period in which they are incurred.
- (iii) Amount of surplus or deficit in a particular project is not included in the revenue of that project, during a particular year, unless and until the project is completed and handed over to the user departments.
- (iv) As per past records, the actual surplus of projects never matches with the surplus mentioned in the estimate and there are cases where the projects have ended up with losses/deficit inspite of surplus stated in the estimate.

The following are the few Police Station (PS) buildings executed by the company, where the contract value and estimated cost are same but the outcome of the projects are different:

Project Name	Contract Value (₹)	Estimated Cost (₹)	Actual Cost (₹)	Outcome Profit/(-) Loss (₹)
PS at Sheragada	5,000,000.00	4,347,826.00	5,078,706.00	- 78,706.00
PS at Chakapada	5,000,000.00	4,347,826.00	5,041,995.00	- 41,995.00
PS at Jamda	5,000,000.00	4,347,826.00	4,793,969.00	206,031.00
PS at Rairangpur	5,000,000.00	4,347,826.00	4,861,111.00	138,889.00
PS at Karanjia	5,000,000.00	4,347,826.00	5,125,094.00	- 125,094.00
PS at Raruan	5,000,000.00	4,347,826.00	4,821,682.00	178,318.00
PS at Sohel	5,000,000.00	4,347,826.00	4,458,177.00	541,823.00
PS at Abhayachandapur	5,000,000.00	4,347,826.00	6,437,014.00	-1,437,014.00
PS at Biswanathpur	5,000,000.00	4,347,826.00	5,519,048.00	- 519,048.00
PS at Jhirpani	5,000,000.00	4,347,826.00	5,685,137.00	- 685,137.00

7. *Opinion of statutory auditors:*

- a. The statutory auditors of the company, appointed by the Comptroller and Auditor General (CAG) of India, are of the opinion that since surplus/margin is not included in the revenue of on-going (non-completed) projects in the annual accounts, the company is failing to comply with Accounting Standard (AS) 7, 'Construction Contracts', issued by the ICAI.
- b. The statutory auditors are insisting for:
 - i. physical measurement of all projects, which are more than 2000 in numbers.
 - ii. valuing the percentage of completion on the basis of original estimate, and

- iii. including estimated surplus in the revenue of non-completed projects, which, as per the querist, is not practically feasible to derive correctly.
8. The querist has also provided an illustrative example of revenue recognition by the company for the perusal of the Committee which is given below:

Example

During the financial year (F.Y.) 2011-12, the company was awarded for construction of four police stations at different locations of the State, by Police Department of Government of Odisha. Estimates for these projects were prepared on the basis of SoR of 2011. Estimated costs of these projects are as follows:

₹ In Lakh

Particulars	Project – A	Project – B	Project – C	Project – D
Material	60.00	60.00	60.00	60.00
Labour	25.00	25.00	25.00	25.00
Other Overheads	15.00	15.00	15.00	15.00

Particulars	Project – A	Project – B	Project – C	Project – D
Total Estimated Cost	100.00	100.00	100.00	100.00
Supervision Charges/ Margin	10.00	10.00	10.00	10.00
Administrative Approval/ Contract Value	110.00	110.00	110.00	110.00

Projects A & B were supposed to be completed and handed over during the F.Y. 2011-12 and Projects C & D were supposed to be completed and handed over during the year 2012-13. Actual costs incurred on various projects during the F.Y. 2011-12 & 2012-13 are as follows:

₹ In Lakh

Name of Project	Contract Value	Estimated Cost	Actual Costs Incurred		
			2011-12	2012-13	Total Costs incurred
Project A	110.00	100.00	105.00	-	105.00

2011-12	2012-13	Total Costs incurred	2011-12	2012-13	Total Costs incurred
Project B	110.00	100.00	106.00	-	106.00
Project C	110.00	100.00	75.00	33.00	108.00
Project D	110.00	100.00	68.00	39.00	107.00

Recognition of revenue and expenditures made by the company in the accounts of F.Y. 2011-12 are as follows :

**Statement of Profit and Loss of the company
for F.Y. 2011-12**

Expenditures	₹ In Lakh	Revenues	₹ In Lakh
Project – A	105.00	Project – A	110.00
Project – B	106.00	Project – B	110.00
Project – C	75.00	Project – C	75.00
Project - D	68.00	Project - D	68.00
Margin/ Earning	9.00		
Total	363.00	Total	363.00

Note:

Since Projects C and D have not been completed it is not practically possible to ascertain whether the projects will have any surplus or not, therefore, contract costs which are recoverable have been taken as revenue.

Recognition of revenue and expenditures made by the company in the accounts of F. Y. 2012-13 are as follows :

**Statement of Profit and Loss of the company
for F.Y. 2012-13**

Expenditures	₹ In Lakh	Revenues	₹ In Lakh
Project – C	33.00	Project – C	35.00
Project - D	39.00	Project - D	42.00
Margin/ Earning	5.00		
Total	77.00	Total	77.00

Note:

1. Revenue of Project C is arrived at ₹35.00 lakh after reducing the turnover of Project C taken during the year 2011-12 i.e.,

₹75.00 lakh from the contract value of ₹110.00 lakh.

2. Revenue of Project D is arrived at ₹42.00 lakh after reducing the turnover of Project D taken during the year 2011-12 i.e., ₹68.00 lakh from the contract value of ₹110.00 lakh.

B. Query

9. On the basis of the above, the querist has sought the opinion of the Expert Advisory Committee as to whether the accounting procedure followed by the company for recognition of revenue and expenditure, which, as per the querist, are as per paragraphs 31(a), 31(b) and 32 of AS 7, is in conformity with AS 7 or not.

C. Points considered by the Committee

10. The Committee notes that the basic issue raised by querist relates to whether the accounting procedure currently followed by the company for recognising revenue and costs is in conformity with AS 7 or not. The Committee has, therefore, considered only this issue and has not considered any other issue that may arise from the Facts of the Case. The Committee presumes from the Facts of the Case that the contracts in the extant case are separate and independent fixed price contracts.
11. The Committee notes from the Facts of the Case that the company, on the basis of inquiry received from various Government departments, submits estimates for each project separately as per Odisha Public Works Department (OPWD) Schedule of Rates (SoR). The estimates are submitted after including cost of materials, labour, other overheads and supervision charges which includes its profit margin. The Committee further notes that the querist has stated that the company is following paragraphs 31 and 32 of AS 7 as the outcome of the construction contracts in its case cannot be estimated reliably. In this regard, the Committee notes the following paragraphs of AS 7, notified under the Companies (Accounting Standards) Rules, 2006:

“21. When the outcome of a construction contract can be estimated reliably, contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date. An expected loss

on the construction contract should be recognised as an expense immediately in accordance with paragraph 35.

22. In the case of a fixed price contract, the outcome of a construction contract can be estimated reliably when all the following conditions are satisfied:

- (a) total contract revenue can be measured reliably;*
- (b) it is probable that the economic benefits associated with the contract will flow to the enterprise;*
- (c) both the contract costs to complete the contract and the stage of contract completion at the reporting date can be measured reliably; and*
- (d) the contract costs attributable to the contract can be clearly identified and measured reliably so that actual contract costs*

incurred can be compared with prior estimates.”

“28. An enterprise is generally able to make reliable estimates after it has agreed to a contract which establishes:

- (a) each party’s enforceable rights regarding the asset to be constructed;
- (b) the consideration to be exchanged; and
- (c) the manner and terms of settlement.

It is also usually necessary for the enterprise to have an effective internal financial budgeting and reporting system. The enterprise reviews and, when necessary, revises the estimates of contract revenue and contract costs as the contract progresses. The need for such revisions does not necessarily indicate that the outcome of the contract cannot be estimated reliably.”

“31. When the outcome of a construction contract cannot be estimated reliably:

- (a) revenue should be recognised only to the extent of contract costs incurred of which recovery is probable; and***
- (b) contract costs should be recognised as an expense in the period in which they are incurred.***

An expected loss on the construction contract should be recognised as an expense immediately in accordance with paragraph 35.

32. During the early stages of a contract it is often the case that the outcome of the contract cannot be estimated reliably. Nevertheless, it may be probable that the enterprise will recover the contract costs incurred. Therefore, contract revenue is recognised only to the extent of costs incurred that are expected to be recovered. As the outcome of the contract cannot be estimated reliably, no profit is recognised. However, even though the outcome of the contract cannot be estimated reliably, it may be probable that total contract costs will exceed total contract revenue. In such cases, any expected excess of total contract costs over total contract revenue for the contract is recognised as an expense immediately in accordance with paragraph 35.”

“35. When it is probable that total contract costs will exceed total contract revenue, the expected loss should be recognised as an expense immediately.”

12. The Committee notes from the Facts of the Case that the querist has stated two reasons for the company not being able to measure the outcome of the project reliably. Firstly, it is stated that the company is executing large number of projects due to which it is not practically possible to estimate the contract cost to complete the balance work and calculate the stage of completion as on the balance sheet date. Secondly, it is stated that since there is no correlation between the estimated cost and actual cost of execution due to estimates being based on SoR, it is not practically feasible to derive the outcome of such huge number of projects unless these are completed and handed over to the user departments.

13. As far as the first reason for not measuring the outcome of the project reliably due to practical difficulties of having large number of projects is concerned, the Committee notes that AS 7 identifies certain situations/conditions in paragraphs 22, 28 and 32, where, in fixed price contracts, it can be stated that the outcome of the project cannot be estimated reliably. The Committee notes that as per AS 7 in case of fixed price contracts, ordinarily, the company would be able to estimate the outcome of the contract reliably except in certain situations, for example, in early stages of a contract and, therefore, should recognise contract costs and revenue based on stage of completion of the contract. The Committee also notes that as per the provisions of AS 7, stage of completion of a contract can be determined either by reference to the contract costs incurred or by reference to physical completion of the contract using survey of work performed or completion of a physical proportion of the contract work method. The Committee is of the view that only practical problems due to large number of projects cannot be considered as a ground for not being able to estimate the outcome of the contract reliably as even in large number of projects where the stage of completion is being determined by reference to contract costs incurred, the company, on the basis of estimates of various costs, such as, labour, material, etc. would generally be able to reasonably estimate the outcome of various projects. However, for this purpose, in order to overcome the practical difficulties due to large number of projects, the company should develop an effective reporting system from all the projects to obtain the data required at the head office for determining the stage of completion as per AS 7.

14. As far as the second reason of no correlation between the estimated cost and actual cost of execution of the contract, the Committee is of the view that although for submission of an estimate for a project to the Government departments, it might be essential for the company to use the rates given in SoR, for the purposes of implementation of AS 7, estimates should be based on the costs expected to be incurred on the project and should also be revised from time to time depending on the changes in the circumstances. The Committee is of the view that for this purpose, the company should develop

an effective budgeting system so as to have the reliable data available for estimating the outcome of the contracts at any stage and for determining the stage of completion. The Committee is of the view that a proper budgeting and reporting system is not only required from the angle of implementation of AS 7 but is also necessary to effectively manage various contracts.

15. The Committee further notes that the querist has stated that the amount of surplus or deficit in a particular project is not included in the revenue of that project, during a particular year, unless and until the project is completed and handed over to the user departments. As per past records, the actual surplus of projects never matches with the surplus mentioned in the estimate and there are cases where the projects have ended up with losses/deficit inspite of surplus stated in the estimate. Hence, it can be inferred that where there are expected excesses of total contract costs over total contract revenues for the contracts, these have not been recognised immediately as per the above-reproduced paragraphs 31, 32 and 35 of AS 7. In this regard, the Committee wishes to point out that any expected loss on the contract should be recognised immediately as an expense in the statement of profit and loss.

D. Opinion

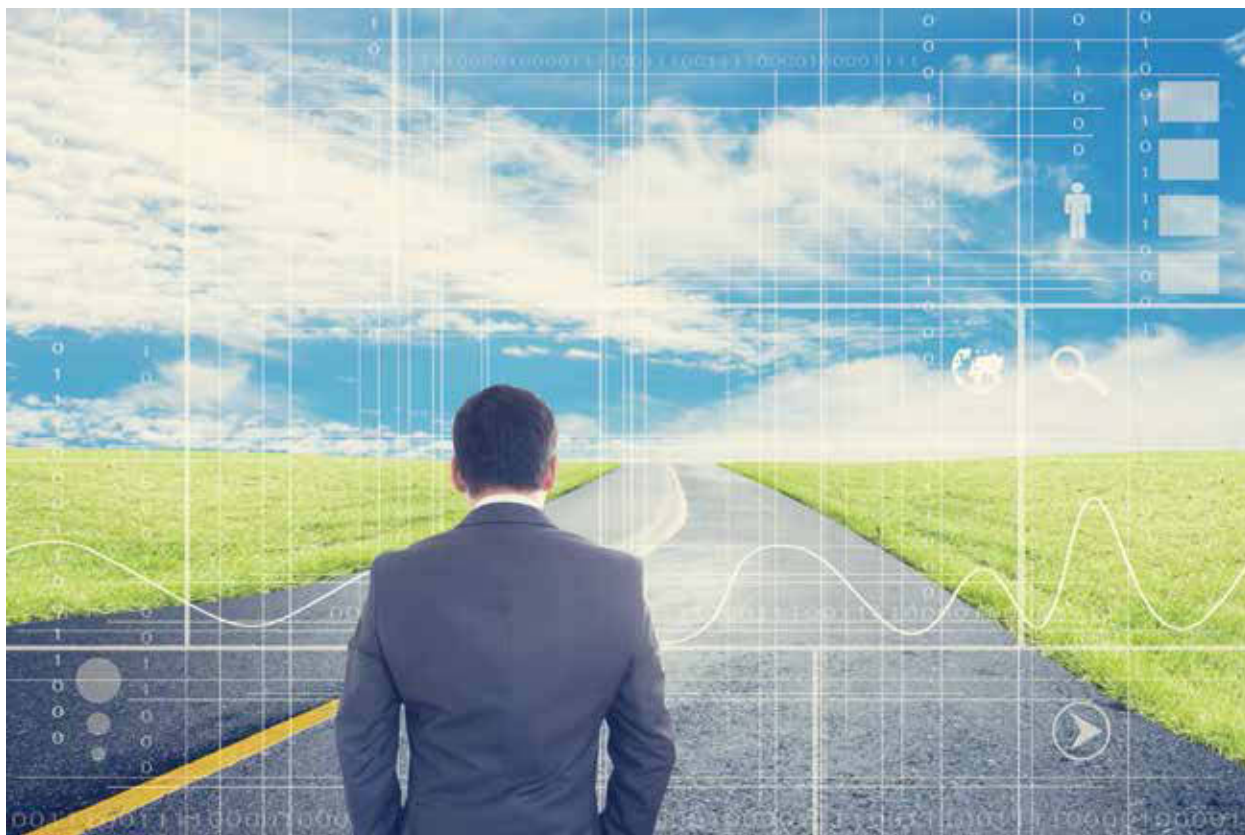
16. On the basis of the above, the Committee is of the opinion that the accounting procedure followed by the company is not in accordance with the requirements of AS 7, as discussed in paragraphs 12 to 15 above. The Committee is of the view that to overcome the practical difficulties due to large number of projects, the company should develop an effective reporting system from all the projects to obtain the data required at the head office for determining the stage of completion

as per AS 7. With regard to company presently having no correlation between the estimated cost and actual cost of execution of the contract, the Committee is of the view that for the purposes of implementation of AS 7, estimates should be based on the costs expected to be incurred on the project rather than based on the rates given in SoR, and for this purpose, an effective budgeting system should be developed, as discussed in paragraph 14 above.

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| 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 . |



NACAS and Convergence in India—Journey So Far and Road Ahead



The Institute of Chartered Accountants of India (ICAI) had issued a concept paper in 2007, focusing on achieving the convergence with IFRS and proposed that India should converge (rather than adopt) with the IFRS. ICAI took it as its responsibility to bring out the standards converged with the IFRS. While converging, the ICAI took IFRS as the starting point and made the required changes in view of existing accounting principles and practices and economic conditions of India. As per a roadmap issued by the MCA, about 300 to 400 entities were likely to be covered by Ind AS in the first phase. National Advisory Committee on Accounting Standards (NACAS) was constituted by the Central Government under Section 210A of the Companies Act, 1956, to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies. In this article, the author, NACAS President himself, provides an authoritative account of the NACAS journey so far vis-à-vis the convergence of Ind AS with the IFRS. Read on...



CA. Amarjit Chopra

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Under Section 210A of the Companies Act, 1956, National Advisory Committee on Accounting Standards (NACAS) was constituted by the Central Government to advise the Central Government on the formulation and laying down of accounting policies and Accounting Standards for the adoption by companies.

Union Finance Minister Shri Arun Jaitley, in his Union Budget 2014-15 speech, stated that corporate India would implement the Ind AS on voluntary basis effective from 1st April, 2015, and on compulsory basis effective from 1st April, 2016.

Beginning of India's Journey to Converge with IFRS

The Institute of Chartered Accountants of India (ICAI) had issued a concept paper in 2007, which focused on achieving the convergence with IFRS. The concept paper also proposed that India should converge (rather than adopt) with the IFRS. Further, a group headed by the then Prime Minister of India, Dr. Manmohan Singh, committed to the converge with IFRS by April 2011 at the G-20 summit held in 2009. ICAI took it as its responsibility to bring out the standards converged with the IFRS. While converging, the ICAI took the IFRS as starting point and made the required changes keeping in view the accounting principles and practices and economic conditions prevailing in India.

Afterwards, the Ministry of Corporate Affairs (MCA) issued a press release no. 2/2010 on 22nd January, 2010, specifying a roadmap of Ind AS implementation for companies other than banking, insurance and non-banking finance companies. The roadmap specified the phased manner in which companies other than banking, insurance and non-banking finance companies were required to apply the converged Accounting Standards.

A press release no. 3/2010 related to the roadmap for application of the converged Indian Accounting Standards by the banking companies, insurance companies and non-banking finance companies was issued on 31st March, 2010. As per the roadmap issued by the MCA, in the first phase, about 300 to 400 entities were likely to be covered by the Ind AS (the converged standards). It may be mentioned here that some of these companies were already preparing their financial statements based on the IFRS for the purpose of raising money from abroad.

Significant Role of NACAS

In respect of the converged Accounting Standards, the ICAI submitted the converged version of Accounting Standards to the NACAS from time to time for recommendations and onward submission to the Ministry. NACAS played an important role

in evaluating and approving all the Ind AS for notification by the MCA. It duly considered the India-specific circumstances and made carve-outs from the IFRS issued by the IASB. It also restricted multiple options that are permitted by the IFRS in several standards to enhance the uniformity. The process of convergence was completed by December 2010. At this juncture, industry started resisting the implementation of Ind AS mainly due to taxation issues involved.

Union Finance Minister Shri Arun Jaitley, in his Union Budget 2014-15 speech, stated that corporate India would implement the Ind AS on voluntary basis effective from 1st April, 2015, and on compulsory basis effective from 1st April, 2016. With a view to achieve the desired objective, the NACAS has recently been reconstituted to ensure the completion of this task in time.

Carve-Outs

In February 2011, the MCA hosted 35 Ind AS on its website, which differ from the IFRS issued by the IASB in certain respects. These have been discussed below along with the current thinking on the same:

I. Ind ASs Deferred by MCA

1. Ind AS 11, *Construction Contracts*

IFRIC 12 and SIC 29, *Service Concession Arrangements and Service Concession Arrangements: Disclosures*, respectively, which are included as Appendices A and B to Ind AS 11, *Construction Contracts*, respectively, were deferred.

Reasons: MCA received feedback regarding the adverse consequences which may ensue to the Indian companies in the event of immediate adoption of the IFRIC 12 and SIC 29. Hence, the MCA decided to defer these.

Present Situation: In case it is decided to adopt the IFRS 15 early, these carve-outs may not be required.

2. Ind AS 17, *Leases*

IFRIC 4 *Determining Whether an Arrangement contains a Lease*, which is included as Appendix C to Ind AS 17, *Leases* would not be notified along with the other standards and its application has been deferred.

Reasons: MCA received feedback regarding the adverse consequences which may ensue to the Indian

IFRS Convergence

companies in the event of immediate adoption of the Appendix C to Ind AS 17, corresponding to the IFRIC 4. Hence, the MCA decided to defer these.

Present Situation: In view of the better preparedness of the industry and the profession, this deferment may not be required now.

3. Ind AS 106, *Exploration for and Evaluation of Mineral Resources*

Ind AS 106 corresponding to IFRS 6, *Exploration for and Evaluation of Mineral Resources*, would not be notified immediately as it is under consideration of the Government.

Reasons: MCA was of the view that the standard is open-ended offering freedom to companies to follow virtually any policy they like. The Standard does not prescribe any standardisation. This may even be counterproductive from a regulatory point of view. Hence, this Ind AS was deferred.

Present Situation: In view of the fact that the revised IFRS 6 may take a significant time before it is finally implemented, India may adopt the Ind AS 106 with suitable modifications based on the Guidance Note on *Accounting for Oil and Gas Producing Activities*.

4. Indian Accounting Standard corresponding to IAS 26, *Accounting and Reporting by Retirement Benefit Plans*, is not being notified as this Standard is not applicable to companies.

5. IFRIC 2, *Members' Shares in Co-operative Entities and Similar Instruments* is not issued as it is not relevant for the companies as the Ind ASs are to be notified under the Companies Act and are applicable to companies incorporated under the Act.

II. Significant Carve-outs

A. Carve-outs which are due to differences in application of accounting principles and practices and economic conditions prevailing in India.

1. Ind AS 21, *The Effects of Changes in Foreign Exchange Rates*

As per IFRS

IAS 21 requires recognition of exchange differences arising on translation of monetary items from foreign currency to functional currency directly in profit or loss.

Carve-Out: Ind AS 21 permits an option to recognise exchange differences arising on translation of certain long-term monetary items from foreign currency to functional currency directly in equity. In this situation, Ind AS 21 requires the accumulated exchange differences to be amortised to profit or loss in an appropriate manner. IAS 21 does not permit such a treatment.

Reasons

- (i) There is significant fluctuation in the value of US dollar *vis-à-vis* rupee. India plans for a large expenditure on infrastructure. This may need a very large inflow in the foreign borrowings. These borrowings are denominated in foreign currencies unlike developed countries where borrowings are denominated in local currencies.
- (ii) Unlike currencies of many advanced countries, rupee is not fully convertible.
- (iii) Indian companies are not permitted to prepay the foreign currency loans.
- (iv) Other countries such as South Korea have also been raising these issues.
- (v) It is not appropriate to recognise the exchange differences immediately which arise as a result of items which are to be paid/realised in foreign currency, after a long-term nature.

Present situation: ASB has submitted its recommendations to the NACAS and the NACAS is evaluating the same.

2. Ind AS 32, *Financial Instruments: Presentation*

Carve-Out: An exception has been included to the definition of *financial liability* in paragraph 11 (b) (ii), Ind AS 32 to consider the equity conversion option embedded in a convertible bond denominated in foreign currency to acquire a fixed number of entity's own equity instruments as an equity instrument if the exercise price is fixed in any currency. This exception is not provided in IAS 32.

An exception has been included to the definition of financial liability in paragraph 11 (b) (ii), Ind AS 32 to consider the equity conversion option embedded in a convertible bond denominated in foreign currency to acquire a fixed number of entity's own equity instruments as an equity instrument if the exercise price is fixed in any currency.

Reasons: This position is not appropriate in instruments such as FCCBs since the number of shares convertible on the exercise of the option remains fixed and the amount at which the option is to be exercised in terms of foreign currency is also fixed; merely the difference in the currency should not affect the nature of derivative, *i.e.*, the option.

Present Situation: ASB has submitted its recommendations to the NACAS and the NACAS is evaluating the same.

3. Ind AS 39, *Financial Instruments: Recognition and Measurement*

As per IFRS: IAS 39 requires all changes in fair values in case of financial liabilities designated at fair value through Profit and Loss at initial recognition shall be recognised in profit or loss. IFRS 9 which replaces IAS 39 requires these to be recognised in 'other comprehensive income'

Carve-Out: A *proviso* has been added to paragraph 48 of Ind AS 39 that in determining the fair value of the financial liabilities which upon initial recognition are designated at fair value through profit or loss, any change in fair value consequent to changes in the entity's own credit risk shall be ignored.

Reasons: It is felt that recognition of gain in profit or loss or in 'other comprehensive income' on deterioration of own credit risk is not proper because such deterioration ordinarily occurs when an entity is incurring losses. Thus, if an entity is allowed to recognise gain on deterioration of its own credit risk, it will book gains when its performance is not upto the mark. In the recent financial crisis in USA, it was noted that some banks booked gains while they were incurring losses due to the crisis.

Present Situation: Due to a subsequent amendment in IAS 39, this carve-out may need to be reevaluated.

4. Ind AS 103, *Business Combinations*

As per IFRS: IFRS 3 requires bargain purchase gain arising on business combination to be recognised in profit or loss.

Carve-Out: Ind AS 103 requires the same to be recognised in other comprehensive income and accumulated in equity as capital reserve, unless there is no clear evidence for the underlying reason

Ind AS 101 provides that the financial instruments carried at amortised cost should be measured in accordance with the Ind AS 39 from the date of recognition of financial instruments unless it is impracticable (as defined in Ind AS 8) for an entity to apply retrospectively the effective interest method or the impairment requirements of the Ind AS 39.

for classification of the business combination as a bargain purchase, in which case, it shall be recognised directly in equity as capital reserve.

Reasons: It is felt that recognition of such gains in profit or loss would result into recognition of unrealised gains as the value of net assets is determined on the basis of fair value of net assets acquired.

Present situation: The carve-out may continue.

5. Ind AS 101, *First-time Adoption of Indian Accounting Standards*

(i) Presentation of comparatives in the First-time Adoption of Indian Accounting Standards (Ind AS) 101 (corresponding to IFRS 1)

As per IFRS: IFRS 1 defines transitional date as beginning of the earliest period for which an entity presents full comparative information under the IFRS. It is this date which is the starting point for the IFRS and it is on this date the cumulative impact of transition is recorded based on the assessment of conditions at that date by applying the standards retrospectively except to the extent specifically provided in this standard as optional exemptions and mandatory exceptions. Accordingly, the comparatives, *i.e.*, the previous year figures, are also presented in the first financial statements prepared under the IFRS on the basis of IFRS.

Carve-Out: Ind AS 101 requires an entity to provide comparatives as per the existing notified Accounting Standards. It is provided that, in addition to aforesaid comparatives, an entity may also provide comparatives as per the Ind AS on a memorandum basis.

Reason: This would facilitate smooth convergence with the IFRS as comparatives are not required to

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be in accordance with the Ind ASs. It is also felt that since the Ind AS 101 would not be considered to be in existence for the comparative period, requiring comparatives to be prepared on the basis of Ind AS may not be legally defensible.

Present Situation: In view of the better preparedness of the industry and the profession, this carve-out may not be required now.

(ii) Foreign currency gains/losses on translation of long term monetary items

Carve-Out: Ind AS 101 provides that on the date of transition, if there are long-term monetary assets or long-term monetary liabilities mentioned in paragraph 29A of Ind AS 21, an entity may exercise the option mentioned in that paragraph regarding spreading over the unrealised Gains/Losses over the life of Assets/Liabilities either retrospectively or prospectively. If this option is exercised prospectively, the accumulated exchange differences in respect of those items are deemed to be zero on the date of transition.

Reason: Exemption given as a consequence of optional treatment prescribed in Ind AS 21, *The Effects of Changes in Foreign Exchange Rates*, in context of exchange difference arising on account of certain long-term monetary assets or long-term monetary liabilities.

Present Situation: ASB has submitted its recommendations to the NACAS and the NACAS is evaluating the same.

(iii) Financial instruments existing on transition date

Carve-Out: Ind AS 101 provides that the financial instruments carried at amortised cost should be measured in accordance with the Ind AS 39 from the date of recognition of financial instruments unless it is impracticable (as defined in Ind AS 8) for an entity to apply retrospectively the effective interest method or the impairment requirements of the Ind AS 39. If it is impracticable to do so then the fair value of the financial asset at the date of transition to Ind ASs shall be the new amortised cost of that financial asset at the date of transition to the Ind ASs. Ind AS 101 provides another exemption that financial instruments measured at fair value

shall be measured at fair value as on the date of transition to the Ind AS.

Reason: This exemption would facilitate smooth convergence with the IFRS.

Present Situation: ASB has submitted its recommendations to the NACAS and the NACAS is evaluating the same.

(iv) Definition of previous GAAP under Ind AS 101 *First-time Adoption of Indian Accounting Standards*

As per IFRS: IFRS 1 defines the previous GAAP as basis of accounting that a first-time adopter used immediately before the adopting IFRS.

Carve-Out: Ind AS 101 defines previous GAAP as the basis of accounting that a first-time adopter used immediately before adopting Ind ASs for its reporting requirements in India. For instance, for companies preparing their financial statements in accordance with the existing Accounting Standards notified under the Companies (Accounting Standards) Rules, 2006 shall consider those financial statements as the previous GAAP financial statements.

Reason: The change makes it mandatory for the Indian companies to consider the financial statements prepared in accordance with existing notified Indian accounting standards as was applicable to them as under the Companies (Accounting Standards) Rule, 2006 as the previous GAAP, when it transitions to the Ind AS as the law prevailing in India does not recognise the financial statements prepared in accordance with Accounting Standards other than those prescribed under the Companies Act.

Present Situation: ASB has submitted its recommendations to the NACAS and the NACAS is evaluating the same.

Ind AS 101 provides an entity an option to use carrying values of all assets as on the date of transition in accordance with the previous GAAP as an acceptable starting point under the Ind AS.

In view of this, the MCA has reconstituted the National Advisory Committee on Accounting Standards (NACAS) vide the notification dated 19th September, 2014, the NACAS has appointed CA. Amarjit Chopra as its Chairman and 12 other members as specified in the notification.

(v) Cost of Property, Plant and Equipment (PPE), Intangible Assets, Investment Property, on the date of transition of First-time Adoption of Indian Accounting Standards.

Ind AS 101 provides an entity an option to use carrying values of all assets as on the date of transition in accordance with the previous GAAP as an acceptable starting point under the Ind AS.

Reasons: The existing Indian notified Accounting Standards are not significantly different from IFRS as all the standards have been based on IFRS. It will minimise the cost of convergence.

Present Situation: The carve-out may continue.

B. Carve-outs for specific industries

1. Ind AS 18, Revenue

As per IFRS: On the basis of principles of the IAS 18, IFRIC 15 on *Agreement for Construction of Real Estate*, prescribes that construction of real estate should be treated as sale of goods and revenue should be recognised when the entity has transferred significant risks and rewards of ownership and has retained neither continuing managerial involvement nor effective control.

Carve-Out: IFRIC 15 has not been included in the Ind AS 18, *Revenue*. Such agreements have been scoped out from the Ind AS 18 and have been included in the Ind AS 11, *Construction Contracts*.

Reasons

- (i) IFRIC 15, would have required the real estate developers to recognise their revenue in their financial statements based on the completion method, i.e., only in the last year of the completion of the project. In that case, the profit and loss account of the developers will not truly reflect the performance of the business, as during the years the real estate project continues, no revenue will be recognised. In other words, profit and loss account will not reflect proper measure

of performance of business.

- (ii) Some countries such as Malaysia have also decided not to apply IFRIC 15 for the time being. Similarly, while Singapore has decided to issue IFRIC 15, it has provided specific guidance in the context of legal situations prevailing in that country.

Present Situation: ASB has submitted its recommendation to early converge with the IFRS 15 and the NACAS is evaluating the same.

2. Ind AS 18, Revenue

Carve-Out: A footnote has been added in paragraph 1 to the Ind AS 18, *Revenue*, that for rate regulated entities, this standard shall stand modified, where and to the extent the recognition and measurement of revenue of such entities is affected by recognition and measurement of regulatory assets/liabilities as per the Guidance Note on the subject being issued by the ICAI.

