



THE CHARTERED ACCOUNTANT JOURNAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

SET UP BY AN ACT OF PARLIAMENT



**SCALING
NEW
HEIGHTS**

Benchmarking CA Education with the Best in the World

Being dynamic, Chartered Accountancy profession has been undergoing rapid transformation. Stereotypical image of a Chartered Accountant, tirelessly adding and subtracting figures is fast changing. Chief factors responsible for the change being, borderless economies, rapid developments in information technology, increasing strategic importance of chartered accountants as watchdogs and need for a stringent regulatory set up, plethora of financial instruments, increasing business complexities, increased emphasis on corporate social responsibilities and the like. These factors warrant that the competence of accountants should be bolstered.

The Institute of Chartered Accountants of India (ICAI) is cognizant of the demands made on the profession. Therefore, it started the process of reviewing and revising its scheme of education and training in 2014. It set in a whole new approach for developing, updating and delivering chartered accountancy education and training of the future accountants. The process involved, amongst other things, a thorough study and benchmarking of not only International Education Standards (IES) issued by International Federation of Accountants (IFAC) but also of the education system followed by major International Accounting Bodies.

Education is the most powerful weapon which you can use to change the world, so rightly said Nelson Mandela. 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.

The new Scheme is in line with relevant IES issued by IFAC. As per the revised scheme, the entry to CA profession in India is allowed to 10+2 passed out students who have to undergo entry level course called Foundation course. Alternatively, graduates and post graduates with requisite percentage of marks and Intermediate passed students of Institute of Company Secretaries of India and the Institute of Cost Accountants of India are allowed direct entry to the course. This is as per the requirements laid down in IES 1.

As desired by IES 2, the ICAI's Revised Scheme covers all the subjects/topics mentioned in this IES namely, Financial Accounting and Reporting, Management

Accounting, Finance and Financial Management, Taxation, Business Laws and Regulations, Audit and Assurance, Governance, Risk Management and Internal Control, Information Technology, Business and Organizational Environment, Economics, Business Strategy and Management so as to build the desired level of technical competence to enable candidates to function as competent professional accountants.

Various types of professional skills as mentioned in this IES namely, intellectual, interpersonal and communication, personal, and organizational are proposed to be honed through two Integrated Courses on Information Technology and Soft Skills. The period of practical experience has been kept as three years as prescribed in this IES. During this period, the candidates would be trained in all relevant areas-technical competence, professional skills and professional values, ethics and attitudes—which are necessary for performing a role as a professional accountant. This is as per the Revised IES 5 of IFAC.

Under the Revised Scheme, the entry to the CA profession has been made somewhat difficult. Now, appearance in Foundation examination (which will be partly descriptive and partly objective type) will be allowed only after passing Class XII examination. The Institute has taken due care that all contemporary areas having a relevance for the profession are included in the curriculum. Having regard to the importance of soft skills two Integrated Courses on Information Technology and Soft Skills (ICITSS) have been introduced. In order to have uninterrupted Practical training to the maximum possible extent, it is to be started after passing either one or both groups of Intermediate. Final examination can be taken only after completion of practical training and Advanced ICITSS.

Now that the basic framework of scheme of education and training has been put in place, matters relating to detailed syllabi, expected competency level at each stage of CA course, and all other relevant and related aspects will be finalised.

The ICAI had announced the Revised Scheme of Education and Training, which necessitated certain changes in the Chartered Accountants Regulations which have been sent for mandatory approval of the Government. Once approved, the Scheme shall be open for public comments for 45 days. 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. ■

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From the President



CA. Manoj Fadnis, President, ICAI

“ I am happy to note the successful completion and enthusiastic participation of our members in a free and fair polling for our 23rd Council and 22nd Regional Councils on 4-5 December in major parts of the country and 18-19 in flood-ravaged Chennai and adjoining areas. This success across India not only amply demonstrated our professional traits but also our faith in our internal democracy and our commitment to take forward our great tradition of autonomy, independence and integrity to the next level. ”

Dear Friends,

At the outset, I wish you a professionally promising and prosperous New Year. The New Year is of course an occasion to celebrate but at the same time also an occasion to ponder over the year gone by and plan for the coming year. Indeed we should learn to fulfill the resolution within the set time-frame, but one should not get disheartened if that does not happen. We should cheer to a new year as another chance for us to get it right with full fervor and enthusiasm.

And let's remember, that a Year's end is neither an end nor a beginning but a going on, with all the wisdom that experience can instill in us. It's time that we resolve to continue the glorious journey of our profession- the journey of knowledge, excellence, integrity and ethics, with aplomb. Let's resolve to become the best in different aspects of our profession, particularly ethics because that is a very crucial enhancer of the value of our knowledge, skill and wisdom in public eye.

It is frequently said that 'Stronger the foundation, higher the building'. This is especially true for us who have seen our Institute go from strength to strength in the past year. In fact, each and every aspect of our Professional and Institutional life has been raised to a level higher than ever before. We have taken our Institute to greater heights of glory only because we are focused and work together as one united family.

Now let me update you on most important developments concerning our profession over the past month.

Successful Polling for ICAI Elections 2015

I am happy to note the successful completion and enthusiastic participation of our members in a free and fair polling for our 23rd Council and 22nd Regional Councils on 4-5 December in major parts of the country and 18-19 in flood-ravaged Chennai and adjoining areas. This success across India not only amply demonstrated our professional traits but also our faith in our internal democracy and our commitment to take forward our great tradition of autonomy, independence and integrity to the next level.

What was particularly noteworthy was the commitment and enthusiasm of our members and candidates in Chennai and adjoining areas

and some other booths of Southern Region who defied all odds in the wake of flood fury to come out and cast their votes on the rescheduled dates. Another highlight of the polling process, a first in the history of the ICAI, was the uploading of the data of votes polled in each polling booth every two hours or so, which added to the transparency of the entire process. I congratulate and thank all candidates, members and particularly our official machinery and staff for ensuring smooth conduct of this mammoth nation-wide exercise.

As the counting of votes continues, I look forward to the outcome of the intelligent choices made by our members. Since the precedence has always been on our side, we will soon have one of the brightest, most efficient and altruistic teams of professionals at both Central as well as Regional Councils. Very soon, we will have one more opportunity to celebrate.

Extending a Helping Hand to TN Flood Victims

As you are aware the flood fury in Chennai and other parts of Tamil Nadu has wreaked unprecedented havoc on life and property of millions of people. At this moment, the affected people in Tamil Nadu need help to tide over this natural calamity that has fallen upon them, to survive and to rebuild their lives. As such, in line with our established tradition to stand by the victims of natural calamities, we have decided to extend our help to our distressed fellow countrymen in Tamil Nadu. For this purpose, ICAI has opened a bank account exclusively for the purpose of collecting donations from members, students and other stakeholders. I fervently appeal to all of you to donate generously for this noble cause through DD/ Cheque payable at New Delhi and drawn in favour of ICAI Tamilnadu Flood Relief Fund. A detailed announcement has also been hosted on ICAI website in this regard.

Meanwhile, we have also decided to replace the study material of flood affected CA students free of cost.

Global Initiatives

New Chapters at Ras-al-khaimah and Auckland: With a view to make our presence on global map more visible, we at the Council have recently decided to open a new ICAI Chapter in

Auckland (New Zealand). Meanwhile, stage is set for inauguration of our Ras-al-Khaimah chapter in UAE in January 2016. I am sure these two new chapters, in addition to 26 already existing, will go a long way in achieving our global objectives.

New Global Roles: Meanwhile I am humbled to inform you that I have been elected as the member of the International Federation of Accountants' (IFAC) SMP Committee while chairman of AASB, CA. Abhijit Bandyopadhyay has also been elected as a member of IAASB of IFAC for the period from January 1, 2016 to December 31, 2018. I fervently hope that these positions will prove to be immensely beneficial to further the views and interest of Indian accountancy profession globally.

Monitoring of Tax Audit

As the members are aware that pursuant to C&AG's Report 'Performance Audit on Appreciation of Third Party (Chartered Accountants) - Reporting in Assessment Proceedings' for the year ended March, 2014, a group headed by one of my Council colleague is actively working on the relevant issues. A Tax Audit Monitoring Cell, supervised by the aforesaid group, is also functioning. While information has been called from members, the Group is also in dialogue with the offices of CBDT and C&AG seeking requisite details to suggest appropriate action against the erring members, if any.

To maintain a better control over the tax audit assignments undertaken by the Chartered Accountants, the group has, through the Direct Taxes Committee, recommended to the Directorate of Income tax (Systems), changes in the tax audit form/utility for adherence to ceiling on number of tax audits. The matter is being followed up by the Direct Taxes Committee.

Further, in terms of decision of the Council, the cases being examined are being simultaneously reported to the Disciplinary Directorate, for further appropriate action, within the framework provided in the Chartered Accountants Act and the Misconduct Rules framed thereunder. After hearing in one particular case, the member has also been found guilty of professional misconduct.

ICAI ARF

ICAI ARF is *inter alia* working on the Project "Study of existing Budgeting and Costing

From the President

System and Proposal for Outcome Budgeting and Integrated Cost Accounting Architecture in line with Indian Railway Budget Announcement of 2015-16". A Concept Paper on Outcome Budgeting has also been submitted to the Indian Railways. The same has been hosted on Indian Railways website.

e-Hearing of ICAI Disciplinary Cases

The technology is aiding all spheres of life. Overcoming the need for physical presence, e-benches have been set up by some of the courts and tribunals such as ITAT in Delhi and Mumbai where involved parties join and appear from different cities using video conferencing. Following the example, I am happy to inform that our Institute has also decided to initiate e-hearing for its disciplinary cases very soon. This initiative would help in effective hearing and disposal of disciplinary cases in the Institute across the country reducing the overall cost and time for all concerned.

Technical Publications to Assist Members in Practice

I am happy to inform you that our Council has diligently considered the drafts of many technical publications in the best interests of our members. Most notably, it accorded its approval to the draft of Guidance Note on Schedule III to the Companies Act, 2013, in a recent meeting. I am sure, other drafts relating to technical publications would also be available to our members very soon.

Section 13 and 14 of Companies Act, 2015 Made Applicable

The Companies Amendment Act, 2015 which introduced materiality concept for reporting on fraud by the auditor as per Section 143 (12) and omnibus approval by Audit Committee for Related Party transactions as per Section 177 was notified and made applicable from 29th May, 2015 except Section 13 (related to Reporting on fraud by auditor) and Section 14 (related to Omnibus approval by Audit Committee) of the said Amendment Act, 2015. The Act provided that a threshold limit would be prescribed upto which the fraud would be reported by the auditor to the Audit Committee/ Board and above the

threshold the fraud would be reported to the Central Government. Further, Audit Committee can give omnibus approval for Related Party Transactions.

This is to inform you that the Section 13 (related to Reporting on fraud) and Section 14 (Omnibus approval by Audit Committee) of Companies Amendment Act, 2015 has been made applicable from 14th December, 2015 and auditors need not report all the frauds to the Central Government. Also, for all the Related Party Transactions a company need not go to Audit Committee for approval which is a step towards ease of business. As you are aware, we had been giving representations to the Ministry for introducing the materiality concept for reporting on fraud and prescribing a threshold limit for the same and also giving representations for giving power to the Audit Committee for giving omnibus for Related Party Transactions for ease of doing business.

Assisting Government in Pre-Budget Exercise

In line with our traditional role of helping the Government in the Budget making exercise, we have submitted a well-thought out Pre-Budget Memorandum to the Ministry of Finance for Union Budget 2016-17. The Memorandum has been prepared after incorporating suggestions from membership and stakeholders at large in the interest of the nation. The suggestions given by us do not only relate to fiscal laws and taxation but also pertain to overall economic development. I am sure our memoranda would prove to be highly useful to the Government.

ICAI Acts on SEBI Request over Ind AS Implementation Issues

In response to the Securities Exchange Board of India (SEBI) request to provide suggestions on issues arising out of Ind AS implementation, we have sent the draft of the format for quarterly financial results as prescribed under Clause 41 of Listing Agreement to SEBI. We have also made our recommendations to SEBI regarding modifications required in the SEBI's Issue of Capital and Disclosure Requirements (ICDR) related to financial statements as a result of Ind AS implementation.

From the President

New Window of Opportunity for CAs

Opening yet another window of professional opportunity for CAs, the Delhi Assembly has recently passed Delhi School (Verification of Accounts and Refund of Excess Fee) Bill, 2015 besides two other related bills to bring a major reform in education system by amending the 42-year-old Delhi School Education Act, 1973. The Bill will regulate and refund excess fees in private institutions and is aimed at ensuring that private schools show greater accountability in fees accepted and money spent. The State Government will now form a committee which will get accounts of private schools audited through Chartered Accountants. I am sure that with the able assistance of our members, this Bill will achieve its objectives for the good of Delhi education system.

ICAI Developing Draft of New CARO for MCA

As you may be aware, the Ministry of Corporate Affairs had constituted a Committee to develop a new Companies (Auditor's Report) Order (CARO) to be made applicable for financial year 2015-16 onwards. At its recent meeting, the Committee has requested us to prepare the draft of the proposed new CARO on behalf of the Committee. We have already started process in this regard.

Curbing the Black Money Menace: New Certificate Course

As part of our efforts to help Government initiatives to curb the generation of the black money and closely work to achieve the objective of Prevention of Money Laundering, our Committee on Economic, Commercial Laws & WTO has launched a 6 days Certificate Course on Anti Money Laundering Laws (Anti-Money Laundering Specialist). The objective of the course is to equip our members in this field with the necessary expertise. Faculties from the Enforcement Directorate, Financial Intelligence Unit of India and other regulatory and investigation organizations have been invited to address the members during the Course.

All set for Mega Corporate Forum and XBRL Asia Conference

Continuing with our tradition, the stage is set for the mega two days 9th ICAI- CMII Corporate Forum on 15th & 16th January, 2016 in New Delhi. This high-profile event will comprise Corporate Conclave, Financial Services Expo and ICAI Awards 2015. The ICAI awards would honour the exemplary work of Chartered Accountants in Industry by recognizing those who have demonstrated excellence in their professional life, personal life and are the role models for others in industry. Shri Suresh Prabhu, Hon'ble Minister of Railways will be the Chief Guest for the ICAI Awards 2015. There is a seventeen member Jury under the Chairmanship of Shri Kumar Mangalam Birla, Chairman of Aditya Birla Group for judicious selection of winners. The Jury met recently to decide the awardees.

In another prestigious event, XBRL India, facilitated by the ICAI will organize XBRL Asia Roundtable, a closed door workshop with the representatives from Asian Countries which includes Singapore, Japan, China, UAE, Australia, Korea, Malaysia and India, on 21st of January, 2016 in Mumbai. Let's take some time out and make these events a big success.

Friends, Christmas has marked the onset of a mood of festivals and celebrations— The New Year, Lohri in Punjab, *Makar Sankranti* in North, East, West and Central India and *Pongal* in the South, Kite Festival in Gujarat, Camel Festival in Rajasthan and of course, the National Festival, the Republic Day on 26th January. Let's enjoy the peak of winter when a large part of North India wakes up to foggy mornings and the fragrance of wood smoke from bonfires. I extend my very warm greetings and good wishes to you and to your near and dear ones for these festivals, particularly our Republic Day.

Best wishes,



CA. Manoj Fadnis
President, ICAI

Kolkata, 23rd December 2015

Photographs

ICAI 23rd Council and 22nd Regional Councils Elections, 2015



Union Railway Minister CA. Suresh Prabhakar Prabhu Casts His Vote



Member of Parliament (Rajya Sabha) CA. K. Rahman Khan Casts His Vote



Sub-Regional Conference at Rajkot Branch of WIRC

Branch Chairman CA. Niketa S. Mody welcomes and presents memento to ICAI President CA. Manoj Fadnis, in the presence of WIRC Vice-Chairman CA. Dilip Apte, among others, on the dais (19th-20th December 2015)



43rd National Convention of Company Secretaries

ICAI President CA. Manoj Fadnis addresses the participants, in the presence of Delhi High Court Judge Justice V. Bakhru, senior advocate Shri U. K. Chaudhary, and CCI (Competition Commission of India) member Shri M. S. Sahoo, among others, on the dais (17th-19th December 2015)

Photographs

ICAI Awards Jury Meet in Mumbai



ICAI President CA. Manoj Fadnis and his Central Council colleague CA. Charanjot Singh Nanda present memento to the Jury Head (and Aditya Birla Group Chairman) Shri Kumar Mangalam Birla while another Central Council colleague CA. Sanjeev Krishnagopal Maheshwari applauds the moments (17th December 2015)



ICAI President CA. Manoj Fadnis and his Central Council colleagues CA. Sanjeev Krishnagopal Maheshwari, CA. Charanjot Singh Nanda and CA. Pankaj I. C. Jain, along with the Jury Head (and Aditya Birla Group Chairman) Shri Kumar Mangalam Birla and other Jury members on the occasion (17th December 2015)



CFO Meet in Mumbai

Central Council member CA. Charanjot Singh Nanda addresses the participants, in the presence of Chief Guest SEBI Whole-Time Member Shri S. Raman and CA. Sudhir Soni, FCA, on the dais (17th December 2015)



Seminar on Internal Financial Controls in Mumbai

Central Council member CA. Rajkumar S. Adukia, along with the faculty CA. Sanjay Banthia, CA. Manish Gadia, CA. Kartik Radia and CA. Manoj K. Jain, light the lamp to inaugurate the Seminar (9th October 2015)

Photographs



ICAI Welcomes the Newly Appointed Appellate Authority

ICAI President CA. Manoj Fadnis along with ICAI Secretary Shri V. Sagar presents a bouquet and welcomes the Chairperson of Appellate Authority Delhi High Court Judge (Retd.) Justice P. K. Bhasin in the presence of other members of the Authority (8th December 2015)



Meeting with Principal Commissioner (Service Tax)

ICAI Central Council member CA. Charanjot Singh Nanda presents bouquet to Principal Commissioner (Service Tax) Ms. Amita Suri (10th December 2015)

CGA's Seminar on Enhancing Effectiveness of Internal Controls



ICAI President CA. Manoj Fadnis addresses the participants, while Finance Secretary Shri Rattan P. Watal, Controller General of Accounts (CGA) Shri M. J. Joseph and Addl. CGAs Shri M. Pran Konchady and Shri G. P. Gupta, share the dais (24th November 2015)



ICAI Central Council members CA. S. Santhanakrishnan and CA. Charanjot Singh Nanda, and CA. Amit Gupta during a session on *Risk-based Internal Audit Framework and Standards* (24th November 2015)



ICAI and Indian Railways—Strengthening Bonds

ICAI President CA. Manoj Fadnis and his Central Council colleague CA. Charanjot Singh Nanda along with the Indian Railways Financial Commissioner Shri S. Mookerjee and its Executive Director (AIMS & AR) from Railway Board, Shri R. K. Manocha, on the occasion (22nd December 2015)



One-Day Seminar at Ghaziabad Branch of CIRC

Chief Guest at the Seminar, ICAI President CA. Manoj Fadnis being welcomed and presented a bouquet in the presence of his Central Council colleague CA. Anuj Goel, among others (30th November 2015)

Know Your Ethics

Ethical Issues in Question-Answer Form

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

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

“192. Restriction on fees

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

Provided that:

- (a) in the case of a receiver or a liquidator, the fees may be based on a percentage of the realization or disbursement of the assets;
- (b) in the case of an auditor or a co-operative society, the fees may be based on a percentage of the paid up capital or the working capital or the gross or net income or profits; and
- (c) in the case of a valuer for the purposes of direct taxes and duties, the fees may be based on a percentage of the value of the property valued.
- (d) in the case of certain management consultancy services as may be decided by the resolution of the Council from time to time, the fees may be based on percentage basis which may be contingent upon the findings, or result of such work;
- (e) in the case of certain fund raising services, the fees may be based on a percentage of the fund raised;
- (f) in the case of debt recovery services, the fees may be based on a percentage of the debt recovered;
- (g) in the case of services related to cost optimization, the fees may be based on a percentage of the benefit derived; and
- (h) any other services or audit as may be decided by the Council.

Q. Whether a member in practice is allowed to become whole-time director of a company?

A. No, members are not allowed to become whole-time director of a company generally. However, a member in practice may become a managing director or a whole-time director of a body corporate within the meaning of the Companies Act, subject to the Council Guidelines of Corporate Form of practice .

Q. Can a Chartered Accountant in practice disclose information acquired in the course of his professional engagement?

A. No, as per Clause (1) of Part I of Second Schedule to the Chartered Accountants Act, 1949 a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client or otherwise than as required by any law for the time being in force.

Q. Whether a Chartered Accountant in practice is entitled to accept teaching assignment?

A. Yes, a Chartered Accountant in practice is allowed to accept teaching assignment in university, affiliated colleges, educational institution, coaching organization, private tutorship, provided the direct teaching hours devoted to such activities taken together do not exceed 25 hours a week with, effect from 1.4.2005.

Q. Whether a member in practice will be liable if he fails to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficiently material to negate the expression of an opinion?

A. Yes, as per Clause (8) 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 obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficiently material to negate the expression of an opinion. ■

* Contributed by the Ethical Standards Board of the ICAI

Appointment of Consultant for Accounting & Advisory Services for Implementation of Ind AS.

The Institute of Chartered Accountants of India (ICAI) invites QUOTATIONS from **Chartered Accountants/Firms of Chartered Accountants** for the following mentioned work/services.

Description of work/services

Appointment of Consultant for Accounting and Advisory Services for Implementation of Ind AS.

Location	:	The Institute of Chartered Accountants of India A-29, Sector-62, Noida Uttar Pradesh- 201309
Contract Period	:	One year from the date of award of the Contract.
Last date for Pre-quote queries	:	15.01.2016 till 17.30 hours
Last date & time for submission of quote	:	21.01.2016 till 15.00 hours
Contact Person & Venue for submission of Quote	:	CA. Savita Singhal, Assistant Secretary (Accounts) ICAI Bhawan, A-29, Administrative Block Sector 62, NOIDA 201 309 Uttar Pradesh, Ph No: 0120-3876854
Quotation Submission Mode	:	Quotation should be submitted in two separate sealed covers – one technical quote covering profile and experience and another financial quote.

Since the transition to Ind AS is effective from 01.04.2015, The Institute of Chartered Accountants of India needs assistance from an experienced and competent consultant in preparation of financial statements for the year 2015-16.

Considering this, ICAI has defined the scope of work under this assignment to ensure smooth transition to the newly notified accounting standards with all amendments applicable for the Financial Statements covered under this contract :-

SCOPE OF WORK

Assistance in Preparation of Half Yearly and Annual Financial Statements for Financial Year 2015-16

1. Preparation of financial statements for the period ending September 30, 2015 and annual financial statements for the year ending March 31, 2016, with comparatives.
2. Identification of current accounting treatments not consistent with Ind AS.
3. TALLY/ERP Compatibility with Ind AS vis-à-vis existing accounting treatments.
4. Assist in preparing consolidated financial statements for the period ending September 30, 2015 and March 31, 2016 for sister concerns – XBRL – India and ICAI – ARE, with comparatives.
5. Comprehensive training to ICAI officials on Ind AS

Payment Terms

1. **Deliverables, Timeline, Payment Terms and Invoicing procedures:-**

1.1. Deliverables : As per Scope of work.

1.2. Timeline and Payment Term :

- I. The ICAI shall pay to the Consultant, during the term of the contract, the amount due, calculated according to

the rates of payment set and in accordance with other provisions hereof. No other payments shall be due from ICAI unless specifically provided for in this contract. All payments will be made in accordance with the terms hereinafter described.

- II. Total of Professional Fees as quoted plus the Service Tax thereon at actual rate, payable to the Consultant shall be ₹ _____ (rupees _____ only), which shall be the total Contract Value under this Contract.
- III. The invoice for Assistance in preparation of Half yearly and annual financial statements for FY 2015-16 may be raised as tabled below :-

Sl. no.	Stages	Timeline (Days)	Payment Term
1	On completion of half-yearly financial statements & submission of half yearly report duly signed on the observation under this stage for period ending 30.09.2015.	As per mutually agreed timeline.	30% of total cost of Fees

Sl. no.	Stages	Timeline (Days)	Payment Term
2	Training to ICAI Officials.	Within 05 days from the date of completion of half yearly Financial Statements.	10% of total cost of Fees.
3	On completion of financial statements for the year ending 31.03.2016.	As per mutually agreed timeline.	30% of total cost of Fees
4	Tally/ERP compatibility Report.	To be submitted with half-yearly and annual closing.	
5	Training to ICAI Officials.	Within 05 days from the date of completion of Annual Financial Statements.	10% of total cost of Fees.
6	Submission of annual report duly signed on the observation under this stage and suggestion on way forward.	Within 10 days from the date of completion of Annual Financial Statements.	20% of total cost of Fees.

1.3 Manner of payment

- I. All payments due to Consultant shall be made by the Institute at Consultant designated bank. All bank charges, if any, will be to the Consultant account. To enable the ICAI to arrange e-remittance, the Consultant must provide his bank account details viz. Bank Account no., IFSC Code, beneficiary address and PAN no.
- II. Payment of any invoice shall not prejudice the right of ICAI to question the validity of any charges therein, provided ICAI within one year after the date of payment shall make and deliver to Consultant written notice of objection to any item or items, the validity of which ICAI question.
- III. Consultant shall submit all invoices to ICAI address duly super scribed Original " alongwith the PAN no. and service tax registration no. of the Consultant.
- IV. Payment of invoices, if undisputed, shall be made within 30 days following the date of receipt of invoice by ICAI after deduction of tax at source as per applicable laws.

Netting off Interest Income against Interest Cost in Standalone Books of Parent Company

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. XYZ is one of India's leading diversified financial services groups. XYZ group offers a broad range of products and services spanning across asset classes and consumer segments. Its businesses are broadly divided into credit including retail finance and debt capital markets, commodities, financial markets, asset management and life insurance. XYZ Ltd. (also referred to hereinafter as the 'company') is the ultimate parent of XYZ group and has many subsidiary and associate companies. The company is a category 1 merchant banker registered with the Securities and Exchange Board of India (SEBI). The company's operations revolve around providing advisory services and merchant banking services (i.e., fee based services) and providing parental support to its group entities in carrying out their respective business activities by way of making investments in subsidiaries or arranging for funding for them.
2. The querist has stated that the company's principal business activity comprises of advisory and merchant banking activities that require minimal working capital. Further, investments in subsidiaries are made out of the capital funds of the company.
3. Subsidiaries of XYZ Ltd. need to borrow funds for their working capital needs. Since XYZ Ltd. enjoys better credit rating, it is able to raise funds at an optimal rate as compared to the rate at which its subsidiaries are able to raise funds. Although XYZ Ltd.'s need for borrowed funds is quite low, it borrows from banks and other lending institutions for lending to its subsidiaries for meeting the subsidiaries' working capital requirements. Such lending to subsidiaries is done at XYZ Ltd.'s average borrowing cost with no markup and consequently, there is no residual cost or gain to XYZ Ltd. XYZ Ltd.'s lending to its subsidiaries and associates at any point of time, is almost equal to the amount of its outstanding borrowings at that time. *Thus, in substance, it acts as a 'pass through' with respect to loans that it borrows for the exclusive use of its subsidiaries.* (Emphasis supplied by the querist.)
4. The querist has also stated that given the above stated economic rationale behind such fund raising and disbursal transactions, XYZ Ltd.'s borrowings and related costs have direct correlation with the funding requirement of the group companies. If funding requirements of the group companies increase, the company will borrow more from lender/institutions and vice versa. So, both these transactions are required to be viewed as linked and correlated. Since, the interest received by the company is equal to its cost of borrowing, the company believes it would be appropriate to offset interest income against interest cost in the presentation of income and expenses in the statement of profit and loss, as this reflects the actual substance of the transaction. Also, the actual net finance costs that would be reflected would be appropriate and attributable to the company's operations.
5. The key question is whether the presentation of the interest costs incurred on funds borrowed for onward lending to group companies net of the interest income earned from lending these funds to group companies is an appropriate presentation practice in light of existing accounting framework in India, insofar as it relates to the standalone financial statements/ financial results of XYZ Ltd.
6. *Company's analysis:*
Extracts from Accounting Standard (AS) 1, 'Disclosure of Accounting Policies':
"Considerations in the Selection of Accounting Policies"
...
17. ...
b. Substance over Form
The accounting treatment and presentation in financial statements

of transactions and events should be governed by their substance and not merely by the legal form."

Extracts from the Framework for the Preparation and Presentation of Financial Statements, issued by the Institute of Chartered Accountants of India:

"25. Qualitative characteristics are the attributes that make the information provided in financial statements useful to users. The four principal qualitative characteristics are understandability, *relevance*, reliability and comparability."

"Relevance

27. To be useful, information must be relevant to the decision-making needs of users. Information has the quality of relevance when it influences the economic decisions of users by helping them evaluate past, present or future events or confirming, or correcting, their past evaluations."

(Emphasis supplied by the querist.)

The company's primary business activity is not lending and consequently, interest income is not its primary source of revenue as it does not enjoy any spread on the monies lent to group companies. As mentioned above, it is a category 1 merchant banker and consequently, fee income is its primary income and is a substantially large contributor to its revenue mix. In a likely situation of its group companies being in a position to self-fund their capital needs, XYZ Ltd. would not have to raise funds and correspondingly not incur borrowing cost, except for a nominal amount for its own funding requirement. By virtue of clear linkage of the borrowings and subsequent disbursement, the company is of the view that both the legs of the transaction are linked, simultaneous and correlated and collectively reflect the substance of the transactions.

7. As per paragraph 4.1 of Accounting Standard (AS) 9, 'Revenue Recognition', ***"In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables or other consideration."*** The arrangement that the company has with its group companies is akin to an agency relationship where it borrows primarily to lend to its group companies at the same rate of

interest as the borrowing. Since the borrowing and lending is akin to agency relationship and does not contribute to the profits/losses of the company as the lending is done at a rate of interest which is the same as the cost of borrowing, it may not be appropriate to present the interest received on lending as revenue but would be more appropriate to net off the same against interest cost.

8. The querist believes that the following further guidance under International Accounting Standards is relevant in this context:

Paragraph 34 of IAS 1, 'Presentation of Financial Statements', issued by the International Accounting Standards Board (IASB) reads as follows:

"34. IAS 18 *Revenue* defines revenue and requires an entity to measure it at the fair value of the consideration received or receivable, taking into account the amount of any trade discounts and volume rebates the entity allows. *An entity undertakes, in the course of its ordinary activities, other transactions that do not generate revenue but are incidental to the main revenue-generating activities. An entity presents the results of such transactions, when this presentation reflects the substance of the transaction or other event, by netting any income with related expenses arising on the same transaction. ...*"

In the instant case, the company's business is that of merchant banking and not of lending. Thus, it may not be appropriate to present interest received on loans to subsidiaries as revenue and instead it would be more appropriate to present the same as a 'net off from interest expenses'. Further, paragraph 13 of IAS 18, inter alia, recognises that the revenue recognition criteria *"are usually applied separately to each transaction"*. However, it goes on to say that *"the recognition criteria are applied to two or more transactions together when they are linked in such a way that the commercial effect cannot be understood without reference to the series of transactions as a whole"*. As stated earlier, the borrowing is done purely for lending to subsidiaries with interest cost passed on without any margin. Thus, it may be appropriate to consider interest

received from subsidiaries, net of the interest paid on the borrowing.

(Emphasis supplied by the querist.)

9. From the above literature, it appears that if interest income and interest expenses are disclosed gross in the financial statements, it may neither be a correct nor an appropriate reflection of the key business activity of the company. It would rather lead to an interpretation that the company is into borrowing and lending activity, which will be an incorrect representation of its operations and business, particularly, when there is simply no loss or gain arising from this activity.
10. Based on the above facts and analysis, the company believes that presentation of net interest cost is appropriate. Further, the company provides a suitable note in its financial statements explaining the rationale for such netting off.

