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THE CHARTERED ACCOUNTANT JOURNAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

SET UP BY AN ACT OF PARLIAMENT

Promoting a Tradition of Democracy—Independence, Integrity and Excellence

ICAI Elections: Promoting a Tradition of Democracy, Independence and Integrity

Welfare *'Of the People, By the People, For the People'*— has been the spirit of Indian democracy ever since its adoption as a way of life in India on 15th August 1947, our Independence Day. *'Democracy works when people claim it as their own,'* goes a saying that also goes for India, which has over the decades transformed from an under-developed economy to one of the fastest growing economies of the day. *"The strongest democracies flourish from frequent and lively debate, but they endure when people of every background and belief find a way to set aside smaller differences in service of a greater purpose."*

Democracy is indeed the best form of welfare-oriented governance, and the ICAI as crusader of Indian accountancy profession has been the thriving example of this fact ever since their inception in country's professional order on 1st July, 1949. The tenets, traits and virtues of democracy have been deeply enshrined in the psyche, thoughts and actions of Indian accountancy profession ever since the founding fathers of the nation granted autonomy to the profession through the Chartered Accountants Act, 1949. The fact that this Act was enacted even before adoption of the Constitution of India shows the paramount importance that the founders of the nation placed on the profession to act as custodians of transparency and integrity working in an environment of internal independence. Having tirelessly upheld a triumphant tradition of internal democracy for the last more than 66 years, the story of ICAI and Indian accountancy profession has been a story of professional panache and a benevolent existence as the proponent of a great legacy of professional excellence and service to the nation.

Let's recall the speech of Mr. K. C. Neogy, the then Minister for Commerce, delivered at the first meeting of the first Council held in New Delhi on 15th August, 1949 in which he said that, *"it was appropriate that a great and important profession in the country was launching upon a career of autonomy on Independence Day"* and hoped that the *"Council would maintain a level of professional conduct and professional standards which would bring resounding glory not only to the profession but to the country as well."*

As such, the ICAI and Indian accountancy profession are now all geared up and well set to not only celebrate but also take forward this great tradition of autonomy, internal democracy and independence to the next level through elections to 23rd Council and 22nd Regional Councils scheduled for December 4-5, 2015. The elections would be held as per Single Transferable System of Voting on two days in Ahmedabad, Bengaluru, Chennai, Delhi/New Delhi, Gurgaon, Hyderabad, Jaipur, Kolkata, Mumbai, Pune, Surat and Thane, and on 5th December 2015 at all other places where polling booths have been set up. An apprisal of Single Transferable System of Voting has already been hosted on ICAI website and also printed in this journal. The official machinery is all ready to conduct this mammoth nation-wide exercise in 621 polling booths in a free, fair and just manner. As many as 2,40,025 valid members are eligible to exercise their franchise to elect their representatives from out of a total 99 candidates for 23rd Central Council and 196 candidates for 22nd Regional Councils. Valid lists of nominations have also already been hosted on ICAI website and printed in the previous issue of this journal.

Success of these elections largely depends on the voter turnout, and objective and positive conduct of electors as well as candidates. While strict observance of Election Code of Conduct is a must, what is equally important, that the profession is always given preference over person(s). Democracy also means healthy debates and sharing of information because when there is information there is enlightenment and when there is debate, there are solutions. Ultimately it is a matter of making judicious choices for the ultimate benefit of profession and its future generations. Further, for more effective elections, what is also needed is that all members take their time out to vote and exercise preferential voting in totality.

These elections come to demonstrate our profession's inherent internal democracy, positivism and professionalism. As such, it is expected from all the stakeholders to stick to professional traits while taking part in this festival of profession's internal democracy. The ultimate aim of our elections has to be to strengthen the accountancy profession in India as well as to justify the CA professional's motto *"pride of service in preference to personal gain."* It is our paramount duty and responsibility to preserve this legacy of professional excellence and pass it on to our next generations in a much bigger way. *"The prudent heir takes careful inventory of his legacies and gives a faithful accounting to those whom he owes an obligation of trust,"* rightfully said the 35th American President John F. Kennedy, which is worth taking note of by present day accounting professionals. Let's come forward and join hands for successful elections. ■

Editorial Board ICAI – *Partner in Nation Building*

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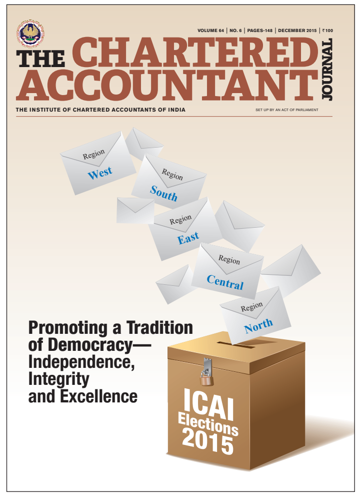

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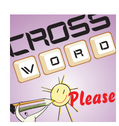


From the President

CA. Manoj Fadnis, President, ICAI

> I sincerely hope that all of us would demonstrate prudence, discipline and integrity while voting for larger concerns. I sincerely offer my best wishes to all my professional colleagues—those who will contest and those who will vote for the contesting candidates. I hope that all of you will fully exercise your franchise in the preferential system of voting and give your preference to all the candidates. I am sure, the ultimate winner will be our democracy, ethics, integrity and independence.

Dear Friends,

The word *bravery* that was once associated more with people who had great physical strength and courage, is now meant for people who have courage—to respect others, their fundamental rights (right to equality and freedom, cultural and educational rights) and existence. Bravery is not just the act of daring to act, but also to take the responsibility of consequences of that action. According to Mahatma Gandhi, bravery is a quality of the soul and not of our body.

Recently while speaking at the 70th anniversary of the United Nations Day the Prime Minister of India has highlighted: *The ideals and path shown by Gandhiji are extremely relevant today*. Before the world takes its lesson from Gandhiji's ideas and ideals, each and every Indian needs to learn from them. Let us be brave and follow the relevant path to be brave in a true sense.

Let us revise our actions and respect our fundamentals—*sarva dharma sambhava* (all religions are equal) and *vasudhaiva kutumbakam* (whole earth is a family). Through *'sarva dharma sambhava',* we had been advised to treat people of all religions with equal respect, since all religions have same spiritual goals. And we got the supreme message of love and unity through *'vasudhaiva kutumbakam'*. Let us continue to respect each other, protect each other's existence and feel responsible for each other's dignity.

Now, let me try to bring to your notice some of the most significant developments in accountancy profession:

Let Us Vote with Integrity and Responsibility

The triennial ICAI elections for 23rd Central and 22nd Regional Councils will be held at 620 polling booths across the nation on 4th and 5th December 2015. Let all of us exercise our power of democracy and reason in this single transferrable system of voting to elect the most suitable candidates to function in the interests of accountancy profession. Counting of votes will be done centrally after collecting the ballot papers and the results will be declared soon thereafter.

Let me tell you that it is time to be responsible not only to our profession, but also to our nation—since the ICAI has been taking on its role of a partner in nation building. I sincerely hope that all of us would demonstrate prudence, discipline and integrity while voting for larger concerns. I sincerely offer my best wishes to all my professional colleagues—those who will contest and those who will vote for the contesting candidates. I hope that all of you will fully exercise your franchise in the preferential system of voting and give your preference to all the candidates. I am sure, the ultimate winner will be our democracy, ethics, integrity and independence. Eventually this will be our collective triumph.

On the part of the Institute, I would assure all my member colleagues that the Institute is committed to hold fair and transparent elections. In this exercise, the employees of ICAI play a very responsible role. I congratulate all of them in advance for the strenuous efforts they are already putting in to make the whole process effective.

Meetings of Companies Law Committee of MCA

As members are aware that in my capacity as ICAI President, I have been nominated as a member of the Companies Law Committee of the Ministry of Corporate Affairs. The committee is looking into the amendments required in the Companies Act, 2013. The committee has so far held 5 meetings to discuss the suggestions received from the stakeholders at large. I have attended all the meetings and put forth the suggestions in the interest of the profession. The Committee is endeavouring to submit its report by the end of December 2015.

IFAC Council and Board meetings

IFAC Board and the Council Meeting were held in Singapore from 11th to 13th November 2015 to *inter alia* discuss IFAC Strategy for 2016–2018 and Strategy Implementation Plan. Besides report from IFAC's President, Chief Executive Officer, Chair of the Audit Committee, Governance Committee, Planning and Finance Committee, Nominating Committee were also considered. ICAI past President and IFAC Board Member CA. K. Raghu and myself attended these meetings.

ICAI President Elected CAPA Deputy President

I am happy to inform that I have been elected Deputy President of Confederation of Asian and Pacific Accountants (CAPA) for a period of two years, at its Board meeting held in October 2015 in Seoul. An ICAI nominee has got this coveted position after a gap of ten years we would be able to strive for professional growth more and better on international platforms. As you know, CAPA is the regional organisation representing 31 national accountancy organisations from 23 countries in the Asia-Pacific region.

International Placement Programme

I am very happy to inform you that the ICAI has taken an initiative to provide opportunities to members abroad. It has launched an India-Ireland Placement Programme. So far, 1,163 members have registered to avail themselves of the benefits of this programme. 738 members have been shortlisted in the first level and, as of now, a total of 37 candidates have been finally shortlisted for final screening. It is heartening to note that the quality of the members has been highly appreciated by the prospective Irish employers.

Meeting of QRB of ICAI with IFIAR

I wish to inform all stakeholders that the Quality Review Board led by its Chairperson Dr. (Mrs.) Parvinder Sohi Behuria recently met the IFIAR (International Forum of Independent Audit Regulators) Chairperson Ms. Janine van Diggelen in Amsterdam and discussed all aspects about the QRB's membership application of IFIAR, among other issues of mutual interest. The QRB delegation included the ICAI Vice-President and my Central Council colleague CA. Charanjot Singh Nanda. We are extending all possible support to QRB.

Clarifications Regarding Use of CA Logo and ICAI Emblem

Pursuant to some FAQs published earlier, some of our member colleagues had expressed

From the President

confusion if the ICAI prohibited the use of CA logo by ICAI members. I take this opportunity to clarify that the common CA logo (letters C and A with inverted tick mark inside a rectangle) may be used by all members; therefore, there is no change in that regard. However, the ICAI logo (the emblem containing garuda with the motto, *ya esha supteshu jagarti*, from Kathopanishada) cannot be used on standalone basis, except for its incidental appearance in the background in a picture/ banner.

Meeting with Minister of State for Finance

Recently, I along with my Central Council colleague CA. Anuj Goel, among others, met the Hon'ble Minister of State for Finance Shri Jayant Sinha to discuss the issues of mutual interests including bank audit and the roles that CA profession can play as partner in nation-building to the national economy to the next level. Hon'ble Minister of State for Finance has taken our viewpoint in the right earnest.

Pre-Budget Memorandum, 2016 to be Submitted

The annual Union budget plays an instrumental role in giving direction to Indian economy. We have been invited by the Government to give our views and suggestions. ICAI representative made a presentation to CBDT Chairperson Ms. Anita Kapur wherein suggestions in respect of major issues in both direct and indirect taxes pertaining to different sectors have been put forth. In a consultative manner, we had earlier requested our members to submit their suggestions, for a Pre-Budget Memorandum. Suggestions received from our members are being compiled and incorporated along with the Institute's views. I wish to inform my professional colleagues that after the incorporation, the Pre-Budget Memorandum will be duly submitted to the Ministry of Finance for their consideration.

Seminar with Controller General of Accounts

Internal audit plays a critical role in delivering the organisation's strategic objectives and championing best practice in governance. It is really heartening that a *Seminar on Enhancing Effectiveness of Internal Audit–Issues & Challenges* was conducted as a joint initiative with Controller General of Accounts. This amply reflects the continued emphasis on good governance and accountability in the government. It is a step to sensitise and promote high standards and deliver excellence in financial management and governance. This joint program is yet another endeavour of the ICAI to partner with the Government in nation building.

All Set to Benchmark Indian CA Education with the Best in the World

Nelson Mandela has rightly said: *Education is the most powerful weapon which you can use to change the world.* Our comprehensive CA education has the same potential in addition to sustained and future-oriented growth of our profession. With a vision that accountancy profession and accountancy education should constantly go hand in hand with global academic, technological and economic advancements, our revised scheme of education and training, has been designed to benchmark Indian CA education with the best in the world.

If you remember, we had announced the Revised Scheme of Education and Training, which necessitated certain changes in the Chartered Accountants Regulations which have been sent for the mandatory approval of the Government. Once approved, the Scheme shall be open for public comments for 45 days. I am sure that this future-oriented drive of the ICAI will go a long way in making our students and future CAs more dynamic, industry friendly, practical in their strategic role as watchdogs and enabler of compliance and fiscal discipline.

CA Examinations Smoothly Conducted

November 2015 Chartered Accountancy examinations were held smoothly across 445 centres in India and abroad. It was a mammoth exercise, as about 1,27,100 candidates were admitted to the Final and about 2,01,000 candidates were admitted to the Intermediate (IPC) examinations. I wish to inform you that CA Final examination of Group II Paper 8 (Indirect Taxes) scheduled on 16th November 2015 was proactively postponed in some specified cities to 26th November 2015. This was done owing to the bad weather condition including heavy and incessant rains and thereby a disruption of daily life in the coastal regions of Tamil Nadu and some parts of Andhra Pradesh.

Workshop for Examiners of CA Examinations

Our Institute has got a very robust and elaborate system of conducting Chartered Accountants' examinations where the Institute takes all necessary measures including proper care and caution while setting the examination papers, conducting the examinations, and evaluating the candidates' answer books. With more than six decades of holding effective examinations with integrity, the ICAI has taken the services of examiners, who are considered experts and held in high regard in chartered accountancy subjects. The examination system of ICAI has enough check and balances so that answer books are evaluated in a justifiable, uniform and consistent manner.

At the same time, to take the examination system to the next level, we recently conducted a workshop for the recently inducted examiners who are new to the system to sensitise them about overall quality and standards of our examination system.

Update on Disciplinary Front

You would appreciate that as a part of the continuous drive to uphold the credibility and integrity and image of the accountancy profession in India, the ICAI through its disciplinary mechanism, has been working assiduously for expeditious disposal of all disciplinary matters. The time taken in disposal of the disciplinary cases has been reduced substantially. In February 2015, there were 129 cases before the Disciplinary Committee. As on date, 99 cases have been fixed for hearing and 49 cases have been heard and concluded while remaining 50 cases are at different stages of disciplinary proceedings. Similarly, out of 28 cases before the Board of Discipline for hearing, 17 have been heard and concluded and remaining 11 cases are at different stages of disciplinary proceedings. While it has been our constant endeavour to reinforce the ICAI's commitment to conduct and conclude Disciplinary Proceedings of the cases in a time bound and judicious manner I exhort my members to strictly follow code of conduct, regulations and the laws of the land. Disciplinary exercise, however sporadic its need may be, is a painful exercise.

Financial Assistance to CA Students through CASBF

I am very happy to inform that the Board of Trustees of *Chartered Accountants' Students Benevolent Fund* (CASBF) has decided to grant financial assistance to 800 meritorious and needy students, 400 male and 400 female students, who are currently undergoing articled training for one year with effect from 1st April 2015 to 31st March 2016.

When we help students, we actually help transform our generation next, and when we empower our generation next, we actually secure our own future. As members of this noble and empowered accountancy profession, we have got power, recognition and security, which we can use suitably to protect, defend and extend help to our society. I sincerely feel that it is now our turn to give back what we have got from our dear profession—let us provide power, recognition and security to the needy.

Before I conclude my page, I sincerely congratulate all of you in advance on the two approaching festivals, *Milad-un-Nabi* or *Id-e-Milad* (Prophet Muhammad's birthday) and *Christmas* (Jesus Christ's birthday), which we will celebrate on 24th and 25th December this year. Let us live together with more love, peace and kindness.

Let us be more accepting.

Best wishes,

CA. Manoj Fadnis
President, ICAI
New Delhi, 24th November, 2015

Photographs

New CAPA Leadership, Board Meeting and Conference

New CAPA Leadership (2016-18)

ICAI President and newly-elected CAPA Deputy President CA. Manoj Fadnis along with the newly elected CAPA President Ms. Jackie Poirier during the Board meeting (28th October 2015)

CAPA Board Meeting in Progress

ICAI President (and now CAPA Deputy President) CA. Manoj Fadnis along with the-then CAPA President Mr. Sujeewa Mudalige and Chief Executive Mr. Brian Blood, along with other members of the Board (27th October 2015)

CAPA Board in Seoul

ICAI President and newly-elected CAPA Deputy President CA. Manoj Fadnis along with CAPA President Ms. Jackie Poirier and Chief Executive Mr. Brian Blood, along with other members of the Board (28th October 2015)

19th CAPA Conference in Seoul

ICAI President (and now CAPA Deputy President) CA. Manoj Fadnis addresses the delegates of the Conference (27th-29th October 2015)

ICAI past President CA. Subodh Kumar Agrawal moderates a panel discussion during the Conference (27th-29th October 2015)

Photographs

Meeting with Union Finance Minister of State

ICAI President CA. Manoj Fadnis and his Central Council colleague CA. Anuj Goel present a bouquet and welcome the Minister of State for Finance Shri Jayant Sinha (6th November 2015)

Meeting with CIPFA President

ICAI President CA. Manoj Fadnis along with the CIPFA (Chartered Institute of Public Finance and Accounting) President Mr. John Matheson (CBE, CPFA and Director, Finance, eHealth and Pharmaceuticals, Scottish Government Health Directorate), among others (13th November 2015)

Meeting with Deputy C&AG Shri P. Mukherjee

ICAI President CA. Manoj Fadnis presents a bouquet and welcomes the Deputy C&AG Shri P. Mukherjee (3rd November 2015)

ICAI President CA. Manoj Fadnis discusses the matter of concerns with Deputy C&AG Shri P. Mukherjee; ICAI Secretary Shri V. Sagar along with other officials of C&AG can also be seen in the frame (3rd November 2015)

Mega Career Counselling Programme in Chennai

Central Council member CA. Vijay Garg along with the SIRC Vice Chairman CA. V. X. Jose and chartered accountant students gathered during the programme-cum-exhibition in Chennai (22nd-23rd August 2015)

Certificate Course on Forensic Accounting and Fraud Prevention in Mumbai

Chief Guest IBA (Indian Banks' Association) CEO Shri Mohan V. Tanksale addresses the participants, while Central Council member CA. Rajkumar S. Adukia, among faculty members, shares the dais (10th October 2015)

CFO Meet in New Delhi

ICAI Central Council member CA. Charanjot Singh Nanda lights the lamp to inaugurate the Meet, while CA. S. Ravi and Mrs. Rita Menon, IAS, among others, share the dais (18th November 2015)

Nomination Committee Meeting in New Delhi

ICAI President CA. Manoj Fadnis along with his Central Council colleague CA. Charanjot Singh Nanda and CA. Neeru Abrol. FCA, at the Meeting for ICAI Awards 2015 (November 2015)

Photographs

4th International Conference at Australia (Sydney) Chapter of ICAI

ICAI President CA. Manoj Fadnis signs the arrangement documents along while Chartered Accountants Australia and New Zealand CEO Mr. Lee White along with ICAI Australia (Sydney) Chapter's founder Chairman CA. Yateender Gupta and current Chairperson CA. Yujita Chaudhri share the dais (30th October 2015)

ICAI President CA. Manoj Fadnis presents a memento to Chartered Accountants Australia and New Zealand CEO Mr. Lee White (30th October 2015)

International Conference at Bahrain Chapter of ICAI (30th-31th October 2015)

ICAI past President CA. Amarjit Chopra, MP (Lok Sabha) Dr. Kirit Somaiya and Central Council member CA. Sanjeev Kumar Maheshwari along with Chapter Chairman CA. Kapil Batra, among others

Central Council member CA. Sanjeev Kumar Maheshwari addresses the delegates (ICAI past President CA. Amarjit Chopra can also be seen in the audience) of the Conference on *Fostering Growth and Good Governance*

27th Annual International Seminar at Abu Dhabi Chapter of ICAI

Abu Dhabi Chapter Chairman CA. Rajiv Shah presents memento to ICAI President CA. Manoj Fadnis at 27th Annual International Seminar in Abu Dhabi (19th-20th November 2015)

ICAI President CA. Manoj Fadnis, Registration Authority CEO of Abu Dhabi Global Market (ADGM) Mr. Dhaher Bin Dhaher and Chapter Chairman CA. Rajiv Shah (along with Chapter's past Chairmen CA. Ganpat Singhvi and CA. Padmanabha Acharya) display the Commercial License given to the Chapter (19th-20th November 2015)

Know Your Ethics

Ethical Issues in Question-Answer Form

Q. Whether a member in practice will be liable, if he fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary to make the financial statement not misleading?

A. Yes, as per Clause (5) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a member in practice shall be deemed to be guilty of professional misconduct, if he fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary to make the financial statement not misleading.

Q. Whether the Chartered Accountant who is appointed as a liquidator of a company can do the audit of that company?

A. No, Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and Regulations framed there under may be referred in this regard.

Q. Can an auditor write the books of accounts of the auditee?

A. No, Council directions under Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 prescribes that an auditor is not permitted to write the books of accounts of his auditee clients. Undertaking assignment of accounting and bookkeeping in case of Companies Act 2013, is prohibited to be done simultaneously by the auditor.

Q. Whether a member in practice will be liable if he fails to report a material mis-statement known to him to appear in a financial statement with which he is concerned in a professional capacity?

A. Yes, as per Clause (6) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a member in practice shall be deemed to be guilty of professional misconduct, if he fails to report a material mis-statement known to him to appear in a financial statement with which he is concerned in a professional capacity.

Q. Whether a member in practice will be liable in a case where he was alleged to have signed two balance sheets on two different dates for the same financial year, the first one with a clean report and the second one with a qualified report?

A. Yes, the action of the Chartered Accountant in signing two Balance Sheets on two different dates for the same financial year will constitute professional misconduct under Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949, which states that a member in practice shall be deemed to be guilty of professional misconduct, if he is grossly negligent in the conduct of his professional duties..

Q. Whether a member of the Institute will be liable, if he contravenes any of the provision of the Act or the Regulations or the Guidelines issued by the Council?

A. Yes, as per Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949, a member in practice shall be deemed to be guilty of professional misconduct, if he contravenes any of the provisions of Chartered Accountants Act or the Regulations made under or any Guidelines issued by the Council.

Q. Whether a member in practice will be held liable for failing to keep moneys of his client in a separate banking account or to use such moneys for purposes other than they are intended for?

A. Yes, as per Clause (10) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a member in practice shall be deemed to be guilty of professional misconduct, if he fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or uses such moneys for purposes other than they are intended for.

Q. Whether a statutory auditor can accept the system audit of same entity?

A. Yes, the statutory auditor can accept the assignment of a system audit of the same entity, provided it did not involve any scrutiny/review of financial data and information. ■

* Contributed by the Ethical Standards Board of the ICAI

Swachh Bharat Mission and CAs

'Cleanliness is Next to Godliness," goes the spiritual dictum across all faiths. But this adage has an important economic aspect also, particularly in Indian context. A World Bank report has estimated that India is losing 6.4% of its GDP annually because of poor access to sanitation which leads to diseases and deaths. It is sad to note a UNICEF estimate that some 594 million people in India - nearly 50% of its population-defecate in the open. More than 1,86,000 children under-five die every year from diarrhoeal diseases caused by unsafe water and poor sanitation. A study by the American Journal of Tropical Medicine and Hygiene reveals that between 2006 and 2012, India reported an annual average of 20,474 dengue cases, with direct medical cost of about ₹3,500 crore per annum. According to government estimates, expenditure on health adds up to ₹6,700 crore annually (approximately ₹60 per capita). As such, the Swachh Bharat Abhiyan launched by our Government not only aims at correcting the country's reputation for poor public hygiene and rudimentary sanitation, but also promises a positive economic impact.

The success and efficacy of this ambitious benevolent initiative is not possible without the contribution of all its citizens. In this scenario, it is welcome that Government has imposed a very nominal Swachh Bharat cess of 0.5% on all services liable for service tax, effective from November 15, 2015 to fund Swachh Bharat programme, as against the 2% proposed in the Union Budget early this year. It will translate into an additional tax of 50 paise only on every ₹100 worth of taxable services, which would yield more than 2,500 crore in the remaining fiscal. This cess will be an additional levy, making the effective service tax rate 14.5% from November 15, 2015. The service tax was earlier hiked from 12.36% to 14%, effective June this year. In budget 2015-16, the government had put the service tax collection target at over ₹2.09 lakh crore.

"Swachh Bharat Cess is not another tax but a step towards involving each and every citizen in making contribution to Swachh Bharat...Given the impact of cleanliness on public health leading to generation of diseases such as malaria, dengue, diarrhoea, jaundice, cholera etc. the cess will help in improving public health," rightly says a Government statement, clarifying that the proceeds from the new cess will be used exclusively for the Swachh Bharat initiative. Everyone would agree with the Finance Ministry statement that *"We are a country of more than 120 crore people. For such a vast and populous country we do have our fair share of cleanliness concerns. In fact, persons entrusted with the job of keeping our country clean struggle constantly... Increased allocation for Swachh Bharat Abhiyan can prevent many of these diseases with consequential benefit to one and all."*

Although the imposition of the cess will marginally increase the cost of doing business and also cause corporates to change their systems again to comply with this levy, it is a pain worth taking for a good social, economic cause.

Meanwhile, the ICAI and CA fraternity in India is already exclusively contributing to this national cause of cleanliness individually as well as collectively, particularly ever since the Prime Minister nominated ICAI to take forward the *Swachh Bharat Abhiyan*. It was for the first time that any professional body had been nominated by the Prime Minister for this important national initiative. Ever since it launched its own Cleanliness Mission in Bangalore last year as a nation-wide initiative involving all its members, students and stakeholders across all its 153 branches and 26 foreign chapters, the ICAI has also effectively taken in its stride the Swachh Vidyalaya Abhiyan, which aims to provide separate toilets for boys and girls in all government schools throughout the country under the aegis of Ministries of Power, Coal and New & Renewable Energy. The CAs are doing physical verification of construction/repairs of school toilets on a *pro-bono* basis. The first such physical verification was conducted for a school toilet constructed by NTPC in the Karimnagar district in Telangana. The ICAI has been actively coordinating with its members who have come forward for this noble initiative, and Central Public Sector Undertakings (CPSUs) for such physical verification of school toilet blocks/ units constructed or renovated by them. So far, more than 2,500 toilet blocks have been assigned to the ICAI members. As of now around 740 members have envisaged interest in this societal mission on *pro-bono* basis, while more and more ICAI members are joining in.

Indeed ICAI's 2,50,000-strong CA fraternity and 8,50,000-strong CA student community, along with other stakeholders can make this Mission a big success, particularly if they take it up as their Social Responsibility and commit to the *Clean India* pledge delivered by our Prime Minister to devote at least one hundred hours every year and two hours every week towards cleanliness. Together, We Can! ■

(Contributed by the Editorial Board Secretariat of ICAI. Comments can be sent to eboard@icai.in)

ICAI Elections 2015

Elections to 23rd Council and 22nd Regional Councils

Single Transferable System of Voting -An Appraisal

The next elections to the Council and Regional Councils of the Institute will be held on 4th and 5th December, 2015 at Ahmedabad, Bengaluru, Chennai, Delhi/New Delhi, Gurgaon, Hyderabad, Jaipur, Kolkata, Mumbai, Pune, Surat and Thane and on 5th December, 2015 at all other places where polling booths have been set up. The members, especially those who are new, would naturally be interested in knowing, how the "single transferable vote" system under which the elections are held, operates.

The broad details of the system are given below:-

(1) Each voter has only one vote for election to the Council and one vote for election to the Regional Council. The voter, in order to cast his vote, shall place on his ballot paper the number 1 (in Arabic or Roman numerals, or in words) against the name of the candidate for whom he desires to vote, and may, in addition, place on his ballot paper the number 2, or numbers 2 and 3, or the numbers 2, 3 and 4 and so on opposite the names of other candidates in the order of his preference. A voter has as many preferences as the total number of candidates from that Regional Constituency/Regional Council. However, for the purpose of facilitating the process of election by avoiding fractions, each valid vote is notionally considered to be of the value of 100 so that if a part of the vote has subsequently to be transferred from one candidate to another (next in the order of preference), it does not become necessary to resort to fractions, which would make the counting cumbersome.

(2) At the time of counting of votes, the covers containing the postal ballot papers are opened and the voting papers are separated. To these are added the voting papers taken out from the ballot boxes used at different polling booths. The ballot papers are, in the first place, examined and invalid papers are rejected and excluded from the process of counting. The total value of the valid votes is then calculated by multiplying the number of such votes by 100, as mentioned above. This total value is then divided by the number of vacancies increased by one, and the quotient increased by one gives the value that is required for any candidate to get elected. This figure is termed as the "quota". Thus, if in a constituency, eight members are to be elected and there are 4,500 valid votes, the quota will be:-

$$\frac{4500 \times 100}{8 + 1} + 1 = 50{,}001$$

In other words, a candidate should get 50,001 votes to get elected. The addition of one to the quotient is explained by the fact that if it is not done, there is a possibility that more candidates may get elected than the number of vacancies.

The first Count

(3) After working out the "quota", the votes are sorted out and divided into parcels according to the candidates for whom the first preference is marked on the respective votes. The value of the first preference votes received by each candidate is then worked out and the process is known as the first count.

(4) All the candidates, the value of whose votes is equal to or greater than the quota, are declared elected. The votes of the candidates who obtain exactly the quota are set aside as there is no question of transfer of any surplus from those votes.

Transfer of Surplus and Subsequent Counts

(5) Then starts the process of transfer of the surplus values of the votes of those candidates who have secured more than the quota at the first count. Their cases are taken one by one in the strict order of the value of their votes, the largest surplus being dealt with first. In case no candidate obtains the quota in the first count, exclusion of candidates is resorted to (see para 12).

(6) The votes of the candidate whose surplus is to be transferred are scrutinised and all those votes which are capable of being transferred (viz., on which the next preference is marked for a candidate, who has not already been elected, or if the next preference is marked for an elected candidate, the preference marked next to that and so on) are separated. The remaining votes which are not capable of further transfer are set aside and treated as exhausted.

(7.1) Before the votes are transferred to the candidates marked next in preference, a new value of each vote is worked out. This value is arrived at by dividing the total surplus of the candidate by the number of votes to be transferred, the remainder being ignored, subject to the condition that the new value does not exceed the original value at which the vote was received by the candidate whose surplus is being transferred (viz., 100 in the case of first preference votes).

(7.2) Thus, if after the first count, a candidate has a surplus of 2,962 and there are 65 votes in his parcel which are capable of being transferred, each vote will be transferred at the new value of 45 (2,962÷65). The remainder of 37 [2,962-(65x45)] is treated as loss in value.

(8) The votes under transfer are then divided into parcels according to the candidates to whom they are to be transferred. The parcels of the transferred votes are also added as sub-parcels to the parcels of original (viz., first preference) votes of the candidates concerned. The total value of the votes going to a particular candidate is obtained by multiplying the new value of each vote by the number of votes going to him and is added to the value of his original votes. The result of the transfer is then struck out and the candidates who obtain at this stage the "quota" are also declared as elected.

(9) This process of transfer of the surpluses of the elected candidates continues till the required number of candidates are elected or till all the surpluses have been dealt with.

(10) As already stated, the surpluses are transferred in the strict order of their value, but all surpluses arising at an earlier count are disposed of before the surpluses arising at subsequent counts are taken up.

(11) In the case of transfer of surplus of a candidate who was not elected at the first count but only as a result of transfer of some votes to him at a subsequent count, since the surplus arises out of the last sub-parcel of his votes, it is only the last sub-parcel that is scrutinised and the unexhausted votes contained therein which are capable of further transfer are revalued, in the manner stated in para 7.1 and 7.2 above, and then transferred to the candidates marked next in order of preference. If there is no vote in the last sub-parcel which is capable of further transfer, the whole of the surplus is treated as loss in value.

Exclusion of Candidates

(12) When there is no surplus left for transfer and the number of candidates elected is less than the number of seats, the exclusion of candidates is resorted to. The process of exclusion comprises the transfer of votes (both original and transferred) of the candidate to be excluded to the candidates marked next in order of preference and who have not already been elected or excluded.

(13) The candidate, the value of whose votes is lowest at the time of exclusion, is first excluded.

(14) The parcels and the sub-parcels of the votes of the candidates to be excluded are taken up one by one in the order in which they were received and the votes contained in each parcel and sub-parcel which are capable of further transfer are transferred to the candidates marked next in order of preference at the same value at which they were received by him. Each parcel and sub-parcel is dealt with separately. It is only after the parcel and all the sub-parcels have been duly transferred that count is completed.

(15) If, as a result of transfer of votes of a parcel, or a sub-parcel, any other candidate secures the quota and is elected, the count in progress is completed but no further votes are transferred to the elected candidate from the subsequent sub-parcels. The following example would make it clear. Let us suppose that the votes of candidate "A" who is to be excluded consist of the original parcel and two sub-parcels subsequently transferred to him. Suppose as a result of the transfer of votes contained in the original parcel, another candidate "B" gets elected. Then the remaining two sub-parcels will be dealt with one by one but no vote therefrom will be transferred to candidate "B" and such of the votes as would have normally gone to "B" will now be straightaway transferred to the candidates marked next to "B" in the order of preference on the respective votes.

(16) The process of exclusion continues till the requisite number of candidates has been elected or the number of candidates left in the field (i.e., the continuing candidates) is equal to the number of vacancies still unfilled.

(17) If, as a result of any exclusion, another candidate gets the quota and is thus elected, no further exclusion is done till the surplus of the elected candidate has been transferred and it becomes necessary thereafter to again resort to exclusion. In other words, a candidate is to be excluded only when there is no surplus to be transferred.

(18.1) If, at any time during the course of counting of votes, the number of candidates remaining in the field is reduced to the number of vacancies not yet filled, all those candidates are declared as elected without resorting to any further calculations.

(18.2) It, therefore, follows that a candidate may be elected even though he does not get the required quota.

(19) If at a particular time only one vacancy is left unfilled and the value of votes (both original and transferred) of anyone continuing candidate at that time exceeds the total value of votes of all the other candidates left in the field, including the surplus of any candidate not yet transferred, that candidate is declared as elected.

(20) When after counting of votes, a tie is found to exist between candidates, regard is given to the original votes and if the original votes are also equal, then the process of draw of lots is resorted to. In case of tie amongst more than two candidates, the candidate whose slip is picked up is excluded from the poll. If the tie is between two candidates, the candidate whose slip is picked remains in the poll or declared as successful, as the case may be. ■

Accounting Treatment of Pension Liability Post-Separation

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 S (hereinafter referred to as the 'company') is a public limited company listed on National Stock Exchange (NSE) and Bombay Stock Exchange (BSE). In the year 2009, as a part of a business transfer agreement with one of its customers N, S took over 35 employees in Germany. As a part of the business transfer agreement, S agreed to takeover customer's employees under same terms and conditions under which employees were employed immediately prior to the agreement. It was also agreed that obligations of the customer N arising from employment relationships with transferred employees shall pass to S as on the agreement date. Towards this obligation, customer N reimbursed S for an amount as agreed on the agreement date. S will be responsible for all employee related obligations on and after the agreement date. Accordingly, the pension liabilities of the employees of N were taken over by S.
2. The querist has stated that under the German law, pension is a defined benefit plan. For the purpose of pension payments and administration, N had established a fully reinsured support fund which converted defined benefit plan into contribution type defined benefit plan. With transfer of pension liabilities to S, S got admitted to the fully reinsured support fund and took over the accumulated balances of the reinsured support fund of N. The basic principles of the reinsured support fund are detailed by the querist in Annexure I.
3. In the financial year (F.Y.) 2011-12, due to changes in business scenario, the transferred employees were terminated after complying the regulatory requirements in Germany. The pension liabilities continued to be with S as they would be paid out only on death of an employee or he/she reaching retirement age, whichever is earlier. S continues to make contribution which also includes a defined annual insurance premium to the reinsured support fund and keeps the reinsurance in force - the benefits of the insurance have been supplied by the querist in Annexure I. As per the querist, this is supposed to take care of the changes in the interest rates and make the scheme similar to defined contribution scheme by taking away the effect of changes in interest rates.
4. The querist has further stated that since the employees are no longer on rolls, the pension amounts and periodic contributions are not subject to any change on account of changes in base salary (as the base salary will be the same as on the date of separation). Further, the pension liability to the employee when it becomes due will be met by the support fund. The company continues to be liable for fulfillment of pension promise, in contingent events, such as, the insurance company goes bankrupt. In the event of underfunding, the employer must pay the part of the benefit due, which cannot be paid by the support fund (because of underfunding), out of its own means. Realistically, since the support fund is fully reinsured, and till such time that a contingent event happens, and as long as the reinsurance is in force, it is unlikely that there will be underfunding. In addition to the pension promise, the company is also liable for pension adjustments to the guaranteed vested amount due to inflation. Traditionally, the inflation rate in Germany has been around 2%. However, the company expects that the increase in the guaranteed return from the contributions made to the fund, will cover the inflation costs and therefore, there is a good chance that the inflation adjustments will be met by surplus in the fund.

B. Query

5. Given this background, the querist has sought the opinion of the Expert Advisory Committee as to whether the scheme can be treated as defined contribution scheme and accordingly, whether it is appropriate for the company to consider the periodic contribution only as its expense for a given period in the financials. Reason for this being that there is a periodical

payment to the support fund. This support fund will take care of the interest rate fluctuation and guarantee the payment to ex-employees on retirement or death whichever is earlier. This, as per the querist, will also eliminate the fluctuation in profit and loss account and make more sense to investors.

C. Points considered by the Committee

6. The Committee notes that the basic issue raised in the query relates to whether the pension scheme to the terminated employees in the extant case can be treated as defined contribution scheme and accordingly, whether it is appropriate for the company to consider the periodic contribution only as its expense for a given period in the financial statements. Accordingly, the Committee has considered only this issue and has not considered any other issue that may arise from the Facts of the Case, such as, accounting in the financial statements (prepared, if any) of support fund and customer N, accounting for transfer of employees by N, whether the scheme in the extant case can be considered as multi-employer plan, detailed accounting aspects of the scheme, accounting as per the German accounting principles, *etc.*
7. The Committee notes from the Facts of the Case that the company took over employees of its customer N as a part of business transfer agreement under the same terms and conditions under which employees were employed immediately before the agreement. Further, the obligations of N including pension liabilities arising from employment relationship were transferred to company S. Later on in F.Y. 2011-12, the transferred employees were terminated. However, the pension liability continued to be with the company. In this connection, a question may arise with regard to the nature of pension benefits. Accordingly, the Committee notes the following requirements of Accounting Standard (AS) 15, 'Employee Benefits', notified under the Companies (Accounting Standards) Rules, 2006 (hereinafter referred to as the 'Rules'):

   "7.1 <u>Employee benefits</u> are all forms of consideration given by an enterprise in exchange for service rendered by employees."

   "7.3 <u>Post-employment benefits</u> are employee benefits (other than termination benefits) which are payable after the completion of employment."

   "7.9 <u>Termination benefits</u> are employee benefits payable as a result of either:
   (a) an enterprise's decision to terminate an employee's employment before the normal retirement date; or
   (b) an employee's decision to accept voluntary redundancy in exchange for those benefits (voluntary retirement)."

   "133. This Standard deals with termination benefits separately from other employee benefits because the event which gives rise to an obligation is the termination rather than employee service."

   "136. Some employee benefits are payable regardless of the reason for the employee's departure. The payment of such benefits is certain (subject to any vesting or minimum service requirements) but the timing of their payment is uncertain. Although such benefits may be described as termination indemnities, or termination gratuities, they are post employment benefits, rather than termination benefits and an enterprise accounts for them as post-employment benefits. Some enterprises provide a lower level of benefit for voluntary termination at the request of the employee (in substance, a post-employment benefit) than for involuntary termination at the request of the enterprise. The additional benefit payable on involuntary termination is a termination benefit."

   The Committee notes from the Facts of the Case that the benefits to the employees are paid not due to their termination rather due to the service rendered by the employees before their termination. Therefore, the Committee is of the view that these cannot be considered as termination benefits and should be considered as post-employment benefits.
8. With regard to the type of post-employment plan, the Committee further notes the following requirements from AS 15:

   "7.5 Defined contribution plans are post-employment benefit plans under which an enterprise pays fixed contributions into a separate entity (a fund) and will have no obligation to pay further contributions if the fund does not hold sufficient assets to pay all employee benefits relating to employee service in the current and prior periods.

7.6 Defined benefit plans are post-employment benefit plans other than defined contribution plans."

"24. Post-employment benefits include:

(a) retirement benefits, e.g., gratuity and pension; and

(b) other benefits, e.g., post-employment life insurance and post-employment medical care.

Arrangements whereby an enterprise provides post-employment benefits are post-employment benefit plans. An enterprise applies this Standard to all such arrangements whether or not they involve the establishment of a separate entity to receive contributions and to pay benefits.

25. Post-employment benefit plans are classified as either defined contribution plans or defined benefit plans, depending on the economic substance of the plan as derived from its principal terms and conditions. Under defined contribution plans:

(a) the enterprise's obligation is limited to the amount that it agrees to contribute to the fund. Thus, the amount of the post-employment benefits received by the employee is determined by the amount of contributions paid by an enterprise (and also by the employee) to a post-employment benefit plan or to an insurance company, together with investment returns arising from the contributions; and

(b) in consequence, actuarial risk (that benefits will be less than expected) and investment risk (that assets invested will be insufficient to meet expected benefits) fall on the employee.

26. Examples of cases where an enterprise's obligation is not limited to the amount that it agrees to contribute to the fund are when the enterprise has an obligation through:

(a) a plan benefit formula that is not linked solely to the amount of contributions; or

(b) a guarantee, either indirectly through a plan or directly, of a specified return on contributions; or

(c) informal practices that give rise to an obligation, for example, an obligation may arise where an enterprise has a history of increasing benefits for former employees to keep pace with inflation even where there is no legal obligation to do so.

27. Under defined benefit plans:

(a) the enterprise's obligation is to provide the agreed benefits to current and former employees; and

(b) actuarial risk (that benefits will cost more than expected) and investment risk fall, in substance, on the enterprise. If actuarial or investment experience are worse than expected, the enterprise's obligation may be increased."

"40. An enterprise may pay insurance premiums to fund a post-employment benefit plan. The enterprise should treat such a plan as a defined contribution plan unless the enterprise will have (either directly, or indirectly through the plan) an obligation to either:

(a) pay the employee benefits directly when they fall due; or

(b) pay further amounts if the insurer does not pay all future employee benefits relating to employee service in the current and prior periods.

If the enterprise retains such an obligation, the enterprise should treat the plan as a defined benefit plan."

"42. Where an enterprise funds a post-employment benefit obligation by contributing to an insurance policy under which the enterprise (either directly, indirectly through the plan, through the mechanism for setting future premiums or through a related party relationship with the insurer) retains an obligation, the payment of the premiums does not amount to a defined contribution arrangement. It follows that the enterprise:

(a) accounts for a qualifying insurance policy as a plan asset (see paragraph 7); and

(b) recognises other insurance policies as reimbursement rights (if the policies satisfy the criteria in paragraph 103).

43. Where an insurance policy is in the name of a specified plan participant or a group of plan participants and the enterprise does not have any obligation to cover any loss on the policy, the enterprise has no obligation to pay benefits to the employees and the insurer has sole responsibility for paying the benefits. The payment of fixed premiums under such contracts is, in substance, the settlement of the employee benefit obligation, rather than an investment to meet the obligation. Consequently, the enterprise no longer has an asset or a liability. Therefore, an enterprise treats such payments as contributions to a defined contribution plan."

The Committee notes from the Facts of the Case that although the pension liability to the employee when it becomes due will be met by the support fund, which is fully reinsured, the company continues to be liable for fulfillment of pension promise, in contingent events such as, if the insurance company goes bankrupt and in the event of underfunding. Thus, the employer, viz., the company will have to pay the part of the benefit due, which cannot be paid by the support fund (because of underfunding) out of its own means. Further, in addition to the pension promise, the company is also liable for pension adjustments to the guaranteed vested amount due to inflation. Thus, although the company expects that the increase in the guaranteed return from the contributions made to the fund, will cover the inflation costs and the inflation adjustments will be met by surplus in the fund, in case surplus in the fund is not able to meet inflation adjustments, the same will be met by the company. Accordingly, the Committee is of the view that since in case of underfunding with the support fund and in case of contingency of insolvency of insurer, deficit is to be met by the employer (company S), the plan in the extant case is a defined benefit plan and not a defined contribution plan. Therefore, the company cannot treat only the periodic contributions for a period as its expenses in its financial statements.