Reason: Rate regulated entities such as electricity companies are subject to tariff fixation by the relevant authorities. Tariff is fixed on the basis of certain costs which are different from the expenses recognised in financial statements. Such differences may result into certain regulatory assets and regulatory liabilities which are presently not recognised as per the IFRS. Such entities feel that such assets and liabilities exist and, therefore, should be recognised in financial statements. IASB has taken up a project on this subject on its Agenda. ICAI has issued a Guidance Note on the subject.

Present Situation: ASB has submitted its recommendation to the NACAS and the same is being evaluated.

3. Indian Accounting Standard on Agriculture (Corresponding to IAS 41)

As per IFRS: IAS 41, *Agriculture*, requires measurement of biological assets, viz., living animals and plants at fair value and recognising gains and losses arising on such measurement in profit or loss, unless ascertainment of fair value is unreliable.

Carve-Out: It has been decided to revise the Standard and not to issue the standard as it is. IASB has taken up a limited scope amendment project on its Agenda to require necessary Bearer Biological Assets using cost model.

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Reasons:

- (i) There is difficulty in identifying the attributes of biological assets, the cost of fair valuation, and high volatility of significant qualitative factors (not within the control of the entity) leads to greater subjectivity in estimating fair value.
- (ii) The quoted market price for bearer biological assets (e.g., long-term assets that produce each year such as tea, coffee, rubber and palm oil trees) is not easily available, since these are not traded in the open market.
- (iii) Present Value (PV) method is to be adopted for estimating fair value of biological assets such as forests. Making appropriate estimates of future price and costs levels are key factors for a reliable fair value measurement of standing forests. Due to the long-term nature of the period of cash flows, small fluctuations in the assumptions may have a significant effect on the calculated fair value.
- (iv) Fair value of biological assets may not be relevant because most plantations are rarely sold. Fair valuation may give the impression that the value of the company increases when in reality nothing has changed.
- (v) Considering the high volatility of prices for the end products, the fair value adopted as cost as per IAS 41, may result in very significant impact on the profitability of the companies.

Present Situation: ASB has submitted the revised converged standard on Agriculture and the NACAS is evaluating the same.

Ind-AS Implementation Regaining Momentum

Union Finance Minister Shri Arun Jaitley, in his Union Budget 2014-15 speech, highlighted the need and urgency for India to move to the Ind AS. According to his announcement, adoption of Ind AS will be compulsory from 2016-17 and voluntary from 2015-16.

In view of this, the MCA has reconstituted the National Advisory Committee on Accounting Standards (NACAS) vide the notification dated 19th September, 2014, the NACAS has appointed CA. Amarjit Chopra as its Chairman and 12 other members as specified in the notification. Besides at present, it has seven special invitees as well.

Challenges for NACAS

Since the Ind AS were hosted by the MCA on its website in 2011, several developments have taken place. IASB has issued the following new IFRS/IAS/IFRIC:

- a) IFRS 9 (*Financial Instruments*),
- b) IFRS 10 (*Consolidated Financial Statements*),
- c) IFRS 11 (*Joint Arrangements*),
- d) IFRS 12 (*Disclosures of Interests in Other Entities*)
- e) IFRS 13 (*Fair Value Measurement*)
- f) IFRS 14 (*Regulatory Deferral Accounts*)
- g) IFRS 15 (*Revenue from Contracts with Customers*)
- h) IAS 27 (*Separate Financial Statements*) and IAS 28 (*Investments in Associates and Joint Ventures*)

Besides, the IASB has made amendments to several existing standards such as the IAS 12 (*Income Taxes*), the IAS 19 (*Employee Benefits*), the IAS 1 (*Presentation of financial statements*), and the IAS 36 (*Impairment*), etc.

ASB of the ICAI and the NACAS are working overtime to evaluate these new standards and changes in the existing standards. Further, it is also evaluating whether India should converge with the IFRS 9 on *Financial Instruments* and IFRS 15 on *Revenue from Contracts with Customers* at this stage.

Besides, the NACAS is also considering the areas, where there may be a need for additional carve-outs. Let us briefly address those areas. Readers may note that those areas are under consideration of the NACAS and the final decision on the same will be based on national requirements, appropriate accounting principles and practices being followed and the industry requirements.

Areas for Consideration of Additional Carve-Outs or Guidance

A. Ind AS 1 on 'Presentation of Financial Statements'

In the Indian context, banks generally do not demand repayment of loans on minor defaults of debt covenants. Ind AS 1 may need to be amended in the context that defaults in compliance with minor procedural loan covenants to which lenders do not exercise their rights to recall the loan, would not result in classification of liability as a current liability.

B. Definition of 'Close members of the family of a person' under Ind AS 24 on 'Related Party Disclosures'

There may be a need for guidance for evaluating as to how the influence in the dealings with the entity can be assessed to address the issue of subjectivity in assessing whether a particular family member is expected to influence or be influenced in their dealings with the entity.

C. Ind AS 111 on 'Joint Arrangements'

As per the exposure draft of Ind AS 111 submitted by the ASB to the NACAS, the accounting for joint ventures will be done using equity method, *i.e.* proportionate consolidation method will not be permitted. The same is being examined by the NACAS.

D. Ind AS 40 on 'Investment Property'

Rebuttable presumption of investment property to be measured at fair value is removed in the Ind AS 40, *i.e.*, only the cost option for valuation of investment property is there. However, the requirement in the Ind AS 40 to disclose the fair value despite the fact that fair value option is not given for valuation of investment property still exists. There may be a case for reexamining this requirement.

E. Ind AS 19 on 'Employee Benefits'

As per para 83 of the revised Ind AS 19, the rate used to discount post-employment benefit obligations (both funded and unfunded) should be determined by reference to market yields at the end of the reporting period on government bonds whereas as per the IAS 19, discount rate should be determined by reference to market yields at the end of the reporting period on high-quality corporate bonds. Further as per the IAS 19, in countries where there is no deep market in such bonds, the market yields (at the end of the reporting period) on government bonds shall be used. The government bond rate in India would not be relevant for subsidiaries, associates and joint ventures of companies in other countries for preparing consolidated financial statements. Therefore, it may not be appropriate to require such companies to use government bond rate in India as the rate of discount for post-employment benefit plans outside India.



Thus, there may be a need to change the requirement in paragraph 83 of the revised Ind AS 19 to permit use of discount rate for subsidiaries, *etc.*, of companies in other countries based on the requirement contained in the IAS 19.

E. Ind AS 113 on 'Fair Value Measurement'

Ind AS 113 uses the concept of highest and best use. Besides, it contains many areas which will require India specific implementation guidance. In particular, implementation guidance may be required in the following areas under the Ind AS 113:

- Terms used in the definition of *Fair Value*, *viz.*, orderly transaction; market participants and measurement date;
- Determination of principal market and the most advantageous market;
- Valuation of a non-financial assets particularly the *Highest and Best Use* principle, *etc.*

Statement of Union Finance Minister in his Union Budget 2014-15 speech has revived the process of implementation of the Ind AS in India. Reconstitution of the NACAS has given it the much-desired momentum. Despite certain challenges faced on this way, target would certainly be achieved and accountancy profession in the country would touch new heights. This would also facilitate recognition of Indian chartered accountants as international accountants. ■

Carve-Outs/Ins in IFRS-Converged Indian Accounting Standards: Recent Developments



The IFRS-converged Indian Accounting Standards (Ind ASs) depart from the corresponding IFRSs to maintain consistency with legal, regulatory and economic environment. In some cases, departures are made on account of conceptual differences with the treatments prescribed in the IFRSs. The ICAI while carrying out the process of convergence with IFRSs always attempts to keep these departures to the minimum and these are also taken forward and discussed with the IASB from time to time. Recently, these carve outs/ins have been examined and revised corresponding to new/revised Ind ASs in the context of the amendments made in IFRSs.



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Background

Due to development of cross-border capital markets, it is imperative that the financial statements in various countries follow a single, high quality accounting standards that are accepted globally. Keeping this in view, many developed and emerging economies have adopted or converged

The 35 Ind ASs placed on the MCA's website were based on the IFRSs issued as on 1st April, 2011. Subsequently, not only significant amendments have been made in IFRSs, but new IFRS have been issued. Keeping this in view, Ind ASs are being revised by the ICAI in the context of the amendments made in IFRSs and the carve-outs made earlier in the 35 Ind ASs have been examined again for their possible removal.

with International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB). Till now, more than 100 countries require or permit use of IFRS. India, being an important emerging economy in the world, cannot remain isolated in this scenario. Thus in 2007, the Institute of Chartered Accountants of India (ICAI) initiated the process of moving towards IFRSs. This move was supported by the Ministry of Corporate Affairs (MCA), Government of India and, accordingly, after following the due process, 35 Indian Accounting Standards (Ind AS) converged with IFRSs were placed on the website of the MCA. However, the date of notification of the Ind ASs was not announced due to certain issues including tax issues.

India has followed the policy of convergence with International Financial Reporting Standards (IFRSs) instead of adopting the same. The ICAI examines and considers the IFRSs while formulating the Indian Accounting Standards (Ind ASs) and departures are made there from, wherever required, keeping in view the legal, regulatory and economic environment in India. These departures from the IFRSs are called carve-outs. In case some additional requirements which are considered necessary in the local environment are added, these are called carve-ins.

The ICAI while carrying out the process of convergence with IFRSs has always attempted to keep the carve-outs to the minimum and these are also taken forward and discussed with the IASB from time to time. The carve-outs are considered from the perspective of local environment and benefit to stakeholders including industry and are not rigid/permanent in nature. These are expected to be eliminated over a period of time either through issuance of amendments in IFRSs or by adoption of IFRS treatment in

Ind ASs when the Indian environment becomes conducive to such removal in future.

Recent Developments in Carve outs/ins in Indian Accounting Standards

Consideration of the carve outs/ins in Ind ASs

The 35 Ind ASs placed on the MCA's website were based on the IFRSs issued as on 1st April, 2011. Subsequently, not only significant amendments have been made in IFRSs, but new IFRS have been issued. Keeping this in view, Ind ASs are being revised by the ICAI in the context of the amendments made in IFRSs and the carve-outs made earlier in the 35 Ind ASs have been examined again for their possible removal and it has also been considered whether any new carve-outs or carve-ins are required. These are being incorporated in the new/revised Ind AS after following the due process.

• Major carve outs proposed to be removed

The following carve outs relating to 35 Ind ASs placed on MCA's website are proposed to be removed as these have been addressed by the IASB:

Revenue recognition from real estate sale agreement

On the basis of principles of IAS 18, Revenue, IFRIC 15, Agreement for the Construction of Real Estate, prescribes that construction of real estate should be treated as sale of goods and revenue should be recognised when the entity has transferred significant risks and rewards of ownership and has retained neither continuing managerial involvement nor effective control. Practically, IFRIC 15 requires the real estate developers to recognise the revenue in their financial statements based on the completion method, *i.e.*, only in the last year of the completion of the project. It was felt that the profit and loss account of the developers will not truly reflect the performance of the business, as during the years the real estate project continues, no revenue will be recognised. This was not in accordance with the existing accounting practices prevailing in the country. Accordingly, such agreements were scoped out from Ind AS 18 and were included in Ind AS 11, Construction Contracts. This issue was taken up with the IASB by India and some other countries and IASB has issued IFRS 15, Revenue from Contracts with

Customers in May 2014 which addresses the concerns arising from IFRIC 15. Thus, the issuance of Ind AS 115 corresponding to IFRS 15 is expected to address the concerns arising from IFRIC 15 as it will supersede Ind ASs 11 and 18.

Accounting for Bearer Plants

IAS 41, Agriculture, required measurement of biological assets, viz., living animals and plants at fair value and recognising gains and losses arising on such measurement in profit or loss, unless ascertainment of fair value is unreliable. Indian Accounting Standard corresponding to IAS 41 was not formulated in 2011, as it was felt by certain stakeholders that it was not suitable to the Indian conditions because it was based on determining fair values of various agricultural assets such as orchards, plantations and other such assets, which is not an appropriate method of accounting. Since, other countries, such as Malaysia, also had similar concerns, the Asia-Oceanic Standards-Setters Group (AOSSG) constituted a Working Group under the Chairmanship of India, with Malaysia as co-chair, to suggest limited scope amendments to IAS 41 for consideration of IASB. The ICAI was of the view that Bearer Biological Assets (flora) should be accounted for in accordance with Ind AS 16, Property plant and Equipment and fauna (animals) should continue to be valued at fair value as per IAS 41. The AOSSG submitted the ICAI's view as an alternative view to the IASB. The IASB has now addressed the concerns by recently issuing amendments to Agriculture: Bearer Plants (Amendments to IAS 16 and IAS 41) which are in line with the views of the ICAI. Accordingly, the Ind AS 41 and consequential amendments to Ind AS 16 are being finalised for issuance.

Gains on Own Credit Deterioration

At the time Ind AS 39 was finalised in 2011, IAS 39 required that all changes in fair value in case of financial liabilities designated at fair value through profit and loss at initial recognition shall be recognised in profit or loss. This was considered inappropriate for changes in own credit risk since a deterioration of in the entity's credit worthiness would have resulted in recognition of a gain in profit or loss. A *proviso*

was, accordingly, added to paragraph 48 of Ind AS 39, Financial Instruments: Recognition and Measurement, that in determining the fair value of the financial liabilities which upon initial recognition are designated at fair value through profit or loss, any change in fair value consequent to changes in the entity's own credit risk shall be ignored. Indian Accounting Standard corresponding to IFRS 9 was not issued earlier since it was felt that it was incomplete. The IASB has recently issued IFRS 9, Financial Instruments, which will replace IAS 39. IFRS 9 requires the changes in fair values in case of financial liabilities due to changes in own credit risk to be recognised in other comprehensive income. Thus, the carve-out in Ind AS 39 will get removed after the issuance of Ind AS 109 corresponding to IFRS 9, as it will replace Ind AS 39.

The following carve-outs relating to 35 Ind ASs placed on MCA's website are proposed to be removed on reconsideration by the ICAI itself:

Accounting for Associates

IAS 28, Investment in Associates, requires that difference between the reporting period of an associate and that of the investor should not be more than three months, in any case. The phrase 'unless it is impracticable' was added in the relevant requirement in Ind AS 28. On reconsideration, it is felt that in case of impracticability to obtain financial statements prepared as on the date on which the financial statements of the investor are drawn (except the time gap permitted by the standard), it may be considered that the investor may not have significant influence over the investee. In other words, in such a case, it may be difficult to establish that the investor is having significant

Some carve-outs relating to 35 Ind ASs placed on MCA's website are proposed to be removed as these have been addressed by the IASB. These are: 'Revenue recognition from real estate sale agreement,' 'Accounting for Bearer Plants,' 'Gains on Own Credit Deterioration,' 'Accounting for Associates,' 'Investments in Associates through Mutual Funds, etc,' 'Forex gains/losses on Long-term Monetary Items,' and 'Comparatives in First Ind AS Financial Statements.'

influence over the investee and, therefore, investee may not be regarded as an associate of the investor. Accordingly, the term 'unless impracticable' is proposed to be deleted from the aforesaid requirement of Ind AS 28.

Investments in Associates through Mutual Funds, etc.

In paragraphs 18 and 19 of Ind AS 28, Investment in Associates, corresponding to IAS 28, references to mutual funds, unit trusts and similar entities including investment linked insurance funds, were deleted as it was felt that the Companies Act, 1956, was not applicable to mutual funds, unit trusts and similar entities including investment linked insurance funds and, thus, this standard would not be applicable to such entities. However, on reconsideration it is felt that the deletion may give an indication that this Standard would be applicable to associates if investor holds investments through mutual funds and trusts since there are no specific exemptions. Accordingly, to avoid such interpretations, the reference to mutual funds, unit trust, *etc.*, has been restored in paragraphs 18 and 19 of Ind AS 28.

Forex Gains/Losses on Long-term Monetary Items

IAS 21, The Effects of Changes in Foreign Exchange Rates, requires recognition of exchange differences arising on translation of monetary items from foreign currency to functional currency directly in profit or loss. Ind AS 21 permitted an option to recognise exchange differences arising on translation of certain long-term monetary items from foreign currency to functional currency directly in equity. In this situation, Ind AS 21 also requires the accumulated exchange differences to be amortised to profit or loss in an appropriate manner which is given in paragraph 29A. It has been noted that as per IFRS 9, only those exposures can qualify for hedge accounting which have impact on the statement of profit and loss. Where an entity follows the option as stated above, such an entity would not be able to use hedge accounting as per IFRS 9. It is felt that, in any case, the option given in Ind AS 21 is conceptually inappropriate as the entity is able to defer the gains/losses arising from foreign

Major carve-outs which are still continuing include 'Foreign currency Convertible Bonds: Exception in the definition 'Financial Liability' and 'Carrying Values of PPEs etc. may be used in First Ind AS Financial Statements.' The new carve outs proposed to be included are: 'Current/Non-current Classification in case of breach of loan covenants,' and 'Straight-lining of lease rentals in operating leases.'

exchange risks. Therefore, paragraph 29A of Ind AS 21 is proposed to be removed as the impact is not on profit or loss.

Comparatives in First Ind AS Financial Statements

IFRS 1 defines transitional date as beginning of the earliest period for which an entity presents full comparative information under IFRS. It is this date which is the starting point for IFRS and it is on this date the cumulative impact of transition is recorded based on assessment of conditions at that date by applying the standards retrospectively except to the extent specifically provided in this standard as optional exemptions and mandatory exceptions. Accordingly, the comparatives, *i.e.*, the previous year figures are also presented in the first financial statements prepared under IFRS on the basis of IFRS. The existing Ind AS 101 requires an entity to provide comparatives as per the existing notified Accounting Standards and not as per IFRS. Ind AS 101 further provides that, in addition to aforesaid comparatives, an entity may also provide comparatives as per Ind AS on a memorandum basis. This difference is proposed to be removed in the revised Ind AS 101, by requiring an entity to mandatorily provide comparatives as per Ind AS.

Major carve-outs still continuing Foreign currency Convertible Bonds: Exception in the definition 'Financial Liability'

An exception was included to the definition of 'financial liability' in paragraph 11 (b) (ii) of Ind AS 32, Financial Instruments: Presentation to consider the equity conversion option embedded in a convertible bond denominated in foreign currency to acquire a fixed number of entity's own equity instruments as an equity

instrument if the exercise price is fixed in any currency. This exception is not provided in IAS 32. The carve-out is considered appropriate for FCCBs since the number of shares convertible on the exercise of the option remains fixed and the amount at which the option is to be exercised in terms of foreign currency is also fixed; merely the difference in the currency should not affect the nature of derivative, *i.e.*, the option. This issue is under discussion with the IASB and will also be taken up at the next meeting of the Emerging Economies Group (EEG) scheduled to be held in December 2014.

Carrying Values of PPEs etc. may be used in First Ind AS Financial Statements

Ind AS 101 provides an entity an option to use carrying values of Property, Plant and Equipments, Intangible and Investment Property as on the date of transition in accordance with previous GAAP as an acceptable starting point under Ind AS. This carve out is being retained in Revised Ind AS 101 as the existing Indian notified Accounting Standards are not significantly different from IFRS as all the standards have been based on IFRS. It will minimise the cost of convergence

- **New Carve-outs proposed to be included**
Current/Non-current Classification in case of breach of loan covenants

Paragraph 74 of Ind AS 1, Presentation of Financial Statements, is proposed to be modified to clarify that the provision to reclassify a non-current liability as current would be applicable only for material breaches and that in case a breach is rectified after the balance sheet date but before the approval of financial statements for issue, it would be considered an adjusting event for the purpose of Ind AS

Convergence is an ongoing process. Going forward, keeping in view further developments in the issuance of new/revised IFRS, the carve-outs would be closely monitored and discussed with IASB. The objective is to place the Indian Accounting Standards at par with IFRS so that the Indian corporates and the accounting professional reap the benefits of global accounting standard.



10. This carve-out is being proposed in view of the existing practices in India with regard to recalling the loans by banks. This issue is being taken up with the IASB.

Straight-lining of lease rentals in operating leases

Paragraphs 33 and 50 of Ind AS 17, Leases, are proposed to be modified to provide that where the escalation of lease rentals is in line with the expected general inflation so as to compensate the lessor for expected inflationary cost, the increases in the rentals in case of operating leases shall not be straight-lined. This carve-out is being proposed in view of the current practice in India to include provisions for increase in rentals based on inflation in the lease agreements. This treatment is similar to that prescribed in IFRS for SMEs. This carve-out is expected to be temporary as the IASB would be issuing the new standard on Leases wherein the issue is expected to get addressed.

Conclusion

Convergence is an ongoing process. Going forward, keeping in view further developments in the issuance of new/revised IFRS, the carve-outs would be closely monitored and discussed with IASB. The objective is to place the Indian Accounting Standards at par with IFRS so that the Indian corporates and the accounting professional reap the benefits of global accounting standard. ■

Consolidated Financial Statements under Ind AS 110: Implementation Issues



Indian Accounting Standards (Ind ASs) were issued by the Ministry of Corporate Affairs (MCA) in accordance with India's roadmap for convergence with the (International Financial Reporting Standards) IFRSs, however, the effective date was not notified. After a lull of nearly three years, the convergence process gained momentum again with Union Budget speech on 10th July, 2014, of Union Finance Minister, to quote: There is an urgent need to converge the current Indian accounting standards with the International Financial Reporting Standards (IFRS). The benefits of convergence are well-accepted and, thus, this is a welcome step and a continuation of recent initiatives to move Indian reporting and governance to international norms. One of the areas where the Ind ASs will have a significant impact is consolidation. Recently, the Institute of Chartered Accountants of India (ICAI) issued a draft of the Ind AS 110, Consolidated Financial Statements, based on the IFRS 10. It is expected that the Ind ASs which will be notified by the Central Government will include the Ind AS 110. The author duo has tried to discuss the concerns with regard to the consolidated financial statements in this article, vis-à-vis the Ind AS 10, and its implementation. Read on...

Background

Indian Accounting Standards (Ind ASs) were issued by the Ministry of Corporate Affairs (MCA) in accordance with India's roadmap for

convergence with the International Financial Reporting Standards (IFRS). However, the effective date was not notified. After a lull of nearly three years, the convergence process gained momentum again with the Union Budget speech on 10th July, 2014, when the Union Minister of Finance, Shri Arun Jaitley, said:

"There is an urgent need to converge the current Indian accounting standards with the International Financial Reporting Standards (IFRS). I propose for adoption of the new Indian



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(The author duo are members of the Institute who may be contacted at archana.bhutani@yahoo.co.uk.).

IFRS Convergence

Accounting Standards (Ind AS) by the Indian companies from the financial year 2015-16 voluntarily and from the financial year 2016-17 on a mandatory basis. Based on the international consensus, the regulators will separately notify the date of implementation of AS Ind for the Banks, Insurance companies etc.....”

The benefits of convergence are well-accepted and, thus, this is a welcome step and a continuation of recent initiatives to move the Indian reporting and governance to the international norms. Though this is a good first step, it should be ensured that pitfalls are avoided that derailed the previous planned implementation in 2011. By moving forward with the implementation, India can play a significant role in accounting standard setting globally. Considering that the transition to Ind AS will significantly impact the financial reporting process, companies need to evaluate their structure, transactions, etc., to identify the impact of Ind ASs.

One of the areas where Ind ASs will have significant impact is consolidation. In 2011, the MCA had notified the Ind AS 27, which was based on the corresponding international standard as applicable then, i.e., IAS 27. To address the concerns arising out of the international financial crisis, the International Accounting Standards Board (IASB) has, in May 2011, issued the IFRS 10 (which has replaced the earlier Standard namely IAS 27 and SIC 12 on *Consolidation-Special Purpose Entities*), which is effective for the annual periods beginning on or after 1st January, 2013, for the companies following the IFRS. Recently, the Institute of Chartered Accountants of India (ICAI) issued a draft Ind AS 110, *Consolidated Financial Statements* (“Ind AS 110”), based on the IFRS 10. It is expected that the Ind ASs which will be notified by the Central Government will include the Ind AS 110 and the scope of Ind AS 27 would be limited to the accounting and disclosure of investments in the subsidiaries in separate financial statements.

Some of the significant aspects of Ind AS 110 include:

Single consolidation model	Ind AS 27 had two different consolidation models: one for special purpose entities and another for all other investees. Ind AS 110 is based on a single consolidation model applicable to all investees.
Different ‘control’ indicators	Ind AS 27 had two different consolidation models: one for special purpose entities and another for all other investees. Ind AS 110 is based on a single consolidation model applicable to all investees. <i>De facto control:</i> Determination of control under Ind AS 110 is now based on ‘<i>de facto control</i>’ rather than an accounting policy choice under Ind AS 27.
Power	To have power, it is necessary for the investor to have existing rights that give it the current ability to direct the activities that significantly affect the investee’s returns, i.e., the relevant activities. This definition of power is based on <i>ability</i>. Therefore, power does not need to be exercised. Conversely, evidence that the investor has been directing the relevant activities is not in itself conclusive in determining that the investor has power over the investee.
Exposure to variability in returns	Exposure to variability in returns is a broader concept than ownership benefits or risks and rewards. Returns can include not only ownership benefits such as dividends and changes in the value of the investment, but also fees and exposures to loss from providing credit/liquidity support, remuneration for servicing assets or liabilities, tax benefits, economies of scale, cost savings, access to future liquidity and other synergies.
Linkage: Principal vs. agent	Ind AS 110 has explicitly introduced the concept of ‘principal vs. agent’. The ‘principal vs. agent’ analysis could be particularly important for industries such as funds, asset management and real estate.
Consolidation procedure	Accounting requirements for subsidiaries in consolidated financial statements are carried forward from Ind AS 27.

Implementation issues

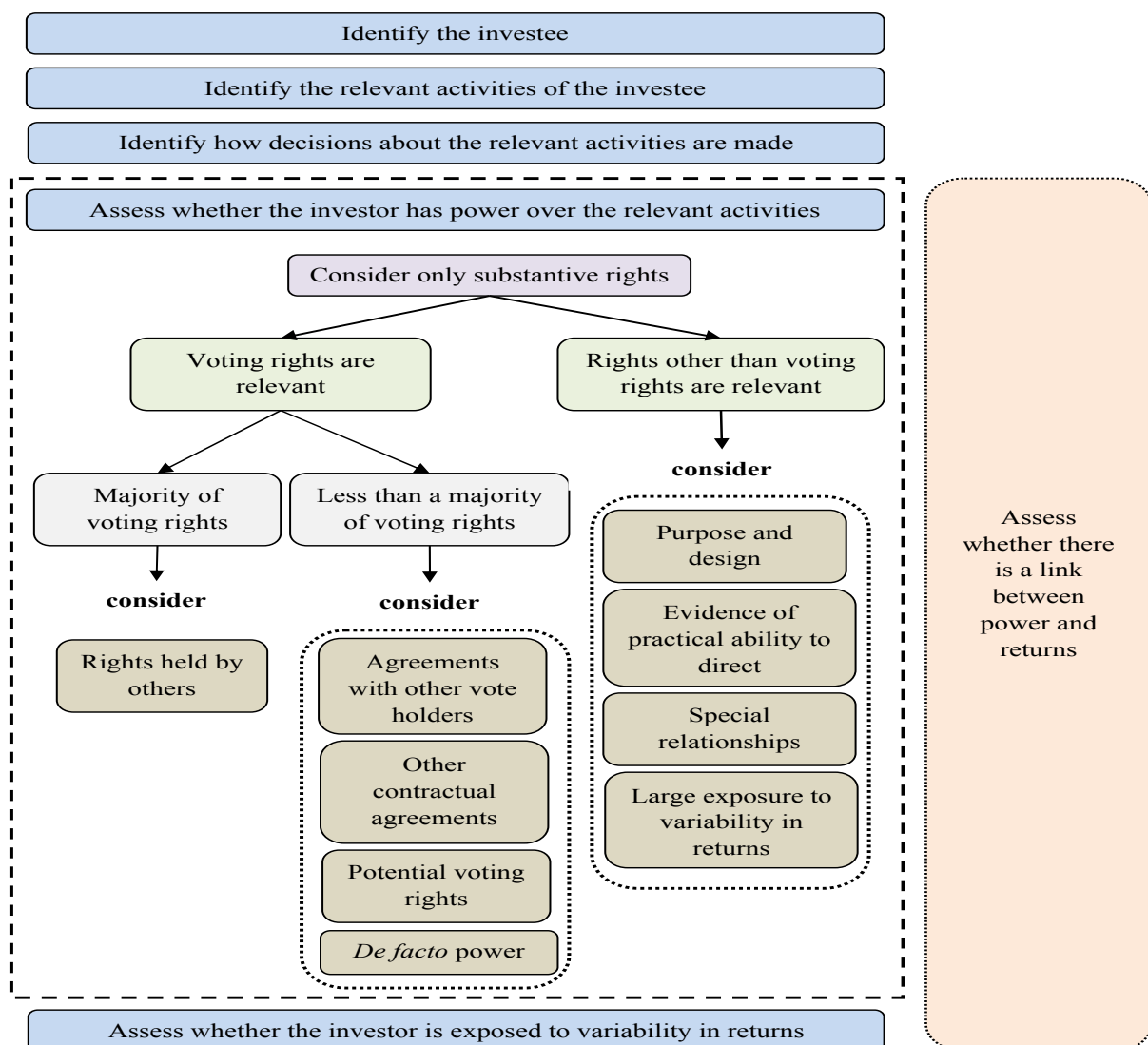
Certain significant aspects of the *control* model that require consideration while implementing Ind AS 110 are discussed below.

Determination of control: judgemental approach

Ind AS 110 comprises a series of indicators of control, but no hierarchy is provided. It requires an analysis of all facts and circumstances and the application of judgement in making the control assessment, *e.g.*, the *Standard* emphasises the need to understand the design and purpose of an investee and stresses the need to take into account evidence of power, which are likely to be highly judgemental areas. Further, the Ind AS 110 has different control indicators for situations in which voting and potential voting rights are important

to the determination of power over an investee and for the situations in which other factors are important. In the early stages of application of the Ind AS 110, it is unclear whether investees for whom factors other than voting rights are important are more similar to the special purposes entities than to the variable interest entities, or entirely different.

The analysis under Ind AS 110 is more *qualitative* than *quantitative*. Therefore, the application of Ind AS 110 is likely to be difficult across many sectors and the first-time implementation efforts may be significant, including staff training, impact assessment, policy development, *etc.* The diagram below is a general presentation of the analysis to be performed in order to determine whether the rights held by the investor give it a control over the investee:



IFRS Convergence

Power

Identify the investee

Ind AS 110 introduces the concept of *silos*. Generally, control by an investor is assessed at the level of legal entity. However, in some cases, an investor has power over only specified assets and liabilities of an entity and treats that portion of the entity as a deemed separate entity, *i.e. silo*. This would apply only if:

- (a) In substance, the assets, liabilities and equity of the *silo* are separate from the overall entity such that none of those assets can be used to pay other obligations of the entity and those assets are the only source of payment for specified liabilities of the *silo*; and
- (b) Parties other than those with the specified liability, have no rights or obligations related to the specified assets or to residual cash flows from those assets.

Silos are normally expected to be present within the entities that are currently special-purpose entities, in the context of multi-seller special-purpose entities and more generally in the financial services sector. Ring-fenced assets also sometimes arise in the real estate sector.

Identify relevant activities of an investee

Relevant activities of the investee are those activities of the investee that significantly affect the investee's returns. The concept has been introduced in Ind AS 110 to determine activities which should be considered while assessing control. Determining the relevant activities will be highly judgemental area in some cases. It becomes even more complicated in situations where several investors each direct different relevant activities. In such situations, the investor that has the current ability to direct the activities that most significantly affect the returns of the investee has power over the investee.

In many investees, a range of operating and financing activities significantly affect returns: sales of goods, management of financial assets,

acquisitions and disposals of operating assets, management of research and development activities, and determination of the funding structure. In such cases, the decisions affecting the returns may be linked to decisions such as establishing operating and capital decisions, *e.g.*, budgets and appointing, remunerating and terminating key management personnel or other service providers.