B. Query

11. Based on the facts and the analysis as above, the querist has sought the opinion of the Expert Advisory Committee as to whether the presentation of net interest cost by the company is appropriate under the accounting framework in India.

C. Points considered by the Committee

12. The Committee notes that the basic issue raised by the querist relates to appropriateness of the presentation of net interest cost in the financial statements. The Committee has, therefore, examined only this issue and has not examined any other issue that may arise from the Facts of the Case, such as, accounting treatment and presentation of funds borrowed by the company for its own utilisation, presentation of borrowings from the financial institutions and lending to subsidiaries in the financial statements, presentation of interest cost and interest income in the consolidated financial statements of the company, disclosure requirements as per Accounting Standard (AS) 18, 'Related Party Disclosures' and Schedule III to the Companies Act, 2013, accounting treatment of interest in the books of subsidiaries, etc. The Committee wishes to point out that although International Accounting Standards

(IASs) have been referred to by the querist, since the query is raised from the perspective of accounting framework in India, the opinion expressed hereinafter, is purely from the existing accounting framework applicable in India.

13. The Committee notes that the existing Indian accounting framework does not contain specific accounting principles for setting off of items of income and expenses. Accordingly, the Committee notes the general principles of presentation of items of income and expenses. In this context, the Committee notes that one of the major considerations governing the selection and application of accounting policies is 'Substance over Form' which is explained in paragraph 17 (b) of Accounting Standard (AS) 1, 'Disclosure of Accounting Policies', notified under the Companies (Accounting Standards) Rules, 2006, as follows:

"b. Substance over Form

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

From the above, the Committee notes that the accounting treatment should be governed by the substance of the transactions and events and not by their legal form. The Committee also notes that the Framework for the Preparation and Presentation of Financial Statements, issued by the ICAI, inter alia, states as follows:

"46. Financial statements are frequently described as showing a true and fair view of the financial position, performance and cash flows of an enterprise. Although this Framework does not deal directly with such concepts, the application of the principal qualitative characteristics and of appropriate accounting standards normally results in financial statements that convey what is generally understood as a true and fair view of such information."

"71. Income and expenses may be presented in the statement of profit and loss in different ways so as to provide information that is relevant for economic decision-making. ..."

From the above, the Committee notes that income and expenses should be presented in the statement of profit and loss in different ways so as to provide information that is relevant for economic decision-making. Further, such presentation should reflect the substance of the transactions and events and should also portray true and fair view of the state of affairs.

14. In this context, the Committee notes from the Facts of the Case that the company's operations revolve around providing advisory services and merchant banking services (i.e., fee based services) and providing parental support to its group entities in carrying out their respective business activities by way of making investments in subsidiaries or arranging for funding for them. Further, since XYZ Ltd. enjoys better credit rating, it is able to raise funds at an optimal rate as compared to the rate at which its subsidiaries are able to raise funds and although XYZ Ltd.'s need for borrowed funds is quite low, it borrows from banks and other lending institutions for lending to its subsidiaries for meeting the subsidiaries' working capital requirements at XYZ Ltd.'s *average* borrowing cost with no markup and consequently, there is no residual cost or gain to XYZ Ltd. From this, the Committee notes that in order to provide parental support to its subsidiaries, XYZ Ltd. borrows funds generally for meeting the working capital needs of all of its subsidiaries and not on behalf of the subsidiaries (as in the case of agency relationship), for which it charges average borrowing cost of such borrowed funds from its subsidiaries. The Committee is of the view that in the extant case, there are two separate transactions, viz., borrowings from banks and other lending institutions and another, lending to its subsidiaries. Further, the Committee is of the view that since the company is borrowing funds from banks and other lending institutions in its own name, the company is solely responsible for the payment of interest as well as the principal amount. However, collection/recovery of the amount lent to the subsidiaries is a separate transaction different from the borrowing of funds. Accordingly, considering the above

substance of the transactions and events in the extant case, the Committee is of the view that the interest/borrowing cost incurred by the company and the interest recovered from its subsidiaries should be presented separately in the statement of profit and loss and not as a set-off against each other.

D. Opinion

15. On the basis of the above, the Committee is of the opinion that the presentation of net interest cost by the company is not appropriate under the accounting framework in India, as discussed in paragraph 14 above.

- 1 The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute.
- 2 The Opinion is based on the facts supplied and in the specific circumstances of the querist. The Committee finalised the Opinion on August 11, 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.

Corrigendum

Attention of readers is invited to Opinion "Accounting Treatment of Pension Liability Post Separation" given by Expert Advisory Committee published in December 2015 issue of the journal *The Chartered Accountant* at page no. 818. The Committee finalised the Opinion on April 23, 2015 which was wrongly mentioned as June 3, 2015. The error is regretted.

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



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

I. NOTIFICATIONS

1. Simplification of procedure for Form No. 15G & 15H-Notification No. 4/2015,

dated 01-12-2015

Section 197A of the Income-tax Act provides for no deduction in certain case by submitting a declaration using Form 15G/15H as laid down in Rule 29C of the Income tax Rules. The manner of filing such declaration and the particulars have been laid down in Rule 29C of the Income tax Rules. The person responsible for paying any income of the nature referred to in sub Section (1) or sub Section (1A) or sub Section (1C) of Section 197A (hereinafter called “payer”) shall enable the payee to furnish the declaration in electronic form after due verification through an electronic process. The declarant shall mandatorily quote his/her PAN in the declaration form 15G/H in accordance with the provisions of Section 206AA(2).

A unique identification number shall be allotted to declaration (paper/electronic). The payer shall digitise the paper declaration and upload all declarations (including electronic declaration and digitized declaration) received during a particular quarter at departmental site (www.incometaxindiaefiling.gov.in) on quarterly basis. Further, clause 5 of rule 29C provides that the payer shall also furnish transactions covered under 15G/15H declarations in quarterly TDS statement in accordance with the provisions of clause (vii) of sub rule (4) of rule 31A irrespective of the fact that no tax has been deducted in the said quarter.

In exercise of the powers delegated by the CBDT under sub para (7) of para 2 of Notification issued vide S.O. No.2663(E) dated 29th September 2015, the Principal Director General of Income-tax(Systems) has specified the procedure, formats and standards in this regard is as under:

a) **Furnishing and verification of the electronic declaration**

The payer shall be responsible for proper verification of the declarant through an electronic process and shall implement the verification process after due diligence to ensure non-repudiation of the declarant. The payer shall archive log of all electronic activities in the process of furnishing of electronic declaration and the payer shall be responsible to establish the identity and credentials of the declarant in case of any dispute. The declarant shall mandatorily quote his/her PAN in the declaration form 15G/H in accordance with the provisions of Section 206AA(2).

b) **Allotment of UIN (Unique Identification Number)**

UIN shall consist of following three fields (i), (ii) & (iii):

(i) Sequence Number (10 alphanumeric for Form 15G/15H) given as follows;

15G	15H
10 alphanumeric characters starting with G followed by 9 digits) Eg. G000000001)	10 alphanumeric characters starting with H followed by 09 digits) Eg. H0000000001)

(ii) Financial year for which declaration is being furnished

(iii) TAN of the payer

Paper declaration shall be digitised by the payer and the same shall bear sequence number out of the same “running sequence number(Field ‘a’ of UIN) series”, as used for online submission.

UIN running sequence number series shall be reset to 1 in case of each TAN of the payer at the start of each F.Y.

c) **Furnishing or making available the declaration to the income-tax authority.**

a. The payer will upload, the 15G and 15H declarations (digitised/electronic) received during a quarter, on quarterly basis, in the

file format given on the e-filing site (www.incometaxindiaefiling.gov.in).

- b. In addition to the above, the payer shall quote "sequence number" (Field 'a' of UIN) in quarterly TDS statement against the transaction covered under 15G/H declaration in accordance with the provisions of clause (vii) of sub rule (4) of rule 31A irrespective of the fact that no tax has been deducted in the said quarter.

d) **Reconciliation Mechanism**

- i. The payer will be responsible for reconciliation of the allotted UINs *vis-a-vis* reported UINs to the ITD through reporting in quarterly TDS statement as well as through upload of declarations on quarterly basis.
- ii. The payer shall file exceptional report for the following UINs:
 - i) UINs not reported in TDS statements
 - ii) UINs not uploaded on ITD website.

2. Stringent authentication mechanism through corporate headquarter server for filing of correction statements & download of TDS certificate, consolidated files etc. by banks/corporate—Notification No. 3/2015, dated 1-12-2015

Section 200 of the Income-tax Act, 1961 provides for filing of TDS statements. The manner of filing such statements and the particulars have been laid down in Rule 31A of the Income-tax Rules, 1962. In exercise of the powers delegated by the CBDT under Explanation to sub-rule (5) of rule 31A of the Income-tax Rules 1962, the Principal Director General of Income-tax (Systems) has laid down the authentication mechanism for filing of correction statements & download of TDS certificates, Consolidated files *etc.* by Banks and Corporates deductors.

3. Agreement and protocol for avoidance of double taxation and prevention of fiscal evasion with Thailand—Notification No. 88/2015, dated 1-12-2015

In exercise of the powers conferred by section 90 of the Income-tax Act, 1961, the Central Government has directed that all the provisions of the agreement and protocol between the Government of the Republic of India and the Government of the Kingdom of Thailand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, which was signed in Thailand

on 29.06.2015, and came into force on 13th October, 2015, shall have effect in India in respect of income derived in any fiscal year beginning on or after 01.04.2016.

4. Service of notice, summons, requisition, order and other communication—Insertion of new Rule 127-the Income-tax (18th Amendment) Rules, 2015-Notification No. 89/2015, dated 02.12.2015

Section 282 provides for the different modes of service of notice or summon or requisition or order or any other communication under the Income-tax Act, 1961 to the assessee. The address (including email ids) to which such communication may be delivered is notified *via* this Notification.

For communications to be delivered or transmitted through post/courier and/or as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons, the following addresses may be referred:

- (i) the address available in the PAN database of the addressee; or
- (ii) the address available in the income-tax return to which the communication relates; or
- (iii) the address available in the last income-tax return furnished by the addressee; or
- (iv) in the case of addressee being a company, address of registered office as available on the website of Ministry of Corporate Affairs:

However, the communication shall not be delivered or transmitted to the address mentioned in item (i) to (iv) where the addressee furnishes in writing any other address for the purposes of communication to the income-tax authority or any person authorised by such authority issuing the communication.

For communications to be delivered or transmitted electronically, the following addresses may be referred:

- (i) e-mail address available in the income-tax return furnished by the addressee to which the communication relates; or
- (ii) the email address available in the last income-tax return furnished by the addressee; or
- (iii) in the case of addressee being a company, email address of the company as available on the website of Ministry of Corporate Affairs; or
- (iv) any email address made available by the addressee to the income-tax authority or any person authorised by such income-tax authority.

The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall specify the procedure, formats and standards for ensuring secure transmission of electronic communication and shall also be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to such communication.

5. Societies procuring and marketing milk can exercise option of Safe Harbour Rules -the Income-tax (19th Amendment) Rules, 2015-Notification No. 90/2015, dated 8-12-2015

Under Section 92CB, the CBDT has the power to make rules for safe harbour. Further, under Section 92D the CBDT has the power to make rules regarding keeping and maintenance of specified information and document for assessee entering into an international transaction or specified domestic transaction. Exercising the powers conferred under such Sections, the CBDT has notified the Income-tax (19th Amendment) Rules, 2015 amending Rules 10D, 10THA, 10THB, 10THC, 10THD and Form No 3CEFB.

The scope of eligible assessee under Rule 10THA has been extended and it now also includes a co-operative society engaged in the business of procuring and marketing milk and milk products. Accordingly, Rule 10THB now includes purchase of milk or milk products by a co-operative society from its members as an eligible specified domestic transaction. Further, Rule 10THC has been amended to provide the specified circumstances for eligible specified domestic transaction of purchase of milk or milk products as follows:

The price of milk or milk products is determined at a rate which is fixed on the basis of the quality of milk, namely, fat content and Solid Not Fat (SNF) content of milk; and-

- (a) the said rate is irrespective of,-
 - (i) the quantity of milk procured;
 - (ii) the percentage of shares held by the members in the co-operative society;
 - (iii) the voting power held by the members in the society; and
- (b) such prices are routinely declared by the cooperative society in a transparent manner and are available in public domain."

Rule 10THD has been amended to provide that the due date for submitting form 3CEFB in respect of the eligible specified domestic

transaction of purchase of milk or milk products undertaken during the previous year relevant to the assessment year 2013-14, assessment year 2014-15 and assessment year 2015-16 is 31st December, 2015.

Consequently, Form 3CEFB containing the application for Opting for Safe Harbour in respect of Specified Domestic Transactions and Rule 10D providing for information and documents to be kept and maintained under Section 92D have also been amended.

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

II. CIRCULARS

1. Explanatory Notes to the provisions of the Finance Act, 2015—Circular No. 19/2015, dated 27-11-2015

Explanatory notes to the provisions of the Finance Act, 2015 as assented by President on 14th May, 2015 have been given by way of this circular. This circular thus explains the substance of the direct tax provisions of the Act contained in the Finance Act, 2015.

2. Deduction of tax at source from salaries u/s 192 during the Financial year 2015-16—Circular No. 20/2015, dated 02-12-2015

The CBDT has, through this circular, provided the rates for deduction of income-tax from the payment of income chargeable under the head "Salaries" during the financial year 2015-16 and explained certain provisions of the Income-tax Act, 1961 and Income-tax Rules, 1962.

3. Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal and High Courts and SLP before Supreme Court—measures for reducing litigation—Circular No. 21/2015, dated 10-12-2015

The CBDT has, through this Circular revised the monetary limits for filing of appeals by the Department with the objective of reducing litigation as a part of its initiatives to reduce grievances of the taxpayers.

The monetary limits for filing of appeals by the Department before the Income Tax Appellate Tribunal and the High Courts have been revised to tax effect of ₹10 lakh and ₹20 lakh, respectively, from the present limits of tax effect of ₹4 lakh and

₹10 lakh. The monetary limits for filing of appeals by the Department before the Supreme Court is ₹25 lakh. The revised limits have been made applicable retrospectively to pending appeals also. Directions have been issued that pending appeals which are below the revised monetary limits may be withdrawn or not pressed.

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

III. Press Releases/ Letter

1. Clarification regarding unauthenticated reports on conciliation in the Vodafone Case Press Release dated 18-11-2015

There are some unauthenticated stories in media about offer of conciliation of Vodafone case outside arbitration. Vodafone has in a written communication expressed its desire to go for conciliation for its tax disputes with India. In response, the Government has held one preliminary meeting to explore terms of reference of such a conciliation on 10th October.

The CBDT has, through this press release clarified that it has not yet finalised contours of Terms of Reference. There would be more follow up meetings required.

2. Signing Advance Pricing Agreements (APAs)–Press Release dated 27-11-2015

It has been the endeavour of the Government to foster an environment of co-operation in matters of taxation through predictability of laws and reduced litigation. In a major push towards providing certainty to foreign investors in the arena of transfer pricing, the CBDT has entered into 11 more unilateral Advance Pricing Agreements (APAs). These APAs were signed with Indian subsidiaries of foreign companies operating in various segments of the economy like investment advisory services, engineering design services, marine products, contract R&D, software development services, IT enabled services, cargo handling support services, etc.

While 7 of these APAs have rollback provisions contained in them, the other 4 are Agreements for future five years. APAs with rollback provisions can cover a maximum period of 9 years in total. With this round of signing, CBDT has so far entered into 31 APAs (30 unilateral and one bilateral).

The APA programme was introduced in the Income-tax Act, 1961 in 2012 *vide* the Finance Act, 2012. 5 APAs were concluded in the first year and 4 APAs got signed in the second year. The pace of negotiations has picked up in the current year. This year has already witnessed the conclusion of 22 APAs. It is the aim of the CBDT to finalise another 30 to 40 APAs before the end of this fiscal to provide stability and confidence to foreign enterprises operating in India.

3. Expeditious issue of refunds below ₹50,000 in Non-CASS cases for AYs 2013-14 and 2014-15- Letter dated 2-12-2015

All the Principal Chief Commissioners of Income Tax have been directed *vide* this letter stating that as on 01.11.2015, there were 2.07 lakh returns involving refund claims of ₹659 crore for AY 2013-14 and 12.90 lakh returns involving ₹4,837 crore for AY 2014-15 still pending for processing and issue of refunds. These returns have not been selected for scrutiny under CASS.

While reviewing the pendency of refunds, the Revenue Secretary has directed that refunds in respect of cases not selected under CASS and involving refund of less than ₹50,000 for the assessment years 2013-14 and 2014-15 may be issued as early as possible. Most of the returns for AY 2013-14 have now been pushed by CPC-Bengaluru to AST. Similarly, some of the returns of AY 2014-15 may also have been pushed by CPC to the assessing officer.

In view of the above, all the Principal Chief Commissioners of Income Tax have been requested that the assessing officers in their Region may be advised to expeditiously process and determine refunds in non-CASS cases having claim of refund of less than ₹50,000/- and issue the same as early as possible.

4. Inauguration of the 6th meeting of the Automatic Exchange of Information (AEOI) group- Press Release dated 3-12-2015.

The 6th Meeting of the AEOI Group of the Global Forum on Transparency and Exchange of Information for Tax Purposes was held at New Delhi on 3rd and 4th December, 2015. Shri Jayant Sinha, Hon'ble Minister of State for Finance inaugurated the meeting.

In his keynote address, Shri Sinha had emphasised that cooperation amongst countries and sharing

of information is the key to unearth illicit money stashed in safe havens. He had lauded the work done by the Global Forum and the AEOI Group in fostering a climate of increased cooperation amongst tax jurisdictions, which he said has resulted in dramatic improvements in transparency.

Earlier, Chairman, CBDT, delivered the welcome address and termed the process of exchange of information as a *“game changer for tax administrations”*.

In the said meeting India's role in strengthening the mechanism of the exchange of information received lavish praise. Also India's contribution to the Global Forum was duly acknowledged.

The AEOI Group, which has 64 member countries presently, was mandated to develop a methodology to review the implementation of the new global standard on automatic exchange of information, i.e., the Common Reporting Standard (CRS). This review is carried out in a transparent manner with all Global Forum members participating in the process on an equal footing. During the 2-day meeting, one of the key areas of work was the specific reviews of the confidentiality and data safeguards procedures of certain tax jurisdictions.

An important development on the sidelines of the meeting was the signing of the Multilateral Competent Authority Agreement (MCAA) by Andorra, thus becoming the 75th country to have signed it. India had signed the MCAA on 3rd June, 2015.

5. Meeting between heads of Revenue Administration of India and Korea-Press Release dated 9-12-2015.

A meeting was held on 9th December, 2015 between Indian and Korean delegations headed by Revenue Secretary and Commissioner, National Tax Service, Korea under the Memorandum of Understanding for Mutual Co-operation between the countries. During the meeting, a new Memorandum of Understanding (MoU) on suspension of collection of taxes during pendency of Mutual Agreement Procedure (MAP) was signed. This MoU will relieve the burden of double taxation for the taxpayer in both the countries during the pendency of MAP proceedings. Further, both sides noted that transfer pricing dispute cases will be taken up for MAP under the revised DTAA between India and Korea. This is a step towards ease of doing business in India for Korean companies as it will relieve economic

double taxation and promote cross-border trade and investment.

6. Clarification regarding defective notices issued to FII/FPIs-Press Release dated 10-12-2015.

Notices of defective returns were issued under section 139(9) of the Income-tax Act to Foreign Institutional Investors/Foreign Portfolio Investors (FIIs/FPIs) in cases where Balance Sheet and Profit and Loss account were not filled.

In order to overcome this difficulty, it has been clarified that such returns will not be treated as defective in cases where the FIIs/FPIs:

- i. is registered with SEBI
- ii. has no Permanent Establishment/Place of Business in India
- iii. has provided basic information required under Section 139(9)(f) of the Income-tax Act, if there is business income

All such cases, where the SEBI registration number has been provided by the FIIs/FPIs in the return for AY 2015-16 are being taken up for processing at CPC Bengaluru. For previous assessment years where the above information is not available in the Income Tax Return, FII/FPI may provide such details in their online response on the e-filing portal of the Income-tax Department (www.incometaxindiaefiling.gov.in) to the previously issued notice u/s 139(9) of the Income-tax Act.

7. New facility of pre-filing TDS data while submitting online rectification –Press Release dated 10-12-2015.

The CBDT has simplified the process of online rectification of incorrect TDS details filed in the Income Tax Return. Taxpayers were required to fill in complete details of the entire TDS schedule while applying for rectification on the e-filing portal of the Income-tax Department (www.incometaxindiaefiling.gov.in). Errors due to incomplete TDS details in rectification applications were leading to delays in processing of such applications thereby causing hardship to the taxpayers.

To avoid this inconvenience, a new facility has been provided for pre-filing of TDS schedule while submitting online rectification request on the e-filing portal to facilitate easy correction or up-dating of TDS details. This is expected to considerably ease the burden of compliance on the taxpayers seeking rectification due to TDS mismatch.

8. Signing of Amended Convention between India and Japan- Press Release dated 11-12-2015.

On 11th December, 2015, India and Japan signed a Protocol for amending the existing Convention for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income which was signed in 1989. Dr. Hasmukh Adhia, Revenue Secretary, signed the Protocol on behalf of the Government of India with Mr. Kenji Hiramatsu, Ambassador of Japan on behalf of the Government of Japan.

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 further provides that the information received from Japan in respect of a resident of India can be shared with other law enforcement agencies with authorisation of the competent authority of Japan and *vice versa*.

The Protocol also provides that both India and Japan shall lend assistance to each other in the collection of revenue claims. In addition, the Protocol provides for exemption of interest income from taxation in the source country with respect to debt-claims insured by the Government/Government owned financial institutions.

9. Initiatives for reducing litigation- Press Release dated 15-12-2015

In a noteworthy decision, the CBDT has issued an Office Memorandum directing Principal Chief Commissioners to constitute a collegium of Chief Commissioners of Income Tax comprising of two officers in their respective Regions. This collegium will consider withdrawal of appeals filed by the Department in cases involving tax effect above the revised monetary limit from the High Courts if no question of law is involved, the issue is considered settled by the Department or the appeal is no longer relevant in view of subsequent amendment.

This decision along with the decision to revise the monetary limits, are expected to reduce pending litigation filed by the Department by 50 % and provide relief to taxpayers facing long standing litigation.

10. Amendment of Rules regarding quoting of PAN for specified transactions-Press Release dated 15-12-2015.

The Government is committed to curbing the circulation of black money and widening of tax base. To collect information of certain types of

transactions from third parties in a non-intrusive manner, the Income-tax Rules require quoting of PAN where the transactions exceed a specified limit. Persons who do not hold PAN are required to fill a form and furnish any one of the specified documents to establish their identity.

One of the recommendations of the Special Investigation Team (SIT) on Black Money was that quoting of PAN should be made mandatory for all sales and purchases of goods and services where the payment exceeds ₹1 lakh. Accepting this recommendation, the Finance Minister made an announcement to this effect in his Budget speech. The Government has since received numerous representations from various quarters regarding the burden of compliance this proposal would entail. Considering the representations, it has been decided that quoting of PAN will be required for transactions of an amount exceeding ₹2 lakh regardless of the mode of payment.

To bring a balance between burden of compliance on legitimate transactions and the need to capture information relating to transactions of higher value, the Government has also enhanced the monetary limits of certain transactions which require quoting of PAN. The monetary limits have now been raised to ₹10 lakh from ₹5 lakh for sale or purchase of immovable property, to ₹50,000 from ₹25,000 in the case of hotel or restaurant bills paid at any one time, and to ₹1 lakh from ₹50,000 for purchase or sale of shares of an unlisted company. In keeping with the Government's thrust on financial inclusion, opening of a no-frills bank account such as a Jan Dhan Account will not require PAN. Other than that, the requirement of PAN applies to opening of all bank accounts including in co-operative banks.

The changes to the Rules will take effect from 1st January, 2016.

The above changes in the rules are expected to be useful in widening the tax net by non-intrusive methods. They are also expected to help in curbing black money and move towards a cashless economy.



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

A. SERVICE TAX

1. Scope of Term "Testing" clarified under Negative List in relation to

agriculture or its produce.

Section 66D(d) of the Finance Act, 1994 under

Negative list covers services relating to agriculture or agricultural produce *by way of agricultural operations directly related to production of any agricultural produce* including cultivation, harvesting, threshing, plant protection or testing.

It may also be noted that the Finance Act 2013 omitted the word “seed” prefixed to “seed testing” in Negative List with an intent to allow the benefit to all other testing in relation to “agriculture” or “agricultural produce” and so as to broaden the scope of coverage of the negative list entry and not to limit its scope only to seeds.

Now, CBEC *vide Circular No. 189/8/2015-Service Tax dated 26th November 2015* has clarified that all testing and ancillary activities to testing such as seed certification, technical inspection, technical testing, analysis, tagging of seeds, rendered during testing of seeds, are covered within the meaning of testing as mentioned in sub-clause (i) of clause (d) of Section 66D of the Finance Act, 1994. *Testing cannot stand in isolation of certification and other ancillary activities. Testing cannot be random, somebody has to register for testing. If certificate is not received and seeds are not tagged, testing is irrelevant.* Thus, all processes are a part of the composite process and cannot be separated from testing. Therefore, such services are not liable to Service Tax under Section 66B of the Finance Act, 1994.

While clarifying this issue, CBEC, has referred the definition of Agriculture, Agriculture Produce, Agricultural operations defined in the Finance Act, 1994.

[Circular No. 189/8/2015-Service Tax dated 26th November 2015]

2. Clarification regarding applicability of service tax on the services received by apparel exporters in relation to fabrication of garments.

Department and Traders have taken a different view with regard to service tax payable on services received by the apparel exporters from third party for job work. Department is of the view that the services received by apparel exporters are of manpower supply, which neither falls under the negative list nor is specifically exempt, hence would be liable to service tax. However, traders are of the view that the services received by them are of job work involving a process amounting to manufacture or production of goods, and thus would fall under negative list [Section 66D(f)] and hence would not attract service tax.

The nature of manpower supply service is quite distinct from the service of job work. The essential characteristics of manpower supply service are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service provider's accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In other words, manpower supplier will charge for supply of manpower even if manpower remains idle.

On the other hand, the essential characteristics of job work service are that service provider is assigned a job e.g. fabrication/stitching, labelling *etc.* of garments in case of apparel. Service provider is accountable for the job he undertakes. It is for the service provider to decide how he deploys and uses his manpower. Service recipient is concerned only as regard the job work. In other words service receiver is not concerned about the manpower. The value of service is function of quantum of job work undertaken, i.e. number of pieces fabricated *etc.*

Thus the exact nature of the service and applicability of service tax on the services received by apparel exporters in relation to fabrication of garments would be determined based on facts of each case which may vary. The terms of agreement and scope of activity undertaken by the service provider would determine the nature of service being provided.

[Circular No. 190/9/2015-ST, Dated: December 15, 2015]

B. CENTRAL EXCISE

3. Clarification regarding suspension of benefits under North East Industrial and Investment Promotion Policy (NEIIPP), 2007 by DIPP and its bearing on Central Excise duty Exemption.

CBEC *vide Circular Nos. 1012/19/2015-CX, Dated: December 2, 2015* has clarified that new units or units undertaking substantial expansion after 01.12.2014 and upto the cut-off date of 31.03.2017 in the North Eastern Region including Sikkim pursuant to the suspension of fresh registrations by the Department of Industrial Policy & Promotion (DIPP) for the schemes under North East Industrial and Investment Promotion Policy (NEIIPP), 2007 shall continue to be eligible for excise duty exemption under *Notification No.20/2007-Central Excise dated 25.04.2007* which

does not mandate registration under NEIIPP, 2007 to avail of the excise duty exemption thereunder.

Fresh registrations for the schemes under NEIIPP, 2007 have been suspended by the DIPP essentially due to shortage of funds allocated to DIPP. Therefore, DIPP OM No. 10(1)/2014-DBA-II/NER dated 01.12.2014 has not suspended the entire package of incentives offered for the schemes under NEIIPP, 2007 as such.

[Circular No. 1012/19/2015-CX, Dated: December 2, 2015]

C. CUSTOMS

4. Provisional grant of Drawback-Rules amended w.e.f November 23, 2015

CBEC vide Notification No. 109/2015-Customs (N.T.), Dated: November 16, 2015 has amended Customs, Central Excise Duties and Service Tax Drawback (Second Amendment) Rules, 1995.

It has been provided that w.e.f. 23rd November 2015 no Drawback shall be allowed in respect of any of the goods falling within heading 1006 or on wheat falling within heading 1001 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). [Rule 3(1) (v) and Rule 6(4)]

Further, rule 7(3) dealing with provisional grant of drawback, has been amended to provide that *Provisional drawback amount, as may be specified by the Central Government, shall be paid by the proper officer of Customs and where the manufacturer or exporter desires that he may be granted further drawback provisionally he may, while making an application under sub-rule (1), apply to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, in writing in this behalf in the manner as has been provided in clause (a) of sub-rule (2) of rule 6 for the applications made under that rule along with details of provisional drawback already paid and the grant of further provisional drawback shall be considered in the manner and subject to the conditions specified therein.*

[Notification No. 109/2015- Customs (N.T.), Dated: November 16, 2015]

5. All Industry Rates of Duty Drawback notified w.e.f. 23.11.2015

CBEC vide Notification No. 110/2015-Customs (N.T.), Dated: November 16, 2015 has notified the All Industry Rates of Duty Drawback subject to the notes and conditions specified therein. These AIRs

broadly take into account certain broad average parameters including, *inter alia*, prevailing prices of inputs, input output norms, share of imports in input consumption, the rates of central excise and customs duties, the factoring of incidence of service tax paid on taxable services which are used as input services in the manufacturing or processing of export goods, factoring incidence of duty on HSD/ furnace oil, value of export goods, etc.

[Notification No. 110/2015-Customs (N.T.), Dated: November 16, 2015; Circular No. 29/2015-Customs, Dated: November 16, 2015]

6. Monitoring of pending bills of entry

CBEC vide Instruction F.No.450/25/2009-Cus. IV Dated: November 18, 2015 has directed all Commissioners to implement an operating procedure by which they shall receive a list of all Bills of Entry pending for more than 72 hours from the time of either 'entry Inwards' or filing of bill of entry, whichever is later to examine the reasons for delay and in particular qualitatively evaluate the queries raised, if any.

Further, Chief Commissioners shall review all pending Bills of Entry, which are not cleared within 7 days (from date & time of 'entry inwards' or filing of bill of entry, whichever is later) with the Commissioners and Group. Where inordinate delays in clearance are noticed due to any systemic faults, the same should be taken up for remedial measures.

[Instruction F.No.450/25/2009-Cus.IV Dated: November 18, 2015]

7. Guidelines prescribed for handling and storage of valuable goods that are seized/ confiscated by the Department.

In order to prevent loss/theft of gold and high value goods from the strong rooms/seized goods godown, CBEC vide Instruction F.No.394/97/2015-Cus (AS) dated December 1, 2015 has in continuation of the existing instructions/circulars in this regard issued guidelines reinforcing/re-iterating a strict compliance for handling and storage of seized/ detained and confiscated goods.

Detailed guidelines are available at <http://www.cbec.gov.in/htdocs-cbec/customs/cs-instructions/cs-instructions-2015/guidlns-handlng-strg-goods-cs-asu.pdf>.

[Instruction F.No.394/97/2015-Cus (AS) dated December 1, 2015]

8. Clarification regarding timely cancellation of bond executed with Customs in advance authorisation cases.

Presently, substantial time is taken to cancel the bond executed by exporters with the Customs in terms of the advance authorisation notifications due to time taken for retrieval of bond file and re-verifying documentation submitted by exporter for obtaining the export obligation discharge certificate (EODC) from the Regional Authority of DGFT.