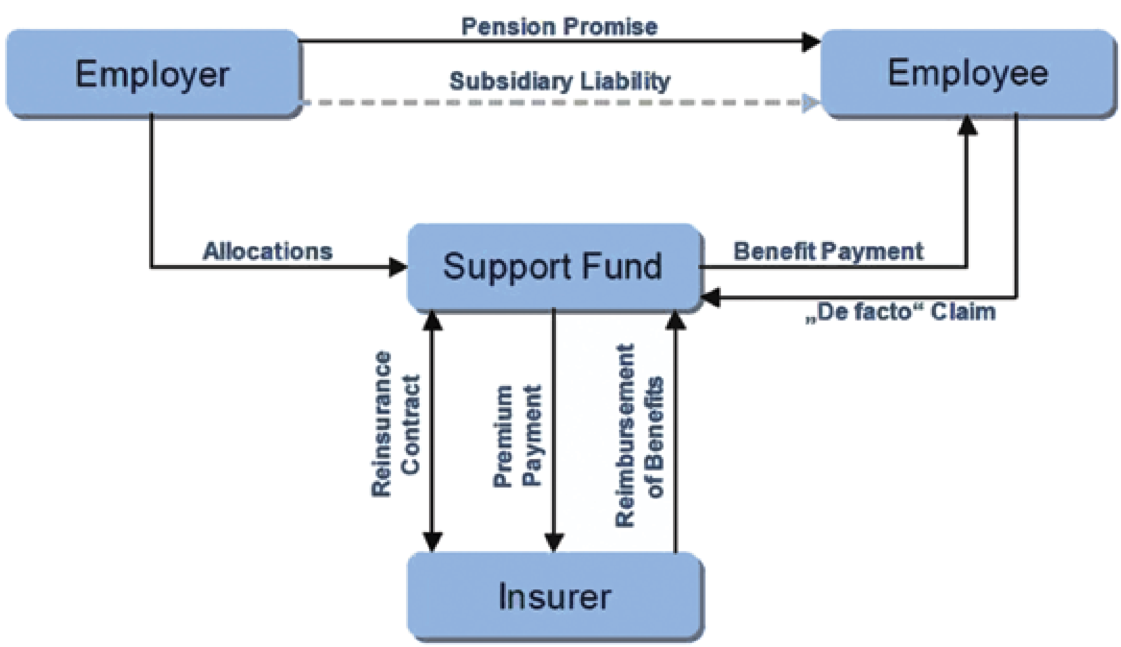
D. Opinion

9. On the basis of the above, the Committee is of the opinion that the pension scheme in the extant case cannot be treated as defined contribution scheme and accordingly, it is not appropriate to consider the periodic contribution only as its expense for a given period in the financial statements of the company, as discussed in paragraph 8 above.

Annexure I

Reinsured support fund

The graph below illustrates the basic principle of financing occupational pensions or lumpsum benefits by a reinsured support fund:



The basic principle of a contribution-type defined benefit plan financed by a fully reinsured support fund can be briefly described as follows:

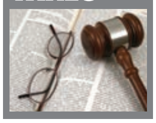
- The employer gives a pension promise in line with the support fund's benefit plan ('Leistungsplan der Unterstützungskasse') to the employee.
- The scope of employer contributions is commonly defined in the plan document (e.g., a fixed percentage of the employee's annual gross base salary in the particular calendar year).
- These defined contributions are paid by the employer to the support fund ('allocations').
- The support fund takes out a life insurance (reinsurance) contract on the employee's life and as the policy-holder, is entitled to the insured benefits.
- The reinsurance premiums payable by the support fund to the life insurer are identical with the amount of employer contributions.
- According to the applicable plan provisions, the employee is entitled to benefits equal to the benefits insured under the reinsurance policy.
- Thus, defined employer contributions are actuarially converted into guaranteed minimum entitlements to benefits on the basis of a life insurance tariff. Up to the guaranteed interest rate, the insurer and-lower-ranking-the employer (due to the subsidiary liability e.g. in the event of insolvency of the insurer) bear the investment risk.
- In excess of the guaranteed interest rate, the employee bears the investment risk. However, the plan concept also offers good prospects for the employee, as dividends granted by the insurer are entirely used to increase his/her entitlement to benefits.
- After the occurrence of an event giving right to a benefit (e.g., retirement or death), the support fund receives the insured benefit plus dividends from the life insurer and, simultaneously, pays out the benefit due to the beneficiary.
- As a rule, mandatory adjustments of pensions (e.g., pre-retirement disability of the employee) in payment can be financed by the dividends granted by the insurer.
- Due to legal constraints, a support fund is not allowed to grant a legal claim to benefits. This fact, however, does not result in a potential risk or disadvantage for the employee.
- According to the German Company Pension Law, the sponsoring company (i.e., the employer) remains liable for the fulfillment of the pension promise (so called subsidiary liability). Thus, in the (unlikely) event of underfunding (e.g., insolvency), the employer must pay the part of the benefit due which cannot be paid by the support fund (because of underfunding) out of own means.
- According to the German Company Pension Act, the employer is obliged to contribute towards the statutory insolvency protection ('Pensions-Sicherungs-Verein') of the Government of Germany, even if the support fund takes out congruent reinsurance. The insolvency protection insurance covers the risk of insolvency of the Government of Germany.
- As per German tax and accounting standards, corporates/listed companies in Germany are not required to account for such pension assets and obligations as assets and liabilities in their balance sheet. Instead, a mere disclosure in notes to accounts of any deficits (i.e., pension obligations minus support fund's assets) is sufficient, given that the support fund has claim to benefits under the re-insurance contract to cover the defined benefit obligations to the employees.

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 3, 2015. 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 four volumes. A CD of Compendium of Opinions containing thirty four volume has also been released by the Committee. These are available for sale at the Institute's office at New Delhi and its regional council offices at Mumbai, Chennai, Kolkata and Kanpur.
4	Recent opinions of the Committee are available on the website of the Institute under the head 'Resources.'
5	Opinions can be obtained from EAC as per its Advisory Service Rules which are available on the website of the ICAI, under the head 'Resources.' For further information, write to eac@icai.in.

Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC, FEMA, SEBI, RBI 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. Notification of Transfer Pricing Rules to incorporate "range concept" and "use of multi-year data" to reduce litigation on transfer pricing issues-Notification No. 83/2015, dated 19.10.2015

The Income-tax Act provides for determination of income having regard to Arm's Length Price (ALP) in case of international transactions and specified domestic transactions. The provisions of the Income-tax Act were amended through the Finance (No.2) Act, 2014 to facilitate alignment of Indian transfer regime with international best practices. The manner of computation of ALP is laid down Income-tax Rules.

The amended regime will be applicable for computation of ALP of international transactions and specified domestic transactions undertaken on or after 1/04/2014.

The amended rules allow for introduction of a "range concept" for determination of ALP and "use of multiple year data" for undertaking comparability analysis in transfer pricing cases. The use of range concept, being a statistical tool, enhances the reliability of analysis undertaken for computation of ALP. The range concept will be applicable in certain cases for determining the price and will begin with the 35th percentile and end with the 65th percentile of the comparable prices. Transaction price shown by the taxpayers falling within the range will be accepted and no adjustment will be made. The use of multiple year data allows for yearly variations to be averaged out and would therefore add value to transfer pricing analysis.

The amended rules would therefore provide clarity in determination of price in transfer pricing cases and reduce disputes on transfer pricing issues. It is a part of the Government's continuing initiative of providing a stable and certain direct tax regime.

2. Amendment of Rule 2F-Guidelines for setting up an Infrastructure Debt Fund for the purpose of exemption u/s 10(47)- Notification No. 84/2015 dated 20.10.2015

Section 10(47) provides that any income of an infrastructure debt fund, set up in accordance with the guidelines as may be prescribed, which is notified by the Central Government in the Official Gazette for the purposes of this clause, shall not be included while computing the total income of a previous year of any person.

Rule 2F deals with *"Guidelines for setting up an Infrastructure Debt Fund for the purpose of exemption u/s 10(47)"*, which provides for certain conditions to be fulfilled for claiming said exemption.

In exercise of the powers conferred by Section 295 read with section 10(47) of the Income-tax Act, 1961, the CBDT has through Income-tax (Seventeenth Amendment) Rules, 2015 which shall come into force from 14.05.2015 substituted Sub Rule (1) and (2) of Rule 2F.

The Substituted Rules read as follows:

1) The Infrastructure Debt Fund shall be set up as a Non-Banking Financial Company conforming to and satisfying the conditions provided by the Reserve Bank of India in the Infrastructure Debt Fund-Non-Banking Financial Companies (Reserve Bank) Directions, 2011, *vide* notification No, DNBS.233/CGM (US)-2011 dated the 21st November 2011 as amended *vide* Notification No. DNBR.020/CGM (CDS) -2015 dated the 14th May 2015.
2) The funds of the Infrastructure Debt Fund shall be invested only in Post Commencement Operation Date Infrastructure Projects which have completed at least one year of satisfactory commercial operations that are-

i. Public Private Partnership projects and are a party to tripartite agreement with the concessionaire and the project authority for ensuring compulsory buy out and termination payment;
ii. Non-Public Private Partnership Projects and Public Private Partnership Projects without a project authority, in sectors where there is no project authority.

3. Proviso to Rule 10CA(7)- Notification No. 86/2015 dated 29.10.2015

Section 92C (1) of the Income-tax Act, 1961 provides that the arm's length price in relation to an international transaction or specified domestic transaction shall be determined by any of the methods stated under clause (a) to clause (f) of the said sub-Section, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the CBDT may prescribe.

The third proviso to sub-Section (2) provides that that where more than one price is determined by the most appropriate method, the arm's length price in relation to an international transaction or specified domestic transaction undertaken on or after the 1st day of April, 2014, shall be computed in such manner as may be prescribed.

Accordingly, rule 10CA prescribes the manner of computation of arm's length price in certain cases. Sub-rule (4) of Rule 10CA provides that where the most appropriate method applied is a method other than the method referred to in clause (d) or clause (f) of section 92C(1) and the dataset constructed in accordance with sub-rule (2) consists of six or more entries, an arm's length range beginning from the thirty-fifth percentile of the dataset and ending on the sixty-fifth percentile of the dataset shall be constructed and the arm's length price shall be computed in accordance with sub-rule(5) and sub-rule (6).

Further, sub-rule (7) of Rule 10CA provides that in a case where the provisions of sub-rule (4) are not applicable, the arm's length price shall be the arithmetical mean of all the values included in the dataset. However, if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding three percent of the latter, as may be notified by the Central Government in the Official Gazette in this behalf, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price.

Accordingly, the Central Government vide this Notification has notified that where the variation between the arm's length price determined under Section 92C and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one percent of the latter in respect of wholesale trading and three percent of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for Assessment Year 2015-2016.

As per the Explanation provided, for the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:-

i. purchase cost of finished goods is eighty percent or more of the total cost pertaining to such trading activities; and
ii. average monthly closing inventory of such goods is ten percent or less of sales pertaining to such trading activities.

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

II. CIRCULAR

1. Interest from Non-SLR securities of Banks-Circular No. 18 dated 2.11.2015

It has been brought to the notice of the CBDT that in the case of Banks, field officers are taking a view that, *"expenses relatable to investment in non-SLR securities need to be disallowed u/s 57(i) of the Act as interest on non-SLR securities is income from other sources."*

Clause (id) of sub-section (1) of Section 56 of the Act provides that income by way of interest on securities shall be chargeable to income-tax under the head "Income from Other Sources", if the income is not chargeable to income-tax under the head "Profits and Gains of Business and Profession".

The matter has been examined in light of the judicial decisions on this issue. In the case of *CIT v. Nawanshahar Central Cooperative Bank Ltd.* [2007]

160 Taxman 48(SC), the Apex Court held that the investments made by a banking concern are part of the business of banking. Therefore, the income arising from such investments is attributable to the business of banking falling under the head "Profits and Gains of Business and Profession".

Even though the abovementioned decision was in the context of co-operative societies/Banks claiming deduction under Section 80P(2)(a)(i)of the Act, the principle is equally applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.

In the light of the Supreme Court's decision in the matter, the issue is well settled. Accordingly, the CBDT has decided that no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this ground before Courts/Tribunals may be withdrawn/not pressed upon. This may be brought to the notice of all concerned.

The detailed circular can be downloaded from the link below: http://www.incometaxindia.gov.in/Pages/communications/circulars.aspx

III. Press Releases/Instructions/Letter *etc.*

1. Taxation of income from display of rough diamonds in "Special Notified Zone"-Press Release dated 16.10.2015

A "Special Notified Zone" has been established in the Bharat Diamond Bourse. To facilitate the participation of leading diamond mining companies of the world in this zone, the matter of taxation of income arising from the activity of mere display of uncut diamonds (without sorting or sale) in the Special Notified Zone has been considered by the Government.

It has been decided that the activity of mere display of uncut diamond (without sorting or sale) inside a Special Notified Zone carried out on or after 1st April, 2015 shall not be taxable under the provisions of the Income-tax Act, 1961. Legislative amendment in this regard shall be carried out through Finance Bill 2016.

2. Revised and updated guidance for implementation of Transfer Pricing Provisions-Instruction 15/2015 dated 16.10.2015

The provisions relating to transfer pricing are contained in Sections 92 to 92F of the Income-tax Act, 1961. These provisions came into force w.e.f. Assessment Year 2002-2003 and have seen a number of amendments over the years, including the insertion of Safe Harbour and Advance Pricing Agreement provisions and the extension of the applicability of transfer pricing provisions to Specified Domestic Transactions.

In terms of the provisions, any income arising from an international transaction or specified domestic transaction between two or more associated enterprises shall be computed having regard to the Arm's Length Price. Instruction No. 3 was issued on 20th May, 2003 to provide guidance to the Transfer Pricing Officers and the Assessing Officers to operationalise the transfer pricing provisions and to have procedural uniformity. Due to a number of legislative, procedural and structural changes carried out over the last few years, Instruction No. 3 of 2003 is being replaced with this Instruction to provide updated and adequate guidance on the transfer pricing provisions pertaining to international transactions.

This Instruction is issued under Section 119 of the Act and supercedes Instruction No.3 of 2003 with immediate effect.

3. Use of Email Based Communication for Paperless Assessment Proceedings-Letter Dated 19-10-2015

In order to improve the taxpayer services, enhance the efficiency and to usher in a paperless environment for carrying out the assessment proceedings, CBDT has decided to initiate the concept of using email for corresponding with taxpayers and sending through emails the questionnaires, notice *etc.* at the time of scrutiny proceedings and getting responses from them using the same medium on a pilot basis. This would eliminate the necessity of visiting the Income-tax offices by the taxpayers, particularly in smaller cases, involving limited issues and where taxpayer is able to provide details required by the AO without necessitating his physical presence.

Steps are being taken by CBDT to devise suitable mechanism for setting up a standardised platform for making such email based communications between the taxpayer and the Income-tax Department seamless and user friendly. To start with, it has been decided to launch a pilot project in this regard in five non-corporate charges at Delhi, Mumbai, Bengaluru, Ahmedabad & Chennai stations. Initially, 100 cases for e-hearing could be identified in each of these charges and major part of assessment processing should be conducted in electronic mode. Also, the cases covered under the aforesaid pilot project should be those which have been selected for scrutiny on the basis of AIR/CIB information or non-matching with 26AS-data. Consent of taxpayers should also be obtained in the beginning and cases of only willing taxpayers be considered under the pilot project. The officers of the Department, through their official e-mail IDs, can interact with the taxpayers at their e-mail IDs as mentioned in the respective returns of income.

The CBDT desires that necessary steps may accordingly be taken for initiating the pilot project on top priority.

4. Setting up of Committee with a view to simplify the provisions of The Income Tax Act 1961–Press Release Dated 27.10.2015

With a view to simplify the provisions of the Income-tax Act, 1961, a Committee has been constituted with the following composition:

(i) Justice R. V. Easwar, (Retd.), former Judge, Delhi High Court and former President, ITAT-Chairman
(ii) Shri V. K. Bhasin, former Law Secretary-Member
(iii) Shri Vinod Jain, Chartered Accountant- Member
(iv) Shri Rajiv Memani, Consultant - Member
(v) Shri Ravi Gupta, Sr. Advocate - Member
(vi) Shri Mukesh Patel, Tax Advocate - Member
(vii) Shri Ajay Bahl, Consultant - Member
(viii) Shri Pradip P. Shah, Investment Adviser-Member
(ix) Shri Arvind Modi, IRS (IT:81009) - Member
(x) Dr. Vinay Kumar Singh, IRS (IT:95006) – Member

The Terms of Reference (ToR) of the Committee shall be as follows:

i) To study and identify the provisions/phrases in the Act which are leading to litigation due to different interpretations;
ii) To study and identify the provisions which are impacting the ease of doing business;
iii) To study and identify the areas and provisions of the Act for simplification in the light of the existing jurisprudence;
iv) To suggest alternatives and modifications to the existing provisions and areas so identified to bring about predictability and certainty in tax laws without substantial impact on the tax base and revenue collection.

The Committee shall set its own procedures for regulating its work. The Committee can also work in

Sub-Groups and the draft prepared by the Sub-Groups can then be approved by the whole Committee. The Committee will put its draft recommendations in the public domain. After stakeholder consultations, the Committee will formalise its recommendations. The Committee can give its recommendations in batches. The first batch containing as many recommendations as possible shall be submitted by 31st January, 2016.

The Term of the Committee shall be for a period of one year from the date of its constitution.

5. Finance Minister launches the "e-Sahyog" pilot project of the Income-tax Department.-Press Release Dated 27.10.2015

The Income-tax Department is committed to the 'Digital India' initiative of the Government of India. The Finance Minister today launched an "e-Sahyog" pilot project which furthers the Department's commitment to work in an e-environment and reduces the need for the taxpayer to physically appear before tax authorities.

The "e-Sahyog" project launched on a pilot basis, is aimed at reducing compliance cost, especially for small taxpayers. The objective of "e-Sahyog" is to provide an online mechanism to resolve mismatches in Income-tax returns to taxpayers whose returns have not been selected for scrutiny, without visiting the Income Tax Office. Under this initiative the Department will provide an end to end e-service using SMS, e-mails to inform the taxpayers of the mismatch. The taxpayer will simply need to visit the e-filing portal and log in with their user-ID and password to view mismatch related information and submit online response on the issue. The responses submitted online by the taxpayers will be processed and if the response and other information are found satisfactory as per automated closure rules, the issue will be closed. The taxpayer can check the updated status by logging in to the e-filing portal.

The Finance Minister also inaugurated a drive to provide public service by holding "special PAN camps in remote areas". Under this drive, special PAN camps are being held over two days at forty-three remote semi urban and rural locations across India in the first instance to facilitate obtaining of PAN by persons residing in such areas. The Finance Minister interacted with applicants and officials at seven of these camps through a video conference. More such camps will be held through the year. The camps will ease the burden of compliance for persons residing in remote semi urban and rural areas who wish to enter into transactions of purchase or sale above rupees one lakh and will be required to quote PAN as announced in the Budget speech of 2015-16.

On this occasion, the Finance Minister stated that the objective of the Income Tax Department is to make life as easy as possible for the assessees and difficult only for those who consciously evade taxes. These digital initiatives will help in creating a positive environment.

These initiatives of the Department are expected to significantly reduce the burden of compliance on taxpayers and enhance the taxpayer satisfaction.

6. Taxation of income from off-shore Rupee Denominated Bonds-Press Release dated 29.10.2015

The Reserve Bank of India has recently permitted Indian corporates to issue rupee denominated bonds outside India.

The matter of taxation of income from such bonds under Income-tax Act, 1961 has been considered by the Government.

In so far as taxation of interest income from these INR off-shore bonds in the case of non-resident investors is concerned, it is clarified that withholding tax at the rate of 5 percent, which is in the nature of final tax, would be applicable in the same way as it is applicable for off-shore dollar denominated bonds.

Further, it has been decided that the Capital gains, arising in case of appreciation of rupee between the date of Issue and the date of redemption against the foreign currency in which the investment is made; would be exempted from capital gains tax. Legislative amendment in this regard will be proposed through the Finance Bill, 2016.

7. Agreement for avoidance of double taxation and prevention of fiscal evasion with foreign countries -Protocol amending convention between India and Turkmenistan-Press Release dated 5-11-2015

The Union Cabinet chaired by the Prime Minister Shri Narendra Modi, has given its approval for amending the Double Taxation Avoidance Convention (DTAC) signed between India and Turkmenistan in 1997 for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income and on capital, through a Protocol.

The Protocol provides for internationally accepted standards for effective exchange of information on tax matters including bank information and information without domestic tax interest. It is further provided that the information received from Turkmenistan in respect of a resident of India can be shared with other law enforcement agencies with authorisation of the Competent Authority of Turkmenistan and vice versa.

The Protocol further provides for 'Limitation of Benefits' Article as an anti-abuse provision aimed at preventing misuse of the Convention. The provisions of this Article enable use of the provisions of domestic law and measures concerning tax avoidance or evasion in the event of misuse of the Convention.

8. Strict Adherence of prescribed time limit in passing order under Section 12AA-Instruction No.16/2015 Dated 6-11-2015

Sub-Section (2) of Section 12AA of the Income-tax Act, 1961 prescribes that every order granting or refusing registration under clause (b) of sub-Section (1) of that section shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) of the sub-Section (1) thereof. Thus while processing the application under Section 12AA of the Act, the time limit of six months has to be adhered to by the Commissioner of Income Tax (Exemptions). However, it has been brought to the notice of the Board that the said time limit has not been observed in some cases.

Through this Instruction, the CBDT has directed the Commissioner of Income Tax (Exemptions) to strictly follow the aforesaid time limit of six months while passing order under Section 12AA. The CCIT (Exemptions) may monitor the adherence of prescribed time limit and initiate suitable administrative action in case any laxity in adhering to the same is noticed.

9. Constitution of Local Committees to deal with taxpayers' grievance from high pitched assessments-Instruction No.17/2015 dated 9.11.2015

The CBDT has consistently been advising the field authorities to be fair, objective and rational while framing scrutiny assessment orders. Role of supervisory authorities in this regard, has also been highlighted by the CBDT from time to time. It has, however, been brought to the notice of the CBDT that the tendency to frame high-pitched and unreasonable assessment orders is still persisting due to which grievances are being raised by the taxpayers. Such grievances not only reflect harassment of taxpayers but also lead to generation of unproductive work for Department as well as Appellate Authorities.

In view of the above, the CBDT felt the need to lay down an institutional mechanism to quickly resolve the taxpayers' grievances arising on account of high-pitched and unreasonable additions made by the Assessing Officers. Accordingly, the CBDT has decided to constitute Local Committees to deal for handling taxpayers' grievances arising from high-pitched scrutiny assessment orders.

10. Tenure of the High Level Committee(HLC) to interact with Trade & Industry on Tax Laws Extended by one year beyond 25th November, 2015–Press release dated 12.11.2015

The tenure of the High Level Committee (HLC) constituted to interact with Trade & Industry on Tax Laws, has been extended by one year beyond 25th November, 2015.

In his Budget Speech 2014-15, the Union Finance Minister Shri Arun Jaitley had announced the setting-up of a High Level Committee (HLC) to interact with trade and industry and ascertain areas where clarity on tax laws is required. Accordingly, a High Level Committee (HLC) was constituted with the approval of the Finance Minister on 26th November, 2014 to interact with trade and industry on tax laws, headed by Dr. Ashok Lahiri, former Chief Economic Advisor (CEA), Ministry of Finance. The other two members in the Committee are Shri Sidhartha Pradhan, Retired Member, Settlement Commission (Income Tax & Wealth Tax) and Shri Gautam Ray, Retired DG(Audit) Customs and Central Excise. The tenure of the Committee which was till 25th November, 2015, is now further extended for one year as per OM dated 10th November, 2015.

The High Level Committee (HLC) will continue to interact with the trade and industry on regular basis and ascertain the areas where clarity in tax laws is required and will give recommendations to the CBDT/CBEC for issuance of appropriate clarifications by way of circulars, instructions *etc.* The CBDT/CBEC will issue the required clarifications, circulars and instructions *etc.* within a period of 2 months from the date of receipt of recommendations of the HLC.

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

A. SERVICE TAX

1. Swachh Bharat Cess leviable from 15th November 2015

CBEC *vide Notification No. 21/2015-Service Tax Dated 6th November, 2015* has provided that Swachh Bharat Cess (SBC) @ 0.5% would be leviable on value of all taxable services with effect from 15th November 2015. This implies that effective rate of service tax will be 14.5%.

Further, CBEC *vide* Notification No. 22/2015-Service Tax dated 6th November, 2015 has exempted all taxable services from payment of Swachh Bharat Cess in excess of 0.5% of the value of services. It has also been provided that SBC would not be applicable on non-taxable services and services which are exempt from service tax.

In order to provide a better clarity regarding SBC implementation, CBEC *vide Notification No. 23/2015-Service Tax Dated 12th November, 2015* has provided that in cases where service tax is payable on abated value as per *Notification No. 26/2012 -Service Tax, dated 20th June, 2012*, Swachh Bharat Cess would also be levied on the abated value of taxable services determined in accordance with the Service Tax (Determination of Value) Rules, 2006. For example if the abatement is 60% & value of taxable services is ₹1000 then service tax payable would be ₹56.00 (1000 * 40% * 14%) and SBC payable would be ₹2.00 (₹1000* 40% * 0.5% or ₹400* 0.5%).

Further, CBEC *vide Notification No. 24/2015-Service Tax Dated 12th November, 2015* has provided that in cases where service tax is payable under Reverse Charge Method as per *Notification No. 30/2012-Service Tax, dated 20th June, 2012*, Swachh Bharat Cess would also be payable as per the Reverse Charge provisions.

Swachh Bharat Cess would also be leviable on the persons liable for paying the service tax at alternate rates who provide services as an air travel agent, an insurer carrying on life insurance business, purchase or sale of foreign currency, lottery distributor or selling agent. In this regard, CBEC *vide Notification No. 25/2015-Service Tax Dated 12th November, 2015* has provided that such assessees, during any calendar month or quarter, shall have the option to discharge their liability towards Swachh Bharat Cess which can be determined as follows:

$$\frac{\text{Alternate Tax Rate x 0.5}}{14}$$

The option under once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances. For example, an air travel agent is liable to pay service tax @ 1.4% of the basic fare in the case of international bookings. Here, SBC payable would be @ 0.05 % [(1.4 * 0.5)/ 14]. Thus on Basic fare of ₹5000, SBC payable would be ₹2.5 (5000*0.05).

It is important to note that, with regards to point of taxation, no SBC liability would arise where payment has been received and invoice has been raised before 15th November 2015. When payment is received before 15th November 2015 and invoice is raised within 14 days i.e. 29th November 2015, no SBC would be required to be paid. However, SBC would be applicable when services are provided on or after 15th November 2015 and payment for the same is received after that date and invoice is not raised within 14 days i.e. invoice is issued after 29th November 2015.

SBC is not integrated in the Cenvat Credit Chain. Therefore, credit of SBC cannot be availed Further, SBC cannot be paid by utilising credit of any other duty or tax.

Also, office of the Controller General of Accounts has allotted the accounting codes for the new Minor Head 506-Swachh Bharat Cess and new Sub-heads as under:

Swachh Bharat Cess (Minor Head)	Tax Collection	Other Receipts (Interest)	Penalties	Deduct Refunds
0044-00-506	00441493	00441494	00441496	00441495

Further, CBEC has also released FAQs on Swachh Bharat Cess which are available at http://idtc.icai.org/download/faq-sbc.pdf.

[Notification No. 21/2015-Service Tax Dated 6th November, 2015, Notification No. 22/2015-Service Tax Dated 6th November, 2015, Notification No. 23/2015-Service Tax, Notification No. 24/2015-Service Tax & Notification No. 24/2015-Service Tax all Dated 12th November, 2015, Circular No. 188/7/2015-ST Dated the 16th November, 2015]

2. Clarification regarding utilisation of credit of Education Cess for payment of Service Tax.

CBEC *vide* Notification No. 22/2015-Central Excise (N.T.), Dated: October 29, 2015 has amended Rule 3 sub-rule 7 of CENVAT Credit Rules, 2004 to allow utilisation of the credit of Education Cess (EC) and Secondary and Higher Education Cess (SHEC):

- Paid on inputs or capital goods received in the premises of the provider of output service on or after the 1st day of June, 2015;
- Paid on capital goods received in the premises of the provider of output service in the financial year 2014-15 (50% balance of EC & SHEC paid);
- Paid on input service in respect of which the invoice, bill, challan etc. as referred to in rule 9, is received by the provider of output service on or after the 1st day of June, 2015;

for payment of service tax on any output service.

However, CBEC is yet to provide a clarification on following issues:

a) Treatment of old unutilised/accumulated credit of EC & SHEC of Excise duty with the assessee as on 28th February 2015.

b) Treatment of old unutilised/accumulated credit of EC & SHEC of Service Tax with the assessee as on 31st May 2015.

[Notification No. 22/2015-Central Excise (N.T.), Dated: October 29, 2015]

3. Amendment in Mega Exemption Notification 25/2012-Service Tax

CBEC *vide* Notification No. 20/2015-ST, Dated: October 21, 2015 has amended Mega Exemption Notification No. 25/2012 –ST, Dated: June 20, 2012 as follows:

- **Clause 29**
  (g) Services provided by business facilitator or a business correspondent or intermediaries to business facilitator or business correspondents to a banking company with respect to a Basic Savings Bank Deposit Account covered by Pradhan Mantri Jan Dhan Yojana in the banking company's rural area branch, by way of account opening, cash deposits, cash withdrawals, obtaining e-life certificate, Aadhar seeding.

Services provided by business facilitator or a business correspondent to an insurance company in a rural area remain exempted as earlier.

Prior to this amendment any service provided by business facilitator or business correspondents (excluding intermediaries) to any banking company in rural area were exempted irrespective of the type of account and nature of activities.

- **Clause 34**
  (b) Charitable activities provided by entities registered under 12AA of the Income-tax Act, 1961 to include advancement of yoga.

[Notification No. 20/2015-ST, Dated: October 21, 2015]

B. CENTRAL EXCISE

4. Guidelines for launching of Prosecution & revised monetary limits for arrest under Central Excise & Service Tax

CBEC *vide Circular Nos. 1009/16/2015-CX dated 23.10.2015 and 1010/17/2015-CX dated 23.10.2015* has provided guidelines for launching of prosecution under the Central Excise Act, 1944 and the Finance Act, 1994. Further, CBEC has directed its officers not to exercise their powers for launching prosecution unless evasion of Central Excise duty or Service Tax, or misuse of CENVAT Credit in relation to offences specified under sub-Section (1) of Section 9 of the Central Excise Act, 1944 or sub-Section (1) of section 89 of the Finance Act, 1994 is equal to or more than ROne Crore.

However, it is important to note here that though there is no change in monetary limit (₹50 lakh) mentioned under sub-section (1) of Section 9 of the Central Excise Act, 1944 and sub-Section (1) of Section 89 of the Finance Act, 1994, these directions are issued to optimally utilise limited resources.

Further, prosecution can be launched disregarding the monetary limits in the case of a company/assessee habitually evading tax/duty or misusing Cenvat Credit facility. Habitual evaders means a company/assessee who is evading tax/duty or misusing CENVAT Credit facility, if it has been involved in three or more cases of confirmed demand (at the first appellate level or above) of Central Excise duty or Service Tax or misuse of CENVAT Credit involving fraud, suppression of facts *etc.* in past five years from the date of the decision such that the total duty or tax evaded or total credit misused is equal to or more than ₹One Crore.

For detailed guidelines please visit: http://www.cbec.gov.in/Excise-Circulars-Instructions

[Circular Nos. 1009/16/2015-CX dated 23.10.2015 and 1010/17/2015-CX dated 23.10.2015]

5. Bulk Cargos exempted from sealing in packages or container

CBEC *vide Notification No. 42/2001-CX (NT), Dated: June 26, 2001* had provided the procedure for export under bond without payment of duty.

Now, CBEC vide *Notification No. 23/2015-Central Excise (N.T.), Dated: October 30, 2015* has amended the said procedures thereby exempting bulk cargo from sealing in packages or container. Further, such exemption from sealing of package or container would be granted by the Principal Chief Commissioner or Chief Commissioner of Central Excise subject to safeguards as may be specified by him in the permission, which may include:

i. method of verification of quantity and quality of goods including testing of goods where necessary at the place of removal or dispatch and at the port of export or SEZ, where the goods are received;
ii. no remission of duty for loss of goods within transit;
iii. permission on case to case basis for a specified period not exceeding one year at a time and may be withdrawn in case of misuse; and
iv. any additional safeguards as may be specified

In addition to above, CBEC has also prescribed the following procedure for allowing export without sealing in packages or container:

i. The assessee who desires to avail facility of export of bulk cargo without sealing shall write to the Principal Chief Commissioner/ Chief Commissioner of Central Excise with a copy to jurisdictional Assistant/Deputy Commissioner of Central Excise, giving details of bulk cargo to be exported with proper justification regarding difficulties faced by him in sealing of the cargo.
ii. The Jurisdictional Assistant/Deputy Commissioner after receipt of such application from the exporter shall forward it to the Principal Commissioner/Commissioner with his comments within fifteen days of receipt of such application with due verification as needed.
iii. The Jurisdictional Principal Commissioner/ Commissioner of Central Excise forward all such application to the Principal Chief Commissioner/Chief Commissioner of Central Excise with his recommendation within three weeks of receipt of the application with report from the Assistant/Deputy Commissioner. The jurisdictional Principal Commissioner/ Commissioner of Central Excise shall also consult the Principal Commissioner/Commissioner having jurisdiction over the port of export or Development Commissioner of SEZ where the goods are received and incorporate the inputs appropriately in his recommendation.
iv. Principal Chief Commissioner/Chief Commissioner of Central Excise shall grant or reject the request for waiver of sealing of bulk cargo with in fifteen days of receipt of the application from the Principal Commissioner/ Commissioner of Central Excise.
v. The final decision taken on the application shall be communicated to the applicant in writing along with conditions and safeguards prescribed, if any.

[Notification No. 23/2015-Central Excise (N.T.), Dated: October 30, 2015; Circular No. 1011/18/2015-CX., Dated: October 30, 2015]

C. CUSTOMS

6. Use of digital signature for submission of documents

CBEC *vide Circular No. 10/2015-Customs, dated 31.03.2015* had provided that importers registered under Accredited Client Programme (ACP) were required to mandatorily file Bills of Entry with digital signature with effect from 01.05.2015.

Now in order to increase coverage of digitally signed documents and subsequent phasing out of physical/manual submission of documents; CBEC vide *Circular No. 26/2015-Customs, Dated: October 23, 2015* has provided that all importers/exporters using services of Customs Brokers for formalities under Customs Act, 1962, shipping lines and air lines shall file customs documents under digital signature certificates mandatorily with effect from 01.01.2016. The importers/exporters desirous of filing Bill of Entry or Shipping Bill individually will have the option of filing declarations/documents without using digital signature. Further, wherever the customs process documents are digitally signed, the Customs will not insist on the user to physically sign the said documents.

[Circular No. 26/2015- Customs, Dated: October 23, 2015]

7. Tumb village in Valsad notified for import and export of goods

CBEC *vide Notification No. 103/2015-Cus., (NT), Dated: November 03, 2015* has declared the following as Customs port in State of Gujarat for the purpose mentioned against it:

S. No.	Place	Purpose
1.	xii) Village Tumb, Taluka Umbergaon, District Valsad.	Unloading of imported goods or loading of export goods

[Notification No. 103/2015-Cus., (NT), Dated: November 03, 2015]

8. Revised Guidelines for launching of prosecution and for Arrest and Bail in relation to offences punishable under Customs Act, 1962

CBEC *vide Circular Nos. 27/2015-Customs & 28/2015-Cus., both Dated: October 23, 2015* has revised guidelines for prosecution in relation to offences punishable under Customs Act, 1962.

The revised guidelines mainly provide the following:

- Prosecution may be launched against any person including legal person for offences covered under Section 132, 133, 134, 135A or 136 of the Customs Act, 1962 after a careful consideration of the nature of offence, the role of the person concerned and evidence available to substantiate the guilty knowledge/*mensrea.*
- Threshold Limits:

  ₹20 lacs or more: For cases involving:
  - unauthorised importation in baggage/ cases under Transfer of Residence Rules;
  - Outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under Section 11 of the Customs Act, 1962;
  - Outright smuggling of goods notified under Section 123 of the Customs Act, 1962 or foreign currency.

  ₹1 Crore or more: For cases related to:
  - Importation/exportation of trade goods (i.e. appraising cases/cases) involving wilful mis-declaration in value/description, concealment of restricted goods or goods notified under Section 11;
  - fraudulent availment of drawback or attempt to avail of drawback or any exemption from duty provided under the Customs Act 1962.

The same limits would apply for Guidelines relating to Arrest and Bail as per *Circular No. 28/2015-Cus. Dated: October 23, 2015.*

- Threshold Limit does not apply in following cases:
  - Habitual Violators;
  - Offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna, irrespective of value of offending goods involved;
  - Where quantum of punishment is linked with the amount of imports duty/market price of offending goods/drawback amounts e.g. Section 135 of the Act.
- Prosecution in respect of narcotic drugs and psychotropic substances may be launched as per the provisions of the NDPS Act, 1985.
- Normally, prosecution may be launched immediately on completion of adjudication proceedings.

For detailed guidelines regarding procedure for launching, monitoring, withdrawal *etc.* of prosecution, compounding of offences, transitional provisions *etc.* please visit: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2015/circ27-2015cs.pdf

[Circular Nos. 27/2015-Customs & 28/2015-Cus., both Dated: October 23, 2015]

D. CESTAT

9. CESTAT Chandigarh Bench to be Operational from 1st December 2015

President, CESTAT *vide Notification No. 02 of 2015 dated: November 4, 2015* has ordered a Regional CESTAT Bench at Chandigarh which would be operational from 1st December 2015.

It may be noted that, the Regional Bench, Chandigarh will deal with all the matters arising from territories within the territorial jurisdiction of Union Territory of Chandigarh and the States of Punjab, Haryana, Himachal Pradesh and Jammu & Kashmir, all appeals already filed pertaining to said jurisdiction and such other matters as may be transferred to it by the general or special order of the President.

The CESTAT, Chandigarh will start functioning w.e.f 1st Dec, 2015 at the following address:

Customs, Excise & Service Tax Appellate Tribunal
1st-3rd Floor, SCO No. 147-148, Sector 17-C
Chandigarh-160017

[Notification No. 02 of 2015 dated: November 4, 2015]

E. VALUE ADDED TAX

KARNATAKA VAT:

10. Date for making correction in Input Tax Credit matching Module of e-UPaSS for the tax period May, 14 to May, 15 has been extended from 31.8.2015 to 31.12.15

Karnataka Government *vide Circular No. 14/2015/16 No. CCW/CR-44/2013-14 dated 19th October, 2015* has extended the time of revision option for making corrections in Input Tax Credit Matching Module under electronic Uploading of Purchase and Sales Statements (e-UPaSS) for the Tax Period May, 2014 to May, 2015 from 31.08.2015 to 31.12.2015.

[Circular No. 14/2015/16 No. CCW/CR-44/2013-14 Dated 19th October, 2015]

ASSAM VAT:

11. Date for filing Annual Return & Audit Report extended to 31.12.2015

Assam Government *vide Notification No. FTX.49/2014/88 Dated 12th October, 2015* has extended the date for filing Annual Return along with the filing of Audit Report for the year 2014-15 from 31.10.2015 to 31.12.2015.

[Notification No. FTX.49/2014/88 Dated 12th October, 2015]

12. Issuance of Registration Certificate on the Day of Registration or on the Next Working Day

Assam Government *vide Circular No.14/2015 No. CTS-53/2014/Pt/182 Dated 28th October, 2015* has prescribed that the Registration Certificate shall be issued on the day of Registration or on the next working day if all the documents are found to be in order. Other statutory forms/TCC will be issued on the basis of an enquiry held within 3 working days for ascertaining the genuineness of the dealer.

Further Enrolment Certificate/Registration Certificate under the Assam Profession Trades Calling & Employment Taxation Act, 1947 will be issued on the basis of turnover declared in the registration application or the status of business. Existing dealers will be granted this certificate within one month time.

Facilitation Centre in each unit office will be constituted to address all the issues relating to e-services and for smooth delivery of e-services.

[Circular No.14/2015 No. CTS-53/2014/Pt/182 Dated 28th October, 2015]

DELHI VAT:

13. Date for Filing Online Return in Form 9 extended from 31.10.2015 to 15.12.2015

Delhi Government *vide Circular No. 28 of 2015-16 F.3(589)/Policy/VAT/2015/963-970 Dated 30th October, 2015* has extended the date of filing online return in Form 9 for the year 2014-15 from 31.10.2015 to 15.12.2015. The return in Form 9 is required to be filed by the dealers who have made inter-state sale at concessional rates against form 'C' or Form 'F' or form 'H' or claimed deduction from taxable turnover against E-I/E-II or I/J forms, etc.

[Circular No. 28 of 2015-16 F.3(589)/Policy/VAT/2015/963-970 Dated 30th October, 2015]

GOA VAT:

14. Amendment made in Definition of Sale shall come into force from 01.11.2015

Goa Government *vide Notification No. 4/5/2005-Fin(R&C)(128)1243 Dated 26th October, 2015* has specified 01.11.2015 as date from which amended definition of sale would be effective. The amended definition of sale has been expanded to include *"an agreement for carrying out the work of building, construction, manufacture, processing, fabrication, erection, installation, fitting, improvement, modification, repair or commissioning of any movable or immovable property, for cash, deferred payment or other valuable consideration"* under the works contract.

[Notification No. 4/5/2005-Fin(R&C)(128)1243 Dated 26th October, 2015]

MAHARASHTRA VAT:

15. Issue of Tax Invoice, Bill or Cash Memo on Normal Paper instead of Thermal Paper

Maharashtra Government *vide Circular NO. 15T of 2015 Dated 29th October, 2015* has prescribed that all the dealers who are liable to pay tax shall issue tax invoice, bill or cash memo on normal paper instead of thermal paper so that such bill and the matter printed thereon lasts for a period of atleast 8 year from the end of the year in which sales takes place.

[Circular No. 15T of 2015 Dated 29th October, 2015]

16. Rate of Interest to be paid by the Dealer in case of a Default

Maharashtra Government *vide Notification No. VAT. 1515/CR-81/Taxation-1 Dated 5th November, 2015* has specified the following rate of interest for the purpose of section 30(1), (2) & (3) for the dealers who has failed to apply for the registration or has failed to apply within the time prescribed or where a registered dealer has failed to pay tax within the time prescribed or where the tax has remained unpaid (except for the tax on which interest has been levied for late payment of tax) up to one month after the end of the period of assessment:

Period, liable for Interest	Rate of Interest on the amount of Tax (for the month or part thereof)
Upton 1 Month	1.25%
Upton 3 Months	1.25% for 1st Month of delay and 1.5% for delay beyond 1 Month up to 3 Months
More than 3 Months	1.25% for 1st Month of delay, 1.5% for delay beyond 1 Month up to 3 Months and 2% for delay beyond 3 Months

[Notification No. VAT. 1515/CR-81/Taxation-1 Dated 5th November, 2015]

17. Last Date for submission of Audit Report for the Year 2014-15 is 15.01.2016

Maharashtra Government *vide Trade Circular No. 17T of 2015 Dated 7th November, 2015* specifies that the last date for submission of Audit Report for the year 2014-15 is 15.01.2016. After uploading the Audit Report the dealer is required to submit a statement of submission of Audit Report duly certified with signature, stamp, seal of the dealer with date and a copy of Acknowledgement generated after uploading as duly certified with signature, stamp, seal of the dealer & auditor with date up to 25.01.2016. The above documents are to be submitted to:

In case of-	Large Tax Payer	Other Tax Payers
Mumbai	LTU Officer	704 Cell at Vikirkar Bhavan, Mazagaon, Mumbai
Rest of the State	LTU Officer	Location in charge Officer of every location

[Trade Circular No. 17T of 2015 Dated 7th November, 2015]

MADHYA PRADESH VAT:

18. Additional Tax on goods specified in schedule II

A new Section 9-AA has been inserted through an ordinance to levy an additional tax based on weight, volume, measurement on unit on the sale of goods specified in Schedule II, other than declared goods at a rate which may be notified by the State Government.

[The Madhya Pradesh VAT (Second Amendment) Ordinance, 2015]

ANDHRA PRADESH VAT:

19. No e-Way Bill or declaration in Form 650 are required for transportation of Goods purchased by Government Departments & Consumer for their own use

Andhra Pradesh Government *vide Circular No. CCTs Ref. No. AI(1)/45/2014 Dated 14th October, 2015* has prescribed that the vehicles carrying goods for the Government Departments & Consumers for their own consumption shall be allowed to pass through the check posts without e-Way Bill or declaration in Form 650, if covered by proper invoice and also a certificate/declaration from the authorised official of the Government Department/ sufficient documentary evidence in support of own use about the procurement and transportation of the relevant goods.

Further, in cases, where goods are purchased by other than dealer or person for personal use, these goods vehicles may be allowed to pass through, if they are covered by proper invoices and also after conducting proper inquiries and ascertaining that the goods are obtained by buyer/ consignee only for own use but not for resale or in the course of business.

[Circular No. CCTs Ref. No. AI(1)/45/2014 Dated 14th October, 2015]

UTTAR PRADESH VAT:

20. Date of filing Annual Return in Form 52, 52A and 52B extended to 31st Dec, 2015

Uttar Pradesh Government *vide Circular No. 1630/ 1516045 Dated 28th October, 2015* has extended the date for filing annual return in form 52, 52A and 52B for the year 2014-15 from 31.10.2015 to 31.12.2015.

[Circular No. 1630/ 1516045 Dated 28th October, 2015]

HIMACHAL PRADESH VAT:

21. Insertion of New Rules (75B, 75C, 75D, 75E & 75F) in Himachal Pradesh Value Added Tax Rules, 2005

Himachal Pradesh Government *vide Notification No. EXN-F(10)-16/2014 Dated 7th November, 2015* has inserted Rules 75B, 75C, 75D, 75E & 75F in Himachal Pradesh Value Added Tax Rules, 2005 which are as follows:

Rule 75B: A dealer may apply for pre-assessment refund (manually or electronically through hptax.gov.in) of excess input tax credit against a bank guarantee of equal amount. Following conditions must be satisfied by the dealer for claiming the refund:

(i) Turnover of ₹5 Crore or more in preceding year;
(ii) All statutory forms under VAT & CST have been submitted of which the refund is being claimed;
(iii) He is not a tax or return defaulter and has not been penalised for the past 3 years;
(iv) Refund claim has been filed in Form VAT-XLV; and
(v) He has verified that the tax has been paid by the seller for which input tax credit has been claimed by the dealer and if not paid by the seller, then dealer will be liable to make the tax payment along with the interest.

Rule 75C: Bank Guarantee for pre-assessment refunds may be accepted if following conditions are satisfied:

(i) It should be equal to the amount of refund claimed,
(ii) It must be of any branch of the bank notified as a Government Treasury. In case of Non-Resident, it may be of any branch of a bank outside the State which is notified as Government Treasury in Himachal Pradesh and
(iii) It shall be furnished for a period of 36 months.