Identify how decisions about relevant activities are made

Determining how decisions about the relevant activities are made is a key in the Ind AS 110 approach and represents a *gating question* in the control analysis. This gating question seeks to determine whether voting rights are relevant in assessing whether the investor has power over the investee, *i.e.*, the investee is controlled by means of voting instruments; or voting rights are not relevant in assessing whether the investor has power over the investee, *i.e.*, the investee is controlled by means of other rights. Depending on the answer to this gating question, a different analysis will be performed to assess which investor has power over the investee.

Control based on substantive rights

For the purpose of assessing power, only substantive rights held by the investor and other parties are considered. An investor is explicitly required to consider both substantive rights that it holds and substantive rights held by others. Determining whether the rights are substantive requires a judgement taking into account of all available facts and circumstances. Factors to consider include:

- Whether there are barriers that prevent the holder from exercising the rights, *e.g.*, financial penalties or incentives;
- Whether several parties need to agree for the rights to become exercisable or operational; and
- Whether the party that holds the rights would benefit from their exercise.

Potential voting rights

When assessing control, potential rights are considered only if they are substantive, as is the case for all voting rights (whereas under Ind AS 27, *currently exercisable* potential voting rights was taken into account). The intent of the management is not considered.

The purpose and design of potential voting rights also are considered in the analysis, as well as the

To address the concerns arising out of the international financial crisis, the International Accounting Standards Board (IASB) has, in May 2011, issued the IFRS 10 (which has replaced the earlier Standard namely IAS 27 and SIC 12 on Consolidation-Special Purpose Entities), which is effective for the annual periods beginning on or after 1st January, 2013, for the companies following the IFRS.

Relevant activities of the investee are those activities of the investee that significantly affect the investee's returns. The concept has been introduced in Ind AS 110 to determine activities which should be considered while assessing control. Determining the relevant activities will be highly judgemental area in some cases.

purpose and design of any other involvement that the investor has with the investee.

This is likely to change the control conclusion in some cases as compared to the Ind AS 27: currently, the exercisable potential voting rights may not be considered substantive, *e.g.*, if the exercise price is deeply out of the money; and potential voting rights not currently exercisable might be considered substantive if the rights are exercisable when the decisions about the direction of the activities that significantly affect the returns need to be made. Thus, whether potential voting rights are currently exercisable is still relevant in the Ind AS 110, it is not a determinative factor on its own as it was under the Ind AS 27. In fact, the current exercisability is not even a necessary condition under the Ind AS 110. In the Ind AS 27, the test was of *currently exercisable*. This test was more black and white, but the Ind AS 110 would require more judgement to determine whether rights are substantive or not, *e.g.*, it may not be easy to determine what a *barrier to exercise* is, and at what level do you assess that to be a barrier? In case the company has majority shareholding but the other shareholders have potential voting rights, how would the information be gathered to assess whether there are significant barriers for the other shareholders to exercise the potential voting rights to determine whether or not the company has control?

Example: A Ltd. and B Ltd. hold 40% and 60% respectively in the C Ltd. A Ltd. has an option to purchase further 20% voting rights in C Ltd. from B Ltd. The option is 'in the money' and is currently exercisable. However, if A Ltd. exercises the option, it must sell its stake in D Ltd. (which is unrelated to B Ltd.) due to certain anti-competition laws. D Ltd. provides three times more return on investment compared to C Ltd. In this case, even though the option available to A Ltd. is currently exercisable, there is lack of substantive potential voting rights due to higher returns from D Ltd. Thus, A Ltd. would not consolidate C Ltd., *i.e.*, C Ltd. would be consolidated by B Ltd.

De facto control

Unlike the Ind AS 27, which permitted a company to elect to assess control using power to govern model or *de facto* control model; *de facto* circumstances are explicitly taken into account when assessing power under the Ind AS 110. Ind AS 110 could result in more entities to be consolidated by a less-than-majority shareholder if international experience [where many entities currently assess the ability to control based on a legal or contractual analysis under the IAS 27 (corresponding to the Ind AS 27)] is considered. Compared to the '*de facto* control' model under the Ind AS 27, the application of implementation guidance in Ind AS 110 could lead to a different conclusion. The concept of *de facto* control under the Ind AS 27 did not necessarily take into account the active or passive nature of other shareholders, but rather considers how many other shareholders are expected to vote in the same way as the investor.

Determining whether an investor *de facto* controls an investee will be highly judgemental: this includes determining the point at which an investor's shareholding in an investee is *sufficient* and the point at which other shareholdings' interests are *sufficiently dispersed*. Accordingly, in practice, when the investor holds less than a majority of voting rights, determining the date on which the investor obtains *de facto* control of the investee may be a challenging issue. At the date on which an investor initially acquires less than a majority of voting rights in an investee, the investor may assess that it does not have *de facto* control over the investee if it does not know how other shareholders are likely to behave. As time passes, the investor obtains more information about other shareholders, gains experience from shareholders' meetings and may ultimately assess that it has *de facto* control over the investee. Determining the point at which this happens is likely to require significant judgement.

Factors that are important in assessing *de facto* power are:

Primary factors	• Size of the investor's holding of voting rights relative to size and dispersion of holdings of other vote holders • Potential voting rights • Other contractual arrangements
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IFRS Convergence

Secondary factors

- Voting patterns at previous shareholders meetings: This refers to passiveness of other voters; the historical voting pattern is not relevant
- Additional factors such as evidence of power, special relationships and the level of the investor's exposure to variability in returns

Example: A Ltd. holds 35% of voting rights of B Ltd. and three other investors each hold 8% of the voting rights in B Ltd. The remaining 41% is widely dispersed, with no other shareholder holding more than 1%. There are no other arrangements that affect decision making. In this case, considering the absolute size of A Ltd.'s holding and the relative size of the other shareholdings alone is not conclusive to determine whether A Ltd. has sufficient rights to give it power. So far, A Ltd. has been directing the relevant activities of B Ltd. as a sufficient number of other shareholders voted in the same way as A Ltd. However, the phrase 'voting patterns in previous shareholders' meetings' under Ind AS 110 requires consideration of the number of shareholders that typically come to the meetings to vote, *i.e.*, the usual quorum in shareholders' meetings, and not how the other shareholders vote, *i.e.*, whether they usually vote the same way as the investor. Decisions about relevant activities of B Ltd. require the approval of a majority of votes cast at relevant shareholders' meetings. At recent shareholders' meetings, 75% of the voting rights have been cast, *i.e.*, A Ltd. holds 47% (35/75) of the 'active' voting rights in S. The active participation of the other shareholders at recent relevant shareholders' meetings indicates that A Ltd. does not have the practical ability to direct the relevant activities unilaterally. Thus, A Ltd. does not have any *de facto* control over B Ltd.

Also, if the date on which *de facto* control is obtained is later than the date on which the

investment in the investee is acquired originally, then the investor may need to do acquisition-like accounting twice if the investee meets the definition of *business*:

- First, when the initial investment is acquired, if the investor has significant influence over the investee and needs to allocate the cost to the underlying net assets of the investee to apply the equity method; and
- Again, when *de facto* control is obtained, to apply the requirements of the Ind AS 103 on *Business Combinations* for step acquisitions. This could also result in a gain being recognised in profit or loss at that date.

Rights other than voting rights

When voting rights are not relevant to the analysis, investors consider the purpose and design of the investee and the following factors:

- Evidence of practical ability to direct the relevant activities;
- Indications of special relationships with the investee; and
- Whether the investor has a large exposure to variability in returns.

Example: An investee is designed so that its only activity is to purchase receivables and service them on a day-to-day basis. The only activity that can significantly affect the returns is managing those receivables when default occurs. An investor may have the current ability to direct this activity because it is agreed in a separate agreement that it will purchase the receivables if and when they default. In this situation, the terms of the agreement are integral to the overall arrangement and the establishment of the investee. Therefore, the agreement would be considered together with the founding documents of the investee when assessing power. In this case, the investor would have power over the investee.

Example: X Ltd. has decided to start operating partly through a franchise network. To help start operations, Y Ltd. (a structured entity) is nominally capitalised (Y Ltd. has no real equity). 80% of the equity of Y Ltd. belongs to Z Ltd. (a banking company) and remaining 20% is held by X Ltd. Debt requirement of Y Ltd. is financed by Z Ltd. Y Ltd. provides loans to franchisees based on their business needs as determined by X Ltd. Z Ltd. services the loans on a day-to-day basis. In this case, based on the rights discussed above, it can be concluded that even though Z Ltd. holds 80% of the equity of Y

Ind AS 110 could result in more entities to be consolidated by a less-than-majority shareholder if international experience (where many entities currently assess the ability to control based on a legal or contractual analysis under the IAS 27 [corresponding to the Ind AS 27]) is considered.

Ltd., control of Y Ltd. vests with X Ltd. Thus, X Ltd. (instead of Z Ltd.) should consolidate Y Ltd.

Exposure to variability in returns

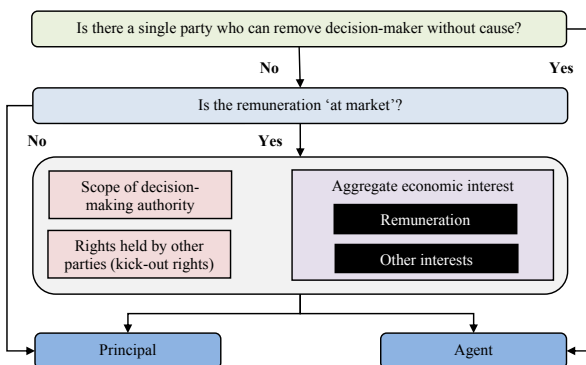
In assessing whether an investor controls an investee, the investor considers whether it is exposed, or has rights, to variability in returns from its involvement with the investee, *e.g.*, holding a bond with fixed interest payments is a source of variable returns because the interest payments are subject to default risk and expose the investor to the credit risk of the bond's issuer. The variability of the returns depends on the credit risk.

It appears that an investor will more easily meet the Ind AS 110 criterion of *being exposed* or having rights to variable returns from an investee than the Ind AS 27 criterion of obtaining the *majority* of the benefits of the activities of the investee.

Link between power and returns

Ind AS 110 introduces the concept of *delegated power*. The decision-maker needs to assess whether it is acting as a principal or as an agent on behalf of other investors when directing the activities of an investee. If the investor has the power to direct the activities of an entity that it manages to generate returns for itself, then it is a principal. If it is engaged to act on behalf and for the benefit of another investor, then it is acting as an agent and does not control the investee when exercising its decision making authority.

The following diagram illustrates the steps that are followed by a decision-maker while analysing whether it is acting as a principal or an agent:



Thus, unless a single party holds substantive rights to remove the decision-maker without cause or remuneration is not at market, the relationship with other parties and other factors stated in the

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diagram above are considered. Different weightings are applied to each of the factors depending on particular facts and circumstances.

- When a single party holds substantive rights to remove the decision-maker without cause, this is sufficient to conclude that the decision-maker is an agent. However, if more than one party needs to act together to remove the decision-maker, then this fact alone is not sufficient to conclude that the decision-maker is a principal or that the removal rights are not substantive. Such rights are considered in the overall evaluation of whether the decision-maker is acting as a principal.
- For the decision-maker to be an agent, its remuneration needs to:
 - be commensurate with the services provided; and
 - include only terms, conditions or amounts customarily present in arrangements for similar services and level of skill negotiated on an Arms' Length basis.

If the remuneration does not meet both of these criteria, then the decision-maker is not an agent. If the remuneration meets these two criteria, then the decision-maker can be, but is not necessarily, an agent as the other factors also would need to be considered.

- If the decision-maker holds other interests in an investee (*e.g.*, investments in the investee or guarantees provided in respect of the performance of the investee), this may indicate that it is a principal.
- The greater the magnitude of and variability associated with its economic interests, the more likely the decision-maker is a principal.

Application to fund managers

The above requirements would specifically impact fund managers. It appears that the analysis for fund

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managers will come down to a combined assessment of just two key indicators: kick-out rights and aggregate economic interests.

Measure aggregate economic interest	The fund manager needs to identify a key measure of aggregate economic interest. It appears that this measure is the variability of expected returns, measured at performance levels at which a performance fee kicks in.
Assess strength of kick-out rights	It appears that the strength of kick-out rights may be assessed by categorising without-cause kick-out rights into several classes of strength. The number of investors that need to act together would be the main factor in determining those categories. While the numbers of investors is most important, barriers to exercising the rights also need to be considered when determining the strength of a kick-out right.
Assess key indicators in combination	There is a trade-off between kick-out rights and aggregate economic interest. So, the stronger the kick-out rights are, the more aggregate economic interest can be accepted, <i>i.e.</i>, higher chances of decision maker being a principal. Conversely, the weaker the kick-out rights are, the less aggregate economic interest can be accepted, <i>i.e.</i>, lower chances of decision maker being an agent. It may be appropriate to use a matrix, grouping together categories of kick-out right strength. For each category, the fund manager could identify a level of aggregate economic interest for which the entity is clearly an agent and another for which it is clearly a principal. A marginal zone would then appear between these points. This can be depicted using the following: The diagram is a rectangular matrix with 'Kick-out rights' on the vertical axis (Low at bottom, High at top) and 'Aggregate economic interest' on the horizontal axis (Low on left, High on right). The matrix is color-coded: green for 'Agent' (top-left), yellow for 'Marginal zone' (center), and orange for 'Principal' (bottom-right).
Significant judgement still required at the margins	Exposure to variability in returns is a broader concept than ownership benefits or risks and rewards. Returns can include not only ownership benefits such as dividends and changes in the value of the investment, but also fees and exposures to loss from providing credit/ liquidity support, remuneration for servicing assets or liabilities, tax benefits, economies of scale, cost savings, access to future liquidity and other synergies.

Protective rights are excluded in assessing whether an investor has power over an investee. However, the protective rights may become exercisable when certain events or conditions arise, *e.g.* when a lender breaches a loan covenant. In such case a reassessment of control may be required, because there has been a change in the factors that are considered in assessing whether an investor has power over the relevant activities of the investee.

Similarly, the *principal vs. agent* analysis could be particularly important for industries such as funds, asset management, real estate and e-retail business.

Assessment on continuous basis

The assessment of control is performed on a continuous basis and an investor reassesses whether it controls an investee if facts and circumstances indicate that there are changes to one or more of the elements of the control model.

Troubled debt

Protective rights are excluded in assessing whether an investor has power over an investee. However, the protective rights may become exercisable when certain events or conditions arise, e.g., when a lender breaches a loan covenant. In such case a reassessment of control may be required, because there has been a change in the factors that are considered in assessing whether an investor has power over the relevant activities of the investee. The key issue in reassessing control in troubled debt scenarios is whether the previously protective rights are now substantive and could, therefore, potentially lead to power. It appears that this would require focus on a combination of the following:

- How significant are a lender's rights in relation to the relevant activities of an investee?
- What is the effect of a borrower's economic circumstances on an investee's relevant activities?

These factors would need to be considered together in reaching a determination, making a judgement based on the facts and circumstances of the specific case. As the lender's rights become more significant and the effect of the borrower's economic circumstances on the investee's relevant activities becomes more significant, the likelihood increases that the lender now has power over the relevant activities of the investee.

The above may have implications for the lending companies.

Detailed disclosures

Disclosures under the Ind AS 110 are much broader than the disclosures required under the Ind AS 27. Thus, there is a need to consider the increased disclosures and to assess whether the systems are designed to provide such information. ■



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First-Time Adoption of Indian Accounting Standards: Issues in Implementation



The Union Finance Minister, in his last budget speech, highlighted the need and urgency for India to move to Ind AS. He announced that adoption of the Indian Accounting Standards (Ind ASs) will be voluntary from 2015-16 and mandatory from 2016-17. To meet this objective, the National Advisory Committee on Accounting Standards (NACAS) has already been reconstituted by the Ministry of Corporate Affairs (MCA) of the Government of India, vide its notification dated 18th September, 2014. It is expected that all the converged Ind ASs will be in place by December 2014. The author in his article gives a lucid analysis and insight into the issues arising out of first-time implementation of the Indian Accounting Standards and the way-forward, while focusing on the requirements of the Ind AS 101 and highlighting the challenges in meeting the same. Read on...

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of India has already reconstituted the National Advisory Committee on Accounting Standards (NACAS), vide its notification dated 18th September, 2014. All the converged Accounting Standards are expected to be in place by December 2014.

However, success in the implementation of Ind ASs depends on the availability of adequate tools and resources and the development of expertise by professionals as well as a considerable investment of time and money on part of the management.



CA. Sanjeev Singhal

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Ind AS 101 on First-Time Adoption of Indian Accounting Standards

The Institute of Chartered Accountants of India (ICAI) recently issued an exposure draft of the

Ind AS 101 (Revised), which deals with the first-time adoption of Ind ASs. The primary objective of this Ind AS is to provide a suitable starting point for accounting in accordance with the Ind ASs.

First-time adoption has its own challenges. One has to undergo the exercise for making the opening Ind AS balance sheet on the date of transition. This is the starting point for adoption of the Ind ASs. For this purpose, an entity should, in its opening Ind AS Balance Sheet:

- (a) recognise all assets and liabilities whose recognition is required by Ind ASs;
- (b) not recognise items as assets or liabilities if Ind ASs do not permit such recognition;
- (c) reclassify items that it recognised in accordance with previous GAAP as one type of asset, liability or component of equity, but are a different type of asset, liability or component of equity in accordance with Ind ASs; and
- (d) apply Ind ASs in measuring all recognised assets and liabilities.

It may also be noted, here, that opening balance sheet is to be prepared on the date of transition, *i.e.*, the beginning of the earliest comparative period presented, *e.g.*, if an entity adopts Ind AS from 2016-17, its date of transition will be 1st April, 2015 and, thus, it will be required to prepare its opening Ind AS balance sheet on 1st April, 2015.

For making the opening Ind AS balance sheet, Ind-AS grants exemptions in certain areas where the cost of compliance may exceed the benefits. These exemptions are optional and not mandatory. You may choose not to avail the exemption, *e.g.*, you may not restate your past business combinations that have occurred before the date of transition to Ind-AS. However, if you choose to restate any of your past business combinations, you will have to restate all your business combinations that have taken place on or after that date. An entity, thus, has to evaluate all these exemptions and understand the impact these will have on its financials in the short run, as well as in the long run.

In the paras that follow, we will discuss briefly the voluntary exemptions and mandatory exceptions:

Voluntary Exemptions

S. No.	Area	Exemption
1.	Share-based payment transactions	A first-time adopter may choose not to apply Ind AS 102 <i>Share-based payment</i> to equity instruments that vested before the date of transition to Ind ASs.
2.	Insurance Contracts	An entity may apply Ind AS 104 Insurance Contracts for annual periods beginning on or after date of transition to Ind ASs.
3.	Deemed cost in case of PPE, intangible assets, investment property	Retrospective application of cost model requires an entity to measure the carrying amount on the date of transition as cost, less any accumulated depreciation and any accumulated impairment losses under the cost model in Ind-AS 16. Ind AS 101 gives an option to an entity to use, instead of cost as computed above, one of the following amounts as the deemed cost of an item of property, plant and equipment: a. <i>fair value at the date of transition to Ind-ASs</i> b. <i>a revaluation in accordance with previous GAAP if the revaluation was, at the date of the revaluation, broadly comparable to:</i> (i) <i>fair value; or</i> (ii) <i>cost or depreciated cost in accordance with Ind-ASs, adjusted to reflect changes in a general or specific price index.</i> c. <i>fair value at the date of an event such as a privatisation or initial public offering (available only for PPE).</i> d. <i>use transition date carrying values (after making necessary adjustments in respect of decommissioning liabilities). This option is not available under IFRS 1 issued by IASB and, hence, is a carve-out, if availed.</i>

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S. No.	Area	Exemption
4.	Leases	Entities may determine whether arrangements in existence on the date of transition to Ind-ASs contain leases (Appendix C to Ind AS 17) by applying paragraphs 6-9 of Appendix C to Ind-AS 19 to those arrangements on the basis of facts and circumstances existing on that date.
5.	Cumulative translation differences	A first-time adopter may set: (a) the cumulative translation differences for all foreign operations to zero at the date of transition to Ind ASs; and (b) the gain or loss on a subsequent disposal of any foreign operation should exclude translation differences that arose before the date of transition to Ind ASs and include later translation differences.
6.	Investments in subsidiaries, joint ventures and associates	If a first-time adopter measures such an investment at cost in accordance with Ind AS 27, it can measure that investment at one of the following amounts in its separate opening Ind AS Balance Sheet: (a) cost determined in accordance with Ind AS 27; or (b) deemed cost. The deemed cost of such an investment will be its: (i) fair value at the entity's date of transition to Ind ASs in its separate financial statements; or (ii) previous GAAP carrying amount at that date.
7.	Assets and liabilities of subsidiaries, associates and joint ventures	If a subsidiary becomes a first-time adopter later than its parent, the subsidiary can, in its financial statements, measure its assets and liabilities at either: (a) the carrying amounts that would be included in the parent's consolidated financial statements, based on the parent's date of transition to Ind ASs, if no adjustments were made for consolidation procedures and for the effects of the business combination in which the parent acquired the subsidiary; or (b) the carrying amounts required by the rest of this Ind AS, based on the subsidiary's date of transition to Ind ASs. A similar election is available to an associate or joint venture that becomes a first-time adopter later than an entity that has significant influence or joint control over it. However, if an entity becomes a first-time adopter later than its subsidiary (or associate or joint venture) the entity should, in its consolidated financial statements, measure the assets and liabilities of the subsidiary (or associate or joint venture) at the same carrying amounts as in the financial statements of the subsidiary (or associate or joint venture), after adjusting for consolidation and equity accounting adjustments and for the effects of the business combination in which the entity acquired the subsidiary.
8.	Compound financial instruments	A first-time adopter may elect not to separate a compound financial instrument into separate liability and equity component if the liability component is no longer outstanding at the date of transition to Ind ASs

S. No.	Area	Exemption
9.	Designation of previously recognised financial instruments	- An entity is permitted to designate, at the date of transition to Ind ASs, any financial liability as at fair value through profit or loss provided the liability meets the criteria in paragraph 4.2.2 of Ind AS 109 at that date. - An entity may designate a financial asset as measured at fair value through profit or loss in accordance with paragraph 4.1.5 of Ind AS 109 on the basis of the facts and circumstances that exist at the date of transition to Ind ASs. - An entity may designate an investment in an equity instrument as at fair value through other comprehensive income in accordance with paragraph 5.7.5 of Ind AS 109 on the basis of the facts and circumstances that exist at the date of transition to Ind ASs.
10.	Fair-value measurement of financial assets or financial liabilities at initial recognition	An entity may apply the requirements in paragraph B5.1.2A (b) of Ind AS 109 prospectively to transactions entered into on or after the date of transition to Ind ASs.
11.	Decommissioning liabilities included in the cost of property, plant and equipment	Ind AS 16 requires specified changes in a decommissioning, restoration or similar liability to be added to or deducted from the cost of the asset to which it relates. A first-time adopter using this exemption is required to do only the following: - measure the liability as at the date of transition to Ind-ASs in accordance with Ind-AS 37; - to the extent that the liability is within the scope of Appendix A of Ind AS 16, estimate the amount that would have been included in the cost of the related asset when the liability first arose, by discounting the liability to that date using its best estimate of the historical risk-adjusted discount rate(s) that would have applied for that liability over the intervening period; and - calculate the accumulated depreciation on that amount, as at the date of transition to Ind-ASs, on the basis of the current estimate of the useful life of the asset, using the depreciation policy adopted by the entity in accordance with Ind-ASs.
12.	Financial assets or intangible assets accounted for in accordance with Appendix C to Ind AS 115 (Service Concession Arrangements)	- Changes in accounting policies are accounted for in accordance with Ind AS 8, <i>i.e.</i>, retrospectively. - If, for any particular service arrangement, it is impracticable for an operator to apply this Appendix retrospectively at the date of transition to Ind ASs, it should: - recognise financial assets and intangible assets that existed at the date of transition to Ind ASs; - use the previous carrying amounts of those financial and intangible assets (however previously classified) as their carrying amounts as at that date; and - test financial and intangible assets recognised at that date for impairment, unless this is not practicable, in which case the amounts should be tested for impairment as at the start of the current period.

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S. No.	Area	Exemption
13.	Extinguishing financial liabilities with equity instruments	A first-time adopter may apply the Appendix E of Ind AS 109 <i>Extinguishing Financial Liabilities with Equity Instruments</i> from the date of transition to Ind ASs.
14.	Severe hyperinflation	If an entity has a functional currency that was, or is, the currency of a hyperinflationary economy, it should determine whether it was subject to severe hyperinflation before the date of transition to Ind ASs. When an entity's date of transition to Ind ASs is on, or after, the functional currency normalisation date (the date on which the currency ceases to be subject to severe hyperinflation), the entity may elect to measure all assets and liabilities held before the functional currency normalisation date at fair value on the date of transition to Ind ASs. The entity may use that fair value as the deemed cost of those assets and liabilities in the opening Ind AS Balance Sheet.
15.	Joint ventures - transition from proportionate consolidation to the equity method	When changing from proportionate consolidation to the equity method, an entity should recognise its investment in the joint venture at transition date to Ind ASs. That initial investment shall be measured as the aggregate of the carrying amounts of the assets and liabilities that the entity had previously proportionately consolidated, including any goodwill (or the allocated share of goodwill, as the case may be) arising on acquisition. The balance of the investment in joint venture at the date of transition to Ind ASs, determined in accordance with above paragraph is regarded as the deemed cost of the investment at initial recognition.
16.	Joint operations—transition from the equity method to accounting for assets and liabilities	When changing from the equity method to accounting for assets and liabilities in respect of its interest in a joint operation, an entity shall, on the date of transition to Ind ASs, de-recognise the investment that was previously accounted for using the equity method and any other items that formed part of the entity's net investment in the arrangement in accordance with paragraph 38 of Ind AS 28 and recognise its share of each of the assets and the liabilities in respect of its interest in the joint operation, including any goodwill that might have formed part of the carrying amount of the investment.
17.	Transition provisions in an entity's separate financial statements	An entity that, in accordance with paragraph 10 of Ind AS 27, was previously accounting in its separate financial statements for its interest in a joint operation as an investment at cost or in accordance with Ind AS 109 should: - derecognise the investment and recognise the assets and the liabilities in respect of its interest in the joint operation. - provide a reconciliation between the investment derecognised, and the assets and liabilities recognised, together with any remaining difference adjusted in retained earnings, at the date of transition to Ind ASs.

S. No.	Area	Exemption
18.	Stripping costs in the production phase of a surface mine	A first-time adopter may apply the Appendix B of Ind AS 16 <i>Stripping Costs in the Production Phase of a Surface Mine</i> from the date of transition to Ind ASs. As at transition date to Ind ASs, any previously recognised asset balance that resulted from stripping activity undertaken during the production phase ('predecessor stripping asset') should be reclassified as a part of an existing asset to which the stripping activity related, to the extent that there remains an identifiable component of the ore body with which the predecessor stripping asset can be associated. If there is no identifiable component of the ore body to which that predecessor stripping asset relates, it should be recognised in opening retained earnings at the transition date to Ind ASs.
19.	Designation of contracts to buy or sell a non-financial item	Ind AS 109 permits some contracts to buy or sell a non-financial item to be designated at inception as measured at fair value through profit or loss. Despite this requirement an entity is permitted to designate, at the date of transition to Ind ASs, contracts that already exist on that date as measured at fair value through profit or loss but only if they meet the requirements of paragraph 2.5 of Ind AS109 at that date and the entity designates all similar contracts.
20.	Revenue from contracts with customers	A first-time adopter may use one or more of the following practical expedients when applying Ind AS 115 retrospectively: (a) for completed contracts, an entity need not restate contracts that begin and end within the same annual reporting period; (b) for completed contracts that have variable consideration, an entity may use the transaction price at the date the contract was completed rather than estimating variable consideration amounts in the comparative reporting periods; and (c) for all reporting periods presented before the beginning of the first Ind AS reporting period, an entity need not disclose the amount of the transaction price allocated to the remaining performance obligations and an explanation of when the entity expects to recognise that amount as revenue. A first-time adopter is not required to restate contracts that were completed before the earliest period presented. <i>A completed contract is a contract for which the entity has transferred all of the goods or services identified in accordance with previous GAAP.</i>
21.	Non-current assets held for sale and discontinued operations	A first time adopter can: (a) measure such assets or operations at the lower of carrying value and fair value less cost to sell at the date of transition to Ind ASs in accordance with Ind AS 105; and (b) recognise directly in retained earnings any difference between that amount and the carrying amount of those assets at the date of transition to Ind ASs determined under the entity's previous GAAP.

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S. No.	Area	Exemption
22.	Exemptions for business combinations	A first-time adopter may elect not to apply Ind AS 103 on " <i>Business Combinations</i> " retrospectively to past business combinations (business combinations that occurred before the date of transition to Ind-ASs). However, if a first-time adopter restates any business combination to comply with Ind-AS 103, it should restate all later business combinations and shall also apply Ind-AS 110 from that same date.

An entity should not apply these exemptions by analogy to other items.

An entity will need to carefully choose the above exemptions. It may be noted here that an entity can pick and choose from the above list of voluntary exemptions.

Mandatory Exceptions (From Retrospective Application of Other Ind ASs)

Ind AS 101 prohibits the retrospective application of the same aspects of other Ind ASs, which are:

- a) **Estimates:** An entity's estimates in accordance with the Ind-ASs at the date of transition to Ind-ASs should be consistent with estimates made for the same date in accordance with the previous GAAP (after adjustments to reflect any difference in the accounting policies), unless there is an objective evidence that those estimates were in error.
- b) **De-recognition of financial assets and financial liabilities:** A first-time adopter should apply the de-recognition requirements in Ind AS 109 prospectively for transactions occurring on or after the date of transition to Ind ASs unless the information needed to apply Ind AS 109 to financial assets and financial liabilities de-recognised as a result of past transactions was obtained at the time of initially accounting for those transactions.
- c) **Hedge accounting:** An entity should not reflect in its opening Ind AS Balance Sheet a hedging relationship of a type that does not qualify for hedge accounting in accordance with Ind AS 109. However, if an entity designated a net position as a hedged item in accordance with the previous GAAP, it may designate as a hedged item in accordance with the Ind ASs an individual item within that net position, or a net position if that meets the requirements in the paragraph 6.6.1 of Ind AS 109, provided that it does so no later than the date of transition to the Ind ASs.
- d) **Non-controlling interests:** A first-time adopter should apply the following requirements of Ind AS 110 prospectively:
 - i. the requirement that total comprehensive income is attributed to the owners of the parent and to the non-controlling interests even if this results in the non-controlling interests having a deficit balance;
 - ii. the requirements for accounting for changes in the parent's ownership interest in a subsidiary that do not result in a loss of control; and
 - iii. the requirements for accounting for a loss of control over a subsidiary, and the related requirements of paragraph 8A of Ind AS 105 *Non-current Assets Held for Sale and Discontinued Operations*. However, if a first-time adopter elects to apply Ind AS 103 retrospectively to the past business combinations, it should also apply Ind AS 110 in accordance with the paragraph C1 of Ind AS 101.

For making the opening Ind AS balance sheet, Ind-AS grants exemptions in certain areas where the cost of compliance may exceed the benefits. These exemptions are optional and not mandatory.

A first-time adopter should apply the de-recognition requirements in Ind AS 109 prospectively for transactions occurring on or after the date of transition to Ind ASs unless the information needed to apply Ind AS 109 to financial assets and financial liabilities de-recognised as a result of past transactions was obtained at the time of initially accounting for those transactions.



- e) **Classification and measurement of financial assets:** An entity should assess whether a financial asset meets the conditions in paragraph 4.1.2 or the conditions in paragraph 4.1.2A of Ind AS 109 on the basis of the facts and circumstances that exist at the date of transition to Ind ASs. However, under this requirement, some relaxations have been permitted on the impracticability grounds.
- f) **Impairment of financial assets:** At the date of transition to Ind ASs, an entity should use reasonable and supportable information that is available without undue cost or effort to determine the credit risk at the date that financial instruments were initially recognised and compare that to the credit risk at the date of transition to Ind ASs.
- g) **Embedded derivatives:** A first-time adopter should assess whether an embedded derivative is required to be separated from the host contract and accounted for as a derivative on the basis of the conditions that existed at the later of the date it first became a party to the contract and the date a reassessment is required by the paragraph B4.3.11 of Ind AS 109.