In this regard, CBEC *vide Instruction F. No. 605/71/2015-DBK dated December 2, 2015* has directed the Commissioners to make it a general practice that the bond file is retrieved from record prior to expiry of export obligation period and the confirmations, if any, are linked therein in advance. The work should be arranged in a manner that bond files are readily available for immediate processing. Where request for cancellation of bond is presented before expiry of the normal EO period, the bond file should be retrieved and readied for processing within 1 day.

Further, there exists guidelines that EODCs against advance authorisations issued by RAs may normally be accepted subject to following checks

- (a) check, in detail, randomly at least 5% of the EODCs and when there is specific intelligence available suggesting misuse/need for detailed verification
- (b) verify shipping bills/other documents based on RA's endorsement on EODC or verify the genuineness of non-EDI shipping bills/bills of export on which EODC is based.

In this regard, CBEC *vide Instruction F. No. 605/71/2015-DBK dated December 2, 2015* has provided that these random checks be restricted from present level of at least 5% cases to 5% cases which would also be in line with Handbook of Procedures, for FTP 2009-14 and FTP 2015-20.

The Commissioners are also directed that the selection parameters should be meaningful and practically applicable upfront without recourse to prior enquiry with exporter or long drawn analysis after EODC is received. Also, credibility and transparency be brought into the bond cancellation process for advance authorisations.

[Instruction F. No. 605/71/2015-DBK dated December 2, 2015]

9. Amendment in guidelines for Appointment of Common Adjudicating Authority

CBEC *vide Notification No. 60/2015-Customs (N.T.), dated 04.06.2015*, in terms of Section 152 of the Customs Act, 1962, has delegated its power to Principal Director General of Directorate of Revenue Intelligence (DRI), New Delhi for appointing officers of the rank of Commissioner of Customs or Additional Director General of the said Directorate for the purpose of adjudication of cases investigated by that Directorate.

Now, CBEC *vide Notification No. 133/2015-CUSTOMS (NT), Dated: November 30, 2015* has delegated its power to the Principal Director as well as Director General, Directorate General of Revenue Intelligence for appointing Principal Commissioner or Commissioner or Additional Commissioner or Joint Commissioner or Deputy Commissioner or Assistant Commissioner of Customs.

Further CBEC *vide Circular No. 18/2015-Cus, Dated: June 09, 2015* clarified that all cases of appointment of common adjudicating authority in respect of cases investigated by DRI will be handled by Principal DG, DRI with regards to the guidelines notified therein.

Now, CBEC *vide Circular No. 30/2015-Customs, Dated: December 04, 2015* has amended the existing guidelines and provided that the following cases investigated by DRI shall be assigned to Additional Director General (Adjudication), DRI:

- (i) Cases involving duty of ₹5 Crores and above;
- (ii) Group of cases on identical issues involving aggregate duty of ₹5 crore and more;
- (iii) Cases involving seizure value of ₹25 Crore or more;
- (iv) Cases involving wrong availment of export incentives where the export incentives wrongly availed is ₹5 Crore or more;
- (v) Group of case on identical issues involving wrong availment of export incentives aggregating to ₹5 Crore or more;
- (vi) Cases of overvaluation of import where overvaluation is ₹25 Crore or more; and
- (vii) DRI case pending with erstwhile Commissioner (Adjudication).

In the cases other than above, the basis of appointment of common adjudicating authority will be maximum duty evaded/export incentive wrongly availed/amount of overvaluation of cases.

In respect of non DRI cases, appointment of common adjudication authority shall continue to be made by Board under Section 4 and Section 5 of Customs Act. This will include:

- (i) Cases made by Commissionerate;
- (ii) Non DRI cases pending with erstwhile Commissioner (Adjudication).

The amended guidelines would also apply for the cases falling under the jurisdiction of Additional Commissioner/Joint Commissioner/Deputy Commissioner/Assistant Commissioner as reference to Commissioners is specifically mentioned in the guidelines.

[Notification No. 133/2015-CUSTOMS (NT), Dated: November 30, 2015; Circular No. 30/2015-Customs, Dated: December 04, 2015]

10. Village Janoli-Bhagola in Palwal notified for import and export of goods

CBEC *vide Notification No. 137/ 2015-Customs (N.T.), Dated: December 7, 2015* has declared the following as Customs port in State of Haryana for the purpose mentioned against it:

S. No.	Place	Purpose
1.	(viii) Village Janoli-Bhagola, Tehsil Palwal.	Unloading of imported goods and loading of export goods

[Notification No. 137/ 2015-Customs (N.T.), Dated: December 7, 2015]

D. VALUE ADDED TAX DELHI VAT:

11. Registration of dealers should be restored in 3 working days

Delhi Government *vide Circular No. 31 of 2015-16 F3(475)/Policy/VAT/2014/1078-84, dated 26th November, 2015* has directed all the Zonal Authorities to ensure that the registration of the dealers should be restored within 3 working days once the proposal for restoration is approved by the Competent Authority.

[Circular No. 31 of 2015-16 F3(475)/Policy/VAT/2014/1078-84, dated 26th November, 2015]

12. Restriction on auto-downloading of central statutory forms online to prevent misuse.

Delhi Government *vide Circular No. 30 of 2015-16 F3(556)/Policy/VAT/2015/1028-1034, dated 18th November, 2015* has prescribed that the facility of auto-downloading of the forms shall not be available for a tax period where the

ratio of purchase and sales (including stock transfer and local transactions) falls below 60%. In such cases, the forms shall be allowed to be downloaded only after scrutiny of returns by ward officer concerned.

Further, in following cases forms are allowed to be downloaded after approval of concerned ward officer:

- (i) Dealers applied for cancellation of registration; or
- (ii) Ward officer has issued a show cause notice; or
- (iii) Registration has been cancelled.

[Circular No. 30 of 2015-16 F.3(556)/Policy/VAT/2015/1028-1034, dated 18th November, 2015]

KARNATAKA VAT:

13. Refund of input tax paid on purchase of inputs by a registered dealer who is a co-developer of Special Economic Zone (SEZ).

Karnataka Government *vide Circular No.17/2015/16 No. IPI/CR.21/2015-16, dated 4th December, 2015* has extended the fiscal benefit as available

for the developer of SEZ to the co-developer of SEZ also subject to the following conditions:

- (i) A registered dealer being a co-developer of SEZ is eligible for refund of input tax paid on purchases (other than petroleum products) from the output tax payable.
- (ii) Eligibility of such refund is subject to production of certificate issued by Directorate of Industries & Commerce.
- (iii) Such refund is eligible only if inputs are purchased for setting up, operation or maintenance of the processing area in SEZ (not for non-processing area of SEZ) for authorised operations w.e.f. 28.02.2009 or from SEZ notification whichever is earlier.
- (iv) Further, Section 20(2) i.e. deduction of input tax on export and inter-state sales and to SEZ units and developers, of Karnataka Value Added Tax Act, 2003 and Rule 130-A of Karnataka Value Added Rules, 2005 be applicable to a co-developer of SEZ also.

[Circular No.17/2015/16 No. IPI/CR.21/2015-16, dated 4th December, 2015]

MAHARASHTRA VAT:

14. Clarification on applicability of revised rate of interest effective from 01.12.2015 for the Dealer in case of a Default

Maharashtra Government *vide Circular No. 18T of 2015, dated 20th November, 2015*, has clarified that the old rates of interest i.e. 1.25% of the amount of delayed tax payment, will apply where the default starts and ends before 1st December 2015. However, if the tax has become due before the 1st December 2015 and default continues after the 1st December 2015, then for the period of default before 1st December 2015, the old rates of interest shall apply and in so far as the default continues on or after 1st December 2015, the new rates will apply as per the slabs which shall commence on 1st December 2015.

[Circular No. 18T of 2015, dated 20th November, 2015]

RAJASTHAN VAT:

15. Extension for the verification of deposit of tax up to the year 2013-14 for the purpose of allowing the input tax credit.

Rajasthan Government *vide Notification No. F.16(100)/Tax/CCT/14-15/7115, dated 17th November, 2015* has amended the Notification No. F.16(100) Tax/CCT/14-15/2787, dated 21st October, 2014 by substituting year '2012-13' by '2013-14' which provides the manner for verification of deposit of tax up to the year 2013-14 for the purpose of allowing the input tax credit, where the demand has been created due to mismatch of input tax credit claimed by a dealer.

[Notification No. F.16(100)/Tax/CCT/14-15/7115, dated 17th November, 2015]

16. Amendment in Rules 21 & 22A of Rajasthan Value Added Tax Rules, 2006

Rajasthan Government *vide Notification No. F.12(79)/FD/TAX/2014-103, dated 2nd December, 2015* has amended following rules of Rajasthan Value Added Tax Rules, 2006:

Rule 21 (Declaration Forms): A dealer who claims partial or full exemption from payment of tax on sale of goods to another dealer or person in a State, shall furnish to his assessing authority up to the due date of filing of annual return or audit report, a declaration or certificate or declaration in a new Form VAT-72 obtained from the purchasing dealer or person. Earlier Form-72 was not provided in the said rule.

Rule 22A: This rule provides for the determination of taxable turnover in case of transfer of property in goods involved in execution of works contract. Heading of table under the said rule is amended *vide* this notification which provides that the existing expression "*Labour charges as a percentage of gross value of contract*", shall be substituted with the expression "*Deduction in percentage of gross value of contract*".

[Notification No. F.12(79)/FD/TAX/2014-103, dated 2nd December, 2015]

TAMIL NADU VAT:

17. Date for issuing manual 'C' & 'F' forms extended from 30.09.2015 to 31.03.2016

Tamil Nadu Government *vide Circular No. 45/2015 CC4/678/2012, dated 10th December, 2015* has extended the date for issuance of manual 'C' & 'F' forms from 30.09.2015 to 31.03.2016.

[Circular No.45/2015 CC4/678/2012, dated 10th December, 2015]

TELANGANA VAT:

18. Implementation of mandatory usage of e-waybills by VAT dealers extended to 01.02.2016

Telangana Government *vide Circular No. CCT's Ref No. Enft/D2/172/2010, dated 1st December, 2015* has extended use of mandatory e-waybills from 01.12.2015 to 01.02.2016. However, cancellation of e-waybills within two hours shall be in force w.e.f. 01.12.2015. The dealers are hereby directed to make necessary arrangements to issue e-waybills which is mandatory w.e.f. 01.02.2016.

[Circular No. CCT's Ref No. Enft/D2/172/2010, dated 1st December, 2015]

19. Time limit for refund of tax has been reduced to 60 days from 90 days

Telangana Government *vide Notification No. G.O. Ms No. 235, dated 10th December, 2015* has reduced the time limit of 90 days for refund of tax mentioned under Rule 35 to 60 days.

[Notification No. G.O. Ms No. 235, dated 10th December, 2015]

UTTRAKHAND VAT:

20. Amendment in Section 48 and 49 of The Uttarakhand Value Added Tax Act, 2005

Following sections have been amended *vide* Uttarakhand Value Added Tax Act, 2015:

Section 48 (Import of Goods into the State against Declaration)

- (1) Now e-declaration or e-certificate may also be obtained to bring, import or otherwise receive any goods into the state from any place outside the state.
- (2) Where goods are consigned by road, the importer shall submit the following documents to be carried with the goods in movements:
 - (i) duly filled and signed declaration, in duplicate, the details of which are entered in the online submitted trip sheet
 - (ii) Copy of the trip sheet
 - (iii) Invoice, Challan or like other documents related to such goods
 - (iv) G.R./Bilty
- (3) A new clause (c) has been inserted in Section 48(2) which states that, if authorised officer is satisfied that goods were transported without online submitting or without carrying copy of "Trip-Sheet" & such goods are not the goods specified in Schedule 1 of Section 42(2) (1) and were not meant for personal use or

consumption then it will be deemed that it is an attempt to evade assessment or payment of tax due or likely to be due.

- (4) A *proviso* has been inserted in Section 48(3) which provides that in case e-declaration is used, the required details of such declaration should be duly filled online, and entered in the online submitted form, the copy of such e-declaration need not to be carried with the goods.

Section 49 (Import of Goods into the State by Rail, River, Air, or Post)

This section provides that when any goods are consigned by rail, river, air or post from outside the state, then importer shall furnish a declaration and he cannot carry the goods away, unless a copy of declaration duly endorsed by officer is carried with the goods.

A proviso has been inserted stating that where e-declaration is used, the required details of such declaration should be duly filled online, and entered in the online submitted form and the copy

of such e-declaration need not to be carried with the goods.

[Notification No. 332/XXXVI(3)2015/63(1)2015,
dated 17th November, 2015]



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

A. Review of Foreign Direct Investment (FDI) Policy on various sectors

DIPP Press Note No. 12 (2015 Series) dated November 24, 2015

The Government of India has reviewed the extant FDI Policy on various sectors and has made amendments in the Consolidated FDI Policy Circular of 2015. Some of the important amendments made in FDI Policy circular are given below:

i. Definition of term "Manufacture" is added after para 2.1.25 of the FDI Policy:

2.1.25 is: "Manufacture" with its grammatical variations, means a change in a non-physical object or article or thing – (a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use, or (b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.

Permitting Manufacturers to Undertake Wholesale and/or Retail, Including Through E-Commerce Without Government Approval
Para 6.2.5 of the FDI Policy is accordingly amended to be read as under:

Subject to the provisions of the FDI Policy, foreign investment in 'manufacturing sector' is under automatic route. Further, a manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce without government approval.

ii. 100% FDI in LLPs Permitted Under Automatic Route

Para 3.2.5 of FDI Policy is amended to read as under:

FDI in LLPs is permitted, subject to the following conditions:

- a. FDI is permitted under the automatic route in LLPs operating in sectors/activities where 100% FDI is allowed, through the

automatic route and there are no FDI linked performance conditions.

- b. An Indian company or an LLP, having foreign investment, will be permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI linked performance conditions.

- c. FDI in LLPs is subject to the compliance of the conditions of LLP Act, 2008.

iii. Investment by Companies/Trusts/Partnerships Owned & Controlled by NRIs on Non-Repatriation Basis to be Treated as Domestic Investment

Non-Resident Indians (NRIs) have special dispensation for investment in construction development and civil aviation sector and investment made by NRIs under schedule 4 of FEMA (Transfer or issue of Security by Persons Resident Outside India) Regulations is deemed to be domestic investment at par with the investment made by residents.

In order to attract larger investments, which are possible through incorporated entities only, the special dispensation of NRIs has now been also extended to companies, trusts and partnership firms, which are incorporated outside India and are owned and controlled by NRIs. (New Para is inserted in FDI Policy after para 3.1.3). Henceforth, such entities owned and controlled by NRIs will be treated at par with NRIs for investment in India.

Para 3.6.2(vii) is inserted and same to be read as under:

A company, trust and partnership firm incorporated outside India and owned and controlled by non-resident Indians will be eligible for investments under Schedule 4 of FEMA (Transfer or Issue of Security by persons Residents Outside India) regulations and such investment will also be deemed to be domestic investment at par with the investment made by residents.

iv. Companies without Operations Not to Require Government Approval for FDI for Undertaking Automatic Route Sector Activities (Para 3.10.3.3 of FDI Policy Circular is amended)

Approval requirements in respect of companies without operation have also been relaxed. It has now been decided that for infusion of foreign

investment into an Indian company which does not have any operations and also does not have any downstream investments, Government approval would not be required, for undertaking activities which are under automatic route. However, approval of government will be required for such companies for infusion of foreign investment for undertaking activities which are under Government route, regardless of the amount or extent of foreign investment. Further as and when such a company commences business(s) or makes downstream investment, it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

v. Investment by Swap Shares

Para 3.5.6 of FDI Policy Circular is amended to read as under:

In case of investment by way of swap of shares, irrespective of the amount, valuation of shares will have to be made by a Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country. Approval of the government will also be a

prerequisite for investment by swap of shares for sector under Government approval route. No approval of the Government is required for investment in automatic route sectors by way of swap of shares.

vi. Raising the Threshold Limit for Approval by Foreign Investment Promotion Board (Para 5.2 of the FDI Policy is amended)

The Minister of Finance who is in charge of FIPB would consider the recommendations of FIPB on proposals with total foreign equity inflow of and below ₹5,000 crore.

The recommendations of FIPB on proposals with total foreign equity inflow of more than ₹5,000 crore would be place for consideration of Cabinet Committee on Economic Affairs (CCEA).

The CCEA would also consider proposals which may be referred to it by the FIPB/the Minister of Finance (in charge of FIPB).

For other amendments relating to sectoral conditions on entry route, conditionalities and caps in various sectors refer below link at DIPP website—
http://dipp.nic.in/English/acts_rules/Press_Notes/pn12_2015.pdf

B. Import of Goods into India – Evidence of Import

A.P. (DIR Series) Circular No. 29 dated November 26, 2015

In terms of para A.10.1 of A.P. (DIR Series) Circular No. 106 dated June 19, 2003, an importer has to submit as evidence of import, a) the exchange control copy of the Bill of Entry for Home Consumption; b) the exchange control copy of the Bill of Entry for Warehousing, in the case of 100% Export Oriented Units (EOUs); or c) Customs Assessment certificate or Postal Appraisal Form as declared by the importer to the Customs Authorities.

With the establishment of Free Trade Warehousing Zones/SEZ Unit warehouses, imported goods can be stored therein, for re-export / re-selling purposes for which Customs Authorities issue Ex-Bond Bill of Entry. AD banks are advised to consider the Bill of Entry issued by Customs Authorities named as Ex-Bond Bill of Entry or by any other similar nomenclature, as evidence for physical import of goods.

Further, in cases where goods have been imported through couriers, the Courier Bill of Entry, as declared by the courier companies to the Customs Authorities, may also be considered as evidence of import of goods.

C. Advance Remittance for Import of Aircrafts/helicopters/other aviation related purchases

A.P. (DIR Series) Circular No. 30 dated November 26, 2015

Director General of Foreign Trade *vide* Notification No. 24/2015-2020 dated October 9, 2015 has announced amendment in Policy condition 1 of Chapter 88 of ITC (HS), 2012-Schedule-1 (Import Policy). Accordingly, AD Category-I banks may, while allowing advance remittance without bank guarantee or an unconditional, irrevocable standby letter of credit up to USD 50 million, ensure that only the requisite approval of DGCA for import of aircrafts/helicopters in terms of the extant Foreign Trade Policy has been obtained by the company for operating Scheduled or Non-Scheduled Air Transport Services (including Air Taxi Services). In other words, the approval from Ministry of Civil Aviation (MoCA) will not be required.

D. Investment by Foreign Portfolio Investors (FPIs) in Corporate Bonds

A.P. (DIR Series) Circular No. 31 dated November 26, 2015

It has been decided to permit FPI to acquire NCDs/bonds which are under default either fully or partly, in the repayment of principal on maturity or principal instalment in the case of amortising bond. The revised maturity period of such NCDs/bonds, restructured based on negotiations with the issuing Indian company, should be three years or more.

The FPI which propose to acquire such NCDs/bonds under default should disclose to the Debenture Trustees the terms of their offer to the existing debenture holders/beneficial owners from whom they are acquiring. Such investment should be within the overall limit prescribed for corporate debt from time to time (currently ₹2443.23 billion). All other existing conditions for investment by FPIs in the debt market remain unchanged.

E. External Commercial Borrowings (ECB) Policy-Revised Framework

A.P. (DIR Series) Circular No. 32 dated November 30, 2015

As sufficient time has passed since the extant ECB framework was operationalised, a need was felt to undertake a review based on the experience gained in administering the ECB regime and the current financing ecosystem which, *inter alia*, allows issuance of Indian Rupee (INR) denominated bonds overseas by a wide set of borrowers. Based on the responses received and, in consultation with the Government of India, a revised ECB framework based on the following overarching principles has been finalised:

- i. A more liberal approach, with fewer restrictions on end uses, higher all-in-cost ceiling, *etc.* for long term foreign currency borrowings as the extended term makes repayments more sustainable and also minimizes roll-over risks for the borrower;
- ii. A more liberal regime for INR denominated ECBs where the currency risk is borne by the lender;
- iii. Expansion of the list of overseas lenders to include long-term lenders, such as, Insurance Companies, Pension Funds, Sovereign Wealth Funds;
- iv. Only a small negative list of end-use restrictions applicable in case of long-term ECB and INR denominated ECB;
- v. Alignment of the list of infrastructure entities eligible for ECB with the Harmonised List of the Government of India.

The revised ECB framework will comprise the following three tracks:

- Track I : Medium term foreign currency denominated ECB with Minimum Average Maturity (MAM) of 3/5 years.
- Track II : Long term foreign currency denominated ECB with MAM of 10 years.
- Track III : Indian Rupee denominated ECB with MAM of 3/5 years.

The guidelines for the revised ECB framework specifying the parameters and other terms & conditions are set out in the Annex to this Circular. It may be noted that these parameters will apply in totality and not on a standalone basis. Criteria for raising ECB under both routes, viz., the automatic route where entities do not require the prior approval of the Reserve Bank for raising ECB and the approval route where entities can raise ECB only with the prior approval of the Reserve Bank are also given in the Annex.

The new ECB framework will come into force from the date of publication, in the Official Gazette, of the relative Regulations issued under FEMA. These Regulations are being issued separately.

For more details of new revised ECB framework specifying the parameters and other terms and conditions as set out in the Annex of the Circular please refer this circular on the RBI website at—<https://rbidocs.rbi.org.in/rdocs/Notification/PDFs/A320084163A24434DB5905EEB3F3296EBEC.PDF>



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

MCA (www.mca.gov.in)
MCA general circular no. 15/2015
dated 30th November 2015- Relaxation

of additional fees and extension of last date of in filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013

MCA has directed that keeping in view requests received from various stakeholders, relax the additional fees payable on e-forms AOC4, AOC (CFS) AOC-4 XBRL and e- Form MGT-7 upto 30th December 2015, wherever additional fee is applicable. For a complete text of the circular, please

refer the link: http://www.mca.gov.in/Ministry/pdf/General_Circular_No_15_2015.pdf

SEBI(www.sebi.gov.in)
SEBI circular no. CIR/CFD/CMD/15/2015 dated 30th
November 2015-Formats for publishing financial results

Listing regulations by SEBI has prescribed various disclosures to be filed under various provisions contained therein. Various formats have been prescribed which shall come into force with effect from December 01, 2015. The regulations also deal with publication of previous period IndAS results in case of companies adopting Ind AS in terms of Companies (Indian Accounting Standards) Rules, 2015. The formats of limited review reported to be issued by auditors have also been prescribed. For a complete text of the circular, please refer the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1448885855487.pdf

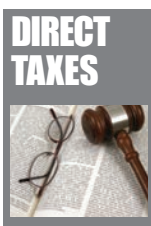
SEBI circular no. CIR/IMD/DF1/9 /2015 dated 27th
November 2015- Format for financial results for listed entities which have listed their debt securities and/or non-cumulative redeemable preference shares.

Under the captioned circular, SEBI has prescribed separate formats for half yearly financial results and also for limited review reports for companies other than banks and NBFCs as well as for Banks and NBFCs. Manufacturing, trading and service companies may furnish the half-yearly financial results in the alternative format prescribed under the said circular. For a complete text of the circular, please refer the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1448620165250.pdf

RBI(www.rbi.org.in)
RBI circular no. DBR.No.BP.BC.65/21.04.141/2015-16
dated 10th December 2015-SLR Holdings under Held to Maturity Category

RBI has directed that it would progressively bring down the SLR by 0.25% every quarter till March 31, 2017 and concurrently reduce the ceiling on SLR holdings under HTM in alignment with the SLR requirement. Certain relaxations have been given to the Banks to exceed the limit of 25 per cent of total investments under HTM category with certain conditions. For a complete text of the circular, please refer the link: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10166&Mode=0> ■

Legal Decisions¹



Income Tax

LD/64/89

Hero Cycles P. Ltd.

vs.

*Commissioner of Income Tax (Central),
Ludhiana*

5th November, 2015(SC)

Section 36(1)(iii) of Income-tax Act, 1961: Deduction of interest paid in respect of capital borrowed.

Loans to subsidiary satisfies 'commercial expediency' test and so deduction of interest is allowed.

SC observed that loan advanced to subsidiary company was imperative as business expediency in view of undertaking given to the financial institutions for providing additional margin for subsidiary's working capital requirements; Reliance was placed on co-ordinate bench ruling in S.A. Builders Ltd. and Delhi HC ruling in Dalmia Cement (B.) Ltd

The assessee is a manufacturing concern. It claimed deduction of interest paid on borrowed sums u/s 36(1)(iii). The AO rejected assessee's claim noting that assessee had advanced interest free loan to Hero Fibres Ltd, its subsidiary company and that assessee had also advanced loans to its director on which it charged interest @10%. Further interest payable on loans from Banks carried an interest @18%.

Assessee, being a promoter having controlling interest in its subsidiary, had given an undertaking to the financial institutions to provide its subsidiary company with an additional margin to meet working capital for meeting any cash losses. The amount advanced by the assessee was in compliance of the stipulation laid down by the financial institutions and it became possible for the financial institutions to advance a loan to Hero Fibres Ltd only because of the aforesaid undertaking given by the assessee. Assessee also stated that no interest was to be paid on this loan unless dividend was paid by the subsidiary company. With regard to the loan advanced to the directors assessee submitted that these loans were never given out of any borrowed funds.

Both CIT(A) and ITAT ruled in assessee's favour. However, Punjab and Haryana HC referring to its

own ruling in Abhishek Industries Ltd. [ITA No. 110/2005] held that when loans were taken from the banks at which interest was paid for business purposes, interest thereon could not be claimed as business expenditure.

SC referred to co-ordinate bench ruling in S.A. Builders Ltd. wherein SC had allowed deduction of interest on borrowed loan advanced to sister concern out of commercial expediency. SC further referred to Delhi HC ruling in Dalmia Cement (B.) Ltd. [2002 (254) ITR 377], wherein it was stated that Revenue cannot assume the role of businessmen to decide the reasonableness of an expenditure. It was also stated that businessman could not be compelled to maximise his profit and that the income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act.

SC observed held that advance made to Hero Fibres Ltd. became imperative as business expediency in view of the undertaking given to the financial institutions by the assessee to the effect that it would provide additional margin to Hero Fibres Ltd. to meet the working capital for meeting any cash loss. SC observed the fact that subsequently, the assessee had off-loaded its share holding in the said Hero Fibres Ltd. to various companies, it not only refunded back the entire loan given to Hero Fibres Limited by the assessee but this was refunded with interest. In the year in which the aforesaid interest was received, same was shown as income and offered for tax.

With respect to advance made to director, SC observed that Revenue failed to prove that such advance was not made out of borrowed funds and noted that the assessee company had reserves/surplus to the tune of almost 15 crores and, therefore, the assessee company could in any case, utilise those funds for giving advance to its Directors.

LD/64/90

State Bank of Patiala

vs.

*Commissioner of Income Tax, Patiala
18th November, 2015 (SC)*

Section 2(28A) of Income-tax Act, 1961 - Section 2(7) of Interest tax Act, 1974.

Interest received by banks for delay by parties to fulfil their payment obligations on discounted bills of exchange is not chargeable to tax under

¹ Contributed by CA. Sahil Garud and ICAI's Editorial Board Secretariat.

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Interest Tax Act; Definition of interest u/s 2(7) of Interest Tax Act is narrow and exhaustive, unlike Sec. 2(28A) of Income Tax Act.

The question before the Court was whether interest received by Banks as compensation after bills of exchange have been discounted by them and a party defaults, was liable to tax under the Interest Tax Act, 1974.

The petitioner was engaged in the business where it purchases Bills of Exchange from its customers and charges commission. Subsequently, these bills are presented before parties and in case the amount is not realised on time, a certain amount in the form of interest is charged by the bank on a fixed percentage basis for every day of default. The petitioner-bank received such an interest upon delay by parties to fulfill their payment obligations. Such compensation received as "interest" was made liable to tax under the Interest Tax Act, 1974.

SC analysed the definition of interest as defined u/s 2(7) of the Interest Tax Act and opined that owing to the use of expression "*interest means ...but does not include*", the definition of interest under the said Act was a narrow one. SC referred to a co-ordinate bench ruling in *P. Kasilingam vs. P.S.G. College of Technology* wherein it was held that the expression "means and includes" was exhaustive. SC took note of Section 32 of the Negotiable Instruments Act which casts obligation on acceptor of a Bill to compensate party to the Bill for loss or damage sustained by it owing to the failure of acceptor to pay the amount on maturity.

As per Section 2(7) of Interest Tax Act was chargeable on interest only when same arise out of loans and advances made in India. SC observed that "*discount on bills of exchange would obviously not come within the expression 'loans and advances made in India', and consequently any amount that becomes payable by way of compensation after a bill is discounted by the Bank would not be an amount which would be on loans and advances made in India*".

SC stated that Section 2(7) itself made a distinction between loans and advances made in India and discount on bills of exchange drawn or made in India. SC therefore rejected the view expressed by the Karnataka HC in *State Bank of Mysore vs. CIT* wherein HC had held that Discounting of Bills was a form of advance or loan, and hence compensation paid on delayed payment of money due thereon was interest on loans and advances since interest is

damages or compensation for delayed payment of money due. SC therefore stated that "*If discounted bills of exchange were also to be treated as loans and advances made in India there would be no need to extend the definition of 'interest' to include discount on bills of exchange*". SC observed that "loans and advances", as a concept, is different from commitment charges and discounts and thus legislature has specifically included commitment charges as well as discounts in the definition u/s 2(7).

The right to charge for overdue interest by banks arose on account of default in the payment of amounts due under a discounted bill of exchange and not on account of any delay in repayment of any loan or advance made by the said banks. SC thus stated that since tax can be levied only under express authority of law and since u/s 2(7) tax is levied only on interest arising directly from loan, Interest payable "on" a discounted bill of exchange could not be equated with interest payable "on" a loan or advance.

SC observed that definition of "interest" as defined u/s 2(28A) of Income-tax Act is much wider than that contained in Section 2(7) of the Interest Tax Act. The expression used in Section 2(28A) is "*payable in any manner in respect of any moneys borrowed*". Under the said definition, expression "in respect of" includes interest arising even indirectly out of a money transaction. The expression "any moneys borrowed" is different from the words "loan or advances" used in interest tax act.

SC concluded that the Interest Tax Act, unlike the Income-tax Act, has focused only on a very narrow taxable event which does not include within its scope interest payable on default in payment of amounts due under a discounted bill of exchange.

LD/64/91

Pradip Burman

vs.

Income Tax Office

2nd December, 2015(DEL)

Section 276D, Income-tax Act, 1961-Failure to produce accounts and documents.

Pendency of appellate proceedings has no bearing on initiation of prosecution under the Act; Age at the time of commission of offence relevant; Prosecution against assessee was upheld.

The assessee had a foreign bank account in HSBC [Zurich] which was not disclosed in the income tax return for 2007-08. The assessee addressed a letter

to DGIT (Investigation) and submitted that said account outside India was as per FEMA Regulations. Revenue issued notice summons u/s 131 and also initiated proceedings for levy of penalty u/s 271. Further, prosecution proceedings were initiated against assessee.

The assessee challenged the prosecution on the grounds of age and appeal pendency.

The assessee submitted that Instruction No. 5051/1991 dated 07.02.1991 mandates that no prosecution could be initiated against a person who is above the age of 70 years, conveniently leaving out the expression '*at the time of commission of offence*'. Revenue argued that the said instruction refers to the age at the time of commission of offence and since assessee filed return in 2006 & 2007, his age were 63 years and 64 years respectively for AY 2006-07 and 2007-08.

HC distinguished assessee's reliance on co-ordinate bench ruling in Arun Kumar Bhatia [Criminal Revision Petition No.36/2011]. In that case, Revenue's counsel conceded that no prosecution could be initiated against a person who is above the age of 70 years. Thus, that said order was not passed on merits but was based on the precise statement made by Revenue's counsel and thus benefit of the same cannot be given to assessee. HC noted that at the time of commission of alleged offence assessee had not reached the age of 70 years and therefore the concerned instruction was not applicable to the assessee.