Rule 75D: After submitting a complete refund application and a bank guarantee, the dealer will be granted refund within 45 days of filing the application.

Rule 75E: Every case shall be assessed within 18 months of grant of pre-assessment refund.

Rule 75F: Every case shall be scrutinized and finalised within 36 months of grant of such refund. If not finalised in the said time period, then a fresh bank guarantee may be obtained. A penalty equal to twice the amount of refund shall be imposed where refund has been claimed fraudulently.

[Notification No. EXN-F(10)-16/2014 Dated 7th November, 2015]

TELANGANA VAT:

22. Mandatory usage of e-waybills by VAT Dealers from 01.12.2015.

Telangana Government *vide Circular-CCT's Ref No. Enft/D2/172/2010 Dated 9th November, 2015* has prescribed mandatory use of e-waybills for all the dealers of the Twin cities and R. R. District in place of manual waybills from 01.12.2015. Further, e-waybill may be cancelled within 2 hours of its generation on the approval of Commercial Tax Officer/Asst. Commissioner on recording the online reasons for such cancellation. If Commercial Tax Officer/Asst. Commissioner is not convinced by the reason then they should issue a show cause notice for the same.

[Circular-CCT's Ref No. Enft/D2/172/2010 Dated 9th November, 2015]

KERALA VAT:

23. Multi-level Marketing Entities–Registration, Payment of Tax at Compounded Rates.

In order to streamline the functioning of the Multi-level Marketing sector in the State of Kerala and also to ensure that the revenue due to the State ex-chequer is duly received, it was announced in the Kerala Budget–2015 that all multi-level marketing companies, their distributors and agents would be made liable to take out registration under the Kerala Value Added Tax Act, 2003. Accordingly following amendments were made in the relevant Sections of the Kerala Value Added Tax Act, 2003 by the Kerala Finance Act – 2015:

Section 2 (Definition): Following new definiations were inserted:

Multi-level Marketing means marketing and sale of goods of a multi-level marketing entity through direct sellers or through direct sellers and distributors, otherwise than through shops, to the consumer or consumers, generally in their houses or at their workplace or through demonstration of such goods at a particular place or by mail order sale.

Multi-level Marketing Entity means a company registered under the Companies Act 2013 or any registered partnership firm (including limited liability partnership firm) engaged in multi-level marketing.

Section 6 (Levy of Tax) The said dealers are liable to pay tax on their sale and purchase of goods whose total turnover is ₹ 10 lakh or more for the year.

Section 8 (Payment of Tax at Compounded Rates) The said dealers may opt to pay tax at the scheduled rates applicable on the maximum retail price of such goods. This provision is not applicable on the goods sold otherwise than by way of multi-level marketing. Further if multi-level marketing entity is paying tax under compounding scheme then subsequent dealers in the chain shall not be liable to get registered and shall be exempted from payment of tax on such goods.

The detailed operational guidelines have been issued by *Kerala Government vide Circular No. 26/15 C3/35960/12/CT Dated 11th November, 2015* for the functioning of Multi-level Marketing Entities/ Direct Sellers:

(i) Conditions for Multi-level Marketing/ Permissible Direct Selling
(ii) Appointment/Authorisation of Direct Sellers
(iii) Activities Prohibited
(iv) General Conditions
(v) Maintenance of Records
(vi) Grievance Redressal Mechanism
(vii) Breach of Guidelines

[Circular No. 26/15 C3/35960/12/CT Dated 11th November, 2015]

ODISHA VAT:

24. Odisha Value Added Tax (Amendment) Act, 2015 shall be deemed to have come into force from 01.10.2015.

Vide Notification No. 28080FIN-CT1-TAX-0017-2013 Dated 19th October, 2015 following amendments which were made in Odisha Value Added Tax (Amendment) Act, 2015 shall be deemed to have come into force from 01.10.2015:

Section 9 (Charge to Tax & Incidence) & Section 16 (Levy of Compounded Tax Rates) The compounded tax rates will be levied on the taxable turnover of sales of every registered dealer whose annual turnover does not exceed ₹50 lakh which was ₹40 lakh earlier.

Section 10 (Liability) Every dealer is liable to pay tax if the gross total turnover exceeds taxable limit. Taxable limits are in relation to any dealer who-

	Earlier Limits	**Revised Limits**
(i) purchases or receives any goods from outside the State for sale within the State on his own behalf or on behalf of his principal	NIL	NIL
(ii)executes any works contract	₹50,000	₹50,000
(iii)manufactures or produces any goods for sale	₹1,00,000	₹10,00,000
(iv)carries on any business other than those referred to in clauses (i), (ii) and (iii)	₹5,00,000	₹10,00,000

Further, sub-Section 4(a) has been inserted stating that a dealer who transfers property in goods under a work contract or enters into a sub-contract either wholly or partially, then such contractor and sub-contractor are jointly and severally liable to pay tax proportionately in respect of transfer of property in goods. If the contractor or sub-contractor proves that the tax has been paid wholly either by sub-contractor or contractor, then the other will not be liable to pay the tax.

Section 11 (Levy of Tax on Sale) Earlier a dealer executing works contract may opt to pay tax under composition scheme. Now it is specifically provided that the works contract will include dealers undertaking the construction of flats, dwellings or buildings or premises and transferring them in pursuance of an agreement along with the land or interest underlying the land.

Section 20 (Iput Tax Credit) A sub-Section (3a) has been inserted stating that no input tax credit will be allowed in excess of the tax amount actually paid.

Section 27 (Security) Under earlier provisions, for the purpose of proper realisation of tax payable and for enforcement of lawful conduct, registering authority may demand a reasonable security or additional security from a registered dealer or from the dealer who has applied for the registration. Now the above provision will be applicable for the registered dealer only.

Section 30 (Suspension of Registration Certificate) has been omitted.

Section 31 (Cancellation of certificate of registration) A new clause has been added to provide that registration certificate may be cancelled for 'good and sufficient reasons' on applying for such cancellation and after causing an inquiry by registering authority and giving an opportunity of being heard to the dealer. The registration will be considered to be inoperative from the date of order of cancellation.

Section 32 (Amendment of certificate of registration)

Amendment in Registration certificate when a registered dealer-	The registering authority may*-
sells or disposes of his business or any part thereof or discontinues his business, or changes the name, style, or nature of business, or makes any addition or deletion in the class of goods dealt in or manufactured, or changes his place of business (other than principal place of business) or warehouse, or opens a new place of business	amendment shall be done electronically on the basis of the application
effects any other change in the constitution or principal place of business	amend the certificate of registration of the dealer or reject the application
changes the ownership of the business, or its basic status	issue fresh certificate of registration or reject the application

**before an application for amendment of certificate of registration is rejected, the dealer shall be given an opportunity of being heard.*

Further, where a dealer fails, without any reasonable cause, to inform the registering authority about the above changes, within the time prescribed, he shall be liable to a penalty of rupees one hundred for each day of default subject to a maximum limit of rupees ten thousand.

Section 33 (Periodical returns and payment of tax) A sub-Section 9 has been inserted which provides that returns filed electronically shall not require any signature by the dealer or his authorised person.

Section 41 (Identification of tax payers for tax audit) After completion of tax audit, the authorised officer shall determine the tax liability and serve a notice along with the Audit Visit Report to the dealer. If the dealer admits in writing and pays the whole amount of tax and a penalty of 25% of such tax then no assessment shall be done.

If dealer does not comply with the notice, then Audit Visit Report along with the statements recorded and documents obtained evidencing suppression of purchases or sales, or both, erroneous claims of deductions including input tax credit and evasion of tax will be submitted to the assessing authority for the purpose of investigation, assessment *etc.*

Insertion of **Section 42A (Assessment in certain cases in *lieu* of Audit)**

- The Commissioner may select dealers on the basis of large tax payment or large turnover or who has been granted provisional refund by issuing a notification for assessment in *lieu* of tax audit and audit assessment.
- After such selection, the assessing authority may serve a notice requiring the dealer to appear and produce books of account, documents, *etc.* within a period of not less than thirty days and after examining the material available and those produced, assess the tax due from that dealer.
- If the dealer fails to appear or fails to produce the books of account and documents then the assessing authority may proceed to complete the assessment to the best of his judgment.
- A penalty not exceeding twenty five per centum of the tax so arrived may be imposed on the dealer.
- The assessment shall be completed within a period of six months from the date of service of the notice on the dealer. If the assessment is not completed within the time specified, the Commissioner may, allow further time not exceeding six months for completion of the assessment proceeding.

Section 43 (Turnover escaping assessment) Where the assessing authority is satisfied that the escapement is without any reasonable cause then a penalty may be levied which is equal to the amount of tax additionally assessed. The penalty of twice the tax amount assessed has been reduced.

Further, the assessment shall be completed within a period of six months from the date of service of the notice on the dealer. If for any reason the assessment is not completed within the time specified, the

Commissioner may, allow further time not exceeding six months for completion of the assessment proceeding. Even if the Commissioner feels it necessary to do so for good and sufficient reasons may allow such further time not exceeding another six months beyond the time allowed for the first time.

Section 54 (Deduction of tax at source from payment to works contractor) A proviso has been added to provide that where a dealer executing works contract, entering into further contract with sub-contractor to execute such work shall not deduct any further amount towards tax and tax deducted at source by the deducting authority shall be transferred proportionately to the sub-contractor by the principal contractor.

A sub-Section (1a) has been inserted to provide that if the Commissioner is satisfied on his own information that the deducting authority requires enrolment, he may enroll the deducting authority and assign him with an identity code.

Section 65 (Accounts to be audited in certain cases) Sub-Section (1a) which provides that a statement of closing stock in trade held at the end of the year has to be furnished by the dealer within a period of three months from the date of expiry of that year has been omitted.

Now under sub-Section (2) the penalty of Rs. 100 per day, for default in furnishing a copy of audit report with a statement of closing stock in trade held at the end of the year, will be levied only on the dealer who is liable to get his accounts audited.

Section 77 (Appeals): Following time limit has been prescribed for disposing of an appeal by appellate authority, after giving the appellant a reasonable opportunity of being heard and after causing such enquiry as he may deem necessary :

- within a period of 3 years from the date of admission of such appeal; or
- in pending cases within a period of 3 years from the date of commencement of the Odisha Value Added Tax (Amendment) Act, 2015.

Further, the assessing authority may, after giving the dealer a reasonable opportunity of being heard and after causing an enquiry, complete fresh assessment within a period of 2 years from the date of the order of setting aside the assessment and directing to make a fresh assessment, or as the case may be, in case of pending cases, within a period of 2 years form the date of commencement of the Odisha Value Added Tax (Amendment) Act, 2015.

[Notification No. 28080FIN-CT1-TAX-0017-2013 Dated 19th October, 2015]

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

A. Annual Return on Foreign Liabilities and Assets (FLA Return) – Reporting by Limited Liability Partnerships (LLPs)

A.P. (DIR Series) Circular No. 22 dated October 21, 2015

In order to capture the statistics relating to Foreign Direct Investments (FDI), both inward and outward, by Limited Liabilities Partnerships (LLPs) in India, it has been decided that henceforth, all LLPs that have received FDI and/or made FDI abroad (i.e. overseas investment) in the previous year(s) as well as in the current year, shall submit the FLA return to the Reserve Bank of India by July 15 every year, in the format as prescribed in the A.P (DIR Series) Circular No. 145 dated June 18, 2014. Since, LLPs do not have 21-Digit CIN (Corporate Identity Number), they are advised to enter 'A99999AA9999LLP999999' against CIN in the FLA Return.

Reserve Bank has since amended the subject Regulations accordingly through the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Seventh Amendment) Regulations, 2015 which have been notified through Notification No. FEMA.351/2015-RB dated September 30, 2015, *vide* G.S.R. No. 745(E) dated September 30, 2015.

B. No Permission/renewal of permission to LOs of foreign law firms–Supreme Court's Directions

A.P. (DIR Series) Circular No. 23 dated October 29, 2015

The Hon'ble Supreme Court *vide* its interim orders dated July 4, 2012 and September 14, 2015, passed in the case of the *Bar Council of India vs A. K. Balaji & Ors.*, has directed RBI not to grant any permission to any foreign law firm, on or after the date of the said interim order, for opening of Liaison Office (LO) in India. Hence, no foreign law firm shall be permitted to open any LO in India till further orders/notification in this regard. However, foreign law firms which have been granted permission prior to the date of interim order for opening LOs in India may be allowed to continue provided such permission is still in force. No fresh permission/renewal of permission shall be granted by RBI/AD banks respectively till the policy is reviewed based on, among others, final disposal of the matter by the Hon'ble Supreme Court.

C. Subscription to National Pension Scheme by Non Resident Indians (NRIs)

A.P. (DIR Series) Circular No. 24 dated October 29, 2015

With a view to enabling NRIs' access to old age income security, it has now been decided, in consultation with the Government of India, to enable National Pension System (NPS) as an investment option for NRIs under FEMA, 1999. Accordingly, NRIs may subscribe to the NPS governed and administered by the Pension Fund Regulatory and Development Authority (PFRDA), provided such subscriptions are made through normal banking channels and the person is eligible to invest as per the provisions of the PFRDA Act.

The subscription amounts shall be paid by the NRIs either by inward remittance through normal banking channels or out of funds held in their NRE/FCNR/NRO account. There shall be no restriction on repatriation of the annuity/accumulated savings.

Reserve Bank has since amended the subject Regulations accordingly through the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2015 which have been notified *vide* Notification No. FEMA.353/2015-RB dated October 6, 2015, vide G.S.R. No. 759 (E) dated October 6, 2015.

D. Switching from Barter Trade to Normal Trade at the Indo-Myanmar Border

A.P. (DIR Series) Circular No. 26 dated November 05, 2015

In terms of A.P. (DIR Series) Circular No. 17 dated October 16, 2000 it had been stipulated that border trade between India and Myanmar may be settled through Barter system thereby facilitating exchange of locally produced commodities along the Indo-Myanmar border. Further, Regulation 3 and 5 of Notification No. FEMA 14/2000-RB dated May 3, 2000 the trade transactions with Myanmar may be settled in any permitted currency in addition to the Asian Clearing Union Mechanism. Further, such transactions were not captured in the banking system or reflected in the trade statistics.

However, over a period of time trade basket has diversified and adequate banking presence is in place to support normal trade with Myanmar. It has therefore been decided in consultation with Government of India to do away with the barter system of trade at Indo-Myanmar border and completely switch over to normal trade with effect from December 1, 2015. Accordingly instructions contained in A.P. (DIR Series) Circular No. 17 date October 16, 2000 stands withdrawn.

E. Filing of bulk SOFTEX – further liberalisation

A.P. (DIR Series) Circular No. 27, dated November 05, 2015

A Software exporter having annual turnover of at least ₹1,000 crore or who files at least 600 SOFTEX forms annually on an all India basis, is eligible to declare all the off-site software exports in bulk in the form of a statement in excel format, to the competent authority for certification on monthly basis.

It has been decided to extend this facility to all software exporters. Accordingly, all software exporters can now file single as well as bulk SOFTEX form in excel format to the competent authority for certification. The SOFTEX form is given at Annex I of the circular. Since the SOFTEX data from STPI/SEZ is being transmitted in electronic format to RBI, the exporters are required to submit the SOFTEX form induplicate as per the revised procedure. STPI/SEZ will retain one copy and hand over the duplicate copy to the exporters after due certification.

As hitherto, the software exporters can generate SOFTEX form number(single as well as bulk) for use in off-site software exports from the website www.rbi.org.in. In order to generate the SOFTEX number/s, the applicant exporter has to fill-in the online form (Path www.rbi.org.in–Forms-FEMA Forms-Printing EDF/SOFTEX Form No.). The specimen of the online form and the advice are given at Annex II of the circular.

(Note: Earlier filing of bulk SOFTEX was only available to exporters having annual turnover of at least ₹1,000 crore or filing at least 600 SOFTEX forms. RBI by this circular has now extended the facility of bulk filing of SOFTEX to all exporters)

F. Relaxation of facilities for residents for hedging of foreign currency borrowings.

A.P. (DIR Series) Circular No. 28, dated November 05, 2015

Under the existing guidelines, residents having a long term foreign currency liability in terms of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, FEMA 3/2000-RB, dated May 3, 2000, as amended from time to time and rules, regulations and directions issued thereunder, are permitted to hedge exchange rate and/or interest rate risk exposure thereof by undertaking a foreign currency-INR swap to move from a foreign currency liability to a rupee liability with an AD Cat-I bank subject to the operational guidelines, terms and conditions as mentioned in the above circular.

With a view to facilitating hedging of long term foreign currency borrowings by residents, it has been decided to permit them to enter in to FCY-INR swaps with Multilateral or International Financial Institutions (MFI/IFI) in which Government of India is a shareholding member subject to the following terms and conditions:

i. Such swap transactions shall be undertaken by the MFI/IFI concerned on a back-to-back basis with an AD Category-I bank in India.

ii. AD Category-I banks shall face, for the purpose of the swap, only those Multilateral Financial Institutions (MFIs) and International Financial Institutions (IFIs) in which Government of India is a shareholding member.

iii. The FCY-INR swaps shall have a minimum tenor of three years. All other operational guidelines, terms and conditions relating to FCY-INR swaps as laid down in A.P. (DIR Series) Circular No. 32 dated December 28, 2010, as amended from time to time, shall apply, mutatis mutandis.

iv. In the event of a default by the resident borrower on its swap obligations, the MFI/IFI concerned shall bring in foreign currency funds to meet its corresponding liabilities to the counterparty AD Cat-I bank in India.

v. AD Category-I bank shall report the FCY-INR swaps transactions entered into with the MFIs/IFIs on a back-to-back basis to CCIL reporting platform, including details of the foreign currency borrower, in terms of Reserve Bank **circular no. FMD.MSRG.No. 94/02.05.002/2013-14 dated December 4, 2013** on the reporting platform for OTC Foreign Exchange and Interest Rate Derivatives.

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

SEBI(www.sebi.gov.in)

SEBI circular no. CIR/CDMRD/DEICE/01/2015 dated 16th November 2015- Annual System Audit, Business Continuity Plan(BCP) and Disaster Recovery (DR)

SEBI is of the view that while technological developments and innovations bring efficiency to the markets, they may also pose certain risks to the stability and integrity of the markets, if not identified and managed effectively. Further, any events of disaster will disrupt trading systems adversely, thereby impacting the market integrity and the confidence of investors. Exchanges should therefore have robust Business Continuity Plan (BCP) and Disaster Recovery (DR) to ensure continuity of operations. Therefore detailed guidelines for Annual Systems Audit and BCP/DR have been issued by SEBI vide the aforesaid circular. For a complete text of the circular, please refer the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1447679358432.pdf

RBI(www.rbi.org.in)

RBI circular no. DGBA.GAD.No. 1636/31.12.010/2015-16 dated 10th November 2015-Payment of agency commission–Certification of claims by external auditors

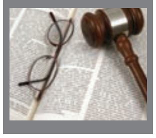
RBI has directed that the format for certification of agency commission claims by external auditors (Chartered Accountants) has been slightly amended and the revised format is specified in the circular. For a complete text of the circular, please refer the link: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10115&Mode=0

RBI circular no. DNBR.CC.PD.No. 070/03.10.01/2015-16 dated 29th October 2015-Early Recognition of Financial Distress, Prompt Steps for Resolution and Fair Recovery for Lenders: Framework for Revitalising Distressed Assets in the Economy-Review of the Guidelines on Joint Lenders' Forum (JLF) and Corrective Action Plan (CAP)

RBI has decided to amend the aforesaid framework applicable to NBFCs on the lines of the modifications made to the same as applicable to Banks. For a complete text of the circular, please refer the link: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10091&Mode=0 ■

Legal Decisions[1]

DIRECT TAXES



Income Tax

LD/64/77

Commissioner of Income Tax
vs.
Amco Power Systems Ltd.
7th October 2015 (KAR)

Section 79, Income-tax Act, 1961-Carry forward and set off of losses-Change in voting power is relevant, not shareholding.

HC allows carry forward and set-off of business losses despite change in shareholding since effective control/voting power over the assessee company was unchanged; HC allowed Section 35AB deduction for expenditure incurred on acquisition of technical know-how, even though amount was payable at the end of relevant AYs and was paid in instalments on subsequent dates; Even if the amount is not actually paid but 'incurred', according to the method of accounting, the same would be treated as 'paid'.

The assessee is a company engaged in the manufacture and sale of storage batteries. During the relevant year, the assessee was granted the technical know-how and non-exclusive license under an agreement with 'ABL' (assessee's holding company), to manufacture and sell batteries on payment of lumpsum consideration of ₹5.00 crore for the licence and right to use the technology. ABL held more than 51% shareholding in assessee co. However, the same got reduced to 6% during AYs 2002-03 and 2003-04.

For AY 2003-04, assessee filed a return declaring nil income and claimed set off of losses brought forward from earlier years and also deduction u/s 35AB with respect to expenditure incurred for acquiring technical know-how, which was to be paid in installments between 1998 to 2006. The AO denied the deduction claimed u/s 35AB. AO also denied carry forward and set off of losses of previous year, considering the change in beneficial holding of 51% or more, as provided u/s 79. On appeals before the appellate authorities, the CIT(A) gave partial relief. ITAT ruled in favour of assessee and allowed the deduction claimed u/s 35AB and also set off and carry forward of losses for AY 2002-03 and 2003-04.

Aggrieved Revenue filed an appeal before Karnataka HC.

Issue arose as to whether the assessee would be entitled to carry forward and setoff of business loss for AY 2002-03 and 2003-04, though there was a change in shareholding as per Section 79.

Section 79 restricts carry forward and set-off of preceding year losses, against income of current year, when there is a change in shareholding of a Company, unless on the last day of the previous year the shares of the company carrying not less than 51% of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than 51% of the voting power on the last day of the year or years in which the loss was incurred. Revenue denied the set off of business losses to assessee. Revenue submitted that in AY 2002-03, the holding of ABL was reduced to 6% from 55%; the remaining 49% shares being transferred to a wholly owned subsidiary of ABL, namely AMCO Properties and Investments Limited ('the APIL'). On this basis, Revenue argued that as the holding company's shareholding was less than 51%, the set off of previous year losses could not be given.

Assessee submitted that because the "ABL" was holding 100% shares of APIL, which was a wholly owned subsidiary of ABL and fully controlled by ABL, even though the shareholding of ABL had been reduced to 6%, yet the voting power of ABL remained 51% and thus the restrictions of Section 79 were not attracted.

HC explained the motive behind Section 79 that the benefit of carry forward and set-off of business losses for previous years of a company should not be misused by any new owner, who may purchase the shares of the Company, only to get the benefit of set-off of business losses of the previous years, which may bear profits in the subsequent years after the new owner takes over the company.

HC stated that even though there was change in the shareholding in the assessment year 2002-03, yet, there was no change of control of the Company, as the control remained with the

[1] *Contributed by CA. Sahil Garud and ICAI's Editorial Board Secretariat & Indirect Taxes Committee.*
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

ABL as the voting power of ABL, along with its subsidiary Company APIL, remained at 51%. HC thus allowed carry forward and set off of business loss for AY's 2002-03 and 2003-04. HC relied on SC court ruling in *CIT vs. Italindia Cotton Private Limited* [(1988) 174 ITR 160 (SC)] wherein it was held that Section 79 would be applicable only when there is change in shareholding in the previous year which may result in change of control of the Company and that every such change of shareholding need not fall within the prohibition against the carry forward and set-off of business losses.

Issue also arose as to whether the assessee was entitled to deduction u/s 35AB with regard to payment for transfer of technical know-how.

Revenue argued that since Section 35AB uses the phrase *'where the assessee has paid any lumpsum consideration',* the amount should actually be 'paid' in lumpsum and installment payments would not be eligible for benefit of Section 35AB. On the contrary, the assessee submitted that the liability to pay would arise on the date when technical know-how was transferred and merely because the payment had been deferred, it could not be said that the liability had not incurred on such date, as the assessee was following the mercantile system of accounting and not the cash system.

HC analysed the definition of "Paid" used in Section 35AB and stated that *"the expression 'lumpsum consideration' used in Section 35AB of the Act, would only mean that the liability to pay the entire amount or 'lumpsum consideration' had occurred on the date of the agreement and transfer of know-how, even though the payment may not have been made in lumpsum, but deferred over a period of time..."*

HC relied on SC ruling in *Taparia Tools Ltd. vs. JCIT* (2015) 372 ITR 605 (SC) wherein while considering the definition "paid" under sub-section(2) of Sec 43 of the Act, it was held that *"even if the amount is not actually paid but 'incurred', according to the method of accounting, the same would be treated as 'paid'".*

HC thus allowed deduction claimed u/s 35AB with respect to sum of ₹5 crore for transfer of technical know-how, even though the amount was payable and paid in installments on subsequent dates.

HC thus ruled in favour of assessee.

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LD/64/78
Mangalore Ganesh Beedi Works
vs.
Commissioner of Income Tax, Mysore and Anr.
15th October 2015 (SC)

Section 32, Income-tax Act, 1961-IPR is 'plant' u/s 32, and therefore depreciation is allowed thereon.

SC allows depreciation u/s 32 for expenditure incurred on acquisition of trademarks, copyrights and know-how during AY 1995-96. The same falls under the ambit of 'plant' u/s 43(3); SC leaves the question of applicability of Sec 35A/35AB open and examines applicability of Sec 32; Definition of 'plant' u/s 43(3) is inclusive and must be given a wider meaning; Sec 32 as it stood at the relevant time, did not differentiate between tangible and intangible assets.

The assessee is a partnership firm which was reconstituted from time to time and the dissolution clause as per the latest deed provided that in case of dissolution, copyrights, trademarks and know-how (IPRs) owned by assessee would vest in the partner who pays off the highest price to the remaining two partners. Owing to disputes between partners, firm was dissolved by HC's order which directed sale of firm's assets as a going concern to the highest bidder amongst the partners. Three erstwhile partners formed an association of persons ('AOP'/ assessee) and emerged as highest bidder by bidding ₹92 crore for firm's assets. In the return filed, the assessee-firm claimed deduction of ₹12.24 lakh on account of legal expenses and also claimed deduction u/s 35A and 35AB towards acquisition of IPR. AO rejected the assessee's claim whereas the CIT(A) partly allowed assessee's appeal. ITAT allowed the assessee's claims. Subsequently HC restored AO's order. Aggrieved, assessee preferred an appeal before SC.

Deduction of Depreciation on IPR:

HC had ruled in Revenue's favour by observing that by way of auction, only goodwill and not IPR was transferred. Revenue argued that assessee was already the owner of the trademarks, copyrights and technical knowhow and essentially the rights in the intellectual property might be included in goodwill, but these were not auctioned off but were relinquished in its favour. SC made a reference to ruling in *Bharat Beedi Works (P) Ltd. vs. CIT* [(1993) 3 SCC 252] to state that IPR has a value.

One valuation report from CA did not accord any value to IPR while the one obtained by the assessee from a different CA valued IPR at ₹14.4 crore as assessee's brand '501' had a brand name and value in national and international market. Beedis were not only known by the trademark, but also by the depiction on the labels and wrappers and colour combination on the package on which assessee was having copyright.

SC noted HC's order wherein benefit u/s 35A and 35AB was denied as HC was of view that no amount was spent by the AOP towards acquisition of trademarks, copyrights and know-how as what was auctioned off was only goodwill. In coming to this conclusion, reliance was placed by HC on a valuation report wherein it was stated that firms' assets were transferred as going concern and no trademarks, copyrights and know-how were acquired. With regards to the report obtained by the AOP from a different CA which assigned value to IPR, SC observed that HC had rejected the said report on belief that goodwill was split into know-how, copyrights and trademarks only for the purposes of claiming a deduction u/s 35A & 35AB.

SC took note of assessee's alternate claim of depreciation u/s 32 r/w Section 43(3) by claiming IPR as "plant". SC noted that though ITAT directed AO to capitalise the value of trademarks, copyright and technical know-how by treating the same as plant and machinery and granting depreciation therein, same was not considered by HC. SC thus kept the question of applicability of Sections 35A & 35AB open and proceeded to decide on assessee's claim u/s 32.

SC held *"for the purposes of a large business, control over intellectual property rights such as brand name, trademark etc. are absolutely necessary. Moreover, the acquisition of such rights and know-how is acquisition of a capital nature, more particularly in the case of the assessee. Therefore, it cannot be doubted that so far as the assessee is concerned, the trademarks, copyrights and know-how acquired by it would come within the definition of 'plant' being commercially necessary and essential as understood by those dealing with direct taxes".*

SC further observed that during the relevant time i.e. AY 1995-96, no distinction was made between tangible and intangible assets for the purposes of depreciation u/s 32 and thus, assessee was entitled to claim the benefit of depreciation on plant.

Deduction of Legal expense:

SC observed that legal expenses were incurred for defending business as a going concern after it was taken over, and so it could not be regarded as personal expense. SC remarked that there is no reason for HC to reverse this finding of fact particularly since nothing has been shown to conclude that the finding of fact was perverse in any manner whatsoever. That apart, if the finding of fact arrived at by the Tribunal were to be set aside, a specific question regarding a perverse finding of fact ought to have been framed by the High Court and that the Revenue did not seek the framing of any such question. SC thus set-aside HC's order and reinstated ITAT's order wherein ITAT had held that expenses incurred by the assessee were honest and reasonable and were incurred for the purposes of protecting firm's business as a going concern.

SC thus ruled in assessee's favour.

Service Tax

LD/64/79

Pearey lal Bhawan Association

vs.

M/s Satya Developers Pvt. Ltd.

20th October 2015 (DEL)

Section 83, Finance Act, 1994 r/w Section 12-B of Central Excise Act, 1944-Presumption that incidence of duty has been passed on to the buyer.

Service recipient is required to pay the Service Tax to the service provider even if the contract did not specifically mention it.

The plaintiff is the owner of premises which was given on lease by an agreement with the defendant in October 2006. Chapter V of the Finance Act 1994 was amended w.e.f. 01/06/2007 so as to levy service tax on renting of immovable property for business purposes. According to the plaintiff, the impugned tax was a levy on the service and was not in the nature of tax on property, and therefore had to be collected from the beneficiary. According to the defendant, it was the plaintiff who has to bear the incidence of the tax.

Defendant placed its reliance on ruling in case of Allahabad in *Thermal Contractors Association vs. Dir. Rajya Vidyut Utpadan Nigam Ltd.* wherein it was held that it is always open to the service provider to charge or not to charge the amount of service tax from its customers and to pay it from its own pocket. The collection of service tax from beneficiary depended upon the contract between them. Defendant pointed out the relevant clause in the lease agreement which was as follows: *"That the lessor shall continue to pay all or any taxes, levies or charges imposed by the MCD, DDA, L&DO and or Government, Local Authority etc".*

HC analysed the provisions of Section 65(105) (zzzz) which explains definition of taxable service. Further, Section 83 r/w Section 12-B of Central Excise Act explains the presumption that the levy has been collected from the user.

HC observed that both the plaintiff and the defendant did not visualise that such kind of a levy would be made in respect of lease, or rental of commercial properties; it is also undisputed that the levy was made effective in 2007, after the parties had entered into the agreement. HC referred to SC ruling in *All India Federation of Tax Practitioners vs. Union of India* [(2007) 7 SCC 527] wherein the nature of service tax liability was explained.

HC noted that if the overall objective of the levy, as explained by the Supreme Court, were to be taken into consideration, it is the service which is taxed, and the levy is an indirect one, which necessarily means that the user has to bear it. The rationale why this logic has to be accepted is that the ultimate consumer has contact with the user; it is from them that the levy would eventually be realised, by including the amount of tax in the cost of the service (or goods).

HC referred to Section 64A of Sale of Goods Act 1930 which mentions that unless a different intention appears from the terms of the contract, in case of the imposition or increase in the tax after the making of a contract, the party shall be entitled to be paid such tax or such increase. HC observed that there was sufficient internal indication in the Act, through Section 83 read with Section 12-A and Section 12-B suggesting that the levy is an indirect tax, and the same can be collected from the user.

HC further ordered that the plaintiff was entitled to the declaration and injunctions claimed against the defendant to the effect that the latter is liable to pay and refund the service tax liability.

LD/64/80

Gopala Builders

vs.

Director General of Central Excise Intelligence.

1st October 2015 (GUJ)

Section 87 of Finance Act 1994.

Revenue was incorrect in taking action u/s 87 of Finance Act 1994 of issuing notices to debtors of the petitioner by unilaterally working out the liability and further without issuing a demand notice. Recovery under section 87 of the Finance Act can be resorted to only after an amount of liability is adjudicated.

The petitioner is a firm providing services of industrial construction and is engaged in the business since 19 years and has got considerable goodwill in the market amongst clients. The petitioner carried out construction works for its clients on the basis of the works contract executed between them. In February 2014, search operations were carried out on the petitioner. As per the Revenue, the service tax liability of petitioner from the period between October 2009 to December 2013 was ₹4.25 crore as against ₹96.22 lakh paid by the petitioner.

The figure of ₹4.25 crore was arrived at unilaterally without affording any opportunity of hearing to the petitioner. No demand notice was issued in respect of the aforesaid liability computed by the first respondent. The petitioner was thereafter cooperated in the assessment proceedings and also paid an additional amount of ₹83 lakh during the course of investigation. In April 2014, notices were sent to debtors of the petitioner, with a direction that monies payable by the clients of the petitioner, instead of being paid to the petitioner, be deposited in the treasury of the Central Government. Aggrieved, the petitioner preferred the instant appeal.

HC observed that proceedings initiated against the petitioner were still at the stage of show cause notice and that there was no final adjudication in respect of the service tax liability. Revenue has issued notices to debtors of the petitioner u/s 87 of Finance Act 1994. HC referred to ruling in case of *Exman Security Services Pvt. Ltd. vs. Union of India* wherein it was observed that going by the language of Section 87 of the Finance Act, any amount payable means the amount adjudged after hearing the show cause notice, and this provision of Section 87 is one of the methods of recovery of the amount due and payable after adjudication is done. HC therefore noted that at the stage of show cause notice when the liability of the petitioner is yet to be crystallised, it was not permissible for the Revenue to resort to the drastic provisions of Section 87 of the Act.

Further, it was an admitted fact that no demand notice in respect of the impugned amount was issued to the petitioner and directly garnishee orders had been issued to the debtors of the petitioner. HC remarked that such course of action adopted by the Revenue, evidently, would bring the petitioner to disrepute and spoil its reputation in the business. Therefore, the action of the respondents of resorting to the provisions of Section 87 of the Act was not warranted.

HC thus allowed the petition.

LD/64/81

Commissioner of Central Excise & Customs
vs.
M/s Godavari Sugar Mills Ltd.
5th October 2015 (KAR)

Section 68 of Finance Act 1994 read with Rule 3(4)(e) of the Cenvat Credit Rules, 2004

As a recipient of service, assessee is permitted to utilise Cenvat credit for payment of Service tax on Goods Transport Agency service.

The assessee is a manufacturer of excisable goods and is holder of Central Excise Registration, and was also registered for payment of Service Tax under the category of Goods Transport Agency (GTA) services. The assessee had utilised the Cenvat Credit of input services availed under Cenvat Credit Rules towards payment of GTA services. It was the Revenue's contention that the assessee is a deemed provider of services only for the limited purpose of discharging service tax liability. Revenue opined that the act of the assessee of taking credit of service tax paid on GTA services and reutilising the same for payment of service tax on GTA services was not tenable. Accordingly notice was issued demanding recovery of cenvat credit, interest thereon and penalty u/s 76.

The Commissioner allowed appeal of the assessee based on circular issued by the Board dated 3.10.2005 and on an interpretation of Rule 2(p) and 2(r) as the said Rules stood prior to 19.4.2006. Further, the Tribunal also allowed assessee's appeal, aggrieved against which the revenue preferred the instant appeal.

HC noted that the instant matter was covered by the rulings of P&H HC in *Commissioner of Central Excise, Chandigarh vs. Nahar Industrial Enterprises Limited* [2012 (25) STR 129] and Delhi HC ruling in *Commissioner of Service Tax vs. M/s. Hero Honda Motors Limited* [2013 (29) STR 358 (Delhi)]. In those cases, the High Courts had relied on CBEC's Excise Manual of Supplementary Instructions. The said manual does not indicate any legal bar for the utilisation of Cenvat Credit for the purpose of payment of service tax on the GTA services. Apart from the above, as per Rule 3(4)(e) of the Cenvat Credit Rules, 2004, the Cenvat Credit may be utilised for payment of service tax on any output services. HC further analysed the legal fiction created by Section 68(2) of the Finance Act 1994 which reads as follows *"Notwithstanding anything contained in sub-section (1), in respect of any taxable service notified by the Central Govt. in the Office Gazette, the service tax thereon shall paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service."*

HC thus ruled in favour of the assessee.

LD/64/82

M/s Future Gaming and Hotel Service Pvt. Ltd.
vs.
Union of India.
14th October 2015 (SIK)

Section 65(105) (zzzzn) of the Finance Act, 1994-Section 66D of the Finance Act, 1994–Negative List of services.

Activity of facilitation of State Govt lottery is not 'service'; Amendment in 2015 Finance Act struck down.

Activity of promoting, organising or assisting in arranging sale of lottery tickets of State Govt. is not a taxable 'service' under Finance Act 1994, as amended by Finance Act 2015; Impugned activity does not establish relationship of a principal and agent but that of a buyer and seller on principal to principal basis, there being bulk purchase of lottery tickets by assessees from State Govt. at discounted price; TRU clarification under D.O.F. Circular dated May 19, 2015 that though lottery per se is not subjected to service tax, but services in relation to lottery will be taxable w.e.f. June 1, 2015, is clearly erroneous and therefore quashed, since Dept. has failed to take note of definition of 'service'; Rule 6(7C) only provides an optional composition scheme for tax payment which by itself does not create a charge and that same is only a piece of subordinate legislation that cannot *go beyond the provisions of Finance Act; Levy of reverse service tax vide Notification No.30/2012-ST as amended by Notification No.7/2015-ST on activity of assessees' selling/marketing agents holding that there is no privity of contract between the parties struck down.*

The issue which fell for adjudication before the court was whether or not the activity of the Petitioners of promoting, organising or assisting in arranging the sale of lottery tickets of the Government of Sikkim is a taxable service falling within the purview of the Finance Act, 1994 as amended by the Finance Act, 2015. The petitioner is a private limited company engaged in the business of sale of paper and online lottery tickets respectively organised by the Government of Sikkim. Petitioner entered into an agreement in Jan 2015 whereby Petitioner procured lottery tickets in bulk from the Government and resold the same to the public at large through various agents, stockists, resellers, *etc.*

The amendment to the Finance Act 1994 sought to make service tax applicable to the petitioner w.e.f. 01.06.2015. Notices were issued to petitioner by the Revenue authorities with respect to taxing the service of lottery distributors and selling agents, under Rule 6(7C) of Service Tax Rules 1994. Petitioner submitted that activities involve purchase of lottery tickets in bulk from the State Government and selling them to stockists, resellers, *etc*., by adding a profit margin. The stockists, resellers, *etc.,* in turn sell these tickets to retailers which in turn sell them to the ultimate participants of the draw. The transaction by which tickets are sold to the Petitioner by the Government of Sikkim is one of sale and purchase of lottery tickets and not one of rendering services. Petitioner further submitted that tax cannot be imposed by a Parliamentary Law on lottery tickets in view of List II of Seventh Schedule of the Constitution of India under Entry 34 of which the subject-matter of "betting and gambling" and the subject-matter of "taxes on betting and gambling" under Entry 62, fall within the sole competence of the State Legislature and, therefore, the levy of service tax is *ultra vires* the Constitution of India.

After going through the arguments of Petitioners and Respondent, HC analysed the rulings in *Future Gaming Solutions India Private Limited vs. Union of India and Others [2014 (36) STR 733 (Sikkim)]* and *Future Gaming Solutions Private Limited vs. Union of India and Others [2015 (37) STR 65 (Sikkim)]*. In that case it was held that:

(i) That lottery consists of whole gamut of activities commencing from the buying and selling of lottery between the State Government and the Petitioners, between the Petitioners and the Stockists and then between the Stockists and the sellers, then between the sellers and the buyers and ultimately winning of the prize.

(ii) That lottery is an actionable claim;

(iii) That "actionable claim" is defined under Section 3 of the Transfer of Property Act, 1882;

(iv) That actionable claim is left out from the purview of service tax in the negative list by virtue of Section 66D of the Finance Act, 1994, as amended by the Finance Act, 2010 and the Finance Act, 2012;

(v) That lotteries fall within the meaning of "betting and gambling" as provided in Entry 34 of List II following the jurisdiction in R.M.D. Chamarbaugwala Case (supra) and, therefore, by virtue of Entry 62, "taxes on betting and gambling" lies in the exclusive domain of the State Legislature;

(vi) That buying and selling of lottery tickets is nothing but actionable claim following the decision in Sunrise Associates Case (supra);

(vii) That in the garb of a Subordinate Legislation, i.e., Sub-Rule (7C) of Rule 6 of the Service Tax Rules, 1994, it is not permissible to charge service tax as it would be beyond the scope of the parent Legislation. All the more so as Sub- Rule (7C) of Rule 6 only provides an optional composition scheme for payment of service tax and that unless there is levy of service tax under the statutory provisions, the alternate scheme cannot be extended so as to provide for such levy.

HC further noted that in *Future Gaming 2015* case it was held that activities of the lottery distributors do not constitute a service and thus beyond the purview of "taxable service" as statutorily defined under clause (zzzzn) of subsection 105 of Section 65 of the Finance Act, 1994 as amended *vide* Finance Act, 2010.

With respect to amendments made in 2015, HC observed that Clause (31A) has been specifically inserted u/s 65B to include definition of "lottery distributor" or "selling agent". Under Clause (44) 'service' has been defined to mean any activity carried out by a person or another for consideration and includes a declared service but shall not include an activity which constitutes merely a transaction in money for actionable claim. It observed that

Explanation 2 appears to have been inserted to Clause (44) of Section 65B by which the transaction in money or actionable claim as provided under Clause (44) excluded any activity carried on for a consideration in relation to or for facilitation of, a transaction in money or actionable claim, including the activity carried out, *inter alia*, by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling lottery or facilitating in organising lottery of any kind in any other manner. Similarly, in Section 66D which provide for the negative list of service, another Explanation is found to have been inserted by which the activity specified in Explanation 2 to Clause (44) of Section 65B has been specifically excluded. It also observed that Clause (44) of Section 65B of the Finance Act, 1994, defines 'service' that would require examination in order to ascertain as to whether the activity of the Petitioners would fall within the meaning of 'service' and, therefore, liable to levy of service tax under the Finance Act, 1994.

Further, in Future Gaming 2015 case, it was held that activity of the Petitioners comprising of promotion, organising, reselling or any other manner assisting in arranging the lottery tickets of a State Lottery does not establish the relationship of a principal and an agent but that of a buyer and a seller on principal to principal basis there being bulk purchase of lottery tickets by the Petitioners from the State Government on full payment on a discounted price as a natural business transaction and other related features and, of there being no privity of contract between the State Government and the Stockists, agents, sellers, *etc.*, under the Petitioner. HC perused the relevant portions of agreement dated Jan 2015 to verify whether there has been any change in such relationship.

HC remarked that it found no change in the circumstances by introduction of the new provisions by the Amendment Act of 2015 from that which existed earlier in Future Gaming Case 2015 (*supra*) and Future Gaming Case 2014 (*supra*). HC agreed with Petitioner's contention that it is trite that when a Legislature sets out to validate a tax declared by a Court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before the validation can be said to take place effectively.

HC further observed that since the selling and marketing agents purchase the tickets from the Petitioners/Distributors as goods on payment of price leaving the former charged with all the liabilities down the line to the second tier agents, it cannot be considered as an activity carried out for consideration in relation to or for facilitation of a transaction in money carried out by a lottery distributor or a selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind in any other manner as provided under Explanation 2 to Clause (44) of Section 65B. There is no dispute of the fact that like the Petitioners/Distributors in the first tier who purchased the lottery tickets in bulk as goods for price from the State Government, the second tier comprising of the selling and marketing agents also purchased from the Petitioners/Distributors lottery tickets in bulk as goods on payment of price severing all other relations. There is no privity of contract between the Petitioners/ Distributors and the sellers and buyers down the line after the second tier. Thus, the levy of reverse service tax *vide* Notification No.30/2012-ST dated 20-06-2012 as amended by Notification No.7/2015-ST dated 01-03-2015 is clearly unsustainable and liable to struck down.

Ruling in favour of assessee, HC thus held as follows:

(i) The Petitioners in buying and selling the lottery tickets is not rendering service to the State and, therefore, their activity does not fall within the meaning of 'service' as provided under Clauses (31A) and (44) of Section 65B and, therefore, outside the purview of Explanation 2 to the said Section;

(ii) In any case, since by the Explanation the scope of Section 66D which is the main provision which is to be expanded, it would be ultra vires the Finance Act, 1994 and is accordingly struck down;

(iii) The impugned letters issued by the Revenue to the petitioners have been issued on an erroneous interpretation of Section 66D of the Finance Act, 1994, as amended by the Finance Act, 2015 requiring the Petitioners to pay tax under the Service Tax Rules, 1994, (as amended), in the absence of specific provision in the Finance Act and that Sub-Rule (7C) of Rule 6 of the Service Tax Rules, 1994, only provides an optional composite scheme for payment of tax and, therefore, does not create a charge of service tax and is a Subordinate piece of Legislation, hereby stands quashed. Resultantly, Circular under D.O.F. No.334/5/ 2015-TRU dated 19-05-2015 referred to in the aforesaid letters in the two Writ Petitions also stand quashed; and

(iv) The Respondents, their agents, servants, officers and representatives are restrained directly or indirectly, and in any manner whatsoever, from demanding any amounts by way of service tax or enforcing the provisions of the Finance Act, 1994 on the activity of the Petitioners in relation to lottery tickets.