- h) **Government loans:** Except as permitted by the paragraph B11 of Ind AS 101, a first-time adopter should apply the requirements in Ind AS 109 and Ind AS 20 prospectively to the government loans existing at the date of transition to Ind ASs and should not recognise the corresponding benefit of the government loan at a below-market rate of interest as a government grant.

However, an entity may apply the requirements in Ind AS 109 and Ind AS 20 retrospectively to any government loan originated before the date of transition to Ind ASs, provided that the information needed to do so had been obtained at the time of initially accounting for that loan.

Challenges in First-Time Adoption

An entity, thus, has to evaluate all the aforementioned exemptions and understand the impact these will have on its financials in both short and long-run. Moreover, quite a few new accounting policies may require to be adopted. The previous policies may need modifications. The basis of judgements and estimates will need detailed working and understanding.

Besides, the first-time adoption will have the following challenges:

- a) **Regrouping/Reclassification:** Presently, items are regrouped or reclassified to confirm to the current year classification without any justification being provided in the financial statements. Under the Ind AS, in case any regrouping or reclassification is done, the same needs to be disclosed along with the reasons thereof.
- b) **Industry comparatives:** Now with Ind AS, not only the basis of quantitative data will change, the compiling and collation itself will become a major challenge. The comparison of present performance on Ind AS basis with the historical data prepared on Indian GAAP would be challenging.
- c) **Introduction of fair value concept:** A number of Ind ASs require that certain assets and liabilities have to be measured at their initial recognition and also at their subsequent measurement at their fair value and not at their cost. There are also a number of Standards where an option is given to use the fair value method or the cost method.

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d) **Introduction of time-value of money concept:**

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

e) **Awareness at board level:** Unless and until the board of directors themselves understand the Ind ASs, the buy in for Ind AS implementation will be difficult. Thus, the board needs to be aware about the impact Ind AS implementation will have on the entity's financial results, ratios, the remuneration packages, distributable surplus, etc.

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

g) **Internal changes:** Indian Accounting Standards will not only cast their shadow on the accounts department but influence other departments too. There will be new terms, new definitions for

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old terms, different ways of things done hitherto. These will entail changes in various internal processes and systems. There would also be a need to reconfigure accounting software. The way the budgets are drawn, the way performance is measured, the way performance is rewarded will require substantial changes. The MIS also has to follow Ind AS and cannot be based on old systems.

h) **Accounting policy changes:** Indian Accounting Standards entail major accounting policy changes in the areas like:

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

Way-Forward

The decision to converge the Indian accounting standards with the IFRSs will go a long way in the history of accountancy profession in India. Implementation of the Ind ASs involves challenges, but the change management can smoothen the process of implementation to some extent. Corporate sector needs to identify the day-to-day development that takes place in the IFRS and issues arising thereon. A robust plan along with a dedicated team is required to successfully implement the Ind ASs. Financial implications also need to be considered to ensure a smooth implementation of the Ind ASs. Governance and transparency are important and the cost associated with them will need to be managed. Changes that the existing systems would require to get set for transition should be analysed for sustainability. Further, a timely issuance of Ind ASs corresponding to the new and revised IFRSs is required, so that a sufficient time to understand the implications of standards is available to all the users. ■



Moreover, quite a few new accounting policies may require to be adopted. The previous policies may need modifications. The basis of judgements and estimates will need detailed working and understanding.

Impairment Loss Methodology under Ind AS 109 - Financial Instruments



As part of the renewed push on convergence of Indian Accounting Standards (Ind AS) with the International Financial Reporting Standards (IFRS), the exposure draft (ED) of the Ind AS equivalent of the IFRS 9 Financial Instrument has been issued recently. The Exposure draft of the Ind AS 109 is a replica of the IFRS 9, except for the exclusion of two parts that accompany the IFRS 9, i.e., Basis for Conclusions (BoC) and Implementation Guidance (IG). Impairment loss recognition and measurement methodology is a critical component of the Ind AS 109 Financial Instrument. The new methodology used in the Ind AS 109, will significantly change the current accounting issues, which include 'provision for non-performing asset, general provision for standard asset and provision for bad and doubtful debts'. The author in this article explains the concept of impairment loss recognition and methodology of Ind AS 109, which has received global attention in the light of the financial turbulence across the world. Read on...



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Exposure draft (ED) of Ind AS equivalent of IFRS 9 Financial Instrument, i.e., Ind AS 109, which has been issued recently, is a replica of the IFRS 9 except for the exclusion of two parts, i.e., Basis for Conclusions (BoC) and Implementation Guidance (IG). Impairment loss recognition and measurement methodology is a critical component of this Ind AS, which will significantly change the current accounting issues, *provision for Non-Performing Asset (NPA), general provision for standard asset and provision for bad and doubtful debts.*

IFRS Convergence

International Standard-IFRS 9

Consequent to the onset of global financial crisis (GFS) around 2008, a joint initiative of the International Accounting Standards Board (IASB) and the US national standard-setting body, Financial Accounting Standards Board (FASB), set up to reduce the complexity and improve accounting standards on the *Financial Instruments* (e.g., IAS 39), got accelerated.

During the GFS, the *Impairment Loss* methodology of IFRS and US GAAP was identified as one of the key weaknesses. Global bodies such as G20 and Financial Stability Board (FSB) took a serious note of this issue, and some of them labelled these existing impairment models as a *Too-Late-and-Too-Little* approach. The Impairment methodology finalised recently in July 2014 marks the completion of IFRS 9 and is the result of an extensive debate and deliberation of about the last five years. IFRS 9 is internationally mandatory for the accounting period on or after 1st January, 2018, but a voluntary early adoption is permitted. To address the implementation issues and guidance required, the IASB has recently formed a resource team called the *Impairment Transition Group* (ITG).

Scope of Ind AS 109 Impairment Methodology

Ind AS 109 Impairment requirements apply to certain category of *Financial Assets* (FAs) and *Financial Instruments* (FIs) given in the table below and **do not** apply to non-financial assets such as property, plant and equipment, intangibles, etc., which are addressed in other standards, e.g., Ind AS 36.

<i>FAs/FIs within scope of Ind AS 109</i>	<i>FAs/FIs within scope of other Ind ASs</i>
- FAs classified as measured at - Amortised Cost (AC) 'Fair Value through Other Comprehensive Income (FVOCI)' - Financial Guarantees and Loan Commitments to provide loan at below market interest rates	- Lease Receivables -Ind AS 17 Leases - Trade Receivables and Contract Assets-Ind AS 115 Revenue from Contracts with Customers - Loan Commitments- Ind AS 37 Provisions, Contingent Liabilities and Contingent Assets

FAs within amortised cost or FVOCI (fair value through other comprehensive income) category can be typically loans and advances or investments in bonds, debentures and other debt securities. Ind AS 109 impairment requirements also apply to certain commitments to extend credit and financial guarantee contracts. The reason behind the inclusion of these items is that such items do have credit risks similar to on-balance sheet exposures and these are also managed together; hence, it is single impairment model, which also removes complexity of multiple models.

FAs classified as FVOCI will be subject to these impairment loss requirements because fair-value gain/loss is not recognised in the profit or loss statement (P/L), but in a separate component within Equity-OCI (Capital & Reserves). But these requirements do not apply to equity investments classified as FVOCI using the irrevocable option at initial recognition.

Overall Approach and Theme Behind

IAS 39 followed an *Incurred Loss* approach wherein the impairment losses will be recognised only upon the occurrence of a credit-risk trigger or event indicating objective evidence of impairment, e.g. past due or default, significant financial difficulty and so on. Losses expected from the occurrence of future events, no matter how likely, were not to be recognised, i.e., no concept like general provision on standard assets. IFRS 9 differs and follows an *Expected Loss* Model:

Box 1-Expected Loss Approach based on '3 Bucket or 3 Stage' Model		
FAs Bucket based on 'Increase in Credit Risk' since initial recognition		
Stage 1	Stage 2	Stage 3
No significant increase in credit risk or FA that has low credit risk (e.g., above investment grade) at the reporting date	Significant deterioration in credit quality but do not yet reflect Stage 3 features 30 days past due is rebuttable presumption	Credit-impaired 90 days past due is rebuttable presumption of 'Default'
Impairment Loss Recognition Threshold		
12-Month ECL	Lifetime ECL	Lifetime ECL

Interest Revenue Recognition Method

Effective Interest Rate (EIR) on gross carrying amount	EIR on gross carrying amount	EIR on amortised cost amount
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Time Value of Money-Credit Loss computation is based on present value of estimated cash flows discounted at original EIR (or other specified rates)

There are substantial *disclosure* requirements but those are part of the Ind AS 107. Before we look at the above prescriptions in detail, let us understand a few fundamental concepts and techniques:

Information basis: Expected Credit Loss (ECL) is recognised and measured using information that is based *not* only on historical, current conditions and events, *but* also considering *forecast future information*. But, entities are not expected to use crystal ball to gaze the future.

Impairment loss allowance: Assessed at each reporting date and difference between the opening and closing balances is recognised in the P/L as impairment gain or loss.

ECL: ECL is defined as the weighted average of credit losses with the respective risks of a default occurring as the weights. Application guide (Paragraph B5.5.28) of the Ind AS 109 elaborates this, as the ECLs are a probability-weighted estimate of credit losses (*i.e.*, the present value of all cash shortfalls) over the expected life of the financial instrument.

Box 2 – Formulaic expression of ECL

Advanced approaches	Probability of Default (PD)	X	Loss given Default (LGD)	X	Exposure at Default (EAD)
Simple approaches*	Loss Rate or Provision %age*			X	Amount O/S

**vary based on categorisation: past due, asset quality, customers, regions, products.*

Credit Loss (CL): The standard defines CL as the difference between all contractual cash-flows that are due to an entity in accordance with the contract and all the cash-flows that the entity expects to receive

FAs within amortised cost or FVOCI (Fair Value through Other Comprehensive Income) category can be typically loans and advances or investments in bonds, debentures and other debt securities. Ind AS 109 impairment requirements also apply to certain commitments to extend credit and financial guarantee contracts.

(*i.e.*, all cash shortfalls), discounted at the original effective interest rate (or credit-adjusted effective interest rate for purchased or originated credit-impaired financial assets). Cash-flows expected will include recovery from borrower, liquidation of collateral/securities, guarantees and credit enhancements. Based on above definition, one can say that a CL reflects a component of the total ECL, *i.e.*, LGD component in Box 2 above.

Risk of default (RoD): This aspect occupies a central position in the new impairment model as it forms the basis of critical components, *i.e.*, assessment of significant increase in credit risk of FA, determining level of credit risk, *i.e.*, low or high and to differentiate measurement of 12-month ECL and lifetime ECL. RoD is a measurement of the FAs credit risk that does not require full estimation of ECL (Paragraph BC5.154 of BoC of IFRS 9). Conceptually, it is similar to PD component in Box 2, but under the IFRS, they may not always be the same. RoD can be assessed and expressed using *qualitative* criteria, *i.e.* simple rank ordering the FAs into buckets to differentiate credit risk or in explicit quantitative measures like PD or *risk ratings*, the latter may reflect total credit loss & not just RoD. *Because the RoD is a component of ECL and not the entire ECL, the standard makes it amply clear that if the entity does not apply the explicit PD approach as an input per se, such as in credit loss rate approach, it should be able to separate the changes in the risk of a default occurring from changes in other drivers of expected credit losses, such as collateral* (Paragraph B5.5.12 of Ind AS 109). Such a challenge to separate may arise in case of entities utilising rating systems that consider both the borrower-specific risk features (ability/willingness to repay) and facility-/transaction-/collateral-related risk factors, *e.g.* retail exposures risk grades under Basel II, Bank Loan /Issue Specific Rating of some external rating agencies. However, Illustrative Example 5 of IG of IFRS 9 indicates that if the collateral value has

IFRS Convergence

a strong correlation with the default rates, credit risk ratings that include such factors do not require any further separations.

12-month ECL: The standard defines it as the portion of lifetime expected credit losses that represent the expected credit losses that result from *default events* on a financial instrument *that are possible within the 12 months* after the reporting date.

Lifetime ECL: The expected credit losses that result from all possible *default events over the expected life* of a financial instrument.

Therefore, lifetime cash shortfalls that will result if a default occurs *within 12 months and anytime over entire expected life* after the reporting date are 12-month ECL and lifetime ECL, respectively. As can be seen from the above definitions, the differentiation between the two thresholds is solely based on a factor that drives the occurrence of default, *i.e.*, RoD and not on any other the basis (refer to Paragraph BC5.154 and 155 of BoC of IFRS 9). Now the question arises - can this factor 'RoD', which is similar to PD, be computed for different time horizons? Yes, it is a well-known credit risk philosophy that *longer the tenor higher the RoD or PD*. Therefore, it is possible to estimate RoD (like PD) over different time horizons, say occurrence of default over next 12 months (commonly called as *Point-in-Time PD*), over an economic (or credit) cycle (commonly called *Through-the-Cycle PD*) or over the entire life time of the exposure. The first two categories are widely used by many banks especially those following advanced approaches of the *Basel II Capital Adequacy Framework*. Another point to note here is that a *12-month ECL* is also not a pro-rata allocation of *lifetime ECL* using time-proportion basis. It is equally important to note that lifetime ECL does not mean RoD or PD is 100%, but it is based on assessed level of credit risk of individual FA

The standard defines CL as the difference between all contractual cash-flows that are due to an entity in accordance with the contract and all the cash-flows that the entity expects to receive, *i.e.*, all cash shortfalls, discounted at the original effective interest rate (or credit-adjusted effective interest rate for purchased or originated credit-impaired financial assets).

or counterparty (refer to Example 1 for clarity on the difference between the two).

Credit-impaired FAs: Prescriptions for determining credit-impaired items are similar to that of identifying impaired FA under the IAS 39 but there is more clarity and accuracy in Ind AS 109. A financial asset is credit-impaired when one or more events that have a *detrimental impact* on the estimated future cash flows of that financial asset have occurred. The standard's intention here is to say that there is near likelihood of default and incurrence of credit loss. The standard goes on to require that there has to be evidence of impairment based on observable data about certain events. The approach here and the credit-risk events cited are broadly the same as those used in identifying impaired FAs or NPAs in the banking world such as significant financial difficulty of the borrower or issuer, breach of contract such as default, possibility of bankruptcy or financial restructuring and so on.

Default: Meaning and definition of the term *Default* assumes high significance because segmentation of FAs, which drives ECL recognition and measurement, is dependent upon the assessment of level of and change in credit risk from the viewpoint of RoD. Considering the need for and prevalence of different approaches, the standard-setters prescribe that entities can adopt definitions used in their internal credit risk management purposes and use those criteria consistently. However, the standard stipulates a rebuttable presumption that default is assumed when FA is *90 days past due*, a threshold commonly accepted, including prudential regulators across the globe and used since a very long time. Further, entities have a flexibility to adopt longer threshold than 90 days past due based on FA type/ product specific definitions (*e.g.*, retail loans, contract receivables, agricultural loans, *etc.*), but have to justify the appropriateness of different default thresholds. Also, the use of materiality and practical considerations would be needed to suitably address the isolated one off instances of past due. It is pertinent to note that some of the NPA identification criteria prescribed in the Reserve Bank of India (RBI) Master Circular on *Prudential Norms* can be adopted here also.

ECL Recognition Approach Principles

Impairment-loss allowance is recognised for both

Considering major operational challenges for longer tenor FA, etc., the standard provides flexibility and accepts assessment based on comparison of RoD occurring over next 12 months, where default patterns are not concentrated at a specific point in time or significant payments obligations do not arise only beyond next 12 months.

credit-impaired and non credit-impaired (standard asset in Indian parlance) categories. However, the ECL recognition threshold (*i.e.*, 12-month or lifetime ECL) varies depending upon the change in credit risk (RoD) since initial recognition or level of credit risk at reporting date. The rationale for this approach is to capture the underlying economics of the transaction, while easing operating complexities like uncertainty about estimating lifetime ECL for FAs with no signs of increase in credit risk and avoiding excessive front loading of ECLs but addressing concerns of G20/ Others about delayed recognition of credit losses under the IAS 39 (Paragraph BC5.150 of BoC of IFRS 9).

In view of the operational complexities involved in tracking changes in credit risk for entities that do not have sophisticated credit-risk management systems, a simplified approach of ECL recognition has been permitted for the certain type of FAs, *viz.* trade receivables (both categories those having and not having significant financing component), contract assets (*receivables*) and lease receivables. For these FA types, entities have the option of having accounting policy choice to always measure and recognise *lifetime* ECL instead of a two-step process.

Mechanics of Determining Significant Increase in Credit Risk

The standard provides an extensive guidance, which at times is contradictory, necessitating appropriate interpretation. Four main principles can be deduced from the standard.

(i) *Change in Risk of Default (RoD)*: RoD or PD is one of the most relevant factors used to compute ECL. It was considered operationally simpler and better aligned with entities risk management practices to assess the change in credit risk-based on change in this factor only instead of tracking movement in the total amount of ECL. The standard lists down over 15 items that can be applied in assessing the changes

in credit risk, which include changes in internal and external price indicators, *e.g.*, interest rate, credit spreads, fair value, changes (expected or actual) in internal or external credit rating, adverse change in credit risk of other FIs of the same borrower, adverse changes in business, operating and regulatory environment, breach of covenants, past due, change in credit management approach for the FA (*e.g.*, account transferred to special monitoring cells, *etc.*). Entities can apply different approaches to different financial instruments, *e.g.*, a typical commercial bank can use the following approach:

Credit Exposure Type	Risk Assessment Tools
Corporate Lending	Internal Credit Risk Grade/Score
Investment Securities	Credit Rating by agencies like S&P
Retail Exposures	Credit Score (Application/Behavioural Scores)

Assessment of RoD over expected life of FA

When assessing change in credit risk, an entity is required to consider the RoD occurring over the expected life of FA and not over shorter period, say over next 12 months. Considering major operational challenges for longer tenor FA, *etc.*, the standard provides flexibility and accepts assessment based on comparison of RoD occurring over the next 12 months, where default patterns are not concentrated at a specific point in time or significant payments obligations do not arise only beyond the next 12 months.

Change in RoD since initial recognition, Modification (Restructuring) of cash flows

Assessment of significant increase in credit risk is by comparing RoD as of Initial Recognition to current reporting date and not from last reporting date to current reporting date. It is also not based on simple comparison of *absolute level* of credit risk as of two reporting dates. In case of modification (*e.g.* restructuring of facilities) assessment is by considering credit risk as of initial recognition, *i.e.* unmodified original terms and *not* as of recent modification date. Hence, there is no scope for *ever greening* of credit exposures.

Collective and individual assessment basis

There may be situations where a significant increase

in credit risk may not be noticeable at individual instrument level, *e.g.*, over different exposures on a single counterparty or such assessment may not be feasible at all such as large pool of retail loans. In such cases, the assessment can be performed on collective basis by grouping the FAs based on shared credit risk characteristics, examples of which are instrument type, credit-risk ratings, borrower/industry type, geography/region, collateral type, collateral value, *e.g.*, loan-to-value ratio (if they influence or drive the RoD), origination time and remaining maturity. Here, there is some similarity with the guidance in the IAS 39 for Collective Impairment Assessment. *The key purpose of grouping FAs based on shared credit risk characteristics should be to identify appropriate credit loss on timely basis.*

Counterparty versus individual FA

It is a well-known credit-risk management practice that in case of corporate and business entities, credit-risk assessment is performed at counterparty level and not at individual facility or instrument level. Generally, a comprehensive review of all credit facilities and credit-risk assessment is performed as part of annual facility renewal policy. The question is whether an entity can recognise lifetime losses on all exposures to a counterparty based on its credit assessment at counterparty level. Reading of paragraph BC5.166 to 167, BC5.260 of BoC, Illustrative Example 7 of IG of IFRS 9 and Paragraph B5.5.1 to 6 of IFRS 9, all give contradictory and unclear positions.

(ii) 30 days past due-rebuttable presumption of significant increase in credit risk

The standard does not explicitly prescribe Quantitative criteria as to what Significant increase in credit risk is. However, a few specific factors to bear in mind, highlighted by the standard are level (low or high) of credit risk at initial recognition, remaining tenor of FAs even if the credit rating is

same and credit risk is expected to decrease as the time elapses, *etc.*

More importantly, the standard prescribes a rebuttable threshold of 30 days past due which can act as *backstop* measure. This threshold appears to be very stringent, but one is allowed to adopt a higher threshold, say 60 days (or even 90+ days), if an entity is able to demonstrate with adequate evidence and information that there is no significant correlation between 30 days past due and RoD either at level of individual instrument or product type or customer type or region. However, this threshold cannot be pushed to a level that is used for defining default or credit-impaired category of FA.

RBI's regulatory prescriptions (Part C of Master Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances) to identify and monitor distressed (special mention accounts-SMA0, SMA1, SMA2) exposures based on past due status would be helpful here.

(iii) This assessment cannot be solely based on *past due information* unless other more forward-looking information is *not* available without undue cost and efforts.

(iv) *FIs that have low credit risk at the reporting date* In order to reduce the operational complexity and costs, the standard does not require recognition of *lifetime* ECL for FAs that have low credit risk at reporting date. In a way, in such cases, there is really no need to assess the change in credit risk since initial recognition. Here, entities can use internal credit rating or external credit rating or other globally accepted methodologies. As a guide, the standard states that external credit ratings upto *Investment Grade*, *e.g.*, BBB of S&P or its equivalent, may be considered as low credit risk.

Decrease in credit risk since initial recognition

At any reporting date, if it is identified that there is a decrease in credit risk from previously assessed level and it results in FA not meeting Stage 2 criteria or having low credit risk, ECL recognition will revert to *12-month* ECL threshold from *lifetime* ECL.

Overall, there are a number of areas that require development of robust policies and procedures, systems and close involvement of credit risk experts.

Prescriptions for determining credit-impaired items are similar to that of identifying impaired FA under the IAS 39 but there is more clarity and accuracy in Ind AS 109. A financial asset is credit-impaired when one or more events that have a detrimental impact on the estimated future cash flows of that financial asset have occurred.

Therefore, evaluation based on a range of possible outcomes and multiple scenarios would be appropriate to reduce uncertainty and lend higher reliability to the ECL amount. However, a large number of scenarios or outcomes are not expected always; at least, two outcomes are expected.

Measurement of ECL

- The standard prescribes uniform principles centered around *Three Factors* for measuring the ECL of all FAs regardless of credit risk level (stages).
- In view of the application of *time-value-of-money concept*, credit loss occurs even if the borrower repays full amount but later than the contractual due date or pays interest at a reduced rate than the original interest rate.

(1) Unbiased and probability-weighted outcome

The standard recognises the inherent nature of credit loss that it is subjective and judgemental and requires estimation, at times, using multifactor and holistic analysis (Paragraph B5.5.16 of Ind AS 109) by the relevant subject-matter experts. Therefore, evaluation based on a range of possible outcomes and multiple scenarios would be appropriate to reduce uncertainty and lend higher reliability to the ECL amount. However, a large number of scenarios or outcomes are not always expected; at least, two outcomes are expected. Another critical aspect to note is that impairment loss measurement is an unbiased estimated amount. It is not a worst case or best case scenario nor most likely outcome scenario.

The standard does not mandate any particular technique and method. It is not always necessary that sophisticated statistical models or complex mathematical exercises are required. The approaches depend upon the nature and complexity of credit-risk items and availability of data/information. Entities can use advanced techniques like an explicit use of PD, LGD and EAD for some type of exposures. Simple approaches like estimation based on average loss rates of a large group of items with shared credit risk characteristics would be a substitute for probability-weighted estimated amount. Similarly, practical expedients like *provision rate matrix* based on past due or other criteria are

acceptable. However, one has to bear in mind the requirement to suitably group the items to reflect shared credit risk features and to adjust the historical data for changes in current conditions and expected future conditions. Further, simpler approaches like loss rates, applied should also be able to differentiate between RoD for 12-month ECL and RoD for *lifetime* ECL, relevant for Stage1 and Stage 2 categories, respectively. Perhaps, entities may have to arrive at two loss rates.

Cash-flows from collaterals need to reflect timing of receipt, cost of repossession/selling those bearing in mind the legal and market factors. In case of undrawn loan commitments, estimation shall take into account the period over which entity will be exposed to credit risk and shall not restrict it to contractual notice period to withdraw facilities. A concept similar to computation of *Exposure At Default* (EAD) in the banking world can be applied here.

Credit-risk management and recovery or collection departments will play a major role in this estimation process. Provision percentages prescribed by RBI under *Prudential Norms* may be used, provided those are supported by justifiable and suitable data/facts about risk of default and amount of losses and are not excessively influenced by other regulatory obligations like monetary and economic policy considerations.

(2) Time value of money—present value and cash flow discounting

This is an important conceptual change introduced by the Standard. Though it is not widely used in the measurement of loan-loss provisions in India, it is required by the RBI in certain circumstances, e.g., in case of provisioning for restructured NPAs, where there is an evidence of sacrifice of future interest on the loans. Prescriptions of the standard in this regard are:

- ECL shall be computed by discounting cash flows to the reporting date and not to some other date such as default date. The latter concept is used in estimating LGDs under Basel II Regulatory Framework.
- Discount rate shall be original EIR (or approximation thereof); latest EIR in case of variable (or floating) rate accounts. Also different specifications exist for lease receivables, loan commitments, financial guarantees and purchased or originated credit-impaired FAs.

IFRS Convergence

Under the Ind AS 109, there is no concept of NPAs like interest recognition on Cash Basis or Interest-in-Suspense approach. The standard requires that interest income on credit-impaired item should be recognised on using the original EIR but on amortised cost base.

(3) Reasonable and supportable information

Ultimately, availability of adequate, appropriate and reliable information is a prerequisite for achieving objectives of preparing and providing decision-useful reliable financial information to the users of financial statements. The standard requires that impairment loss methodology has to be based on *Reasonable and Supportable Information* at reporting date about past events, current conditions and forecasts of future economic conditions. Consistent with the underlying objective behind ECL model, entities have to consider expected economic scenarios. This is a paradigm shift from the IAS 39 prescriptions and also Prudential Regulations which assign greater weightage to historical data. Few important guiding principles laid down are:

- Entities are not expected to go on making exhaustive research but consider *Reasonable and Supportable Information* that is available without undue cost/effort.
- It is not always necessary to incorporate future forecast conditions over the entire expected life of FA. As the forecast horizon increases, data availability and reliability decreases and estimation becomes more judgmental and uncertain.
- Historical data is a base anchor but needs to be adjusted for changes in current and future conditions. In an emerging economy like India, this aspect is very critical.
- Internal as well as external sources can be used subject to adherence to comparability requirements.

For banks in India, external data bases such as loss data consortium CordeX (an initiative of Indian Banks Association) and internal data warehouses set up for Basel II purposes can be a significant source of information. Also, RBI being the repository of extensive data about banks can play a significant role in guiding the banks and disseminating the information.

Example 1: Stage 1 and 2 accounts-explicit use of advanced credit risk parameters-PD/LGD/EAD (refer to the appendix for detailed working)

Notes on detailed workings

1) Column 4 reflects counterparty risk grades/credit scores used by the entity to differentiate credit risk across exposures in internal risk management. Probability of Defaults (PD) is derived from these elements which form the basis of assessing change in RoD and level of credit risk. Accounts in Risk grades 'AAA to BBB' of Commercial banking division and credit scores up to 30 of Retail banking division are considered as 'Low Credit Risk'. Other categories are assessed for segregation into Stage 2 and Stage 3 items by considering the change in RoD, i.e., by comparing risk grade/credit score as of initial recognition of FA to those as of current reporting date.

2) Column 7 represents the extent of Loss in the event of default which is called Loss given Default (LGD). It takes into account time value of money and also recoveries from sale of non-cash collaterals such as building, plant etc. Therefore, values of non-cash collateral are not reduced while computing net exposures to avoid double counting of collateral values. LGD as well as PD are based on data used for Bank's Regulatory Capital requirements but adjusted to reflect Ind AS prescriptions such as discount rate.

3) Off balance sheet exposures are converted into credit equivalents using percentage called 'credit conversion factors (CCFs)' which were determined based on past experience. CCF's for loan commitments and Financial Guarantees were 100% and Import Letters of Credit 20.

Example 2: Stage 3 Credit-impaired account

A term loan of ₹1000/- carrying contractual interest 10% is determined to be credit-impaired as of 31-03-2001. Contractual interest rate and EIR are same. At time of impairment, there is an unpaid interest accrued and due of ₹100/-. The bank expects to

Consistent with the underlying objective behind ECL model, entities have to consider expected economic scenarios. This is a paradigm shift from the IAS 39 prescriptions and also Prudential Regulations which assign greater weightage to historical data.

receive an amount of ₹800/- towards principal in two annual installments (31-03-2002 and 31-03-2003) and additional ₹100/-towards accrued interest along with first installment. When the account was considered as credit-impaired, against this exposure there is an ECL provision balance of ₹40 on gross basis and ₹50 on present value basis.

		31-03-2001	31-03-2002	31-03-2003
1.1	Gross Carrying Amount	1,100	600	200
1.2	Amortised Cost (1.1-5)	785	364	0
2	Expected Future Cash Flow including interest - Gross	(900)	(400)	0
3	Present Value of Expected Future Cash Flow including interest- Discounted at original EIR (10%)	(785)	(364)	0
4	ECL Provision- Gross (1 -2)	200	200	200
5	ECL Provision - Discounted (1-3)	315	236	200
6	Additional ECL Provision due to discounting (5-4)	115	36	0
7	Reduction in discount provision (unwinding of discount)	-	79	36
		-	(115-36)	(36-0)
	Memorandum Contractual Interest Accrual for the year	100	100	60

Based on the above, upon initial impairment recognition as of 31-03-2001, an amount of ₹265 (₹315 less ₹50 opening ECL) will be charged to P/L as *Impairment Loss Charge* and credited to a Balance Sheet account called Impairment Loss Allowance. In practice, two separate b/s account may be maintained

to separately track *impairment loss allowance* on gross basis and discounted basis. In the second year (31/03/2002) and third year (31-03-2003), there is a reduction of ₹79/- and ₹36/-, respectively, in the impairment-loss allowance, which will be released to the P/L. This is effectively equal to interest income recognition on amortised cost balance of ₹785/ and ₹364 at EIR of 10%.

Interest Income Recognition for Credit-Impaired Assets

This aspect is one of the more controversial aspects and a radical change in the income recognition principles of credit-impaired asset. Under the Ind AS 109, there is no concept of NPAs like interest recognition on *Cash Basis* or *Interest-in-Suspense* approach. The standard requires that interest income on credit-impaired item should be recognised on using the original EIR but on *amortised cost* base. However, contractual interest income gets recognised on accrual basis only if the bank expects to receive cash flows that cover interest claim over and above the principal outstanding. But, such fact patterns will be rare resulting in similar end result like cash basis recognition. Secondly, interest income recognised will only be unwinding (release of additional provision created) of discounting effect due to passage of time.

Conclusion

Impairment Loss Methodology of Ind AS 109 brings in new accounting concepts and global best practices which will undoubtedly enhance the quality of financial information and enable timely and adequate recognition and quantification of credit losses in the financial statements. Prescriptions of a principle-based standard founded on the conceptual framework of *Neutrality* and *Faithful Presentation* call for an exercise of significant management judgment and estimation. In a rule-based highly prescriptive reporting environment like India, there is a need for a change in *mindset* among the preparers, auditors and other stakeholders. But this issue is not insurmountable in the present economic and political scenario.

Effective and efficient implementation necessitates partnerships with subject-matter experts outside the typical accounts/finance department and comprehensive review and changes to enterprise-wide data systems and framework. Bankers have to start putting life in credit review files and invoke their unique ability, *i.e., their sixth sense*.