The assessee had further submitted that an appeal against AO's order was pending and thus prosecution could not be initiated. Revenue submitted that at the time of filing of Complaint No. 70/04, the assessee had not filed any appeal and that the same had been filed as an afterthought with a view to thwart the criminal proceedings pending against him. Revenue also contended that pendency of appeal cannot be ground for stay of the proceedings if the same had no bearing on the complaint.

HC noted that the appeal had been filed challenging the AO and consequential outcome of imposition of penalty U/s 271(1)(c), Income-tax Act. Thus, at any count, the outcome of the appeal filed on behalf of the petitioner will have no bearing on the present complaint at least in respect of offence U/s 276D Income-tax Act. Moreover, no prayer for quashing of the proceedings was made by the petitioner in the application.

Relying on rulings in Sasi Enterprises [(2014)

5 SCC 139] and *B. Premanand & Ors* [(2011) 4 SCC 266], HC stated that pendency of appellate proceedings has no bearing in initiation of prosecution under the Income-tax Act.

HC noted that proceedings once initiated in a warrant trial case, there is no provision under the Code of Criminal Procedure, 1973, except U/s 258 Cr.P.C., where the proceedings of the case can be stayed by the Magistrate *suo moto* or upon the application filed on behalf of the accused.

HC thus ruled in favour of the Revenue.

Service Tax

LD/64/92

Kailash Chawla.

vs.

Commissioner of Service Tax, Delhi

6th November, 2015 (DEL)

Section 35F of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994.

Civil work undertaken for Airports Authority of India-Tax computed on cost of materials supplied-service component involved of 25% to 44%- Tribunal order directing pre-deposit of ₹17.5 lakhs with interest modified-Appellant to make pre-deposit of ₹5 lakhs by 30.11.2015 consequent upon which Tribunal to hear appeal on merits-Appeal/applications disposed of.

The assessee is a contractor engaged in undertaking civil work primarily for the Airports Authority of India [AAI]. The assessee contended that works undertaken for the airports, road, railways *etc.* were excluded from service tax liability as they formed part of the infrastructure development of the country. A notice was issued by Revenue proposing to levy service tax on all contracts executed by the Assessee, which included the contracts undertaken for the AAI. The adjudicating authority upheld the demand categorising the service under "management, maintenance or repair service". Before CESTAT, the assessee pointed out that the adjudicating authority had computed the demand by taking the entire turnover of the Assessee which included the cost of the materials supplied. According to the Assessee the service component was between 25% and 44% of the turnover during the period in question.

The assessee submitted that in real terms the highest possible service tax demand worked out was ₹26.8 lakh whereas the CESTAT had asked the Assessee to deposit ₹17.5 lakh (along with

proportionate interest) which was about 65% of the highest possible service tax demand. Assessee had already deposited a sum of ₹4.17 lakh.

Delhi HC modified the impugned order of the CESTAT and directed the assessee to deposit a sum of ₹5 lakh before the CESTAT, after which CESTAT would consider assessee's appeal on merits.

Excise

LD/64/93

Commissioner of Central Excise.

vs.

M/s Nestle India Ltd.

24th November, 2015 (SC)

Rule 8 of Central Excise Valuation Rules.

Excise duty for purpose of application of exemption Notification Nos. 8/97-CE & 23/2003-CE should be arrived at in accordance with Rule 8 of Central Excise Valuation Rules, and not FOB export price of similar goods; Goods were captively consumed and not sold to sister units or actually sold in wholesale market, and thus Rule 8 of Excise Valuation Rules would have to be followed to determine amount equal to excise duty leviable on like goods.

The Assessee is a 100% EOU engaged in the manufacture of instant tea which falls under Chapter 2101.20 of Central Excise Tariff Act 1985. The present appeal is concerned with clearances of their product to two sister units on payment of duty in terms of Notification No.8 /97 - CE dated 1.3.1997 and Notification No.23/2003 CE dated 31.3.2003. The first notification would cover the period 1.11.2000 to 30.3.2003 and the second notification would cover the period 31.3.2003 to 31.5.2005.

A show cause notice was issued dated 23.09.2005 stating that ordinarily Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 would apply and that tea being captively consumed and not sold, should be valued at 115% of the cost of production or manufacture of such goods. However, the show cause notice then goes on to say that as the said tea is transferred only to two sister concerns and no sale is involved, the assessable value of instant tea removed to the respondent's own units would be determined on the basis of the export price of similar goods and not 115% of the cost of production. The Additional Commissioner upheld the show cause notice and confirmed duty amount, interest and penalty. Commissioner (Appeals) confirmed the demand

stating that Sec 3(1) *proviso* (ii) of Central Excise Act would apply to facts of the case and that being so, it was clear that basis for valuation had to be the FOB value of export of similar goods and not the cost of production under Rule 8 of Central Excise Rules.

However, CESTAT set aside the appellate order by reasoning that since the exemption Notifications applied and since what had to be determined was excise duty payable, such duty could only be arrived at by applying Rule 8 in cases of captive consumption and therefore the basis of show cause notice and the decisions by original and appellate authority were incorrect.

Notification No. 8/97-CE exempts finished goods and rejects and waste/scrap produced wholly from indigenous raw materials by EOU and allowed to be sold in India, from so much of excise duty leviable u/s 3 of Central Excise Act, as is in excess of amount equal to excise duty leviable on like goods, produced/manufactured in India other than in EOU or FTWZ, if sold in India.

SC observed that the object of the Notification is that so far as the product in question is concerned, so long as it is manufactured by a 100% EOU out of wholly indigenous raw materials and so long as it is allowed to be sold in India, the duty payable should only be the duty of excise that is payable on like goods manufactured or produced and sold in India by undertakings which are not 100% EOUs.

SC observed that whatsoever that the duty of excise leviable under Section 3 would be on the basis of the value of like goods produced or manufactured outside India as determinable in accordance with the provisions of the Customs Act, and the Customs Tariff act. However, the notification states that duty calculated on the said basis would only be payable to the extent of like goods manufactured in India by persons other than 100% EOUs. This being the case, it is clear that in the absence of actual sales in the wholesale market, when goods are captively consumed and not sold, Rule 8 of the Central Excise Rules would have to be followed to determine what would be the amount equal to the duty of excise leviable on like goods. Thus the basis of show cause notice itself was flawed.

According to SC, the expression "settled law" used by Revenue in the show-cause notice referred to CBEC Circular No. 268/85-CX.8 dated September 29, 1994 dealing with valuation of goods manufactured by units working under 100% EOU scheme. The said Circular referred to Rule 8 of

Customs Valuation Rules and not Central Excise Valuation Rule. SC observed that *"the application of this circular and consequently any FOB export price would be wholly irrelevant for the purpose of this case and as has been held above, is only for arriving at the duty of excise leviable under Section 3(1) Proviso (ii) of the Central Excise Act. On the facts of the present case, it is clear that the said duty of excise arrived at based on Section 3(1) Proviso (ii) is more than the duty determinable for like goods produced or manufactured in India in other than 100% EOUs. Since the notification exempts anything that is in excess of what is determined as excise duty on such like goods, and considering that for the entire period under question the duty arrived at under Section 3(1) proviso (ii) is in excess of the duty arrived at on like goods manufactured in India by non 100% EOUs, it is clear that the whole basis of the show cause notice is indeed flawed."*

SC observed that the test to be applied under notification 8/97-CE was whether goods in question were "allowed to be sold" in India, which expression was different from the term "sold". Hence, to attract the Notification, actual sale was not required. It is clear that the said notification attempts to levy only what is levied by way of excise duty on similar goods manufactured in India, on goods produced and sold by 100% EOUs in the domestic tariff area if they are produced from indigenous raw materials. If the revenue were right, logically they ought to have contended that the notification does not apply, in which event the test laid down under Section 3(1) proviso (ii) would then apply.

SC thus ruled in favour of the assessee.

Customs

LD/64/94
GMR Energy Ltd
vs.

Commissioner of Customs, Bangalore.
27th October, 2015 (SC)

Rule 4 and Rule 9 of Customs Valuation Rules

Customs duty demand quashed on import of replacement/refurbished parts of Gas Turbine Hot Section of a naphtha based power plant, under Long Term Assured Parts Supply Agreement (LTAPSA) with associated foreign entity; Rule 4 r/w Rule 9 of Customs Valuation Rules inapplicable since there was no "sale" of goods for export to

India or direct/indirect accrual of proceeds to seller from subsequent re-sale, disposal or use of the very goods imported by buyer; Once State Govt. authorities are satisfied that goods are required for renovation, Customs Dept. need not go deep into the matter and deny the benefit of exemption Notification.

The assessee is aggrieved by the valuation of import of parts of Gas Turbine Hot Section of a naphtha based power plant, whereas the Revenue is aggrieved whether assessee was entitled to benefit of Notification No. 21/2002 dated March 1, 2002 in respect of goods imported under 2 bills of entry (BOE) dated June 25, 2003.

Assessee, GMR Energy Ltd., had imported a naphtha based power plant with 5 Gas Turbines, which was mounted on a barge which floated in a river at a village near Mangalore for purposes of power generation. The capacity of the said power plant is 220 MW and entire power generated is uploaded into the grid of the Karnataka Power Transmission Corporation Limited (KPTCL).

Assessee entered into an agreement for service and supply of parts with GE, USA being a Long Term Assured Parts Supply Agreement (LTAPSA) dated December 12, 2000. As per the said agreement, assessee was to make payments based on either fired hour charges or maintenance charges. Various parts of Gas Turbine Hot Section of the said plant, which had to be imported under LTAPSA, were imported under 2 BOE dated June 25, 2003 after 12,500 fired hours had come to an end. The parts that were identified as having to be replaced were re-exported back to GE, USA under cover of shipping bills of May, 2003, before the 2 BOE were presented for import of the replaced parts to Customs authorities. Assessee-appellant paid customs duty based on the value declared in said bills of entry but did not make any payment to GE, USA based on these invoices since their payments had already been made based on fired hour charges. The assessment of the said import was completed by Customs Dept. after due verification of the documents produced at the time of import.

A show cause notice (SCN) was issued on the taking reference of Rule 4 and Rule 9 of the valuation rules and it was sought that 1/3rd of the value of imported items be added to the invoice value as that was said to represent the amount of parts that were replaced and re-exported back to GE, USA. A demand ₹ 4.20 crore and proposed confiscation of goods was made vide the notice.

The Id. Commissioner specifically found that as per the LTAPSA since the assessee has declared only the differential value of the returned parts and the parts imported, 1/3rd of the invoice value of the imported parts needs to be added to arrive at the correct assessable value. Thus, it confirmed the demand made in the show cause notice. CESTAT confirmed the order of the commissioner.

CESTAT dismissed assessee's appeal, thus confirming the order of Commissioner. In addition, CESTAT additionally found that there is no transaction value at all and, therefore, Rule 8 will have to be referred to and relied upon and a best judgment assessment was to be made.

SC perused the relevant provisions and observed that Rules 4 & 9 would apply only in case imported goods are "sold" for export to India. The expression "shall be the price actually paid or payable for the goods when sold for export to India" would necessarily postulate that transaction value would be based upon goods that are sold in the course of export from a foreign country to India. Admittedly there was no sale. All that happened under LTAPSA was that parts were replaced without any further charge after a certain number of hours of running of the power plant. SC accepted assessee's contention that neither Rule 4 nor Rule 9 applied.

SC further noted that Rule 4(2)(g) and Rule 9(1)(d) refer only to the very goods that are imported and not to goods which may have been imported much earlier to the imported goods. Therefore, what would be necessary is that there should be proceeds which arise from re-sale, disposal, or use of the very imported goods by the buyer, which in the instant case did not occur.

Equally, SC stated that Rule 9(1)(e) would not apply as there was no other payment actually made or to be made as a condition of sale of imported goods by the buyer to the seller.

Based on facts, SC concluded that Rule 5 would have no application in the facts of present case. Consequently, SC proceeded on the footing that Rule 8 alone applies and best judgment assessment made by Commissioner would have to be reasonable and not arbitrary.

SC accepted assessee's contention that in terms of clause 2.8, seller was only to furnish the buyer with "information" regarding the incremental value of each refurbished part so that customs duty may be limited to the incremental value of each such refurbished part. SC found that the assessee had

made it more than clear that the price of imported goods was a rotatable exchange programme price, which was common uniform price for supplies by GE, USA worldwide. Thus, SC stated, SC observed that prices stated in the invoices accompanying the bills of entry in the present case were list unit prices or catalogue prices and so by no stretch of imagination can they be said to be prices after re-exported items' value has been taken into account. Thus, both Commissioner and CESTAT were wrong in arriving at a conclusion that invoice price was only an incremental value price and not the price of articles supplied by GE, USA.

SC noted that conjoint reading of Section 46(4) of Customs Act & Rule 10(1)(a) of the Rules makes it incumbent on the importer while presenting a BOE to subscribe to a declaration as to the truth of its contents and in addition, to produce to the proper officer the invoice relating to imported goods. There was no doubt that assessee had fulfilled this condition. According to SC, LTAPSA would be a document which would fall within Rule 10(1)(b) r/w Sec 17(3) of the Act as it then stood. A conjoint reading of of Section 17(3) and Rule 10(1)(b) made it clear that the proper officer may require the importer to produce any contract with reference to the imported goods consequent upon which the importer shall produce such contract. In the instant case, the proper officer had not called upon the assessee to produce any contract in relation to the imported goods, and thus there was no infraction of Rule 10.

As regards Revenue appeal, SC observed that both the requisite certificates as well as recommendation of Principal Secretary, Govt. of Karnataka, had been dealt with in the proper perspective. The CESTAT was correct in its finding that once the authorities were satisfied that the impugned goods were required for renovation, the Customs Dept need not go deep into the matter and by hair-splitting and semantic niceties, deny the benefit of exemption Notification. SC thus dismissed Revenue appeal.

LD/64/95

Cargill India Pvt. Ltd

vs.

Commissioner of Customs and Central Excise

28th October, 2015 (SC)

Section 50 and 113 of the Customs Act.

Conversion of free shipping bills into drawback shipping bills—Conversion permissible only

when claim for duty drawback was beyond the control of the exporter; Drawback on All industry rates can be considered without converting the Shipping Bill.

The assessee is an exporter of a variety of food and agriculture related products. During the period 08.11.2007 to 23.01.2008, the appellant had filed as many as 14 shipping bills for export of Soyabean meal through Visakhapatnam Port to Vietnam and Japan. While filing the shipping bills, the appellant did not claim any duty drawback and instead free shipping bills for export were filed. The appellant submitted an application to the Commissioner (Customs) for conversion of the said free shipping bills into drawback shipping bills under Rule 12(1)(a) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The Commissioner rejected the request of conversion on the ground that under Rule 12(1)(a) of the Rules, the request could be made for change/conversion only for the reasons because of which the shipping bills filed earlier were beyond the control of the exporter and since the appellant could not satisfy this requirement, it was not permissible for him to seek conversion of the free shipping bills into duty drawback bills under the aforesaid Rules. Further the Commissioner noted that at the time when the appellant had sought the duty drawback, the goods could not be physically examined. CESTAT reversed the order of the Commissioner, however HC ruled in favour of the assessee.

Issue before the SC was that whether the appellant is entitled to claim conversion of free shipping bills into drawback shipping bills on the basis of Rule 12(1)(a) of the Rules?; If no, whether the appellant is entitled to the benefit of duty drawback on the strength of Circular No. 04/2004 dated 16.01.2004 even without seeking conversion?

SC analysed the provisions of Rule 12 and observed that a bare reading of the aforesaid Rule demonstrates that such conversion is permissible only when the exporter is able to satisfy the Commissioner that "for reasons beyond his control" drawback was not claimed. Merely because the appellant was not aware of the correct legal position would not afford any such ground that it was beyond his control.

With respect to Circular No. 04/2004, SC observed that this Circular referred to the

discussion that was held in the Conference of Chief Commissioner on Tariffs and allied matters held on 25th/26th September, 2003 and notes that in the said conference it was felt that in cases where the exporters had filed free shipping bills on their own, it would not be advisable to permit such conversion. This view of the Commissioner's Conference was deliberated by the Central Board of Excise & Customs and the issue was re-examined, which resulted in the issuance of the aforesaid circular. After taking note of the provisions contained in Rule 12(1)(a) of the Rules which undoubtedly state that "*no provision exists for permitting conversion of free shipping bills into drawback shipping bills*", the Board was still of the opinion that it was permissible for the Commissioner to examine and consider individual requests on merits and facts in terms of the aforesaid provisions and the relaxation shall only apply in respect of drawback claims pertaining to All Industry Rates of drawback and it would not apply to brand rate of duty drawback, where rate is claimed in terms of Rule 6 or Rule 7 of the Customs & Central Excise Duties Drawback Rules.

SC perused Section 50 and 113 of the Customs Act and observed that the proper officer is to satisfy itself only to the extent that the goods which are entered for export are not prohibited goods and the exporter has paid the duty at the time of clearance of the goods meant for export and therefore, the inspection is confined to the aforesaid aspect viz. the goods are not prohibited. Since in the present case, goods are not dutiable, no duty has to be paid. Therefore, there was no reason for denying the benefit only on the ground that at the time when the appellant had sought the duty drawback, the goods could not be physically examined.

SC concluded that provisions of Circular No. 04/2004 dated 16.01.2004 would be applicable in the instant case. SC remitted the matter back to Commissioner directing him to examine and consider the request of the appellant on merits as per the stipulation contained in Circular No. 04/2004 dated 16.01.2004

International Taxation

LD/64/96

Columbia Sportswear Company

vs.

DIT (Karnataka HC)

DTAA India–USA, Explanation 1(b) of Section 9(1)(i) of the Income Tax Act, 1961.

Procurement activity carried out by liaison office in India is not taxable.

The assessee, a company incorporated in and a tax resident of the US, was engaged in the business of designing, developing, marketing and distribution of outdoor apparel with operations in North America, Europe and Asia. The assessee had set up a Liaison Office ('LO') in India for undertaking liaison activities for purchase of goods in India. The LO was engaged in the purchase coordination activities i.e., vendor identification, review of causing data, uploading of material prices into the internal product data management system, ensuring vendor recommendation and quality control, monitoring vendor compliance with policies, procedures and standards related to quality, delivery, pricing and labour. Specifically, the LO did not supervise, direct or control the production facilities of the Indian vendors. Its activities were consistent with the approval granted by the Indian Regulatory Authority to it. The LO also did not distribute or retail its products in India. It had no revenue streams in India and also did not source products for local sales in India. Additionally, designing of all the products was undertaken outside India.

The assessee had applied to the AAR to adjudicate upon this issue. The AAR held as under:

- A portion of the income of the business of designing, manufacturing and sale of the products imported by the applicant from India accrues to the applicant in India.
- The applicant has a business connection in India being its liaison office located in India.
- The activities of the Liaison Office in India are not confined to the purchase of goods in India for the purpose of export.
- The Income-taxable in India will be only that part of the income that can be attributed to the operations carried out in India. This is a matter of computation.
- The Indian Liaison Office involves a 'Permanent Establishment' for the applicant under Article 5.1 of the DTAA.
- In terms of Article 7 of the DTAA only the income attributable to the Liaison Office of the applicant is taxable in India.

Assessee's Contentions:

The assessee contended that no income would be

deemed to accrue or arise in India through or from operations which are confined to the purchase of goods for exceptional purpose of exports as per the exceptions carved out in Explanation 1(b) of Section 9(1)(i). It does not undertake any activity of trading, commercial or industrial in nature in India. The expenditure of the liaison office is entirely met by remittances made by the assessee. Further, it also submitted that there exists no permanent establishment ('PE') in India as per the Double Taxation Avoidance Agreement ('DTAA') entered with USA. The assessee carries out only purchase co-ordination functions which are covered by the specific permanent establishment exclusionary clause specifically covered under the PE Article of the DTAA.

Revenue's Contention:

The designing and the manufacturing of products was carried out by the assessee in India and hence a portion of the income relating to these activities accrued to the assessee in India. The LO constitutes a permanent establishment of the assessee under the article 5 of the DTAA and hence in terms of article 7 of the DTAA, the income attributable to the Indian LO from the Indian activities would be taxable in India.

The High Court ('HC') held as under:

Article 7(1) of the DTAA applies if a PE carries on business of sales in India or other business activities of the same or similar kind. Therefore, there is no tax liability if purchase is made for the purpose of export.

Furthermore, if the PE is established for the purpose of purchasing goods or merchandise or for collecting information for the enterprise, it is not a PE as defined in Article 5 read with Article 7 of the DTAA.

The LO of the assessee identifies a competent manufacturer, negotiates a competitive price, helps in choosing the material to be used, ensures compliance with the quality of the material, acts as a go-between and involves itself in testing of the material for ensuring quality and compliance with the relevant laws and policies.

If the assessee has to purchase goods for the purpose of export, an obligation is cast on it to see that the goods, which are purchased in India for export, is acceptable to the customer outside India.

Therefore, the AAR was not justified in recording a finding that these acts amount to involvement in all the activities connected with the business, except the actual sale of the products outside the country.

All these acts are necessary to be performed by the assessee before export of goods. Consequently, the reasoning that the LO would qualify to be a PE is erroneous.

The LO was established only for the purpose of carrying on business of purchasing goods for the purpose of export and all that activity also falls within the meaning of the words "collecting information" for the enterprise.

Under the facts of this case, the HC reached a conclusion that, as the LO is engaged in activities that are connected to and necessary for the purchase activity, it satisfies the requirement of PE exclusion under the DTAA provisions. Hence, it does not result in a taxable presence for the assessee in India.

Therefore, the assessee is eligible for the DTAA PE exclusion.

LD/64/97

Food World Super Markets Ltd vs.

DDIT (Bangalore ITAT)

Section 9(1)(vii), Section 44DA of the Income Tax Act, 1961.

Salary reimbursement for seconded employee taxable as FTS.

The assessee, Food world Supermarkets Ltd. is company engaged in the business of ownership and operation of supermarket chain in India. The assessee entered into a secondment agreement with Dairy Farm Company Ltd. ('DFCL') which is a company based in Hong Kong under which DFCL assigned 5 personnel/employees to assessee. The salaries of these employees were paid by DFCL which was subjected to TDS u/s 192. The assessee reimbursed the amount paid towards the salary to DFCL but did not deduct tax u/s 195 on the same as it was in the nature of reimbursement. AO however initiated proceedings u/s 201 as it was of view that remittance made by assessee constituted Fees for Technical Services ('FTS') u/s 9(1)(vii) and thus was chargeable to tax on gross basis. AO in addition to tax @ 10% also levied interest u/s 201(1A). CIT(A) upheld AO's order

Assessee's Contention:

The remittance to DFCL is nothing but reimbursement of remuneration paid to the employees under seconded agreement and said salary was chargeable to tax in India. Therefore, the assessee was under the liability to deduct tax at source u/s 192 of the Act which was discharged by the assessee and hence it cannot be regarded as FTS.

Revenue's Contentions:

The assessee did not have any control over deputed personnel.

The seconded employees were still on the pay role of DFCL and, therefore, there was no relation of master and employees between the assessee and these employee seconded.

DFCL was the actual employer hence the services rendered by this employees were actually rendered on behalf of DFCL.

The remittance was not towards reimbursement of salary but for the services rendered by the expatriates on behalf of DFCL.

The ITAT held as under:

ITAT noted that the employees deputed by DFCL were high level officials which were deputed because of their expertise and managerial skills in the field. ITAT also noted that the employee seconded were assigned by DFCL and there was no separate contract of employment between assessee and the employee seconded.

As employee seconded further claimed salary from DFCL, ITAT concluded that expatriates were performing their duties for and on behalf of the DFCL and thus were rendering managerial and highly expert services to assessee. ITAT thus noted that these payments were within the ambit of FTS as defined in Explanation 2 to Section 9(1)(vii). ITAT pointed out that ***Delhi HC in Centrica India Offshore Pvt. Ltd. W.P.(C) No.6807/2012*** had in similar facts held that services of the personnel deputed under the secondment agreement were in the nature of managerial consultancy services to the assessee.

Though said ruling was in context of India UK DTAA, HC therein held that the provision of services of technical or other personnel is common in both definition provided under Explanation 2 to section 9(1)(vii) of the Act as well as in the Article 13(4) of the India UK DTAA, noted ITAT. ITAT

noted that SLP against the said ruling was dismissed by Supreme Court ('SC') and thus view taken by HC attained finality.

ITAT further observed that concept of income includes positive as well as negative income or nil income and in case of FTS payments it was irrelevant whether any profit element was present in the income or not. ITAT held "If the payment being FTS or royalty is made to nonresident, then the concept of total income becomes irrelevant and the provisions of section 44D recognise the gross payment chargeable to tax. Thus, all the payment made by the assessee to non-resident on account of FTS or royalty an chargeable to tax irrespective of any profit element in the said payment or not".

With regard to assessee's argument that secondment of employees constitute a service Permanent Establishment ('PE') and thus amount paid was chargeable as per Section 44DA, ITAT noted that there was no DTAA between India and Hong Kong and Income-tax act did not provide for the concept of service PE.

The assessee in this regard placed reliance on **SC ruling in DIT(E) vs. Morgan Stanley and Co. Inc. [292 ITR 416]** wherein while interpreting the definition of PE as provided u/s 92F(iii), SC had observed that definition of PE covers services PE, agency PE, Software PE, construction PE etc.

ITAT thus noted that since the assessee took this plea for the first time before ITAT, concept of service PE required proper examination and thus remanded the matter to AO for adjudication that whether secondment of the employees constitutes a service PE and that whether Section 44DA would be applicable.

Transfer Pricing

LD/64/98

Johnson Matthey India Private Limited vs. DCIT (Del HC) (ITA 14/2013)

Rule 10B of the Income-tax Rules, 1962 – OECD Transfer Pricing Guidelines.

'Pass through' costs not having effect on profits can be excluded from PLI denominator.

The Assessee, Johnson Matthey India Private Limited ('JMIPL') is engaged in the business of manufacture and sale of automobile exhaust catalysts. 90% of the shares of the Assessee are held by Johnson Matthey Plc. UK ('JMUK') through

Matthey Finance, BV, Netherlands. JMIPL's manufacturing unit is located at IMT, Manesar in Haryana. Maruti Udyog Limited ('MUL') is a major customer of JMIPL accounting for most of its sales. JMIPL and MUL agreed on an arrangement where JMIPL would sell finished catalysts to the vendors of MUL under the instructions of MUL. JMIPL used two basic raw materials for the manufacture of the catalyst. The raw materials were procured from its associated enterprises (AEs) JMUK (for precious metals) and Johnson Matthey Malaysia (JMM) (for wash coated substrates). With respect to precious metals, JMIPL entered into a Forward Cover Agreement (Agreement) with MUL, agreeing to provide a quote for purchase on a specified day in future. The Agreement also states that the quote shall be an invitation to treat only and not an offer and in the event that MUL wishes to make an offer for the purchase of the precious metal on the basis of the quote, an authorised employee of MUL would place a firm and binding order with JMIPL by fax within the specified period in a set form. JMIPL will use these precious metals bought in manufacture of auto catalyst for MUL. In addition to a fixed manufacturing charge, JMIPL recovers the entire cost of raw material consumed in the manufacture of the catalyst from MUL.

The Profit Level Indicator ('PLI') in the TP Report was as under:

- Return on capital employed ('ROCE') was selected as (PLI) for all international transactions except for the sale of catalysts to AEs.
- For sale of catalysts to AEs, net profit margin i.e. profit after tax (operating profits less operating cost) as a percentage of sales was selected as the PLI.

The transfer pricing officer ('TPO') rejected ROCE and held that Operating Cost/Total Cost (including cost of raw materials) as the appropriate PLI. The CIT(A) rejected the Assessee's appeal on the basis that JMIPL is engaged in manufacturing and not any seasonal business. This view was also upheld by the Delhi ITAT which observed that the cost of purchase of precious metals cannot be treated as pass through cost based on the accounting followed by the assessee and its AE.

The assessee then appealed to the Delhi High Court ('HC') with two grounds

- Replacement of the assessee's PLI without providing cogent reasons and;

- Not treating the cost of raw materials as pass through cost in the alternate PLI and rejecting the Assessee's contention that cost of the raw material should be excluded from the total cost if the alternate PLI is adopted

The transfer pricing officer ('TPO') rejected ROCE and held that Operating Cost/Total Cost (including cost of raw materials) as the appropriate PLI. The CIT(A) rejected the Assessee's appeal on the basis that JMPL is engaged in manufacturing and not any seasonal business. This view was also upheld by the Delhi ITAT which observed that the cost of purchase of precious metals cannot be treated as pass through cost based on the accounting followed by the assessee and its AE.

Assessee's Contentions:

The assessee contended that it being a contract manufacturer in a highly capital intensive industry, an asset based PLI would be appropriate. The same contention was accepted by the Revenue in AY 2002-03 to AY 2011-12.

In support of this contention, the assessee relied on the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2010, the United States Regulation on Transfer Pricing and the Taxation Ruling TR 97/20 issued by the Australian Tax Office and the ICAI Guidance note on Transfer Pricing. Further, no cogent reasons was provided for rejection of ROCE as the PLI.

With respect to the alternate PLI, the assessee submitted that no function was performed by JMPL, no risk was undertaken and no assets were employed and hence the cost of raw materials should be reduced from the total cost.

It was further reiterated that JMPL could not earn any profit based on percentage of raw material used since the purchase was based on instructions and order placed by MUL, which is unrelated *vis-à-vis* JMUK.

Therefore, the price was already at arm's length and routing of transaction through the assessee was only for administrative reasons.

Revenue's Contentions:

The revenue, on the other hand out rightly rejected ROCE as being inconsistent with Rule 10B(1)(e) (i) and asset employed had no relation to purchase transactions.

Further for treating the raw material cost as a pass through cost, the revenue's contention was

that the accounting entries do not show that the materials purchased were to be treated as a pass through cost and highlighted the absence of any agreement between MUL and JMUK to rule out any value addition by JMPL.

The HC held as under:

- HC noted that the Rule 10B envisages computing the net profit margin realised by the enterprise from an international transaction entered into with an AE in relation to costs incurred, or sales effected, or assets employed or to be employed by the enterprise, or having regard to "any other relevant base."
- HC further noted that ICAI Guidelines state that ROCE is computed with respect to operating assets. Explaining the relevance of ROCE as PLI, the HC agreed with the TPO's observations that "reliability of ROCE as a PLI depends upon the extent to which the composition of assets/capital deployed by the tested party and their valuation is similar to that of comparables."
- If operating assets reported in balance sheet do not reliably measure the capital employed, ROCE would be less reliable than financial ratios. If the balance sheet does not accurately reflect the average use of capital throughout year, ROCE would be less reliable."
- Further noting that JMPL has itself understood the limitations and changed the PLI to operating cost/ (total cost-raw materials cost) for subsequent AYs, the HC rejected ROCE as the PLI and ruled in favour of the Revenue.
- The HC rejected the Revenue's arguments by stating that it failed to consider the actual arrangement. HC accepted JMPL's argument that its profit is not at all affected by the cost of raw materials. HC noted that exclusion of pass through cost from total cost has been recognised in Para 2.93 of OECD Transfer Pricing Guidelines.
- HC observed that in the absence of any reliable comparable data, and in the absence of proper reasons, it would not be justified for the Revenue to simply reject a financial ratio adopted by the assessee for computing the net profit margin by excluding a pass through cost from the TC in the denominator.
- The expression "any other relevant base" occurring in Rule 10 (1) (e) (i) of the Rules is

wide enough to encompass a denominator that excludes pass through costs as long it is demonstrated to be at arm's length.

- HC also held that there was merit in Assessee's contentions that the arrangement is for administrative convenience. HC held, "If MUL had bought the PGM (Platinum Group Metals) directly from JMUK there would have been no application of transfer pricing since MUL and JMUK are unrelated entities. MUL would have purchased the PGM just like JMIPL did on negotiated prices."
- Thus, HC held Revenue's contentions were merely based on suspicion. Also noting that the said PLI has been accepted by the Revenue in subsequent years, the HC ruled in favour of the assessee.