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Excise Law

LD/64/83
Commissioner of Central Excise
vs.
Fitrite Packers
7th October, 2015

Section 2(f) of the Central Excise Act, 1944.

Blank paper could be used as wrapper for any kind of product, however, after the printing of logo and name of the specific product, the end use is confined to only that particular and specific product of the said particular company/ customer-Printing, is not merely a value addition but has now been transformed from general wrapping paper to special wrapping paper-End use has positively been changed as a result of printing process undertaken by the assessee-printing has resulted into a product, i.e., paper with distinct character and use of its own which it did not bear earlier-activity amounts to manufacture and CE duty payable under 4811.90.

The main question before SC was whether the goods in question, i.e., printed GI paper are classifiable under Chapter heading 4811.90, as claimed by the Revenue or they were to be classified under Chapter heading 4901.90 as the product of printing industry, as per the stand taken by the assessee.

The assessee purchased GI paper from the market which was already duty paid base paper. On this paper, process of printing was carried out by the assessee according to the design and specifications of the customers depending on their requirements. This printing was done in jumbo rolls of GIP twist wrappers. Bulk orders were received from Parle, which needed the said paper as a wrapping/ packing paper for packing of their goods. On the paper, logo and name of the product was printed in colorful form. After carrying out the printing as per the requirement of the customers, the same was delivered to the customers in jumbo rolls without slitting.

Revenue contended that, no doubt, paper in question was meant for wrapping/packing of the goods of the customer but that was not the determinative factor and a vital feature/aspect which was missed by the Tribunal was that after printing the said GI paper rolls, it was used for specific purpose which was not possible with the plain paper. In support, some decisions of this Court were cited. Countering the same, the assessee argued that approach of the Tribunal was perfectly justified which was in consonance with the principle laid down by SC in *J. G. Glass Industries* [1998 (97) ELT 5 (SC)]. Assessee further contended that the Tribunal had rightly held that the primary purpose for which GI paper was used in the wrapping/ packaging and even after GI paper was printed, the essential functioning of this paper remained the same, namely, wrapping and had not changed by the process of printing.

SC asserted that in order to discern the principles that were to be applied for ascertaining as to whether a particular process amounts to manufacture within the meaning of Section 2(f) of the Central Excise Act, 1944, it was not necessary to refer to various case laws on the subject. Our purpose would be served by referring to a recent decision, which was rendered by SC, in the case of *Servo-Med Industries Pvt Ltd vs. CCE* (319) ELT 578]. SC reasoned that in the said decision, many earlier judgments were taken note of, considered and principles laid down therein were culled out. SC reiterated elaborate discussion on the aspects covering (i) Distinction between manufacture and marketability (ii) circumstances when transformation did not take place and (iii) essential character of the product do not undergo change there would be no manufacture.

SC further explained that the principle that where there was no commercial user without further process then the said process would amount to manufacture labelling it as 'test of no commercial user without further process'.

SC observed the process of printing and asserted that GI paper is meant for wrapping and the use thereof did not undergo any change even after printing as the end use was still the same, namely, wrapping/packaging. SC further held *"No doubt, the paper in-question was meant for wrapping and this end use remained the same even after printing. However, whereas blank paper could be used as wrapper for any kind of product, after the printing of logo and name of the specific product of Parle* *thereupon, the end use was now confined to only that particular and specific product of the said particular company/customer."*

Thus, SC held that the printing is not merely a value addition but has now been transformed from general wrapping paper to special wrapping paper. In that sense, end use has positively been changed as a result of printing process undertaken by the assessee. SC opined that the process of aforesaid particular kind of printing has resulted into a product, i.e., paper with distinct character and use of its own which it did not bear earlier.

SC emphasised that there had first to be a transformation in the original article and this transformation should bring out a distinctive or different use in the article, in order to cover the process under the definition of 'manufacture'. SC held that these tests were satisfied in the present case.

Thus, SC allowed the appeal of Revenue setting aside the order of Tribunal and restoring the Order-in-Original passed by the Adjudicating Authority.

LD/64/84

Spentex Industries Ltd

vs.

CCE

9th October, 2015 (SC)

Rule 18 and 19 of the Central Excise Rules, 2002.

In case of Rebate of duty paid-Both inputs and final products are entitled for rebate-"OR" means "AND".: Rule 18 stipulates that the Central Government may, by notification, grant rebate of duty paid on such excisable goods OR duty paid on material used in the manufacturing or processing of such goods. The word 'OR' which is used in between the two kinds of duties in respect of which rebate can be granted is the bone of contention and it is to be interpreted whether it postulates grant of one of the two duties or both the duties can be claimed.

Interpretation of word 'OR' occurring in Rule 18: The only inevitable consequence is this: the word 'OR' occurring in Rule 18 cannot be given literal interpretation as that leads to various disastrous results and, therefore, this word has to be read as 'and' as that is what was intended by the rule maker in the scheme of things and to carry out the objectives of the Rule 18 and also to bring it at par with Rule 19.

The basic question of law which arose for consideration was as to whether or not the manufacturer/exporter was entitled to rebate of the excise duty paid both on the inputs and on the manufactured product, when excise duty was paid on a manufactured product and also on the inputs which have gone into manufacturing the product and such manufactured product was exported.

The assessee was engaged in the manufacturing of polyester cotton blended yarn and polyester viscose blended yarn and both these products fell under Chapter 55 of the Schedule to the Central Excise Tariff Act, 1985. For manufacture of the aforesaid product, the assessee had used the raw material which was an intermediate product and paid excise duty thereupon. The final products were also cleared on payment of excise duty on those finished products. The assessee had exported these goods on payment of central excise duty in the CENVAT account and, thereafter, filed as many as forty-five rebate claims in the months of November and December, 2004. These rebate claims were filed under the provisions of Rule 18 of the Central Excise Rules, 2002.

On receipt of the aforesaid rebate claims, the Department issued SCN dated 11th January, 2005 whereby the assessee was called upon to show cause as to why the rebate claimed by the assessee be not rejected as it was contrary to the provisions of Rule 18 of the Rules read with Section 11B of the Act and the Notification issued thereunder, i.e., Notification No. 19/2004-CE(NT) dated 6th September, 2004. After considering the reply that was given by the assessee, the Dy. CCE rejected the rebate of duty paid on the final product exported as well as the claim of rebate of duty paid on inputs contained therein by passing Order-in-original dated 28th January, 2005. Aggrieved by this order, the assessee filed the appeal before the CCE (Appeals) wherein it was held that in terms of Rule 18 of the Rules, the assessee was entitled to one of the two claims for rebate, i.e., either rebate of duty paid on exported goods or the duty paid on inputs used in the exported goods, and not on both of them. He, thus, remitted the case back to the Deputy Commissioner to decide the claim of the assessee after granting personal hearing to the assessee and taking its option as to which of the two claims assessee wanted to prefer.

Still not satisfied with this partial relief given by the Commissioner (Appeals), as the assessee wanted rebate on both types of excise duties paid, assessee challenged the order of the Commissioner (Appeals) by filing Revision Application before the Joint Secretary to the Government of India u/s. 35EE of the Act. This Revision Application of the assessee was decided in its favour as the Joint Secretary held that the assessee was entitled to rebate both on the exported goods as well as inputs used in the exported goods. It was now the turn of the Department to feel dissatisfied with the aforesaid outcome and, therefore, it challenged the aforesaid revision order by filing the writ petition before Nagpur bench of Bombay HC. This writ petition had been decided in favour of the Revenue whereby the view taken by the Joint Secretary to the Government of India was reversed and that of Commissioner (Appeals) was upheld holding that out of the two excise duties, Rule 18 of the Rules permits rebate only qua one of them and not on the both duties. Aggrieved, Special Leave Petition against this judgment of the Bombay High Court was preferred by the assessee in which leave was granted.

SC held that it was to be borne in mind that it was the Central Government which had framed the Rules as well as issued the notifications. If the Central Government itself was of the opinion that the rebate was to be allowed on both the forms of excise duties the government is bound thereby and the rule in-question had to interpreted in accord with this understanding of the rule maker itself. Law in this respect was well settled and, therefore, it was not necessary to burden this judgment by quoting from various decisions. SC relied on its own ruling in *R & B Falcon (A) Pty Ltd. vs. CIT* [(2008) 12 SCC 466] wherein interpretation given by the Central Board of Direct Taxes (CBDT) to a particular provision was held binding on the tax authorities.

SC opined that that another principle of interpretation of statutes, namely, principle of *contemporanea expositio* also became applicable which was manifest from the act of the Government in issuing two notifications giving effect to Rule 18. This principle was explained by the Court in *Desh Bandhu Gupta and Co. and others vs. Delhi Stock Exchange Association Ltd.* [(1979) 3 SCR 373]. While discussing Interpretation of word 'OR' occurring in Rule 18, SC held that the word 'OR' occurring in Rule 18 cannot be given literal interpretation as that lead to various disastrous results pointed out in the preceding discussion and, therefore, this word has to be read as 'and' as that is what was intended by the rule maker in the scheme of things and to carry out the objectives of the Rule 18 and also to bring it at par with Rule 19. SC further held that these two words normally 'or' and 'and' are to be given their literal meaning in unless some other part of same Statute or the clear intention of it requires that to be done. However, wherever use of such a word, viz., 'and'/'or' produces unintelligible or absurd results, the Court has power to read the word 'or' as 'and' and *vice-versa* to give effect to the intention of the Legislature which is otherwise quite clear. This was so done in the case of *State of Bombay vs. R.M.D. Chamarbaugwala* [(1957) 1 SCR 874].

SC relied on *Mazagaon Dock Ltd. vs. CIT* [(1959) 1 SCR 848] wherein it was held that the word 'or' occurring u/s. 42(2) of the Income-tax Act, 1922 was construed as 'and' when the Court found that the Legislature 'could not have intended' use of the expression 'or' in that Section.

Thus, SC held that the exporters/appellants were entitled to both the rebates under Rule 18 and not one kind of rebate.

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LD/64/85
CCE
vs.
Ispat Industries Ltd.
7th October, 2015 (SC)

Section 4 of the Central Excise Act, 1944-Valuation of excisable goods.

By virtue of a transit insurance policy in the name of the manufacturer, excise duty is not liable to be recovered on freight charges incurred for transportation of goods from the factory gate to the buyer's premises, treating the buyer's premises as the place of removal.

The respondent, Ispat Industries Ltd, was engaged in the manufacture of H.R. sheets/coils, C.R. sheets/coils, and Galvanised/colour coated/ sheets, falling under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985. Intelligence revealed that respondents were indulging in evasion of central excise duty by a mis-declaration that their factory gate was the place of removal, and not the buyer's premises, consequent to which freight charges recovered from their buyers was sought to be added in determining the amount of central excise duty payable by them.

The period involved in the present appeal is from 28.9.1996 to 31.3.2003. Five show cause notices were issued to respondent stating that the property in goods manufactured by them remained with Ispat while the goods were in transit as Ispat had taken out an insurance policy to cover the risk of loss or damage to the goods while in transit. Purchase orders as well as agreements with transporters did not suggest that the transporters were taking delivery on behalf of the buyers. All this was corroborated by a statement made by Deputy General Manager stating that the ownership of the goods in transit remained with Ispat. It was thus stated that the buyer's place or the place of delivery should be treated as the place of removal of the goods for the purpose of Section 4 of the Central Excise Act, and this being so, the necessary consequence would be that the freight charges paid by the buyers to Ispat ought to be included in the excise duty payable by Ispat.

In reply to the five show cause notices, respondent stated that all their prices were ex-works, and that the goods were cleared from the factory on payment of central or local sales tax. Most of their sales were against Letters of Credit opened by the customer or through Bank discounting facilities. Invoices were prepared at the factory directly in the name of the customers, and the name of the Insurance company as well as the number of Transit Insurance Policy were both mentioned. Based on the details mentioned in the invoice, the lorry receipt was prepared by the transporter and was in the buyer's name. This receipt carried a caution notice as well a notice to the effect that deliveries were to be made to the buyer alone, and to nobody else. Respondent further stated that these transactions were entered in their sales register and were booked as sales, the stock or inventory of finished goods being reduced by such sales. In the event that there was an insurance claim, recovery was credited to the customer's ledger account against the recovery due from the customer in respect of the sale of the said goods.

The Commissioner held that as the insurance agreement with the transporter was entered into by Ispat who had taken out an Insurance Policy to cover risk to the loss or damage of the goods while in transit, the property in goods remained with Ispat and was not transferred to the buyer at the factory gate. The Commissioner further held that in the order acceptance form, it was mentioned that the transport would be by Ispat.

On appeal before CESTAT, it was held that the payment terms were 30 days after receipt of the materials and that the order acceptance form shows that it was the obligation of Ispat to arrange transportation of goods to the buyer's premises, were beyond the show cause notices issued as no such charge was leveled against Ispat in any of the five show cause notices.

On appeal, SC observed that provisions of Section 4 dealt with Valuation of excisable goods for purposes of charging of duty of excise. SC held *"three important changes have been made in the amended Section 4 so far as the present case is concerned. First, the value of excisable goods is deemed to be the "normal price" thereof that is the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade. Where the goods are sold at different prices to different classes of buyers, each such price shall be deemed to be the normal price. "Place of removal" has been defined for the first time to mean not only the premises of production or manufacture of excisable goods but also a warehouse or any other place or premises wherein such goods have been permitted to be deposited without payment of duty and from where such goods are ultimately removed."*

SC held that where the price at which goods were ordinarily sold by the assessee was different for different places of removal, then each such price would be deemed to be the normal value thereof and sub-clause (b)(iii) was very important and made it clear that a depot, the premises of a consignment agent, or any other place or premises from where the excisable goods were to be sold after their clearance from the factory were SC further held that the expression "any other place or premises" referred only to a manufacturer's place or premises because such place or premises was stated to be where excisable goods "are to be sold". These were the key words of the sub-Section. The place or premises from where excisable goods were to be sold could only be the manufacturer's premises or premises referable to the manufacturer.

SC relied on its own ruling in *Bombay Tyre International* [1984 SCC (Tax) 17] wherein it was held that *"In our view the Commissioner of Central Excise and CEGAT erred in drawing an inference that the ownership in the property continued to be retained by the assessee till it was delivered to the buyer for the reason that the assessee had arranged for the transport and the transit insurance. Such a conclusion is not sustainable."*

SC observed that most of the orders placed with respondent were by the various government authorities. One such order i.e. order dated 24-6-1996 placed by Kerala Water Authority is on record.

On going through the terms and conditions of the said order, it became clear that the goods were to be delivered at the place of the buyer and it was only at that place where the acceptance of supplies was to be effected. Price of the goods was inclusive of cost of material, central excise duty, loading, transportation, transit risk and unloading charges, *etc*. Even transit damage/breakage on the assessee account which would clearly imply that till the goods reach the destination, ownership in the goods remain with the supplier, namely, the assessee. As per the "terms of payment" clause contained in the procurement order, 100% payment for the supplies was to be made by the purchaser after the receipt and verification of material. Thus, SC held that there was no money given earlier by the buyer to the assessee and the consideration was to pass on only after the receipt of the goods which was at the premises of the buyer. SC held that sale of goods did not take place at the factory gate of the assessee but at the place of the buyer on the delivery of the goods in question.

SC distinguished its own ruling in *Escorts JCB Ltd.* [(2003) 1 SCC 281] and *Emco Ltd.* [2015-TIOL-163-SC-CX] on facts.

Thus, SC dismissed the appeal preferred by the Revenue.

Customs Law

LD/64/86

Union of India and Anr

vs.

M/s Jayshree Metal Corporation

6th October, 2015 (SC)

Section 111(d) and 111(m) of Customs Act, 1962-Confiscation of improperly imported goods.

Imported 'scrap' is assessable based on highest auction bid received.

Report obtained by Department based on value prevailing in Indian market, assesses product incorrectly and is 'extraneous', hence, same cannot be accepted; Once said value was discarded and Department had no other evidence to show how these goods could be valued, going by highest bid received was the only alternative.

The assessee imported Zinc Die Cast Scrap and claimed classification under Chapter Sub-Heading 7902 of Customs Tariff Act, 1975. On the basis of an expert opinion, it was found that, goods imported were actually articles of zinc such as door handles, door lock nobes, water tap handles or shower handles and bathroom fitting covers of virgin quality and of serviceable nature. Few pieces were found to be scrap and balance all items were found to be unused and they were serviceable.

Consignment was seized under a belief that the same was misdeclared for description and value and were liable for confiscation u/s 111(d) and 111(m) of Customs Act, 1962 (The Act). Subsequently, Show Cause Notice (SCN) was issued u/s 124 of the Act relating to confiscation of goods, levy of duty on valuation done by valuer and levy of penalty. Commissioner upheld all the allegations in SCN. On an appeal, CESTAT upheld the order in original but set aside the penalty on proprietor.

Assessee's petition was upheld by the High Court. High Court held that what was imported was nothing but scrap and further, it was sold as scrap even by the Department and in two rounds of auction, the highest bids received for the same were ₹11,75,000/- and ₹13,55,555/-; therefore, the value of this scrap could not have been higher.

Based on the 'Inspection Report' obtained by Department, SC stated that goods imported were nothing but scrap and there was no mis-declaration by assessee. SC observed that Dept. did not value the product correctly and was based on the value as prevailing in the Indian market which alone is 'extraneous'. SC noted that, exporter in USA who had exported these items to assessee herein itself was a scrap dealer and these items were treated as scrap in USA and were exported from USA to India which was bought by assessee as scrap. When valuation was itself discarded, Department had no other evidence to show how these goods could be valued and the burden to show that the valuation was on Department and in the absence of any such evidence produced by Department, High Court had no option but to go by the highest bid that was received while auctioning these goods. SC thus dismissed Revenue's appeal.

LD/64/87

M/s Star Industries

vs.

Commissioner of Customs, (Imports), Raigad

7th October 2015 (SC)

Section 3(1) of Custom Tariff Act, 1975.

CVD exemption denied; 'Concentrate' held to be different from 'Ore.'

Note 2 to Chapter 26 deals with mineralogical species used in metallurgical industry, and after *insertion of Note 4 in 2011, concentrate was to be treated as different product; Harmonious construction of both Notes indicate that when Ores become a different product, they cease to be 'Ores'; If imported concentrates not subjected to 'CVD', interest of domestic manufacturers will be sub-served, since such an interpretation militates against domestic producers' interests and plain language of Notification.*

The assessee, Star Industries is engaged in manufacture of Ferro-Alloys falling under Chapter 72 of Central Excise Tariff. Assessee has been regularly importing Ore Concentrate and claiming benefit of Notification No.4/2006-CE and Department has been extending the benefit. No CVD was levied u/s 3(1) of Custom Tariff Act, 1975. The Directorate of Revenue Intelligence (DRI) received some information indicating that assessee was misdeclaring the product as 'Molybdenum Ore' or 'Roasted Molybdenum Ore' and on that basis, seeking benefit of exemption under Notification No. 4/2006-CE. According to them, Roasted Molybdenum Ore was, in fact, Ore Concentrate which was different from 'Ores' and therefore benefit of said Notification No. 4/2006-CE was not available to the assessee.

Examination of certain detained consignments of the assessee revealed that in respect of B/E No.4567406 bags in which goods were packed contained labels/marking which read as 'Roasted Molybdenum Concentrate' and in respect of other B/E the markings were 'Molybdenum Sulfide (MoS2) Roasted. Samples were sent for chemical examination and on that basis goods consignment was seized u/s 110 of Customs Act on the plea that they were liable for confiscation.

Upon investigation, it was revealed that assessee had imported identical goods earlier under 14 B/E's by declaring the goods as 'Molybdenum Ore/Roasted Molybdenum Ore' and had availed CVD exemption totally amounting to ₹3,10,73,035/- during March, 2011 to July, 2011. Show Cause Notice (SCN) was issued proposing to confiscate 59,000 kgs of Roasted Molybdenum Ore Concentrate seized, valued at ₹6,12,61,048/- and 2,75,000 kgs of the said goods valued at ₹28,57,49,418/- imported earlier under 14 Bills of Entry, u/s 111(d) and 111(m) of Customs Act, 1962. Demand of differential duty was also proposed amounting to ₹66,61,664/- on the seized goods and ₹3,10,73,035/- on the goods imported earlier u/s 28(1) of Customs Act along with interest u/s 28AA apart from penalties u/s 114A and 112(a) of Customs Act.

Demand for March 2011 to September 2011 was confirmed, importation seized and realised earlier provisionally was confiscated u/s 111(d) and 111(m) of Customs Act with an option to redeem the same on payment of fine of ₹1 crore u/s 125 of the said Act and those imported earlier was liable for confiscation under the same provisions in respect of which differential duty demand of ₹66,61,664/- and ₹3,10,73,035/- were confirmed by denying the benefit of CVD exemption along with interest u/s 28AA of the Customs Act. A penalty of equivalent amount was also imposed u/s 114A. On an appeal before CESTAT partial relief was granted only to the effect that confiscation of goods u/s 111(d) of the Customs Act was improper and order to that extent was set aside with consequential order of setting aside the imposition of redemption fine u/s 125 and penalty u/s 112(a)/114A of the Customs Act.

Another appeal was tagged with the instant appeal i.e. *Commissioner of Customs (Imports) vs. M/s. Hindustan Gas and Industries Ltd.* related to period 2nd September, 1998 to October, 1999. Facts in the said case were the same where adjudicating authority stated that, after Molybdenum Ore was subjected to process of concentratic and roasting, it had become a different product, namely, Molybdenum Oxide and did not remain 'Ore' and, therefore, was not entitled to benefit of exemption notification which applied only to 'Ore'. On an appeal, CESTAT set aside the order of adjudicating authority and held that, even after Molybdenum Ore had undergone process of Roasting, it remained Ore and there was no difference between Ore and Concentrate which were one and the same product.

CESTAT in *Hindustan case* held that roasting of an ore to obtain concentrate, does not amount to manufacture, as it only removed impurities and the recoverable content of metal oxide is enhanced thereby. Thus, ore and concentrate are one and the same as concentrate remains ore and only impurities were removed therefrom. Tribunal relied upon decision in *Minerals and Metals Trading Corporation vs Union Of India and Others (MMTC)* and stated that, 'Ore' is genus and 'Concentrate' is species. The Tribunal further held that, mention of ores and concentrates separately in Heading 26.03 does not go against the above arguments.

SC analysed Chapter 26 of Central Excise Tariff Act 1985 (CETA) which deals with 'Ores, Slag and Ash Notes. Item 2601 thereof gave the description of goods falling in the said item as 'Iron Ores and Concentrates including Roasted Iron Pyrites'. SC took note of Note 2 *"For the purposes of headings 2601 to 2617, the term "ores" means minerals of mineralogical species actually used in the metallurgical industry for the extraction of mercury, of the metals of heading 2844 or of the metals of Section XIV or XV, even if they are intended for non-metallurgical purposes. Headings 2601 to 2617 do not, however, include minerals which have been submitted to processes not normal to the metallurgical industry."* Further, there was an amendment in the year 2011, where Chapter Note 4 was added which reads as *"In relation to products of this Chapter, the process of converting ores into concentrates shall amount to "manufacture" but Tariff Item 2601 remained the same."*

SC perused Notification No. 4/2006 and further observed that, amendment which was carried out in 2011 was basically related to addition of Chapter Note 4 as per which the process of converting Ores into Concentrates was treated as 'manufacture'. With respect to orders passed by CESTAT in Hindustan Gas & Industries, SC noted that, Chapter 4 was not there at the relevant time when the decision was rendered in 2006.

SC observed that since ores include concentrates, assessee claimed exemption from payment of CVD under Notification No. 4/2006-CE and in support of claim even after roasting, concentrates remain ores only on the plea that, ores is genus and concentrates is specie thereof assessee referred to literature on chemical technology. SC relied upon *Hindustan Gas & Industries Ltd.* cited by assessee where the decision proceeds on the basis that roasting of an ore to obtain concentrate does not amount to manufacture specially when roasting is a process by which impurities in the ore are removed and recoverable content of metal oxide is enhanced.

SC further stated that, with the addition of Note 4, a legal fiction was created treating the process of converting ores into concentrates as 'manufacture' and once this was treated as manufacture, all the consequences thereof, as intended for creating such a legal fiction, would automatically follow. Further, it was observed that Molybdenum Ore was different from concentrate. Referring to definition of manufacture u/s 2(f) of Central Excise Act, SC stated that, purpose of treating concentrate as manufactured product out of ores was to make concentrates as liable for excise duty. Otherwise, there was no reason to deem the process of converting ores into concentrates as manufacture.

SC further stated that Notification No. 4/2006-CE which exempts only ores would not include within itself 'concentrates' also because of the reason that after the insertion of Note 4, the concentrate is to be treated as a different product than ores, in law for the purposes of products of Chapter 26. It was observed that Chapter 2 was retained even after Chapter Note 4 as per Chapter Note 2, 'ores' means minerals of mineralogical species actually used in the metallurgical industry for the extraction of mercury, of the metals of heading 2844 or of the metals of Section XIV or XV, even if they are intended for non-metallurgical purposes and as per this note, metals of Section XV would be included in the term 'ores'.

SC further stated that Note 2, when seen along with Note 4, has to govern itself in limited territory. SC observed that, once process of roasting of 'ore' amounts to manufacture, it creates a different product known as 'Concentrate', for the purpose of exemption notification, which exempts only 'Ores' and therefore, Concentrate will not be covered by exemption notification and therefore, harmonious construction of Note 2 and Note 4 would lead us to hold that, in those cases when Note 4 applies and Ores becomes a different product, it ceases to be Ores.

SC stated that, the Tribunal rightly concluded that, by virtue of Note 4, concentrate has to be necessarily treated as different from ores which is deemed as manufactured product after Molybdenum Ores underwent the process of roasting. SC accepted Revenue's contention that, exemption notifications are to be construed strictly and even if there is some doubt, benefit thereof shall not be available to the assessee but would be given to Revenue. SC relied upon *Novopan India Ltd., Hyderabad vs. Collector of Central Excise and another [1994 (73) ELT 769 (SC)].*

Taking note of the basic objective behind levy of CVD and relying upon SC ruling in *Hyderabad Industries Ltd. vs. Union of India* (108 ELT 321), Tribunal had stated that object of levy has to be kept in mind while interpreting notification No. 4/2006-CE for the purposes of levy of CVD on concentrates.

Tribunal stated that, if the domestic manufacturer of concentrates is liable to pay excise duty on conversion of 'ores' into 'concentrates' in terms of Note 4 to Chapter 26, can his interests be subserved when concentrates imported into India are not levied to CVD at the same rate by interpretation of Notification No. 4/2006 so as to construe that ores includes 'concentrates' and, therefore, no CVD is leviable. It stated that such an interpretation militates against the interests of domestic producers and also the plain language of the notification.

SC rejected assessee's contention that the entire exercise was Revenue neutral since the assessee would get CENVAT credit of the duty paid. SC stated that the argument goes against the assessee. If the exercise was Revenue neutral, then there was no need even to file appeal and it is always open to assessee to claim such credit.

Accordingly, SC dismissed assessee's appeal.

LD/64/88

CC, Air Port & ACC, Bangalore

vs.

Pfizer Products India P. Ltd.

13th August, 2015 (Kar.)

Section 27A of the Customs Act, 1962.

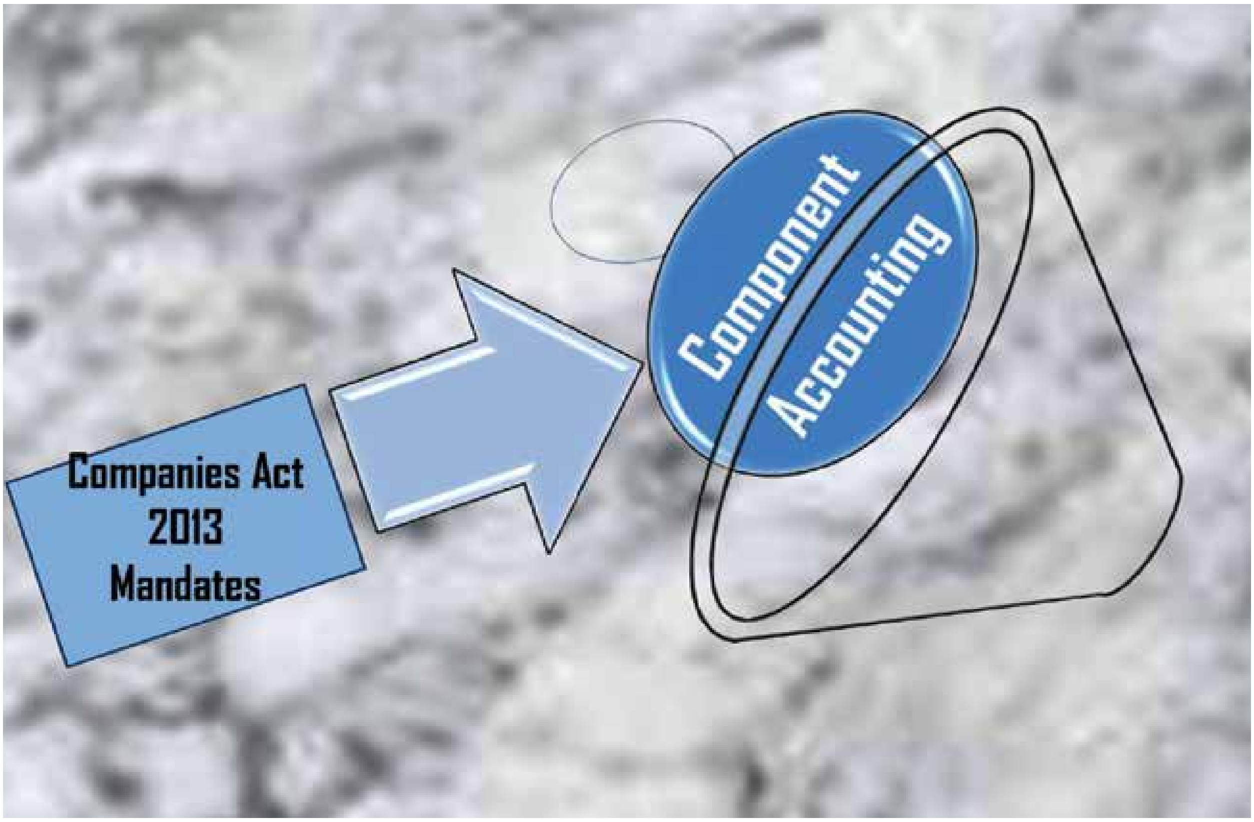
Assessee is entitled to cost or compensation for high handedness of Department in not refunding amount initially for 12 years and then refusing to pay interest by dragging the litigation upto High Court. Department directed to pay additional interest @ 9%, besides notified rate, on interest accruable as on date of grant of refund, till its actual date of payment.

This appeal was filed by the Commissioner of Customs, Bangalore against the CESTAT order that allowed appeal filed by the respondent-company with regard of payment of interest under Section 27A of the Customs Act, 1962.

The respondent company had imported certain goods which were cleared on payment of duty. Later, the respondent realised the mistake of having deposited the duty as the goods which were imported were exempt from customs duty. The respondent company filed claim for refund on 24-12-1998 for refund of customs duty of ₹10674049/- that was deposited on 04-06-1998. The Deputy Commissioner rejected the refund claim stating that the goods imported were not exempt. On appeal to Commissioner of Customs (Appeals) by the respondent company, the Commissioner (Appeals) by order dated 16-10-2002 held that the respondent was eligible for exemption and ordered refund of amount but after holding that the respondent company had not been able to show that the burden of duty had not been passed on directly or indirectly to some other person, rejected the claim on the ground of unjust enrichment, and directed the said amount to be credited to Consumer Welfare Fund. Challenging the said order of Commissioner (Appeals), the respondent filed an appeal before Tribunal which was allowed with consequential relief on 27-07-2005 after holding that the claim of refund was not hit by unjust enrichment. Aggrieved by the said order of the Tribunal, the appellant filed an appeal before the High Court which was dismissed on 01-04-2010. Further, a Special Leave Petition (SLP) was filed by the appellant before the Supreme Court, which was also dismissed on 21-02-2011. It was only after dismissal of the SLP that by order dated 13-4-2011, the Assistant Commissioner of Customs sanctioned refund but denied claim of interest made by the respondent-company under the provisions of section 27A of the Customs Act, 1962.

Being dissatisfied with non-payment of interest, appeal was filed before Commissioner of Customs (Appeals) which was dismissed by order dated 13-1-2012 holding that the respondent-company was not eligible for interest since the refund was sanctioned within three months from the date of the judgment of the Supreme Court as also on the ground that the amount to be refunded was with the Consumer Welfare Fund for substantial period. Aggrieved by the said order, the respondent-company filed a further appeal before the Tribunal, which by a detailed reasoned order, allowed the appeal on 21-5-2014. Challenging the said order of the Tribunal, this appeal has been filed by Revenue. Hon. High Court of Karnataka, dismissed the appeal filed by the revenue holding that no substantial question of law arises in this appeal. Hon. High Court also directed that besides the payment of interest from 24-03-1999, (which is three months after the date of application for refund of customs duty filed by the respondent) till the actual date of payment, which shall be at such rates as notified from time to time, the appellant shall further be liable to pay additional interest at the rate of 9% per annum (besides the notified interest) on the amount which is found liable for payment as on 13-04-2011, till its actual payment. ■

Component Accounting-Now a Reality



Schedule II to the Companies Act 2013 requires that useful life for significant components of tangible assets should be determined separately. This requirement is commonly known as 'Component Accounting'. Companies need to identify and depreciate significant components with different useful lives separately. The Ministry of Corporate Affairs vide its notification dated 29th August 2014, has made component accounting mandatory for financial year commencing on or after 1st April 2015. It is important to note that under Accounting Standard 10, Accounting for Fixed Assets, use of component approach is optional, however, Schedule II requires application of component accounting mandatorily when relevant and material. This view is reinforced by Ind AS 16, Property, plant and equipment, which also mandates component accounting. This therefore implies that, companies would have to break up their tangible assets into various components (physical component or a non-physical component that represents a major inspection or overhaul) for computation of depreciation. This will require considerable efforts since management would have to estimate value of components as on 1st April 2015.

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For compliance with schedule II, components will need to be identified for the opening block of assets as at 1st April 2015 and cannot be restricted only to new assets acquired on or after adoption of component approach.

Identification of Components

Let us first understand the concept of component accounting. There are two charges to profit and loss account representing costs relating to usage of a fixed asset. One of them is depreciation and the other is repairs and maintenance charge. Depreciation allocates the depreciable amount of a fixed asset over its useful life. There can be certain assets which comprise components whose individual useful lives differ significantly and thus require replacement from time to time within the estimated useful life of the principal asset. Aircraft is a classic example of such an asset. The airframe (i.e. the body of the aircraft), the engines and the interiors have different individual useful lives. The concern then is: what is the useful life of the aircraft? If the life of the airframe (being the longest of the individual lives of the three major types of components) is taken as the life of the aircraft, then how should the expenditure on replacement of interiors and engines during the useful life of the aircraft be dealt with? In certain cases, the components (usually small and low value) may require replacement very frequently, while in some other cases, the components may require replacement only once or twice during the estimated useful life of the asset (usually of high value).

In order to overcome this concern, it is imperative that the components of a single asset are treated as different assets for accounting purposes. To illustrate this, suppose a composite asset costs ₹100. It has a major component X, whose cost is ₹40. This component is expected to have a life of 4 years while the rest of the asset is expected to have a life of 20 years.

Determination of significant components requires a careful assessment of the facts and circumstances. This assessment would include at a minimum the Comparison of the cost allocated to the item to the total cost of the aggregated property, plant and equipment; and consideration of potential impact of componentisation on the depreciation expense.

In the absence of component accounting, the position would be as follows:

Year	Annual charge to profit and loss account
1 to 4	12.5
5	12.5 + 40 = 52.5
6-8	12.5

Thereby, it is evident that charging replacement cost of X in year of replacement would distort the true and fair view.

However, if the aforesaid component is treated as a separate asset, the annual depreciation charge would be as follows:

a)	Depreciation on major component (40/4) =	10
b)	Depreciation on rest of the asset (60/20) =	3
	Total	13

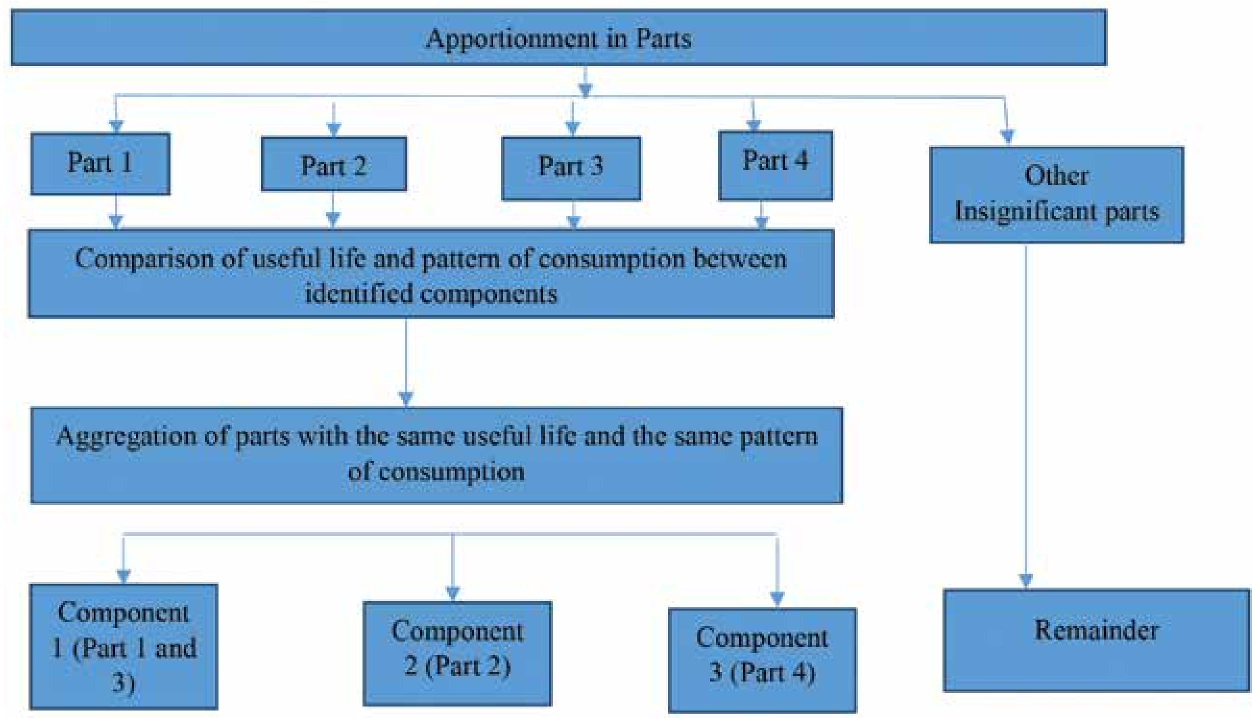
While the above is the best way of accounting for assets having major components whose useful lives differ significantly, practically there may arise a difficulty if a composite price has been paid for the total asset and also where there are a large number of individual components having varying lives which are shorter than the principal asset's life. In such a case, apportioning the cost to components may present difficulties since the prices of all parts may not be available, or the aggregate price of all individual components may not necessarily be equal to the price of the composite asset. Moreover, such an exercise may be far too detailed and end up cluttering the fixed assets schedule. Hence, component approach is followed for parts of an asset which have significant costs and different useful life from remaining parts of the asset.

Schedule II requires separate depreciation only for components of an asset having:

(i) Significant cost, and
(ii) Different useful lives from remaining parts of the asset.

Determination of significant components requires a careful assessment of the facts and circumstances. This assessment would include at a minimum:

- Comparison of the cost allocated to the item to the total cost of the aggregated property, plant and equipment; and
- Consideration of potential impact of componentisation on the depreciation expense.



Source: Application Guide on the provisions of Schedule II to the Companies Act 2013

For instance, a building may be split into components such as structural design, heating systems etc. Determination of components is a very judgemental exercise and due consideration should be given to all facts before concluding on component accounting.

A company needs to identify only material/ significant components separately for depreciation. For example, A Limited buys a machine for ₹500,000. The machine consists of four components, of which the cost of two components (with different useful lives) is ₹490,000. The remaining two components have a cost of ₹5,000 each, which is considered insignificant, and they have useful lives of four and six years respectively.

In the above example, we believe that the two insignificant components could be combined to give a cost of ₹10,000 and a useful life of five years. Accordingly, the machine would be split into 3 different components.

Based on the above therefore, identification of separate components of an asset and determination of their useful life is not merely an accounting exercise; rather, it involves technical expertise. Hence, it may be necessary to involve technical experts to determine the parts of an asset.

Identification of separate components of an asset and determination of their useful life is not merely an accounting exercise; rather, it involves technical expertise. Hence, it may be necessary to involve technical experts to determine the parts of an asset.

Accounting for Replacement Costs

The application of component accounting will cause significant change in measurement of depreciation and accounting for replacement costs. Currently, companies need to expense replacement costs in the year of incurrence. Under component accounting, companies will capitalise these costs as a separate component of the asset, with consequent expensing of the net carrying value of the replaced component. The capitalised replacement cost will be depreciated over its estimated useful life (generally, till the time of next replacement), which should be lower than the life of the principal asset. If it is not practicable for a company to determine carrying amount of the replaced component, it may use the cost of the replacement as an indication of what the cost of the replaced part was at the time it was acquired or constructed.

However, it is important to note that the day-to-day service cost for an item of fixed asset will be expensed and will not qualify for capitalisation.

Accounting for Major Inspection or Overhaul

Though Accounting Standard 10 Accounting for Fixed Assets does not comprehensively deal with component accounting, Ind AS 16 Property, Plant and Equipment provides guidance on this matter. Under component accounting as envisaged in Ind-AS 16, major inspection/overhaul cost is treated as a separate part of the asset, regardless of whether any physical part of the asset is replaced or not. Hence, companies, while preparing financial statements under Indian GAAP should draw an analogy from Ind AS 16.

When the company purchases a new asset, it is received after major inspection or overhauling by the manufacturer. Hence, major inspection or overhaul can be identified separately at the time of purchase of new asset. The cost of such major inspection or overhaul is depreciated separately over the period till next major inspection or overhaul. Upon next major inspection or overhaul, the cost of new major inspection or overhaul is added to the gross block of the asset and any residual amount pertaining to the previous inspection or overhaul is derecognized. For example, C Limited runs a merchant shipping business and has just acquired a new ship for ₹10,000. The useful life of the ship is 15 years, but it will be dry-docked every three years and a major overhaul will be carried out. At the date of acquisition, the dry-docking costs for similar ships that are three years old are approximately ₹2,000. Therefore, the cost of the dry-docking component for accounting purposes is ₹2,000 and this amount would be depreciated over the three years to the next dry-docking. The remaining carrying amount, which may need to be split into further components, is ₹8,000. Any additional components will be depreciated over their own estimated useful lives.

If the element relating to the inspection/overhaul had previously been identified, it would have been depreciated between the time of identification and the next overhaul. However, if it had not previously been identified, the recognition and de-recognition principles still apply. In such a case, the company uses estimated cost of a future similar inspection or overhaul to be used as an indication of the cost of the existing inspection or overhaul component to be derecognised after considering the depreciation impact.

The application of component accounting will cause significant change in measurement of depreciation and accounting for replacement costs. Currently, companies need to expense replacement costs in the year of incurrence. Under component accounting, companies will capitalise these costs as a separate component of the asset, with consequent expensing of the net carrying value of the replaced component

Computation of Depreciation

Each significant component of the asset having useful life, which is different from the useful life of the principal asset, is depreciated separately. If useful life of the component is lower than the useful life of the principal asset as prescribed in Schedule II, such lower useful life should be used. On the other hand, if the useful life of the component is higher than the useful life of the principal asset as prescribed in Schedule II, the company can use higher useful life only if the component is expected to be used even after expiry of useful life for the principal asset.

Presentation/Disclosure

Although individual components are accounted for separately, the financial statements continue to disclose a single asset. For example, an airline would generally disclose aircraft as a class of assets, rather than disclosing separate information in respect of the aircraft airframe, engines, interiors, *etc.* Moreover, Schedule II requires disclosure of justification if a company uses higher or lower life than what is prescribed in Schedule II.

Transitional Provision

Accounting Standard 10, gives an option to follow the component accounting, however, it does not mandate the same. In contrast, component accounting is mandatory under the Schedule II w.e.f. 1st April 2015. Considering this, in our view, the transitional provision of Schedule II can be used to adjust the impact of component accounting.

If a component has zero remaining useful life on 1st April 2015, its carrying amount, after retaining any residual value, may be charged to the opening balance of retained earnings. The carrying amount of other components, i.e., components whose remaining useful life is not nil as on 1st April 2015, is to be depreciated over their remaining useful life.

Identification of Cost of Component as on 1 April 2015

Application Guide on the provisions of Schedule II of the Companies Act, 2013 states that, if the separate cost of each significant component of an asset is not available in the books of account, following criteria can be used:

(a) Break up cost provided by the vendor;
(b) Cost break up given by internal/ external technical experts;
(c) Current replacement cost of component of the related asset and applying value the same basis on the historical cost of asset.

While the Application Guide does not clarify whether or not there is a free choice in applying the above criteria, it appears logical to apply the criteria in the chronological order in which they are stated above. Let's discuss this concept by way of an example:

Company A acquired a machine on 1st April 2011 for INR 100,000. The useful life of the machine was 20 years. As on 31st March 2015, the accumulated depreciation is INR 20,000 (machine costing INR 100,000 depreciated for four years with nil residual value), and corresponding WDV is INR 80,000 (INR 100,000-INR 20,000). Pursuant to Schedule II of the Companies Act, 2013, the company started following component accounting w.e.f 1st April 2015, wherein two components (A and B) were identified having an original cost of INR 20,000 and INR

While the Application Guide on the provisions of Schedule II of the Companies Act, 2013 does not clarify which is the preferred criteria to identify the cost of each significant component, it would be appropriate to use the original cost of acquisition as the basis, if the same is available.