IFRS Convergence

Example 1: Stage 1 & 2 Non Credit-impaired accounts-Explicit use of Advanced Credit Risk

Parameters- PD/LGD/EAD

Borrower (1)	Type of exposure (2)	Amount (3) ₹	Risk grade (4)	PD -12 Month (5)	PD – Lifetime (6)	LGD (7)	Collateral value (8)	ECL 12-month 9 = 5x7x3	ECL Lifetime 10 = 6x7x3	Credit risk 'Stage'
Commercial banking division -On balance sheet exposures										
A	Term loan	10000	AAA	0.01%	0.02%	60%	0	0.60	NA	Stage 1 -Low Credit Risk upto Investment grade
B	Overdraft	5000	AA	0.03%	0.05%	60%	0	0.90	NA	
	Term loan	2000	AA	0.03%	0.05%	60%	0	0.36	NA	
C	Import Loan	7000	A	0.10%	0.14%	45%	0	3.15	NA	
D	Export Loan	5000	BBB	0.40%	0.70%	20%	Cash – 1000	3.20	NA	
E	Bills discounted	10000	BB	2.25%	5.25%	40%	0	Now, these require Lifetime ECL	210	Stage 2 -Significant increase in credit risk
F	Term loan	10000	B	10.00%	22.00%	30%	Building – 3000(2)		660	
G	Bonds	2000	C	30.00%	70.00%	60%	0		840	
H	Term loan	2000	D	100%	100.00%	50%	ECL Assessed using different approach			Stage 3 -Credit-impaired
Commercial banking division -Off balance sheet exposures										
B	Loan commitment	20000	AA	0.03%	0.05%	60%	0	3.60	NA	Stage 1 - Low Credit Risk
C	Letter of credit	10000	A	0.10%	0.14%	45%	LC shipment	0.90	NA	
G	Financial guarantee	10000	C	30.00%	70.00%	60%	Cash – 2000	NA	3360	Stage 2
Retail banking division -On balance sheet exposures										
a	Res mortgage	5000	80-99	0.10%	0.10%	25%	House- 5500 (2)	1.25	NA	Stage 1 -Low Credit Risk
a	Personal loan	1000	60-79	1.15%	4.50%	45%	0	5.18	NA	
b	Car loan	1000	50-59	3.00%	5.00%	40%	Car – 1100	12.00	NA	
c	Student loan	500	40-49	5.00%	10.00%	70%	0	17.50	NA	
d	Res mortgage	2000	30-39	6.00%	10.00%	25%	House- 2250	Now, these require Lifetime ECL	50	Stage 2 -Significant increase in credit risk
e	Overdraft	1000	20-39	20.00%	30.00%	60%	0		180	
f	Sub-prime mortgage	1500	10-19	40.00%	60.00%	50%	House- 1250		450	
g	Credit card	1000	< 10	100%	100.00%	80%	ECL Assessed using different approach			Stage 3
Total ECL for on Balance sheet exposures deducted from FAs carrying amount in B/S									2434	
Total ECL for Off-Balance sheet exposures shown under Provisions and Other Liabilities									3365	

Bombay High Court Rules on Allowability u/s 37(1) on Benefits Incidentally Accruing to the Foreign Principals



The base intent of this article is to deliberate upon the recently pronounced decision by the Hon'ble Bombay High Court ('Bombay HC') in the case of NGC Networkⁱ wherein the order of the Income Tax Appellate Tribunal ('ITAT' in short) was upheld. It was held that the advertisement expenditure incurred by the assessee to popularise the business of the channel run by the foreign principal is allowable as there is a direct nexus between the amount spent on advertising and publicity, and the assessee's revenue. The mere fact that the foreign principals also benefited does not entail right to deny deduction claimed by the assessee under Section 37(1). The transfer pricing perspective on this issue shall also be discussed briefly in the ensuing paragraphs of this article. Read on...

I. Background

By and large, the law has been fairly settled that expenditure which is incurred wholly and exclusively for the business purpose has to be allowed in entirety, notwithstanding the fact that some third party was also benefitted by such expenditure. However, the issue is long-winding and the views on the same, depending upon the facts and circumstances in different cases, may change.

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

ⁱ CIT vs. N.G.C. Network (India) P. Ltd. [2014] 50 taxman 240 (Bombay)

International Taxation

The debate on allowability of deduction under Section 37(1) of the Income-tax Act, 1961 (hereafter referred to as the 'Act') flares up when another party incidentally benefited by such expenditure is a foreign Associated Enterprise (in short 'AE'). On one hand, while the Revenue Authorities on such issues contends that Chapter X provisions of the Act (*i.e.*, transfer pricing provisions as applicable on 'international transaction'ⁱⁱ between AE's) shall have precedence over the general provisions governing the deductibility of expense if the incidental beneficiary is an AE, the Assessee on the other hand, contends the view that since the expenditure is incurred with a view of augmenting its own business and not with the intent of endorsing the foreign AE's business, disallowance cannot be justified.

a) Factual Matrix of the Case

- NGC Network (India) P. Ltd. (hereafter referred to as the Assessee), a company incorporated in India is engaged in the business of distribution of T.V. Channels popularly known as National Geographic and History Channel.
- NGC Network Asia LLC ("NGC Asia") which operates the National Geographic Channel and Fox International Channel (US) Inc. ("Fox") which owns and operates the History Channel shall, collectively be referred to as the foreign principals hereafter.
- The Assessee paid the foreign principals a lumpsum amount by way of distribution fees.
- The Assessee, in turn, received subscription fees from its re-distributors *viz.* media distributors, cable networks *etc.*, who were in turn compensated by the consumers in the form of subscription fees paid to view the channel.
- The assessee also earned agency commission by entering into ad-sales agreement with the advertisers who wish to advertise 'on air' during the telecast of such channels.
- With an intent to increase the popularity of the programme, the assessee incurred advertising and publicity expenses of ₹6,21,31,262/- and claimed deduction under Section 37(1).
- The assessee filed the return of income for AY 2005-06 and filed Form 3CEB to report the international transactions with the Associated Enterprises, *i.e.*, the foreign principals. The Transfer Pricing Officer (in short 'TPO')

accepted the transactions as reported in Form 3CEB to be at Arm's Length.

- The Assessing Officer (in short 'AO') restricted the allowable deduction of advertising and promotion expenses under Section 37(1) to 33.33% contending that such expenditure not only benefitted the assessee but also the foreign principals.
- Being aggrieved by the disallowance, the assessee preferred an appeal before the Commissioner Income Tax (Appeals) [CIT (A)] who decided the matter in favour of the assessee.
- Subsequently, the Revenue went in appeal before the Income Tax Appellate Tribunal (ITAT). In view of difference in opinion of the Accountant Member and the Judicial Member, the President of ITAT made reference to a Third member. The order of the CIT (A) was upheld by the ITAT.
- Aggrieved by the order of the ITAT, Revenue went in appeal before the High Court.

b) Arguments by the Tax Department

- Deduction u/s 37(1) is not permissible because:-
 - The benefit accruing to the foreign principals was not disclosed in Form 3CEB.
 - Despite of the benefit accruing to the foreign principals, no contribution was made from them towards the cost of advertisement, publicity *etc.*
- Revenue relied on the decision of Delhi High Court in the case of **Maruti Suzuki India Limited**ⁱⁱⁱ while contending that the arm's length price has to be determined and relied where benefits are accruing to the foreign principals.
- Revenue also placed reliance on the decision of the Gujarat High Court in case of **Navsari Cotton and Silk Mills Ltd**^{iv} contending that in order to qualify for deduction under Section 37(1), the expenses must not be unreasonable and out of proportion. Since the amount expended far exceeded the revenue, the same cannot be allowed as a deduction.

c) Arguments by the Assessee

- It was contended that the expression 'wholly and exclusively' used in Section 37(1) does not mean 'necessarily'. In this context, the Assessee's

ⁱⁱ The issue as to what constitutes an 'international transaction' is highly fact sensitive and subjective. For the sake of brevity, we are not deliberating into the aspect as to what constitutes a transaction or an international transaction in this article.

ⁱⁱⁱ *Maruti Suzuki India Ltd. vs. ACIT, TPO* [2010] 192 Taxman 317 (Delhi)

^{iv} *CIT vs. Navsari Cotton & Silk Mills Ltd.* [1982] 135 ITR 546 (Gujarat)

counsel relied on the decision of the Apex Court in case of **Sassoon J. David**^v wherein it was held that merely because the foreign principal was benefitted by advertising, promotion and publicity it will not prevent the respondent-assessee from claiming benefit of deduction under Section 37(1).

- Assessee also relied upon the decision of Supreme Court in case of **Maruti Suzuki India Ltd**^{vi} wherein it was held that the compensation of Arm's Length Price decided by the TPO and the findings of the TPO are conclusive.

d) High Court Ruling

i. Non-disclosure of Principal as a beneficiary in 3CEB

- The order of the TPO is final and the contention of department that no proper disclosure was made before the TPO cannot be accepted.
- Admittedly, the assessee being the agent of the foreign principal, the principal would naturally benefit from the advertisement carried out by its agent in India.
- The Contention of the assessee that extra territorial benefits derived by the Principal cannot be determined, is correct and justified.
- The assessee offered to tax its income from distribution and advertisement and therefore it is held that there is no suppression of any information.
- The TPO's view cannot be faulted with and restricting the deduction of total advertisement expenses to 33.33% cannot be justified.
- The advertisement expenses being made to the third party Indian residents were not reflected in Form 3CEB since only international transactions are covered under the gamut of Section 92 (governing the effect of Form 3CEB).

ii. Benefit of expenses not wholly derived by the assessee but also by the foreign Principal

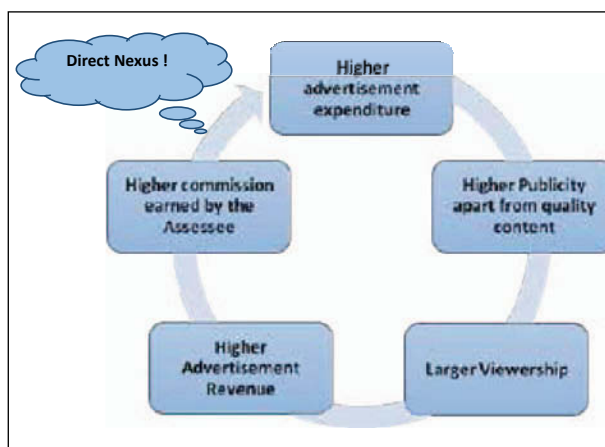
- The Bombay HC primarily placed reliance on the Apex Court Judgment in *Sassoon David* (*supra*) wherein it was held that the mere fact that foreign principals also benefitted does not entail right to deny

deduction under Section 37(1).

- The Revenue's contention that the assessee received fixed income cannot be justified since it received variable subscription fees as also commission of 15% of the value of Ad-sales.
- Bombay HC observed existence of a direct nexus between the amount spent on advertisement and publicity and revenue of the assessee.

iii. Expenses incurred far higher than the revenue earned

- Higher advertising expenditure through media houses and advertisement agencies would lead to higher chances of larger viewership. Higher viewership would entail chances of higher advertisement revenue and higher advertisement would in turn yield to higher commission being earned by the assessee.
- The Bombay HC held that there may be a lean period before revenue picks up notwithstanding high amount spent on such publicity and therefore the higher expenditure *vis-à-vis* the revenue is quite justified.



iv. No compensation by foreign Principals to avail the benefits of expenses incurred by the assessee

- The assessee (Indian Agent) earns income by way of distribution revenue and commission from ad-sales which sufficiently compensates it and it is not necessary for the foreign principal to compensate additionally for the

^v *Sassoon J. David & Co. (P) Ltd. vs. CIT* [1979] 118 ITR 261 (SC)

^{vi} *Maruti Suzuki India Ltd vs. ACIT* [2011] 198 Taxman 102 (SC)

benefit derived by it from advertisement and promotion of its channels.

- The HC held that is not justified on the part of the Revenue to determine the sufficiency of compensation received by the assessee.

e) Key takeaways from the Judgment

On the basis of the decision of the Bombay HC and the consistent position followed in the judicial precedents including Apex Court judgment^{vii} is that so long as the assessee derives direct benefit from the expenditure incurred by it, no adverse inference can be drawn notwithstanding, the incidental benefit enjoyed by another party (an AE in this case) even if the incidental beneficiary inures any direct or indirect benefit from such expenditure.

The transactions were outside the purview of Form 3CEB since the expenses were paid to Indian residents. In view of the above, the Bombay HC has rightly allowed the advertising expenditure under Section 37(1) of the Act, holding that the mere fact that the foreign principals of the assessee get benefitted does not entail right to deny deduction claimed by the assessee.

III. Interplay amongst Section 37(1) & Section 92

One important aspect which needs consideration while determining the allowability/deductibility of advertisement, marketing and publicity expenses is whether the expenditure is incurred by the assessee for promotion of its own business interest or for the business interest of the foreign principals. From Section 37(1) perspective, it is fairly a well settled position that an expenditure incurred wholly and exclusively for business purpose is to be allowed in entirety notwithstanding, the fact that some incidental beneficiary is also being benefited by incurrence of such expenditure.

However, what happens in a scenario where such expenditure is subject to transfer pricing provisions? Also, can provisions of Section 37(1) be read in isolation of the other provisions of the Act and which provisions shall take precedence-Section 37(1), Section 92 or both? Though some of the aspects have been considered in a few recent judicial pronouncements, yet no conclusive evidence can be drawn and the final word on the issue is still awaited.



The Division Bench of Delhi ITAT in the case of **Whirlpool of India Ltd.**^{viii} while deliberating on the issue of TP adjustment towards AMP expenses incurred for the foreign AE has held that, after the TPO determines the expenditure for the benefit of AE, balance is deemed to be incurred for assessee's business and is automatically allowable under Section 37(1). The ITAT also held that the object of making TP adjustment is to segregate the total AMP expenses into amount spent by the assessee towards promoting the business of the assessee and amount spent towards promoting the business of foreign AE. While the former shall be allowed in entirety subject to the regular provisions of the Act, the latter would be added to the total income with suitable mark-up by way of a TP adjustment. Further, ITAT also held that disallowability of expenditure under both Section 37 and 92 would entail double addition to the extent of original amount spent for promoting the business of Foreign AE.

Recently the Delhi High Court in the case of **Cushman & Wakefield**^{ix} deliberated on the issue that whether the tax authority/AO has jurisdiction to re-examine an intercompany transaction under Section 37 of the Act, even after it has been examined by the TPO for ALP determination. The jurisdiction of the Revenue Authorities to determine business exigencies under Section 37 of the Act is not overlapping with the jurisdiction of the TPO to

^{vii} *Sassoon J. David & Co. (P) Ltd. vs. CIT* [1979] 118 ITR 261 (SC); *CIT vs. Infosys Technologies Ltd.* [2014] 43 taxman 251 (Kar); *Novo Nordisk India (P) Ltd. vs. DCIT* [2014] 42 Taxman 168 (Bang-Trib)

^{viii} *Whirlpool of India Ltd. vs. DCIT* [2014] 42 taxman 553 (Del-Trib)

^{ix} *CIT vs. Cushman & Wakefield (India) Pvt. Ltd.* (ITA 475/2012) dtd 23.05.14

determine the ALP of a particular expenditure. The decision as to whether the expenditure was "laid out or expended wholly and exclusively for the purposes of the business" is a fact determination or verification to be undertaken by the Revenue Authorities, and cannot be curtailed by a reference to the TPO under Section 92 of the Act.

IV. Marketing Intangibles

The above discussion would not be complete without mentioning the Transfer Pricing issue of 'Marketing Intangibles/AMP expenses'. The issue of marketing intangibles during past few years has become a bone of contention between the taxpayers and the TP Authorities.

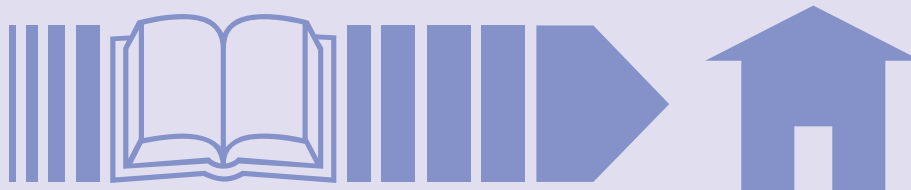
Lately, the issue (incurring of AMP expenses and creation of Marketing Intangibles) has entered the realm of transfer pricing controversy. The contention of the Tax Department has been that since the Indian company incurs expenses which benefit the foreign AE, the Indian company should be reimbursed for

such expenses. In fact, the proposition has been that by promoting the brand in India, the Indian subsidiary is providing a service to the foreign AE, for which it should receive due compensation (which could be the recovery of expenses incurred plus an appropriate mark-up over and above such expenses).

Judicial precedents in India have also not been able to provide a clear picture/way forward to resolve this issue. It is hoped that this issue will be more fully ventilated by the Courts in near future. The Delhi Bench of ITAT in **various cases**^x placing reliance on the Special Bench ruling in the **LG Electronics case**^{xi}, held that benchmarking of AMP expenses, being an international transaction, is permissible under TP Regulations. Many of these matters have reached the Delhi High Court. The entire tax fraternity in India now awaits the decision of the Court so that clear guidance is available for both taxpayers and the Revenue Authorities, and the controversy, uncertainty and apprehensions on the 'hard to value intangibles' can be curtailed. ■

^x Sony India Pvt. Ltd. vs. ACIT [TS-163-ITAT-2013(DEL)-TP], Canon India [TS-96-ITAT-2013(DEL)-TP], Discovery Communications etc.

^{xi} L.G. Electronics India (P) Ltd. vs. ACIT [2013] 29 taxman 300 (Del-Trib. SB)



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Corporate Governance – Companies Act, 2013 and Clause 49



The Companies Act, 2013 has tried to renovate various provisions relating to corporate governance, which, especially those relating to independent directors, are examples that confer greater power and responsibility in the company's governance. There were no explicit provisions for independent directors in the Companies Act, 1956, while only Clause 49 of the Listing Agreement had induction of independent directors, which was mandatory for all listed companies. Corresponding changes were made in the provisions of the 1956 Act, the requirement of having independent director(s) on the board of listed companies and selective unlisted public companies was included in the new Companies Act, 2013, i.e. applicable from 1st April, 2014. To make the listed companies more transparent, the Securities and Exchange Board of India (SEBI) has amended Clause 49 of the Listing Agreement. The objectives of the revised Clause 49 align with the provisions of the Companies Act, 2013, and focus on adopting the best practices in corporate governance. This article highlights the comparison between the provisions of revised Clause 49 of Listing Agreement and the Companies Act, 2013 in the context of independent directors. Read on...



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The Companies Act, 2013 has tried to overhaul the various provisions relating to strong corporate governance. The provisions relating to independent directors are examples that confer greater power and responsibility in the governance of a company. There are no explicit provisions for independent directors under the six-decade-old Companies Act, 1956 and only Clause 49 of the *Listing Agreement*

prescribed for the induction of independent directors and made that mandatory for the listed companies. Thereafter, the Ministry of Corporate Affairs carried out corresponding changes to the provisions of the 1956 Act, in an attempt to include the requirement of having an independent director on the board of listed companies and selective unlisted public companies to oversee the corporate governance under the new Companies Act, 2013. These provisions are now applicable from 1st April, 2014.

In a step towards making the listed companies more transparent and to align the provisions related to the *Listing Agreement* with the Companies Act, 2013, the capital market regulator, Securities and Exchange Board of India (SEBI) has also now amended Clause 49 of the Listing Agreement. The new Master Circular No. *CIR/CFD/POLICY CELL/2/2014* dated 17.04.2014 will supersede all other earlier circulars issued by the SEBI on Clause 49 of the Equity Listing Agreement.

The objectives of the revised Clause 49 align with the provisions of the Companies Act, 2013, which focus on adopting the best practices on corporate governance and aim at making the corporate governance framework more effective. The said amendments of the revised Clause 49 will be made effective on all the listed companies with effect from 1st October, 2014.

A. Applicability

Clause 49: Revised Clause 49 of the *Listing Agreement* is applicable on all the listed companies with effect from 1st October, 2014.

The Companies Act, 2013: Provisions of independent directors are not applicable to all companies under the Companies Act, 2013. According to sub-Section 4 of Section 149 read with the Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following categories of companies shall have independent directors:

1. Listed public company;
2. Public companies having paid up share capital of ₹ 10 crore or more;
3. Public companies having turnover of ₹ 100 crore or more; and
4. Public companies that have, in aggregate, outstanding loans, debentures and deposits, exceeding ₹ 50 crore.

According to sub-Section 5 of Section 149, every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-Section (4) of Section 149.

Time limit for compliance: According to sub-Section 5 of Section 149, every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-Section (4) of Section 149. The appointment will be only done at the general meeting of a company. Hence, all the companies need to ensure compliance with the said provision in the upcoming AGM held in 2014 itself so as to comply within 31st March, 2015.

Point of Difference: Revised Clause 49 is applicable on all listed companies while the provisions relating to independent directors under the Companies Act, 2013 are only applicable on a selective class of unlisted public companies in addition to the listed companies. Revised Clause 49 would be applicable on all the listed companies with effect from 1st October, 2014, while under the Companies Act, 2013, every company that is covered under the provisions relating to independent directors existing on or before the date of commencement of this Act shall, within one year from such commencement (*i.e.*, on before 31st March, 2015) or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of appointing an independent director.

B. Composition/Number of Independent Directors

Clause 49: Under Clause 49 of the *Listing Agreement*, the strength of the number of independent directors is determined on the status of the chairman of the board. Where the chairman of the board is a non-executive director, at least one-third of the board should comprise independent directors and in case the company

Corporate Governance

does not have a regular non-executive chairman, at least half the board should comprise independent directors.

Provided that where the regular non-executive chairman is a promoter of the company or is related to any promoter or person occupying management positions at the board level or at one level below the board, at least one-half of the board of the company shall consist of independent directors.

Explanation—For the purpose of the expression, *related to any promoter* means:

- i. If the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it; and
- ii. If the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.

The Companies Act, 2013: While under the Companies Act, 2013, the strength of the number of independent directors for the prescribed companies under Section 149(4) read with Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 is:

1. Listed public company—*At least one-third of the total number of directors*
2. Public companies having paid-up share capital of ₹10 crore or more—*At least 2 directors*
3. Public companies having turnover of ₹100 crore or more—*At least 2 directors*
4. Public companies that have, in aggregate, outstanding loans, debentures and deposits, exceeding ₹50 crore—*At least 2 directors*

Explanation—For the purposes of Section 149(4), any fraction contained in such one-third number shall be rounded off as one.

Provided that in case a company covered under this rule is required to appoint a higher number of independent directors due to the composition of its audit committee, such higher number of independent directors shall be applicable to it.

Provided further that any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest, but not later than the immediate next Board meeting or three months from the date of such vacancy, whichever is later.

Provided also that where a company ceases to fulfill any of the three conditions (Category No. 2, 3 and 4 above) for three consecutive years, it shall not

be required to comply with these provisions until such time as it meets any of such conditions;

Explanation—For the purposes of this rule, it is hereby clarified, that the paid-up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of the latest audited financial statements shall be taken into account.

Provided that a company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force, shall comply with the requirements specified in such law.

Point of Difference: The strength of independent directors under the revised Clause 49 is determined on the status of the chairman of the board, while under the Companies Act, 2013, there are no such parameters.

C. Definition of Independent Director

Clause 49: Under the revised Clause 49, the expression *independent director* shall mean a non-executive director, other than a nominee director of the company:

- (a) who, in the opinion of the board, is a person of integrity and possesses relevant expertise and experience;
- (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
- (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
- (c) apart from receiving a director's remuneration, has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- (d) none of whose relatives have or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to 2%

The strength of independent directors under the revised Clause 49 is determined on the status of the chairman of the board, while under the Companies Act, 2013, there are no such parameters.

or more of its gross turnover or total income or ₹50 lakh or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

- (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 an employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
 - (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of —
 - a. a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
 - b. any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company 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, by whatever name called, 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;
 - (v) is a material supplier, service provider or customer or a lessor or lessee of the company;
- (f) who is less than 21 years of age.

Explanation:

For the purposes of the above clause:

- i. *Associate* shall mean a company which is an *associate* as defined in the Accounting Standard (AS) 23, *Accounting for Investments in Associates in Consolidated Financial Statements*, issued by The Institute of Chartered Accountants of India.
- ii. *Key Managerial Personnel* shall mean *Key Managerial Personnel* as defined in Section 2(51)

On a combined reading of the Clauses (c) and (d) of Section 149 (6) (similar to the definition under the revised Clause 49), one may observe that Clause (c) takes into account pecuniary relationship of director and Clause (d) covers pecuniary relationship or transaction of relatives of such directors.

of the Companies Act, 2013.

- iii. *Relative* shall mean *relative* as defined in Section 2(77) of the Companies Act, 2013 and rules prescribed thereunder.

The Companies Act, 2013: According to sub-Section 6 of Section 149 of Companies Act, 2013, an independent director in relation to a company, means a director other than a managing director or a full-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) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
- (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
- (c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- (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 ₹50 lakh or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- (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, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
 - (ii) is or has been an employee or proprietor

or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

- a. a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
- b. any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company 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, by whatever name called, 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; or
- (f) who possesses such other qualifications as may be prescribed.

Explanation.—For the purposes of this section, “nominee director” means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.

On a combined reading of the Clauses (c) and (d) of Section 149 (6) [similar to the definition under the revised Clause 49], one may observe that Clause (c) takes into account pecuniary relationship of director and Clause (d) covers pecuniary relationship or transaction of relatives of such directors. The lawmaker has consciously used only the word *relationship* in Clause (c) while either *relationship* or *transaction* has been used in

Clause (d). In Clause (d), there is a monetary *de minimis* value, up to which transactions are not to be considered as affecting the independence of the director. There is no question of a *de minimis* value for a relationship, as relationships, may not have any transactions at all, and therefore, may not have a value. Clause 49 only excludes director remuneration in the term *pecuniary relationship*.

Since the law uses the word *pecuniary relationship* without qualifying it with the word *material*, it will be important to hold that what is immaterial is trivial, and therefore, nonexistent. It cannot be said to be a relationship at all, as relationship requires a continuity, staying together of parties. Mere isolated transactions performed on an arm's length basis should not be construed as a pecuniary relationship.

Point of Difference: Although the revised Clause 49 is aligned with the definition of independent director, but Clause 49 places additional restriction relating to definition of independent director, namely the director herself/himself nor any of her/his relatives shall be material supplier, service provider or customer or a lessor or lessee of the company; and such director shall not be less than 21 years of age. The Companies Act, 2013 places another condition relating to the definition of independent director—such person shall possess such other qualifications as may be prescribed. In this regard, the Rule 5 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 provides that an independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

D. Limit on Number of Independent directorships

Clause 49: Under the revised Clause 49, a person shall not serve as an independent director in more than seven listed companies. Further, any person who is serving as a whole-time director in any listed company shall serve as an independent director in not more than three listed companies.

The Companies Act, 2013 does not provide any separate limit on the number of persons in which a person can be appointed as independent director but the general limit provided in Section 165(1) of the Act shall be applicable in case of independent director also.

Clause 49 prescribes the manner of appointment of independent director in the manner prescribed under the Companies Act, 2013. Under Clause 49, the letter of appointment along with the detailed profile of independent director shall be disclosed on the websites of the company and the stock exchanges not later than one working day from the date of such appointment.

The Companies Act, 2013: According to Section 165(1) of the Act, no person, after the commencement of this Act, (*i.e.* with effect from 1st April, 2014) shall hold office as a director, including any alternate directorship, in more than 20 companies at the same time.

Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed 10.

Explanation — For reckoning the limit of public companies in which a person can be appointed as a director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

However, the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.

Independent directors under the Companies Act, 2013 will not be liable to retire by rotation nor will their strength be considered for determining the total number of directors liable to retire by rotation.

Point of Difference: Clause 49 provides the maximum limit of seven listed companies, while the Companies Act, 2013 provides the maximum limit of 10 public companies. The Companies Act, 2013 does not provide any separate limit on the number of persons in which a person can be appointed as independent director, but the general limit provided in Section 165(1) of the Act shall be applicable in case of independent director also.

E. Maximum tenure of Independent Directors

Clause 49: An independent director shall hold office for a term up to five consecutive years on the Board of a company and shall be eligible for

reappointment for another term of up to five consecutive years on passing of a special resolution by the company.

Provided that a person who has already served as an independent director for five years or more in a company as on 1st October, 2014 shall be eligible for appointment, on completion of his present term, for one more term of up to five years only.

Provided further that an independent director, who completes his above mentioned term shall be eligible for appointment as independent director in the company only after the expiration of three years of ceasing to be an independent director in the company.

The Companies Act, 2013: An independent director shall hold office for a term up to five consecutive years on the board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the board's report.

Notwithstanding anything to the above, no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director:

Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

Explanation—For this purpose, any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-Sections.

Point of Difference: This sub-Clause of the Clause 49 has been drafted on similar lines of the Section 149(10) and (11) of the Companies Act, 2013. While Clause 49 includes the period served before 1st October, 2014, the Companies Act, 2013 does not include the period served before the commencement of the Act (*i.e.* before 1st April, 2014). The Companies Act, 2013 provides that the independent director shall not be appointed or associated with a company in any other capacity, directly or indirectly during the cooling period of three years before which the independent director cannot be considered for reappointment, while Clause 49 is silent on that point.

F. Manner of Appointment

Clause 49: The manner of appointment of independent director is not prescribed in Clause 49. It only provides that the company shall issue a formal letter of appointment to independent directors in the manner as provided in the Companies Act, 2013 and the letter of appointment along with the detailed profile of independent director shall be disclosed on the websites of the company and the stock exchanges not later than one working day from the date of such appointment.

The Companies Act, 2013: Section 152 of the Act read with Schedule IV of the Act and the Companies (Appointment and Qualification of Directors) Rules, 2014 provides the manner of appointment of independent directors. Provisions are:

1. Save as otherwise expressly provided in this Act, every director shall be appointed by the company in the general meeting.
2. Every independent director shall at the first meeting of the board in which she/he participates as a director and thereafter at the first meeting of the board every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that she/he meets the criteria of independence. This declaration shall be included in the board report (Section 134(3) of the Act).
3. No person shall be appointed as a director of a company unless he has been allotted the director identification number (DIN) under the Section 154. Prescribed form to apply for DIN is DIR-3.
4. Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish her/his DIN and a declaration that he is not disqualified to become a director under this Act. Prescribed form for this purpose is DIR-2.
5. A person appointed as a director shall not act as a director unless she/he gives her/his consent to hold the office as director and such consent has been filed with the registrar within thirty days of her/his appointment in such manner as may be prescribed. Prescribed form for this purpose is DIR-12.
6. Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the board, she/he fulfils the conditions specified in this Act for such an appointment and that the proposed director is independent of the management. This explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.
7. Appointment process of independent directors shall be independent of the company management; while selecting independent directors the board shall ensure that there is appropriate balance of skills, experience and knowledge in the board so as to enable the board to discharge its functions and duties effectively.
8. Appointment of independent director(s) of a company shall be approved at the meeting of the shareholders.
9. Appointment of independent directors shall be formalised through a letter of appointment, which shall set out:
 - i. the term of appointment;
 - ii. the expectation of the board from the appointed director; the board-level committee(s) in which the director is expected to serve and its tasks;
 - iii. the fiduciary duties that come with such an appointment along with accompanying liabilities;
 - iv. provision for directors and officers (D and O) insurance, if any;
 - v. the *code of business ethics* that the company expects its directors and employees to follow;
 - vi. the list of actions that a director should not do while functioning as such in the company; and

Schedule IV of the Companies Act, 2013 also contains same provisions of separate meeting of independent directors. Independent directors are entitled for sitting fees, reimbursement of expenses for participation in the board and other meetings and profit-related commission as may be approved by the members.