LD/64/99

ADIT

vs.

**ABB Lummus Heat Transfer BV
(Delhi ITAT) (ITA No.2763/Del/2013)**

Rules 10B & 10C of the Income Tax Rules, 1962.

Hourly rates can be considered for internal CUP if similar services are rendered to Non AE.

The assessee, ABB Lummus, is the Indian branch office of a company incorporated in the Netherlands, and is engaged in the designing of engineering and construction projects in the power, oil and gas, fertiliser and petrochemical sectors. During AY 2005-06, the assessee reported an international transaction of rendering 'Services' to its AEs and also earning of revenue from 'Equipment supply'. The assessee also declared transactions with non-AEs, and used the Transactional net margin method ('TNMM') as the most appropriate method to demonstrate that its international transactions were at arm's length price (ALP). The assessee computed its operating profit margin at 10.81% from the international transactions as against loss of 17.89% from unrelated transactions. The AO applied Comparable Uncontrolled Price ('CUP') Method, and applied the hourly rate charged by the assessee to from its non-AEs to compare the rates charged to the AE.

The ITAT held as under:

- ITAT observed that the assessee had applied TNMM as the most appropriate method on

both transactions of 'Service revenue' and 'Equipment supply revenue'. ITAT also noted that it rendered similar services to AEs and independent third parties.

- ITAT observed that when the services provided to the AEs are similar to those provided to non-AEs, the CUP method cannot be ignored.
- ITAT held that the internally uncontrolled comparable transactions of rendering similar services as provided to the AEs are available and accordingly, CUP should be considered as a the most appropriate method.
- ITAT thus approved AO's view in determining the ALP of the international transaction of 'Service' revenue from its AE on the basis of CUP method as against TNMM applied by the assessee.
- Further, the ITAT observed that the area of dispute is also related to the determination of the correct hourly rate charged by the assessee from unrelated parties.
- The ITAT observed that the assessee had charged the AEs at an hourly rate of ₹1,135 per hour.
- Referring to Rule 10B(1)(a), ITAT observed that if there is only one comparable uncontrolled transaction, then such sole transaction should be considered as a benchmark and whereas in case of plurality of the comparable uncontrolled transactions, their average price is to be taken as benchmark, and AO/TPO cannot resort to cherry-picking.
- Applying the same, ITAT observed that AO had ignored 5 invoices representing service charges for the actual work done by the assessee to unrelated parties, and had only picked up 3 invoices of ₹24,000/- each for determining the benchmark rate of ₹1,500/- per hour, which, merely represented site visiting charges undertaken by the assessee's employees.
- It was observed that considering all 8 invoices raised in non AEs and not resorting the cherry picking undertaken by the AO, the average hourly rate came to ₹717/-, or by ignoring the 3 invoices from computation of revenue as well as number of hours, the average hourly rate was ₹682/-.
- Accordingly, ITAT held that, "the price charged by the assessee from its AEs at ₹1,135/- per hour is definitely at arm's length". ITAT thus upheld CIT (A)'s deletion of TP addition. ■

Innovation Accounting: Necessity of Every Lean Startup



The importance of traditional accounting is intuitive to be considered in a business project. It goes about measuring economic outcomes to make decisions by changing its course and speed. For well established companies, there exist standard measures of progress. Irrespective of type of business, a company's financial statements come handy to measure the health of a business. But in case of early startups or products, the financial statements are not as useful. At the start of an innovation project, there exist no economic results and if at all they exist, the only relevant information they provide is that they are losing money every month. The characteristic of startup is that it develops in a context of high uncertainty where there is hardly any history and certainty. Only hypotheses exist and predictions are almost impossible to be made. But still, every start up needs to measure where they stand and how they are evolving, so that early decisions can be made and corrective actions can be taken. In this context, traditional accounting hardly provides any support with valuable information to understand if start up is doing well or not. Hence, there is a burning need of a new kind of accounting for early stage products. The answer lies in 'Innovation Accounting'.



Prof. Manju Punia Chopra

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Introduction

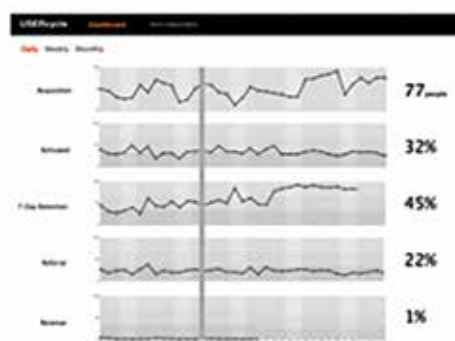
The world is headed by innovations. New products and services hit the market almost every day, hungry for its space in the customer's mind. Entrepreneurs have new, crazy ideas for the world. Startups like Facebook, Snapdeal.com, Bigbasket.com, Twitter and

many such more are smart enough to woo investors as well as customers. But the BIG QUESTION is: **“are traditional accounting techniques equipped enough to harness the growth of these startups and innovations”?** And the answer is NO, since traditional accounting works best when measuring established products or on-going concerns.

By definition, new innovations have a limited operating history and little to no revenue. In addition, they are burning cash well in excess of revenue. Hence, financial ratio analysis, cash flow analysis and other standard practices shed an unflattering light on new innovations, especially in comparison to existing products or business within established companies. Hence, a new accounting practice becomes the need of the hour.



Financial accounting



Innovation Accounting

Rather than relying on revenues alone, innovation accounting defines a set of macro metrics that can be used to model the customer life cycle. Revenue happens to be one of those macro events, but not the only one. Macro-metrics are the powerful tools that provide leading indicators to revenue even before its realisation. To be more specific, one can actually define and measure customer value before some of this value is captured back i.e. it gets paid. Thus, innovation accounting is the rigorous process of defining, empirically measuring and communicating

Thus, innovation accounting is a measurement/ accounting system that uses actionable metrics to evaluate how fast one is learning as a critical measure of progress towards converging on a business valuable result.

the true progress of innovations such as customer retention and usage pattern.

The Need

‘How do you know you are learning?’ - that’s the question that haunts most of the entrepreneurs- not just to measure his/her own progress, but to continually justify the existence of ventures to investors (for startups) and to management (for established companies). The people who invest money, time and resources into one's idea are probably aware of the fact that they have to wait for a long time to see a return on their investment. But, it’s their right to know if things are moving in the right direction. *Innovation Accounting* is the answer to all these questions and issues.

Definition

Innovation Accounting is the term Eric Ries described in his book ‘The lean start-up’. He defines innovation accounting as follows:

“It is the system or process that allows the decision makers of the business to prove objectively that the developments that are making to their product are having a measurable impact on the behavior of their customers.”

Thus, innovation accounting is a measurement/ accounting system that uses actionable metrics to evaluate how fast one is learning as a critical measure of progress towards converging on a business valuable result.

Holding Innovation Accountable

There is more to innovation accounting than just the ability to define and measure progress. And that *more* is to hold *innovation accountable*.

Very much like financial statement can be used to hold companies accountable, innovation metrics can be used to hold entrepreneurs accountable which is good for both external stakeholders and entrepreneurs.

Very much like financial statement can be used to hold companies accountable, innovation metrics can be used to hold entrepreneurs accountable which is good for both external stakeholders and entrepreneurs.

1. Innovation accounting can be used by external stakeholders to continuously and systematically de-risk their investment in smaller batches versus employing the traditional “all-in” approach.
2. Innovation accounting can be used by entrepreneurs to get fast feedback loop that both informs about most critical business model assumptions and this in turn provides them an opportunity to course correct before it is too late.

How Innovation Accounting Works (Metrics Development)

According to *Ries*, innovation accounting works in three basic steps:

- 1) It uses a minimal viable product (MVP) to establish real data on where the company stands at any given juncture. An MVP is the fastest way to establish a customer feedback loop with minimal output of effort, *Ries* says. Its primary goal is to test fundamental business hypotheses without having to perfect the product or service in question too prematurely.
- 2) Using the MVP, start-ups, through many attempts, move from the baseline to the ideal, when the company then reaches a decision point.
- 3) At this juncture, a company is either making solid progress towards the ideal enough that it makes sense to continue, or persevere. If not, the strategy must be deemed flawed and in need of serious change—or as *Ries* labels it, a pivot, which starts the process all over again and in a more productive fashion than before.

Innovation accounting represents the entire set of metrics and indicators that are used to make data based decisions, long before having an impact on the economic accounts.

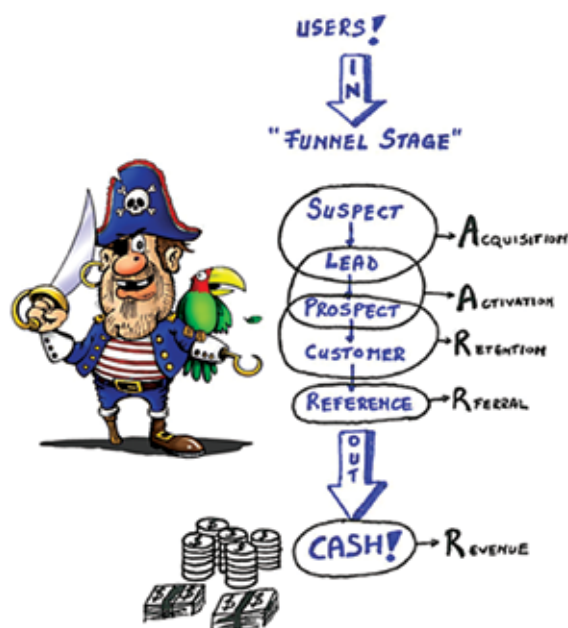
It is not about having an infinite collection of indicators, but having the essential minimum that

provides value to make good decisions. A good indicator must be:

1. **Controllable:** it should lead to a clear cause-and-effect relationship, so that one can infer the causes of variations to learn from them and make decisions to correct/improve it.
2. **Accessible:** it must be easy to obtain and understand.
3. **Auditable:** they are credible and be tested without much complexity.

The three major families of indicators that are widely used are:

1. **Metrics related to learning process:** As suggested by Eric Ries, validated learning is the progress unit of the startup, and it can be modeled and measured. It helps to make decisions regarding the validation state of the hypotheses and assess the quantity and quality of work done by the promoter's team.
2. **Funnel of conversion and cohort analysis:** These funnels make a lot of sense at the moment of selling of products/services. These techniques allow analysing the behaviour of each group of customers through the sales process. Use of percentage rather than absolute amount allows one to compare and see evolution in time, regardless of the total number of customers.
3. **Growth engines:** Similar to funnels, these make sense at the moment of the sales process and it becomes further important at the stage of growth.



Innovation accounting represents the entire set of metrics and indicators that are used to make data based decisions, long before having an impact on the economic accounts.

Example

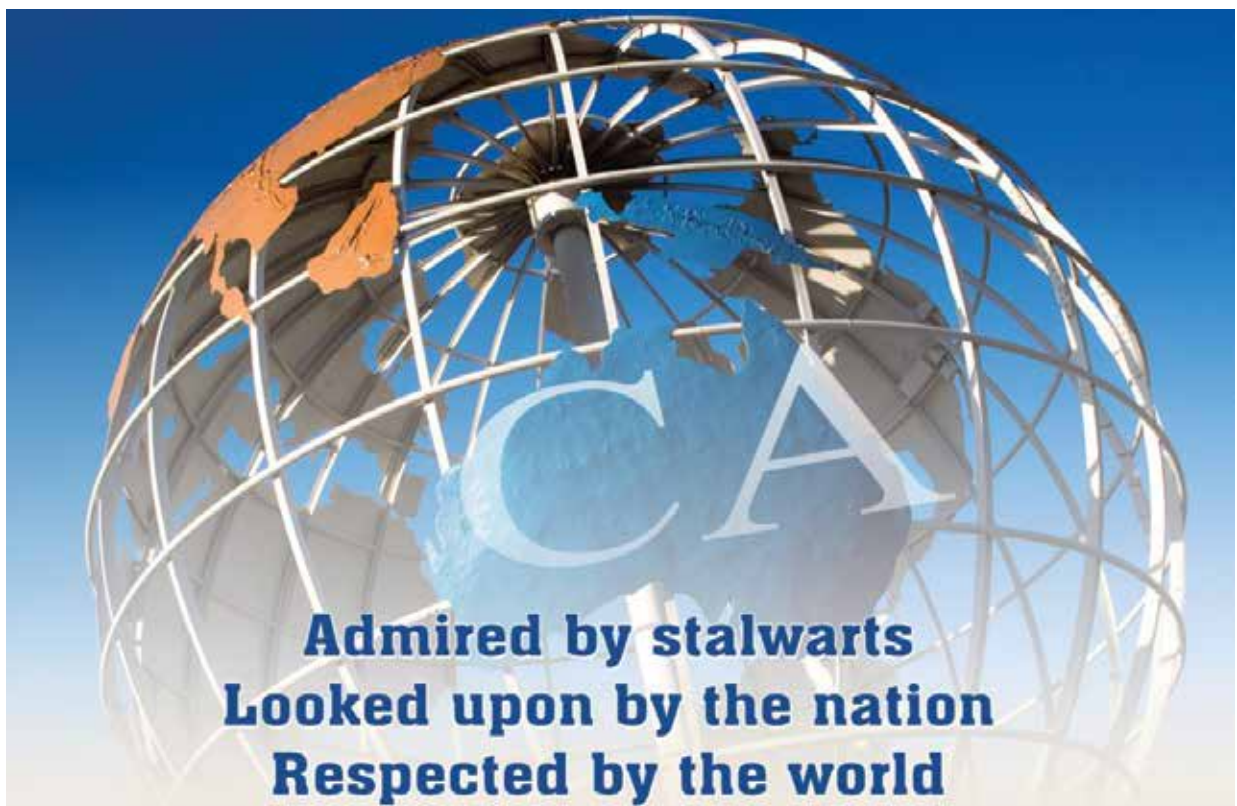
AARRR Framework: AARRR (double A triple R) is a wonderful framework to help better understand the consumers. It helps to measure the funnel and enables to optimise it for the better. It is a perfect tool to make more informed and data driven decisions. The AARRR framework is divided into five basic steps:

1. **A-Acquisition:** How much time and efforts are required to acquire a new customer?
2. **A-Activation:** How much time, effort and convincing ability is required to activate the acquired user?
3. **R-Retention:** Is my product addictive enough to bring back the same customer again and again?
4. **R-Revenue:** Is the retained customer ready to conduct monetisation behaviour?
5. **R-Referral:** Has the customer found the product worthy of referring to others?



Conclusion

Innovation accounting is an exciting discipline that forms a key and simple control panel for the governance of an innovation project. In simple terms, innovation accounting is just a way to stop wastage on developing big expensive features for the product that ultimately won't make any difference to the customers and are therefore effectively waste. The whole reason the movement is called 'lean' is that it tries hard to eliminate waste. Innovation is such a murky and misunderstood area in business these days, that by creating some systems of measurement around how to innovate and what to innovate on, then hopefully, business will be less wasteful. ■



Audit of Life Insurance Companies – An Insight



Considering the multifold growth of life insurance companies, huge business volume and complex IT environment, it has become imperative for an auditor to go beyond the normal audit techniques of sampling and vouching and use modern techniques, including data analytics to enhance the effectiveness of the audit. Moreover, the rapidly changing laws and regulations require auditors to be continuously aware of their increasing roles and additional responsibilities including expressing an opinion on adequacy and operating effectiveness of internal financial controls over financial reporting. Continue reading what minimum diligent duties/procedures an auditor should perform while carrying out the audit of life insurance companies...

Life Insurance Industry – An Overview

Since 2000, the Indian insurance industry underwent liberalisation and privatisation, and information technology (IT) played a key role in revolutionising the insurance sector. We saw recently, the introduction of a complete new set of laws (the Insurance Laws (Amendment) Act, 2015 and its cascading regulations) governing the insurance companies. The amendment Act aims to remove archaic and redundant provisions in the legislations and incorporates certain provisions to provide Insurance Regulatory and Development Authority

of India (IRDAI) with the flexibility to discharge its functions more effectively and efficiently. It also provides for enhancement of the foreign investment cap in an Indian insurance company from 26% to an explicitly composite limit of 49% with the safeguard of Indian ownership and control and permits a foreign reinsurer to set up a branch office in India.

Life insurance companies are primarily involved in selling of products under two broad segments - traditional/conventional products (having profit participating and non-participating features) and unit linked products (ULIPs) (market linked investment policies). ULIPs are similar to mutual fund schemes and additionally cover life risk of policyholders.



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Unique Features of the Life Insurance Industry

A few features that make insurance companies unique in certain aspects:

- Insurance products (including all terms and

conditions) are duly approved by the Insurance Regulatory and Development Authority of India (IRDAI)

- Prescribed format for preparation of financial statements
- Actuarial valuation of liabilities: Role of actuaries is significant for ascertainment of future liabilities in respect of insurance policies issued by the company
- Segregation of funds between shareholders and policyholders
- Recognition and measurement principals of certain items of financial statements (such as premium, investments, commission, etc.) governed by IRDAI regulations
- Mandatory appointment and rotation of joint auditors
- Maintenance of solvency margin ratio
- Income tax calculation under Section 44 (Sections 28 to 43B are not applicable), First Schedule and Section 115 B of the Income-tax Act, 1961
- Mandatory audit for transfer of surplus to shareholder during the interim periods.

Preparation of Financial Statements

Preparation of financial statement of life insurance companies is governed by Schedule A of the IRDAI (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations, 2002 ("Regulation" or "Financial Statement Regulation"). Post this regulation, IRDAI issued a master circular in 2013, on preparation of financial statements and filing of returns of life insurance business, detailing presentation, recognition, measurement and disclosure requirements for life insurance companies. This master circular consolidates all the circulars issued by the authority as appended to the circular and supersedes all the earlier circulars/ guidelines issued in this regard. IRDAI, with an objective of bringing further transparency and clarity, has on 17th November, 2015 issued an Exposure Draft on Preparation of Financial Statements and Auditors Report.

Applicability of Accounting Standards (AS)

The financial statements of the insurer should be in conformity with the AS referred to in Section 133 of the Companies Act, 2013, to the extent applicable to the insurers carrying on life insurance business except that:

- *AS 3 - Cash Flow Statements* – Only direct method is prescribed.
- *AS 17 - Segment reporting*- IRDAI has prescribed various segments to be disclosed in the financial statements.
- *AS 13 - Investments* - Valuation of investments should be in accordance with the valuation norms issued by the IRDAI.
- *AS 29 – Provisions, Contingent Liabilities and Contingent Assets* – Provision and contingent liabilities arising in insurance enterprises from contracts with policyholders have been excluded.

Format and Contents of Financial Statements

Format and contents of the financial statements is governed by the Regulation and various other circulars/orders/notification issued by IRDAI. The financial statements also include disclosure requirements mandated by other laws such as the Companies Act, MSMED Act, etc. The financial statements consist of:

- Revenue Account (Policyholders' Account)
- Profit and Loss Account (Shareholders' Account)
- Balance Sheet
- Schedules 1 to 15 in prescribed formats
- Receipts and Payments Account (i.e. the Cash Flow Statement)
- Segmental reports relating to Revenue Account and Balance Sheet
- Significant accounting policies and notes to accounts including ULIP disclosures.

Format of Auditors' Report

The Regulation mandates auditors to report on certain additional requirements/matters over and above the normal reporting norms given under Standard on Auditing 700 - *The Auditor's Report on Financial Statements*. Additional reporting/

"The amendment Act aims to remove archaic and redundant provisions in the legislations and incorporates certain provisions to provide Insurance Regulatory and Development Authority of India (IRDAI) with the flexibility to discharge its functions more effectively and efficiently. It also provides for enhancement of the foreign investment cap in an Indian insurance company from 26% to an explicitly composite limit of 49% with the safeguard of Indian ownership and control and permits a foreign reinsurer to set up a branch office in India."

certifications are required to be made part of the Auditors' Report on the following:

- Actuarial Valuation of Liabilities: Actuarial valuation of liabilities is duly certified by the appointed actuary
- Compliance with IRDAI guidelines specifically in respect of investment valuation
- Contents of management report for inconsistencies with the Financial Statements
- Compliance with the terms and conditions of the registration
- Verification of cash balances and investment
- Compliance with the application of assets of policyholders' funds

The auditors' report format prescribed under the Exposure Draft - IRDAI (Preparation of Financial Statements and Auditors' Report of Insurers) Regulation 2015 includes a supplementary report which is similar to the Companies (Auditors Report) Order, 2015.

Shift in Stakeholders Expectation from Auditors

During the last couple of years, there has been a total shift in the way of conducting and managing business, complexity of business/transactions, IT environment and the regulatory and reporting landscape has changed significantly. Therefore, the expectations of stakeholders from the auditors have significantly changed and require auditors to perform more than the conventional approach – year end auditing based on sample checking. Stakeholders doesn't foresee audit as compliance requirements or mere a formality but expect round the year audit to be performed for early warnings, open communication and pragmatic resolution of issues which derives the maximum benefits and avoid last minutes discussions/hassles.

Audit Approach and Methodology

The basic audit approach and methodology for insurance industry is principally very similar to that followed in other industries. An auditor must devote significant time in understanding/updating themselves on IRDAI regulations, insurance products, *etc.* and their accounting and other relevant aspects of auditing at the inception of audit. It has also become imperative for an auditor to go beyond the normal audit techniques of sampling and vouching and use modern techniques of auditing including data analytics. Moreover, the rapidly changing laws and regulations have a cascading effect on the

auditors' awareness about their increasing roles and additional responsibilities including expressing an opinion on adequacy and operating effectiveness of internal financial controls over financial reporting. Broad considerations while formulating the audit strategy are as under:

General Procedures

I. Risk Based Audit Approach:

At the planning stage, the auditor must identify the risks and define the audit strategy to be performed. The objective of this approach is to select high risk areas (i.e. suspense/control account, bank reconciliation, commission, investment, money laundering, *etc.*) with focused approach, and conduct systematic in depth audit. This approach emphasises on coverage of 'all major areas of risk' based on objective assessment of risk factors, their significance and materiality.

II. Internal Financial Control over Financial Reporting (ICoFR)

Auditors are required to report on adequacy and operating effectiveness of ICoFR effective from 1st April, 2015. Accordingly, auditors have to reassess and modify the existing audit approach and methodology basis the Guidance Note issued by the ICAI (the Guidance Note). The Guidance Note provides supplementary procedures that are required to be considered by auditors for planning, performing and reporting.

III. Complex IT Environment:

Due to voluminous transactions, business segments and varied reporting requirements, data recording, processing, interface, transmission and storage is handled through high level of computerisation. It is imperative to obtain a thorough understanding of the IT environment prevalent, application software used at all points of time during the year/period as well as interfaces established between several sub systems. Today the focus of audit is more on processes, products and controls and less on financial numbers. It would not be incorrect to state that around 70% to 80% of the time is devoted towards audit planning process consisting of mapping of business processes, understanding the industry developments, review of internal controls, understanding and review of IT environment, integration of IT systems, *etc.* and only remaining time is spent on audit execution and verification of financial numbers.

IV. Use of In-House Experts:

Due to the use of complex computerised environment, frequent changes in service tax laws and specific provisions of income tax for insurance industry, an auditor would do well to use the expertise of IT and tax professionals in their firm in addition to carrying out normal audit procedures. It is also necessary to obtain an understanding about the tax issues faced by the overall insurance industry and positions taken by the company wherever necessary in consultation with external expert.

V. Data Analytics:

Considering the voluminous transactions, complex IT environment and significance of the time, auditors should perform data analytics (by using MS-Access/data analytical tools) to review the full information, which enable auditors to analyse and interpret the data in a more meaningful way and effectively:

1. Automation of whole of the process from acceptance of premium/proposal to discharge of claim/claim settlement;
2. System integrations;
3. Logic and design of the IT system for specific activity;
4. IT System Issues, if any; *etc.*

It is necessary to have an understanding about the life cycle of policies within the policy admin system of life insurance companies. The various phases/stages/cycles of a life policy are In Force (active), Lapse (non-payment of premium within 3 years), Paid Up (non-payment of premium post 3 years), Surrender, Registered Death, Maturity (on completion of policy term), *etc.*

Performing data analytics would help auditors to obtain appropriate results for certain illustrative procedures enumerated below:

- Whether policy is still under In-force status though the premium is not received within due date including grace period?
- Whether policy is still under ULIP Lapse status after completion of its grace period for premium payment?
- Whether policy gets under Matured status after risk cessation date?
- Whether all in force policies of a policyholder has been appropriately dealt post receipt of intimation of death against one policy?

VI. Others:

The insurance companies generally have robust systems in place for defining the products and processes and these are well documented in the form of operating procedures, guidelines, manuals and circulars.

As an auditor, it is important to:

- Understand the business, products, internal control system and all the key / critical processes.
- Understand the process of updation of masters in IT configuration from file and use documents.
- Understand the issues existing in the insurance industry.
- Review the internal guidelines, circulars, process flows including accounting manual.
- Review of all the circulars, guidelines and notifications issued by IRDAI.
- Assess the overall internal/concurrent audit approach and review the scope and coverage of internal/concurrent auditors.
- Review of critical manual applications and controls thereon.
- Understand the process of application of cutoff procedures.
- Understand the process of vendor due diligence put in place before entering into transactions with vendors to ensure compliance with the outsourcing Guidelines issued by IRDAI.
- Understand the risk identification process and mitigation framework for each process.
- Perform walkthrough tests for understanding the processes and test the existence and effectiveness of controls.
- Effectiveness and assessment of critical controls, processes by substantive analytical procedures (SAP) / other substantive procedures (OSP).
- Benchmark the accounting policies and practices with peers.
- Continuously monitor circulars/orders issued to company and peer companies by IRDAI.
- Review correspondence with the statutory authority including inspection reports.
- Verify the reconciliation between various systems – front end *vis-à-vis* accounting system.

Specific Procedures

Premium Income and Related Accounts:

Insurance company collects premium in two modes—single premium (one time) and regular premium including first year premium (monthly, quarterly, half yearly and annually). It is important for the

Auditing

auditor to consider the procedures summarised in the following table:

PROCEDURES	DETAILS
Basic understanding	- Understand the process from receipt of proposal form till recognition of premium income and the accounting entries recorded at each stage. - Understand the process of compliance with AML/KYC guidelines including reporting requirements. - Understand the underwriting guidelines (financial and non-financial) and product features. - Understand the treatment relating to free look-in cancellation of policy and cheque bounce subsequent to balance sheet date and consequent effect on commission, actuarial liabilities, reinsurance, <i>etc.</i> - Understand the process of monitoring of premium suspense account.
Substantive procedures and Test of controls	- Walkthrough the above processes. - Review all suspense/control accounts to assess the control and monitor thereof. - Ensure compliance with application of NAV for ULIPs. - Review mechanism and reporting made to FIU towards suspicious transaction(s) (based on company's own assessment) and cash transactions (above ₹10 Lakh)
Compliance	- Adherence to AML policy formulated by the insurance company in accordance with the IRDAI guidelines. - File and Use - filed and approved by IRDAI. - Rural and social norms of IRDAI by understanding the process of identification of rural and social regions. - Regulation related to linked and non-linked insurance products issued by IRDAI in 2013. - Financial Statement Regulation and Master Circular on financial statements.

Commission:

Acquisition cost paid to insurance advisors (individuals and corporate), brokers, referral and bancassurance constitutes the major portion of the expenses of an insurance company. It is important for the auditor to consider the procedures summarised in the following table:

PROCEDURES	DETAILS
Basic understanding	- Understand the process from accrual to payment of commission and accounting entries recorded at each stage. - Process of termination of agents including termination on license expiry. - Company's policy/guidelines for acceptance of new business post expiry of license (viz. under renewal). - Controls in place for compliance with Section 40A for limitation on expenditure on commission.
Substantive procedures and Test of controls	- Perform walkthrough of the above processes. - Verify rates of commission and compliance with IRDAI regulations. - Check the reconciliation of premium as per commission register to premium register.
Compliance	- Tax deducted at source on commission. - Service tax. - Section 40A on 'limitation of expenditure on commission'. - Section 44 on 'prohibition of cessation of payments'. - Other IRDAI regulations/guidelines related to brokers, corporate agents, bancassurance, referral arrangement, <i>etc.</i>

Benefits (Claims) Paid:

Claim - a demand for the payment of policy benefit because of occurrence of an insured event comprises of claim by death, maturity, annuities / pensions payment, other benefits such as surrenders, lapse liability, *etc.* It is important for the auditor to consider the procedures summarised in the following table:

PROCEDURES	DETAILS
Basic understanding	- Process of benefits paid from receipt of application of claim to the payment of claim and accounting entries recorded at each stage. - Process of identification and investigation of suspicious and contestable claims. - Process of monitoring disputes between the company and claimants. - Process of application of NAV on receipt of claims (for ULIP policies). - Role of actuaries for claims outstanding at each reporting date. - Process adopted by companies for making claims payments under lender borrower group schemes.
Substantive procedures and Test of controls	- Perform walkthrough of the above processes. - Check whether on acceptance of claim or on maturity, the status of the policy in the system is updated. - Assess the control over the unclaimed amount and efforts for the discharging the same. - Review respective suspense accounts. - In respect of litigation matters, ensure that provision made towards the same is after making appropriate adjustments towards liability existing in the books (e.g. actuarial liability, unit linked liability, claim recoverable from reinsurance, <i>etc.</i>)
Compliance	- Internal guidelines. - Compliance with IRDAI regulations, specific orders, directives, <i>etc.</i> - Section 194DA of the Income-tax Act, 1961. - Financial Statement Regulation and Master circular on financial statements. - Handling of the unclaimed amount pertaining to the policyholders.

Investment:

As per the IRDAI, the investments related to policyholders and shareholders need to be separately disclosed in the financial statements. It is important for the auditor to consider the procedures summarised in the following table:

PROCEDURES	DETAILS
Basic understanding	- Process flow for investments to identify the risk and control. - Investment policy approved by the investment committee and filed with IRDAI. - Understand the basis/working for segregation of investments in shareholders' funds and policyholders' fund (including discontinued funds) and also with participating and non-participating in policyholder funds.
Substantive procedures and Test of controls	- Perform walkthrough of the above processes. - Review of concurrent audit reports and investment risk management system and process reports. - Reconcile the holding statement and custodian statement to ensure completeness of book position. - Ensure exposure limits are met- if not, whether the authority had provided relaxation and whether the conditions specified therein have been complied with. - Review the investment policy approved by the investment committee and filed with IRDAI on half yearly basis and all investments are made in line with the investment policy.

	- Ensuring that all the investments are correctly classified and disclosed in the financial statements. - Ensuring that investments are correctly valued. - Ensuring that all the investment functions are In-house except for class of companies exempted by IRDAI (e.g. AUM within certain limits). - Ensuring calculation of NAV of various ULIP schemes are as per IRDAI guidelines. - Ensuring that the company has accounted for all the corporate benefits on timely basis. - Verification of various charges charged to the fund such as fund management charges, guaranteed charges, <i>etc.</i> - Obtaining the list of any NPA investments, if any, and the provisioning for the same. - Verification of ULIP disclosures.
Compliance	- IRDA (Investment) Regulations, 2000 and related circulars. - IRDA (Investment) Amendment Regulations, 2004 for internal control procedures. - IRDA (Investment) (Fourth Amendment) Regulations, 2008. - IRDA (Investment) (Fifth Amendment) Regulations, 2013. - Investment and various other policies. - Filing of investment returns to IRDAI.