80,000 respectively. The useful life of component A is estimated as 8 years (from the date of purchase) whereas the useful life for component B remains unchanged. Thus, the remaining useful life of component A as at 1st April 2015 is 4 years.

For allocating the carrying value to components A and B, one view is that the carrying value should be allocated as per the original cost of the components. As per this, the carrying value of component A i.e. INR 16,000 (i.e. original cost of 20,000 less accumulated depreciation of 4,000) will be depreciated over 4 years and that of component B i.e. INR 64,000 (i.e. original cost of 80,000 less accumulated depreciation of 16,000) will be depreciated over 16 years.

An alternative view could be to allocate the carrying value to the components 'on the basis of' their current replacement cost. As per this, WDV of INR 80,000 will be allocated to components A and B in the ratio of their current replacement cost. Let's assume that current replacement cost of components A and B is INR 10,000 and INR 60,000, respectively. Therefore WDV of INR 80,000 will be apportioned into component A and component B as INR 11,429 and INR 68,571 respectively.

As stated above, while the Application Guide on the provisions of Schedule II of the Companies Act, 2013 does not clarify which is the preferred criteria to identify the cost of each significant component, it would be appropriate to use the original cost of acquisition as the basis, if the same is available. ■

When does a Controlled Subsidiary Company in India turn PE of its Foreign Principal and can be Held Liable to Pay Higher Tax?

A foreign enterprise is liable to be taxed in India on so much of its business profit as is attributable to the permanent establishment in India. Taxability of such foreign companies having subsidiaries for back office support operations in India has been a subject matter of debate before the courts. This article discusses various cases where controlled subsidiary companies in India were questioned to be permanent establishments (PEs) of their foreign principals. Read on...

Domain of Permanent Establishment

The Supreme Court in *DIT (International Taxation) vs. Morgan Stanley and Co. Inc., [2007] 292 ITR 416* explained the significance of this principle in the following words (page 442):

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"The object behind enactment of transfer pricing regulations is to prevent shifting of profits outside India. Under Article 7(2), not all profits of MSCO would be taxable in India but only those which have economic nexus with permanent establishment in India. A foreign enterprise is liable to be taxed in India on so much of its business profit as is attributable to the permanent establishment in India. The quantum of taxable income is to be determined in accordance with the provisions of the Income-tax Act. All provisions of Income-tax Act are applicable, including provisions relating to depreciation, investment losses, deductible expenses, carry-forward and set-off losses, *etc*. However, deviations are made by the DTAA in cases of royalty, interest, *etc*. Such deviations are also made under the Income-tax Act (for example: Sections 44BB, 44BBA, *etc.*). Under the impugned ruling delivered by the AAR, remuneration to MSAS was justified by a transfer pricing analysis and, therefore, no further income could be attributed to the permanent establishment (MSAS). In other words, the said ruling equates an arm's length analysis (ALA) with attribution of profits. It holds that once a transfer pricing analysis is undertaken; there is no further need to attribute profits to a permanent establishment. *The impugned ruling is correct in principle in so far as an associated enterprise, that also constitutes a permanent establishment, has been remunerated on an arm's length basis taking into account all the risk-taking functions of the enterprise. In such cases nothing further would be left to be attributed to the permanent establishment. The situation would be different if transfer pricing analysis does not adequately reflect the functions performed and the risks assumed by the enterprise. In such a situation, there would be a need to attribute profits to the permanent establishment for those functions/risks that have not been considered. Therefore, in each case the data placed by the taxpayer has to be examined as to whether the transfer pricing analysis placed by the taxpayer is exhaustive of attribution of profits and that would depend on the functional and factual analysis to be undertaken in each case. Lastly, it may be added that taxing corporate on the basis of the concept of economic nexus is an important feature of attributable profits (profits attributable to the permanent establishment)." (Emphasis supplied)*

Subsidiary as a Permanent Establishment

Extracts from Bulletin for International Taxation, February 2011 titled 'The Subsidiary as a Permanent Establishment'

"A permanent establishment is, however, not always easy to identify. This is particularly true where a permanent establishment is hidden behind a dependent operating company, i.e., if an operating company in addition to its own business also carries on another company's business as a permanent establishment of the latter. In this regard, the 2010 OECD Model Tax Convention (the 'OECD Model') states in Article 5(7) that:

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

This follows from the principle that, for the purpose of taxation, such a subsidiary constitutes an independent legal entity. Accordingly, both companies are subject to unlimited tax liability in the State in which they are resident or where their place of management is located.

However, by using the wording 'not of itself', the provision clarifies that a parent company (parent) can have an (agent) permanent establishment in its subsidiary's State of residence if the general requirements for a permanent establishment set out in Article 5(1) to (5) of the OECD Model are met. Accordingly, any space or premises belonging to the subsidiary that is at the disposal of the parent (the 'right-to-use test') and that constitutes a fixed place of business (the 'location test' and the 'duration test') through which the parent carries on its own business (the 'business activity test'), gives rise to a permanent establishment of the parent under Article 5(1), subject to Article 5(3) and (4), of the OECD Model. In addition, under Article 5(5) of the OECD Model, a subsidiary constitutes an agency permanent establishment of its parent if the subsidiary has the authority to conclude contracts in the name of its parent and habitually exercises this authority, unless these activities are limited to those referred to in Article 5(4) or unless the subsidiary does not act in the ordinary course of its business as an independent agent within the meaning of Article 5(6) . . ."

E-Funds IT Solution Case

Reading through the commentary on paragraph 5 of UN Model the Delhi High Court in *Director of Income-tax vs. e-Funds IT Solution (2014) 364ITR256* held that to hold a place of business a permanent establishment, the enterprise using it must carry on its business wholly or partly "through" it, though the activity need not be productive in character and need not be permanent in the sense that there is no disruption, but the operations must be carried out on regular basis. Branch offices and factory mentioned in paragraph 2 are examples of fixed place of business. In paragraph 4.6 of the OECD Commentary, the words "through which" have been interpreted to have a wide meaning but postulate that the particular location should be at the disposal of the enterprise for that purpose and only then the business is carried through the location where the activity takes place. The word "through" has been interpreted and read in a manner that the foreign enterprise should have the right to use the location in the second State. The said right may or may not be formalised through legal documentation, but right to use should be established and shown. Then and then alone fixed place permanent establishment shall exist. Fixed location test may be in form of a legal right or can be inferred from the facts when the foreign establishment and its employees are allowed right to use the place of business belonging to a subsidiary, a third party. At the same time, the Court also observed that overwhelming international commentaries, write ups and decisions support the position that for applying the location test, requirements of paragraph (1) of Article 5 must be independently satisfied.

The LG Case Scenario

In *L. G. Electronics Inc. vs. Asstt. DIT (2014)* 368ITR401, the foreign holding company is called to pay tax in India on 25% of the total value of international transactions consisting of supply of raw materials, finished goods, commission and reimbursements for the following survey finds (19 in number) in the case of Indian subsidiary that revealed the assessee holding company having PE in India:

i. The Indian company, LGIL, is a 100% subsidiary company of the petitioner and it does not function as an independent corporate entity and is totally dependent on the petitioner.

ii. All the senior employees i.e. heads of all departments are Koreans. The hiring of these Korean expatriates is done by the petitioner.

iii. While working in India, the expatriates have a lien over their employment over the petitioner company and work on deputation in India clearly establishing a continuous connection between the subsidiary company and the petitioner, which is nothing but a business connection.

iv. The employees do not report only to the Indian management but also send reports to their principals in Korea.

v. The Korean expatriates visit Korea and other countries very frequently for business purposes and implement decisions taken thereof.

vi. The regional headquarters in Singapore monitors each and every function of the Indian company. It provides business consultancy and financial consultancy to the Indian company.

vii. The regional director visits India regularly and monitors the progress of the Indian company. It also looks after the interest of the petitioner and other affiliates in the region including India.

viii. The order of raw material and finished products is placed from India on a global portal provided by the petitioner which is accessed by the Indian company. This proves that there is a continuity of business and the office of LGIL is nothing but an extension of the petitioner company.

ix. The petitioner company has a menu card of products manufactured and launched by it. The Indian company can only import and launch those products as an independent business enterprise and cannot import or sell brands of any other company.

x. The Indian company does not own the brand. The brand promoted in India is LG brand which is owned by the petitioner. In India also, the brand is registered by the petitioner.

xi. The Indian company cannot hire expatriates from anywhere else other than Korea. Every requirement of heads of various divisions is processed by the petitioner.

xii. Before the launch of a particular product, the employees of the petitioner company visit India and understand the market and do a comprehensive market survey which is a core business activity and not ancillary or auxiliary business activity.

xiii. Once the decision is taken to launch a particular product in India is decided by the petitioner company, they provide the technology and details of parts to be used which are mainly supplied by the petitioner and its other affiliates.

xiv. The petitioner through its employees in India takes a decision as to what part can be localised or procured locally.

xv. Once the imported parts are decided by the petitioner, the quantity is decided by LGIL and order is placed through the portal without any price negotiation as price is strictly decided by the petitioner.

xvi. The contract for sale is concluded in India once the orders are placed. No agreements are signed and no negotiation takes place. However, employees of the petitioner visit India to finalise the deal and in order to estimate the total sale to be made by them during a particular period.

xvii. As per the petitioner, the sale is on C & F basis and therefore, the sale is concluded in India.

xviii. The MD of LGIL reports to the HQ at Singapore and Korea and is responsible to the petitioner.

xix. For the imports made by the Indian company, it has not done any analysis of comparative pricing or the price at which it can get the product from any other company.

Further taking note of such findings, the AO drew following ten conclusions, namely:

i. There is a continuity of business between the Indian company and the non-resident.

ii. The transaction of import is not an isolated transaction but a close business connection on a regular basis.

iii. The non-resident is doing business in India through its employees who are heading various divisions in the Indian company and also through employees visiting India regularly.

iv. There is a close business connection in terms of the dependence of the Indian company on the non-residents for all imports as it does not have the authority or choice to make imports from any other concerns other than LG affiliates.

v. The whole transaction is so intermixed that supply of equipment cannot be segregated from the supply of technology and marketing of product. Each transaction is dependent on the other and has a close nexus with India.

vi. The products supplied including raw material and finished products are customised for India e.g. the sound system in television is customised for India as per the local needs. The Indian company is nothing but an extension of the Korean company. If we analyse the functioning of LG India, it works as a branch of LG Korea.

vii. LG India and LG Korea work as partners in business.

viii. The transactions between both the parties are so inter-linked that the Indian company cannot move an inch without the support and supplies of the non-resident.

ix. The function of the Indian company is marketing for the non-resident companies to build their brand and also manufacturing which is primarily assembly of products already launched by the non-residents.

x. The business arrangement between the two companies is something like a partnership where roles are defined and divided but the ultimate decision is taken by the non-residents.

On the aforesaid basis, the Assessing Officer in LG case concluded that the assessee had business connection in India and was liable to be taxed under Section 9(1)(i) of the Act and income is taxable in India under Article 7 of the DTAA as the petitioner has a permanent establishment in India. The AO invoked provisions of Section 147 and reopened the case of the assessee and called for a return of income from the holding company. The foreign company filed NIL return and further objected to reassessment on the ground that the transactions that it had with its subsidiary in India are already tested for their arm's length by the TPO having taken into consideration FAR analysis carried by the Indian subsidiary post which no further taxes could be determined as payable by it. The AO however rejected such study as well as the objections filed by the foreign company and held as under:

"The survey clearly indicated that the petitioner had a permanent establishment in India and, consequently, the profits were required to be attributed to the permanent establishment in India in terms of the functions performed, risks assumed and assets deployed by the permanent establishment."

The foreign company then filed a writ petition before the Allahabad High Court. The High Court referred to both, Section 9 of the Income-tax Act and Article 7 of the DTAA and commented the two as identical. Further, sub-Article (1) of Article 7 of Indo Korea DTAA states that the profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as are attributable to that permanent establishment. The High Court from their reading of clause (1) held that the establishment of a permanent establishment pre-supposes that business operations are being carried out for profit. In other words, if the AO is able to establish presence of PE in India as per Article 5 then there would perhaps be a statutory requirement upon the foreign entity to submit a return of income. And for this reason, the High Court declined to admit the contention of the company of precluding AO to take reopening action after conclusion of TP proceedings. The Court held the following after drawing reference to Supreme Court decision in ***DIT (International Taxation) vs. Morgan Stanley and Co. Inc., 292 ITR 416:***

'The contention that as per the provisions of Chapter X of the Act, the Indian subsidiary, in terms of the provisions of Section 92E of the Act had disclosed all the transactions with the petitioner relating to purchase of raw materials, finished goods, commission and reimbursements and further, in terms of Section 92CA of the Act, the TPO of the Indian subsidiary had already examined the said transaction and by its order dated 20th December, 2006 found the same to be meeting the arm's length principle, consequently, the Assessing Officer was precluded from drawing any inference that any further income of the petitioner from the same transactions was chargeable to tax had escaped assessment is erroneous and cannot be accepted.'

As in this case, the survey had been conducted after conclusion of order of TPO, the High Court held that the survey findings and documents impounded did reveal the existence of permanent establishment of the foreign company and its business operations in India without disclosing its taxable income for which reason the reopening cannot be adjudged as invalid under the law. Now to know whether TPO's acceptance of arm's length price would undermine any further action in this regard to separately determine profits/income of the foreign company *vis-a-vis* any permanent establishment that it has is something that the Allahabad High Court held it as independent and necessitating in certain situations as in the case of LG.

Guidance for the Assessing Officer

The Allahabad High Court order further carried the following guidance for the Assessing Officer:

'Once the Assessing Officer is satisfied that a permanent establishment of the petitioner exists in India and business is being conducted from this permanent establishment, the attribution of profits is a necessary consequence. The order of TPO will not come in the way for the reason that the TPO's order is in relation to the transactions between a subsidiary company and the petitioner. The situation becomes different when the subsidiary company also works as a permanent establishment of the petitioner. Once a permanent establishment is established, the petitioner becomes liable to be taxed in India on so much of its business profits as is attributable to the permanent establishment in India. The order of the TPO is in relation with the subsidiary company and not in relation with the permanent establishment of the petitioner. The transfer pricing analysis is to be undertaken between the petitioner and its permanent establishment which has not taken place as yet. Once a transfer pricing analysis is done, the computation of income arising from international transaction has to be done keeping in mind the principle of arm's length price. Once this is done, there is no further need to attribute profits to a permanent establishment. However, where the transfer pricing analysis does not take into account all the risk taking functions of the enterprise and it does not adequately reflect the function performed and the risk assumed by the petitioner, the situation would be different and, in such a situation, there would be a need to attribute profits to the permanent establishment for those functions/risk that have not been considered. This is precisely what was considered in ***Morgan Stanley's case (supra)*** wherein the Supreme Court held:

"As regards attribution of further profits to the PE of MSCo where the transaction between the two are held to be at arm's length, we hold that the ruling is correct in principle provided that an associated enterprise (that also constitutes a P.E.) is reimbursed on arm's length basis taking into account all the risk taking functions of the multinational enterprise. In such a case, nothing further would be left to attribute to the P.E. The situation would be different if the transfer pricing analysis does not adequately reflect the functions performed and the risks assumed by the enterprise. In such a case, there would be need to attribute profits to the P.E. for those functions/risks that have not been considered. The entire exercise ultimately is to ascertain whether the service charges payable or paid to the service provided (MSAS in this case) fully represent the value of the profit attributable to his service."

Hiring Policy and Agency PE

Ordinarily, hiring of labour by the subsidiary from the associated enterprise does not constitute it a

The LG case somehow affirms the AAR 1996 ruling in which it is held that when a subsidiary performs services for its foreign parent, it constitutes a "service PE". The ruling further states that for ascertaining the position in this regard, the exact working of the subsidiary, the correspondence between the subsidiary and the principal and the mode of their functioning and operations would have to be examined in toto.

permanent establishment of the parent company *vide Director of Income-tax vs. e-Funds IT Solution (2014) 364ITR256.* In the LG case, however it was found that much of the hiring of senior heads is done by the holding company. This fact establishes the dependence of the subsidiary upon its holding company for day-to-day management of affairs of the business in India. On the subject of agency permanent establishment, the Delhi High Court in E-Funds case further held as under:

'Agency Permanent Establishment under Article 5(4) and (5) of DTAA

Paragraphs (4) and (5) of Article 5 relate to creation of agency permanent establishment in the second contracting country. Agency replaces fixed place with personal connection. Arvid K. Skaar in his work Permanent Establishment has opined that primacy of "location test" of the basic rule is consistent with the conceptual structure of the permanent establishment clause itself. An agency will constitute a permanent establishment only when a permanent establishment cannot be found according to those conditions in the basic rule which are altered or replaced by the agency clause. OECD and UN Model Treaties recognise agency permanent establishment. The principle being, that a foreign enterprise may choose to perform business activities itself or through a third person in the other States. An agent is a representative who acts on behalf of another with third persons. International taxation laws recognise and accept two distinct types of agency permanent establishment, dependent and independent. Every agent by very nature of principle of agency is to follow the principal's instructions. But this principle is not squarely applicable to the DTAAs, as third parties may not be strictly an agent under the domestic law. Further, the aforesaid dependency cannot be the distinguishing factor which determines whether the agency is dependent or an independent agency for the purpose of Article 5, paragraphs (4) and (5), respectively. A dependent agency is one which is bound to follow instructions and is personally dependent on the enterprise he represents. Such dependency must not be isolated or once in a while transaction but should be of comprehensive nature.'

In the LG case, the employment of expats was not an isolated instance but a recurring instance and they had a lien over their employment over the holding company and further they were to report to their principal in Korea apart from the Indian management, thereby, meeting the test of dependent agency.

Stewardship Activities and PE

The Delhi High Court in *DIT vs. E-Funds IT Solution (2014) 364ITR256* held that every subsidiary which engages an employee on the non-resident, would always become a service permanent establishment of the controlling foreign company is a misconceived notion. In this case, the employees of the non-resident holding company were hired to provide stewardship services only. Drawing their reference to Supreme Court ruling in *DIT (International Taxation) vs. Morgan Stanley and Co. Inc. (2007) 292ITR41,6* the High Court held that the stewardship activity would not fall under Article 5(2)(l) of DTAA.

Extracts of SC Ruling in Morgan Stanley – Pages 427-428

'Article 5(2)(l) of the DTAA applies in cases where the MNE furnishes services within India and those services are furnished through its employees. In the present case, we are concerned with two activities namely, stewardship activities and the work to be performed by deputationists in India as employees of MSAS. A customer like an MSCo who has worldwide operations is entitled to insist on quality control and confidentiality from the service provider. For example, in the case of software permanent establishment, a server stores the data which may require confidentiality. A service provider may also be required to act according to the quality control specifications imposed by its customer. It may be required to maintain confidentiality. Stewardship activities involve briefing of the MSAS staff to ensure that the output meets the requirements of the MSCo. These activities include monitoring of the outsourcing operations at MSAS. The object is to protect the interest of the MSCo. These stewards are not involved in day to day management or in any specific services to be undertaken by MSAS. The stewardship activity is basically to protect the interest of the customer. In the present case as held hereinabove, the MSAS is a service permanent establishment. It is in a sense a service provider. A customer is entitled to protect its interest both in terms of confidentiality and in terms of quality control. In such a case it cannot be said that MSCo has been rendering the services to MSAS. In our view, MSCo is merely protecting its own interests in the competitive world by ensuring the quality and confidentiality of MSAS services.

We do not agree with the ruling of the Authority for Advance Rulings that the stewardship activity would fall under Article 5(2)(l).'

Management Reporting and Agency PE

The periodic reporting of the results of operations of the subsidiary to the management of the holding company highlight continuous business monitoring in which case the subsidiary would provide the face of dependent agency where it is bound to follow instructions of its holding entity.

Engagement of Expats on Deputation and Service PE

When the expats are hired directly by the holding company and deputed to subsidiary for a specified period, they would sense service PE in India if they report to the parent company or associated enterprise. In LG case, it was found that the expats reported to the parent company management too.

Extracts of SC Ruling in Morgan Stanley- Page 428

'As regards the question of deputation, we are of the view that an employee of MSCo when deputed to MSAS does not become an employee of MSAS. A deputationist has a *lien* on his employment with MSCo. As long as the *lien* remains with MSCo, the said company retains control over the deputationist's terms and employment. The concept of a service P.E. finds place in the U.N. Convention. It is constituted if the multinational enterprise renders services through its employees in India, provided the services are rendered for a specified period. In this case, it extends to two years on the request of MSAS. It is important to note that where the activities of the multinational enterprise entails it being responsible for the work of deputationists and the employees continue to be on the payroll of the multinational enterprise or they continue to have their lien on their jobs with the multinational enterprise, a service P.E. can emerge. Applying the above tests to the facts of this case, we find that on request/requisition from MSAS the applicant deputes its staff. The request comes from MSAS depending upon its requirement. Generally, occasions do arise when MSAS needs the expertise of the staff of MSCo. In such circumstances, generally, MSAS makes a request to MSCo. A deputationist under such circumstances is expected to be experienced in banking and finance. On completion of his tenure, he is repatriated to his parent job. He retains his lien when he comes to India. He lends his experience to MSAS in India as an employee of MSCo as he retains his lien and in that sense there is a service P.E. (MSAS) under Article 5(2)(l). We find no infirmity in the ruling of the ARR on this aspect. In the above situation, MSCo is rendering services through its employees to MSAS. Therefore, the Department is right in its contention that under the above situation, there exists a service P.E. in India (MSAS).'

Secondment to Subsidiary and Service PE

In *Centrica India Offshore Pvt. Ltd. vs. Commissioner of Income-tax (2014) 364ITR336*, the overseas group entities of Centrica PLC are stated to be in the business of supplying gas and electricity to consumers across U. K. and Canada. The overseas entities outsource their back office support functions-for instance, debt collections/consumers' billings/monthly jobs to third party vendors in India, *etc.* To ensure that the Indian vendors comply with quality guidelines, the assessee company (subsidiary company) was established in India. It was to act as service provider to these overseas entities. Thus, the assessee company entered into service agreement with overseas entities to provide locally based interface between those overseas entities and Indian vendors. The scope and range of services so provided in terms of those agreements/understanding are : (i) management assistance for outsourced supplies in India and facilitating efficient interface back to U. S. business of Centrica Plc ; (b) ensure that outsourced suppliers adhered to best practices and share them on e-2-e on optimal basis ; (c) expert advice on widening scope of potential services in India to target work force through greater control and such other services as may be requested by Centrica Plc from time to time. The assessee therefore entered into agreements for secondment of employees from the overseas entities for a fixed tenure. The employees so seconded continued to remain on the payroll of the overseas entities which paid and disbursed their salaries. The assessee thereafter reimbursed such salary costs to the overseas employers.

In this entire arrangement therefore, more than anything else, the presence of seconded employees in India is felt to serve the interest of the overseas entities. In other words, their performance in India was only to yield to the interest of the parent company. The seconded employees held full responsibility upon them for final output of service. They were to oversee subsidiary's operations as per the requirements of overseas entities and to be overall responsible to the parent for subsidiary's activities and functions. Under this situation, the seconded employee acted more under the direct control and supervision of the parent company so that what is actually remunerated by the assessee to the parent company is not salary but consideration for provision of services of seconded personnel. And because they acted for parent company, their presence constituted service permanent establishment in India.

Advance Ruling P. No. 8 of 1995, In Re (1997) 223ITR416

The LG case somehow affirms the AAR 1996 ruling in which it is held that when a subsidiary performs services for its foreign parent, it constitutes a "service PE". The ruling further states that for ascertaining the position in this regard, *the exact working of the subsidiary, the correspondence between the subsidiary and the principal and the mode of their functioning and operations would have to be examined in toto*. As in LG case, only survey could only reveal the exact working of the subsidiary and then it was found that the foreign parent was carrying on business operation in India through a permanent establishment.

In this case, the applicant was a company incorporated in Switzerland, a trader in goods and commodities on an international basis and intending to trade with India. It proposed to set up a subsidiary company in India to provide consultancy services from India to the applicant-company for use outside India. The facts in this case further envisaged proposed agreements for: (a) secretarial and clerical assistance to complete documentation of tenders, contracts and subsequent documentation required to enable the Indian customers who had purchased commodities from the Swiss company overseas, to obtain delivery of the said commodity on its arrival in India; (b) assistance in responding to global tenders floated by Indian organisations, which entailed providing information and submitting tenders within the parameters laid down by the applicant; and (c) follow-up of tenders and signing of contracts. The foreign parent would retain the Indian subsidiary as consultant on a non-exclusive basis for a year, to be automatically renewed, and the Indian subsidiary was at all times to act on instructions from the applicant and would not have any authority to accept orders on behalf of or bind the foreign company.

i. The AAR in this case held that the expression "business connection" means something more than a business. It presupposes an element of continuity between the business of the non-resident and the activity in the taxable territory. A stray or isolated transaction would normally not be regarded as a business connection. Business connection may take several forms; it may include carrying on part of the main business or activity incidental to the non-resident through an agent or it might merely be a relation between the business of the non-resident and the activity in the taxable territory which facilitates or assists the carrying on of that business. A relation to be a "business connection" must be real and intimate and through or from which income must accrue or arise, whether directly or indirectly to the non-resident. Such a business connection could be spelt out on the terms of the agreements in question. Though the term of the agreements in question was initially for one year and liable to termination at short notice, it was envisaged also that, unless so terminated, it should continue indefinitely, automatically renewed at the end of each year. Though the subsidiary was not to render services exclusively to the applicant, it was

Ordinarily, hiring of labour by the subsidiary from the associated enterprise does not constitute it a permanent establishment of the parent company vide *Director of Income-tax vs. e-Funds IT Solution (2014) 364ITR256*. In the LG case, however it was found that much of the hiring of senior heads is done by the holding company. This fact establishes the dependence of the subsidiary upon its holding company for day-to-day management of affairs of the business in India.

bound to render all services for the applicant as stipulated in the agreement. There was a term of "confidentiality" included in the agreements, which also placed considerable restrictions on the capability of the subsidiary in rendering like service to other parties. The scope of work in the proposed agreements included not only clerical and secretarial assistance but supply of information in respect of global tenders, by the subsidiary to the applicant and *vice versa*; signing and submitting of tenders on behalf of the applicant, although stated to be within the parameters fixed by the applicant; negotiating the terms of the tender with the tendering authority, again within the parameters laid down by the applicant; and follow-up of the tenders and finally signing the agreements. The business activity or the business relationship between the applicant and the subsidiary would not be based on any stray transaction but would be a continuous process in respect of the series of purchase and sale transactions undertaken by the applicant in India and in all such transactions the subsidiary would do the work as stated in the four agreements. Such an intimate and continuous relationship would constitute a "business connection" for purposes of Section 9(1)(i). The subsidiary would have to undertake such substantial and important commercial activities systematically and continuously for the applicant as to justify an inference that the applicant would be deriving income through or from a "business connection" in India.

ii. That in terms of the definition of "permanent establishment" in Article 5.2(l) of the Agreement for the Avoidance of Double Taxation between India and the Swiss Confederation and in the background of the stated facts and the proposed four service agreements between the applicant and the subsidiary company, there would be a permanent establishment of the applicant in India.

iii. That for ascertaining whether Articles 5.4 and 5.6 of the Agreement of the Avoidance of Double Taxation between India and the Swiss Confederation applied, the exact working of the subsidiary, the correspondence between the subsidiary and the principal and the mode of their functioning and operations would have to be examined in toto. The quantum of work done, the services rendered, the contracts undertaken for outsiders, i.e., other than the principal and companies controlled by the principal would have to be examined to determine whether the subsidiary was an agent having independent status or not in terms of the paragraph. At this stage, however, since the total activities which would be carried on by the subsidiary company in India could not be ascertained, it might be difficult to come to a conclusion as to the extent of activities of the subsidiary company which would be in the nature of services rendered to the applicant or its other controlled companies. For these reasons, the subsidiary would have to be considered to be a permanent establishment of the applicant unless it had significant independent activities on its own or on behalf of persons other than the applicant and unconnected with it.

Food for Thought

The survey findings in the L. G. Case of 2014 and facts finding in AAR ruling No. 8 of 1996 both mark importance to intimate and continuous flow of transactions in every year since inception between the subsidiary and holding company as they establish a business connection between the two. Also, parent company in either of the case contributed far greater role in the running of the day-to-day operations of the main business of the subsidiary through employment of expats and that the expats and other personnel deputed therefore not just rendered stewardship functions but participated in the running of business of the subsidiary and consistently reported to the parent company. Likewise, the subsidiary which when rendered services to the parent company on regular basis did not limit itself to routine clerical and secretarial functions but also ventured into supply of information in respect of global tenders; signing and submitting of tenders on behalf of the applicant within the parameters fixed by the applicant; negotiating the terms of the tender with the tendering authority, again within the parameters laid down by the applicant; and follow-up of the tenders and finally signing the agreements all of which are undertaken not based on any stray transaction but as a continuous process in respect of the series of purchase and sale transactions undertaken by the applicant in India all of which point to the presence of PE in India. ■

MAT- Is it a Separate/Complete Code or Merely Computational Mechanism?

Finance Act, 2015 has amended the provisions of Section 115JB of the Income-tax Act, 1961[1] (hereinafter referred to as "the Act") to exclude certain incomes from tax under Section 115JB. Subsequent to the amendment, controversy on taxability of FII/FPI under Section 115JB surfaced. Hence, government appointed a committee under Justice A P Shah and based on recommendation through specific instructions, government instructed assessing officers to keep the proceedings in abeyance till suitable amendment is made in the Act, in all such cases where FII/FPI do not have permanent establishment (PE). However, few questions on the role of the provisions of Chapter XII-B remained unanswered. This article attempts to summarise few of the relevant cases decided by various forums on the provisions of Section 115JB/115JA or 115J on the scope and applicability of provisions of Chapter XII-B. Read on…

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Background

Following incomes have been excluded from tax under Section 115JB by the Finance Act, 2015:

1. Income of foreign company from sale of securities/royalty or FTS (Chapter XII) that is chargeable at a rate lower than MAT rate.

[1] *Unless otherwise mentioned, Section or Chapter reference represents Section or Chapter of the Income-tax Act, 1961. "The Act" referred in this article refers to "the Income-tax Act, 1961".*

2. Share of income derived from AOP or BOI to which Section 86 applies.
3. Income/gain referred under Section 47(xvii).

Recently, the Hon'ble Mumbai ITAT in the case of *Shivalik Venture P. Ltd. vs. DCIT [ITA No.2008/ Mum./2012]* has held to the effect that for taxability of profit under Section 115JB, it is necessary to satisfy the conditions of "income" under Section 2(24) and taxability under Sections 4, 5 or Section 9. On facts of the case, gain on transfer of asset to the subsidiary was exempt from tax under Section 45 and hence, Hon'ble ITAT held that provisions of Section 115JB do not apply. Further, Hon'ble ITAT, by relying on the decision of Hon'ble Delhi HC in the case of *CIT vs. Sain Processing and Weaving Mills P. Ltd. [325 ITR 565]*, also relied on notes to accounts detailing company's opinion on tax treatment of the said gain.

In the said decision of the Hon'ble Delhi High Court, the taxpayer had not provided depreciation in profit and loss account but mentioned the same fact in notes in compliance with Section 211(3B) of the Companies Act, 1956 ("Co. Act"). Considering the said fact, the Hon'ble Delhi High Court allowed deduction of depreciation for MAT purpose as notes to accounts is extension of profit and loss account.

Hence, it is relevant to examine the scope and relevance of note of accounts for computation of book profit under Section 115JB.

Further, the Hon'ble Cochin ITAT in case of *ACIT vs. Nilgiri Tea Estate Ltd. (ITA No.37 of 2014)* while holding that sale of agriculture land is not liable to tax under Section 115JB, held to the effect that Chapter XII-B do not extend the scope of `total income' as per Section 5, but is only towards providing an alternative basis for computing the income.

The Hon'ble Jaipur ITAT in the case of *Shree Cements Ltd. in ITA No.: 504/JP/2012 [31 ITR(T) 513]*, wherein ITAT has relied upon its decision in the assessee's own case for earlier years for AY 2004-05 to AY 2006-07 [ITA No.:614,615&635/JP/2010] has held to the effect that sales tax subsidy credited to profit and loss account is not liable to tax under Section 115JB by holding that the sales tax incentives are capital receipts and not an income under Section 2(24) and hence, is outside the purview of "book profit" for taxability under Section 115JB.

From a perusal of the above referred decisions, it can be observed that the Hon'ble ITATs are of the view that Section 115JB is subject to income definition under Section 2(24) and taxability under normal provisions of the Act and hence, effectively provides for mere computational mechanism alternate to provisions of Chapter IV and does not prescribe or provide for separate code.

To appreciate captioned topic in a proper perspective and rightly analyse the above referred ITAT decisions, analysis is bifurcated into two parts:

1. Appreciation of statutory/legislative provisions and judicial precedents.
2. Potential of restrictive applicability of Section 115JB as alternate to Chapter IV only.

1. Appreciation of Statutory/Legislative Provisions and Judicial Precedents

For appreciation of various statutory/legislative provisions and judicial precedents, this has been further taken up in following sub-topics:

1.1 Legislative intent
1.2 Relevance to decision of Hon'ble Supreme Court
1.3 Effect of *non-obstante* clause
1.4 Relevance of provisions of Schedule VI to the Companies Act, 1956

1.1 Legislative Intent:

To understand the rationale for levy of any tax and to interpret newly inserted provisions, it is important to look at the history behind introduction of such provisions. Hence, the history behind introduction of MAT provisions have been summarised hereunder:

a) Prior to the enactment of the Finance Bill, 1983, there were no restrictions on the quantum of deduction for companies except under Chapter VI-A for deduction to the extent of gross total income. However, due to overall impact of charging, computational and incentive provisions and deductions under Chapter VI-A, total income was found to be insufficient for collecting taxes under normal provisions.
b) It was observed that few highly profitable companies do not pay any tax in light of the incentive provisions contained under the Act. As a revenue generating measure, through the Finance Act, 1983, Section 80VVA was introduced restricting deduction eligible under certain Sections to 70% of the total income to make otherwise profitable companies to pay at least some tax on balance. However, due to certain other allowances and impact of charging provisions contained in Chapter II, the companies were still successful in reducing the tax to zero.

c) Hence, *vide* the Finance Act, 1987, through Section 115J, the government proposed an alternate mechanism to tax income to collect at least some tax based on the "declared profits" of such companies. This is evident from the extract of the budget speech of the Finance Minister and memorandum explaining provisions for the Finance Bill, 1987. The relevant extracts from budget speech are reproduced hereunder:

> 80. *It is only fair and proper that the prosperous should pay at least some tax. .... a new Section 80 VVA was inserted in the Act so that all profitable companies pay some tax. This does not seem to have helped and is being withdrawn. I now propose to introduce a provision whereby every company will have to pay a "minimum corporate tax" on the profits declared by it in its own accounts. ... This measure will yield a revenue gain of approximately ₹75 crores."*

The extracts from the Memorandum explaining provisions relating to the Finance Bill, 1987 are reproduced hereunder:

> *New provisions to levy minimum tax on "Book Profits" of certain companies*
>
> *37. ....*
>
> *Under the proposed amendment, in the case of any company whose total income as computed under the other provisions of the Income-tax Act in respect of any previous year is less than 30 per cent of its book profit, the total income of such taxpayer chargeable to tax shall be deemed to be the amount equal to 30 per cent of such book profit.*
>
> *...."*

Hence, interpreting Chapter XII-B as subject to all other provisions of the Act except to Chapter IV would defeat the intention of the legislature to tax "book profit declared in accounts" instead of "total income" under Chapter XII-B.

On perusal of the provisions of Section 115JB, it can be observed that, provisions of Section 115JB(1) create charge on "taxable subject" i.e. "company" and on "taxable object" i.e. on "book profit". Akin to normal provisions of the Act, provisions of Section 115JB(2) contain computational mechanism for computing income liable to tax under Section 115JB.

1.2 Relevance to Decision of Hon'ble Supreme Court:

From a tax perspective, we have judicial hierarchy wherein the decision of the ITAT is subject matter of review by the Hon'ble High Court and decisions of the High Court are subject matter of review by the Hon'ble SC, if such decisions of the Hon'ble High Court do involve any substantial question of law.

In case of identical issue is involved, lower authorities are required to give cognisance to the decisions of higher appellate authorities. Supreme Court being the highest adjudication authority, decision of the Hon'ble Supreme Court is considered as law of land and is binding for all lower authorities.

Hence, it is critical to examine decisions of the Hon'ble Supreme Court to see whether it had a chance to deal with interpretation and scope of provisions of Section 115JB. In this regard, two decisions by the Hon'ble SC have been dealt with:

- In the case of *Apollo Tyres Ltd. vs. CIT [255 ITR 273]*, the Hon'ble Supreme Court has held to the effect that the powers of the assessing officers for making adjustments to profit as per profit and loss account prepared in accordance with the Schedule VI to the Companies Act are restricted to only such items which are specifically mentioned in the provisions of Section 115JB.
- The Hon'ble SC has reiterated the same view even in its subsequent decision in the case of *Malayala Manorama Co. Ltd. vs. CIT [300 ITR 251]*.
- In addition to the same, the Hon'ble Rajasthan HC in the case of *Rajasthan Spinning & Weaving Mills vs. DCIT (281 ITR 177)* has held to the effect that the provisions of Section 115J constitute complete code in itself. In this regard, the Hon'ble HC has relied upon the decisions of the Hon'ble SC in the case of *Apollo Tyres Ltd. (supra)*. In absence of further appeal to SC by the department, it can be concluded that the same has achieved finality. This has also been emphasised by the Hon'ble SC in the case of *Malayala Manorama (supra)*.

On perusal of the provisions of Section 115JB, it can be observed that, provisions of Section 115JB(1) create charge on "taxable subject" i.e. "company" and on "taxable object" i.e. on "book profit". Akin to normal provisions of the Act, provisions of Section 115JB(2) contain computational mechanism for computing income liable to tax under Section 115JB.

Based on above, it can be summarised that provisions of Chapter XII-B are complete/self-contained code in itself.

The Hon'ble SC has held to the effect that AO's powers to make adjustment to profit as per P&L prepared in consonance to Schedule VI to the Co. Act are restricted to as provided under the Explanation to Section 115JB(2). Further, this restriction equally applies to taxpayer as it is required to file its return of income under self assessment. Hence, taxpayer and tax administration are under obligation to follow the provisions of the Section 115JB in its letter and spirit as the provisions of Section 115JB constitute a complete code in itself.

However, one should consider the fact that the restriction in adjustments will apply only in case P&L Account is prepared in consonance with Schedule VI to the Co. Act.

1.3 Effect of *Non-Obstante* Clause:

Provisions of Section 115J, Section 115JA and Section 115JB start with the *non-obstante* clause which indicates the intention of the legislature. The relevant extract has been reproduced herein below:

> ***"Special provision for payment of tax by certain companies.***
> ***115JB.*** *(1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company ....."*

Further, the book profit has been defined under Explanation – 1 to Section 115JB as under:

> *"Explanation 1.—For the purposes of this Section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-Section (2), as increased by—"*

The Hon'ble Jaipur and Cochin ITAT have held to the effect that provisions of Section 115JB will override only computational provisions and not to Section 4 and Section 5 of the Act. These decisions raise following questions for consideration:

> *"Whether provisions of Section 115JB are complete code in itself or merely an alternate computational mechanism?"*
> *"Whether the "non-obstante" clause contained in Section 115JB applies only to provisions of Chapter IV or the same has over-riding impact over all other applicable provisions of the Act (i.e. Chapter II)?"*

To understand and appreciate the above questions, following points require special consideration:

- In view of the fact that present analysis/article is not examining the difference between various types of the *non-obstante* clauses, we will not deal with the implications due to different forms of non-obstante clauses.
- Wherever the legislator have intended to make a particular provision of the Act as having overriding effect over one or more specific Sections, the same has been specifically mentioned in the provisions to be given overriding effect. For example, we may refer to Section 40:

  "Amounts not deductible.
  40. *notwithstanding anything to the contrary in Sections 30 to 38,.......,-"*
- Where a particular Section was intended for having overriding effect over specific category/ group of provisions, such intention has also been specifically provided in the statute. For example, we may refer to Section 44:

  "Notwithstanding anything to the contrary contained in the provisions of this Act relating to the computation of income chargeable under the head..."
- Wherever a particular Section was intended for having overriding effect a particular Chapter, the same has been expressed differently. For example, we may look into provisions of Section 79:

  "Notwithstanding anything contained in this chapter ...."
- On combined reading of the provisions of Section 115JB, scheme of provisions of the Act including type and use of *non-obstante* clause and intention of the legislature for introduction of provisions vide Chapter XII-B, it suggests that the provisions of Section 115JB have overriding effect over all other provisions of the Act which deals with taxation under "normal provisions of the Act and application of Section 115JB is not restricted to only computational provisions contained under Chapter IV.
- Further, in light of the fact that the provisions of Section 115JB contain charging as well as computational mechanism, it will override provisions of Chapter II, III, IV, V, VI and VI-A. In view the fact that scope of Section 115JB is till levy of tax on "deemed total income", provisions of Section 115JB, procedural aspect of filing of return and assessment mechanism, *etc.* will be governed by provisions of Chapter XIV.

- It is worthwhile to reiterate the fact that the inefficiency of the then existing charging provisions coupled with the computational mechanism (i.e. combined application of provisions of Chapter II to VI-A) to generate/collect enough taxes from taxpayers due to higher allowances under beneficial computational and charging provisions when compared with the profits as per the Co. Act, the provisions of Section 115J or 115JA or 115JB have been introduced.
- Hence, when we keep the intention of the legislature and scheme of provisions of the Act, as discussed herein above, we can understand the relevance of "*non-obstante* clause" at the beginning of the Section 115JB for giving overriding effect over provisions of Chapter II to VI-A.

1.4 Relevance of Provisions of Schedule VI to the Companies Act:

- Provisions of Section 115JB taxes "book profit" for companies. For the purpose of this Section, "book profit" has been defined as the net profit as shown in the profit and loss account for the relevant previous year subject to certain adjustments as prescribed under the relevant provisions of the said Section 115JB.
- Provisions of sub-Section (2) to Section 115JB specifically require the companies to prepare profit and loss account in accordance with the provisions of Part II of Schedule VI to the Co. Act or as per the provisions of such other governing law and also to adopt same polices, accounting standards and methods as adopted for the purpose of accounts laid before its AGM.
- In summary, "book profit" of the company has to be the profit as per P&L account which has been prepared in accordance with the provisions of the Co. Act or relevant other applicable governing law.
- Hence, in case the P&L is not in accordance with or deficient from compliance with the accounting standards or requirements under Schedule VI to the Companies Act read with provisions of Section 211 of the Co. Act, AO has powers to make adjustments to the net profit as per P&L account in addition to the adjustments specified under Explanation–1 to Section 115JB.

Hence, in case the P&L is not in accordance with or deficient from compliance with the accounting standards or requirements under Schedule VI to the Companies Act read with provisions of Section 211 of the Co. Act, AO has powers to make adjustments to the net profit as per P&L account in addition to the adjustments specified under Explanation – 1 to Section 115JB.

- However, two critical points are involved here, one of them being interpretation of "book profit" and second, being how far and to what extent adjustment can be made under Chapter XII-B to net profit as per the accounts prepared in accordance with the Co. Act.
- On first issue of interpretation of "book profit", the definition of "book profit" under Section 115JB is quite clear. However, the Hon'ble Jaipur ITAT in case of *Shree Cements Ltd. (Supra)* has held to the effect that as "capital receipt" is not income under Section 2(24), hence such capital receipt would not be taxable even under Section 115JB. In this regard, the relevant paras of the said decision of the Hon'ble ITAT in ITA No. 614, 615 & 635/ JP/2010 have been reproduced hereunder:

  > *"13.2 ...... it has been held by the Apex Court that effect that "capital receipt" is not "income" under Section 2(24) of the Act. Further, it has held that if the receipt is neither "profit" nor "income" and which does not have any element there-of embedded there in, cannot be part of "profit" as per profit & loss account ......"*

- It is evident that the Hon'ble ITAT has applied classification of "sales tax subsidy" under the Act for the purpose of determining its treatment under Section 115JB. Hon'ble ITAT ought to have been appreciated that the profit and loss accounts are required to be compiled in accordance with the provisions of the Co. Act read with accounting standards. Hon'ble ITAT ought to have been appreciated that the definition of "income" under Section 2(24) is not applicable for the purpose of preparation of P&L account in accordance with Schedule VI to the Co. Act and consequently, not relevant for computation of book profit under Section 115JB.