- vii. the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the boards and other meetings and profit related commission, if any.
- 10. Terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during the normal business hours.
- 11. Terms and conditions of appointment of independent directors shall also be posted on the company's website.
- 12. Independent directors may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors. This databank maintained by an agency to be notified by the Central Government. Any person who desires to get her/his name included in the data bank of independent directors shall make an application to *the agency* in Form DIR-1.

Point of Difference: Clause 49 prescribes the manner of appointment of independent director in the manner prescribed under the Companies Act, 2013. Under Clause 49, the letter of appointment along with the detailed profile of independent director shall be disclosed on the websites of the company and the stock exchanges not later than one working day from the date of such appointment. While under the Companies Act, 2013, terms and conditions of appointment of independent directors shall also be posted on the company's website.

G. Performance Evaluation of Independent Directors

Clause 49: Provisions in respect of performance evaluation of independent directors under Clause 49 are:

1. *Nomination Committee* shall lay down the evaluation criteria for performance evaluation of independent directors.
2. Companies shall disclose the criteria for performance evaluation, as laid down by the *Nomination Committee*, in its annual report.
3. Performance evaluation of independent directors shall be done by the entire board of directors (excluding the director being evaluated).

4. On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

The Companies Act, 2013: According to Section 149(8) of the Act, company and independent directors shall abide by the provisions specified in the Schedule IV. According to Schedule IV of the Act, performance evaluation of independent directors shall be done by the entire board of directors, excluding the director being evaluated. On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

Point of Difference: Under Clause 49, *Nomination Committee* shall lay down the evaluation criteria for performance evaluation of independent directors. Companies shall disclose the criteria for performance evaluation, as laid down by the Committee in its annual report. While under the Companies Act, 2013, *Nomination and Remuneration Committee* shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the board their appointment and removal and shall carry out evaluation of every director's performance.

H. Separate Meeting of Independent Directors

Clause 49: Under the revised Clause 49, provisions for separate meeting of independent directors are:

- a) Independent directors of a company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management. All independent directors of the company shall strive to be present at such meeting.
- b) Independent directors in the meeting shall, *inter-alia*:
 - i. review the performance of non-independent directors and the Board as a whole;
 - ii. review the performance of the chairperson of the company, taking into account the views of executive directors and non-executive directors;

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- iii. assess the quality, quantity and timeliness of flow of information between the company management and the board that is necessary for the board to effectively and reasonably perform their duties.

The Companies Act, 2013: Schedule IV of the Companies Act, 2013 also contains same provisions of separate meeting of independent directors. Independent directors are entitled for sitting fees, reimbursement of expenses for participation in the board and other meetings and profit-related commission as may be approved by the members. Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 prescribes the maximum sitting fees of ₹1 lakh per meeting to the independent director for attending a board meeting.

Point of Difference: There is no point of difference. Provisions relating to the separate meeting of independent directors are similar/same in the revised Clause 49 and Companies Act, 2013.

I. Training of Independent Directors

Clause 49: Revised Clause 49 also contains the provisions relating to training of independent directors. Under the sub-Clause 7 of revised Clause 49:

- a) Companies shall provide suitable training to independent directors to familiarise them with the company, their roles, rights, responsibilities in the company, nature of the industry in which the company operates, business model of the company, etc.
- b) Details of such training imparted shall be disclosed in the annual report.

The Companies Act, 2013: The Companies Act, 2013 doesn't contain such provisions. Schedule IV of the Companies Act, 2013 prescribes the guidelines of professional conduct, roles and functions and duties of the independent directors. According to sub-Section 8 of the Section 149, companies and independent directors shall abide by the provisions specified in the Schedule IV.

J. Remuneration of Independent Directors

Clause 49: *Nomination and Remuneration Committee* is the exclusive authority to recommend

to the board a policy, relating to remuneration to directors. Under the Clause 49, all fees/compensation, if any paid to non-executive directors, including independent directors, shall be fixed by the board of directors and shall require previous approval of shareholders in general meeting. Requirement for obtaining prior approval of the shareholders in general meeting shall not apply to the payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees (maximum prescribed amount is ₹1 lakh per meeting) without approval of the Central Government. Independent directors shall not be entitled for any stock option.

The Companies Act, 2013: *Nomination and Remuneration Committee* is the exclusive authority to recommend to the board a policy, relating to remuneration to directors. According to Section 197(4) of the Act, remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity. A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the board (maximum prescribed amount is ₹1 lakh per meeting). Independent directors shall not be entitled for any stock option.

Point of Difference: Clause 49 requires that all fees/compensation paid to independent director shall be fixed by the board of directors and shall require previous approval of shareholders in general meeting. While the Companies Act, 2013 requires that remuneration payable to directors (including independent directors) shall be determined in accordance with the articles or if the articles so require, by ordinary/special resolution passed by the company in general meeting.

K. Resignation or Removal of Independent Directors

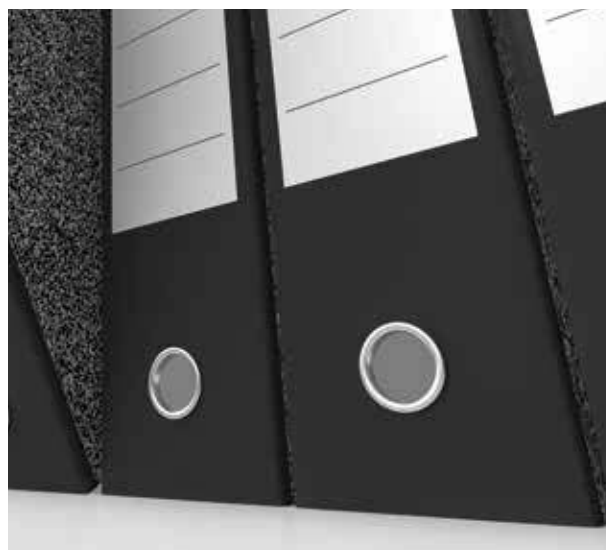
Clause 49: Clause 49 does not prescribe the manner of resignation/removal of independent directors. It only provides that an independent director who resigns or is removed from the board of the company shall be replaced by a new independent director at the earliest but not later than the immediate next Board meeting or three months from the date of such vacancy, whichever is later. Where the company fulfils the requirement of independent directors in its board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply. The board of the company shall satisfy itself that plans are in place for orderly succession for appointments to the board and to senior management.

The Companies Act, 2013: Sections 168 and 169 of the Act prescribe the manner of resignation and removal of directors, including independent directors. Further, Schedule IV of the Act prescribes that an independent director who resigns or is removed from the board of the company shall be replaced by a new independent director within a period of not more than one hundred and eighty days from the date of such resignation or removal, as the case may be. Where the company fulfils the requirement of independent directors in its board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.

Point of Difference: Clause 49 requires that the replacement of independent director in case of her/his resignation/removal shall be made at earliest by immediate next board meeting or three months from the date of such vacancy, whichever is later. While the Companies Act, 2013 requires that the replacement of independent director in case of his resignation/removal shall be made within 180 days from the date of such resignation or removal, as the case may be.

L. Liability of Independent Directors

Clause 49: Under Clause 49, an independent director shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through



board processes, and with his consent or connivance or where he had not acted diligently with respect to the provisions contained in the *Listing Agreement*.

The Companies Act, 2013: According to sub-Section 12 of the Section 149, notwithstanding anything contained in the Act, an independent director shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with her/his knowledge, attributable through board processes, and with her/his consent or connivance or where she/he had not acted diligently.

Point of Difference: Clause 49 provides another liability clause for independent director, where she/he had not acted diligently with respect to the provisions contained in the *Listing Agreement*.

Conclusion

Both, Companies Act, 2013 as well as the revised Clause 49 of the *Listing Agreement* empower independent directors with proper checks and balances, so that such extensive powers are not exercised in an unbridled manner, but in a rational and accountable way. Changes are a step in the right direction. They should enhance corporate governance and ensure the management and affairs of the companies are conducted in the interest of stakeholders. These are all welcome changes, and indeed, they will help improve the manner in which business is run in India by instilling strong corporate governance norms in a company. These provisions have recognised the role of independent directors as watchdog of corporate governance watchdog. ■

Concept of Entrenchment under Companies Act, 2013



Section 5(2) of the Companies Act, 2013 has introduced the concept of entrenchment for incorporating regulations in the articles of association, with an objective to protect interest of capital, intellectual property rights of shareholders, which can be amended by following the conditions more restrictive than special resolution. Companies Act, 2013 has also introduced Section 58(1) and (2) to remove all restrictions on transfer, Sections 106(3), 179(1) and 164(3) of the Act encompass the enabling provisions. Section 6 of the Act also provides that articles and memorandum cannot override the Act. Hence the scope and width of powers of entrenchment cannot override the democratic functioning, role of independent directors and exercise of powers of the board and shareholders in meetings including restrictions and prohibitions on the directors. Read on to understand the concept of entrenchment under the Act...

Entrenchment until the enactment of the Companies Act, 2013 (the Act, hereafter) is not a legally-recognised phrase with its purport and width widely understood. The dictionary on legal concept has not at all listed the term entrenchment. However, a normal dictionary defines *entrenchment* as:

1. To establish solidly so as to make changes difficult
2. Surround with trench, place in strong defensive position.

Section 5 of the Act, subject to Section 6, provides that articles of a company can have the regulation of entrenchment, which firmly establishes shareholders in their position to protect their capital and intellectual property contributed towards the operation of business and goodwill of their company. However, a limitation laid down in the Section 6 that article cannot override the Act, needs to be complied. Nowadays, businesses are global and customer must perceive certainty of continuity and sustainability for continuous growth of business. Hence, the regulation of entrenchment articles not only provides protection of capital,



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intellectual property, business but also ensures certainty of continued existence to its customer. Such protection and guarantee to customer is essential for survival of business.

In common parlance, the meaning loosely meant by certain court judgments in the use of the word *entrenchment* implies gaining an unauthorised entry into the jurisdiction of a court. However, it appears that the Act has not intended *entrenchment* in that sense and has used the word in the sense of normal dictionary meaning.

In order to define the contour of regulations in the article having force of entrenchment, such articles of entrenchment must not be in conflict and rather be in harmony with the fundamental philosophy of the Act, as laid down in its various provisions.

Fundamental Philosophy, Spirit and Scheme of the Act

The company form of organisation normally envisages that a large number of shareholders, by contributing capital or intellectual property, set up business, managers administer business and directors representing shareholders oversee the management of business, and managers in the course of managing business become directors and also acquire shares as part of their remuneration. Large private businesses also operate under the company form of organisation for limiting liability. Hence, directors lay down the policy framework, managers manage business and surplus or profit generated is distributed among shareholders as dividend, remuneration among directors and managers. Directors oversee the functioning of business within policy parameters by virtue of reports which are reviewed in multiple meetings and shareholders oversee functioning and performance through the service of notices and annual accounts; meetings are held with the right to speak.

It is a fundamental philosophy of the Act that shareholders investing their capital shall have the right to vote. The voting right with show of hands is counted in terms of numbers for the purpose of majority, disregarding the capital invested by shareholders. However, voting on poll is in proportion to the capital invested by shareholders. Hence, higher amount of invested capital will mean higher value of vote, in case of poll in a general meeting. All the shareholders have a right to personally participate, speak and vote on various resolutions proposed in the meetings. This fundamental principle is known

Voting right with show of hands is counted in terms of numbers for the purpose of majority disregarding the capital invested by shareholders. However, voting on poll is in proportion to the capital invested by shareholders. Hence, higher amount of invested capital will mean higher value of vote, in case of poll in general meeting.

as *corporate democracy*. Likewise, certain powers are exclusively reserved for the consideration of shareholders in meetings under Section 180 of the Act. Such a democratic mode and powers of shareholders cannot be taken away by the articles of entrenchment.

Shareholders may be large in number and lack expertise in managing complex businesses, which necessitates employing directors and key managerial personnel having whole or substantially whole management of affairs of the company. Hence, the board of directors represents the interests of providers of capital and managers provide expertise to manage the business. Directors and managers should act in fiduciary capacity and avoid conflicting situations by balancing such interests; in this regard, Section 166 of the Act incorporates the duties of directors. The Act has also reinvigorated the concept of independent directors pioneered by the Listing Agreement. Provisions of the Act provide independence, ensure objectivity and check and balance through independent directors in governance and functioning of company, which is strengthened by the code for independent directors in the Schedule IV to the Act that regulates the role, functions, duties, selection, appointment, eligibility, resignation and removal including functioning and evaluation. Thus, specific and general duties prescribed for the independent directors have the all pervasive effect on the governance of a company.

The Act has not only laid down the duties of a board through its Section 166, unlike the previous Companies Act, 1956, the Act (2013) has by virtue of *proviso* to the Section 179(1) has provided various limitations in respect of the procedure of exercise of powers of a board. Section 106(3) provides the mode of exercise of voting differently by the same person for shareholding representing different interests. Section 194 provides a prohibition on the rights of directors to enter into a forward contract for purchase or sale of shares of a company. Section 195

prohibits insider trading and Section 185 prohibits loans to directors and restrictions on their powers including their remuneration. Private companies are authorised to add more criteria for disqualification according to the Section 164(3). In view of these features of the Act, regulations in the articles of entrenchment cannot override the aforesaid framework of governance according to the Act.

Case Law on Areas of Entrenchment under Companies Act, 1956

Case laws regarding the byelaws governing the rights of shareholders through the articles have been dealt by various courts. Following issues have emerged:

1. *State of Karnataka vs. Mysore Coffee Curing Works Ltd.* [55 company cases 70]: The state of Karnataka was having the right to nominate directors including the chairman in the respondent company due to the shareholding agreement. However, such a majority shareholding has gone down to a minority and the right of state of Karnataka to nominate directors and chairman was challenged. It was held that the right has flowed from the agreement and hence, unless the operation of agreement is made conditional upon the majority of shareholding, such right emanating from the agreement cannot be taken away.
2. *V. B. Rangrajan vs. V. B. Gopalkrishna A.I.R. 1992SC543*: It is a case of a private company and its shareholders were from one family. The agreement between them prohibited the transfer of shares absolutely; such prohibition was held to be void as per the Companies Act, 1956, as the prohibition to transfer was absolute.
3. (i) *Mafatlal Industries Ltd. vs. Gujarat Gas Co. Ltd.* [97 Company cases 301(Guj.)]
(ii) *Pushpa Katoch vs. Manu Maharani Hotels Ltd.* [131 Company cases 42 (Del.)]
(iii) *Western Maharashtra Development Corp. Ltd. vs. Bajaj Auto Ltd.* [154 Company cases 593 (Bom.)]
(iv) *Madhusoodanam vs. Kerala Kaumudi (P) Ltd.* [117 Company cases 19 (Ker.)]
4. *Rolta India Ltd. vs. Venire Industries Ltd.* [100 Company cases 19 (Bom.)]: Any restriction on the rights of directors cannot restrict the exercise of rights to be exercised in fiduciary capacity.
5. *Master Gautam R. Padivial vs. Karnataka Theatres Ltd.* [100 Company cases 124 (Kern.)]: The issue pertaining to restriction on the right to vote to the extent of 1/10th of share holding has been held to be legally enforceable.
6. *Mohta A & S works vs. Mohta Finance & Leasing Co. Ltd.* [89 Company cases 227(Kol.)]: Articles in practice can contain the widest possible powers of delegation both to individual directors and other agents chosen by the board.
7. *Baker Hughes Ltd. vs. Hiroo Khushlani* [102 Company cases 203 (Bom.)]: An Indian joint venture company having the right to use the name of a foreign company by virtue of the joint venture agreement, conditional upon 40% shareholding of the foreign company in the Indian company, such shareholding was sold and foreign company instituted suit to restrain joint venture company from using the foreign name, though the articles of association have no such clause of restraint. But a restraint from the use of trademark was granted to the Indian joint venture company in view of the provisions of the Trade Marks Act on account of the illegitimate passing off.

The first three cases relate to public limited companies, and any restriction on the transfer of shares by public limited companies even by consensual private agreement are considered to be void, as it has been held that there should not be any restriction on the transfer of shares of public limited companies. Likewise in the fourth case, since

it was a private company, it is distinguished from the second case where the restriction on transfer was considered absolute, while in the fourth case, that was considered limited. Hence, such restriction on transfer was held to be legally enforceable.

An identical controversy of restriction on the transfer of shares of public companies in *M/s. Messers Holdings Ltd. vs. Shyam Madan Mohan Ruia* [159 company cases 29 (Bom.)] said restriction was held to be valid and enforceable, independent from the articles of association only amongst the shareholders by the High Court. Such controversy has failed to stand the test before the Supreme Court and the said judgment of Bombay High court appears to have been reversed.

Section 195 prohibits insider trading and Section 185 prohibits loans to directors and restrictions on their powers including their remuneration. Private companies are authorised to add more criteria for disqualification according to the Section 164(3).

Thus, the Companies Act, 1956 and the courts were categorical regarding any prohibition on the transfer of shares which appear to have been removed under Section 58(1) and (2) of the Act, and even private agreements as to restrictions on the transfer of share are enforceable. Restriction in the articles on fiduciary powers of directors is not removed in the Act.

8. *IL & FS Trust Co. Ltd. vs. Birla Perucchini Ltd.* [121 Company cases 335 (Bom.)]: The law is well-settled that subject to the provisions of the Companies Act, 1956, a company and its members are bound by the provisions contained in its articles of association. The articles regulate the internal management of the company and define the powers of its officers. The articles also establish a contract between the company and members and between the members *inter se*. The contract governs the ordinary rights and obligations incidental to the membership in the company.

A distinction exists between a case where special voting rights are conferred on a particular class of shares and a situation where a provision is made that no alterations can be made in the articles without the consent of a particular person. The conferment of special voting rights does not deprive the company of power to alter its articles. The position is different, if it is provided that the alteration of articles cannot be made without the consent of a particular person.

There was a subscription *cum* shareholders agreement between the parties and by virtue of such agreement, Rs. 8/- crore were invested in optionally convertible preference shares. According to the articles, shareholders are authorised to nominate directors in proportion to their capital and such directors have, unless sought leave of absence, to be part of the quorum and their affirmative vote is essential in the appointment of further directors from the shareholders or from any member of the public and for adopting and approval of accounts. Appointment of further directors and approval of accounts in the absence of affirmative vote of such directors in meeting are invalid acts.

Thus, the Companies Act, 1956 and the courts were categorical regarding any prohibition on the transfer of shares which appear to have been removed under Section 58(1) and (2) of the Act,

and even private agreements as to restrictions on the transfer of share are enforceable. Restriction in the articles on fiduciary powers of directors is not removed in the Act.

Provisions Governing Articles of Entrenchment

In order to elucidate the concept of entrenchment, it is also necessary to go into the contextual provisions of company law in the Act, for laying down appropriate boundaries of scope and width of entrenchment. Such provisions are contained in:

(A) Provisions of Entrenchment

Section 5(2), (3) and (4) enacts the enabling provisions of entrenchment and provides that

- (i) Articles may contain provisions for entrenchment;
- (ii) That said articles can be altered only if conditions as that are more restrictive than those applicable in case of special resolution are specified;
- (iii) Such articles shall be incorporated either at the time of formation of company or subsequently thereof in articles if agreed to by all members in case of private company and by a special resolution in case of public company;
- (iv) Information of such article of entrenchment either on formation of company or its amendment has to be given to registrar of companies;

(B) Enabling Provisions of Entrenchment

- (v) Section 179(1) lays down the enabling provisions for different procedures like approval in general meeting to be followed for exercise of powers by directors;
- (vi) Section 58(1) and (2) lays down the powers to restrict the right to transfer shares in public and private companies by a separate contract which are now enforceable;
- (vii) Definition of control indicate mode of embodying right of control either by way of resolution or by agreement or by regulation in the articles; and
- (viii) Section 106(3) indicates the mode of exercise of voting in respect of shareholding by an individual representing different capacities for whole of shareholding and not in identical manner for whole of shareholding.

In case Section 5(2) of the Act has connected words with first condition that the articles may contain provisions for entrenchment by the phrase *to the effect* to second condition. Phrase to the effect, according to the Stroud's Judicial Dictionary, means *form, tenor, in accordance, with form, manner* and hence, if words in accordance with are read connecting first and second condition in the Section 5(2), it implies that the amending articles of entrenchment must be in accordance with conditions which are more restrictive than special resolution. Therefore, the conditions of amendment of articles of entrenchment are cumulative with the first condition and mandatory and all four conditions are cumulative. Hence, Section 5(2) implies that all articles of entrenchment should have procedure of amendment more restrictive than those applicable in case of special resolution. Hence, the power of amendment of articles of entrenchment can be exercised with affirmative votes of particular director or group of directors or with unanimous consent of all directors or subject to veto power by particular director. However, the articles for entrenchment shall always have to be *conterminous* with the scope and effect with primary understanding of parties as to particular project including the regulation of amendment of such articles. Hence, its drafting shall always be dependent upon facts of each case and it is most creative and imaginative application of knowledge of company law, which balances the interest of various groups and incorporates their understanding into the articles of entrenchment for successful working and governance of a company. If such articles are not properly drafted, it can result into a deadlock in the functioning of a company due to serious misunderstanding. Hence, ascertaining appropriate intent of parties and their drafting accordingly shall also play a key role. It is not a tool merely to protect the interests of the majority shareholders but also for minority ones. Shareholders can also use such articles for strengthening the governance of a company.

Hence, ascertaining appropriate intent of parties and their drafting accordingly shall also play key role. It is not a tool merely to protect the interests of majority shareholders but also for minority ones. Shareholders can also use such articles for strengthening the governance of company.

Areas of Articles of Entrenchment

As we have adverted to the scheme of Act, normally the articles of entrenchment should not interfere and abrogate or control and/or vary procedures for exercise of:

- (a) Rights of shareholders to participate and vote at meetings on subjects according to law or as decided to be laid before general meeting;
- (b) Fiduciary capacity of directors, duties and power of directors to be exercised in meeting;
- (c) Fiduciary capacity, duties and mandatory participation of independent directors in matters laid down in law;
- (d) Constitution and functioning of audit committee, remuneration committee, shareholders relation committee, vigilance mechanism and participation of independent directors in meetings authorising related party contracts; and
- (e) Restrictions on the powers of directors under Sections 179, 180, 182, 185, 186, 187, 188, 191 and 192, and prohibition contained in Sections 194 and 195, and restrictions relating to remuneration.

The aforesaid fundamental pillars of governance have to be adhered to for the drafting of articles of entrenchment, or the purported article of entrenchment shall be void according to Section 6 of the Act. Case laws based on previous Companies Act, 1956 do not throw more light on the mode of entrenchment. However, the Act (of 2013), has various enabling provisions which not only enables but throws light on areas where the articles of entrenchment can exit.

However, after looking into the limitations and enabling provisions under the Act, the following areas are still open for the articles of entrenchment:

- (a) Appointment of directors, affirmative voting of directors on particular items of agenda in meeting, participation in quorum.
- (b) Appointment of chairman or vice chairman and affirmative voting in the event of exercise of casting vote.
- (c) Managerial decisions:
 - (i) Increase in capital
 - (ii) Diversification of business by acquisition of new company, divestment or demerger or joint venture, or adopting new product line or services or forming consortium or abandoning

particular product line or services or setting up new production facilities or service facilities or opening branch in foreign countries or setting up of subsidiaries in India or outside India or amalgamation or substantial capital expenditure for tangible and intangible assets

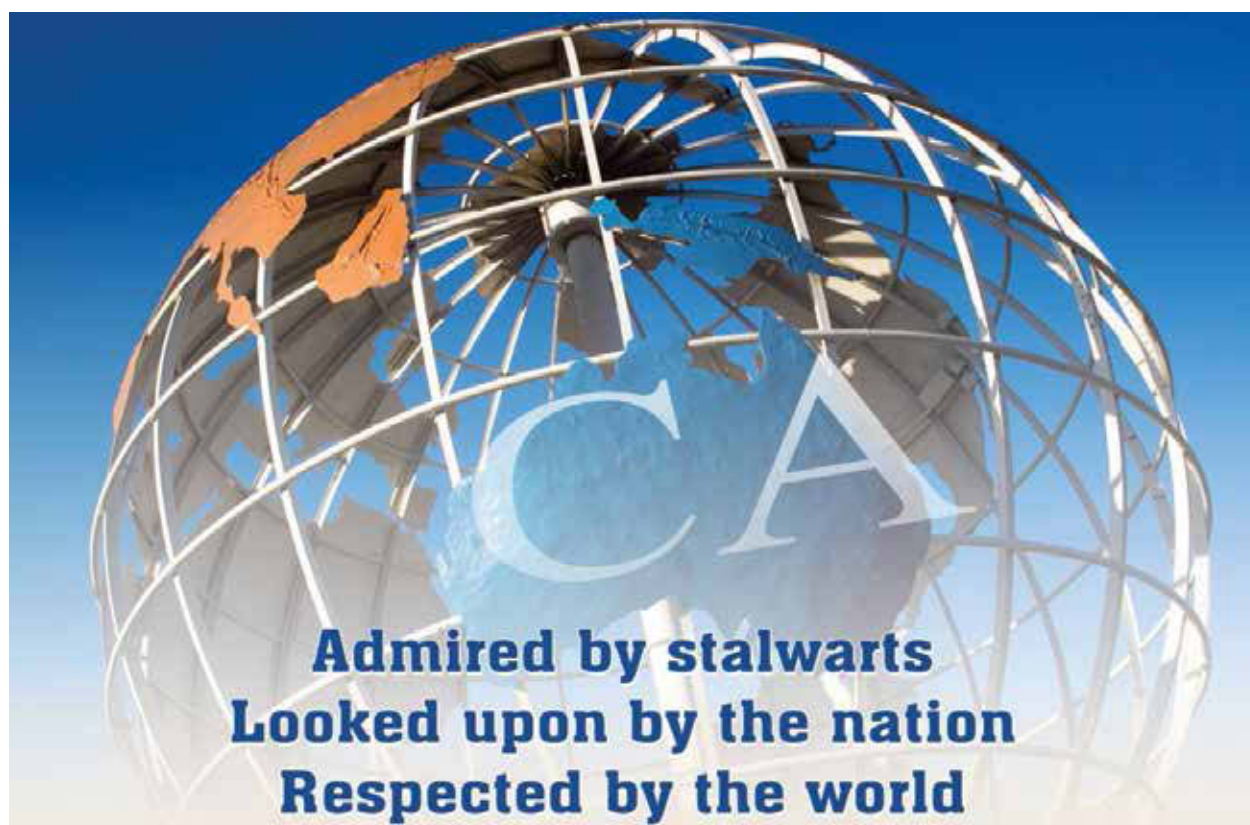
- (iii) Dividend distribution
- (iv) Appointment of key managerial personnel or other managerial or functional heads
- (v) Acquisition of new technology, know how or any intellectual property rights in any form or initiating research and development for new product or restructuring requiring substantial investment
- (vi) Policy pertaining to all regulatory and statutory matters as well as for functioning and operation of business such as environment labour laws, internal audit, *etc.*, excluding all routine, ministerial and administrative repetitive tasks

(vii) Services of notice to directors for board meeting

- (d) Exit of shareholder and exercise of right of first refusal, drag along, tag along, valuation of shares including call and put option, *etc.*;
- (e) Procedure for amendment of articles of entrenchment may lay down procedure of affirmative votes or unanimous consent or exercise of veto power.

Thus, the aforesaid areas may be covered in the articles of entrenchment, which shall almost include all matters of control to protect substantial amount of money invested by any investor or developer of any intellectual property rights in the course of carrying of business, still the facts of each case may dictate various other areas for articles of entrenchment according to the provisions in the Act. ■

(Disclaimer: This article attempts to broadly analyse the provisions of entrenchment as contained in the Companies Act, 2013 and this analysis may be applied after ascertaining the facts and understanding among the parties *vis-à-vis* independent analysis of provisions in its entirety with the help of a legal counsel only.)



Acceptance of Deposits by Private Companies



With the enforcement of a large number of Sections of the Companies Act, 2013 and relevant Rules, the Government of India has given a big push to the enforcement of the new Company Law with effect from 1st April, 2014. Whereas the Companies Act, 1956 provided for a number of privileges and exemptions to the private companies, most of them are withdrawn in the new regime. One such privilege for the private companies was its eligibility to accept deposits from its members, directors and their relatives, without doing much paper work. However, the new law has restricted this privilege and prescribed for detailed compliance with reference to the repayment of existing deposits and acceptance of the fresh deposits. This article covers the key features of these provisions and the procedure to be followed by the private companies for accepting deposits. This article covers the impact of these provisions on private companies. Read on...

Acceptance of Deposits

Provisions relating to the invitation, acceptance and repayment of deposits are comprised under Chapter V of the Companies Act, 2013 (the 'Act'). Deposits-related matters like (i) the existing deposits; (ii) acceptance of deposits from members; and (iii) acceptance of public deposits, are sought to be regulated through this Chapter. Key sections of this Chapter, namely, Section 73, Section 74(1) and Section 76 have already been brought into force from 1st April, 2014. Exercising its powers under the Act, the Central Government has, in



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consultation with the Reserve Bank of India (RBI), made the rules which are notified as the Companies (Acceptance of Deposits) Rules, 2014 (the 'Rules'). The notified Sections would affect a large number of private companies who have accepted deposits from their members, directors and their relatives. Some of the recently notified provisions would require immediate compliance by these private companies. Since this would include the certification of certain information by the auditors, timely examination of the relevant records by the auditors would be equally essential.

Meaning of Deposit

According to Section 2(31) of the Act, *deposit* includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the RBI.

According to Rule 2(1)(c) of the Rules, the *deposit* includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include certain receipts as listed under this Rule. The list given under Rule 2(1)(c) states 14 types of transactions in the nature of the receipt, which are specifically excluded from the ambit of the term *deposit*. The said list includes amount received from the Central Government or a State Government, foreign Government, *etc.*, loan or facility from banks, public financial institutions, *etc.*, amount received against issue of commercial paper, *etc.*, amount received from any other company, amount received towards subscription to any securities, amount received from a director of the company, amount raised by the issue of secured bonds or debentures, non-interest bearing security deposit from an employee, non-interest bearing amount received or held in trust, amount received in the course of, or for the purposes of, the business of the company, amount brought in by the promoters, in pursuance of the stipulation of any lending financial institution or a bank, and amount accepted by a *Nidhi* company. To be treated as an exempt deposit, receipts falling in the above categories should be in conformity with the terms mentioned in the specific clause.

Two key categories of transactions which would affect a large number of private companies are:

- a) Rule 2(1)(c)(vi): any amount received by a company from any other company.
- b) Rule 2(1)(c)(viii): any amount received from a person who, at the time of the receipt of the

Private companies can accept the deposit from its members only if it has complied with the provisions of Section 73(2) of the Act. Of course, no such compliance is necessary if the company accepts the deposit only from such member(s), who also happen to be the director(s) of the company, at the time of making the said deposit [Rule 2(1)(c)(viii)].

amount, was a director of the company—provided that the director from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

Depositor

Rule 2(1)(d) defines a *depositor*, which means:

- (i) any member of the company who has made a deposit with the company in accordance with the provisions of sub-Section (2) of Section 73 of the Act, or,
- (ii) any person who has made a deposit with a public company in accordance with the provisions of Section 76 of the Act.

The said definition of the term *depositor* makes it clear that -

- a) by complying with the provisions of Section 73(2), any company, be it private or public, can accept deposit from its members only; and
- b) by complying with the provisions of Section 76, only a public company can accept deposit from any person, who can be a non-member also. Of course, such public company should also be an *eligible company* as defined under the Rule 2(1)(e).

Deposits and Private Companies

Private companies can accept the deposit from its members only if it has complied with the provisions of Section 73(2) of the Act. Of course, no such compliance is necessary if the company accepts the deposit only from such member(s), who also happen to be the director(s) of the company, at the time of making the said deposit [Rule 2(1)(c)(viii)]. The wordings of this imply that the exemption would continue to be available throughout the tenure of the deposit even if the said depositor ceases to be a director at a later date.