Reinsurance Ceded:

It is the process of sharing the risk through sharing the premium. It is important for the auditor to consider the procedures summarised in the following table:

PROCEDURES	DETAILS
Basic understanding	- Understanding the arrangement with the reinsurers by going through the re-insurance treaties. - Understand the arrangement with reinsurance companies related to profit commission, if any and accounting thereof.
Substantive procedures and Test of controls	- Verify calculation of premium ceded as per the treaty. - Verify the mortality and other rates being used for calculating the premium is as per the treaty. - Verify the calculation of reinsurer's proportion for the reinsurance claims. - Review the reconciliation between the premium register and premium considered for reinsurance.
Compliance	- IRDA (Life Insurance - Reinsurance) Regulation 2013. - Reinsurance plan and treaty. - Service tax compliance.

Bank Reconciliation:

Due to large volume of retail transactions, the auditor should be more cautious about bank reconciliation. It is important for the auditor to consider the procedures summarised in the following table:

PROCEDURES	DETAILS
Basic understanding	- Process of bank reconciliation. - Process of review and monitoring open items in bank reconciliations. - Process of matching the receipts <i>vis-a-vis</i> the policy/proposal.
Substantive procedures and Test of controls	- Obtaining outstanding report from bank and comparison with the items appearing in the BRS representing cheques deposited but not cleared. - Assess the control over all the processes for bank reconciliation. - Verify the long outstanding items pending in bank reconciliation.

Actuarial Valuation:

As per IRDAI Regulations, insurance companies should appoint an actuary, known as “appointed actuary”. Insurance reserves certified by the appointed actuary (also known as actuarial reserve) form a significant item of liability in the financial statements of insurance company. An auditor, in his report, state that reliance has been placed on appointed actuary for actuarial valuation of liabilities in their auditors’ report. Still, a question arises - can an auditor step in the shoes of actuaries and verify the actuarial reserves? Para A34 to Para A48 of Standard on Auditing 500 - “Audit Evidence” requires an auditor to document the reliability of information produced by management’s expert. It is worth taking note that in western world, auditors are expected to validate actuarial valuation by having in-house expert who would conduct peer review of the process and report submitted by the company appointed actuary. The day may not be far when this requirement would also be made applicable in India. It is also important for the auditor to consider the procedures summarised in the following table:

PROCEDURES	DETAILS
• Basic understanding	• Understand the process of calculation of the actuarial liability including fund for future appropriation (FFA). • Assumptions used for calculating the actuarial valuation.
• Substantive procedures and Test of controls	• Validate the inputs/data received from various systems for calculation of actuarial liability. • Review various MIS/data such as death claims, surrender claims, maturity claims, <i>etc.</i> and corresponding update of the policy status in data used for valuation. • Review sample policies having specific status based on the file and use documents. • Obtain the list of policies/products which are not considered for actuarial valuation and reasons thereof. • Benchmarking the assumptions used by peer companies.

Certain Matters to be Considered

Apart from the huge volumes and IT complexity, there are various matters which revolve around the insurance industry. Some of these are common across all companies and some arise due to varied practices.

1. Accrual of Premium Due and Consequential Actuarial Liabilities on Reporting Period:

IRDAI has issued a master circular wherein the insurance companies are required to make provisions for policies cancelled during the free look period after the reporting period and correspondingly actuarial valuers are also required to give the effect of the same on actuarial liabilities on basis of certain assumptions and past precedence.

However, as regards the renewal premium which is accounted for on due basis, the question arises, whether insurance companies can accrue the premium due on reporting period considering the lapsation/persistency ratio? If yes, whether any effect is required to be given on actuarial liabilities on basis of certain assumptions and past precedence, is a matter of debate.

2. Contest Payout: Insurance companies generally pay incentives in form of contests for achieving business targets, *etc.* other than commission payout. These contests are not linked to any insurance policy. The question arises whether the contest payments which are not linked with any policies, are covered under Section 40A of the Insurance Act, 1938 or not.

3. Renewal Commission to Agents: Whether insurance companies are liable to pay renewal commission to insurance agents considering Sections 2 (10), 40A, 42 and 44 of the Insurance Act, 1938, even though their license has not been renewed or license has been cancelled, is yet another debatable point.

“It is worth taking note that in western world, auditors are expected to validate actuarial valuation by having in-house expert who would conduct peer review of the process and report submitted by the company appointed actuary. The day may not be far when this requirement would also be made applicable in India.”

4. **Contingent Liabilities:** Provision and contingent liabilities arising in insurance companies from contracts with policyholders are excluded from scope of AS 29 "Provisions, Contingent Liabilities and Contingent Assets". There are varied practices followed by the insurance companies in terms of disclosure of contingent liabilities especially in litigation cases with existing policyholders / nominees.
5. **Surrender and Reissuance of Group Policies:** Corporate clients often switch policies from traditional products to ULIP or *vice versa* depending on the returns given by the insurance companies. Accordingly, switch from original policy is shown under benefit payments and the newly issued policy is disclosed under premium income. The questions remains, what would be the appropriate treatment and whether any disclosure is required to be made in the financial statements?
6. **Investment in Private Limited Companies in Form of Borrowings:** Section 27A of the Insurance Act, 1938 clearly disallows investment in shares or debentures of private companies. Whether grant of loan to private companies is also covered or not, is matter of debate.

"IRDAI has issued a master circular wherein the insurance companies are required to make provisions for policies cancelled during the free look period after the reporting period and correspondingly actuarial valuers are also required to give the effect of the same on actuarial liabilities on basis of certain assumptions and past precedence."

Takeaways

Audit of insurance companies is not very different from the audit of other companies. However, there are a few specific points which an auditor needs to take care of. To summarise, there are a few takeaways for auditors:

- Invest more time in planning for identification and assessment of risks and defining the test of controls, analytical and other substantive procedures.
- Reassess and modify the overall audit approach and methodology basis the Guidance Note.
- Comprehensive understanding of the IRDAI regulations and bye-laws.
- Use of modern audit techniques including data analytics through use of audit tools.
- Involve in-house experts (e.g. for information technology and taxation matters). ■



‘Make Available’ Clause- Tracing the Contours



The taxation of fees for technical services/fees for included services ('FTS/FIS' in short) is of paramount importance and probably one of the most debated topic in the context of international taxation. There are various issues vis-a-vis taxability of FTS, namely taxability of cross charges, the existence of human intervention whether a prerequisite, what constitutes a 'standard facility', taxability in cases where the double taxation avoidance agreement ('DTAA/Treaty' in short) does not have FTS clause, etc. Interpretation of the 'make available' condition in certain Treaties is also the most contentious issue amongst others.

1. 'Making Available' Fees for Technical Services

Section 9(1)(vii)(b) of the Income-tax Act, 1961 ('Act' in short) provides that FTS shall be deemed to

accrue or arise in India where such FTS is payable by a resident. The Explanation after Section 9(2) as inserted by the Finance Act 2010 clarifies that FTS shall be deemed to accrue or arise in India whether or not the services are rendered in India. Accordingly, under the Act, FTS would be taxed based on the 'payer rule', i.e. based on the residence

(Contributed by the Committee on International Taxation of ICAI. Comments may be sent to citax@icai.in.)

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of the payer, irrespective of the place of rendering the services. It may be noted that the condition of 'make available' does not exist in the provisions of the Act dealing with FTS.

As regards the taxability of FTS in terms of the respective DTAA, under most of the tax treaties entered by India with other countries, technical services shall be deemed to arise in a Contracting State in which the payer is a resident. However, the Source State may also have right to tax the same. While in certain DTAA's¹, the definition of FTS/FIS is more restricted as it requires satisfaction of the 'make available' condition with respect to such services. There are certain DTAA's² which do not contain the condition of 'make available' specifically in the Article on FTS but in the form of a Most Favoured Nation (MFN) clause in the Protocol.

A distinction needs to be made between services rendered and services which are made available. While all services that are made available are necessarily rendered, not all services that are rendered, 'make available' the technical knowledge, skill, etc. to enable the recipient to derive an enduring benefit and apply the technology contained therein. The Authority for Advance Ruling (AAR) in the case of *Intertek Testing Services*³ has reflected upon the difference between the rendering of services and 'make available' of services. The Authority held that in order to fit into the terminology of 'make available', the following conditions need to be satisfied:

- i. Technical knowledge, skills, etc. must remain with the person receiving the services even after the agreement comes to an end.
- ii. The technical knowledge or skills of the provider should be imparted to the recipient.
- iii. The recipient should be in a position to deploy similar skills or technology or techniques in future without the aid or assistance of the service provider.

None of the DTAA's referred above defines as to what is meant by the expression 'make available' except for the India-USA DTAA. The explanation provided in the Memorandum of Understanding (MOU) appended to the India-US DTAA is as follows:

While all services that are made available are necessarily rendered, not all services that are rendered, 'make available' the technical knowledge, skill, etc. to enable the recipient to derive an enduring benefit and apply the technology contained therein. The Authority for Advance Ruling (AAR) in the case of Intertek Testing Services has reflected upon the difference between the rendering of services and 'make available' of services.

"Generally speaking, technology will be considered "made available" when the person acquiring the service is enabled to apply the technology. The fact that the provision of the service may require technical input by the person providing the service does not per se mean that technical knowledge, skills, etc., are made available to the person purchasing the service, within the meaning of paragraph 4(b). Similarly, the use of a product which embodies technology shall not per se be considered to make the technology available." (Emphasis supplied)

Apart from the explanation with respect to the term 'make available', the MOU even gives examples of certain services like bio-technical services, food processing, geological surveys, etc. wherein technology is made available.

2. Analysing Taxability of Bio Analytical/ Clinical Testing Service vis-a-vis FTS/FIS

There are quite a few rulings which have analysed the taxability of payments made to non-residents for services in the nature of bio-analytical test, clinical tests, and other certifications of similar nature. The Ahmedabad Tribunal recently in the case of *B.A. Research India Pvt Ltd*⁴ has analysed whether the payments for bio-analytical services would be chargeable to tax in India as FTS/FIS by virtue of the provisions of the Act read with the respective DTAA's. In the instant case, the non-resident entities carried on bio-analytical services on the sample supplied by taxpayer. The non-resident entity performed the requisite tests outside India and submitted its report to the taxpayer. The non-resident entity did not have a PE in India. The services were utilised by the taxpayer

¹ India-Australia; India-Canada; India-Netherlands; India-Singapore; India-Finland; India-Malta; India-UK; India-USA; India-Cyprus; India-Portuguese Republic

² India-Belgium; India-France; India-Hungary; India-Israel; India-Kazakhstan; India-Spain; India-Sweden

³ Intertek Testing Services India (P) Ltd., *In re* [2008] 307 ITR 418 (AAR)

⁴ *ITO vs. B.A. Research India Pvt. Ltd.* (ITA No 3106/Ahd/2011) dtd 30-11-2015

for earning income from source in India which is manufacturing of drugs in India and subsequent sales.

The taxpayer's contention was that since the services did not 'make available', the same were not taxable in India by virtue of the relevant Article on FTS/FIS. The Revenue placed reliance on the decision of *Jindal Thermal Power Company Limited* (2009) 225 CTR 220 and contented that the payments made to non-residents are to be included in the total income whether or not services have been rendered in India.

The Tribunal held that the taxpayer had sent samples to the experts outside India and the experts submitted their report. The services rendered to the taxpayer were neither made available nor was the taxpayer subsequently in a position to apply the skill on its own. As regards the contention of Revenue, the Tribunal held that post amendment of Section 9, the decision in the case of *Jindal Thermal* (*supra*) on this issue is no longer a good law. The Tribunal even observed that the Revenue has not placed any material on record to rebut that the services were actually not made available to the taxpayer. Thus, it was held that the said services cannot be categorised as FTS/FIS under the DTAA with USA and Canada.

As regards the interpretation of the connotation 'make available' in the definition of fees for technical services in the tax treaties are concerned, it has been held in many cases⁵ that the issue is no more res integra and the judicial view on the similar factual matrix is more or less settled. 'Make available' in many judicial precedents is held to be a condition precedent for invoking the clause for FTS/FIS.

Technology will be considered "made available" when the person acquiring the service is enabled to apply the technology. The fact that the provision of the service may require technical input by the person providing the service does not per se mean that technical knowledge, skills, etc., are made available to the person purchasing the service, within the meaning of paragraph 4(b).

The connotation 'make available' has not been specifically defined either under the Act or in the DTAA's and therefore, recourse to the available judicial precedents shall be required. While there are numerous judgments⁶ on which reliance can be placed while adopting a view as to whether services are 'made available', for the sake of brevity and with an intent to limit the discussion around the specific scope of services as discussed in the case of *B.A. Research* (*supra*), reference is being made to only few of the following cases to analyse how Courts have interpreted the expression 'make available':

• ***De Beers India Minerals Pvt. Ltd.***⁷

In the instant case, for the purpose of carrying out the geophysical survey, the taxpayer entered into an agreement with M/s Fugro Elbocon B.V. Netherland to conduct the air borne survey for providing high quality, high resolution, and geophysical data suitable for selecting probable kimberlite targets. The Karnataka High Court while deliberating upon as to what is the meaning of 'make available' observed as under:

"22. ... The technical or consultancy service rendered should be of such a nature that it "makes available" to the recipient technical knowledge, know-how and the like. The service should be aimed at and result in transmitting technical knowledge, etc. so that the payer of the service could derive an enduring benefit and utilize the knowledge or know-how on his own in future without the aid of the service provider. In other words, to fit into the terminology "making available", the technical knowledge, skill etc., must remain with the person receiving the services even after the particular contract comes to an end. It is not enough that the services offered are the product of intense technological effort, and a lot of technical knowledge and experience of the service provider have gone into it. The technical knowledge or skills of the provider should be imparted to and absorbed by the receiver so that the receiver can deploy similar technology or techniques in the future without depending upon the provider. Technology will be considered

⁵ *ABB Inc vs. DDIT* (2015) 59 Taxmann 159 (Bang Trib); *ITO vs. Veeda Clinical Research (P) Ltd.* (2013) 156 TTJ 115 (Ahd Trib)

⁶ *Guy Carpenter & Co. Ltd.* 346 ITR 504 (Del); *Endemol India Private Limited* [2014] 361 ITR 340 (AAR); *Worley Parsons Services Pvt. Ltd.* 313 ITR 74 (AAR); *Shell Technology India Private Limited* [(2012) 345 ITR 206 (AAR)]; *Wockhardt Ltd. vs. ACIT* [(2011) 10 Taxmann.com 208 (Mum ITAT)]; *RR Donnelley India Outsource Private Limited* [AAR No.883of 2010]

⁷ *CIT vs. De Beers India Minerals (P) Ltd.* (2012) 21 Taxman 214 (Kar)

International Taxation

Payment of consideration would be regarded as “fee for technical/included services” only if the twin test of rendering services and making technical knowledge available at the same time is satisfied.

“made available” when the person acquiring the service is enabled to apply the technology. The fact that the provision of the service that may require technical knowledge, skills, etc., does not mean that technology is made available to the person purchasing the service, within the meaning of paragraph (4)(b). Similarly, the use of a product which embodies technology shall not per se be considered to make the technology available. In other words, payment of consideration would be regarded as “fee for technical/included services” only if the twin test of rendering services and making technical knowledge available at the same time is satisfied.”

• **Anapharm Inc⁸**

In this case, fees were paid for clinical and bio-analytical services provided to pharmaceutical companies in India. The methods of analysis were not disclosed to the clients. The AAR observed the following:

“It is, thus, fairly clear that mere provision of technical services is not enough to attract Article 12(4) (b). It additionally requires that the service provider should also make his technical knowledge, experience, skill, know-how, etc. known to the recipient of the service so as to equip him to independently perform the technical function himself



in future, without the help of the service provider. In other words, payment of consideration would be regarded as “fee for technical/included services” only if the twin tests of rendering services and making technical knowledge available at the same time is satisfied.”

• **Denial Measurement⁹**

In this case, the taxpayer made payments to non-resident in respect of wet calibration and testing of ultrasonic meters. The services were provided outside India, and only the certificate/report was given to the taxpayer which did not mention the process of how the testing or calibration was carried out. Therefore, the Tribunal held that due to non-compliance of the ‘make available’ condition, the services could not be treated as fees for technical services.

• **Wockhardt Ltd.¹⁰**

In the instant case, the taxpayer in order to market the generic drugs in markets overseas like USA/ Canada was required to carry out bio-equivalence tests through CROs. Accordingly, generic drugs developed by the taxpayer were sent for testing at the laboratories of CROs in USA, UK, Canada, etc. CROs conducted the test and experiments on these drugs and send back analysis report containing results of such test and experiment. The Tribunal observed that the CROs use their own skills, equipment’s, etc. to prepare the report. The CROs supplied only an analysis report to the taxpayer, and there is no parting with their skills and know-how to the taxpayer.

3. Some Thoughts to Ponder...

Apparently from the above discussion, it appears that if the ‘make available’ condition is not satisfied, bio-analytical test, clinical tests and other certifications of similar nature carried out by the non-residents shall not be taxable in India.

The Chennai Tribunal has held that in the absence of the FTS clause in DTAA, services rendered by non-residents may be made liable to tax in India as per the Indian tax laws. Bangalore Tribunal has however, held that in the absence of FTS clause, payments made even if assumed to be FTS will be governed by the respective Article dealing with business profits/ income.

⁸ Anapharm Inc. *In re* (2008) 174 Taxmann 124 (AAR)

⁹ ITO vs. Denial Measurement Solutions (2014) ITA No 828/AHD/2010 (Ahd Trib)

¹⁰ Wockhardt Ltd. vs. ACIT (2011) 10 Taxman 208 (Mum Trib)

However, it may be pertinent to note that there are numerous aspects that need consideration while analysing whether the services are taxable as FTS/FIS or not. Few observations/comments that need to be borne in mind are mentioned hereunder:

- There are various DTAAAs like India-Mauritius, India-Malaysia, India-Sri Lanka, which do not have FTS/FIS clause in their respective tax Treaties. There are contrary views upholding the taxability or otherwise in such cases. The Chennai Tribunal has held¹¹ that in the absence of the FTS clause in DTAA, services rendered by non-residents may be made liable to tax in India as per the Indian tax laws. Bangalore Tribunal¹² has however, held that in the absence of FTS clause, payments made even if assumed to be FTS will be governed by the respective Article dealing with business profits/income.
- The expression 'make available' has been used in several DTAAAs like Netherlands, Australia, US, UK, *etc.* However, the expression has been explained only in the Indo-US DTAA and therefore, the issue for consideration is that whether the same explanation can be imported to other treaties where the relevant article contains the term 'make available'? While it may be correct to say that the MOU relating to India-USA Treaty would not apply to any other treaty, but when the expression has been interpreted and explained in a way that is consistent with the meaning attributed to it, the explanation does become a valuable aid for interpretation. The Protocol to India-Netherlands DTAA specifically mentions "*The memorandum of understanding and the confirmation of understanding, dated September 12, 1989 with reference to paragraph 4 of article 12 of the Indo-USA Double Taxation Avoidance Convention (DTAC), will apply mutatis mutandis for the purpose of paragraphs III, IV, V and VI above.*" In view of above, it may be inferred that when the provisions are *pari materia* to each other, different meanings may not be assigned to the provisions unless there is anything repugnant in the context.



- Interestingly, there are some peculiar DTAAAs as well, for example, the India-Israel DTAA, wherein apart from the MFN clause, other beneficial provisions¹³ with respect to payments in the nature of FTS also exists. Payments in the nature of FTS shall be taxable in India only upon satisfaction of twin conditions *i.e.* services are rendered in India and the payer is a resident of India. Thus, where such stated services are rendered in Israel, the same shall not be taxed in India. However, this condition is in complete contradiction with the Explanation to Section 9(2) which states that services shall be taxed in India whether or not the non-resident has rendered services in India.

Another important issue that one needs to take cognisance of is whether the onus to prove that the taxpayer has transferred technology skill, *etc.* rests with the Revenue? Unlike the onus to prove the existence of permanent establishment (PE), there are not many judgments wherein this aspect has been analysed. The decision of the Hon'ble Ahmedabad Bench of ITAT in the case of *Veeda Clinical*¹⁴ may be worth taking a note. The Tribunal held that "*In any case, in order to successfully invoke the coverage of training fees by 'make available' clause in the definition of fees for technical services, the onus is on the revenue authorities to demonstrate that these services do involve the transfer of technology. That onus is not at all discharged by the assessing officer or even by the learned departmental representative.*"

In view of the rulings available now, it is hoped that the same will be taken note of by the assessing officers and would be of benefit to both sides in reducing litigation. ■

¹¹ TVS Electronics Ltd. (TS-421-ITAT-2012)(Chennai Trib)

¹² Spice Telecom vs. ITO (2008) 113 TTJ 502 (Bang)

¹³ Article 12(5) of India-Israel DTAA- "*Fees for technical services shall be deemed to arise in a Contracting State when the services are rendered in that State and the payer is that State itself, a political sub-division, a local authority or a resident of that State.*"

¹⁴ ITO vs. Veeda Clinical Research (P) Ltd(2013) 156 TTJ 115(Ahd Trib)

Fresh Claim Outside the Return of Income or in an Appeal



Admission of claim not made by filing the revised return of income before the assessing officer (AO) or appellate authority has always been an issue in which the tax authorities and courts have taken different views. Courts have pronounced decisions that support the contention that fresh claim can be made before the appellate authorities even if it is not made before the AO nor claimed in the return of income. In this article, the authors have discussed in detail the view that fresh claim outside the return of income or in appeal can be made and is allowable even if the claim is made before the AO or appellate authorities, provided the relevant facts pertaining to the claim are before the AO. Read on...

Overview

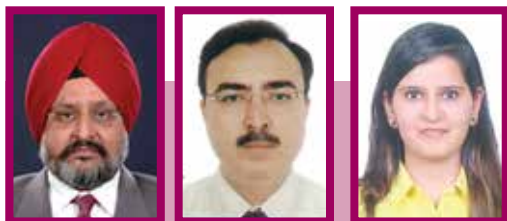
The return of income is filed under Section 139(1) of the Income-tax Act, 1961 (Act) before the due date specified in Explanation 2 of the Section. In case any omission or incorrect statement is made in the return of income, revised return can be filed before the expiry of one year from the end of the relevant

assessment year (AY), or before the completion of assessment, whichever is earlier, in accordance with Section 139(5) of the Act.

Omission or mistake or incorrect statement is often discovered during the assessment proceedings. In other words, after the time permitted to revise the return of income under Section 139(5) of the Act. The issue arises whether in such cases the assessee can claim a deduction that was not claimed in the return of income without revising the return of income before the AO or before the appellate authorities.

The Income Tax Department relying upon the decision in *Goetze (India) Ltd. vs. CIT*, 284 ITR 323(SC) invariably upholds that fresh claim can be made only by revising the return of income that too within the time permitted under Section 139(5) of the Act.

In this article, it is discussed whether a legitimate claim or deduction not claimed in the return can be claimed before the AO or before CIT(A), in the light



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of the Constitution of India, the Income-tax Act, 1961 and the decisions of the Supreme Court, High Courts and Income Tax Appellate Tribunal.

Goetze (India) Ltd. vs. CIT (284 ITR 323) – Facts and Decision

It is important to note that the case of *Goetze (India) Ltd.*, (*supra*) relates to AY 1995 – 96. The facts of the case were as follows:

The assessee filed its return of income but omitted to claim a deduction that was legitimately available to it. The mistake was discovered during the assessment proceedings after the time for revising return of income under Section 139(5) had elapsed. A claim was made by filing a letter during the assessment proceedings. The AO rejected the claim stating that no provision existed in the Act to entertain a claim made otherwise than by revising the return.

In the appeal before CIT(A), the matter was decided in assessee's favour. The Tribunal reversed the decision of CIT(A). The assessee preferred an appeal before the High Court, which upheld the decision of the Tribunal. The Hon'ble Apex Court also confirmed the order of the High Court.

Before the Apex Court, the assessee company based on the decision in *National Thermal Power Co. Ltd. vs. CIT (229 ITR 383) (SC)* contended that – it was open to the assessee to raise points of law even before the Tribunal, if the same arises from the facts as found by the authorities and having a bearing on the tax liability of the assessee.

The Apex Court observed that – *the decision does not in any way relate to the power of the AO to entertain a claim for deduction otherwise than by filing a revised return. The Apex Court while dismissing the appeal clarified that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the ITAT under Section 254 of the Act.*

Return of Income and its Revision - Provisions of the Income-tax Act, 1961

Section 139(1) of the Act prescribes the time within which return of income should be filed. Section 139(5) prescribes the time for revising the return of income. A reading of the Section suggests that if the time limit of revising the return of income had elapsed, *the assessee cannot claim the legitimate deduction or relief available to him.*

It is also relevant to examine the provisions of the Act regarding assessment under Section 143(3)

as prevailed in the assessment year 1995-96 (year of *Goetze* decision) and that which is currently in force.

Section 143(3)(ii) of the Act during AY 1995-96

On the day specified in the notice –

(ii) issued under clause (ii) of sub-Section (2),

.....and determine the sum payable by him on the basis of such assessment.

Section 143(3)(ii) of the Act currently in force

On the day specified in the notice –

(ii) issued under clause (ii) of sub – Section (2),

....and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

It may be noted that the assessing authorities have been specifically empowered by the Act currently to grant refund of tax post assessment, whereas in the AY 1995-96, they were empowered only to determine the amount payable by the assessee post assessment only. This position in law as existing during 1995-96 may have influenced the decision of the Apex Court in *Goetze (India) Ltd. (supra)*, since the case related to AY 1995-96.

But, the larger question is – *whether the assessing authorities should or can allow legitimate deductions or rebates even though omitted to be claimed/not claimed by the assessee in the return of income and the time limit prescribed under Section 139(5) of the Act for revision of such return has elapsed?*

The analysis of the *Constitution of India*, the *Income Tax Act, 1961*, the *Circulars issued by CBDT* and a number of Court decisions would provide an insight into the reasons for allowing claims made by the assessee outside the return of income.

The Constitution of India

Article 265 empowers the Government to levy and collect taxes. Any act outside the powers of the Government is *ultra vires*, being not legally sustainable. Article 265 of the Constitution is reproduced below –

“Thus, under the constitution, the Government can levy and collect only those taxes and only that much taxes that are provided in the law. The assessing authority should collect the due taxes and in determining the tax, it is duty bound to allow legitimate deductions and reliefs as provided in the Act, even though they are not claimed by the assessee. Collection of any tax not provided under law would be in violation of the provisions of the Constitution of India.”

“No tax shall be levied or collected except by authority of law.”

Thus, under the constitution, the Government can levy and collect only those taxes and only that much taxes that are provided in the law. The assessing authority should collect the due taxes and in determining the tax, it is duty bound to allow legitimate deductions and reliefs as provided in the Act, even though they are not claimed by the assessee. Collection of any tax not provided under law would be in violation of the provisions of the Constitution of India.

Duties and Responsibilities of Assessing Authorities under the Income-tax Act, 1961

The Board of Revenue (now CBDT) issued Circular (No. 14 (XL – 35) dated 11th April 1955 detailing duty on the assessing authorities to make correct assessments and collect correct taxes. Let us examine the legal validity and legal status of the Circular issued by the Board.

Circular No. 14 (XL – 35) dated 11th April 1955

The text of the Circular is as follows:

“Officers of the department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way particularly in the matter of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a taxpayer where proceedings or other particulars before him indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the department; for it would inspire confidence in him that the assessee may be sure of getting a square deal from the department. Although, therefore, the responsibility of claiming refunds and reliefs rests with the assessee on whom it is imposed by law, officers should:

- (a) *Draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or the other.*

“CBDT through this Circular has prescribed the duties of AOs directing them to assist the assessee in every reasonable way, particularly in the matter of claiming and securing reliefs. It further directs them to take initiative in guiding the taxpayer where proceedings or other particulars before him indicate that some refund or relief is due to him.”

- (b) *Freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming the refunds and reliefs.*

CBDT through this Circular has prescribed the duties of AOs directing them to assist the assessee in every reasonable way, particularly in the matter of claiming and securing reliefs. It further directs them to take initiative in guiding the taxpayer where proceedings or other particulars before him indicate that some refund or relief is due to him. The effect of the Circular is that the assessing authorities are duty-bound:

1. to bring to the notice of the assessee reliefs and deductions that are due to it and not claimed; and
2. to allow the reliefs and deductions upon being claimed during the assessment proceedings where the particulars indicating that the reliefs or deductions are due to the assessee.

In *S. R. Koshti vs. CIT*; 146 *Taxman* 335, the Gujarat High Court observed:

The authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. This Court, in an unreported decision in case of Vinay Chandulal Satia vs. N. O. Parekh, CIT (Spl. Civil Application No. 622 of 1981 dated 20.8.1981) has laid down the approach that the authorities must adopt in such matters in the following terms:

“The Apex Court has observed in numerous decisions, including Ramlal vs. Rewa Coalfields Ltd. AIR 1962 SC 361, State of West Bengal vs. Administrator, Howrah Municipality AIR 1972 SC 749 and Babutmal Raichand Oswal vs. Laxmibai R. Tarte AIR 1975 SC 1297, that the State authorities should not raise technical pleas if the citizens have a lawful right and the lawful right is being denied to them merely on technical grounds. The State authorities cannot adopt the attitude which private litigants might adopt.”

The Hon’ble Allahabad High Court in *CIT vs. Lucknow Public Education Society* 183 *Taxman* 62 held that assessing authorities should follow Circular No. 14.

Legal Validity of the Circular No. 14 (XL - 35) of 1955, dated 11th April 1955

Hon'ble Apex Court examined this Circular in *CIT vs. Mahendra Mills* (243 ITR 56) and held that the Circular was in force even though issued prior to the 1961 Act as the Circular has not been withdrawn till date.

Legal Validity of Circulars

Section 119(1) of the Income-tax Act, 1961 requires every officer to follow orders, instructions and directions of CBDT. Circular No. 14 is issued by CBDT and thus, is binding.

The Supreme Court has also on numerous occasions examined the issue and has held that the Circulars issued by CBDT are binding in nature on the tax authorities, even if the directions given by CBDT are at variance with the provisions of law. *The circulars in effect, are as good as law.* To quote: *Ellerman Lines Ltd. vs. CIT* (82 ITR 913), *K. P. Varghese vs. ITO* (131 ITR 597), *UCO Bank vs. CIT* (237 ITR 889), *CIT vs. Anjum M. H. Ghaswala* (252 ITR 1) and *Spentex Industries Ltd. vs. CCE* (Civil app. No. – 1978 of 2007).

In the light of above discussion, let us revisit the decision in *Goetze (India) Ltd.*:

- **Article 265 of the Constitution** empowers the Government to levy and collect tax that it can through the authority of law.
- **Circular No. 14 (XI – 35) of 1955** prescribes the duties of the assessing authorities with respect to granting legitimate reliefs and deductions available to the assessee.
- **Section 143(3)(ii) of the Act** empowers the assessing authorities to grant refund of amount to the assessee post assessment. It leaves little doubt in the mind that the assessing authorities can assess the income at an amount lower than that returned by the assessee. The decision of the Supreme Court in *Goetze (India) Ltd.* relates to the AY 1995-96 and the Act did not allow the assessing authorities to grant refund post assessment. In *Universal Subscription Agency (P) Ltd. vs. JCIT* 159 Taxman 64 (All.), it was held that the decision of the Apex Court in *Goetze (India) Ltd.* (*supra*) has not laid down as a matter of law that there is a bar for the assessing authority to entertain the claim for deduction otherwise than by filing a revised return.

The purpose and intention of law is to make correct assessments and to collect correct and

legitimate tax from the assessee. If the rightful deduction or relief is not allowed to the assessee, the purpose and intention of the law is defeated.

This view finds support from the following decisions of the Hon'ble High Courts and also the Income Tax Appellate Tribunal:

1. CIT vs. Bharat Aluminium Ltd. 303 ITR 256 (Del)

In this case, the assessee had submitted two revised computations of income during the assessment proceedings. It had in its return of income claimed a part of deferred revenue expenditure as revenue expenditure while the remaining was carried to the balance sheet. In the revised computation, the assessee claimed total deferred revenue expenditure as revenue expenditure. The AO rejected the claim made by the assessee in the revised computation holding the expense to be capital in nature. The matter was decided by the CIT (A) and also by the Tribunal in favour of the assessee holding that the Act does not have a concept of deferred revenue expenditure. The Department filed an appeal before the High Court.