- Further as per AS-12, gain on premature settlement sales tax liability at NPV results in gain which is required to be credited to P&L account and was appropriately credited amount to P&L account by the company. Hence, conclusion of the Hon'ble ITAT that credit of "sales tax subsidy" to profit and loss account is not in compliance with the provisions of Co. Act and is incorrect in my view. With respect to Judiciary, in my view, Hon'ble ITAT ought to have relied upon and examined requirements/classification under the Co. Act and accounting standards and ought to have applied the same classification for the purpose of computation of "book profit" under Section 115JB.
- Now, we will see another limb of interpretation affecting "book profit" wherein the adjustments to the net profit have been permitted but without appreciating scope of notes to accounts and requirements under Section 211 of the Co. Act.
- The Hon'ble Mumbai ITAT in the case of *Shivalik Venture P. Ltd. (supra)* has allowed to reduce net profit as per P&L by the value of gain on transfer of asset to subsidiary relying upon exemption under the Act and the notes to accounts expressing company's view on applicability of MAT on such gain credit to profit and loss account.
- Based on notes to accounts, the Hon'ble ITAT has held to the effect that such amount of surplus on transfer of asset to subsidiary requires exclusion from net profit to arrive at book profit as such surplus is not income under Section 2(24) and the transaction is not taxable under normal provisions of the Act. The Hon'ble ITAT relied upon the decision of the Hon'ble Delhi HC in the case of *Sain Processing and Weaving Mills P. Ltd. (Supra)* for coming to conclusion on permissibility of adjustment based on notes to accounts.
- In the case before the Hon'ble Delhi HC, taxpayer has sought for adjustment of depreciation from net profit to arrive at book profit under Section 115J as the same was not provided in P&L Account but was part of notes to accounts in accordance with Section 211(3B) of the Co. Act and hence, the Hon'ble Delhi HC has approved taxpayer's claim by dismissing the department's appeal.
- Considering Section 211(3B) of the Co. Act, I believe that the decision of the Hon'ble Delhi HC has correctly upheld the order of the Hon'ble ITAT by allowing adjustment of depreciation disclosed in notes to accounts in terms of Section 211(3B) of the Co. Act to net profit to arrive book profit under Section 115JB.
- In the case before the Hon'ble Mumbai ITAT, the note in accounts were more of opinion/ view of the company as contrary to the fact before the Hon'ble Delhi HC where the note on depreciation was in terms of Section 211(3B) of the Co. Act. Considering this factual difference and reading Section 211(3B) of the Co. Act, I believe the reliance by the Hon'ble Mumbai ITAT on the decision of the Hon'ble Delhi HC is misplaced.
- To appreciate reason for giving adjustment for note to accounts which is in terms of Section 211 (3B) of the Co. Act, it is worth of referring to the observation of the Hon'ble Cochin ITAT in the case of *Padinjarekara Agencies Pvt. Ltd. vs. ACIT [ITA 375/ Coch./2014]* at Para 21 and 22 wherein it has been observed that provisions of the Income-tax Act do not provide option as provided under Section 211(3B) of the Co. Act and hence, adjustment need to be made for such disclosures to arrive at book profit under Section 115JB.
- Hence, one needs to consider provisions of the Co. Act and requirements under accounting standards on independent basis and without getting it influenced by provisions of the Income-tax Act, 1961 (other than Section 115JB itself) so far as to determine the correct profit as per P&L account in accordance with provision of Section 211 and Schedule VI to the Co. Act.

2. Potential of Restrictive Applicability of Section 115JB as Alternate to Chapter IV Only

The Hon'ble ITATs (Cochin & Jaipur) have ruled that provisions of Section 115JB would override Chapter IV and not Chapter II. Effectively, the Hon'ble ITATs held that Section 115JB is merely computational provision. In that light, there are several connection issues which are yet not answered by the judiciary:

- If Section 115JB is subject to Section 4 and 5, the taxability under Section 115JB needs to be examined with respect to the tax residency and scope of total income based on source rule, *etc.* of the company.

- If Section 115JB were to override only computational provisions under Chapter IV, then, prior to the amendment *vide* Finance Act 2006, specific exclusion for exempt income under Chapter III *vide* clause (ii) to Explanation–1 to Section 115JB(2) was redundant.
- If Section 115JB would have been alternate to only provisions of Chapter IV then sub-Section (3) to Section 115JB would become redundant. However, existence of sub-Section (3) indicates that taxation of book profit under Section 115JB is independent to brought forward/carry forward of loss under normal provisions of the Act.
- If Section 115JB would have been alternate to only provisions of Chapter IV then sub-Section (6) to Section 115JB would become redundant. However, existence of sub-Section (6) to Section 115JB indicates that taxation of book profit under Section 115JB is independent of exemption under Chapter III.
- In view of above, if we hold that taxability under 115JB is subject to Sections 2(24), 4 and 5 and ratio of the Hon'ble ITAT decisions, discussed above, as correct, will defeat the "appropriateness" or "relevance" of the provisions of Section 115JB and may also defeat purpose of said provisions.
- Hence, I believe that provisions of Chapter XII-B are not merely alternate computational mechanism. Considering the legislative intent, deeming fiction, levy of tax on specific taxable subject (i.e. company) and separate computational mechanism make provisions of Chapter XII-B of the Act as complete code in itself.

3. Other Issues

Overriding Effect Over Provisions Of Section 90:

Even though not directly connected with the captioned discussion on inter-play between taxation under normal provisions *vis-a-vis* taxation under Section 115JB, captioned issue of overriding impact of provisions of Section 90 is worth understanding.

- Provisions of Section 115JB as well as Section 90 of the Act have *non-obstante* clause whereby provisions of both the Sections would override other provisions of the Act. Hence, it would be relevant to examine which provisions would prevail in interplay of both the said Sections.
- Provisions of Section 115JB deal with taxability of income when provisions of Chapter I are applicable to the facts of the taxpayer. While provisions of Section 90 deal with giving effect to the agreement entered with other country for distribution of taxing rights.
- In my view, the Section 90 deals with applicability of charging provisions (by making Act subject to beneficial provisions of DTAA) and hence, overrides provisions of Section 115JB. Hence, if India do not have right to levy tax when read with DTAA, provisions of Section 115JB will not apply.

Provisions of Section 115JB as well as Section 90 of the Act have *non-obstante* clause whereby provisions of both the Sections would override other provisions of the Act. Hence, it would be relevant to examine which provisions would prevail in interplay of both the said Sections.

4. Summarising

In my view, various judicial forums ought to have interpreted Section 115JB without making it subject to same interpretation and taxability as under normal provisions of the Act. Further, provisions of the Companies Act should be given due cognisance for taxability under Section 115JB. Hence, Section 115JB is neither subject to Chapter II nor merely an alternate to Chapter IV,sssss but a separate and complete code in itself regarding taxability of certain income. ■

Business Intelligence (BI) Tools

Irrespective of the size of the organisation, having your data spread across multiple third party and/or internal systems may give you some hard tremors in terms of monitoring of data and taking decisions based on it. The concern is especially important in this day and age where the regulatory environment is extremely stringent. Professionals like chartered accountants who play lead roles as advisors as well as in execution capacity need to device innovative and effective ways to deal with this situation. This article explains features of 'Business Intelligence Tools' that play a key role in planning and decision making process of an organisation and discusses opportunities for the chartered accountant professionals in this segment. Read on...

The concerns which are most daunting upon the chief operating officers on outsourcing front in current era include:

1. Data being spread all over the place due to multiple systems, and
2. Post-processing and monitoring of output.

One of the natural ways thought upon to resolve the above concerns involves either maintaining all the systems in-house or enforcing a single vendor policy. None of these options seem feasible in the wake of cost, resources and expertise. Developing systems internally takes a huge drain on cost and efforts of the organisation. More importantly, it diverts the very purpose of the organisation's existence. Surely, companies do not exist to exhaust all its resources on operational issues. Having a single vendor policy also does not seem too exciting, given the fact that no single vendor possesses expertise on all the required parameters and domain. It is only apt to reach out to specialised vendors for specific requirements.

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Having debated over the above options for some time, modern day executives have resorted to what is called a 'Business Intelligence Tool' or the more common way of referring 'BI tool' to address these requirements. BI in its pure form integrates technology and functional features to form a robust reporting and monitoring tool. BI tool is a known concept in the technology world but seldom an area of focus for professionals like chartered accountants due to its limited outreach and scope in early days. The recent phenomenon of technology has resulted in digitalising every area of an organisation thereby blending technology with functional performance and outcomes. This has made it inevitable for finance professionals to get their hands dirty on this subject.

The way to think about a BI tool is that it works like an aggregator plus an automation tool making different systems talk to each other with a lot of customised features. The so called intelligence is built to consolidate the data from various systems and deliver them in a manner most suited to an organisation. The core objectives that go into making of a BI tool include:

a) Consolidation of data,
b) Post processing of data,
c) Alarms and red flags checks on output, and
d) Elimination of manual dependency.

A BI tool has been exposed to various functions within an organisation, most of which are used in an interrelated manner. Some of the most evident themes which have arisen from a BI use case have been described below:

Risk Management and Compliance

With the sophistication of Indian financial markets and a growing intellectual class of investor community, risk management has never been of such prime importance as today. This includes all types of risks viz., market risk, credit risk and operational risk. Any risk management function involves three primary aspects i.e., identification, measurement and monitoring of risk. While the identification and measurement aspects are taken care by an internal or third party risk systems, it is the monitoring aspect which the BI tool is most apt for.

Market Risk: Financial risk plays crucial in every organisation and is directly aligned with front office. It involves keeping a tab on various trading/investment related risk parameters including exposure, value at risk (VaR), sensitivities, stress tests, *etc.*

Risk analytics systems measure these parameters on top of which there is an incremental need to develop a robust risk monitoring system. This is to ensure that risks are maintained within permissible limits and prompt actions are taken as and when required. This is required to cater to various elements like compliance, capital adequacy and regulatory limits. A BI tool gets integrated with the mainstream risk system and a hand shake is created to allow swift flow of output to a BI tool. Pre-set thresholds are inbuilt within the tool allowing ongoing monitoring of exposures and risks as market movements occur. This allows the risk manager and front office team to be pro-active in handling worsening situations and avoid monetary losses to that extent. In addition to the above, back-testing is another important area where BI tools can help whereby cross monitoring of mark-to-market PnL and VaR is performed to confirm the VaR model validation.

Any risk management function involves three primary aspects i.e., identification, measurement and monitoring of risk. While the identification and measurement aspects are taken care by an internal or third party risk systems, it is the monitoring aspect which the BI tool is most apt for.

Credit Risk: This involves keeping a track of exposures and risk arising out of various counterparties. In an OTC market setting, it is eminent to maintain counterparty limits based on the risk tied to them and to avoid concentrated exposures with a single counterparty.

A BI solution monitors these exposures highlighting exceptions on each trade and counterparty. Counterparty exposure is also a very important element of regulatory compliance wherein most local and global regulations impose some kind of counterparty check limits to be maintained. This includes regulatory bodies and provisions like RBI, EMIR, AIFMD, UCITS, BASEL, *etc.*

Operational Risk: This relates to maintaining internal controls within an organisation and deals with aspects within and outside of investment spectrum. Operational risk covers widest dimensions of an organisation and is a necessity for all the functions. It relates to processes like expense management, payroll, HR policies, procurement, audit, fraud, *etc.*

BI tools can cover the objective aspects of these controls by maintaining a check list and monitoring the flow of information. Needless to say, this will involve integration of multiple systems which is again a pre-requisite with any BI solution.

Artificial Intelligence

A sophisticated version of BI solution includes incorporating artificial intelligence or what we term as *algorithms.* A traditional version of BI tool is expected to throw output and alarms to help facilitate a decision making process for management and executives. This process can be further supplemented by a feature to take decisions when an exception occurs. This can be achieved by artificial intelligence.

A simple example of such feature would be in a trading scenario wherein if the exposure increases above x% of overall portfolio, it automatically triggers a wind down of position in the market. While this concept is fairly advanced, it is appreciated that incorporating an exhaustive level of decision making is neither possible nor feasible for any organisation. Having said that, the idea is to relieve the senior management from taking standardised decisions or what we call 'rules of thumb'.

Technology and BI

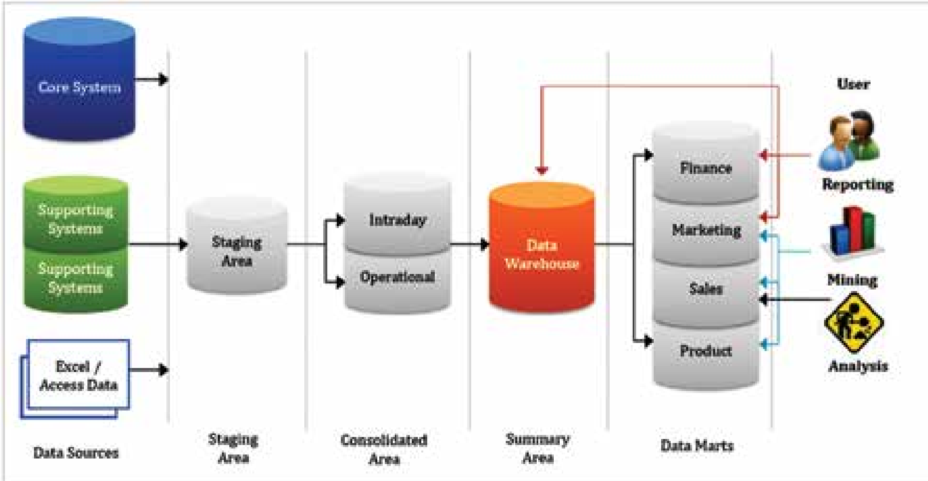
As with any other system or product, technology is the single most important element which drives the success of any BI solution. In a world where technology choices are in abundance and constantly evolving, it is often a difficult decision to select a technology which is most suitable to a particular use case.

While for some the choice of technology is more in terms of licensed software vs. an open source platform, it is although recommended to go with the technology which can optimise the end goal. The broad technology stack is split across companies like IBM, SAP, Oracle and Microsoft. Additionally, there are multiple open source platforms to choose from including, Pentaho, Jasper, Hadoop and R programming. Open source technologies are those which do not incur any licensing requirements and results in lesser overheads in terms of system maintenance. Open source technologies allow even the smaller companies to leverage the BI route by having a cost effective set-up.

Most companies already have some sort of subscription to commercial technologies and it only makes sense to leverage those technologies by extending its usage to create BI tools. Having said this, technology choice calls for a balancing act on part of the management. It is never a straight forward decision to balance the business requirements with technology keeping in view the analytical requirements and cost considerations. Again, there is a trade off in terms of processing speed, ability to handle data volumes, integration compatibility, and visual appeal and so on.

BI Workflow

Showcased below is a typical BI framework:



Source: MindCraft Software Pvt. Ltd. (MindCraft is a leading BI solutions provider in BFSI segment in India.)

Dashboard Reporting

Bulky spread-sheet reports are a thing of past. Management, investors and executives heavily emphasise the need for eye detailing dashboards by reporting key parameters. A BI tool can be tuned to squeeze key reporting parameters by creating a dashboard structure. This is achieved by using what is called an Extract-transform-load (ETL) process, which transforms the source data into user friendly logic and format. What's more is that these dashboards can be a by-product of data from multiple report sources.

Dashboard reports include a combination of mathematical logic, formatting and data massage. Some of the noteworthy features include:

- Data Sorting– e.g., reporting top five values of each parameter
- Data Visualisation– charts, graphs, pie charts, *etc.*
- Variance Analysis – key differences in values based on time scale or segment, e.g., YTD, QTD analysis
- Trend Analysis

A BI tool can be tuned to squeeze key reporting parameters by creating a dashboard structure. This is achieved by using what is called an Extract-transform-load (ETL) process, which transforms the source data into user friendly logic and format.

CAs in practice can also propose formulation of these tools and play a lead role as a consultant in drawing success of the tool. The BI tool is of immense help during audit exercise to give a single point clearance of all the functions in an organisation.

- Slice and Dice–carving reports across rows and columns based on pre set dimensions

Another important feature of dashboard reporting is the ability to incorporate *ad hoc* or on the fly reporting mechanism. Increasing number of BI tools include an ability of a drag and drop feature to create on the fly MIS. Users can select reporting parameters from a list of parameters and tune the formatting as suitable.

Real Time Analysis

Much of the trading or market driven indicators require a need for a real time tracking in order to take timely actions. This is true for areas like risk management, compliance, capital usage limits, *etc.* Many of these objectives can be achieved by integrating add-ons or connectors to the core front office or data application system and creating a hand shake with the BI tool. This includes front office trading systems to absorb trade feeds and data platforms like Bloomberg or Reuters or any open source public data source like yahoo finance to track the market movements.

Way Forward

The BI market is already clocking about $15 billion market currently and expected to grow at a rapid pace for the years to come. According to Gartner, world's leading information technology research and advisory company, the BI market is expected to reach over $20 billion by 2018. Having described the above use case, it is clear that BI is not just an efficiency tool but a very strong cost reduction tool as well. In the growing wake of cost reduction exercises by organisations, a BI tool investment goes a long way in achieving this objective. Lack of manual intervention is the single most important flux point of saving cost with a BI solution.

Currently, IT and technology companies dominate the offerings in BI segment. This trend is fast changing with growing number of boutique analytics and techno-functional companies entering this segment in a big way. The USP these companies bring over a traditional IT company is the functional or domain expertise within the area of specific domain like capital markets, insurance, banks, manufacturing, pharma and e-commerce.

Another important aspect going forward is the aspect of sophistication which comes with a BI solution. There is an increasing trend of adding additional features to the BI suite like artificial intelligence, enterprise level integration, access controls, commentary features and so on. These features raise the benchmark of what a standard BI solution can offer. Having said this, firms need to be careful and vigilant in deciding the extent of automation and intelligence they would want to incorporate in such solutions. At the end of the day, it is the people who run the organisation and the flavour of subjectivity, instinct and experience can never go out of fashion while making some key decisions.

The final trend observed during recent times is translation of these tools in to more compatible instruments like mobiles and tablets. Executives often have an urge to showcase various metrics and performance while being on the move. This is also true to business development and sales staff who demonstrate these capabilities to their prospects while on field. This brings a need for multi versions of GUIs to facilitate these features.

Opportunities for CAs

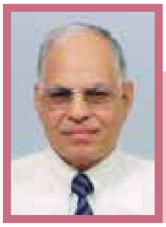
To summarise the things, chartered accountants can play a major role in implementation and execution of such BI tools in a BFSI segment. It is of common knowledge that these BI tools are techno-functional in nature and much of the expertise from the functional stand-point is crucial for its success which is where CAs step-in. This includes areas of BI in capital markets, finance, analytics and BFSI in general. The so called logic or rules are of crux for the successful implementation of these solutions in addition to the technology stack.

CAs in practice can also propose formulation of these tools and play a lead role as a consultant in drawing success of the tool. The BI tool is of immense help during audit exercise to give a single point clearance of all the functions in an organisation. Needless to mention, audit checks can also be automated from an internal control perspective to trigger an exception whenever it arises. ■

Competition Law-Indian Experience

With the globalisation and progressive integration of the world economy, there is increasing flow of trade, finance, ideas and information across the world. The World Bank, World Trade Organisation (WTO) and Organization of Economic Co-operation and Development (OECD) have long back realised the importance of competition law for efficient functioning of the free-market economy. Presently over 100 countries have legal and regulatory framework for competition, anti-trust activities, and merger & acquisition in the corporate sector. This article discusses the concepts of competition policy and law and their implications on international trade in the light of the experience of advanced countries and India, and offers a few suggestions.

"Competition is a very rich concept containing within it a number of ideas and may be valued for many reasons as serving economic, social and political goals". - Australian Trade Practices Tribunal.



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Concept

Fair competition is one of the key pillars of an efficient market economy for optimisation of production and distribution. Competition stimulates innovation and productivity, ensures optimum allocation of resources and enables better satisfaction of consumer preferences. Competitiveness refers to an enterprise's ability to compete–in respect to prices, quality, management, and innovation. In a competitive market, consumers are protected against mal-practices of trade and industry. They are also ensured availability of 'goods' and 'services' in abundance of acceptable quality at affordable price. Moreover, in a fair business climate, investors face relatively low entry and exit barriers and are protected against the risk of expropriation and abuse. Competition leads to an overall enhancement of efficiency and productivity of factors of production and thereby higher level of socio-economic welfare.

Competition Policy

'Competition Policy' promotes equity among producers and reduces rent seeking behaviour on their part. According to the World Bank, *"Competition policy refers to government measures that directly affect the behaviour of enterprises and the structure of industry."* An appropriate competition policy includes both:

(a) policies that enhance competition in local and national markets, such as liberalised trade policy, relaxed foreign investment and ownership requirements, and economic deregulation, and
(b) anti-trust or anti-monopoly law designed to prevent anti-competitive business practices by firms and unnecessary government intervention in the market place.

Competition Law

With the globalisation and progressive integration of the world economy, there is increasing flow of trade, finance, ideas and information across the world. The competition law is one of the most important legislations to promote and ensure efficient functioning of free-market economies. Though there is no multilateral agreement on trade and competition in the WTO, but the principles of non-discrimination, transparency, most-favoured-nation and national treatment are an integral part of the liberalised trading system under the WTO regime.

The regulatory framework lays down the principles of fair conduct of business actively and checking:

(i) horizontal agreements between firms to fix prices, engage in bid-rigging, restrict output and/or market shares, allocate geographic markets and or customers; and
(ii) abuse of market positions by large dominant firms and vertical restraints between suppliers and distributors such as resale price maintenance, exclusive dealing and geographical market restrictions.

Competition and International Trade

Trade and competition policy share some of the common objectives and values. Both contribute towards making markets more competitive and improving the allocation of resources and promoting efficiency and consumer welfare. However, in practice, the goals and objectives of international trade and competition policy may diverge. The WTO Working Group on the Interaction between Trade and Competition Policy while discussing the role of competition policy in ensuring effective market access and the role of trade liberalisation in facilitating removal of governmental measures that facilitate anti-competitive behaviour of enterprises stated: *"Trade policy was basically concerned with the government action, whereas competition policy focused on the behaviour of enterprises. Trade policy is traditionally focused on measures at the border, whereas competition policy regulates competitive conditions and behavior of enterprises within the country".*

Exposure to international markets plays a central role in promoting competition in domestic markets. Imports directly introduce international competition pressures to domestic markets. This pressure is also introduced indirectly, through exports, since domestic firms have to compete in the global markets. It is an established fact that trade liberalisation increases competition and, consequently, efficiency and productivity growth.

International Regulatory Framework

The history of the United States of America (USA) anti-trust regime can be traced to the Sherman Act, 1890. The antitrust laws are concerned with defining the fundamentals of the competitive order and preventing market distortions. The European Union (EU), Canada and Australia also have well developed competition regimes. More and more countries had to introduce regulatory framework after failing to control anti-competitive practices through other provisions of their laws. Experience

In the US, high prices charged by a monopolist are not considered anti-competitive per se and the issue is left for the courts to decide. The European Union, however, condemns excessive pricing as an 'exploitative abuse'. In India, 'excessive pricing' by itself is not listed as an anti-competitive violation under the Competition Act, 2002.

proves that it is easier to deal with combinations and mergers at the initial stages, rather than to post-facto control of market power or collusions to avoid social and economic cost by ordering a de-merger. The regulatory authority looks both at the plans and intentions of a company in approving combinations. It is ensured that the acquisition move is not a pre-emptive move to kill future competition. In Australia, the government has powers under the Foreign Acquisition and Takeovers Act to block proposals which are deemed contrary to national interest.

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The typical cases of combinations include:

(a) The Federal Trade Commission (FTC) took action in the merger between Institute Merieux of France and Connaught of Canada, although neither party maintained production facilities in the US. Merieux, the sole supplier of rabies vaccines in the US, had acquired Connaught, which was still developing a rabies vaccine and was thus a potential competitor. The FTC was concerned that Merieux's monopoly would remain unchallenged, and, therefore, forced Merieux to lease Connaught's rabies vaccine manufacturing business to another firm.

(b) The FTC stopped the merger of office supply retail chains Staples and Office Depot because of the resulting high market share and likelihood of increased prices.

(c) The European Commission (EC) blocked the merger of Lonrho and Gencor because the two firms would have accounted for 70% of the world platinum supply, whereas the other suppliers were fragmented.

(d) The EC stopped the acquisition of Portugal's gas company GDP by its electricity company EDP and Italian energy company ENT because EDP and GDP had dominant positions pre-merger in electricity and gas markets. This vertical merger could have led to "input foreclosure" for rivals by increasing their cost of gas, the raw material for producing electricity.

Cartels

Cartels are the most pernicious form of anti competitive business practices because such understandings and arrangements are not reduced in writing. It, therefore, becomes difficult for the authorities to investigate and gather evidence of price fixation for effective prosecution of the offenders.

Cartels are likely to be more harmful in developing economies where the rate of detection and quick judicial punishments may not match with those in the developed world. Mexico and Colombia are classical examples where the ill-famed drug cartel mafia is known to be constantly engaged in a state of 'drug war'. The 'gangland' type executions by Mexican gangs have reportedly increased dramatically since 2001 and in 2007 an estimated 2,500 executions took place. In Argentina, in July 2005, five Cement companies were prosecuted for a cartel that lasted for 18 years from 1981 to 1999. The cartel members were fined $107 million, the largest antitrust fine in the nation's history.

➢ Siem Reap in Cambodia is a very popular tourist town, which houses the famous Angkor Vat temples. There are three means of transportation from Phnom Penh to Siem Reap–boat, road and air. The competition between boat companies has been intense and the prices came down from US$ 10 to US$ 5. The boaters discussed among themselves and resolved that they will charge US$ 10 from Khmer nationals and US$ 20-25 from foreigners. They further agreed that they would not compete with each other and would share their departure schedules. There was no written agreement but the common understanding constituted the cartel agreement.

- The International Vitamins Cartel in which all leading manufacturers of vitamins located in Belgium, Canada, France, Germany, Japan, the Netherlands, Switzerland and the United States, including Hoffmannla Roche Ag and BASF of Germany, Rhonepoulenc of France operated for over 10 years from 1989 to 1999 and covered all major vitamins consumed the world over. The overcharge on vitamins imports by 90 economies during the years 1990 to 1999 was estimated to be $2,709.87
- The EC too has made great strides in fighting cartels. Between 2000 and 2005 the Commission adopted 38 infringement decisions targeting both European and worldwide cartels, and imposed total fines of €4.4 billion.

INDIAN EXPERIENCE

Background:

The Constitution of India in the 'Directive Principles of State Policy' provides "that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment [Article 39 (c)]." Accordingly, the Monopolistic and Restrictive Trade Practices Act 1969 (MRTP Act) was enacted. The MRTP Act dealt with control of monopolies, prohibition of monopolistic and restrictive trade practices. The provision relating to unfair trade practices was inserted in 1984. The MRTP Act specifically dealt with issue relating to mergers and acquisition, which required prior approval from Central Government (Section 23), but the provisions relating to concentration of economic power were deleted in 1991.

Competition Act, 2002:

The Government of India enacted the Competition Act, 2002 (Act) on 13th January 2003 to give a boost to the process of globalisation and liberalisation and efficient functioning of free market economy. The Act prevents practices having adverse effect on competition, to promote and sustain competition in markets and protects the interests of consumers and ensures freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental therewith.

The Act prevents practices having adverse effect on competition, to promote and sustain competition in markets and protects the interests of consumers and ensures freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental therewith.

Simply stated, the Act mainly deals with three areas–(a) prohibition of anti-competitive agreements; (b) prohibition of abuse of dominant position; and (c) regulation of combinations including acquisitions, mergers and amalgamations which exceed the threshold limits specified in the Act in terms of assets of turnover. The four limbs of the law are inter-related.

The Competition Act 2002 mainly deals with three areas – (a) prohibition of anti-competitive agreements; (b) prohibition of abuse of dominant position; and (c) regulation of combinations including acquisitions, mergers and amalgamations which exceed the threshold limits specified in the Act in terms of assets of turnover. The four limbs of the law are inter-related.

The important concepts used in the Act (Section 2) as under:

'acquisition' means directly or indirectly, acquiring or agreeing to acquire shares, voting rights or assets of any enterprise; or control over management or control over assets of any enterprise.

'agreement' includes any arrangement or understanding or action in concert;

"consumer" includes one who buys "goods" or avails of "services" for consideration notwithstanding whether such purchase of 'goods' or availing of 'services' is for one's own consumption or for resale or commercial purposes.

'goods' includes goods manufactured, processed, mined or imported into the country.

'person' includes an individual, firm, company, corporate incorporated by or under the laws of a country outside India.

"enterprise", *inter-alia*, includes private sector undertakings, public sector undertakings, government departments engaged in production, storage, supply, distribution, acquisition or control of articles, goods or services of any kind for consideration, but does not include government body performing sovereign functions.

'service' means services of any description which is made available to potential users including the provision of services in connection with business of any industrial or commercial matters.

Anti-competitive agreement:
The Act prohibits all anti competitive agreement, which are void (Section 3). Anti competitive agreements are those agreements which have appreciable adverse effect on competition within India (AAEC) and which limit production or supply or allocate markets, agreement to fix price, collusive bidding, tie in arrangement, exclusive supply/ distribution arrangement and refusal to deal with any party.

Though the term AAEC has not been directly defined in the Act, but any agreement between any persons or associations engaged in identical or similar trade of goods or provisions of services which directly or indirectly determine purchase or sale prices, limits, control production, supply, markets, technical development, investments or provision of services, share the market, source of production or by way of allocation of geographical areas of market, goods or results in bid rigging, collusive bidding shall be presumed to have an appreciable adverse effect on competition.

Abuse of dominant position:
The Act prohibits abuse of dominant position (Section 4). Dominant position is abused by imposing unfair conditions with regard to pricing, distribution, supply *etc.* which makes other competitors to unable to enter the market. The object is to prevent and check that no enterprises or group shall abuse its dominant position. There shall be abuse of dominant position if enterprises or group imposes unfair or discriminatory conditions for purchase or sale of goods or services.

Regulation of Combinations:
The Act deals with combinations including mergers, amalgamation and acquisition of enterprise or control by one or more persons or group (Section 5). There is prescribed threshold limit in terms of assets or turnover of the entity which will come into existence after acquisition/merger and amalgamation.

The anti-competitive effect of mergers arises from increased risk of collusion amongst reduced number of players or from creation of excessive market power or even near monopoly conditions. The advantages of checking anti-competitive effect include (i) increased consumer welfare, higher levels of efficiency and greater innovation; (ii) checking collusive enterprises escaping punishment by simply resorting to the merger route thereby defeating the purpose of the law; and (iii) preventing collusion by restructuring industry.

The Act prohibits certain combinations having adverse effect on competition (Section 6). It provides that no person or enterprise shall enter into a combination which causes or likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void. The maximum of 210 days is prescribed for the clearance of combinations. Further, any person or enterprise who proposes to enter into a combination is required to give notice to the CCI disclosing the details of the proposed combination within 30 days of approval of proposal or execution of agreement.

Regulation of Cartels:
'Cartel' includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of service.' Cartel agreements are presumed to have adverse appreciable effect on competition in markets of India.

The three essential ingredients of cartel are:
(i) An agreement which includes arrangement or understanding;
(ii) Agreement is amongst producers, sellers, distributors, traders or service providers *i.e.*, parties engaged in identical or similar trade of goods or provision of service; and
(iii) Agreement aims to limit, control or attempt to control the production, distribution, and sale or price of, or, trade in goods or provision of services.

The adverse effect of cartels by overcharging is primarily on consumers. Normally the median cartels overcharge 17-19% for domestic cartels and 30-33% for international cartels. Studies have found that cartels raise prices 200% or more above the unit cost of production and distribution.

Competition Commission of India

The CCI of India, a quasi-judicial authority, was establishment for implementing the Act by preventing anti-competitive practices and ensuring fair competitive market in India. The CCI is to consist of a Chairperson and not less than two and not more than 10 other members to be appointed by the Government of India.

The duties, powers and functions of the CCI include keeping a check on the anti-competitive practices having adverse effect on competition, promote and sustain competition, protect the interest of consumers, and ensure freedom of trade.

In India the CCI has adequate powers of investigation and awarding deterrent penalty to the extent of three times the profit on each of the members of the cartel agreement during the entire period of cartelisation or 10% of the turnover of each member of the cartel during the entire period of cartelisation, whichever is higher.

The CCI also has clear extra-territorial mandate to enquire into agreements, abuse of dominant position or combinations taking place outside India, if they have or are likely to have an appreciable adverse effect on competition in the relevant market in India (Section 32).

Any person, association of persons or consumers or trade, corporate body can approach the CCI. In addition, the Central Government, state government and other statutory authorities can also make reference to the Commission under the provisions of the Act.

Duties of the CCI:

The primary duty of the CCI is to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interest of consumer and ensure freedom of trade carried on by in Indian markets as indicated below:

- prohibiting anti competitive agreements, abuse of dominance position and regulate merger or amalgamation or acquisition after making an inquiry into the agreements and combinations, etc.;
- enquiring into violation of any provisions of the act, and in case of violation, imposing a penalty of not more than 10% of turnover of the enterprises ;
- directing an enterprise to discontinue anti-competitive agreement and abuse of dominant position including modifying the agreement;
- awarding compensation to the person affected by these practices;
- recommending to the Central Government for division of enterprises if found in a dominant position; and

In India, the Competition Commission of India has adequate powers of investigation and awarding deterrent penalty to the extent of three times the profit on each of the members of the cartel agreement during the entire period of cartelisation or 10% of the turnover of each member of the cartel during the entire period of cartelisation, whichever is higher.

Powers and Functions:

The CCI has power to enquire into any contravention of the Act by issuing directions to the Director General for investigating into cases relating to anti-competitive agreement, abuse of dominant position by an enterprise and combinations through a process of "enquiry". The Benches of the CCI may exercise the jurisdiction, powers and authority of the CCI. Every Bench shall consist of at least one judicial member.

The CCI may levy penalty on enterprises for failure to comply with its orders or directions and submission of false facts and statements.

The Government of India may also make a reference and seek opinion of the CCI on the possible effect on competition emanating from its policy, statute, rules, regulations framed, adopted or contemplated by it.

Suggestions

In Indian context, following suggestions deserve careful consideration for promoting competition:

1. There is need for continuous interaction between the government, chambers of trade, commerce and industry, and, competition authority to understand the complex issues involved and their ramifications for the developing countries.
2. The Government should periodically evaluate and assess the impact of state monopolies,

exclusive rights and regulatory policies on competition and international trade. In the light of the findings, the economic policy, competition policy and competition legal and regulatory framework should be harmonised.

3. The business and corporate world should assess the impact of the provisions of the competition law on business functioning, particularly for attracting foreign direct investment.
4. Promoting and keeping market competition requires positive intervention by the government, besides prohibiting anti-competitive practices. As such, there is a constant need to modify the legal and regulatory framework of competition in the light of the analysis of market structure, business practices and pricing mechanism.
5. Horizontal and vertical agreement, which are detrimental to competition, need to be strictly regulated by the competition law. Horizontal agreements relate to price, quantities, bids and market sharing, whereas vertical agreements like tie-in arrangements, exclusive distribution and refusal to deal are generally anti-competitive.
6. As a general proposition, the easy availability of capital has made sustained monopoly abuse difficult, the important task before the competition authorities is to promote and advance the cause of market regulated economy.
7. There is need for clarity on the relationship between the TRIPs and competition policy to achieve the objectives of the WTO, including promotion of international trade.
8. In developing countries companies are quite small compared to global MNCs. As such, competition authority in developing countries should focus more on encouraging competition rather than splitting companies.

Conclusion

The competition law for the last two centuries has a powerful influence on the society and business. There is consensus that competition is an essential element in the efficient working of markets. It encourages enterprise and efficiency and widens choice. It enables consumers to by the goods and services they want at the fair price. By encouraging efficiency in the industry, competition in the markets also contributes to international competitiveness. In the emerging scenario of globalisation and free enterprises, it has become necessary for the governments to safeguard their economic interests and regulate combinations

As a general proposition, the easy availability of capital has made sustained monopoly abuse difficult, the important task before the competition authorities is to promote and advance the cause of market regulated economy.

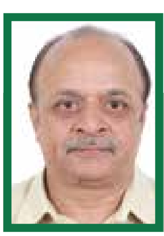
which result in market dominance and are against the public interest.

The objective of competition policy is to promote efficiency and maximise welfare. Trade liberalisation alone is not sufficient to promote competition and there is a need for a separate competition policy/ law. The competition policy/law needs to have necessary provisions and teeth to examine and adjudicate upon anti-competitive practices that may accompany or follow developments arising of the implementation of the WTO agreements pertaining to foreign investment, intellectual property rights, countervailing duties, antidumping measures, sanitary and phytosanitary measures. In addition, technical barrier to trade and government procurement need to be reckoned in the competition policy/law with a view to dealing with anti-competition practices.

In developing countries, the competition authority should not take for granted the intellectual property rights of a company under the patent law, but also scrutinise the implications of their patent rights on fair market price and the need for life saving drugs. The authority can, in public interest, judge the reasonableness of the price fixed and conditions imposed by the patent holders for marketing of patented drugs. The underlying object should be to allow reasonable profit and fair price of patented drugs, badly needed by poor patients of cancer, transplant and HIV/AID drugs. ■

Finance Concurrence in PSUs

In every public sector undertaking (PSU), the finance department plays a pivotal role, and in addition to its finance/accounting functions, ensures that the procedures, rules and regulations are followed in line with the processes and defined guidelines. In an organisation, finance department has number of wings or branches to take care of all activities such as establishments, billing, payments, taxation, commercial, etc. One of the important activities is concurring the proposals received from various departments of an organisation. In a public sector undertaking, a separate department exists named as 'Finance Concurrence Department' (FCD). We need to understand here the meaning of 'finance concurrence' and the role of FCD. Let's read on to know…



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The dictionary meaning of concurrence is "the state of agreeing with someone or something". Finance concurrence means the proposal is agreed to by the finance department.

If the finance department does not agree or is not in concurrence with any proposal received from any department, it specifies the reasons thereof and if agrees (with some reservations), it put the comments along with the suggestions to be followed by the owner of the proposal. The finance concurrence also plays its role from propriety point of view. Now what is propriety? Let us examine clearly.

The dictionary meaning of *propriety* is fitness, rightness; correctness of behaviour or morals. The business meaning is "doing things with the same vigilance for expenditure incurred from the organisation as a person of ordinary prudence would exercise in respect of expenditure of his own money."

What are the Cannons of Propriety?

- Expenditure should not *prima-facie* be more than the occasion demands.
- Every employee should exercise the same vigilance for expenditure incurred from organisation as a person of ordinary prudence would exercise in respect of expenditure of his own money.
- No authority should exercise powers of sanctioning expenditure to pass any order which will directly or indirectly be to its own advantage.
- Expenditure should not *prima-facie* be more than the occasion demands.
- Public money should not be utilised for the benefit of a particular person or section of the community unless:
    - o Expenditure is in pursuance of a recognised custom or policy.
    - o A claim for the amount would be enforced in a court of law.
    - o Amount of expenditure is insignificant.

Since the government is the shareholder, the shareholder is not involved in decision-making; hence, propriety is to be exercised by managers.

Role of Finance Concurrence

Finance Concurrence vis-a-vis Contracts:

S. No.	Activity	Finance Concurrence to Examine
1	Package list for the main Plant	Technically approved, basis of bifurcation of packages, similarity to other main plant packages and pricing.
2	Qualifying criteria for each package	Basis for technical clauses, basis of financial data, any ambiguity in language.
3	Cost estimate for each package	Basis of cost/unit prices, documentation of cost, correctness.
4	Bid documents	Terms and conditions as documented, any ambiguity, clear specifications (if given), approval of technical clauses.
5	Tendering process	Tendering as per defined manual, basis of selection of tenders with approval as per DOP, any deviation (if) with approval.
6	Pre-bid conference	Representatives of departments as per defined process, replies to queries of bidders as per Q.R and tendering conditions.
6	Bid openings (a) Technical (b) Commercial	BOD as per tendering process and as per policy. Any deviation (if) with approval as per DOP.
7	Bid evaluation	As per documents submitted by the bidder, the conditions of tender documents, approved Q.R's, any cost compensation with supporting.
8	Approval for negotiation(if required)	To be followed as per company policy and guidelines of vigilance department, approval as per DOP.
9	Award of contract	As per approval accorded and followed with the defined process.
10	Post award issues	Administrative approval, technical approval (if required), association in negotiations, supporting documentation.
11	Delegation of power	Correct interpretation of clauses of DOP. If required, the approval to be taken of any variation to clauses.

Finance Concurrence vis-a-vis Procurements:

1	Indents	Requirement and criteria of urgency, fulfilment of guidelines of procurement policy.
2	Approval as per DOP	In view of any addition, fresh requirement or variation in quantity, DOP followed or not.
3	Estimated cost	Basis, supporting documents, correctness.
4	Tendering process	Whether single tender/ limited tender/open tender-process followed or not.
5	Tender documents	To check any ambiguity in terms and conditions, coverage of all commercial terms/conditions.
5	Pre-award discussion	Requirement, compliance of guidelines of procurement policy, approval.
6	Negotiation (if required)	Basis, supporting documents, approval.
7	Delegation of power	Correct interpretation of DOP clauses.

Finance Concurrence vis-a-vis Administrative Proposal:

1	Indents and approval	Requirement along with criteria of urgency, approval as per DOP.
2	Budgets approval	Proposed expenditure as per approved budget or not, approval if required to be obtained.
3	Tendering	Process as per requirement being followed or not.
4	Standardisation/ R/C	In case of repetitive procurement of items, process of rate contract or standardisation followed or not. Specific approval required.
5	Estimated cost	Basis, supporting documents, correctness either of lump sum amount or unit rates.
6	DOP	Proposal to be strictly as per DOP.
7	Negotiation and award	Reasons for negotiation, fulfilment of guidelines issued and award to be placed as per approval.

Finance Concurrence vis-a-vis Research and Development Proposal:

1	Requirement and approval	Administrative/technical approval, requirement of expenditure from propriety point of view.
2	Tendering process	Defined process for such proposed expenditure being followed or not.
3	Allocated budgeted cost	Head-wise expenditure is as per approved budget or not. In case specific approval required, to be obtained.
4	Activities before award	Tendering process or any other methodology if to be followed to be suggested from propriety point of view.
5	Negotiation process	Compliance to guidelines in this regard to be seen.
6	Final award	Approval for final award of total expenditure being spent to be obtained as per DOP.

Finance Concurrence vis-a-vis Post Award Process:

1	Nature of activity and approval	Approval of each activity as per DOP to be verified. Propriety angle, wherever required, needs to be examined also.
2	Monetary limit of variation (if taken).	Total variations to original award to be seen and approval if required to be ensured.
3	Delegation of power	Strictly DOP is to be followed considering cumulative variation amount as well as each individual activity variation.

4	Negotiation process (if required)	In case of material variation either quantity or unit rates, negotiation process being considered to be examined.
5	Award process	Award is to be placed as per policy/DOP.

From the above, it can be seen that finance concurrence department's functions are:

- To ensure the compliance to systems, procedures envisaged in the contract/ procurement policy,
- To strictly adhere to delegation of power of the company,
- To see financial correctness, and
- To see any impropriety in the proposal.

However, FCD does not put any break in the working of the organisation, rather suggests for smooth working and proper compliance in case of any deviations. Sometimes, the finance concurrence is correlated with internal audit or government audit. But it may be noted that exactly the functions are not the same of all these departments. There may be few similarities of the functions but the activities as well as objectives of all these departments are different and independent.

Now, let us see as how the finance concurrence differs from internal audit as well as CAG's office audit.

Finance Concurrence- Internal Audit and CAG Audit:

Subject	Finance Concurrence	Internal Audit	CAG Office's Audit
Objectives	To see Finance correctness and any impropriety.	To vouch transactions, accounting treatment.	To oversee fairness of transactions and do propriety audit.
Scope	To review and accord approval of proposal and if needed, giving suggestions.	To evaluate internal, financial and operational controls.	To audit constructively to promote economical, effective and efficient governance.
Planning	To review the proposals for any suggestion.	To develop an audit plan for efficient and economical use of resources.	To do strategic audit planning and selection of audit topics keeping in view of government priorities, goals and programmes.
Investigation	To go into depth of the proposal in case of suspicion or doubtful integrity.	To investigate cases of misappropriation, misconduct or fraud.	CAG's office have full powers to conduct transactions audits relating to debt, remittances, deposits, P&L accounts and balance sheets.
Recommendations	Recommend the proposal as proposed or in addition giving suggestive measures.	Recommend adoption of desirable policies or changes to existing policies.	Recommend gist of major audit findings and recommendations along with the risk and materiality of the issues.
Reporting	Approving and sending proposal to authorities as per DOP.	Put up the audit observations to reporting officer and keep informing audit committees as required statutorily.	Final signed copies of reports forwarded to government.
Ethics	To follow ethics from propriety point of view.	To follow standards of professional practice of internal auditing and code of ethics as promulgated by the Institute of Internal Auditors.	To comply with the relevant ethical requirements with independence.

How Important is Finance Concurrence?

Finance concurrence department should not be given less importance in an organisation. Even appointment of an officer in this department requires due diligence. Pressure always remains on this department since the officer has to ensure that procedures, policies of the company are being followed and proposals are made by the relevant department from propriety point of view in addition to financial correctness as well as with fair evaluation. This is inspite of the fact that proposals cannot be stopped, rather suggestions are to be forwarded to the competent authority for further implementations. This is the department who put forward lacunas, if any, and recommend the options for the higher authorities to take care of while approving the proposals. Further, it may be said that the recommendations given by the FC in the proposals are tools for the internal audit for their detailed examination.

Finance Concurrence Department - "A Facilitator"

Finance department acts as a facilitator to the executing department in various ways such as pointing out deficiencies for necessary corrections, giving the appropriate suggestions in case of faulty procedures being followed, helping the negotiation team by providing commercial data, *etc.* In addition, FCD becomes a facilitator to internal audit, statutory audit and government audit in the following ways:

Facilitator to Internal Audit:

The major roles of internal audit are to review: (i) methods and procedures, (ii) orderly and efficient conduct of activities, (iii) adherence to management policies, (iv) prevention and detection of frauds and errors and (v) accuracy and completeness of accounting records. Finance concurrence reviews the activities before the activity takes place whereas, internal audit do their job after the event takes place but the deficiencies noted and suggestions provided by FCD definitely helps internal audit to take note of the same and get the systems improved for future.

In addition to above, the role of internal auditor has been widened with specific reference to corporate governance and audit to perform obligations i.e.:

(i) To review the effectiveness of the organisation's code of conduct, ethics policies, and whistle-blower provisions.

(ii) To evaluate the effectiveness of the corporate governance activities.

(iii) To participate in whistle-blower and other ethics complaints investigation processes.

(iv) To facilitate identification of important risk areas for the organisation as well as organisation's most important processes.

(v) To maintain open communications with management and audit committees.

The suggestions provided by FCD during evaluation of various proposals always make way for internal audit objectives of economical and efficient operations of the company to be fulfilled and assist the auditor in investigating the activities/processes, if required.