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Section 3(1)(iii)(d) of the Companies Act, 1956, prohibited a private company to invite or accept deposits from persons other than its members, directors or their relatives. In other words, a private company was allowed to accept deposits only from its members, directors or their relatives. In case of private companies, acceptance of deposits from these people is a general practice.

However, a recently notified Section 74(1) of the Act mandates that all those private companies, who have accepted the deposits, are required to ensure certain compliance on immediate basis, to avoid penal consequences. Moreover, Section 73 provides that the private companies can accept deposits from the members, only by complying with the detailed process as prescribed under the Act and the relevant Rules. Hence, on 1st April, 2014, the deposit-acceptance activities of a private company may be divided into two parts:

- (i) Treatment of existing deposits (Section 74) and
- (ii) Acceptance of fresh deposits (Section 73).

Treatment of Existing Deposits (Section 74)

Sub-Section (1) of Section 74 of the Act provides for the repayment of all deposits which have been accepted by the private companies on or before 31st March, 2014. The said sub-Section reads:

“(1) Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall –

(a) file, within a period of three months from such commencement or from the date on which such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable thereon along with the

arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law; and

(b) repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.”

To comply with this provision, every private company that has taken deposits from its members, directors or their relatives and such deposits were either outstanding as on 31st March 2014 or due but not paid (including interest, if any) as on 31st March, 2014, has to take the following actions, as early as possible:

- (a) File Form DPT-4: The statement regarding the deposits in existence as on 1st April, 2014 needs to be filed within 3 months from 1st April, 2014 or from the date on which such payments are due.
- (b) Repayment of deposits: The deposits which are in existence on 1st April, 2014 must be repaid before 31st March, 2015 or within one year from the date on which such payments are due, whichever is earlier.

Filing of Form DPT-4

A statement regarding deposits existing as on 1st April, 2014, is required to be submitted through Form DPT-4. In addition to giving the statutory information about the company's name, address, status, etc., a company is also required to give the following important information in this Form:

- (i) Total deposits outstanding as on 1st April, 2014:
 - (a) amount; and
 - (b) number of depositors.
- (ii) Details of above deposits under following heads:
 - (a) deposits due but not paid;
 - (b) interest due thereon but not paid;
 - (c) deposits due but not claimed;
 - (d) interest due thereon but not claimed; and
 - (e) deposits not yet due for repayment.
- (iii) Deposits due for repayment in next three months.
- (iv) Arrangements made for repayment of deposits due for repayment.

Following documents are required to be attached to this Form:

1. Auditor's certificate;
2. List of depositors indicating name, address, amount deposited, repaid during the year and

The company is required to obtain the auditor's certificate and attach the same to Form DPT-4. No specific format is prescribed for the said certificate; however, we can presume that the said Certificate has to state that the information disclosed under the Form is correct.

All private companies who held deposits on 1st April, 2014 will have to obtain a certificate on correctness of information as given in Form DPT-4 from the auditors. Private companies deciding to invite and accept deposits from 1st April, 2014, will need to get the audited cash flow statement for the three years immediately preceding the date of issue of circular.

outstanding, interest due, paid and payable as at the close of the Financial Year and separately indicating deposits not yet matured, matured, claimed and paid and matured, claimed but not paid and matured but not claimed for payment; and

3. List of deposits matured, cheques issued but not yet cleared.

Auditor's Certificate

The company is required to obtain the *auditor's certificate* and attach the same to Form DPT-4. No specific format is prescribed for the said certificate; however, we can presume that the said *Certificate* has to state that the information disclosed under the *Form* is correct.

Acceptance of Fresh Deposits (Section 73)

Under the new Act, the deposits accepted by a private company from its directors are exempt. However, if a private company wants to accept the deposits from its members, it is supposed to comply with the detailed process prescribed under the Section 73 and the Rules. *Box 1* gives the overview of Section 73 and *Box 2* gives overview of the relevant Rules.

Box 1: Key Provisions on Acceptance of Deposits from Members

Section	Provision
73 (1)	Company to accept of deposits from public in specific manner alone
73 (2)	Acceptance of deposit by a company from its members
73 (2)(a)	Issuance of a circular to the members
73 (2)(b)	Filing a copy of the circular with the Registrar of Companies
73 (2)(c)	Deposit of 15% amount in a scheduled bank in a separate bank account to be known as Deposit Repayment Reserve Account
73 (2)(d)	Deposit insurance
73 (2)(e)	No default certificate

Section	Provision
73 (2)(f)	Creation of charge on the property or assets of the company, if needed
73 (3)	Repayment of deposits with interest in accordance with the terms and conditions
73 (4)	Failure in repayment of the deposit or interest, application to the Tribunal
73 (5)	Utilisation of Deposit Repayment Reserve Account only for repayment of deposits

Box 2: Key provisions of Companies (Acceptance of Deposits) Rules, 2014 (as applicable to private companies)

Rule	Provision	Form, if any
4	Form and particulars of advertisements or circulars	Form DPT-1
5	Manner and extent of deposit insurance	
6	Creation of security	
7	Appointment of trustee(s) for depositors	Form DPT-2
8	Duties of trustee(s)	
9	Meeting of depositors	
10	Form of application for deposits	
11	Power to nominate	
12	Furnishing of Deposit Receipts to depositors	
13	Maintenance of liquid assets and creation of Deposit Repayment Reserve Account	
14	Registers of deposits	
15	General provisions regarding premature repayment of deposits	
16	Return of Deposits to be filed with the Registrar	Form DPT-3
17	Penal rate of interest	
18	Power of Central Government to decide certain questions	
20	Statement regarding deposits existing as on 1 st April, 2014	Form DPT-4
21	Punishment for contravention	

Sub-Section (2) of Section 73 permits a company to accept deposits from its members, if the same is approved by the members in general meeting. The

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company wanting to invite and accept such deposit has to follow the following procedures:

- (a) *Issue the circular*: Issue a circular, approved by the Board, to all the members, by registered post with acknowledgement due or speed post or by electronic mode, including therein a statement showing the financial position, the credit rating and all other details as given in the Form DPT-1.
- (b) *File the Form*: Not less than 30 days before issuing the circular, file Form DPT-1 with the Registrar of Companies.
- (c) *Deposit Repayment Reserve account*: Open a separate bank account to be called as "*Deposit Repayment Reserve Account of _____ Pvt. Ltd.*" with a scheduled bank. An amount, not less than 15% of the amount of its deposits maturing during the current financial year and the next financial year needs to be kept in this account.
- (d) *Deposit insurance*: At least 30 days before issue of circular, enter into a contract for providing deposit insurance, in conformity with the Rule 5.
- (e) *No-default certificate*: Request the Board to pass a resolution certifying that the company has never committed any default in the repayment of deposits accepted or interest thereon.
- (f) *Creation of security*: If the company is accepting secured deposits, create the security by way of charge on the property or assets of the company.
- (g) *Unsecured deposits*: In case, the company does not secure the deposits, the deposits shall be termed as *unsecured deposits*. This fact needs to be quoted in every communication or document related to invitation or acceptance of deposits.
- (h) *Appointment of trustees*: In case of acceptance of secured deposits, appoint one or more trustees for depositors for creating security for the deposits and execute a deposit trust deed in the Form DPT-2 at least seven days before issuing the circular.
- (i) *Form of application*: Receive the deposit from an intending depositor in the prescribed form only. The depositor should be allowed to appoint a nominee.
- (j) *Deposit Receipt*: Whenever a deposit is accepted or renewed, issue a deposit receipt within 21 days.
- (j) *Register of Deposits*: Maintain the *Register of Deposits* at the registered office of the Company and make necessary entries within seven days of issuance of the *Deposit Receipt*.
- (k) *Premature repayment*: Make the premature



mature repayment only in accordance with the directives contained in the Rule 15.

- (l) *Return of Deposits*: File before June 30 every year, a return in the Form DPT-3, with the Registrar of Companies, giving information as of 31st March of that year. The said return should be duly audited by the auditors of the company.
- (m) *Penal interest*: In case, of delayed repayment, pay a penal of interest @ 18% per annum, for the overdue period.

Role of Auditors

Auditors of the companies accepting the deposits have an important role to play in the deposit and inviting-accepting exercise of companies. All private companies who held deposits on 1st April, 2014 will have to obtain a certificate on correctness of information as given in Form DPT-4 from the auditors. Private companies deciding to invite and accept deposits from 1st April, 2014, will need to get the audited cash flow statement for the three years immediately preceding the date of issue of circular. The same is required to be incorporated in the Form DPT-1. Annual *return of deposits*, in the Form DPT-3, to be filed by a company accepting deposits has to be supported by the *auditor's certificate*.

Conclusion

Imposing restrictions on private companies to accept deposits from members is bound to disappoint the people managing such companies. Moreover, taking deposit insurance, getting credit rating, appointing trustees may involve considerable costs. These companies may, therefore, stop accepting deposits from the members, who are not directors. However, till the time the existing deposits are paid, such companies will have to ensure a timely compliance to avoid the contravention resulting into the imposition of any kind of penalty. ■

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals received during October-November, 2014 for the reference of Faculty/Students & Members of the Institute.

1 Accountancy

Accounting Research in Family Firms: Theoretical and Empirical Challenges by Annalisa Prencipe and Sasson Bar-Yosef. *European Accounting Review*, Vol.23/3, 2014, pp.361-386.

Accounting Standards GAPS IN GAAP: Contingent Pricing of Fixed Assets and Intangible Assets by Dolphy D'Souza. *Bombay Chartered Accountant Journal*, October 2014, pp. 81-86.

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Financial Reporting: FRS 102 Accounts What Will Your First Set Look Like by Terry O'Rourke and Fiona Hockett. *Accountancy Ireland*, October 2014, pp.22-24.

IFRS 9: Too Little, Too Late? by Mercedes Bano. *Accountancy*, October 2014, pp. 52-54.

Sea Change for Charities: A Shake-up of Accounting Rules for Small Entities Means Charities by Nick Sladden. *Accountancy*, October 2014, pp.56-59.

2 Auditing

Six Essential Questions for Audit Committees by John Corrigan. *Accountancy Ireland*, October 2014, pp. 30-32.

Trust, Organizational Justice, and Whistleblowing: A Research Note by Deborah L. Seifert and William W. Stammerjohan etc. *Behavioral Research in Accounting*, Vol. 26/1, 2014, pp.157-168.

3 Economics

Market Impact of Mandatory Interactive Data: Evidence from Bank Regulatory XBRL Filings by Lizhong Hao and Mark J. Kohlbeck. *Journal of Emerging Technologies in Accounting*, Vol.10, 2013, pp.41-62.

Performance of Private Corporate Business Sector, 2013-2014. *RBI Monthly Bulletin*, October 2014, pp.73-81.

Post-Reforms Performs Performance of Indian Public Sector Banks by G. Pavan Kumar Reddy and

P. Mohan Reddy. *Banking Finance*, September 2014, pp.32-37.

Suspicious Finds: In the Global War on Money Laundering, Accountants are Front and Centre and New Laws Are There to Help Them by Robert Colapinto and Gary Sawyer. *CPA Magazine*, August 2014, pp. 35-37.

4 Investment

Do Stock Prices Influence Analysts' Earnings' Forecasts? by Jeffrey S. Miller and Lisa M. Sedor. *Behavioral Research in Accounting*, Vol. 26/1, 2014, pp.85-108.

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Profit at the Bottom of the Pyramid: A Tool for Assessing Your Opportunities by Erik Simanis and Duncan Duke. *Harvard Business Review*, October 2014, pp. 87-93.

5 Law

New Era in Related Party Transactions: Is IT A Paradigm Shift in Disclosures? by Sudipto Banerjee. *Company Law Journal*, October 2014, pp. 1-15.

6 Management

Compensation Peer Groups and Their Relation with CEO Pay by Brian Cadman and Mary Ellen Carter. *Journal of Management Accounting Research*, Vol. 26/1, 2014, pp.57-82.

Corporate Governance Disclosure Practices in Indian Steel Sector by L. N. Koli and Navratan. *Banking Finance*, September 2014, pp.38-44.

Corporate Governance: Changing Trends in Interpreting Fiduciary Duty by Anurag K. Agarwal. *Vikalpa*, July-September 2014, pp.1-12.

Pricing Issues for Small Firms Sales: What Partners Need to Know to Maximize Proceeds When Selling Their Practice by Joel Sinkin and Terrence Putney. *Journal of Accountancy*, October 2014, pp.24-27.

What Qualify as Funds for GST Purposes by Chris Loh & Ho Soon Wing. *ISCA Journal*, October 2014, pp. 36-39. ■

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

Report on Campus Placement Programme – August-September-October, 2014*

The Committee for Members in Industry (CMII) of ICAI organises Campus Placement Programmes for Newly Qualified Chartered Accountants twice in a year and is committed to provide world class placement services to the Members and best accounting and finance talents to the industry.

In its endeavor to provide quality Accounting, Finance, Tax, Audit and Management Consultancy personnel to recruiting entities, the Committee has successfully organised one more round of Campus Placement Programme for Newly Qualified Chartered Accountants at nineteen centres viz. Ahmedabad, Bangalore, Baroda, Bhubaneswar, Chandigarh, Chennai, Coimbatore, Ernakulam, Hyderabad, Indore, Jaipur, Kolkata, Mumbai, Nagpur, Navi Mumbai, New Delhi, Pune, Thane & Vasai in August-September-October, 2014.

Brief summary of the Campus Placement Programme–August-September-October, 2014:

Particulars	Campus August-September-October, 2014
Number of Candidates Registered	4,809
Number of Candidates Shortlisted	4,208
Number of Interview Teams	154
Number of Organisations	86
Number of Jobs Offered	1,019*
Number of Jobs Accepted	953
Percentage of Jobs offered <i>vis-a-vis</i> shortlisted candidates	24.22%

Executive Summary

- Highest salary offered for Domestic posting in the Campus Placement Programme is ₹17 lakh per annum offered by ITC Limited.
- Highest salary offered for International posting in the Campus Placement Programme is ₹24 lakh per annum offered by Alghanim Industries at New Delhi center to 4 candidates.
- Average CTC offered is ₹7.29 lakh per annum.
- 1,019* jobs were offered to the candidates

who had participated in Campus Placement Programme.

- 86 organisations and 154 Interview Teams have participated during the Campus Placement Programme.

Salient Features

- Candidates were given two chances to meet the recruiting organisations via opting for two centres, first at smaller centre and second (if the candidates has not been selected at smaller centres) at bigger centres.
- The committee organised Orientation Programme for candidates so as to sharpen their soft skills and to provide them technical updates.
- All the candidates have been provided E-Learning opportunity on two topics, namely Business Etiquette-Gaining That Extra Edge and Mastering the Interview, free of cost during the Campus Placement Programme August-September-October, 2014.

Top CTC Offered for domestic posting:

Sl No.	Company Name	Job Offered	CTC Offered (INR Per Annum)
1	ITC Limited	7	17,00,000
2	Coca-Cola India Inc.	6	15,00,000
3	ITC Limited	6	14,00,000
4	Bharat Petroleum Corpn. Limited	10	12,50,000
5	Cairn India Limited	6	11,00,000

Salary Range

Salary Range (per annum)	Number of Candidates
₹9,00,000 and above	201
₹7,50,000 to ₹9,00,000	135
₹6,00,000 to ₹7,50,000	337
₹5,00,000 to ₹6,00,000	246
₹4,00,000 to ₹5,00,000	21
₹3,00,000 to ₹4,00,000	13
Total	953

Top Companies Participating in Campus Placement Programme, August-September-October, 2014

S. No.	Company Name
1	ABNL-Apparel & Retail Business
2	Alghanim Industries
3	Axis Bank Ltd.
4	Axis Risk Consulting Pvt Ltd-A Genpact Company
5	Back Office Shared Services (I) Pvt. Ltd.
6	Barclays Shared Services private Limited
7	BHARAT PETROLEUM CORPN. LIMITED
8	Bharti Infratel Limited
9	Birla Sunlife Insurance Company Ltd
10	Bosch Limited
11	Cairn India Limited
12	Capgemini
13	Carborundum Universal Ltd
14	Caterpillar India Pvt Ltd
15	Christy Group of Companies
16	Coca-Cola India Inc.
17	Cognizant Technologies Services Pvt Ltd
18	Credit Suisse Services India Pvt Ltd
19	ENGINEERS INDIA LIMITED
20	Evolutionary Systems Private Ltd.
21	GAIL (India) Limited
22	Galaxy Surfactants Limited
23	Genpact
24	Genpact AIG
25	HLL LIFECARE LIMITED
26	ICICI Prudential Life Insurance
27	INDRAPRASTHA GAS LIMITED(IGL), New Delhi
28	ITC Limited
29	Jindal Steel & Power Limited
30	JSW Steel Ltd.
31	Kalpataru Power Transmission Ltd
32	L&T
33	LIC HOUSING FINANCE LTD
34	Macquarie Global Services
35	Madura Fashions & Lifestyle
36	Marriott Hotels India Pvt. Ltd.
37	Mphasis an HP Company
38	PAREXEL International
39	PNB Gilts Ltd
40	RailTel Corporatio

S. No.	Company Name
41	Ramco Systems Ltd
42	RASHTRIYA ISPAT NIGAM LIMITED
43	Reliance Ind Limited
44	RPG Enterprise
45	Schneider Electric India
46	Suzlon Energy
47	Tata Consultancy Services Ltd.
48	Tata Teleservices Ltd
49	The Federal Bank Limited
50	The Indian Hotels Company Limited
51	Torrent
52	Universal Sompo General Insurance Company Limited
53	Vedanta Resources Plc.
54	Wipro Ltd

List is indicative

Spreading Wings-Organisation participating First time in Campus Placement Programme

S. No.	Company Name
1	Arvind Lifestyle Brands Limited
2	Avery Dennison
3	Edelweiss Financial Services Limited
4	FUTURES FIRST INFO SERVICES PVT. LTD.
5	IBS SOFTWARE SERVICES PVT. LTD.
6	ISSL Market Services Limited
7	Jindal Stainless Limited
8	Khazana Jewellery Pvt Ltd
9	KPIT Technologies Ltd
10	LAKSHMI MACHINE WORKS LIMITED
11	LAKSHMI VILAS BANK
12	Locon Solutions Pvt. Ltd.
13	M/s India Pistons Limited
14	NATIONAL BUILDINGS CONSTRUCTION CORPORATION LIMITED
15	Samsung R&D Institute, Bangalore
16	SKS Microfinance
17	Telecommunications Consultants India Ltd.
18	TESCO HINDUSTAN SERVICE CENTRE
19	UST GLOBAL
20	WNS Global Services (P) Ltd

*Status as on 19th November, 2014, 11:30 A.M.



Examination Notification: ISA Assessment Test

The Institute of Chartered Accountants of India

[Set up by an Act of Parliament]

9th November, 2014

TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA

NOTIFICATION

No.13-CA(EXAM)/ISA/D/2014: - In pursuance of Regulation 204 of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify that the Information Systems Audit (ISA) Course

Assessment Test (which is open to the members of the Institute) will be held on **27th December, 2014 (Saturday) from 10.30 AM to 2.30 PM** at the following cities provided that sufficient number of candidates offer themselves to appear therefrom.

Sl. No.	Name of the Cities	Sl. No.	Name of the Cities	Sl. No.	Name of the Cities
1	AGRA	23	GUWAHATI	45	MUMBAI
2	AHMEDABAD	24	GWALIOR	46	MYSORE
3	ALIGARH	25	HISAR	47	NAGPUR
4	AMRAVATI	26	HYDERABAD	48	NASIK
5	AURANGABAD	27	INDORE	49	PATNA
6	BANGALORE	28	JABALPUR	50	PUNE
7	BELGAUM	29	JAIPUR	51	RAIPUR
8	BHOPAL	30	JALANDHAR	52	RAJAMAHENDRAVARAM
9	BHUBANESWAR	31	JALGAON	53	RAJKOT
10	BIKANER	32	JAMMU	54	ROHTAK
11	BILASPUR	33	JAMNAGAR	55	SHIMLA
12	CHANDIGARH	34	JODHPUR	56	SILIGURI
13	CHENNAI	35	KANPUR	57	SOLAPUR
14	COIMBATORE	36	KARNAL	58	SURAT
15	CUTTACK	37	KOLHAPUR	59	TIRUPUR
16	DELHI / NEW DELHI	38	KOLKATA	60	UDAIPUR
17	DURGAPUR	39	KOZHIKODE	61	VADODRA
18	ERNAKULAM	40	LUCKNOW	62	VARANASI
19	FARIDABAD	41	LUDHIANA	63	VIJAYAWADA
20	GANDHIDHAM	42	MANGALORE		
21	GHAZIABAD	43	MEERUT		
22	GOA	44	MORADABAD		

The Council reserves the right to withdraw any centre at any stage without assigning any reason. The above Test is open only to the Members of the Institute who are already registered with the Institute for the ISA course and passed the related eligibility test. The fee payable for the above Assessment Test is ₹ 1000/-.

An application for admission to the Assessment Test is required to be submitted online by visiting <http://isaat.icaiaexam.icaai.org> and the sum of ₹ 1,100/- (₹ 1,000/- as examination fees and ₹ 100/- towards the examination form) has to be paid online using Master/Visa/Maestro Credit or Debit Card on or from 21st November, 2014. Alternatively, the format of application form can be downloaded from the website of the Institute viz. www.icaai.org and the cost of the application form of ₹ 100/- can be added to the Assessment Test fee of ₹ 1,000/- and the Demand Draft for ₹ 1,100/- of any Scheduled Bank

drawn in favour of "The Secretary, The Institute of Chartered Accountants of India", payable at New Delhi only has to be sent to the Additional Secretary (Exams), The Institute of Chartered Accountants of India, ICAI Bhawan, Indraprastha Marg, New Delhi-110002 so as to reach him on or before 4th December, 2014. The applications received after **4th December, 2014** will not be entertained under any circumstances.

(V. Sagar)
Acting Secretary

"ICAI Bhawan", Post Box No.7112
Indraprastha Marg, New Delhi-110 002, India

Telephones: 3054829, 3054823, 3054822
Fax: 0120-3054843/3054841 E-Mail: examcoob@icai.in

**Examination Notification****The Institute of Chartered Accountants of India***[Set up by an Act of Parliament]*Post Box No.7112, ICAI BHAWAN, Indraprastha Marg
New Delhi – 110002**TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA****NOTIFICATION****7th November, 2014**

No.13-CA(Exam)/CPT/December/2014/II: In partial modification of the Institute's Notification No.13-CA(Exam)/CPT/December/2014 dated 16th July, 2014, it is hereby notified for general information that in view of the Election to the Legislative Assemblies of States *i.e.* Jharkhand and Jammu & Kashmir, the Common Proficiency Test (CPT) initially scheduled to be held on 14th December 2014 at Dhanbad (in the State of Jharkhand) and Srinagar (in the State of Jammu & Kashmir) stand rescheduled and the test will now be held at Dhanbad & at Srinagar on 21st December

2014 at the same timings *i.e.* 10.30 AM to 12.30 PM and 2.00 PM to 4.00 PM (IST).

However, it is clarified that the schedule of Common Proficiency Test notified *vide* Notification No.13-CA(Exam)/CPT/December/2014 dated 16th July, 2014 in respect of all other cities shall remain unchanged.

(V. Sagar)

Acting Secretary

Raising of Number of Partners in CA Firm**Announcement****Raising of number of partners in CA Firm with reference to the provisions of Companies Act, 2013**

The Council of the Institute has clarified that the earlier restriction of maximum of 20 partners permitted for firms under Section 11 of the Companies Act, 1956 is no more applicable to the firms as Section 464 of the Companies Act, 2013 has been notified *w.e.f* 01.04.2014 wherein sub-Section (1) provides for a maximum number of partners permissible for business firms at 100 and sub-Section (2) provides that nothing in sub-Section (1) shall apply to an association or partnership, if it is formed by professionals who are governed by special

Acts.

Accordingly, as per *proviso* to the said Section, Chartered Accountants firms are now allowed to be registered/reconstituted with more than 20 partners *w.e.f* 01.04.2014 under the Indian Partnership Act as in the case of a firm under the Limited Liability Partnership Act.

Date: 26th August, 2014Joint Secretary
M&C-MSS

CHARTERED ACCOUNTANTS BENEVOLENT FUND

AN APPEAL TO ICAI MEMBERS FOR CONTRIBUTION TO CABF

Chartered Accountants Benevolent Fund (CABF) established in 1962 by ICAI, is one of the largest body providing welfare and support to the Chartered Accountants Fraternity. It provides financial assistance for medical treatment, education, maintenance or any other similar purpose to necessitous persons of the CA fraternity. Financial assistance in lump sum is also given to the widows/relatives of the deceased member in case of accidental/unnatural death at age below 55 years. A considerable number of members/family is already getting such assistance from CABF.

To continue this endeavour, CABF invite contribution from our CA members. The contribution can be made in the form of:

- | | |
|----------------------------------|--|
| 1. Life Membership | - Rs.2500/- |
| 2. Ordinary Membership | - Rs. 500/- annually |
| 3. Voluntary Contribution | - An honorable amount up to any extent. |

All subscription and contribution made towards CABF is eligible for deduction under Section 80 (G) of Income Tax Act, 1961.

Please contribute generously towards the Fund through at par cheque/DD favoring "Chartered Accountants Benevolent Fund" and sent it to concerned Regional Office of ICAI or to following address:



Chairman
Chartered Accountants Benevolent Fund

The Institute of Chartered Accountants of India

"ICAI Bhawan",
A-29, Sector 62, Noida-201309,
Dist. Gautam Budh Nagar (U.P.)
Email: cabf@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 Centers 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-tasking 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: 09538898906

For any other queries or feedback, please contact Secretary, CCBCAF & SMP, ICAI at 0120-3045994 or E-mail at: ccbcf.software@icai.in

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



EOI from Software Development Companies

Invitation for Expression of interest from software development companies for providing software relevant to the Practitioners & CA Firms of ICAI by December 30, 2014

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) of the Institute of Chartered Accountants of India (ICAI) is meant to encourage and enhance close links between the Institute and the Chartered Accountants, so as to provide for them, a base of reference in terms of knowledge, expertise, skills and assistance in their professional growth, simultaneously pursuing the goal of providing newer

opportunities to the practitioners & CA Firms. One of the major responsibilities of CCBCAF & SMP is to arrange software relevant for the Members of the Institute of Chartered Accountants of India (ICAI).

The CCBCAF & SMP invites Expression of Interest from the various software vendors who are interested to provide the software relevant to the Practitioners & CA Firms of ICAI by December 30,

2014. The intending parties are expected to have appropriate level of practical experience in the relevant area along with the knowledge of various aspects of the CA profession.

Terms of Reference for the Vendors of the software:

THE SOFTWARE VENDOR must be willing to rebrand its existing software.

Further, THE SOFTWARE VENDOR shall not use the logo of its Company on the software provided to ICAI members and/or in any ancillary document related to the software except with prior approval of ICAI and for limited purposes only.

THE SOFTWARE VENDOR shall act as a Development and Support Partner to this arrangement and shall provide support through their help desk.

THE SOFTWARE VENDOR shall provide initial license free of cost for first two years activation from date of MOU to CA members and thereafter, provide the software at nominal price. Any registered member with ICAI would be eligible to get single copy of initial license without paying any cost.

THE SOFTWARE VENDOR shall provide free of cost licenses of the software during the period of MOU to all present and future Information Technology Training Centers of ICAI all over India with two years' activation. THE SOFTWARE VENDOR shall also provide free of cost live patches of the software as and when released during the term of this MOU.

THE SOFTWARE VENDOR shall provide free of cost single license of the software with two years' activation from date of MOU to all present and future offices of ICAI.

THE SOFTWARE VENDOR shall also provide free of cost training to all staffs in the Head Office & other offices of ICAI as well as to provide live patches of the software as and when released during the period of MOU.

Any other terms & conditions, as decided by the Committee from time to time.

Delivery of software products

THE SOFTWARE VENDOR shall make available the Software Setup in the ICAI/Committee website www.icaai.org.in and www.icaai.org so that software setup may be downloaded from website and installed by the ICAI members.

i) THE SOFTWARE VENDOR shall upload the

extensive documentation in soft form (PDF & HTML) through web links. These documents shall include Installation Manual, Feature List, FAQs, and User Manual etc.

ii) THE SOFTWARE VENDOR shall provide latest software patches through website www.icaai.org.in

iii) THE SOFTWARE VENDOR shall provide access to the updated documentation, whenever the new update/release of the current version of the products is published if the same is required.

b) UPLOADING THE SOFTWARE ON COMMITTEE'S WEBSITE:

THE SOFTWARE VENDOR shall make available the Software content through the website of Committee for Capacity Building of CA Firms and Small & Medium Practitioners, www.icaai.org.in and www.icaai.org so that software setup can be downloaded and installed easily by the members, free of cost.

Training to End Users

The software vendor shall provide free of cost Training to all users of the software.

THE SOFTWARE VENDOR shall not use the name of the ICAI or any of its associates in any manner whatsoever for the promotion of its products. THE SOFTWARE VENDOR shall not publicise directly or indirectly in their advertisements in any manner about the MOU or arrangements with the ICAI except with the prior written approval of ICAI.

THE SOFTWARE VENDOR shall not state in any manner that any of its software products are endorsed, vetted, approved or developed with the inputs of the ICAI.

THE SOFTWARE VENDOR shall use the data coming to its possession for intended purpose only, in case this data is otherwise used or intended to be so used by THE SOFTWARE VENDOR, the Company shall be liable for the same.

ICAI hereby retains the right to impose any other or relax the existing terms & conditions for the arrangement of the software.

The intending Software vendors are required to send a formal request letter with the following details to *Secretary, Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP), The Institute of Chartered Accountants of India, ICAI Bhawan, A-29, First*

Floor, Administrative Block, Sector-62, Noida (U.P.), P.C.- 201309, Telephone: 0120-3045994. Sending proposals by email at sambit.mishra@icai.in is preferred:

1. Brief profile of the Company
2. Specific experience and expertise in the software relevant to the Practitioners & CA Firms of ICAI they offer.
3. Proposed coverage of the Software relevant for Practitioners & CA Firms of ICAI
4. Details about the software relevant for Practitioners & CA Firms of ICAI
5. Modalities about the software relevant for Practitioners & CA Firms of ICAI

It may be noted that mere submission of the Expression of Interest shall not entitle the applicant Vendor Company to enter into an arrangement

with CCBCAF&SMP, ICAI for its software. CCBCAF&SMP, ICAI reserves the right to invite similar proposal from any other Vendor Company though they may not have offered their expression of interest in this regard. No communications will be entertained from the applicant Vendor Companies in this regard. Only selected vendors will be individually communicated. CCBCAF&SMP, ICAI reserves the right to reject the Expression of Interest received from the applicant Vendor Companies without assigning any reason therefore.

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



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.in

For any other queries or feedback, please contact Secretary, CCBCAF & SMP, ICAI at 0120-3045994 or E-mail at: ccbcaf.software@icai.in

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



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 March 31st, 2015 are as follows:

Components	ICAI Special Offer (per user per month)	DELIVERY SLA
MICROSOFT OFFICE 365 SINGLE USER PACK Genuine Microsoft Office 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 organization	₹ 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 March 31st, 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.
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	For other products, delivery will vary based on feasibility.
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:
 Secretary, CCBCAF & SMP, ICAI at 0120-3045994 or ccbcf.software@icai.in

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



EOI as Resource Person for Certificate Course on WM&FP

Invitation for empanelment as Resource Persons for the Certificate Course on Wealth Management & Financial Planning to be organised by the Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) in the Year 2014-15

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) of the Institute of Chartered Accountants of India proposes to organise a Certificate Course on Wealth Management & Financial Planning during the year 2014-15.

The aforesaid certificate course emphasise on developing skill sets which would be required for advising clients to make sound financial decisions while practicing and serving clients in diverse practice areas as compliance, taxation *etc.*

Learning Objectives of the aforesaid certificate course:

- To enable the candidate to have enhanced career opportunities in Financial Services Investments guidance and wealth management.
- To enable the candidate to have Global league of the best Financial Planning professionals.