It was held that the assessee had only corrected the claim allowable by virtue of Section 37(1) of the Act on account of the expenditure which was incurred wholly and exclusively for the purpose of business hence, is allowable.

In effect, the court upheld that the legitimate claim of the assessee is to be allowed even if claimed subsequently without revising the return of income.

2. CIT vs. Jai Parabolic Springs Ltd. 172 Taxman 258 (Delhi)

The assessee claimed 1/5th of deferred revenue expenditure as was debited to profit and loss account. Also, it did not claim the expense as revenue before the AO. The assessee sought relief through additional ground before the CIT (A). CIT (A) and ITAT allowed the claim of the assessee. On appeal, the High Court

“The Hon'ble Apex Court, on numerous occasions has laid down the proposition that the assessing authorities are bound to compute the correct income only and collect only legitimate tax, hence, by merely procedural lapse or technicalities, in our opinion, the assessee should not be compelled to pay more tax than what is due from him.”

held that revenue expenditure incurred wholly and exclusively for the purpose of the business must be allowed in entirety in the year in which it is incurred. It further held that there was no infirmity in the order of the Tribunal.

In effect, the court upheld that the legitimate claim of the assessee is to be allowed even if claimed subsequently without revising the return of income.

3. **CIT vs. Dhampur Sugar Ltd. 90 ITR 236 (All.)**

The Court distinguished between the original return and revised return. It held:

"There is a distinction between a revised return and a correction of return. If the assessee files some application for correcting a return already filed or making amendments therein, it would not mean that he has filed a revised return. It will still retain the character of an original return, but once the revised return is filed, the original return must be taken to have been withdrawn and to have been substituted by a fresh return for the purpose of the assessment."

4. **Chicago Pneumatics India Ltd. vs. DCIT (15 SOT 252) (Mumbai)**

The Hon'ble Tribunal observed as follows:

"The situation has compelled us to look into the duties of the assessing authorities rather than powers of assessing authorities because the Government is entitled to collect only the tax legitimately due to it otherwise the tax not so collected would be in violation of Article 265 of the Constitution of India. We have found that the CBDT as back as in 1955 issued Circular No. 14 as to what should be the department's attitude towards refund and reliefs to the assesseees"

It further observed that – it is a settled position that the Circulars issued by the Board are binding on the subordinate income tax authorities and if CBDT issues directions which are beneficial to the assessee although the same may not be directly in consonance with the provisions of law, even then these instructions have to be given effect and adhered to by the concerned authorities.

The Hon'ble Apex Court, on numerous occasions has laid down the proposition that the assessing authorities are bound to compute the correct income only and collect only legitimate tax, hence, by merely procedural lapse or technicalities, in our opinion, the assessee should not be compelled to pay more tax than what is due from him.

Therefore, this situation has to be looked upon from the angle of duties of assessing authorities as stated earlier, CBDT is the apex body for tax administration and it can also issue directions which are for the benefit of the assesseees though such directions may not be in consonance with the provisions of law, hence, if a circular is issued directing the assessing authorities to grant reliefs / refunds while completing the assessment proceedings, even though such circular may be at variance with the law, as pronounced by the Hon'ble Apex Court, but the same would be binding on the subordinate IT authorities.

In our opinion, therefore, circulars of the same nature which have been already issued would not become irrelevant or can be ignored. Admittedly, the circular issued in 1955 has not been withdrawn hence it has got binding force on the subordinate IT authorities even as on date. Accordingly, we hold that the AO is bound to assess the correct income and for this purpose, the AO may grant reliefs / refunds suo moto or can do so on being pointed out by the assessee in the course of assessment proceedings for which the assessee has not filed revised return, although, as per law, the assessee is required to file the revised return. Having stated so, in our view, the learned CIT (A) having co-terminus powers with the powers of AO and the fact that the appellate proceedings are the continuation of original proceedings, should have entertained the claim of the assessee and allowed if other provisions of law are satisfied.

5. **Bharat Starch Industries Ltd. vs. JCIT (URO) (ITA No. 1611/K/2003)**

The assessee had not claimed deduction for interest paid allowable under Section 36(1)(iii) of the Act in its return of income. The complete facts relating to interest were disclosed in the tax audit report and notes to accounts. The AO had not allowed the deduction. The assessee in its appeal before the CIT (A) sought relief as an additional ground. The additional ground was admitted and adjudicated in favour of the assessee.

In the appeal before the Hon'ble ITAT, it was held that the decision in the case of *Goetze India Ltd. (supra)* is not applicable to the case and directed the AO to allow the claim as per law.

6. **Thomas Kurian vs. ACIT; 108 TTJ 439 (Cochin)**

The assessee had not claimed deduction under

Section 80HHC. It was allowed by the Tribunal, it being the deduction available as it was provided in the Act.

7. ***Xerox India Ltd. vs. DCIT New Delhi (ITA No. 1580/Del/2010) (UO)***

Expenses disallowed in the earlier year under Section 43B were not claimed on payment in the assessment year by oversight was allowed by the Tribunal as the matter was before the assessing authority in the earlier years.

However, the Chennai Bench in ***Chiranjeevi Wind Energy Ltd. vs. ACIT 29 (Trib.) 534*** held that a claim not made in the return of income cannot be claimed before the CIT (A). A reading of ITAT order suggests that in the established legal position, Article 265 of the Constitution and Circular 14 was not considered.

First Time Claim Before the CIT (A)

Another related issue that arises is whether the assessee can claim the relief before the CIT (A) even though it has not been claimed before the assessing authority.

Section 251 of the Act empowers CIT (A) to confirm, reduce, enhance or annul the assessment. The powers of the CIT (A) being co-terminus with that of the assessing authority, the assessee can claim a relief that is due to him for the first time before the CIT (A).

The view finds support from the decisions in the cases of *JCIT vs. Hero Honda Finance Ltd.*; 115 TTD (Del) (TM) 752, *CIT vs. Rajasthan Fastners (P) Ltd.* 100 DTR (Raj) 152, *Ramco Cements Ltd. vs. Dy. CIT* 112 DTR (Mad) 393, *CIT vs. Jai Parabolic Springs Ltd.* 172 Taxman 258 (Delhi), *Chicago Pneumatics India Ltd. vs. DCIT 15 SOT 252* and *ACIT vs. Bharat Starch Industries Ltd. (UO)*.

Conclusion

Based on the foregoing discussions, a legitimate relief available to the assessee and not claimed in the return of income and the time permitted to revise the return of income under Section 139(5) having elapsed can be claimed by the assessee either before the assessing authorities or before the CIT (A) provided the relevant facts and data with respect to the claim was before the assessing authorities. ■



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Analysis of Service Tax Provisions in Banking Sector



The main purpose of this article is to provide a basic understanding of service tax (including 'swachh bharat cess') implications on various services provided or received, as the case may be, by the bank. In addition, this article will serve as a handy reference tool for members while verifying statutory compliances relating to service tax provisions during various types of bank audits. Read on...

Overview

It would be germane to acquaint with relevant provisions of Chapter V of the Finance Act, 1994 reproduced below so as to prepare a platform for discussion in succeeding paras:

Section 65B (44) of Chapter V of the Finance Act, 1994 defines 'service' as:

"Service means any activity carried out by a person for another for consideration and includes a declared service but it does not include

- (a) *An activity which constitutes merely –*
- i. ...
 - ii. ...



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- iii. A transaction in Money or Actionable Claim
(b) ...
(c) ...

Explanation 2: For the purpose of this clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or any other mode, from one currency or denomination, to another form, currency or denomination, for which a separate consideration is charged.

Explanation 3(b): For the purpose of this Chapter, an establishment of a person in the taxable territory, any of his other establishment in a non-taxable territory shall be treated as establishment of distinct persons."

A perusal of *supra* cited provisions reckons that important requirements of 'service' are –

- There should be an 'activity',
- Activity should be carried out by one person for another,
- Activity should be for consideration.

To elucidate the meaning of the term 'activity', reliance can be placed on *Advanced Law Lexicon*, a legal dictionary, which says 'activity' means any *cost incurring operation* within an organisation, which probably includes practically everything that happens. Further, *Para 2.1.1 of CBE&C's 'Taxation of Services : An Education Guide'* states that activity would include an act done, a work done, a deed done, an operation carried out, execution of an act, provision of a facility, etc. It is a term with very wide connotation.

An activity must be done by a person for another for consideration. As per the Indian Contract Act, consideration must be at the *desire* of promisor. Stress shall be laid on the phrase '*desire of promisor*'. The phrase signifies that whether consideration is there or not, it has to be determined as per the desire of the promisor. If an act is done by the promisee as per the desire of the promisor, doing such act as per desire is called as consideration for the promise.

1. Service Tax On Incomes Of The Bank i.e. Taxable Services Rendered By The Bank :

1A) Advances Section

- **Services Covered Under "Any activity carried out by a person for another for consideration":**

Interest on Advances: When bank sanctions a loan, an activity is said to be carried out by bank for which interest would be received. The word 'mere' used in the exclusion a.iii to Section 65B (44) reckons that there should be no profit element

inherent in money transaction i.e. it should be a mere exchange of money. Thus when a bank extends loan to a borrower, this is not a mere exchange of money as interest would be recovered. Therefore, this is a service. Now, determining whether levy of service tax is attracted or not, taxability of service is required to be determined. This Chapter has specified some services in negative list given under Section 66D of the Act on which levy of tax is not attracted. The said service found its place in clause n) to Section 66D reproduced below:

Section 66D (n): "Extending deposits, loans or advances in so far as consideration is represented by way of interest or discount."

Prior to negative list regime, the said service was exempted from levy *via* exemption notification 29/2004 ST dated 22/09/2004. Hence, providing a loan or overdraft facility or a credit limit facility in consideration for payment of interest is covered under negative list and no service tax is applicable on interest income of the bank.

Processing Fees/ Documentation Fees/ CIBIL Charges / Inspection Fee/ Upfront Fee: These charges are recovered for the activity of lending and thus cannot be construed in congruity with interest. To substantiate this, definition of interest given under Section 65B (30) is reproduced, which provide accentuation whether such charges are in the nature of interest or not:

Section 65B(30) : Interest means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include

- *any service fee or other charge in respect of the moneys borrowed or debt incurred or* ^[PROCESSING FEES]
- *in respect of any credit facility which has not been utilised.* ^[COMMITMENT FEES]

Hence, processing fee is not interest as defined under Section 65B(30) and service tax is leviable on these charges and on gross amount charged as per Section 67(1)(i).

Commission on Bank Guarantee: These charges are recovered for the activity of giving guarantee and thus, covered under exhaustive part of definition. Hence, service tax is leviable on these charges and on gross amount charged as per Section 67(1)(i).

- **Services Covered Under "Declared Service":**
Commitment Fees: This amount is not recovered for rendering any activity. Therefore, an exhaustive part of this definition does not

cover this. This Chapter has declared some services under Section 66E on which service tax is leviable under Section 66B of the Act. The relevant clause is reproduced below:

Section 66E (e): "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act."

These charges are recovered for agreeing to do an act. Hence, service tax is leviable on these charges and on gross amount charged as per Section 67(1)(i).

Penal Interest: Emphasising on definition of interest *supra* cited, it can succinctly be construed that penal interest does not fall under the ambit of said definition. Thus, negative list does not cover penal interest. It is a stipulation that if borrower defaults with agreed terms, penal charges would be levied on him. Under the banking transaction, such acts as aforesaid are concomitant and therefore, represents consideration for tolerance of an act which is a declared service under Section 66E (e). At the outset, the amount on which service tax is to be levied is determined in terms of provisions of Section 67 read with Service Tax (Determination of Value) Rules, 2006. The relevant Rule is reproduced below:

Rule 6 of Service Tax (Determination of Value) Rules, 2006: "Transaction value will exclude interest on delayed payment of any consideration for the provision of services or sale of property, whether movable or immovable."

Hence, value for levying service tax on penal interest is nil and therefore no service tax is recovered on it.

- **Services Under "Merely a Transaction in Money":**

Conversion of Foreign Currency to Home Currency: For example, Mr. A is carrying 100\$ and wants to convert it into Indian rupees. He approaches a bank and gets it converted for ₹100*60=₹6000. In this case, this is not a mere transaction in money because conversion rate/merchant rate of bank (1 USD = 60 INR) includes profit element in the form of exchange margin. Hence, this activity is a taxable service which attracts levy of service tax on profit element included in merchant rate in the form of exchange margin. However, bank can calculate service tax either as per Rule 2B of the Service Tax (Determination of Value) Rules, 2006 or as per rates mentioned under Rule 6(7B) of Service Tax Rules, 1994. For further discussion, refer

"Providing a loan or overdraft facility or a credit limit facility in consideration for payment of interest is covered under negative list and no service tax is applicable on interest income of the bank."

explanation 2 to definition of service as discussed in succeeding paras.

Payment of Import Letter of Credit: When bank makes payment under import LC, it will convert INR into USD and therefore, would be a case of conversion of home currency into foreign currency. For further discussion, refer explanation 2 to definition of service as discussed in upcoming para.

- **Services under "Explanation 2 to Definition of Service":**

Payment of Import Letter of Credit: This explanation includes within its ambit an activity of conversion of money from one currency to another currency for which a separate consideration is charged in the form of exchange margin. Further, as per Rule 3 and Rule 8 of Place of Provision of Service Rules, 2012, this service is rendered in taxable territory as location of service receiver is in taxable territory and hence, service tax is leviable thereon. Now as per valuation provisions:

Section 67(1)(i) : "In case where the provision of service is for a consideration in money, gross amount charged by the service provider for such service provided or to be provided by him shall be the value."

Emphasis shall be given to the words "such service" – since gross amount charged by service provider i.e. bank for providing service by way of payment of import letter of credit, the exchange margin is the consideration received in money. But, practically, it is very difficult to ascertain the purchase price of USD which has been sold to the importer for making payment. Hence, we refer to the Section 67(1)(iii) reproduced below:

Section 67(1)(iii) : "In case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner"^[SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006]

In this juncture, provisions of Rule 2B of the Service Tax (Determination of Value) Rules, 2006 are reproduced below which helps to determine value of service:

“The value of service shall be computed as under- Where any one of the currencies is Indian Rupee:

The difference between Buying Rate or Selling Rate, as the case may be and the RBI Reference Rate for that currency at that time, multiplied by units of currency exchanged	<i>Purchase of Forex : Exporter [RBI Rate – Buying Rate]* Units of Forex bought Sale of Forex : Importer [Selling Rate – RBI Rate]* Units of Forex sold</i>
If RBI Reference rate is not available, the value shall be 1% of Gross Amount of Rupees provided/received by the person changing the money	<i>RBI Reference rate is not available 1% of [Indian Rupees exchanged for forex]</i>

....”

It can be seen that, practically, the procedure given in Rule 2B is very difficult to follow, as daily record of the purchase and sale of foreign currency in inter-bank market as well as RBI reference rate cannot be easily tallied with foreign currency sold to importer. Hence, a composition scheme has been issued in this respect which leads to easy calculation and control over calculation of service tax on money changing business as given under Rule 6(7B) of the Service Tax Rules, 1994:

Instead of paying service tax at the rate specified under Section 66-B of Chapter V of the Act, the person liable to pay service tax in relation to service of purchase or sale of Foreign Exchange (including Money Changing) shall have the option to pay the following amount:

Gross Amount of Currency Exchanged	ST Payable	Subject to
Upto ₹ 1,00,000	0.14%	Minimum ₹35/-
More than ₹ 1,00,000 upto ₹ 10,00,000	₹140 + 0.07% of the excess over ₹1,00,000	---
More than ₹ 10,00,000	₹770+0.014% of the excess over ₹10,00,000	Maximum of ₹7000/-

Example:

At the time of making payment to exporter, ₹6,00,000 has been debited from the account of borrower (being an amount equivalent to USD 10,000). Now, this would amount to levy of service tax on forex money changing, which will be

computed as under:

Upto ₹ 1,00,000	0.14% of ₹ 1,00,000	₹ 140
From ₹ 1,00,001 to ₹ 6,00,000	0.07% of ₹ 5,00,000	₹ 350
Service Tax		₹ 490
Swachh Bharat Cess	₹ 490/14 x 0.5	₹ 17.50

1B) Deposits Section

a. Savings Account

- Services Covered Under “Any activity carried out by a person for another for consideration”:** **Charges for SMS Alert/DD Commission/ATM Charges/Internet Banking Charges/Ledger Folio Charges:** No doubt, an activity has been rendered by bank for customer for a consideration. Therefore, it is a service. However, in order to determine its taxability, place of provision of service shall be determined. It would be relevant to refer Rule 9 of said rules reproduced below:

Rule 9 of Place of Provision of Service Rules 2012:
“The place of provision shall be the location of the service provider for services provided by a Banking Company / Financial Institution / NBFC to Account Holders^[SAVING ACCOUNT]

Explanation: Service by Banking Co / Financial Institution (including NBFC) to account holder-

“Account” means an account which bears an interest to the depositor [including NR(E) A/c and NR(O) A/cs]

(Rule 2 of POPS Rules, 2012)

On perusal of Rule 9, it can be concisely said that if a service is provided to *saving bank account holders*, location of bank would be the place where service is provided. Therefore, amount charged for services provided by way of SMS alerts/ ATM charges / internet banking charges to saving account holders is leviable to service tax if the bank is located in taxable territory.

- Services Covered Under “Declared Service”:** **Minimum Balance Charges:** These charges are covered under Section 66E(e) as it represents consideration for tolerance of an act and hence, service tax is leviable thereon on gross amount charged as per Section 67(1)(i).

b. Current Account

If any of the above stated charges like ATM charges, minimum balance charges, DD

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commission, etc. are levied in current account, POPS will not fall under Rule 9, it will be covered by Rule 3 of the Place of Provision of Service Rules which will further be determined by Rule 8 and hence, POPS will arise at location of service recipient i.e. location of depositor.

Authors' Interpretation of Rule 9 of Place of Provision of Service Rules, 2012

As the Rule 9 covers in its ambit services provided to account holder as meaning of account has been defined under Rule 2(b) of the said rules, account which bears *interest*. Therefore, place of provision is required to be determined separately if services are provided to *saving account holders* and current account holders because:

- As per Rule 9, location of bank is the place of provision of service whereas,
- As per Rule 3, location of service receiver i.e. location of depositor is the place where service is provided (even if service receiver and service provider both are in taxable territory, then Rule 8 will be applicable and PoPS will arise at location of service receiver only).

Therefore, in case of services rendered to *saving account holders*, PoPS will always arise at location of bank branch:

Location of Bank Branch (SP)	Location of Depositor (SR)	Type of facility availed & income to bank	As per PoPS Rule 9 PoPS = Location of Bank Branch	Whether service tax leviable
Chandigarh	Chandigarh	Service: Demand Draft	Taxable Territory	Yes
Jammu & Kashmir	Chandigarh		Non – Taxable Territory	No
SEZ	Chandigarh	Income:	Taxable Territory	Yes
Chandigarh	Jammu & Kashmir		Taxable Territory	Yes
Chandigarh	SEZ	Commission on DD	Taxable Territory	No*

* As per E/N 12/2013 ST, the taxable services received by a unit located in SEZ and used for the authorised operations, are exempt from service tax.

And, in case of services rendered to *current account holders*, PoPS will always arise at location of depositor:

Location of Bank Branch (SP)	Location of Depositor (SR)	Type of facility availed & income to bank	As per PoPS Rule 3 PoPS = Location of Depositor	Whether service tax leviable
Chandigarh	Chandigarh	Service : Demand Draft	Taxable Territory	Yes
Jammu & Kashmir	Chandigarh		Taxable Territory	Yes
SEZ	Chandigarh	Income: Commission on DD	Taxable Territory	Yes
Chandigarh	Jammu & Kashmir		Taxable Territory*	Yes*
Chandigarh	SEZ		Taxable Territory	No**

* As per explanation 3(b) to the definition of service: “For the purpose of this Chapter, an establishment of a person in the Taxable Territory any of his other establishment in a Non-Taxable Territory shall be treated as establishment of Distinct Persons.” So, Jammu & Kashmir branch is deemed to be separate person in terms of explanation 3(b) of Section 65B (44). Now, in personal view of the author, for instance, if a depositor of State Bank of India approaches to Oriental Bank of Commerce for DD, then for Oriental Bank of Commerce it is not a service rendered to depositor having an interest bearing account. The place of provision of service is determined as per Rule 3 of said rules but since the location of service receiver is not known to the Oriental Bank of Commerce, then place of provision of service will be location of service provider by virtue of Rule 3 of provision of Service Rules, 2012. Therefore, applying the same principles, in this case, it will be deemed that bank is providing services to depositor having an account with distinct person and location of service receiver is not known to the bank and therefore, place of provision of service will be location of service provider

by virtue of Rule 3 and hence attracts levy of service tax.

** As per E/N 12/2013 ST, the taxable services received by a unit located in SEZ and used for the authorised operations, are exempt from service tax.

And, in case of services rendered to NR(E) / NR(O) Account Holders, PoPS will always arise at location of bank branch :

Location of Bank Branch (SP)	Location of Depositor (SR)	Type of facility availed & income to bank	As per PoPS Rule 9 PoPS = Location of Bank Branch	Whether service tax leviable
Chandigarh	USA	Demand Draft	Taxable Territory	Yes

Had Rule 2(b) of PoPS Rules, 2012 not included NR(E)/NR(O) Account within in the meaning of word account covered under Rule 9, then services rendered by bank to these account holders would come under the purview of Rule 3 and thus will become exempt from levy of service tax. But as this type of account has been included in the definition of “account”, services rendered by bank to these depositors would attract levy of service tax.

Cheque Dishonour Charges: It also represents consideration for tolerance of an act. As per discussion regarding POPS done above, POPS of this declared service will also be determined in the same manner i.e. (Rule 9)[saving a/c] or (Rule 3 – Rule 8) [current a/c, loan a/c] i.e. location of the service provider or location of bank branch, as the case may be.

2. Expenses Of The Bank i.e. Taxable Services Received By The Bank :

2A) Deposit Section

Interest Paid on Saving Bank Account : There is no implication of service tax payment on bank as this type of service is specifically excluded from the purview of service tax by inserting a provision in Section 66D of the Chapter V [Section 66D(n) as explained in the preceding clauses.

2B) Full Reverse Charge Applicability

Search Report Fee/ Legal Opinion Fee – Paid to Lawyer: This is taxable service rendered by lawyer and as per POPS Rules, 2012 – Rule 3 and Rule 8, place of provision of service will be location of service receiver. Hence, service tax is leviable on these charges. But as per Notification Number 30/2012, this service is covered under full reverse charge.

Notification Number 30/2012 ST:

Description of Service			% of ST payable by SP	% of ST payable by SR
In respect of services provided or agreed to be provided			Nil	100%
By Individual Advocate or Firm of advocate	By way of legal service	To any Business entity located in taxable territory		

Also, exemption notification 25/2012 does not exclude it from purview of service tax levability.

Exemption Notification Number 25/2012 (Entry

Number 6):

Services provided by an individual as an advocate or a partnership firm of advocates by way of legal services to... any person other than a business entity.

Section 65B(17): Business Entity means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.

Hence, when bank avails legal services from an advocate/ partnership firm of advocates:

- Notification no. 30/2012: Reverse charge is applicable.
- Exemption notification 25/2012 is not applicable (as services are provided to business entity).
- Bank is required to pay service tax on the amount of bill under full reverse charge mechanism.

Now consider a case when **bill of the advocate is in the name of borrower:** In this case, bank will be considered as *pure agent* in terms of Rule 5(2) of Service Tax (Determination of Value) Rules, 2006 and such value will be excluded from value of services and therefore, there will be no service tax applicability on bank under reverse charge mechanism. For instance, if advocate bill is received for ₹10,000 then following treatment shall be done by the bank:

- Bank shall recover ₹10,000 from client as advocate fee. Further, in terms of Rule 5(2) of Service Tax (Determination of Value) Rules, 2006, this value is **excluded from valuation** of service and therefore it does not attract service tax liability under reverse charge mechanism on the bank.

In case the **bill of the advocate is in the name of bank**, then bank cannot claim itself to be the pure

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agent of borrower and service tax is required to be paid by the bank under reverse charge mechanism. For instance, if advocate bill is received for ₹10,000 then following treatment shall be done by the bank:

- Bank is a service receiver and therefore should book liability under reverse charge mechanism.
- Further, bank shall recover ₹10,000 from client as advocate fee and for client, bank is service provider and therefore, such debit shall also attract levy of service tax and swachh bharat cess. This means that bank should recover Rs. 11,450 from the client.
- Service tax shall be paid by bank as under:
 - ₹1400 – for being a service provider
 - ₹1400 – for being a service receiver, under reverse charge mechanism. Doing so, bank should avail CENVAT credit of ₹1400 also.
- Swachh Bharat Cess shall be paid by bank as under
 - ₹50 – for being a service provider
 - ₹50 – for being a service receiver, under reverse charge mechanism. However, CENVAT credit of swachh bharat cess is not available.

2C) Partial Reverse Charge Applicability

Payment of Security Services (₹25000): This is taxable service rendered by security agency/company/firm to the bank and as per POPS Rules, 2012 – Rule 3 and Rule 8, Place of provision of service will be location of service receiver i.e. location of the bank branch. Since, location of bank falls in the taxable territory, service tax is leviable on these charges. But as per Notification Number 30/2012, this service is covered under reverse charge.

“Thus, if the service provider is either an individual (sole proprietorship firm) or HUF or partnership firm (including LLP) or AoP, then security services provided to the bank will come under the purview of reverse charge. Hence, bank shall pay 100% of the service tax on the value of services levied in the bill. However, if security services are provided by a company, then it will not come under reverse charge. In such cases, bank shall pay service tax levied on the bill to service provider.”

Thus, if the service provider is either an individual (sole proprietorship firm) or HUF or partnership firm (including LLP) or AoP, then security services provided to the bank will come under the purview of reverse charge. Hence, bank shall pay 100% of the service tax on the value of services levied in the bill.

However, if security services are provided by a company, then it will not come under reverse charge. In such cases, bank shall pay service tax levied on the bill to service provider.

Thus, an auditor must check the status of service provider, to determine the applicability of reverse charge. Also, it should be noted that service tax under reverse charge is attracted only if control lies with the branch/head office itself.

3. Debatable Issue

Interest On Delay In Payment Of Credit Provided By Way Of Credit Card: There are two views on this:

Judicial View: Interest on delayed payment of credit provided by way of credit card is on *delay in making payment for use of money. Prima-facie*

N/N 30/2012		Reverse Charge	
In respect of the services provided or agreed to be provided			
By HUF or Individual Partnership Firm (whether registered or not) AoP Located in taxable territory		To Business Entity registered as Body Corporate Located in the taxable territory	
Description of service		% of ST Payable by SP	% of ST Payable by SR
Entry No. 9	Service by way of	Nil	100%
	• Supply of manpower for any purpose • Security services		

“On perusal of Rule 9, it can be concisely said that if a service is provided to saving bank account holders, location of bank would be the place where service is provided. Therefore, amount charged for services provided by way of SMS alerts/ ATM charges / internet banking charges to saving account holders is leviable to service tax if the bank is located in taxable territory.”

interest on credit card dues partakes the character of “interest on loan” and, therefore, it shall not form part of value of credit card related services. [*Canara Bank vs. Commissioner of Central Excise & Customs (LTU)* – 2013 – Tribunal Bangalore Bench]

CBEC View: CBEC vide its *Taxation Of Services : An Education Guide* on page number 46 in para 4.14.10 regarding Section 66D(n) mentioned that this interest is on *delay in making payment for services*

provided and hence, these exorbitant charges has no relationship with the prevailing interest. Thus, these are in the nature of consideration for the services rendered for using the convenience of using the services by way of credit card and hence, taxable.

Author’s View: *Prima-facie* judicial view appears to be correct view, as “interest” will fall under Section 66D(n), even if rate is exorbitant. Hence, service tax is not *leviable* on such interest.

To Conclude

Service tax has a very wide coverage in our fast growing economy. An auditor shall keep a bird eye view on the nature of each and every type of service charge levied by bank and shall analyse service tax implications on it. In this article, our stress is only to bring a great learning opportunity among professionals and make available for them a handy tool to refer statutory implications on mostly all types of service charges being levied by banking industry today. ■

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Understanding the SAP World and the Roles and Opportunities for a Chartered Accountant



In today's challenging business environment, the best run companies act quickly with increased insight, efficiency and flexibility because they possess clarity across all aspects of their business. Many companies are realising that SAP solutions have become extremely important to their businesses. SAP solutions have become integral to the foundation of international businesses, as almost half of the world's Fortune1000 companies have implemented ERP solutions from SAP. Over time, many companies have started to discover deficiencies in their information systems architecture. Separate systems are there to handle the general ledger, the sales processes, a separate system to manage the manufacturing or production processes, etc. In order to generate the reports that various levels of management needed to run their operations, data had to be exchanged between these sub-systems. When there were errors or inconsistencies between these sub-systems, these flowed on into the consolidation process and skewed the management reports. The benefits of using SAP for your business are numerous. SAP delivers systems that are modern and highly efficient. Their support infrastructure is unparalleled in the software industry. Read on to get an overview of various SAP modules used by the businesses and opportunities for chartered accountant professionals in the world of SAP...

Introduction

The first question which arises in our mind when we hear SAP is-what exactly this term means and how it works? SAP stands for Systems, Applications and

Products in data processing. It is the most widely used ERP (Enterprise Resources Planning) system in the world. ERP term is used to denote different kinds of software used by companies to control the work done by their different departments. For example, SAP, Oracle, People soft, JD Edwards, etc. are some of the top ERP software systems.

The SAP R/3 system is a business software package designed to integrate all areas of a business. It provides industry specific solutions for different industries other than its basic SAP modules. It



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contains various sub-modules. It is the decision of the client whether they want to buy all modules or some specific modules.

Benefits of SAP

- SAP focuses on maximising resources, reducing costs and optimising performance.
- SAP provides real time access to timely information.
- SAP can be customised according to the evolving business requirements of an enterprise.
- It provides end to end solutions for financials, manufacturing, logistics, distribution, *etc.* All business processes are executed in one SAP system and sharing common information with everyone.
- Keeping in view the cost involved in implementation and the functionality of the SAP ERP, usually organisations with a good amount of turnover are better suited for implementing it.
- In every 2-3 years, SAP introduces new version of ERP with some very useful added functionalities for the companies using SAP.

Facts about SAP Usage around the Globe¹

SAP is the fourth largest software company in the world.

- 12 million users utilise SAP software every day.
- SAP software is found at 140,000 installations within 120 countries around the world.
- SAP employs over 53,000 workers worldwide.
- Being the world leader in ERP, SAP captures more than 60% of the ERP market.
- There are 35000+ SAP ERP customers around the world.

SAP provides customised industry specific solutions in the following sectors-

- Aerospace and Defense
- Automotive
- Banking
- Chemicals
- Consumer products
- Defense and Security
- Healthcare
- Insurance
- Mining
- Oil & Gas
- Pharmaceuticals
- Telecommunications

How SAP Came Into Operation

In 1975, Xerox decided to exit the computer industry and asked IBM to migrate their business systems to IBM technology. "IBM got the rights to the Scientific Data Systems/SAPE software, reportedly for a contract credit of \$80,000 as compensation".

Five IBM engineers-*Dietmar Hopp, Klaus Tschira, Hans-Werner Hector, Hasso Plattner, and Claus Wellenreuther*, were working on this software and they were told that their services are no longer required. They decided to leave IBM Tech and start another company.