Facilitator to Statutory Auditor:

The role of statutory auditor has been enhanced to a greater extent and the Act expects the auditors to be proactive in their actions and in discharge of statutory duties in addition to assessment of internal control and auditing of accounts. The statutory auditor can complete its job of true and fair assessment only after reviewing the proprietary functions. The contract/procurement/administrative proposals can be reviewed by statutory auditor on random basis (especially high value packages) and after considering FCD's views and suggestions wherever given, can make recommendations to the management for further streamlining the procedures and for review the policies, if required.

Facilitator to Government Audit:
The basic objective of government audit is to carry out the audit from propriety point of view. The role of CAG's office is to audit the company's affairs constructively to promote economical, effective and efficient governance of the company. It has been seen that the agenda of government audit includes review of high value award proposals which definitely takes views of finance concurrence wherever given and if need be, they go into the details and investigate the proposal, if suspicion arises for any lapses on the part of management.

In view of the above, it can be observed that finance concurrence department plays a positive and important role in promoting the company's functions, systems and policies.

Facilitator to Audit Committees:
"Audit committee is a sub-committee of the Board, to assist the board of directors in the discharge of the latter's oversight responsibility, particularly in relation to financial reporting, integrity, internal control, risk management and corporate standard of behaviour."

Few important provisions have been made under the Companies Act 2013 and by SEBI under Clause 49 inserting important requirements for listed companies to comply on manner of appointment of independent directors, meetings of audit committees, quorum, qualifications of independent directors, *etc.* Audit committees need to review the performance of auditors (internal/statutory), to review the functioning of whistle blower mechanism besides performing other duties.

The deficiencies highlighted by FCD (especially in high value proposals) in implementation of processes by the concerned group always help the internal audit and in turn audit committee to go into depth either for taking corrective actions or making amendments in processes. Audit committee must refer the important proposals and review the suggestions made by FCD which helps in meeting overall objectives.

Conclusion

In view of the latest changes made in the Companies Act 2013, enhancing the role of statutory auditors and in view of CAG's reports on mega corruptions, particularly in 2G spectrum scam, commonwealth games scam and other scams, it would be prudent to have an independent finance concurrence department in all PSU's who ensures that the policies, systems, procedures and delegation of powers laid-down by the management are complied in all respects.

The deficiencies highlighted by FCD (especially in high value proposals) in implementation of processes by the concerned group always help the internal audit and in turn audit committee to go into depth either for taking corrective actions or making amendments in processes. Audit committee must refer the important proposals and review the suggestions made by FCD which helps in meeting overall objectives.

Further, for improvement of finance concurrence department, following are the suggestive key points for the management:

- To give full independence to FCD for reporting suggestions in the interest of the company.
- To appoint officers in FCD with an overall integrity.
- To give technical support to FCD wherever needed.
- To impart training to the officers from time to time (keeping in view the latest corporate guidelines including of CVC).
- The management to assure that FCD holds monthly interactive meetings to be consistent in all similar type of proposals.
- To make sure that FCD improve their negotiation skills from time to time.
- To see that FCD keeps updating with latest commercial laws and ICB procedures/guidelines issued from time to time.
- To ensure that audit committee have atleast quarterly meet with FCD for feedback and taking future remedial measures to avoid any scam. ■

Setting Up of Business in India by Foreign Companies

Foreign investments are a very vital part of a country's economy. Government of India has always shown keen interest in formulating the consolidated Foreign Direct Investment (FDI) Policy and other investment policies, with an intent and objective to promote foreign investment in the country, through a transparent and hassle free regulatory system. Last year, the government liberalised norms for foreign investment in certain sectors like construction-development, railways, defense and medical devices. The Indian government's liberalised approach and a robust business environment have strengthened the faith of foreign investors. Global brands lined up to invest in India as the government opened more sectors to foreign investment. This article highlights various ways in which foreign companies may enter India and start business in various forms of entities. The procedure and compliances required for incorporation of such entities by foreign investor is also discussed in detail. Read on…

Below are some quick facts on India's foreign investment:

- FDI inflows during April-October of the financial year 2014-15 grew by 26 per cent to $17.34 billion from $13.82 billion in the same period a year earlier.[1]

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- Total FDI inflows into India in the period April 2000–August 2014 touched US$ 341,357 million. Total FDI inflows into India during the period April–August FY15 was US$ 17,445 million.[2]
- Mauritius led the share of top investing countries by FDI equity inflows into India with US$ 3,934 million during April-August FY15, followed by Singapore (US$ 1,892 million), the Netherlands (US$ 1,562 million) and Japan (US$ 897 million).[3]

India, being one of the fastest growing economies in the world which has also sustained the downturn of 2008-09, offers huge potential and promising business opportunities for global investment community.

[1] Source: http://articles.economictimes.indiatimes.com/2015-01-02/news/57611477_1_consolidated-fdi-policy-circular-industrial-policy-the-dipp
[2] Source: http://www.ibef.org/economy/foreign-direct-investment.aspx
[3] Source: http://indiainbusiness.nic.in/newdesign/index.php?param=investment_landing/247/1

Liberalised policies, simplified regulatory norms and adoption of 'best practices' in production of goods and services have been the key factors in attracting foreign investment in the country.

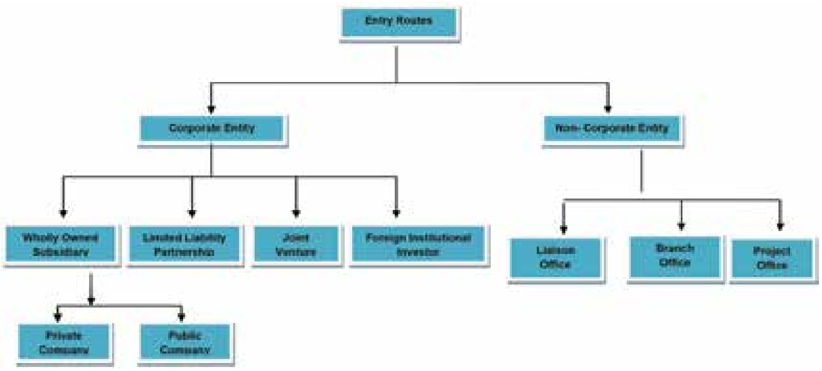
Choosing the Form of Business for Investment in India

Foreign investment can come into the country in various forms and entities. Each form has its own set of merits and demerits. The key is to balance the advantages and disadvantages of various forms of business. A prospective foreign investor will have to keep in mind various aspects before entering into the Indian market, including regulatory requirements, sources of financing, setting up of infrastructure, *etc.*

Key factors on which choosing the form of business depends:

- *Nature of Business*
  Nature of business for which the foreign entity is desirous of making investment in India is one of the crucial factors. There are certain sectors where foreign investment is either partially allowed or completely prohibited by the Indian government. A joint venture might be most suitable form if the foreign company is willing to provide technical know-how to an already established Indian entity and in turn Indian company may contribute in terms of infrastructural set up, manpower, *etc.* Similarly, a liaison office might be set up in India to spread awareness about the foreign company, explore new markets or to promote its business interests.
- *Scale of Operations*
  Another key factor in choosing the right form of setting up business in India is the scale of operations with which the foreign company is willing to start its business. If the volume of proposed operations is large then it is preferable to set up a wholly owned subsidiary company (private or public). If the foreign investor intends to invest for short duration or for a specific project in India, then a liaison office can be set up. Foreign companies engaged in the business of manufacturing and trading activities outside India, may set up a branch office to facilitate import/ export of their goods or for providing services to their customers in India. Similarly, a limited liability partnership (LLP) is suitable for small and medium scale business.
- *Amount of Capital to be Invested*
  One of the major concerns before setting up a business entity in India by a foreign investor is the amount of capital proposed to be invested. Setting up of and complying with regulatory norms in case of a branch office or a liaison office requires less capital as compared to incorporating a wholly owned private or public subsidiary. Moreover, complying with the statutory requirements in case of a wholly owned subsidiary is also a costly affair.

Entry Routes Available to Foreign Investor



A foreign entity planning to invest in India can do so either by forming a corporate entity or a non-corporate entity. Let's have a closer look at both the forms of doing business:

Formation Of Corporate Entity

If a foreign investor chooses to enter the Indian market through this route, then the following choices are available:

1. Wholly Owned Subsidiaries

Foreign investors may set up wholly owned subsidiaries (either public or private company) under the Companies Act, 2013. This will ensure an independent legal status, different from its parent foreign company, limited liability and a separate existence if its own.

Things to be kept in mind before incorporation:

- *Activities allowed by the government:* There are certain activities in which foreign investment is allowed completely and in some activities it is partially allowed. Also, some commercial sectors are open to foreign investment under automatic route, which means no prior approval from government is required, while others require prior approval from government. There is also a list of activities in which foreign investment is completely prohibited. Therefore, this is an important aspect to be kept in mind before setting up of a wholly owned subsidiary in India.

- *Minimum requirement of capital:* Till now, for incorporation of a private limited wholly owned subsidiary, minimum amount of capital required was ₹1,00,000/- (Rupees One Lakh), while minimum capital required to set up a public limited wholly owned subsidiary was ₹5,00,000/- (Rupees Five Lakhs). This cost was exclusive of setting up of infrastructure and other running cost of the proposed Indian company. However, with effect from end of May, 2015, the government has done away with the requirement of minimum capital for both, private and public limited companies. Hence, now foreign entities can set up their wholly owned subsidiaries without any initial capital, and can instead invest in setting up of infrastructure and promotion of their business.
- *Requirement of minimum number of directors and shareholders:* There is a minimum requirement of directors and shareholders, as mentioned below:
  A) Private Limited Company
  Minimum Shareholders: 2 (Two)
  Minimum Directors: 2 (Two)
  B) Public Limited Company
  Minimum Shareholders: 7 (Seven)
  Minimum Directors: 3 (Three)

It must be noted here that while only individuals can become directors; a shareholder can also be a company (including foreign company). Also, at least one of the directors on the Board of the company must be resident in India.

- *Statutory compliances:* A wholly owned subsidiary, either public or private limited, will have to comply with all the laws, rules and regulations as applicable, including but not limited to the Companies Act, 2013, Foreign Exchange Management Act, 1999, Shops and Establishment Act, Income Tax Act, *etc.*, failing to which may result in heavy penalties. This will result in increase in the running expenses of the Indian subsidiary as professional guidance shall be mandatorily required to stay compliant with all the applicable laws.

Steps for incorporation:

Approving Authority: Registrar of Companies (RoC) and Reserve Bank of India (RBI)

I. Obtaining approval from FIPB (Foreign Investment Promotion Board), if required:
If the activities of the Indian wholly owned subsidiary fall under Government approval route, then the approval from FIPB has to be obtained.

II. Obtaining DSC (Digital Signature Certificate) of proposed directors:
Digital Signature Certificates (DSC) are the digital equivalent (that is electronic format) of physical or paper certificates. DSC is required to sign any electronic document like e-forms. DSC can be obtained from any licensed Certifying Authority.

III. DIN (Director Identification Number) of proposed directors:
It is mandatory for proposed directors to obtain DIN (Director Identification Number) under the Companies Act, 2013. DIN can applied electronically in Form DIR-3 on the website of Ministry of Corporate Affairs (MCA), along with required documents and filing fee.

IV. Applying for availability of name:
The fore most step in formation of a company (public or private) is to apply for availability of name of the proposed company. One must comply with the naming guidelines in this regard. Form INC-1 has to be filed with MCA for reservation of name of the proposed company.

V. Drafting of Memorandum of Association (MoA) and Articles of Association (AoA):
Memorandum of Association (MoA) is the charter of the company and it sets out its scope of activities. Articles of Association (AoA), on the other hand, regulate the internal working of the company. Both these documents are very crucial to the company and hence, are drafted with caution.

VI. Filing incorporation documents (within 60 days of filing Form INC-1):
Once the name is approved from the Registrar of Companies, documents for incorporation have to be filed in Form INC-7 and Form DIR-12, within 60 days of date of filing of form INC-1.

VII. Filing of documents for registered office of the company (within 30 days of incorporation):
The company must have a place of business as its registered office. Form INC-22 has to be filed along with the required documents, either at the time of filing documents for incorporation

or within 30 days of date of incorporation of the company.

VIII. Certificate of Commencement of Business:
A company, after its incorporation, could commence its business only when the subscribed amount has been deposited by the subscribers in the bank account of the company. A declaration from subscribers of the company in Form INC-21 was to be filed within 180 days of its incorporation. In a recent amendment, government has done away with the above mentioned requirement of obtaining Certificate of Commencement of Business (effective from end of May, 2015).

New Form INC-29

In its effort to simplify the process of incorporating a company in India and to attract foreign investors, government introduced an integrated e-Form INC-29, which is available for online filing from May 1, 2015.
Form INC-29 at a glance:

- A single form for application of DIN, name availability and filing of other incorporation documents;
- This facility is in addition to present procedure for incorporation of companies;
- Time for incorporation of company will be significantly reduced.

However, there are certain limitations of the same, which includes the following:

- DIN can be applied only for 3 (three) directors;
- Only 1 (one) name can be applied for, instead of 6 (six);
- If anyone of the above applications is rejected, then whole process will have to be started afresh.

Despite of such limitations, introduction of this integrated Form INC-29 for incorporating a company is a welcome step.

Post incorporation compliances (immediately after incorporation)

Foreign Exchange Management Act (FEMA), 1999

I. Obtaining FIRC (Foreign Inward Remittance Certificate): As soon as the subscription amount from foreign subscriber is received in India, authorised dealer bank will issue FIRC.

II. Reporting to the Reserve Bank of India (RBI): The company is required to report to RBI in Form FC-GPR, along with other documents, within 30 days of issue of shares and shares for the same have to be allotted within 180 days of the receipt of subscription amount.

Carrying out business through an LLP is well suited for small or medium scale enterprises, particularly in service sector. If proposed foreign investor intends to set up business in India with limited operations, then LLP might be a suitable option.

Companies Act, 2013

In case of a wholly owned subsidiary, 100% shares of the Indian company are held by the foreign entity (in its own name as well as through a nominee). Therefore, declarations from registered shareholder and beneficial shareholder have to be filed in Form MGT-6, within 30 days of receipt of such declarations.

2. Limited Liability Partnership

Limited Liability Partnership or LLP is a fairly new concept in India. An LLP is a corporate entity formed under the Limited Liability Partnership Act, 2008 and one of its important characteristics is that its partners have limited liability (unlike partnership firms registered under the Indian Partnership Act, 1932). Though a partnership, an LLP has perpetual succession and separate legal existence from its members. Thus, an LLP is a corporate structure that combines benefits of both, a company and a partnership firm.

As the compliance cost for a LLP is much lower than other forms of business and because of its greater flexibility, LLP can be a good option for foreign entities to start business in India. This form of business is best suited to service industry, as well as small and medium scale enterprises.

Things to be kept in mind before incorporation:

- *Compliances under FEMA, 1999:* There are certain conditions subject to which foreign investment is allowed in LLPs. Foreign investment in LLPs is allowed only through prior government approval route and that too in sectors/activities where 100% foreign investment is allowed under automatic route. Therefore, an intending foreign investor must go through all the conditions subject to which a LLP can be formed in India.
- *Scale of operations:* Carrying out business through an LLP is well suited for small or medium scale enterprises, particularly in service sector. If proposed foreign investor intends to set up business in India with limited operations, then LLP might be a suitable option.

- *Requirement of minimum number of partners:* An LLP must have at least two partners, who can be individuals or any body-corporate. Also, there must be atleast two designated partners, who should be individuals. At least one of designated partners must be resident in India. However, there is no bar on maximum number of partners.

Foreign entity desirous of investing in India should consider the above mentioned requirements and other conditions before deciding to incorporate LLP in India.

Steps for incorporation:

Approving Authority: Registrar of Companies (RoC) and Reserve Bank of India (RBI)

I. Obtaining approval from FIPB (Foreign Investment Promotion Board):
As already mentioned, foreign investment in LLP is allowed through prior Government approval route and only in sectors where 100% foreign investment is permitted under automatic route. There are several other conditions also, as specified by Government, which needs to be fulfilled. Hence, proposed foreign investor shall make an application to FIPB seeking approval.

II. Obtaining DSC (Digital Signature Certificate) of proposed partners:
As mentioned in case of wholly owned subsidiary, DSC can be obtained from any licensed Certifying Authority.

III. DIN (Director Identification Number)/ DPIN (Designated Partner Identification Number) of proposed partners:
It is mandatory for proposed partners to obtain DIN/ DPIN under the Companies Act, 2013. DIN/ DPIN can be applied electronically in Form DIR-3 on the website of Ministry of Corporate Affairs (MCA), along with required documents and filing fee.

IV. Applying for availability of name:
The fore most step in formation of an LLP is to apply for availability of name of the proposed LLP. Care must be taken to comply with the naming guidelines in this regard. Form 1 has to be filed with MCA for reservation of name of the proposed LLP.

V. Filing of incorporation documents:
Once the name of proposed LLP has been approved, incorporation documents, which include subscriber's statement, details of partners and registered office, *etc.* are required to be filed in e Form 2.

VI. Drafting and execution of LLP agreement:
LLP Agreement is one of the most crucial documents as it governs the rights and duties of partners. It may be drafted as per the convenience and mutual understanding among partners of LLP. Various aspects covered under the agreement may include amount and manner of contribution, rights and duties of partners, description of business of proposed LLP, *etc.*

VII. Filing of LLP agreement:
LLP is formed once the Form 2 is approved by the Ministry. LLP agreement shall be then filed within 30 days of incorporation of LLP in Form 3.

Post incorporation compliances (immediately after incorporation)

Foreign Exchange Management Act (FEMA), 1999

I. Obtaining FIRC (Foreign Inward Remittance Certificate):
As soon as the amount of consideration from foreign investor is received in India, authorised dealer bank will issue FIRC.

II. Reporting to the Reserve Bank of India (RBI):
LLP is then required to report to RBI (through its authorised dealer) in Form FOREIGN DIRECT INVESTMENT-LLP(I), along with other documents, within 30 days of the receipt of amount of consideration.

3. Joint Venture Company

Another option available for foreign entity to invest in India is to set up a joint venture company, which means collaboration with an Indian company and contributing in terms of capital, infrastructure, knowledge, technology, *etc.* It may involve an entirely new business, or an existing business that is expected to significantly benefit from the introduction of the new participant. A joint venture company can be set up as a separate legal entity, distinct from both, the foreign entity and Indian entity.

Things to be kept in mind before incorporation:

- *Limited control:* Unlike a wholly owned subsidiary, a joint venture company offers a limited degree of control to both the entities. This is due to a very obvious reason that both, the Indian as well as the foreign company, have almost equal stake in a joint venture. Therefore, if a foreign entity is willing to reap the advantages like sharing of risks, easy entry into Indian markets, taking advantage of infrastructure set up, *etc.*, rather than exercising full control of the new company, then setting up of a joint venture with an Indian company is best suited.

- *Cultural and social differences:* Every country has its own way of doing business. In a joint venture, two or more companies from different mindsets, social and cultural backgrounds come together for doing business. Indian company might fear complete acquisition by its foreign collaborator. On the other hand, foreign entity might be apprehensive about Indian entity before investing such a huge amount of capital. Thus, both the collaborators must be sure about their compatibility with each other and willing to sort out their differences for a smooth and profitable business ahead.
- *Choosing the right partner:* Before entering into a joint venture with any Indian company, the foreign investor must understand what it shall gain from this joint venture. It must suit to the requirements of foreign entity. For example, if a foreign investor is ready to contribute in terms of capital, knowledge and skill and technology but lacks in setting up of infrastructure, manpower, access to Indian markets, then the proposed Indian collaborator must compensate for it.
- *Documentation in a Joint Venture:* Transactions in a joint venture demand efficient, clear and foolproof documentation. Depending upon the nature of the structure, definitive agreements would be drafted and executed, which will set out terms and conditions for both the partners. A few examples are, joint venture agreement, shareholder's agreement, memorandum and articles of association or any other agreement for collaboration.

Setting up of a joint venture

A joint venture may mean either to set up an entirely new company (public or private) in Indian with an Indian partner or it may involve investing in an already existing company in India.

Steps for incorporation

Approving Authority: Registrar of Companies (RoC)

- A new joint venture company:
  Procedure for incorporation and post incorporation statutory compliances of a new joint venture company will be similar to that of incorporation of a wholly owned subsidiary (public or private) in India, with only difference in its shareholding pattern. In this case, both Indian and foreign partners shall have their agreed percentage of stakes in the joint venture company.
- Investment in an existing Indian company:
  A foreign investor company may subscribe a percentage of shares of an existing Indian company by way of allotment or transfer of shares already allotted. This will help saving the initial cost of incorporation and other infrastructures. It will also save time of both the partners and the business can be started immediately once the initial formalities are completed.

In this case, if shares are allotted to the foreign investor, then the details of the same shall be reported by the Indian company to the Reserve Bank of India (RBI) in Form FC-GPR, within 30 days of allotment, through its authorised dealer.

On the other hand, if the shares are transferred from an existing shareholder (transferor) to the foreign investor, then Form FC-TRS shall be filed with RBI, through its authorised dealer, within 60 days of receipt of full and final amount of consideration. It must be noted here that in this situation, filing of Form FC-TRS is the responsibility of the transferor, if he is resident in India.

4. Foreign Institutional Investor

A Foreign Institutional Investor (FII) means an entity established outside India and which proposes to make investment in India in securities. Foreign entities, willing to invest in India as FIIs, should first register themselves with the Securities and Exchange Board of India (SEBI). A wide range of foreign entities are allowed to register themselves as FIIs such as pension funds, mutual funds, insurance companies, investment trusts, banks, university funds, endowments, foundations, sovereign wealth funds, hedge funds and charitable trusts. In fact, asset management companies, investment managers, advisors or institutional portfolio managers set up and/or owned by NRIs are also eligible to be registered as FIIs. FIIs are not only allowed to invest in securities traded in primary and secondary markets, but also in mutual funds, dated government securities and derivatives traded on stock exchange. As already discussed, Indian economy offers huge potential for FIIs to invest in India.

Steps for registration with SEBI

Approving Authority: Securities and Exchange Board of India (SEBI)

A body corporate incorporated outside India, including a firm or association of persons, may open a Liaison Office (LO) in India. As the name suggests, it can only take up liaison activities in India and thus, act as a channel for communication between its head office abroad and Indian parties. This form of business is best suited if the proposed foreign investor intends to mark its presence in India and spread awareness about its products and services among Indian customers.

I. Application to SEBI in Form A:
Foreign entity proposed to invest in India as FII, has to make an application to the SEBI in Form A, along with required documents and requisite fee.

II. Additional information:
On receipt of application, SEBI may ask for some additional information or documents from the applicant, before granting registration certificate. The applicant or is authorised representative may also be required to make personal representation before SEBI.

III. Criteria for grant of registration certificate:
There are few points of considerations by SEBI, before it may grant certificate of registration to the applicant. Some of these are as mentioned below:
   a) the applicant's track record, professional competence, financial soundness, experience, general reputation of fairness and integrity;
   b) whether the applicant is registered and regulated by an appropriate foreign regulatory authority;
   c) Whether the grant of certificate to the applicant is in the interest of the development of the securities market; etc.

IV. Procedure for grant of certificate:
SEBI, after being satisfied with the information and documents furnished by the applicant, will grant certificate of registration in Form B, within 3 (three) months from the date when the required information/ documents is furnished to SEBI.

Post registration compliances

FIIs must comply and at all times after registration with SEBI, to the guidelines, rules and regulations as prescribed by SEBI and the Reserve Bank of India (RBI) in this regard.

Prohibitions

FIIs are not allowed to invest in any company which is engaged or proposes to engage in the following activities:

i. Business of chit fund, or
ii. Nidhi company, or
iii. Agricultural or plantation activities, or
iv. Real estate business* or construction of farm houses, or
v. Trading in transferable development rights (TDRs).

** Real estate business does not include construction of housing/commercial premises, educational institutions, recreational facilities, city and regional level infrastructure, townships.*

Formation of Non-Corporate Entity

Foreign entity may not be keen to invest a huge amount of capital in India during its initial stage. It might simply be interested in evaluating business opportunities and explore markets in India. In such a case, it may form a non-corporate entity in India.

Here, we shall discuss some common entry routes for the foreign investor:

1. Liaison Office/Representation Office

A body corporate incorporated outside India, including a firm or association of persons, may open a Liaison Office (LO) in India. As the name suggests, it can only take up liaison activities in India and thus, act as a channel for communication between its head office abroad and Indian parties. This form of business is best suited if the proposed foreign investor intends to mark its presence in India and spread awareness about its products and services among Indian customers. However, a major drawback of establishing an LO is that the foreign entity cannot carry any business activities through LO.

Purpose of an LO

- Representing in India the parent company/group companies.
- Promoting export/import from/to India.
- Promoting technical/financial collaborations between parent/group companies and companies in India.
- Acting as a communication channel between the parent company and Indian companies.

Steps for incorporation

Approving Authority: Reserve Bank of India (RBI)

I. Permission from RBI:
Application in Form FNC is required to be submitted, along with other required documents,

to the Foreign Exchange Department, through authorised dealer.

There are two routes under which application in Form FNC is considered by RBI:

i) Reserve Bank Route: This route is followed where the principal business of the foreign entity falls under sectors where 100 per cent Foreign Direct Investment (FDI) is permissible under the automatic route.

ii) Government Route: The application is considered under this route where principal business of the foreign entity falls under the sectors where 100 per cent FDI is not permissible under the automatic route.

II. Additional criteria:

There are few additional criteria which are considered by RBI on case to case basis. These are mentioned below:-

i. A profit making track record of the foreign company during the immediately preceding three financial years in the home country.

ii. Net Worth* of foreign company not less than US$ 50,000 or its equivalent.

**Means total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a Certified Public Accountant or any Registered Accounts Practitioner by whatever name.*

Initially, the permission is granted by RBI for a period of 3 (three) years, which can later be extended by the authorised dealer.

III. Foreign Insurance Companies and Foreign Banks:

Foreign Insurance companies can establish liaison offices in India only after obtaining approval from the Insurance Regulatory and Development Authority (IRDA).

Similarly, foreign banks can establish liaison offices in India only after obtaining approval from the Department of Banking Operations and Development (DBOD), Reserve Bank of India.

Post establishment compliances (immediately after establishment)

I. After establishment, LO is required to intimate to Registrar of Companies (RoC) in Form FC-1, within 30 days of establishment.

II. Foreign entity setting up LO is required to submit a report containing information in prescribed format, within 5 (five) working days of the LO becoming functional to the Director General of Police (DGP) of the state concerned in which LO has established its office.

2. Branch Office

If the foreign investor company is engaged in the business of manufacturing and trading, and it wishes to undertake certain business activities in India as well, then it can set up a branch office (BO) with specific approval of RBI.

Purpose of BO

- Export/Import of goods (only on wholesale basis).
- Rendering professional or consultancy services.
- Carrying out research work, in areas in which the parent company is engaged.
- Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- Representing the parent company in India and acting as buying/selling agent in India.
- Rendering services in information technology and development of software in India.
- Rendering technical support to the products supplied by parent/group companies.
- Foreign airline/shipping company.

Things to be kept in mind before incorporation

- A BO set up in India is not allowed to carry any kind of retail trading in India.
- A BO is also not allowed to carry out manufacturing or processing activities in India, directly or indirectly.
- Profits earned by the BO are freely remittable from India, subject to payment of applicable taxes.

Steps for incorporation

Approving Authority: Reserve Bank of India (RBI)

I. Permission from RBI:

The manner and procedure for making application to RBI seeking permission to set up a branch office in India is similar to that of setting up a LO. Application is to be made in Form FNC.

II. Additional Criteria:

As in case of a LO, there are few additional criteria for BO also, which are considered by RBI on case to case basis. These are mentioned below:-

i. A profit making track record of the foreign company during the immediately preceding five financial years in the home country.

ii. Net Worth* of foreign company not less than US$ 100,000 or its equivalent.

**Means total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a Certified Public Accountant or any Registered Accounts Practitioner by whatever name.*

III. Branches of Foreign Banks:
Foreign banks are required to obtain necessary approval under the provisions of the Banking Regulation Act, 1949, from Department of Banking Operations & Development, Reserve Bank, to open a branch office in India.

IV. Branch Office in Special Economic Zones (SEZs):
Foreign companies can establish its branch in Special Economic Zones (SEZs) to undertake manufacturing and service activities. The general permission is granted by RBI and is subject to the following conditions:

i. such branches/units are functioning in those sectors where 100 per cent FDI is permitted;
ii. such units comply with the provisions of the Companies Act as applicable to the companies incorporated outside India;
iii. such units function on a stand-alone basis.

Post establishment compliances (immediately after establishment)

The post establishment compliances of a branch office are similar to that as in case of a liaison office.

3. Project Office

A project office (PO) is essentially a branch office, but for a limited period of time and limited purpose. If a foreign company has secured a project from an Indian company, then in order to carry out such project conveniently and efficiently, it may open a PO in India. However, it must be borne in mind that a PO cannot carry out any other activity other than those which are incidental to or related to the project.

Steps for incorporation

No prior approval is required from RBI to set up a project office. Reserve Bank has granted general permission to foreign companies to set up a PO, subject to following conditions:

i) Foreign entity has secured a project from an Indian company; and
ii) the project is funded directly by inward remittance from abroad; or
iii) the project is funded by a bilateral or multilateral International Financing Agency; or
iv) the project has been cleared by an appropriate authority; or
v) a company or entity in India awarding the contract has been granted term loan by a public financial institution or a bank in India for the project.

Here, the condition as mentioned in point no. (i) is mandatory and out of rest of the three conditions, any one or more conditions can be fulfilled. However, if the above criteria are not met, the foreign entity has to approach the Reserve Bank of India, Central Office, for approval.

A project office (PO) is essentially a branch office, but for a limited period of time and limited purpose. If a foreign company has secured a project from an Indian company, then in order to carry out such project conveniently and efficiently, it may open a PO in India.

Setting Up Of Project Offices by Foreign Non-Government Organisations/Non-Profit Organisations/Foreign Government Bodies/ Departments

If any of the above foreign entities, by whatever name called, intends to set up a PO in India, then such entities are required to apply to the Reserve Bank for prior permission to establish an office in India, whether project office or otherwise. sssThis is because it falls under the Government Route.

Post establishment compliances (immediately after establishment)

The post establishment compliances of a project office are similar to that as in case of a liaison office or branch office. Additionally, the foreign company establishing a project office in India is to furnish report through the concerned AD branch, to the Reserve Bank of India, containing required information, within two months of its establishment.

India: Land of Investment Opportunities

Having discussed the investor friendly regulatory systems and various routes available to foreign investors to enter into Indian market, it cannot be denied that India is today one of the most attractive destinations for business investment opportunities. Not only foreign entities earn a good return on their investment in India, but also Indian economy gets a boost! ■

Effective Verbal Communication Skills for Finance Leaders

Accountants are generally associated with certain parochial typecasts, and one of the Chartered most long-lasting is that of the bean-counter who is concerned only with numbers. Finance and accounting skills are no less important, however, they are only a fragment of the entire bouquet of skills the today's finance professional offers. Finance Leaders are also frequently assuming the niche positions of decision-makers and corporate leaders, necessitating them to be capable of interacting and networking with a variety of people. The acrobatic act of balancing fiduciary role with a strategic advisory role involves extraordinary set of soft skills. This entails that they need to be excellent listeners, great presenters, analytical, decisive, firm as well as tactful. Read on…

More than ever, the job description of a Finance Leader includes him or her to work as a strategic advisor to the CEO and the Board. A person who can act as catalyst between internal and external stakeholders, someone who is expected to have best in class negotiation skills while maintaining requisite integrity and thus earns the trust of all stakeholders.

This article looks at effective verbal communication skills which are quintessential for a Finance Leader to perform his or her duties effectively as a great leader.

CA. Ratish Mohan Sharma

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Effective Verbal Communication

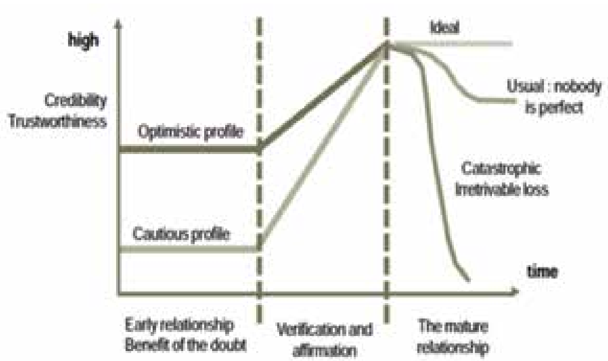
Finance Leaders are increasingly pressured to become world-class communicators and public speakers. They are challenged by the need to communicate complex issues to a variety of audiences. Body gestures, office attire, pleasing personality are no less important part of effective communication.

Dale Carnegie in his book *'How to Win Friends and Influence People in the Digital Age'* mentions *"There is no such thing as a neutral exchange. You leave someone either a little better or a little worse".* Poor ineffective workplace communication typically results in impairment of relationships either immediate or during long term. Some of that damage can be tracked down and fixed, other damage cannot.

Stefano Baldi and Eduardo Gelbstein in their paper *'Jargon, protocols and uniforms as barriers to effective communication'* provides pointers for effective communication. The following diagram given by them (in the next page) attempts to show how credibility and trust develops over a time.

When you are distressed, the first five minutes are usually the most impulsive. That is the time to pause for a while and think. Assess your mood. If there is any suspicion, nervousness, anger or frustration, then the good idea is to keep mum. If you think you cannot, then mentally rehearse first. This will make you identify statements that may go against your objective.

In their words: *"To make effective communication possible, the concepts of credibility and trust are important. Neither credibility nor trust are automatically and instantly given; they need to be earned. This is why communication with family and friends is much easier than with a stranger. At the early stages of a relationship personal character determines whether we assign someone an optimistic profile of credibility and trustworthiness (like in case of a medical doctor) or a cautious profile (like in case of a door to door salesman). As a relationship develops it can follow many different paths. The diagram below depicts a happy situation where credibility and trustworthiness actually increase during the early stages of the relationship until they reach a high level denoting a mature and stable relationship. Alternately, the mature relationship can involve a catastrophic loss of credibility or trust, which is almost always irretrievable, and implies the end of any meaningful and effective communication."*



Following are some tips for an effective verbal communication;

- **Think Before You Speak**
  "Think twice before you speak, because your words and influence will plant the seed of either success or failure in the mind of another." – Napolean Hill.

When you are distressed, the first five minutes are usually the most impulsive. That is the time to pause for a while and think. Assess your mood. If there is any suspicion, nervousness, anger or frustration, then the good idea is to keep mum. If you think you cannot, then mentally rehearse first. This will make you identify statements that may go against your objective.

Your anger is your opponent. A Buddhist folktale tells of a young farmer rowing his boat upstream to deliver his produce to the village. As he looked ahead, he spied another vessel heading hastily downstream, right towards him. He rowed frantically to get out of the way, to no avail. He shrieked at the other vessel, "Change direction, you idiot!" It didn't work. The vessel bumped into his with a loud blow. The young farmer was fuming and yelled out to the other vessel, "You moron! You idiot! What is wrong with you?" No one responded, and the young man realised there was no one in the other boat. The lesson is simple. There is never anyone in the other boat. When we are angry, we are screaming at an empty boat.

What we say *impromptu* is something we later generally realise, we had either said it otherwise or had not said it at all. Typically, it happens when we are replying under stressful circumstances or during conflicts and in situations where we are largely driven by untethered impulse. Alleviating this issue is not intricate, however, it does involve behavioral changes. The idea is to mentally segregate when to talk naturally and when to think before speaking and when to be quiet.

Witness yourself and situation - Observe the situations when what you say is not what would have wanted to say, had you given a careful thought to it before conveying. Keep a track of all such events such that you can relate those at a later convenient time and observe if there is any clear trend which can be addressed.

Observe people - Certain individuals are very letter-perfect and some use illustrations. Some add much facial expressions, body movements while some rely on complex *pleonasm*. A lot can be learnt by mere observation which can give you an indication about how to communicate with such person.

Frame your responses - Consider your alternatives. There are diverse subtle ways to convey your message and your aim is to discover the finest technique that has a positive bearing on listener.

- **Begin with Compliment**
  As they say *'well begun is half done'.* The opening words you say establish the mood for the dialogue. Honest expressions of gratitude at the beginning and end of conversation add a lot of value to the entire dialogue. Find out, what you really appreciate about this person. Look for those attributes which you can genuinely admire. Again as they say, *there is something good in everyone.* As soon as you get an opportunity, share your kind appreciation. Just a simple, *"I love your watch -- where did you get it from?"* can get you into an enjoyable conversation about shopping. Even if the compliment doesn't lead anywhere, it will still make the person feel further valued before you start discussing other subjects.
  Researchers at the National Institute for Physiological Sciences, Nagoya Institute of Technology, and the University of Tokyo, among other Japanese institutions, have found compliments activate the same region of the brain, the *striatum,* as cash does, and both encourage people to perform better.
  The study researchers trained 48 adults to perform a task that required them to tap items on a keyboard in a specific pattern. Then the adults were split into three groups. One group received personalised, individual compliments from one of the administrators of the study. Another group was forced to watch as other people received compliments. The third group was simply meant to evaluate how they did, as participants, on the test.
  When the participants returned to the testing facility the next day, all of the participants were asked to perform the finger test once again. The group that received personalised compliments performed better on the test that day than either of the other groups. Researchers believe that the compliments made them perform better.

The shorter the message the better it is. It also allows the listener to acknowledge through decipherable subtle responses that the essence has been comprehended. Further, the slowly, calmly and confidently you speak the higher are the chances of listener respecting and trusting your words. A serene voice has a calming effect on a person whereas a hurried, fast voice may induce excitement, annoyance or even panic.

- **Be Slow and Brief**
  The shorter the message the better it is. It also allows the listener to acknowledge through decipherable subtle responses that the essence has been comprehended. Further, the slowly, calmly and confidently you speak the higher are the chances of listener respecting and trusting your words. A serene voice has a calming effect on a person whereas a hurried, fast voice may induce excitement, annoyance or even panic.
- **Remember Names**
  William Shakespeare once said: *"There is no sound so sweet as the sound of one's own name".* You can make people feel special and valued by addressing them with their name. Prodigious communicators remember the names of people they speak with; it's a common saying among politicians *"To recall a voter's name is statesmanship. To forget it, is oblivion".* In some sectors like media, it is imperative for an anchor or a journalist to remember the names of guests, while you are on air you cannot afford to forget names or address them with a wrong name as it could be embarrassing and as well be considered disrespectful.
  The following tips can be useful to remember names:
  As practice makes a man perfect so is reiteration helps you recall. Simply say sentences which will involve the person's name: *"What are you planning to do next year, Vikram?", "How did you feel about that, Vikram?", "It was a pleasure meeting you, Vikram".* Using it when you say goodbye is an excellent way of reinforcing the name in your mind for future meetings.
  Many of us know about this game called dumb charades wherein a person acts or expresses a word or words without uttering a word till it is guessed by others. There is some science behind how we recall words based on some relation with expressions, acts or what they sound like. This is called association and is one of the best ways to remember names.
  You can associate the name with a similar rhyming name or with the meaning it conveys or with someone with similar name or with the place person belongs to, *etc.* For instance you just met two girls, you met a girl named Kaveri,

you can associate her name with the river Kaveri. You met another girl named Medha, you can associate her name with Medha Patkar. These are just examples. There could be multiple ways to achieve the same result. Obviously, keep these associations to yourself, as the person might feel offended by what they might see as a comparison rather than an association.

While you work on yourself, you may keep writing the names in your notepad or in your notes app in your handheld device. You may also add something about the person's personality traits, and where and when you met, what location *etc.* Revisiting such information a couple of times will help you freezing the names in your memory.

You may also make use of technology. To name a few, namerize, namerick, nameshark are some apps which can help you with remembering names and related details.

- **Don't Criticise**
  The old Jewish proverb goes "For in the same way you judge others, you will be judged, and with the measure you use, it will be measured to you". The moment you use communication to criticise, the subject of your criticism is forced to defend. Everything you say is then filtered through disbelief. Its long term effect is far more harmful than helpful. In a dynamic environment, you never know when your competitor becomes your ultimate collaborator. A healthy competition should be respected but at the same time collaboration is critical and should be protected.
- **Don't Argue Too Much:** *'Choose Your Battles',* for some issues you have to take a stand considering their materiality and your integrity, but other times it will be more effective to compromise. Todd Duncan in his book *'Killing the sale'* describes 10 fatal mistakes a salesperson makes and one of them is 'Arguing'. *"The mistake of arguing is talking too much and listening too little. It's staking your sales success on your ability to state your case in a convincing fashion. It's mastering a monologue and then expecting the jury of your prospects to be convinced to take your side. But arguing only makes certain your sales get a death sentence. And the reason is simple: you can't build trust with a prospect if you're the only one talking. Establishing an initial level of trust takes more than flowery monologue. It takes dialogue. It takes actual conversation. There is no other way for you to know that your product or service will meet a prospect's needs."*

In the fast paced world and especially with so much of digital distraction, you may tend to lose your focus, and one of the best ways to regain your focus is by listening. The difference between the sense of hearing and the skill of listening is attention. Good listeners relax and completely focus on listening and suspend judgment until the other person is finished before they create a reply.

- **Learn from Different Mediums:** There are some great movies one can learn from. One such movie is *"12 Angry Men".* It is a 1957 golden bear award winning American drama film based on a teleplay by Reginald Rose. This film shares the story of a jury made up of 12 men as they debate upon the fault or exoneration of a defendant. In USA, the judgment by jury in most criminal trials must be agreed by all jury members. *12 Angry Men* reveals many methods of building consensus, collaborative problem solving, and managing conflicts among a group of people whose personalities are very different from each other. Library of Congress in 2007, selected *12 Angry Men* for preservation in the United States National Film Registry as being "culturally, historically, or aesthetically significant". A very well directed Indian remake of *12 Angry Men* called *'Ek Ruka Hua Faisla'* was released in 1986.
- **Use Humour**
  "If you're going to tell people the truth, you'd better make them laugh. Otherwise, they'll kill you."
  - George Bernard Shaw.
  Humour, as per one of the definitions available on Wikipedia is defined as the tendency of particular cognitive experiences to provoke laughter and provide amusement. The term derives from the humoral medicine of the ancient Greeks, which taught that the balance of fluids in the human body, known as humours (Latin: humor, "body fluid"), controlled human health and emotion.
  "A sense of humor is part of the art of leadership, of getting along with people, of getting things done." – Dwight D. Eisenhower
  Many world leaders including head of businesses, politicians, spiritual leaders and public speakers

use humour effectively. You need not be a comedian to use humour effectively. You only need a good sense of humour. Humour if used effectively, can help you get away from difficult situations and at times let you convey a negative message in an unobjectionable way. Inappropriate humor is off-putting, and can even be frustrating.

In a survey of more than 1,400 CFOs from a stratified random sample of US companies with 20 or more employees done by a Robert Half company Accountemps, roughly four in five (79%) chief financial officers said an employee's sense of humour plays an important role in how well he or she fits in with the company's corporate culture.

Whenever you find something funny around, be it jokes, cartoons, real life examples, videos, pictures *etc*, try and relate them with the issues or points you usually end up discussing with people. Practically, you may write or save them somewhere in your records, assign them to issues and points you discuss and use them as and when required. Slowly, this will become a habit and even without keeping them in your records you will be able to use them effectively.

- **Verbal Faux Pas**

  Though the list is endless, Joy Fisher-Sykes says that following Verbal Faux Pas should not be used;

  - *"Let me be honest with you"* (Common variations include *"To tell you the truth," and "To be frank with you."*) should not be used. This phrase implies that, up to now, you've been deceitful or haven't been completely honest-that, in some way, you've been holding back.
  - *"You know" or "You know what I mean"* confuses people. This phrase seems common by even the most seasoned speakers, TV personalities, and celebrities. The phrase implies, "It's obvious what I'm trying to say. I shouldn't have to say any more-you know what I mean. Can't you read my mind?" For many, the first thought is, "No I don't know what you mean, please tell me." "You know" is a speech filler which gives the speaker time to think about what to say next.

- **Listening Skills**

  The most basic and powerful way to connect to another person is to listen. Just listen. Perhaps the most important thing we ever give each other is our attention. - Rachel Naomi Remen

  In the fast paced world and especially with so much of digital distraction, you may tend to lose your focus, and one of the best ways to regain your focus is by listening.

  The difference between the sense of hearing and the skill of listening is attention. Good listeners relax and completely focus on listening and suspend judgment until the other person is finished before they create a reply. If you feel like you might forget a point, just take notes.

  Pay attention to what isn't said i.e. to nonverbal signals. We not only listen with our ears but also with our eyes. We pick the add-on information being carried through non-verbal communications like eye-movements, body gestures and facial expressions.

  Be unbiased. Every person has a dissimilar way of speaking, for instance some individuals are more introvert than others, some are anxious, some use regional accents, some keep moving their arms *etc*. Don't be annoyed and or let the other person's conduct befuddle you from what they are truly conveying. In more of financial language, pay attention to substance of what is being said rather that getting distracted by the form in which message is conveyed.

  It is considered rude to interrupt. When listening to someone talk, abstain from suggesting solutions. Most people don't want your counsel anyway. If they do, they will ask for it.

  Listening, like all skills, improves with practice. You can test and practice listening skills online as well. ■

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ACCOUNTANT'S BROWSER

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National Update

Transfer of Completed Immovable Property Exempt from Service Tax

For long there was a debate around when a developer should charge service tax to a home buyer while selling the property—when the property is being constructed, or even after it is finished and occupancy certificates received. Resolving the issue, the Ministry of Finance has issued a circular, stating that developers should not levy service tax on sale of flats and apartments once occupancy certificate is received but completion certificate is not. In its statement, the ministry stated, *"...that sale of flats/ dwellings, etc., where the entire consideration is received after issue of occupancy certificate by Brihanmumbai Municipal Corporation (BMC), leading to a mere transfer of title in immovable property, falls outside the definition of "Service" provided in Section 65B (44) of the Finance Act, 1994, and is therefore, not taxable."* In many projects, the developer may get the occupation certificate phase-wise, and the completion certificate once the whole project is completed.