The curriculum of the aforesaid Certificate Course is as follows:

1. Introduction to financial planning
2. Risk Analysis & Insurance Planning
3. Retirement planning & employee benefits
4. Investment planning
5. Tax & estate planning
6. Advanced financial planning and HNI Wealth Management
7. Technical Analysis

Experts who have more than five years of experience in the relevant area and who have delivered lectures at various forums of Chartered

Accountants are eligible for the enlistment in the Panel of Experts.

Experts who are interested to be associated with The Institute of Chartered Accountants of India as Resource Persons are requested to send/e-mail their resume to the following address:

Secretary, Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP), The Institute of Chartered Accountants of India (ICAI), ICAI Bhawan, A-29, First Floor, Administrative Block, Sector-62, Noida (U.P.), P.C.-201309. E-mail: sambit.mishra@icai.in, Phone: 0120-3045994.

It would be appreciated if the resume including all details regarding qualification, Membership no. of ICAI (if any), Experience, areas of specialization, contact address, *etc.* is sent at the earliest, preferably within 30.12.2014.

CCBCAF&SMP, ICAI reserves the right to invite similar proposal from any other Member/ Members of ICAI though they may not have offered their expression of interest in this regard. No communications will be entertained from the applicant Member/ Members in this regard. Only selected applicant Member/ Members will be individually communicated. CCBCAF&SMP, ICAI reserves the right to reject the Expression of Interest received from the applicant Member/ Members of ICAI without assigning any reason therefore.

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



EOI for Resource Material for Certificate Course on WM&FP

Invitation for Expression of Interest for Authoring Resource Material for Certificate Course on Wealth Management & Financial Planning by December 30, 2014

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) initiated to launch a certificate course on Wealth Management & Financial Planning. The brief outline of the modules for the aforesaid Course is appended below.

Module 1: Introduction to Financial Planning –

This module is comprehensive and offers a complete overview of the financial planning process. It focuses on a globally accepted six-step financial planning process: general principles of cash-flow planning, budgeting, legal aspects of financial planning

and acquaints the students with concepts of risk management, investments, insurance, retirement solutions, tax and estate planning, which are covered in greater detail in the subsequent five modules.

The module will analyse the financial needs and goals to be achieved with specific resources within stipulated time period. It will stress on drawing up an action plan to fulfill the goals, like, the products to buy and the savings to make.

Module 2: Risk Analysis & Insurance Planning

– This module examines the principles of Risk Analysis & Insurance Planning to identify a client's risk exposure and accordingly select appropriate risk management techniques. The module reviews basic insurance products, pertaining to both general and life insurance; analyses various insurance needs, such as medical, disability, life and general insurance and finally determines the type and amount of insurance best suited to the client's situation and needs.

Module 3: Retirement Planning & Employee Benefits

– The module covers all the major retirement-related issues like retirement savings need analysis, qualified retirement plan design, Social Security, Medicare, and more.

Module 4: Investment Planning – The module emphasizes on identifying effective investment strategies of asset allocation according to an investor's risk appetite and financial goals. It also gives an insight into the wide variety of investment options in different asset class.

Module 5: Tax & Estate Planning – This module aims to enhance the knowledge in the realm of personal taxation and tax planning, by providing a synopsis of the key tax components. Estate planning sub-module introduces the student to the process of developing an estate plan, including assessment of important techniques of estate planning: wills, gifting schemes, powers of attorney and joint property ownership.

The sub-module on Tax Planning will include Privileged communications, Dangers of tax evasion, Filing tax returns and documentation, Advance tax, audit process, Refund of income tax, Taxation terminologies etc. It will also focus on taxation issues of Sole proprietorship, General partnership, Limited liability companies, Trusts, Foundations/exempt organisations, Professional associations/

corporations, Co-operative Societies etc.

Module 6: Advanced Financial Planning and HNI Wealth Management

– This module will focus on establishing client- planner relationships, gathering client data and determining goals and expectations, determining clients' financial status by analyzing and evaluating the clients' information, developing and preparing client-specific Financial Plan tailored to meet the goals and objectives of client commensurate with client's value, temperament, and risk tolerance, presenting and reviewing the plan with the client, implementing the Financial Plan, monitoring the Financial Plan *etc.*

Module 7: Technical Analysis - This module will focus on various technical parameters/analysis as well as indicators and chart patterns and other tools and buying and selling strategies for maximising the performance of managed portfolio.

The CCBCAF & SMP invites Expression of Interest from members of the Institute and other experts who are interested in developing/preparing basic drafts of the resource materials for the proposed certificate course on Wealth Management & Financial Planning relevant to the participants of the aforesaid course. The intending authors for preparing the aforesaid resource materials are expected to have appropriate level practical experience in the relevant area along with the knowledge of the aforementioned modules of the aforesaid course.

The aforesaid resource material has to be prepared as self-learning booklets in the form of handbooks with proper mix of theory and practical case studies or any other form for enhancing the knowledgebase of the Practitioners of ICAI.

Apart from getting recognition, among their professional brethren, for their contribution in preparing the background materials, the authors of the accepted resource materials will get:

1. Their names will be acknowledged in the resource material
2. Honorarium and reimbursement of incidental expenses as per the prevailing policy of the Committee/Institute. (Which will depend upon the size, time and efforts to be required to prepare such resource materials).

The intending authors are required to send a formal request letter with the following details, to *Secretary*,

Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP), The Institute of Chartered Accountants of India, First Floor, Administrative Block, ICAI Bhawan, A-29, Sector-62, Noida(U.P.)-201309. Sending proposals by email at sambit.mishra@icai.in is preferred:

1. Brief profile of the author
2. Specific experience and expertise in the relevant topic for which they offer themselves to write the background materials which will enable the CCBCAF&SMP secretariat for allotting the preparation of resource material for them
3. Proposed coverage of the resource material
4. Sources of primary and secondary data based on which the resource material will be written
5. Time frame within which they can submit the resource material.

It may be noted that mere submission of the Expression of Interest may not lead to the allotment of the particular resource material to a particular applicant. The Institute reserves the right to request any other expert (though they might not have

offered their expression of interest in this regard) to prepare resource material. No communications will be entertained in this regard. Only selected authors will be individually communicated.

CCBCAF&SMP, ICAI reserves the right to invite similar proposal from any other Member/Members of ICAI though they may not have offered their expression of interest in this regard. No communications will be entertained from the applicant Member/Members in this regard. Only selected applicant Member/Members will be individually communicated. CCBCAF&SMP, ICAI reserves the right to reject the Expression of Interest received from the applicant Member/Members of ICAI without assigning any reason therefore.

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



New Branches of Students' Association: Tinsukia/Dibrugarh/Raniganj

Announcement

October 27, 2014

**The Institute of Chartered Accountants of India,
New Delhi-110 002**

In pursuance of Regulation 81(5) of the Chartered Accountants Regulations, 1988, read with Rule 4 of the Chartered Accountants Students' Association Rules (as contained in Appendix No. (5) to the Chartered Accountants Regulation 1988), the Council of the Institute of Chartered Accountants of India is pleased to announce the setting up of Branches of Eastern India Chartered Accountants Students' Association at Tinsukia, Dibrugarh and Raniganj with effect from October 10, 2014.

As prescribed under Rule 4(b) of the Chartered Accountants Students' Association Rules, the Branches shall, at all time function subject to the control, supervision and direction of the Central Council, exercised through the Regional Council or the Regional Students' Association and shall be governed by the directions issued by the Central Council from time to time, for the functioning of the Branches of Students' Association or such other directions that may be issued from time to time.

The Branches shall be known as under:

- (1) Tinsukia Branch of EICASA
- (2) Dibrugarh Branch of EICASA
- (3) Raniganj Branch of EICASA

(T. Karthikeyan)
Secretary



Committee for Members in Industry
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

The Committee for Members in Industry of ICAI is organising comprehensive

Two days

ICAI-CMII Corporate Forum

on 31st January, 2015 - 1st February, 2015

at

Hotel Sahara Star, Mumbai

This mega event comprises the following sub- events:

1

Corporate Conclave -

Two days National Convention on contemporary topics to enrich the knowledge and to enhance the skill set of members. This Convention focuses on various important aspects that are of practical relevance to the members of the Institute and will be beneficial in keeping them updated in this dynamic environment.

2

ICAI Awards 2014 on 1st Feb. 2015-

Would honour the exemplary work of the Chartered Accountants in Industry by recognizing those who have demonstrated excellence in their professional life, personal life and are the role models for others in industry. The ICAI Awards 2014 also seek to acknowledge Chartered Accountants who have created value to their company's stakeholders on a sustainable basis.

3

Financial Services Expo -

A platform where Chartered Accountants and Corporate from all over India would mark their presence. This would enable various organizations involved in Banking, Insurance, Mutual Funds, Capital Markets, Real Estate, Information Technology products and services and other technological products to interact with Chartered Accountants, Investors, Finance Fraternity and Corporate Decision Makers.

We are expecting more than 3000-4000 delegates – all of them high profile professionals in various industries across the country who will participate in the Corporate Forum. The organizations can use the ICAI-CMII Corporate Forum 2014 for marketing their products/showcase themselves. By sponsoring the events, sponsors would be contributing to the main objective of searching and recognizing talent in the Industry at a higher level.

We earnestly invite you to participate in ICAI-CMII Corporate Forum 2014 and utilize this excellent opportunity. Details are available at <http://corporateforum.icai.org>. Members interested for participation in Corporate Conclave, ICAI Awards 2014 may kindly contact CMII Secretariat at 011-30110525/555/549/430.

We eagerly looking forward to meet you in the ICAI-CMII Corporate Forum 2014.

With kind regards,

Chairman,
Committee for Members in Industry

Classifieds

- 5195** Jamshedpur (Jharkhand) based CA firm, is looking for work on assignment, partnership basis. Jaluka & Associates, jalukaandassociates@gmail.com, 9709138711, 8406000707.
- 5196** 27 years established Lucknow CA Firm invites proposals for partners for partnership from experienced retired/new members. Contact:- CA. S. N. Gupta at 09415101759, 07607424536 E-mail: shivnarainabha@yahoo.co.in
- 5197** A Mumbai based Firm with Eight Partners and in practice for 42 years is looking to merge Proprietary 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
- 5198** Mumbai based CA firm is looking for work on assignment/sub-contract/partnership basis. Contact: shahpathik123@gmail.com, 09870148084.
- 5199** Mumbai based CA looking for professional work on assignment/sharing/sub contract/partnership basis / part time basis [e.g.: Accounts writing-part time, Accounts review, Income tax, Audit, Registration work, formation of company/LLP, foreign exchange laws related, etc.]. Contact: +91 99675 94897; e-mail: mdshahassociates@gmail.com
- 5200** CA firm since 1995 with five partners having experience in financial, management and tax advisory services, Interested in strategic partnership. Kindly contact on our email id rpmerger@gmail.com
- 5201** FCAs with DISA required from various districts of Odisha, for joining a CA firm of more than 25 years old. Write with details to email happyca40@gmail.com
- 5202** Firm of 4 Partners having offices at Kanpur & Delhi seeking to engage CA professionals/merge proprietor firmsto open new branches at Jammu and Kashmir & Srinagar. Contact: 9871070943 Email: bpsassociates@gmail.com
- 5203** Delhi based CA firm requires experienced Chartered Accountants. Candidates should have 6-7 years of taxation experience including of income tax assessments. Contact M/s. D. G. & Co., Chartered Accountants, 403, Pratap Chambers, Gurudwara Road, Karol Bagh, New Delhi-05, Ph. no. 28751295, e-mail: appointments@dgco.in
- 5204** 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
- 5205** South Delhi based CA firm is looking for senior chartered accountants willing to retire from their practices and form partnership on mutually agreed terms. Contact: nmittal@neerajmittal.co.in, 09810148364.

Forthcoming Events¹

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
1.	One Day Seminar on “ <i>Mergers & Acquisitions</i> ”	13 th December, 2014	Mumbai	6
Topics	- Is M&A the Harbinger of Corporate Growth - a Curtain Raiser - What to look for in M&A: Success Factors and Dos and Don'ts - Legal Issues: Too Many Need to be Known - Tax Structure: Tax Could be the Reason - Tax Planning - Structuring a Deal - Bankers' Perspective - M&A Analysis - Deal Experience Sharing			
Fees	₹1,500/- per participant			
Contact Person	Secretariat of Committee on Members in Industry, Phone: 011 – 30110555/525/548, Email: cmii@icai.in ; ruchi_gupta@icai.in			
2.	Comprehensive Conference on Professional Opportunities in WTO, FEMA, Intellectual Property Rights & other Economic, Commercial Laws	13 th & 14 th December, 2014	Mumbai	9
Topics	- Drafting of Commercial Documents, Affidavits – a Practical Exercise - FEMA- New Vision & Approach - Overview of the FEMA Law, Inbound & Outbound Investments Latest Developments & Professional Opportunities - Foreign Direct Investments: Overview & Regulatory Framework including Procedure, Important Circulars/Master Circulars issued by RBI <i>etc.</i> - Emerging Professional Opportunities in WTO Regime - Functioning of WTO; Basic Principles of WTO & Current Negotiations - Accountancy Services Modes of Supply & Movement of Natural Persons under General Agreement on Trade in Services (GATS) - Export Import-Policy & Procedures - Professional Opportunities - Intellectual Property Rights - Global Recognition and Protection - Key Features, Practical Aspects and Emerging Professional Opportunities in Intellectual Property Rights (IPRs) - Copyright Act 1957, Patents Act 1970, Trade Marks Act, 1999, Design Act 2000 - Valuation, Accounting and Auditing Aspects in IPRs			
Fees	₹1,500/- per participant			
Contact Person	For registration and further details: - Secretariat of Committee on Members in Industry, Phone: 011 – 30110555/525, E-mail: cmii@icai.in; ruchi_gupta@icai.in - Secretariat of Committee on Economic, Commercial Laws & WTO, Phone: 011 – 30110499, Mobile: 09312085029 E-mail: ctlwto@icai.org; cecl@icai.in; kuldeep.vashisht@icai.in			
3.	Three Days Residential Refresher Course at Jim Corbett National Park	5 th –7 th December, 2014	The Hridayesh 'NH 121, Village Dhikuli, Jim Corbett National Park, District Nainital, Uttarakhand 244715	18
Topics	- Companies Act, 2013: Compliances from Incorporation to Winding Up - Companies Act, 2013: Related Party Transactions and Deposit - Writs and Compounding under the Income-tax Act, 1961 - Procedural Aspects of Litigation and Assessment in Service Tax under the Finance Act 1994 - Capacity Building Measures of Practitioners			
Fees	Members–per participant–(on twin sharing basis) ₹8,500/-			

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
Contact Person	Programme Chairman: CA. Anuj Goyal, Chairman, CCBCAF&SMP, ICAI and CMA, ICAI, E-mail: anujgoyal@icai.org Programme Co-ordinator: CA. Sanjay Gupta, Chairman, Dehradun Branch of CIRC of ICAI, Mobile: 09412059094, E-mail: skg_ddun@rediffmail.com For Registration & Information: - CA. Ajay Khattak, RRC Co-ordinator, Mobile: 9837080271, E-mail: dehradunica@gmail.com - Dr. Sambit Kumar Mishra, Secretary, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI, Phone: 0120-3045994, E-mail: ccbcaf.event@icai.in			
4.	National Conference on Role of CA professionals in Economic Development of India	20 th & 21 st December, 2014	Hotel Country Inn, Sahibabad, Delhi NCR	12
Topics	- Direct Taxation: Issues & Way Forward - Indirect Taxation: Issues & Way Forward - Companies Act, 2013: Compliances from incorporation to winding up - Cloud Computing an essence for CA Professionals - CAs and SMEs in <i>Make in India</i>: Expectations and Opportunities			
Fees	₹1,500/- for Members of ICAI			
Contact Person	Programme Chairman: CA. Anuj Goyal, Chairman, CCBCAF&SMP, ICAI and CMA, ICAI, E-mail: anujgoyal@icai.org Programme Co-ordinator: CA. G. C. Misra, Chairman, Ghaziabad Branch of CIRC of ICAI, Mobile: 9810816012, E-mail: gpa001@gmail.com , misragyan@yahoo.co.in For Registration & Information: - Ghaziabad Branch of CIRC of ICAI, Yamunotri Complex, IInd Floor, A-12, Ambedkar Road, Ghaziabad-201001, Phone: 0120-4114478, E-mail: ghaziabad@icai.org, info@icaigzb.org - Dr. Sambit Kumar Mishra, Secretary, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI, Phone: 0120-3045994, E-mail: ccbcaf.event@icai.in			
5.	National Conference 2014. Theme: Role of CAs in Make in India	26 th & 27 th 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 CAs in Make in India - The Companies Act 2013 – Accounts & Audit - The Companies Act 2013 – Compliances - Issues on Direct Tax - Capacity Building Measures – Networking, Merger & Other Forms of Consolidation			
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, E-mail: anujgoyal@icai.org Programme Co-ordinator: CA. Pawan Kumar Udaypuria, Chairman, Cuttack Branch of EIRC of ICAI, Mobile: 09937166049, E-mail: pudaypuri@yahoo.com For Registration & Information: - Cuttack Branch of EIRC of ICAI, Phone: 0671-2505348, 2506348 E-mail: cuttack@icai.org, Fax: 0671-2506348, Mobile: 7205131215, 9040967244 - Dr. Sambit Kumar Mishra, Secretary, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI, Phone: 0120-3045994, E-mail: ccbcaf.event@icai.in			
6.	National Conference- Theme - Make In India -A Global Necessity Chartered Accountants -A Parallel Contributor	27 th & 28 th December, 2014	ICAI Bhawan, A-29, Sector-62, NOIDA	12
Topics	- Appeal, Jurisdiction & Audit Under Service Tax. - Opportunities & Challenges Under New Company Act-2013. - Opportunities in Banking, Insurance & Investment. - Impact of UP. VAT in Real Estate Sector. - Assessment, Reassessment, Revision & Tax Pricing Assessment. - Panel Discussion on role of CA's in Make in India. - Panel Discussion on role of CA's in Financial Inclusion. - Panel Discussion on Impact of GST.			
Fees	₹1,500/-			

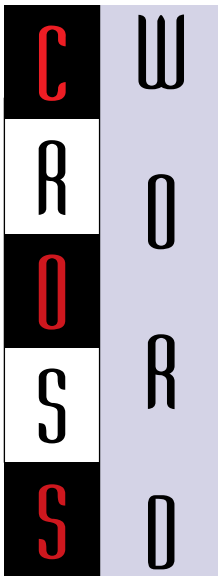
Events

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
Contact Person	Programme Chairman: CA. Anuj Goyal, Chairman, CCBCAF&SMP, ICAI and CMA, ICAI, E-mail: anujgoyal@icai.org Programme Co-ordinator: CA. Manoj Kumar Agrawal, Chairman, Noida Branch of CIRC of ICAI, Mobile: 9811018596, E- mail: mma.ca@rediff.com For Registration & Information: - Noida Branch of CIRC of ICAI, Phone: 0120-4280419, E-mail: infoicainoida@gmail.com - Dr. Sambit Kumar Mishra, Secretary, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI , Phone: 0120-3045994, E-mail: ccbcaf.event@icai.in			
7.	National Conclave on Technical Standards	6 th December, 2014	Hotel Le Meridian, New Delhi	6
Topics	- First Time Adoption of IND- AS - Audit Documentation, Engagement Letter and Written Representation - Companies Act, 2013: Auditor's Appointment, Responsibility & Reporting - Ethical Standards: Practitioner Perspective			
Fees	₹1,000/- per participant			
Contact Person	Conference Chairman: CA. Naveen N D Gupta, Chairman, Peer Review Board Conference Co-Chairman: CA. Mukesh Singh Kushwah, Vice Chairman, Peer Review Board For Information Contact: - Peer Review Board of the ICAI, Phone: (0120) 3045941, 3045970, Email: peerreviewboard@icai.in - CA. Radhey Shyam Bansal, Chairman, Northern India Regional Council of the ICAI, Phone: (011) 30100532, 30100500, 30100507, Email: nirc_seminar@icai.in For registration visit: http://www.nircseminars.org/seminardesc.aspx?semid=4			
8.	Conference on Corporate Frauds and Forensic Investigation	19 th December, 2014	India Habitat Center, Lodhi Road, New Delhi	6
Topics	- Risks and Mitigation Strategies for an Effective Business Environment - Serious Financial Frauds in Corporate - Banking & Insurance Sector - Digital Forensics and Use of Forensic Tools & Investigative Skills			
Fees	₹1,500/- for Chartered Accountants and ₹2,000/- for others			
Contact Person	Conference Chairman: CA. S. Santhanakrishnan, Chairman, Committee on Information Technology, ICAI, E-mail: sk@pkfindia.in For Registration & Information: CA. Amit Gupta, Committee on Information Technology, Phone: (0120) 3045961, 992,963			
9.	Certificate Course on Indirect Taxes	13 th December, 2014 to 18 th January, 2015 (Every Saturday and Sunday) Time: 9.30 am to 5.30 pm	Delhi	70 (50 Structured and 20 Unstructured)
Topics	The Certificate Course covers the following topics: - Service Tax - Introduction to Central Excise Law - Introduction to Customs Law - CST/ VAT Laws - Foreign Trade Policy/GST - Case Law - Practical case Studies			
Fees	₹20,000/-			
Contact Person	CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Phone: 09810103611, E-mail : atulservicetax@gmail.com For Information contact: Secretariat, Indirect Taxes Committee, Phone: 0120-3045954, 9350799932, E-mail: ccidt@icai.in For Registration visit : http://www.icai.org/post.html?post_id=7382			
10.	Live Webcast	18 th December, 2014	Online	-
Topics	Central Sales Tax			
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: itdc@icai.in			
11.	Two Days Programme on Service Tax	13th & 14th December, 2014 Time: 9.30 am to 5.30 pm	Durgapur	12
Topics				

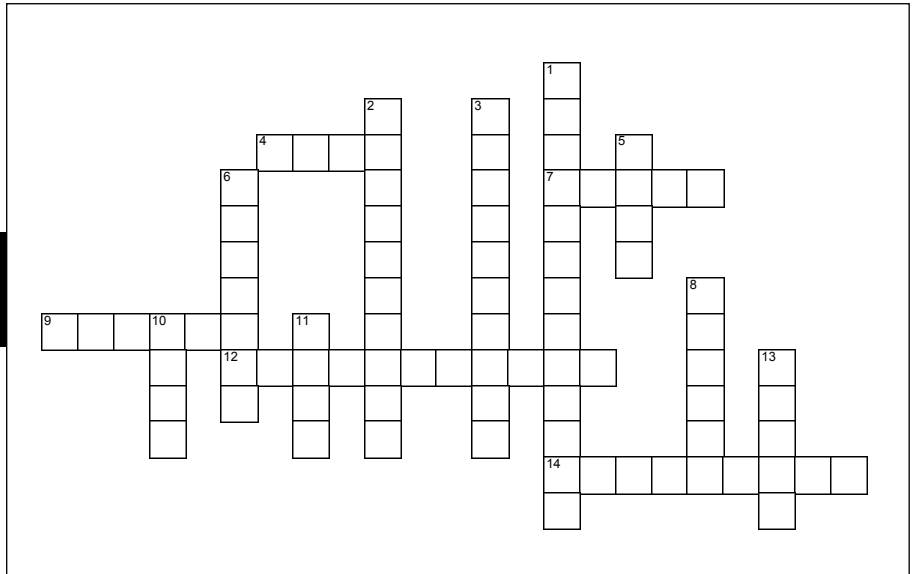
Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
Contact Person	CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 09810103611, E-mail : atulservicetax@gmail.com For Information contact: - CA. Manoj Sharma, Ph: 9933057025, E-mail: manojsharma1976@gmail.com - Secretariat, Indirect Taxes Committee, Phone: 0120-3045954, Mobile: 9350799932, E-mail: ccidt@icai.in			
12.	Programme on Service Tax and VAT	13 th & 14 th December, 2014 Time: 9.30 am to 5.30 pm	Mumbai	12
Topics	- Definition of Service Tax, Declared Service & Reverse Charge - Negative list of services and Exempted Services - Statutory Compliance in Service tax and VAT "Service Tax & VAT" in Works Contract - Valuation under VAT & CST - Input Tax Credit			
Contact Person	CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 09810103611, E-mail : atulservicetax@gmail.com CA. Prafulla P. Chhajed, Chairman, Young Members Empowerment Committee, E-mail: pchhajed@yahoo.com For Information contact: - Secretariat, Indirect Taxes Committee, Phone: 0120-3045954, Mobile: 9350799932, E-mail: ccidt@icai.in - Secretariat, Young Members Empowerment Committee, Phone: 0120-3045945, Mobile: 9650075010, E-Mail: rohit.kumar@icai.in			
13.	Two Days National Conference on Indirect Taxes	13 th & 14 th December, 2014 Time: 9.30 am to 5.30 pm	Delhi	12
Topics	- Reverse Charge Mechanism - Place of Provision of Service Rules and Rule 6A of Service Tax Rules 1994 - Applicability of Service Tax on Real Estate and Construction Industry - CENVAT Credit Rules 2004 - Opportunity of Chartered Accountants in Custom Act - Opportunity & Challenges for Chartered Accountants under GST			
Fees	- For Member: ₹ 1,200/- per Delegate. - For Non Member : ₹ 2,000/- per Delegate(Including Service Tax) - Free for all study group member of NIRC Region of ICAI subject to submission of form by 30th November, 2014			
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			
14.	One day Programme on Service Tax	6 th December, 2014 Time: 9.30 am to 5.30 pm	Sangrur	6
Contact Person	CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 09810103611, E-mail : atulservicetax@gmail.com For Information contact: - CA. Rahul Garg, Mobile: 9815553351, E-mail: gargrd@yahoo.co.in - Secretariat, Indirect Taxes Committee, Phone: 0120-3045954, Mobile: 9350799932, E-mail: ccidt@icai.in			
15.	One day Programme on Service Tax	12 th December, 2014 Time: 9.30 am to 5.30 pm	Baroda	6
Contact Person	CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 09810103611, E-mail: atulservicetax@gmail.com For Information contact: - CA. Viral K Shah, Mobile: 9824362211, E-mail: vkshah3@gmail.com - Secretariat, Indirect Taxes Committee, Phone: 0120-3045954, Mobile: 9350799932, E-mail: ccidt@icai.in			
16.	One day Programme on Service Tax	6 th December, 2014 Time: 9.30 am to 5.30 pm	Rohtak	6
Contact Person	CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 09810103611, E-mail : atulservicetax@gmail.com For Information contact: - Sachin Bhutani, Mobile: 9215352300, E-mail: sachinbhutani_ca@hotmail.com - Secretariat, Indirect Taxes Committee, Phone: 0120-3045954, Phone: 9350799932, E-mail: ccidt@icai.in			

Events

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
17.	Summit on "CA Professionals & SMEs in Make in India"	1 st December, 2014	Noida	6
Topics	- SMEs & SMPs in Economic Development in India - CA Professionals & SMEs in Make in India - CAs in Skill Development & Capacity Building in SME Sector for Facilitating Make in India - Networking Amongst CA professionals & SMEs for Make in India			
Fees	₹200/- for Members of ICAI			
Contact Person	Programme Chairman: CA. Anuj Goyal, Chairman, CCBCAF&SMP, ICAI and CMA, ICAI, E-mail: anujgoyal@icai.org For Information: - CA. Manoj Kumar Agrawal, Chairman, Noida Branch of CIRC of ICAI, Mobile: 9811018596, E-mail: mma.ca@rediff.com - CA. G. C. Misra, Chairman, Ghaziabad Branch of CIRC of ICAI, Mobile: 9810816012, E-mail: gpa001@gmail.com, misragyan@yahoo.co.in			
18.	Summit on "CA Professionals & SMEs in Make in India"	14 th December, 2014	Delhi	6
Topics	- SMEs & SMPs in Economic Development in India - CA Professionals & SMEs in Make in India - CAs in Skill Development & Capacity Building in SME Sector for Facilitating Make in India - Networking Amongst CA Professionals & SMEs for Make in India			
Fees	₹200/- for Members of ICAI			
Contact Person	Programme Chairman: CA. Anuj Goyal, Chairman, CCBCAF&SMP, ICAI and CMA, ICAI, E-mail: anujgoyal@icai.org For Registration & Information: Dr. Sambit Kumar Mishra, Secretary, Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI, Phone: 0120-3045994, E-mail: ccbcaf.event@icai.in			
19.	One Day Programme on Representation	7 th December, 2014 Time: 9.30 am to 5.30 pm	Alwar	6
Topics	- Understanding Notice vs. Show Cause Notice, Drafting Replies - Drafting Appeal along with Stay Application before Commissioner Appeal - Condonation of Delay (COD) Provisions - Filing of Appeal with Stay in CESTAT - Submitting Cross Objection under ST-7 - Submission of Additional Evidence/Additional Ground - Type of Applications with CESTAT - Mock Tribunal			
Contact Person	CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 09810103611, E-mail: atulservicetax@gmail.com For Information contact: - CA. Brij Mohan Veranwal, Mobile: 9828159062, Email: v_brijmohan@rediffmail.com - Alwar Branch, Phone: (0144) 2336381, 2701632, Email: alwar@icai.org			
20.	One Day Programme on Service Tax	21 st December, 2014 Time: 9.30 am to 5.30 pm	Aurangabad	6
Contact Person	CA. Atul Kumar Gupta, Chairman, Indirect Taxes Committee, Mobile: 09810103611, E-mail: atulservicetax@gmail.com For Information contact: - CA. Rathvi Vijay B., Mobile: 9822228661, Email: itsvijay.ca@gmail.com - Secretariat, Indirect Taxes Committee, Phone: 0120-3045954, E-mail: 9350799932, E-mail: ccidt@icai.in			
21.	One day National Seminar on Audit under Companies Act, 2013- Challenges for Statutory Auditors	13 th December, 2014	Lucknow	6
Topics	- Audit Report under Companies Act, 2013 – Issues - SA 570, Going Concern - SA 230, Audit Documentation - Risk Assessments and Fraud Risk Considerations for Auditors – SA 315 & SA 240 - Audit of Related Party Transactions under Companies Act, 2013 – Challenges for Auditors			
Fees	₹800 for registration in advance and ₹900 for on the spot registration			
Contact Person	CA Sandeep Bhatnagar, Chairman, Lucknow Branch of CIRC of ICAI, Phone: 0522-2301524, 94151-02178, Email: lucknow@icai.org ; sandeepfca@gmail.com			



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ACROSS

4. Broad Money, as defined in economics, has to be sensitized through CLR, SLR and _____ rate.
7. Brazil, Russia, India, China and South Africa are the countries that forms a part of _____ economies.
9. Financial Leverage is also known as trading on _____.
12. The _____ test, 'F-test' is used to test the significance of the differences between/among more than two samples mean and variance of two samples.
14. In a management system, MBO stands for Management by _____.

DOWN

1. In the recent past in India, factors like Growth of Multinational Corporations, Internationalisation of Finance, Increased International Trade led to _____.
2. _____ cost is the sum of Direct wages, direct expenses and factory overhead.
3. The function of issuing currency notes is not performed by the _____ banks.
5. The guide to IFRS foundation, 'Who we are and what we do' is available in _____ languages.

6. The Capital Markets Advisory Committee (CMAC), created with the specific aim to provide the IASB with regular input from the international community of users of financial statements, was formerly known as the _____ Representative Group (ARG).
8. _____ Enterprise is defined as an organisation owned and managed by public authorities for definite set of public purposes.
10. _____ are developed by the International Accounting Standards Board (IASB).
11. The IFRS Foundation and the _____ were established in 2001 in order to develop a single set of high quality, understandable, enforceable and globally accepted financial reporting standards based upon clearly articulated principles.
13. Privatisation in _____ has initially been adopted from USA.

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.



On a crowded bus, one man noticed that another man had his eyes closed.

"What's the matter? Are you sick?"

"No, I'm okay. It's just that I hate to see an old lady standing."

SOLUTION CROSSWORD 101