*(**Source:** http://www.business-standard.com/)*

Plans to Rewrite Direct Tax Laws

The government has set in motion the process of rewriting income tax laws to bring them in sync with the contemporary Indian economy. It has constituted a 10-member committee to overhaul the provisions of the Income-Tax Act (I-T Act), 1961 with the aim of reducing litigation arising from ambiguous drafting of laws. The deadline for the committee has been staggered, with the first batch of recommendations due on 31 January 2016, so that they can be incorporated in the Finance bill to be presented along with the Union budget for 2016-17. "We have, over the last few months, been resolving a lot of past issues and now time has come to look at some provisions of the I-T Act to look at how their drafting quality can be improved in order to avoid ambiguity so that everybody is certain as to what the Act itself says," Finance Minister Arun Jaitley said recently. The move is likely to provide relief to both domestic and foreign investors who have been vocal about the lack of clarity in Indian tax laws and the subsequent prolonged litigation caused by it. Around Rs.4-5 trillion is estimated to be locked up in litigation at various courts and appellate authorities. The move also comes in the backdrop of the rapid rise of e-commerce in India and the consequent need to put in place tax regulations to govern online marketplaces.

(Source: http://www.economictimes.com)

e-Sahyog Pilot Project Launched

The Finance Minister Arun Jaitley has recently launched an "e-Sahyog" pilot project which furthers the Income Tax Department's commitment to work in an e-environment and reduces the need for the taxpayer to physically appear before tax authorities. The "e-Sahyog" project is aimed at reducing compliance cost, especially for small taxpayers. The objective of "e-Sahyog" is to provide an online mechanism to resolve mismatches in Income-tax returns of those assesses whose returns have been selected for scrutiny, without visiting the Income Tax Office. Under this initiative the Department will provide an end to end e-service using SMS, e-mails to inform the tax assesses of the mismatch. The taxpayers will simply need to visit the e-filing portal and log in with their user-ID and password to view mismatch related information and submit online response on the issue. The responses submitted online by the taxpayers will be processed and if the response and other information are found satisfactory as per automated closure rules, the issue will be treated as closed. The taxpayers can check the updated status by logging in to the e-filing portal. The Finance Minister has also inaugurated a drive to provide public service at peoples doorstep by holding "special PAN camps in remote areas".

*(**Source:** Press Information Bureau)*

India to Tie Up with G20, OECD

India is set to make major changes in its Income Tax Act and sign a multilateral agreement with G20 and OECD nations to prevent the corporate practice of showing large parts of global profits in low tax countries and tax havens instead of the country where economic activity takes place. The government would sign a legal instrument with nearly 90 countries as early as 2016 to counter tax avoidance strategies of corporations, including abuse of tax treaties such as the one with Mauritius. These nations would also take coordinated measures to bring digital economy under the tax net, tighten disclosures of cross-border transactions among related group firms, tax the profits held abroad without repatriation and tighten the definition of a company's business presence in a country. The 15 steps announced by OECD, a global thinktank on economic policy, are the outcome of its project on tax Base Erosion and Profit Shifting (Beps). Department of Economic Affairs Secretary Shaktikanta Das said: *"Our officers are part of the OECD working groups and India's views are duly reflected in the report."* Revenue secretary Hasmukh Adhia also said India was very much in support of the Beps project.

*(**Source:** http://www.expressindia.com)*

New Rules to Reduce TP Disputes

The government has issued the final rules to incorporate range concept and use of multi-year data in transfer pricing calculations to reduce litigation and bring Indian laws in line with international practices. The Income Tax Department had issued the draft of the rules in May inviting stakeholder comments. The new regime will be applicable for calculating the arm's length pricing of international transactions and specified domestic transactions from April 1, 2014, the finance ministry has said. Tax officials have elaborated rules to fix these prices to ensure companies pay appropriate tax. Most rules are based on how these goods or services would be priced if the transaction was at an 'arm's length' or between unrelated entities. Transfer pricing is one of the main reasons for tax disputes in India. The tax department has made these changes to provide more clarity. "The use of range concept, being a statistical tool, enhances the reliability of analysis undertaken for computation of ALP (arm's length price)," the finance ministry said in a press release. Essentially, after comparing prices with that of comparable companies, if transfer prices shown by the assessee company are within a range, the tax authorities will accept the pricing. This will help reduce adjustments to only cases where transfer prices are outside the range. The new rules also provide for use of multi-year data, which will take care of annual fluctuations.

*(**Source:** www.financialexpress.com)*

Govt May Introduce TDS for Certain Services under GST

The government may be looking to introduce tax deducted at source (TDS) for certain services under the goods and services tax (GST)—a move that is likely to increase compliance requirements by companies, plug leakages and boost revenue collection. Most states deduct TDS under value-added tax for some specific areas like work contracts to ensure that small suppliers are not able to evade taxes, but there is no such TDS for service tax at present. In its draft report on the filing of tax returns under the GST made public recently, the government introduced a returns form for TDS deducted by purchasers at the time of payment to suppliers. The report went on to add: *"The GST law may contain a provision for TDS for supply of certain goods and/or services to specified categories of purchasers who will be obligated to deduct tax at a certain percentage from the payment due to the suppliers."* This is not the first attempt by the government to introduce TDS in service tax—the government had floated this idea in 2011, but shelved it after opposition from industry.

*(**Source:** http://www.business-standard.com/)*

CBDT Clarifies on Interest Earned by banks on Investments in non-SLR Securities

Accepting the Supreme Court's stance, the Central Board of Direct Taxes (CBDT) has clarified that interest earned by banks on investments in "non-SLR" securities will be taxed only as "business income", not as "income from other sources". The fallout of this CBDT stance is that the Income Tax Department cannot "disallow", for income tax purposes, the expenses incurred by banks for earning income from non-SLR (statutory liquidity ratio) securities. Investments in non-SLR securities cannot be considered eligible for SLR requirement, which is the reserve requirement that Indian banks are required to maintain in the form of gold or government securities before extending credit to customers. The move is expected to benefit banks, as it brings certainty to tax treatment on income earned from investments in "non-SLR" securities. In the absence of this clarity, many field officers were taking the stance that such income of banks was to be taxed as only "income from other sources" and therefore "disallowed" all expenses incurred by banks for earning this income.

*(**Source:** www.thehindubusinessline.com/)*

International Update

IFAC Study Shows Accountancy Strongly Linked to Prosperity, Improved Living Standards

The accountancy profession is strongly linked to national economic growth and improved living standards, and it contributes USD $575 billion annually to the global economy, according to a report by the International Federation of Accountants, the global organisation for the accountancy profession. Fayez Choudhury, IFAC Chief Executive Officer, said, *"This report highlights the scale of the profession's importance to the global economy. It confirms a particularly exciting economic opportunity in the rapidly developing Asian and South American regions. And the findings verify the profound importance of IFAC's mission—and that of the global profession—to help strengthen accountancy capacity in developing countries, where accountants have a significant role to play in strengthening the institutions and architecture that will improve peoples' lives."* For the first time, IFAC has definitively linked a strong accountancy profession to improved living standards for citizens. Launched at the recent Singapore Accountancy Convention, ***Nexus 2: The Accountancy Profession—A Global Value Add***, a study conducted by the independent Centre for Economics and Business Research (Cebr), found that global regions with a higher share of accountants in total employment have a higher per capita GDP. The correlation between the share of accountants in total employment and the UN Human Development Index (HDI) is even stronger. The HDI measures a number of indicators including life expectancy, years of schooling, and income. The global accountancy ecology—which includes members of IFAC professional accountancy organizations (PAOs) as well as people who identify their roles as accountancy or accountancy support—contributes an estimated $575 billion gross value added (GVA) annually to the global economy and, of this amount, IFAC PAO members contribute 43%. Highly developed countries in North America and Europe dominate the GVA of the global accountancy ecology; Asia's contribution is third highest.

IFAC Releases New Thought Paper Setting Out a Vision for Integrated Thinking

To facilitate the contribution of professional accountants to integrated thinking—and help align capital allocation, corporate behaviour, financial stability, and sustainable development—the International Federation of Accountants has recently published ***"Creating Value with Integrated Thinking: The Role of Professional Accountants"***. The thought paper sets out a vision for integrated thinking and explores what professional accountants working in the public and private sectors can do in practical terms to facilitate it in their organisation, regardless of whether their organisation is planning to publish an integrated report. It identifies five key elements, which, if implemented, can lead to more effective organisations. This ultimately provides the basis for shifting from today's financially oriented reporting to integrated reporting. "Integrated reporting continues to gain global momentum and help change the way businesses think about creating value over time. But it is integrated thinking that will ultimately change corporate behaviour and lead to more resilient organisations and greater trust in business and government," said IFAC CEO."Professional accountants—as business partners involved in organisational leadership and decision support—can use integrated thinking as a means of engaging those beyond the finance and accounting departments to facilitate resilient organizations that create value over the short, medium, and long term." The thought paper reflects integrated thinking as we understand it today, given that this is a period of experimentation for many organizations.

Thought Paper on Integrating Risk Management

Most people in an organisation are primarily focused on doing their job well. And this is how it should be, as the main objective of an organisation is not to manage risk, nor to have controls, but to ensure that it makes the best decisions and achieves its objectives. If employees were obliged to implement a risk management and internal control system around their activities it would merely be seen as a distraction. Establishing an explicit connection between how risk affects their jobs and their objectives, however, makes them more inclined to manage the related risk as well. Unfortunately, most standards, frameworks, and guidelines still treat risk management as a separate process or a non-integrated, stand-alone function, rather than as an integral part of managing an organisation, including strategic and operational planning and decision making, execution, monitoring, review, and continuous improvement. As a first step in filing this gap, IFAC has developed a thought paper, with the support and guidance of Professional Accountants in Business Committee, ***"From Bolt-on to Built-in—Managing Risk as an Integral Part of Managing an Organization"***. The paper demonstrates the benefits of properly integrating the management of risk and provides guiding principles and a practical example on how such integration can be achieved.

IFAC Urges G-20 Action on Growth

The International Federation of Accountants has submitted **12 recommendations for endorsement** by the Group of Twenty (G-20), urging action on issues impacting the G-20 priorities of robust, inclusive growth. "Quite a bit has been achieved through the G-20's leadership under the substantial pressures of the global financial crisis—but now is no time for complacency," said Fayezul Choudhury, IFAC's Chief Executive Officer. IFAC's 12 recommendations focus among other things on 'Good governance and regaining trust,' 'Globally consistent, good regulation,' 'Resolving poor financial management, transparency, and accountability,' and 'A transparent, fair, and effectual international taxation system.' We're at a crucial juncture—growth continues to wane or completely elude economies around the world despite massive, unsustainable monetary stimulus since the global financial crisis. A complex, fragmented regulatory environment is emerging, and there is no clear sight of how this is impacting growth."

2015 Handbook of International Education Pronouncements

The 2015 Education Handbook of IAESB has been recently released and contains the IAESB's suite of the newly revised and redrafted International Education Standards (IES) 1-6, the re-drafted IES 7, *Continuing Professional Development (2014), IES 8, Competence Requirements for Audit Professionals* (2008), and the revised *Framework for International Education Standards for Professional Accountants and Aspiring Professional Accountants*. It replaces the 2014 edition of the *Handbook of International Education Pronouncements*. One of the more significant changes to the handbook is the addition of a new section that includes the newly revised IES 8, *Professional Competence for Engagement Partners Responsible for Audits of Financial Statements*, that have been approved by the IAESB, but are not effective at the time of the handbook's release.

Accountants as Partners in Crime Prevention & Reporting

"For those who pay bribes, or don't do enough to prevent them, the world is getting smaller every day," says the ***Foreign and Corrupt Practices Act Blog***. Commentators on economic crime have recently observed an upswing in both enforcement of anti-corruption legislation and compliance with laws and regulations around the globe and the accountants can be crucial as partners in crime prevention and reporting in present global scenario, according to by **Samantha McDonough**, Professional Standards Support Manager, Chartered Institute of Management Accountants. In an article in IFAC Knowledge Gateway, he argues that even North Korea recently announced the creation of an anti-corruption agency. Laws and regulations are instigated almost every day, somewhere in the world. The success of these laws relies on their enforcement which, in turn, relies heavily upon the acuity of those working in business and their ability to spot suspicious activity. Accountants are in a good position to identify activity that may be indicative of corruption through their preparation of financial information and their ability to spot anomalies or irregular activity.

Materiality in Integrated Reporting

The International Integrated Reporting Council and IFAC have recently released a publication, which offers guidance for preparing integrated reports. It supports the International Integrated Reporting <IR> Framework by explaining materiality, and the corresponding materiality determination process, in the context of integrated reporting. It also outlines expectations for materiality-related disclosures. Integrated reporting enhances the way organisations think, plan and report the story of their business.

Certificate Course on Concurrent Audit of Banks

The concurrent audit system of banks has become very crucial and important for banks. The main objective of the system is to ensure compliance with the audit systems in banks as per the guidelines of the Reserve Bank of India and importantly, to ensure timely detection of lapses/ irregularities. In view of the core competence of the chartered accountants in the area of finance and accounting, risk management, understanding of the internal functioning and controls of banks, *etc.*, the banking sector has been relying extensively on them to comply with these requirements of the regulator. The Internal Audit Standards Board of ICAI conducts six days Certificate Course on Concurrent Audit of Banks. The purpose of the ***Certificate Course on Concurrent Audit of Banks*** is to provide an opportunity to the members to understand the intricacies of concurrent audit of banks thereby improving the effectiveness of concurrent audit system in banks, and also the quality and coverage of concurrent audit reports.

The course is open for the members of the Institute of Chartered Accountants of India as well as the students who have cleared CA final examinations.

Please refer link for further details of the Course: http://www.icai.org/post.html?post_id=8236

Course Fees: For metro cities: ₹15,000 per participant, for non-metro cities: ₹12,500/- per participant *(Cheque may be drawn in favor of "Secretary, ICAI" Payable at Delhi and should be submitted to respective branch)*

The details of the forthcoming batches of the Certificate Course on Concurrent Audit of Banks, organized by the Internal Audit Standards Board at various places in December, 2015 and January, 2016 are as follows:

Location	Scheduled Dates	Registration and Course Details
Noida	December 12 & 13, 19 & 20 and 26 & 27, 2015	http://resource.cdn.icai.org/38399iasb-noida-192.pdf
Bangalore	December 12 & 13, 19 & 20 and 26 & 27, 2015	http://resource.cdn.icai.org/39385iasb-bangalore-207.pdf
Thane	December 12 & 13, 19 & 20 and 26 & 27, 2015	http://resource.cdn.icai.org/39494iasb-thane-205.pdf
Coimbatore	December 12 & 13, 19 & 20 and 26 & 27, 2015	http://resource.cdn.icai.org/39671iasb-coimbatore-214.pdf
Jaipur	December 19 & 20, 26 & 27, 2015 and January 2 & 3, 2016	http://resource.cdn.icai.org/39502iasb-jaipur-211.pdf
Baroda (jointly with Anand Branch)	December 19 & 20, 26 & 27, 2015 and January 2 & 3, 2016	http://resource.cdn.icai.org/39551iasb-baroda-188.pdf
Guwahati	December 26 & 27, 2015 and January 2 & 3 and 9 & 10, 2016	http://resource.cdn.icai.org/39234iasb-guwahati-206.pdf
Ahmedabad	December 25 & 26, 2015 and January 2 & 3 and 9 & 10, 2016	http://resource.cdn.icai.org/39496iasb-ahmedabad-191.pdf
Patna	January 2 & 3, 9 & 10 and 16 & 17, 2016	http://resource.cdn.icai.org/39524iasb-patna-210.pdf

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Invitation for empanelment as Resource Persons for the programmes to be organised by the Career Counselling Committee in the Year 2015

The Career Counselling Committee (CCC) of the Institute of Chartered Accountants of India, a newly constituted non standing Committee proposes to organise a Career Counselling Programmes during the year 2015-16. The Committee emphasise on holding the career counselling programmes in various parts of India in the year 2015-16 to advise students at Secondary school Higher/Senior Secondary School, Graduation/Post Graduation level & others for connecting them with the Chartered Accountant course.

Experts/Resource Persons who have experience in the relevant area and/or 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 Career Counsellors are requested fill the form available at **https://docs.google.com/a/icai.org/forms/d/1P4sLD2EFaL3coX2zqdZa50Zqod_ARzxAPykeDyj3pAI/viewform.** Thereafter, Experts are also requested to send/e-mail their resume at: Secretary, Career Counselling Committee (CCC), 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, Tel No. 0120-3876871. 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 30.12.2015.

Alternatively, Experts/Resource Persons who have experience in the relevant area and/or 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 Career Counsellors are requested fill the Counsellor Registration form available in the home page at Committee's exclusive website cccicai.in. Thereafter, Experts are also requested to send/e-mail their resume at ccc.secretary@icai.in.

Resource Persons empanelled therefore requested to host the programmes to be organised by CCC in the Committee's exclusive website cccicai.in. We have also provided the facility to login in the Committee's exclusive website cccicai.in & fill the details in the dashboard provided to them after logging into the aforesaid website for hosting the aforesaid Career Counselling programme.

CCC, 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. CCC, ICAI reserves the right to reject the Expression of Interest received from the applicant Member/Members of ICAI without assigning any reason therefor.

Chairman
Career Counselling Committee (CCC), ICAI
Email: ccc.chairman@icai.in

Invitation for Expression of Interest from POUs i.e. Branches & Regional Councils to host the Career Counselling Programmes in the year 2015-16

The Career Counselling Committee (CCC) of ICAI a newly constituted Committee, with prime objective to promote the Commerce Education with special focus on CA course amongst Secondary, Senior/Higher Secondary, Graduate/Post Graduate students as well as other stakeholders.

The Career Counselling Committee has taken an initiative to hold career counselling programmes in various parts of India in the year 2015-16 to advise students at Secondary school, Higher/Senior Secondary school, Graduation/Post Graduation level & others for connecting them with the Chartered Accountant course.

The CCC proposes to hold these aforesaid programmes wherein Career Counsellor shall interact with the students of Secondary, Senior/Higher Secondary, Graduate/Post Graduate students as well as other stakeholders.

POUs i.e. Branches/Regional Councils therefore requested to host the programmes to be organized by CCC within jurisdiction of your branch/Regional Council. We have also provided the facility to login in the Committee's exclusive website cccicai.in & fill the details in the dashboard provided to them after logging into the aforesaid website.

Please contact Secretary, Career Counselling Committee, 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, Telephone: 0120-3876871, Mobile: 09312085025 for hosting the aforesaid Career Counselling programmes within jurisdiction of your branch/Regional Council.

Chairman,
Career Counselling Committee, ICAI

New Initiatives of Career Counselling Committee (CCC)

Career Counselling Programme at Overseas locations

Recently, the Committee had organized a Career Counselling programme at Indian School, Muscat, Oman on 5th & 6th November, 2015 and Indian School, Darsait on 17th November, 2015.

Career Counselling Programmes

The Committee organised the Career Counselling programmes on 19th November, 2015 at Phase-I, Ashok Vihar, New Delhi, 19th November, 2015 at Ram Nagar, Rohtak, Haryana, on 18th November, 2015 at Jhajjar Road, Rohtak, Haryana, 18th November, 2015 at Phooliya Kalan, Bhilwara, Rajasthan, 18th November, 2015 at Phooliya Kalan, Bhilwara, Rajasthan, 18th November, 2015 at Phase-3rd, Jhalana Doongri, Jaipur, Rajasthan, 17th November, 2015 at SAS Nagar, Chandigarh, Punjab, 17th November, 2015 at Jawala Hari Market, Paschim Vihar, New Delhi, 17th November, 2015 at Bhawani Singh Marg, Rambagh Crossing, Jaipur Rajasthan, 17th November, 2015 at Patel Nagar Bhilwara, Rajasthan, 16th November, 2015 at Kaushalpuri, Kanpur, Uttar Pradesh, 16th November, 2015 at Civil lines, Rewa, Madhya Pradesh, 16th November, 2015 at Near Railway Station, Rohtak, Haryana, 16th November, 2015 at Near Lowadih Chowk, Lowadih, Ranchi, Jharkhand, 10th November, 2015 at Jamalpur Colony, Ludhiana, Punjab, 9th November, 2015 at Bariyatu Road, Ranchi, Jharkhand, 9th November, 2015 at Hoskote, Bangalore, Karnataka, 9th November, 2015 at Lajpat Nagar-I, New Delhi, 7th November, 2015 at Vasnakeliya, Dholka, Ahmedabad, Gujarat, 7th November, 2015 at Dwarakanagra Visakhapatnam, Andhra Pradesh, 7th November, 2015 at Jamalpur Colony, Ludhiana, Punjab, 7th November, 2015 at Greater Noida, 7th November, 2015 at Faridabad, Haryana, 6th November, 2015 at Near Bank Enclave, Laxmi Nagar, New Delhi, 6th November, 2015 at Balolnagar Char Rasta, Ranip, Ahmedabad, Gujarat, 6th November, 2015 at Kundaul, Agra, Uttar Pradesh, 6th November, 2015 at Birbal Road, Krishna Market, Block C, Lajpat Nagar-I, New Delhi, 6th November, 2015 at Mayur Vihar Phase-III, Delhi, Career Counselling Committee (CCC), ICAI is organising Career Counselling Programme on 5th November, 2015 at birthliawali, Sriganganagar, Rajasthan, 5th November, 2015 at Fatehwadi, Sarkhej, Ahmedabad, Gujarat, 5th November, 2015 at 30, Mother Teresa Sarani, Kolkata, West Bengal, 5th November, 2015 at T. Nagar, Chennai, Tamil Nadu, 5th November, 2015 at Mogappair, Chennai, Tamil Nadu, 5th November, 2015 at Peera Gari, New Delhi-110087, 5th November, 2015 at Juglan, Hisar, Haryana, 5th November, 2015 at Behbalpur, Hisar, Haryana, 5th November, 2015 at Opposite New Sabji Mandi, Adarsh Nagar, New Delhi, 4th November, 2015 at Rohtak Road Village Kharawar, Rohtak, Haryana, 4th November, 2015 at Vasnakeliya, Dholka, Ahmedabad, Gujarat, 3rd November, 2015 at Lajpat Nagar-1, New Delhi, 3rd November, 2015 at HNG Campus, Opp. Bus Stand, Bahadurgarh, Haryana, 3rd November, 2015 at near Overbridge, Ranchi, Jharkhand, 3rd November, 2015 at JLN Marg, Jaipur, Rajasthan, 2nd November, 2015 at Madurai, Tamil Nadu, 2nd November, 2015 at Village Bahuakbar Pur, Rohtak, Haryana, 2nd November, 2015 at Purulia Road P.B. 87, Ranchi, Jharkhand, 2nd November, 2015 at Main Bazar Village Mokhra, Rohtak, Haryana & organised the same in many places from 20th February, 2015 onwards.

You are requested to post your query/suggestion by post/e-mail and for updating about the other endeavours of the CCC, ICAI to the Secretary, Career Counselling Committee (CCC), 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, Tel No. 0120-3876871.

Chairman
Career Counselling Committee, ICAI

Free access to e-CLA (Electronic Version of Corporate Law Adviser)

Get FREE access to the electronic version of Corporate Law Adviser, (e-CLA) to remain updated on Corporate/SEBI and Business Laws

Young Members Empowerment Committee (YMEC) of ICAI constantly endeavours to keep Young Members updated with latest developments in the profession. YMEC has been taking various initiatives to acumen Young Members with updated information of the profession as implementation of YMEC vision and mission. In today's world where time is money and real time updates are required, Electronic Medium has assumed growing importance as a new approach to continuing education.

Taking the YOUNG MEMBER EMPOWERMENT drive forward YMEC has made the arrangement with Company Law Advisor, whereby all 70000 Young CAs across the country would be getting free of cost online access to this e-CLA worth ₹4500 p.a. for a period of 10 months w.e.f. 1st Sept. 2015 up till 30th June 2016. Free access to e-CLA would be available with No Cost to ICAI to the Young members (born on or after 1.1.1985).

Complete details of this arrangement are available on www.ymec.in

Extent of Coverage through e-CLA	Contents of e-CLA
• **Corporate Laws** – Company Law, Securities Law, SEBI Law, Foreign Exchange Law, Banking, NBFC, SARFAESI, SICA, Competition Law, etc. • **Business Laws** - Arbitration, Trade Marks, Designs, Copyright, IDRA, Information Technology, Money Laundering, Insurance etc.	• Latest Case Laws, Orders of CLB, SAT, Competition Commission, etc., Legislations (Acts, Rules, Regulations, etc.), Articles on Contemporary Issues, Queries and Replies on interesting aspects of Law, Latest Notifications, Circulars, etc.

Chairman, YMEC

Online Registration for Mentoring to hand-holding the young Chartered Accountants-

Young Members Empowerment Committee has come up with Online Mentoring. Mentoring is a process in which mentor (our senior and experienced members) encourages and advises our Young CAs (Mentees) act as a guide or counsellor in a friendly way by sharing their own professional experiences and knowledge. This program pairs the experienced professionals and Young Members in order to develop a relationship that can yield insights and opportunities to expand one's knowledge of career options, developing work-related soft-skills for career progression, or to achieve meaningful goals.

Through online mentoring, senior experienced professional provide guidance and assistance to the young members by providing their technical video on various topics on YMEC web portal.

Member who wants to become Mentor / Mentee can fill their interested areas for mentoring on YMEC Portal at http://ymec.in/add-online-registration-for-mentoring/. For more details kindly visit www.ymec.in.

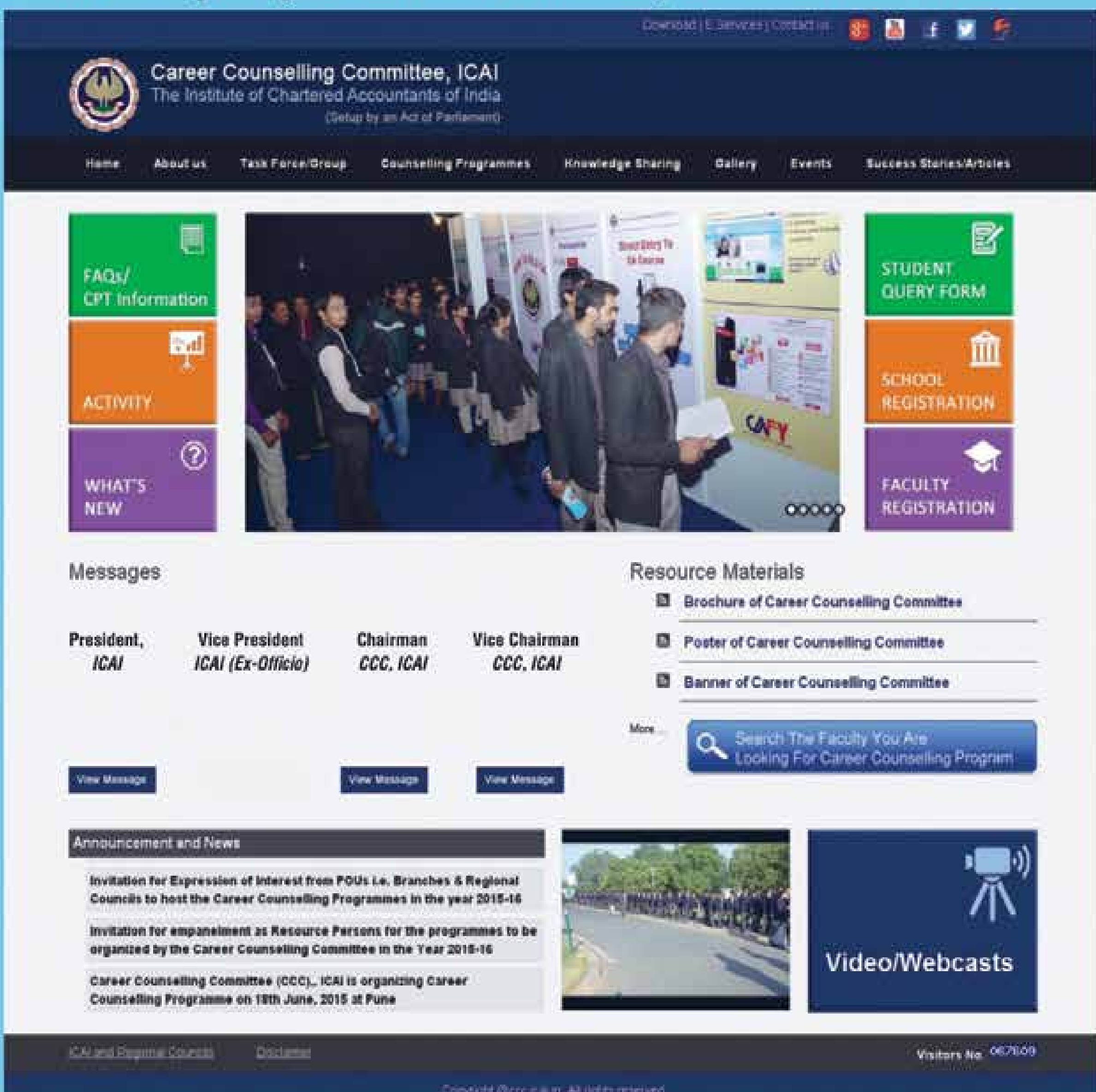
Chairman, YMEC

CAREER COUNSELLING COMMITTEE (CCC), ICAI

An Exclusive website of CCC, ICAI i.e. cccicai.in

An endeavour towards promotion of Commerce Education particularly CA Course

Career Counselling Committee, ICAI has brought out an Exclusive website, to promote the Commerce Education with special focus on CA course amongst Secondary, Senior/ Higher Secondary, Graduate/Post Graduate students as well as other stakeholders. The aforesaid website will educate students about the glorified world of Accountancy Profession This website will be a stepping stone for choosing an excellent career with special reference to Commerce education particularly Accountancy education and help them in deciding the right career choice in accountancy education available to them.



Career Counselling Committee (CCC), ICAI

CCC, ICAI is Now on Social Media Platform

Career Counselling Committee, ICAI has brought out its contents in social media platform, to promote the Commerce Education with special focus on CA course amongst Secondary, Senior/ Higher Secondary, Graduate/Post Graduate students as well as other stakeholders. The aforesaid various social media platforms like Facebook, Twitter, Google+, Youtube & Linkedin will be a stepping stone for choosing an excellent career with special reference to Commence education particularly Accountancy education and help them in deciding the right career choice in accountancy education available to them, which will facilitate in creating buzz, post updates, starting discussions, sharing links, promotional campaigns, promote blogs/feeds, posting of photos & documents, creating twitter handler, customised for Contact form/ Registration form for the same etc. for the same.

Facebook

- Creating profile
- Creating page
- Content development
- Buzz creation
- Integration page with other social media channels
- Post updates with links to the desired landing page
- Joining groups and pages
- Adding members
- Starting discussions
- Sharing links
- Run contests promotional campaigns, polls
- Video sharing via YouTube tabs (for viral campaigns)
- Photo sharing via page flicker apps/ similar apps
- Document sharing (pdf, ppt, whitepapers, brochures)
- Customized contact from/ registration form
- Promote blogs/feed

Twitter

- Creating twitter handle
- Post tweets with site link (content from the site)
- Following key influencers
- Use hash tags for keywords
- Retweet influential tweets
- Tweeting based on trends
- Post natural updates frequently
- Influence mentions
- increase followers base constantly
- Network and engage the followers

Google+

- Creating profile
- Create page
- Buzz creation
- Integrating page with other social media channels
- Post updates with links to the desired landing page 3
- Joining pages
- Adding influencers to our circles
- Starting discussion
- Sharing links
- Video sharing
- Photo sharing
- Document sharing (pdf, ppt, whitepaper, brochures, notes.)
- Tagging

You Tube

- Creating a YouTube channel.
- Managing the YouTube Page of the brand.
- Integration of YouTube videos with facbook brand page
- Optimization of YouTube channel.
- Making video viral by sharing them on other social media platforms.
- Posting some documentary

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

THE CHARTERED ACCOUNTANT JOURNAL
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
SET UP BY AN ACT OF PARLIAMENT

Non-Receipt of *The Chartered Accountant* Journal

This is for the information of Members/subscribers who fail to receive *The Chartered Accountant* journal despatched to them either due to un-intimated change of address or postal problems.

Members and Students are requested to inform the respective regions immediately after you change the address to ensure regular and timely delivery of journals to you as the mailing list is drawn from ICAI's centralised database updated till 15th of every month. Subscribers are requested to mail their changed address to eb@icai.in.

Members can also update their address online in the 'Members' section placed on the top bar of ICAI website. The required link in the 'Members' section is titled 'Members: Update Your Residential and Professional Addresses' (http://www.icai.org/addupdate/). Fill the Membership No and Date of Birth to open the Form. Fill the Form to update your changed address.

After updating the address online, the member is also required to download the updated Form and submit the same at their respective regions with their signature. Please note that once updated in the respective regional head offices' records, the new address gets automatically updated in the centralised data base of the Institute, from where the journal mailing list is prepared.

While updating the address members can opt for their 'Residential Address' to receive the copy of the journal by clicking the option "Do you want to get your journal on Residential Address" at the bottom of the Form. Thereafter you will get your copy of the Journal at your residential address.

Any queries or complaints in this regard can also be sent by email at journal@icai.in (for members) and eb@icai.in (for students and Subscribers) or contact at 0120-3045921.

Get Your Journal on Mobile...

Your **The Chartered Accountant e-journal** is now compatible on iOS (iPad/iPhone, etc.) and Android devices.

The Podcast and Bookmark has also been incorporated wherein you can also listen to the textual material in addition to reading. So, go on, browse and listen the journal just at the push of button anywhere, anytime. You may now access the e-journal on the above mentioned platforms without any specific download requirements, at http://www.icai.org/ under 'e-journal' tab.

The Institute of Chartered Accountants of India

'ICAI Bhawan', Post Box Number 7100.
Indraprastha Marg, New Delhi - 110 002

5339 A Mumbai based Firm with Ten Partners and in practice for 43 years is looking to merge Proprietary CA firm and open branches at Delhi, Kolkata, Bangalore, and Chennai. Contact: +91 9820031346, Email: carecruitsicai@gmail.com

5340 Delhi (Noida) based FCA, seeks professional work on assignment/sub-contract/retainership basis in Delhi UP. E-mail: pravag3001@gmail.com/Call 9720108105

5341 47 years old firm of 11 Partners having Head office at Delhi seeking to sub-contract CA firms for car dealers/spares audit in major cities of India. Email: jk.sarawgi@jksco.in; sumit.jawa@jksco.in

5342 Mumbai based FCA COP Age 62 Experience 38 years (26 in Industry as CFO) Seeks professional work on retainer/partnership basis. Contact: 9820422001, harshadshah1953@yahoo.com

5343 FCA with 32 years Indian/International industrial exposure seeks professional work partnership basis with CA firms Chennai. Kindly contact krisrisan@yahoo.com to initiate discussions.

5344 A firm of Chartered Accountants established over seven decades back having offices in six cities and rendering professional services, requires for its head office at Mumbai.

- Chartered Accountants with a post qualification experience of over four years for their audit department. Remuneration would be commensurate with experience. Candidates having exposure of large corporate audits as well as ability to lead multiple audit teams would be considered for long-term association with the firm.
- Chartered Accountant who has good experience in indirect taxation and wants to develop a career in indirect taxation. Candidates must possess good working knowledge of all practice areas under relevant statutes and should be ready to take over existing work.

Age is no bar. An opportunity for CAs practicing as proprietor, as partner or as manager or such other senior position. Interested candidates may apply immediately with complete details via email at applyforjob321@gmail.com

5345 Maharashtra FCA DISA COP Age 65 PSU Bank Service 33 Yrs seeks professional work on retainer/partnership basis. EMAIL: rameshjsomani@gmail.com/9420903181/9420381673

5347 Jamshedpur (Jharkhand) based CA Firm is looking for work on assignment, partnership basis. Jaluka & Associates, jalukaandassociates@gmail.com, 9709138711, 8406000707

5348 27 Years Established Lucknow CA Firm invites proposals for partnership from senior experienced retired/new members. Interested may Contact: CA S.N. Gupta at 09415101759, 07607424536, shivnarainabha@yahoo.co.in

Events

Forthcoming Events[1]

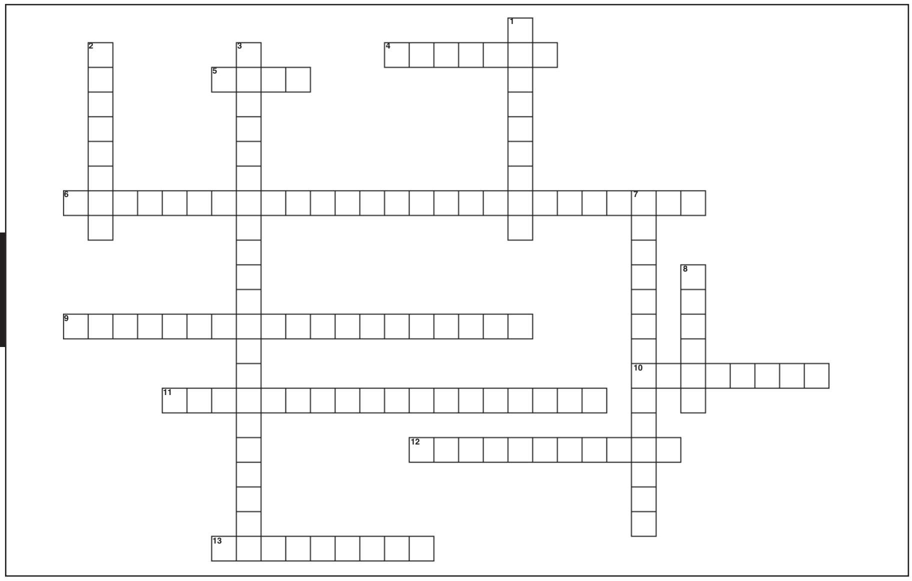
Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
Committee Name: Committee on Financial Markets and Investors Protection **Course Chairman: CA. Anuj Goel**				
1.	Certificate course on Forex and Treasury Management	12th Dec., 2015	Mumbai	48 Hrs
Topics	**Module – I** Chapter– 1 Treasury – Organization Structure Chapter– 2 Treasury – Process Chapter– 3 Treasury – Domestic Chapter– 4 Treasury – Forex Chapter– 5 Treasury – Mathematics Chapter– 6 Treasury – Technology		**Module – II** Chapter– 7 Treasury – Accounting Chapter – 8 Treasury – Taxation Chapter – 9 Treasury – Types Chapter – 10 Treasury – Risk Management Chapter – 11 Treasury – Regulation, Supervision And Compliance Chapter – 12 Treasury – Auditing	
Fees	₹17,500			
Contact Person	**Course Co-ordinator:** Committee Secretariat **For Registration and making online payment, please visit:** http://www.icai.org/post.html?post_id=3552&c_id=266 **For any other queries, contact at:** 0120-3045945, 08130567979 or email at: fxtm@icai.in			
2.	Certificate course on Forex and Treasury Management	12th Dec., 2015	Chennai	48 Hrs
Topics	**Module – I** Chapter– 1 Treasury – Organization Structure Chapter– 2 Treasury – Process Chapter– 3 Treasury – Domestic Chapter– 4 Treasury – Forex Chapter– 5 Treasury – Mathematics Chapter– 6 Treasury – Technology		**Module – II** Chapter– 7 Treasury – Accounting Chapter – 8 Treasury – Taxation Chapter – 9 Treasury – Types Chapter – 10 Treasury – Risk Management Chapter – 11 Treasury – Regulation, Supervision And Compliance Chapter – 12 Treasury – Auditing	
Fees	₹17,500			
Contact Person	**Course Co-ordinator:** Committee Secretariat **For Registration and making online payment, please visit:** http://www.icai.org/post.html?post_id=3552&c_id=266 **For any other queries, contact at:** 0120-3045945, 08130567979 or email at: fxtm@icai.in			
3.	Certificate course on Forex and Treasury Management	9th Jan., 2016	Kolkata	48 Hrs
Topics	**Module – I** Chapter– 1 Treasury – Organization Structure Chapter– 2 Treasury – Process Chapter– 3 Treasury – Domestic Chapter– 4 Treasury – Forex Chapter– 5 Treasury – Mathematics Chapter– 6 Treasury – Technology		**Module – II** Chapter– 7 Treasury – Accounting Chapter – 8 Treasury – Taxation Chapter – 9 Treasury – Types Chapter – 10 Treasury – Risk Management Chapter – 11 Treasury – Regulation, Supervision And Compliance Chapter – 12 Treasury – Auditing	
Fees	₹17,500			
Contact Person	**Course Co-ordinator:** Committee Secretariat **For Registration and making online payment, please visit:** http://www.icai.org/post.html?post_id=3552&c_id=266 **For any other queries, contact at:** 0120-3045945, 08130567979 or email at: fxtm@icai.in			
Committee Name: Indirect Taxes Committee				
4.	Certificate Course on Indirect Taxes	12th Dec. 2015 to 20th Jan., 2016 (Only on Weekends) Time: 9.30 am to 5.30 pm	Chennai Mumbai Hyderabad	70 Hrs (50 Structured, 20 Unstructured)
Topics	• Service Tax • Overview of Central Excise Law • Overview of Customs Law • CST/ VAT Laws		• Foreign Trade Policy • GST • Case Law & Practical case Studies	

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

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
Fees	₹20,000/- in case of Metro(s) and ₹15,000 in case of Others			
Contact Person	Secretariat, Indirect Taxes Committee, Ph: 0120-3045954, E-mail: ccidt@icai.in **For Registration visit:** http://idtc.icai.org/cc/student/ **Visit website of the Committee:** www.idtc.icai.org			
5.	Live Webcast on Service Tax	18th December, 2015 Time: 4.00 pm to 6.00 pm	Online	2 Hrs
Contact Person	**For Information contact:** Secretariat, Indirect Taxes Committee, Ph: 0120-3045954, E-mail: idtc@icai.in; **Visit website of the Committee:** www.idtc.icai.org			
Committee Name: Continuing Professional Education Committee				
6.	Three-day CPE National Residential Programme Hosted by the Sivakasi Branch of SIRC of ICAI	11th-13th December, 2015	Ayur County Resorts, Chinnakanal (Post), Munnar	12 Hrs
Topics	• GST – A Critical Review • Handling Board Meetings and General Body Meetings • Professional Opportunities & Challenges during Economic Slowdown • Balancing Profession and Life • Corporate Social Responsibility under the Companies Act, 2013 • Recent & Interesting Case Laws in Income Tax			
Fees	(On Twin Sharing Basis) For Members/Non Members- ₹10,000/- For Spouse- ₹9,000/- For Child (6 to 10 Years Extra Bed)– ₹5,000/- For Non-Residential Participants– ₹9,000/- For Members/Non Members (Single Occupancy)– ₹17,500/-			
Contact Person	**For Registration & Further Details:** Sivakasi Branch of SIRC of ICAI, ICAI Bhawan, 128, Velayutham Road, Near Railway Station, Sivakasi– 626 123 (T.N.); Phone : 04562-221488; e-mail: sivakasi@icai.org			
Committee Name: Professional Development Committee and Committee on Financial Market & Investors' Protection				
7.	Fourth Residential Refresher Course at Kanatal, Mussoorie organized by Professional Development Committee jointly with Committee on Financial Market & Investors' Protection of ICAI hosted by Dehradun Branch of CIRC of ICAI	11/12/2015 (Friday) to 13/12/2015 (Sunday)	The Terraces Kanatal, Chamba Mussoorie Highway, Kanatal	15 Hrs
Topics	• Technical Session on "Recent Changes in Private & Small Companies under Companies Act 2013 and Advantages of LLP over Private Limited Companies" • Technical Session on "Audit and Scrutiny under Service Tax Laws" • Technical Session on "Pros & Cons of Surrender during Search/Survey and Assessment u/s 153A &153C of Income Tax Act 1961" • Technical Session on "Cyber Laws affecting Chartered Accountants" • Technical Session on "Income Computation and Disclosure Standards under Income Tax Act"			
Fees	INR 12,000/- per person on twin sharing basis			
Contact Person	**Program Chairman:** CA. Anuj Goel, Central Council Member & Chairman, PDC & CFMIP (Mob. No.: 98 100 41371, 93122 58364) **Program Co-ordinator:** CA. Ravi Maheswari, RRC Chairman-9412059532, CA. Ajay Khattak, RRC Cordinator- 9837080271 011-30110440, 0135-2714232			

Backpage

CROSSWORD 114



ACROSS

4. Exchange of ________ goods or services is not regarded as transaction generating revenue under converged Indian AS.
5. A bank auditor is required to issue_______ in addition to statutory audit report.
6. __________ Board is a government agency that provides a single window clearance for proposals on FDI in India.
9. ______________means the integrated representation of a company's performance in terms of both financial and other value relevant information.
10. Service provided by way of admission to a museum, zoo, national park, wild life sanctuary and a tiger reserve is ___________ service.
11. Property (land or a building, or part of a building or both) held by an entity to earn rentals and/or for capital appreciation.
12. Deferred tax assets are the amounts of income taxes _________ in future periods in respect of deductible temporary differences.
13. ________ Budgeting lays emphasis on preparing the budget neglecting history of expenditure.

DOWN

1. ________ duty is imposed for the purpose of protecting the interest of any domestic industry in India aiming to make it more competitive.
2. _________ is an online mechanism introduced by the government to resolve mismatches in tax returns for taxpayers whose returns have been selected for scrutiny.
3. AS 9 requires recognition of revenue from interest on time proportionate basis while IND AS requires use of _______________ method.
7. __________ is the amount by which the carrying amount of an asset or a cashgenerating unit exceeds its recoverable amount.
8. Formal organisation of sellers or buyers to control prices or exclude entry of a new competitor in a market.

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.

A client comes to a bank:
- My cheque was returned with a remark: "Insufficient funds". I'd like to know whether it refers to mine or the Bank?

SOLUTION CROSSWORD 113