"In June 1972, they founded Systemanalyse und Programmentwicklung ("System Analysis and Program Development") company, as a private partnership under the German Civil Code. The acronym was later changed to stand for Systeme, Anwendungen und Produkte in der Datenverarbeitung ("Systems, Applications and Products in Data Processing") i.e. SAP."²

German branch of Imperial Chemical Industries in Östringen was their first client, where they developed mainframe programs for payroll and accounting. Instead of storing the data on punch cards mechanically, as IBM did, they stored it locally. Therefore, they called their software a real-time system.

Different Versions of SAP

SAP R/1- First Version launched in 1972

"R" stands for real-time data processing. It is one-tier architecture in which three layers- Presentation, Application and Database are installed in one system/ server. (Presentation + Application + Database)

SAP R/2- Second Version launched in 1979

This version was designed to handle different languages and currencies. R/2 was a two-tier architecture in which three layers - Presentation, Application and Database were installed in two separate servers. (Server one – Presentation, Server two – Application + Database)

SAP R/3- Upgradation from R2 to R3

SAP R/3 is the client/server version of the software and it is three-tier architecture in which three layers- Presentation, Application and Database are installed in all the three servers/systems. (Server one – Presentation, Server Two – Application, Server Three – Database)

¹ Reference from Google

² Reference from Wikipedia

Information Technology

The below table lists down all the Functional and Technical Modules in SAP-

SAP Functional Modules	SAP Functional Modules		SAP Technical Modules	SAP Technical Modules	
	Module Name	Description		Module Name	Description
SAP Functional Modules	FI	Financial Accounting	SAP Technical Modules	ABAP	Advanced Business Application Programming
	CO	Controlling		Basis	Basis Admin, administration of SAP
	APO	Advanced Planner Optimizer		BI	Business Intelligence
	CRM	Customer Relationship Management		BPC	Business Planning and Consolidation
	CS	Customer Service		BODI	Business Objects Data Integrator
	EC	Enterprise Controlling		EP	Enterprise Portal
	EHS	Environment, Health & Safety		GRC	Group Risk Compliance
	EWM	Extended Warehouse Management		MDM	Master Data Management
	FM	Fleet Management		Netweaver	The technical foundation for SAP applications
	FSCM	Financial Supply Chain Management		Security	Security for enterprise operations
	HR	Human Resources		Solution Manager	Manages technical support for distributed systems
	IM	Investment Management		XI	Allows the implementation of cross-system processes on services
	MM	Materials Management		PI	Enterprise application integration (EAI) software
	PLM	Product Lifecycle Management			
	PM	Plant Maintenance			
	PP	Production Planning			
	PS	Project Systems			
	QM	Quality Management			
	RE	Real Estate			
	SCM	Supply Chain Management			
	SD	Sales and Distribution			
	SEM	Strategic Enterprise Management			
	SM	Service Management			
	TR	Treasury			
	WM	Warehouse Management			
	LO	Logistics General			

SAP FI (Financial Accounting) records, collects, and processes financial transactions or information on a real-time basis to provide the necessary inputs for external (statutory) reporting purpose. SAP FI takes care of accounting, year-end adjustments, preparation of financial statements, tax computations, etc. A new patch provided by SAP also supports XBRL, useful for new reporting norms.

Overview on SAP FI-CO Module

SAP FICO stands for FI (Financial Accounting) and CO (Controlling) and is a very important module of SAP related to both finance and controlling that stores the financial transactions data.

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SAP CO (*Controlling*) module takes care of all the costing related issues as well as internal or management reports. Among others, it covers

budgeting, internal orders, and cost sheet, inventory control, cost centres, profit centres, cost allocation and ABC (Activity Based Costing).

SAP CO plays an important role for the management decision making purpose and internal reporting purposes.

Sub-Modules under FICO Module – Basic Overview

General Ledger Accounting

The central task of G/L accounting is to provide a comprehensive picture of external accounting and accounting system. Supports real-time evaluation of and reporting on current accounting data, in the form of account displays, financial statements with different financial statement versions and additional analysis.

This module serves as a complete record of all business transactions. The SAP FI General Ledger has the following features:

- Free choice of level: corporate group or company.
- Automatic and simultaneous posting of all sub-ledger items in the appropriate general ledger accounts (reconciliation accounts).
- Recording all business transactions (primary postings as well as settlements from internal accounting) in a software system that is fully integrated with all the other operational areas of a company ensures that the accounting data is always complete and accurate.
- It is the centralised, up-to-date reference for the rendering of accounts. Actual individual transactions can be checked at any time in real-time processing by displaying the original documents, line items, and transaction figures at various levels.

Accounts Receivables

The accounts receivable is also an integral part of sales management. This process involves the posting of accounting data to customers in accounts receivable. From there, when you post data in accounts receivable, the system creates a document and passes the data entered to the general ledger.

General ledger accounts and customer accounts are then updated according to the transaction concerned (receivable, down payment, credit memo and so on).

All business transactions are posted to and managed by means of accounts and for this, customer master records are created. One time customers are used for avoiding building up of huge master data volume.

Accounts Payables

The accounts payable is also an integral part of the purchasing system. This process involves the posting of accounting data to vendors in accounts payable. From there, the data is sorted by vendor and made available to other areas such as the purchasing system.

When you post data in accounts payable, the system creates a document and passes the data entered to the general ledger. General ledger accounts and vendor accounts are then updated according to the transaction concerned (payable, down payment, credit memo and so on) vendor payment activities. This payment can be done for

both the following cases: when the PO is released by the Material Management System and when the PO is not released by the Financial Accounting System.

Asset Accounting

The asset accounting (FI-AA) component is used for managing and supervising fixed assets with the SAP system. In financial accounting, it serves as a subsidiary ledger to the general ledger, providing detailed information on transactions involving fixed assets.

As a result of the integration in the SAP system, asset accounting (FI-AA) transfers data directly to and from other SAP components. When you purchase an asset or produce an asset in-house, you can directly post the invoice receipt or goods receipt to assets in the asset accounting component.

Process in asset accounting involves:

- Asset master data naming convention.
- External asset acquisition integrated with accounts payable (FI-AP).
- External asset acquisition without integration with accounts payable.
- In-house acquisition.
- Asset transfer.
- Asset disposal/write-off of asset.
- Assets write up/write down (revaluation).
- Asset depreciation.
- Closing business processes.

Bank Accounting

This component is used to handle accounting transactions that you process with your bank. It includes the management of bank master data, cash balance management (check and bill of exchange management) and the creation and processing of incoming and outgoing payments.

It is possible to freely define all country-specific characteristics, such as the specifications for manual and electronic payment procedures, payment forms, or data media.

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Consolidation

“This module contains consolidation functions which can be used for external (statutory) rendering of accounts as well as internal (management) reporting. This module offers different consolidation types that are based on user-definable organisational units. Specifically, one can perform consolidation for companies, divisions, business areas or profit centers.”³

Different types of consolidation are represented by dimensions. For example, one can define one dimension for company consolidations and at the same time, another dimension for profit center consolidations.

The component features the ability to use different consolidation charts of accounts. One can use consolidation versions to maintain different categories of data, such as actual data, prognostic data or budget data.

Special Purpose Ledger

In this module, we can define different ledgers for reporting purposes. These ledgers enable us to report at various levels using the values from the various sub-modules.

“The functions available in the special purpose ledgers enable us to collect and combine information, create and modify totals, and distribute actual and plan values. The values are transferred to the special purpose ledgers from other SAP applications and external systems.”

Using the special purpose ledger has no effect on the functions of other SAP applications.

Travel Management

This module of SAP supports all processes involved in handling business trips. We can request, plan, and book trips, create travel expense reports and transfer expense data to other functional areas and this is integrated with settlement, taxation, and payment processes.

The following three areas of SAP travel management can be combined in different ways to reflect individual requirements and the organisational structure of the company:

- Travel Requests
- Travel Planning
- Travel Expenses

Travel Expenses sub-module can be used independently of travel requests and travel planning.

Contract Accounting (FICA Module)

SAP contract accounts receivable and payable is a subsidiary ledger that is focused towards the requirements of industry sectors with a high volume of business partners and a large number of documents for processing, such as electronic toll collection, banking, leasing, retail, posting services, railways, *etc.*

Key functions of SAP contract accounts receivables and payables include the following:

- Mass data processing,
- Reduction of memory space for storing open and cleared items,
- Flexible input format,
- Business process enhancements and seamless integration of customer-specific data without modification,
- Separation of user interface, checks, data storage, *etc.*

This module is generally implemented in companies engaged in utilities industry like gas, power, oil, water, *etc.*

Cost Centre Accounting

Cost centre is an organisational unit within a controlling area that represents a defined location of cost incurrence. All expenses or cost is posted to either specific cost center or overhead cost centre. Overhead can be allocated to specific cost centre. The definition of cost center can be based on:

- Functional requirements
- Allocation criteria
- Physical location
- Responsibility for costs

Cost centres are grouped together into decision, control and responsibility units.

“We use cost centres for differentiated assignment of overhead costs to organisational activities, based on utilisation of the relevant areas (cost determination function) and for differentiated controlling of costs arising in an organisation (cost controlling function).”

Cost centre structures and characteristics depend on the accounting objective which we are following and the cost accounting system we decide to use. We can group cost centres according to various criteria into groups. This enables us to use cost centres to depict the structure of the organisation in the SAP System.

³ Reference from Help.sap.com

“We can use the groups to build cost center hierarchies which summarise the decision-making, responsibility, and control areas according to the particular requirements of the organisation. The individual cost centres form the lowest hierarchical level.”⁴

There must be at least one group that contains all cost centres and represents the entire business organisation. This cost centre group is described as the standard hierarchy. We can assign more cost centre groups to the standard hierarchy. You can assign each cost centre to only one group in the standard hierarchy.

Profit Centre Accounting/Profit Centre (New GL)

Profit Centre Accounting (EC-PCA) lets us determine profits and losses. It also lets us analyse fixed capital and so-called “statistical key figures” (number of employees, square meters, and so on) by profit center.

Profit centre accounting is closely integrated to FI module in new GL concept. No reconciliation is needed between the general ledger and profit centre accounting. Real-time integration enables immediate transfer of all controlling documents to financial accounting, together with the detail information required for the general ledger. As a result, financial accounting and controlling are always reconciled.

Profit centre is posted in each transaction either manually, derived from other account assignments like from cost centre, material master, etc.

Role of CAs In the Field of SAP

The role of a CA in this field is to understand client’s business processes and map these processes to SAP standard practices. Chartered accountants can provide their services as a SAP consultant or by working in a core-finance team of an organisation having SAP ERP or as a SAP auditor.

CAs are well aware of all the functional aspects of accounting and financial knowledge which helps

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them in understanding the client’s overall accounting structure and this helps them to perform better.

How to Gain Knowledge of SAP

Some companies provide internal trainings related to SAP to the new joiners in the field of SAP. One can go for SAP certification in different modules like FI, CO, etc. to get the basic level of knowledge.

SAP certification would be a path-breaker for a person who is not a chartered accountant. By learning SAP, one gains a unique skill-set of core financial knowledge plus an understanding of how SAP system works and behaves for different financial scenarios. The certification will help any person to start his/her career into SAP.

Conclusion

CAs are also involved in functional configuration (non-technical) and testing of the software on the predetermined set of regression/non-regression scenarios. They are also a part of the team looking out for the best ERP model as per the organisation structure of a prospective client. A SAP consultant and IT company’s relation with the client implementing SAP ERP does not end on implementation of the ERP. Consultants are needed for supporting ERP users working in the client organisation and the service agreement can go on forever. ■

⁴ Reference from Help.sap.com

A Primer on Bonds



Bonds are the financial instruments issued for raising capital by borrowings. This article serves as a quick reference to this debt instrument describing its various features and types, accounting and tax treatments and other technical concepts involved with the Bonds. It also provides an insight into the position of bond market in India by using various data and statistics. Read on...

Definition:

Bonds are fixed income debt instruments, where an investor loans a certain amount of money to another entity, which in turn repays the loan over a period of time (coupon payments). This repayment is done in regular periods, followed by a balloon payment at the maturity of the said agreement. Bonds are unsecured and the value is solely backed by

the credit worthiness of the issuer (also called a 'debtor').

Features of Bonds:

Most bonds can be characterised by the following parameters:

- Issuer:** This is the entity liable for the money borrowed against the bond. Significant proportions of all bonds that are outstanding, in India, are either issued by the government or corporates.
- Face Value/ Par Value/ Principal:** It is the value on which the issuer pays interest. The balloon payment at the time to maturity of a bond, called the redemption value, is usually equal to the face value. However, it is also quite



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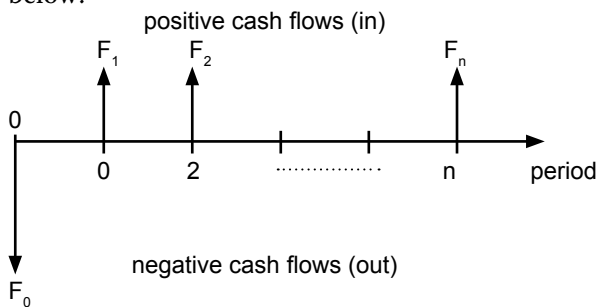
common to have a redemption value different from the par.

- c) **Maturity Date:** This is the day on which the redemption value is paid to the investor, essentially terminating the debt agreement. Time to maturity (TTM)/ tenor is the time by which the bond will mature; equal to the life of the bond on the day of issue.
- d) **Coupon Yield:** It is the interest payment made to the investor by the issuer at regular intervals of time. The amount is usually specified as an annualised percentage of the nominal value.
- e) **Frequency of Coupons:** Interest payments by the issuer can happen at different frequencies. Most government securities in India make coupon payments semi-annually, whereas the corporate bonds are annual.

These parameters only serve as a starting point. There also exist highly structured products like callable puttable bonds, which have features like optionality embedded in them.

Pricing:

A bond is priced using the present value concept, which is based on the theory of time value of money. An illustration using generalised variables is given below:



In the above cash flow diagram, F_0 , the price of the bond as of 'today', is to be estimated. F_1 to F_n are the cash flows, i.e. coupon payments and the end bullet payment.

Price of the bond is calculated as:

$$F_0 = \frac{F_1}{(1+r_1)} + \frac{F_2}{(1+r_2)^2} + \dots + \frac{F_n}{(1+r_n)^n}$$

Where r_1, r_2 etc. denote the interest rates for the respective time periods. These values can be obtained from the term structure of interest rates – a mapping between interest rates and time period of payment. The cash flows from the bond need not be equal, as is the case with a floating rate bond. For example,

"The governor of RBI has indicated that the bank's monetary policy will primarily target inflation. At a fundamental level, this means that for the interest rates to be lower; there has to be a decrease in inflation. A drop in headline inflation and/or core inflation will give enough leeway for the bank to cut rates."

there are innovative products like inflation linked bonds that make payments by adding a premium to inflation indicators.

Types of Bonds:

A few basic types of bonds are explained below:

- a) **Fixed Rate Bonds:** A bond whose coupon is always fixed percentage of the redemption value. Zero coupon bonds are a special case of fixed rate bonds – these are always sold at a discount.
- b) **Floating Rate Bonds:** These bonds have the coupon rate indexed to an economic parameter. For example, a bond might have its coupon payment set to a two percent premium over the inflation.
- c) **Callable Bonds:** These bonds can be 'called' back by the issuer before its maturity.
- d) **Convertible Bonds:** Convertible bonds can be converted to equity at some points of time agreed upon by the parties involved. The optionality involved raises the price.

Bonds are also classified on the basis of maturity sometimes. *Bills* are securities with maturity less than a year, *notes* – between a year and 10 years and *bonds* – over 10 years.

Accounting Procedures:

As an instrument that has regular cash flows, bond is recorded in the books a bit differently from other assets. All steps are from the perspective of an issuer:

- The total amount received as proceeds from the sale are recorded on the assets side under cash and equivalents.
- Against this, a liability account called Bonds Payable is credited with an amount equal to the face value of the bond.
- If the bond has been issued at a premium (discount), then an additional account for the same is created on the liabilities (contra-liability) side.
- This discount on the bond/ premium has to

Capital Market

be amortised over the life time of the bond, such that just before the bond is redeemed, the value in the discount/premium accounts is zero – interest rate method or the straight line amortisation method can be followed for this process.

- Every time a payment is made to the investor, two changes are made:
 - An interest expense is recognised, and the cash account is debited.
 - The discount/premium account is amortised using the appropriate method.

Technical Concepts:

Yield and Price

Yield to maturity (YTM), current yield (broker's yield) and the coupon yield are three different yields that are used to evaluate a bond. Consider the following equation:

$$\frac{F_1}{(1+y)} + \frac{F_2}{(1+y)^2} + \dots + \frac{F_n}{(1+y)^n} = \frac{F_1}{(1+r_1)} + \frac{F_2}{(1+r_2)^2} + \dots + \frac{F_n}{(1+r_n)^n}$$

The value of y for which the above equation is satisfied is called the **yield to maturity (YTM)**, or simply the yield of the bond. YTM is arguably the most watched parameter of a bond, and when observed at an aggregate level for a few benchmark bonds, serves as an indicator to market trends.

Current yield is simply defined as the coupon payment through the time period divided by the price at the beginning of the investment period.

The yield to maturity is the average return obtained on the position. YTM of the bond is inversely related to the price, as indicated by the equation. When the yields are rising, it is wiser to either short a bond or wait for the economy to pick up again.

Yields of bonds majorly depend on two factors – the interest rates in the country (as set by the central bank) and the amount of risk associated with the issuer. The difference between the risk-free rate and the bond yield is called the credit spread/premium. Factors such as capital flows, inflation and the exchange rate also affect the supply and demand in the market.

Duration

Macauley's duration gives the value of time period at which reinvestment risk cancels out price risk of a bond. Duration depends on coupon yield, maturity, redemption value and the yield to maturity.

It can be calculated as follows:

$$\text{Duration} = \frac{\sum \frac{tc}{(1+y)^t} + \frac{mR}{(1+y)^m}}{P}$$

Where t is the time period, c is the coupon rate, m is the time to maturity, y is the yield to maturity, R is the redemption value and P is the market price of the bond.

The formula above only gives the duration of a single bond. Portfolio duration is a more useful parameter to watch and can be calculated as a weighted average of all durations.

There are other measures of the same quantity – modified duration, effective duration, *etc.*, less pertinent.

PVBP

PVBP or the present value of a basis point is the amount by which the overall investment decreases in value when the yields move up by 1 basis point or 0.01 percentage points. As explained above, price of a bond goes down when the yield climbs.

PVBP can also be calculated at a portfolio level, by simply aggregating the PVBPs of each element in the portfolio. It is also referred to as DV01.

Factors Affecting Yields:

Consider the equation to calculate YTM again:

$$\frac{F_1}{(1+y)} + \frac{F_2}{(1+y)^2} + \dots + \frac{F_n}{(1+y)^n} = \frac{F_1}{(1+r_1)} + \frac{F_2}{(1+r_2)^2} + \dots + \frac{F_n}{(1+r_n)^n}$$

It is evident from the equation that YTM is dependent on the parameters like coupon yield, time to maturity and face value of the bond. But more importantly, macroeconomic indicators have a huge effect on the interest rates, and hence on YTM.

Indicators of the nation-wide economy like GDP growth, balance of trade, output gap, unemployment data, inflation data (headline and core), industry activity indicators, *etc.* play a role in shifting the yield curves of benchmark bonds and hence the bond market in general.

Expectations on the inflation number are considered the prime driver of interest rates in an economy. The governor of RBI has indicated that the bank's monetary policy will primarily target inflation. At a fundamental level, this means that

“Bond market in India is dominated by government securities. It can be seen that about 88% of the bonds that are traded are in some form guaranteed by the government. Corporate bond secondary market is not very active in India.”

for the interest rates to be lower; there has to be a decrease in inflation. A drop in headline inflation and/or core inflation will give enough leeway for the bank to cut rates. Similarly, given the inflation target ($4\pm 2\%$), a rising inflation number will force the bank to raise rates.

An important point to note is that it is the expected level of inflation, not realised, that plays a role in determining the yield curve.

Let's see how an economic indicator can affect rates in a country. Consider the unemployment data. An increase in the number of jobless claims indicates a slowing down economy (Phillip's Curve) and hence an expectation of a lower inflation number. This will be interpreted by the market as falling yields, causing an increase in the price of bonds.

Wage data is seen as an important indicator of inflation. This is because wages remain rather consistent over time, and hence a change in wages indicates a more lasting shift in inflation. There are other factors, such as the average wealth of

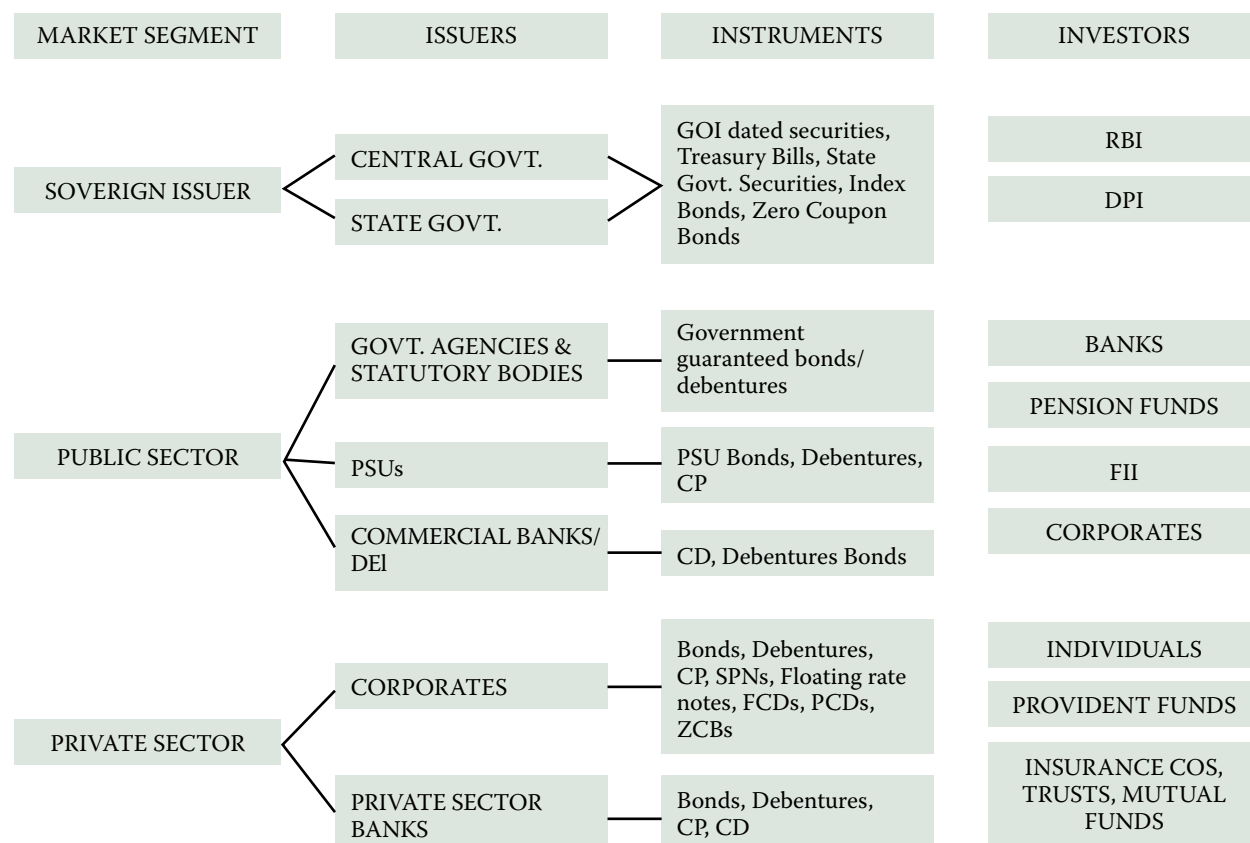
people, debt to GDP ratio, which play a relatively small role in determining the interest rates of the economy.

Bottom line is that one has to look at many economic factors to arrive at an estimate of *expected inflation*, which in turn determines the rates of the economy.

In case of corporates, issuer quality also affects the yields. Lower the rating, higher is the premium that is paid. An expectation on the credit rating of a firm can be arrived at, by following its balance sheets.

Bond Market in India:

Bonds are issued as a part of the debt capital markets and are also traded very actively in the secondary markets. The bond market in India is primarily regulated by the Securities Exchange Board of India (SEBI) and the Reserve Bank of India (RBI). Another organisation which is influential in promoting the bond markets is the Fixed Income Money Market and Derivatives Association (FIMMDA).



Source: SEBI, Working Paper No. 9, Corporate Debt Market in India: Key Issues and Some Policy Recommendations, July 2004

Capital Market

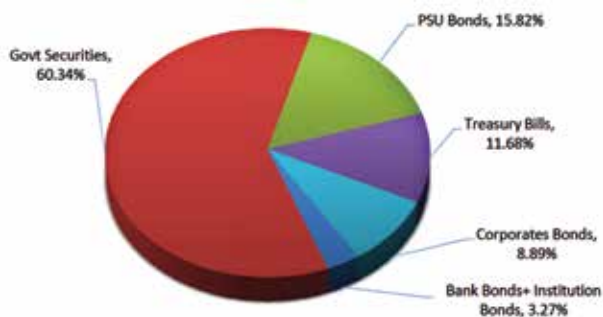
Bond market in India is dominated by government securities. Data from NSE indicates the following compositions of outstanding bonds:

Type of Security	No. of Securities as on 30 Oct, 2015	Issue Size* (₹ in millions)				Increase/Decrease in Last one Year %
		As on 30 Oct, 2015	As on 30 Sep, 2015	As on 31 Aug, 2015	As on 31 Oct, 2014	
Govt. Bonds	115	27045753	27035753	27590093	29042492	(6.88)
State Govt. Bonds	1811	13824230	13628137	13469235	11596505	19.21
Treasury Bills	51	3895962	4124852	3870714	3771324	3.30
State Enterprise Bonds	1136	4896686	4829347	4736507	3994810	22.58
Financial Institutions/ Bank Bonds	821	3832243	3862055	3906375	3739598	2.48
Corporate Debt	2924	4097366	3960027	3901668	3285606	24.71
Supra Institutional Bonds	10	3300	3300	3300	3300	0.00
Local Bodies	17	29750	29750	29750	29840	(0.30)
Mutual Fund	6	7502	7502	7502	7502	0.00
Preference share	1	1500	1500	1500	0	0.00
Total	6892	57634292	57482223.3	57516644.2	55470977	3.90

*rounded off the nearest million.

**Debt oriented Mutual Funds not included in the above data.

The following pie chart indicates the activity in these securities. It can be seen that about 88% of the bonds that are traded are in some form guaranteed by the government. Corporate bond secondary market is not very active in India.



Supply:

Two major types of issuers are looked at below:

Government Bonds

The Government of India (GOI) issues several types of bonds.

T-Bills are money market instruments, currently issued in three tenors – 91 days, 182 days and 364 days. These are zero coupon bonds and are always issued at a discount. The GOI also issues longer term bonds which can be any of these: fixed rate bonds, floating rate bonds, zero coupon bonds, capital indexed bonds and bonds with optionality.

Primarily, there are three channels for issue of new government securities and trading in India:

- Over the Counter (OTC)
- Negotiated Dealing System (NDS)
- Negotiated Dealing System – Order Matching (NDS-OM)

Both NDS and NDS-OM are available only to

select members like commercial banks, primary dealers, etc. and is maintained by the Clearing Corporation of India Limited (CCIL). CCIL also acts as the counter party to all transaction involving government securities.

Government bonds are also used to regulate the liquidity in the market through market interventions by the RBI. The central bank can purchase or sell government securities to this end.

Corporate Bonds

Corporate Bonds are issued by large corporates as an alternative to loans from banks. These bonds are usually listed on the exchanges NSE and BSE; accessible to retail investors. Issuance of corporate bonds to the public is done by investment banks.

Corporate debt market in India is evaluated as underdeveloped by several studies. The share of corporate bonds in India as compared to the government securities is low.

Security Type	No. of Securities	Mkt Capitalisation (₹ Mn.)	% of Total
Govt. Securities	115	27321563.14	46.98
PSU Bonds	1136	4952838.14	8.52
State Loans	1811	14015345.65	24.10
Treasury Bills	51	3817508.50	6.57
Local Bodies	17	29855.16	0.05
Fin. Inst.	240	1060581.76	1.82
Bank Bonds	581	2801079.08	4.82
Corporate Bonds	2924	4141250.91	7.12
Supranational Bonds	10	3386.26	0.01
Mutual funds	6	7502.00	0.01
Preference share	1	1500.00	0.00
Total	6892	58152410.60	100.00

Source: NSE

Demand:

The demand for government securities stems from different sources. One main source is the regulatory requirement—banks, provident funds, etc. are bound

to hold a certain amount of reserves in the form of government securities, called the statutory liquidity ratio (SLR).

Government securities are also used as an instrument to manipulate the liquidity in the market by the RBI. RBI also allows a tool called the LAF – Liquidity Adjustment Facility, which can be used by banks to borrow money at a premium (MSF) over the repo, to account for their own firm level liquidity needs. Also, all repo transactions by RBI are done using government securities.

Bonds are also seen as relatively less risky investments as compared to equity, derivatives and other complex structured products. The demand for corporate bonds is mainly in the institutional investors and FII space nowadays. Mutual funds, provident funds, insurance companies, *etc.* are the main sources of demand for the corporate bonds, as diversification allows them to go for higher returns at a cost of minimal marginal addition to risk taken.

Risks:

There are primarily two kinds of risk an investor faces with a bond on the portfolio:

- Default/ Migration Risk
- Interest Rate Risk

Default Risk

Default risk / migration risk is the uncertainty in bond prices and the yields due to a change in the issuer's rating. One special case in this scenario is the issuer defaulting. This risk is also referred to as the credit risk.

This risk can be quantified using the ratings published by well reputed global rating agencies like Fitch Ratings, Moody's and Standard & Poor's. Ratings range from AAA to D, where AAA indicates the safest investment there is, D indicates default. All securities that are awarded a rating of BBB or above are adjudged 'investment grade'. All other bonds are said to have a 'speculative' or 'junk' status.

Interest Rate Risk

Interest rate risk has two components – price risk and reinvestment risks.

Price risk is the variance in price of the bond due to a change in the interest rates. For example, if the interest rates move up, the prices of bonds begin to fall, reducing the value of investment. Lower the interest rates, higher the value of the investment.

Reinvestment risk is the variance in the returns that can be obtained by reinvesting the interest payments and/ or the proceeds from sale. In this case, as the interest rates move up, the reinvestment opportunity will have more value. Higher the interest rates, better the value for the investor from this perspective.

From the above two arguments, it can be observed that reinvestment risk and price risk move against each other, which leads to a simple conclusion. There must be a strategy that makes it possible for an investor to nullify the interest rate risk on the portfolio. The strategy is to set the investment horizon to the duration of the bond portfolio. At duration, reinvestment risk equals the price risk. But one important thing to note is that it is necessary to keep investing the payments from the bond issuer at the bank interest rates.

Taxation:

The coupon payments made by the issuer is counted under regular income and will be taxed accordingly. If the bond is sold and capital gains are made, then depending on the holding period, the government levies short-term or long-term capital gains tax. Some bonds also give tax saving benefits. There are bonds issued by the government of India which are income tax exempt. There are no corporate bonds which serve the purpose of tax savings, except for those bonds issued by companies in the infrastructure space.

Conclusion:

Bond market in India is under-developed compared to many other developing nations like Korea and Japan. In India, most of the demand is for the government bonds and corporates are finding it tough to raise money through bond issues. Bank loans still dominate corporate debt and will continue to do so in the near future – growth in the corporate bond market in India has been sluggish.

From an investor's perspective, a bond is one of the safest instruments to invest in. Some of these also serve the purpose of tax savings. A fairly liquid secondary market makes transacting in bonds also relatively easy. All these factors make bonds an easy and comfortable investment for risk-averse investors. ■

"Bonds are also seen as relatively less risky investments as compared to equity, derivatives and other complex structured products. The demand for corporate bonds is mainly in the institutional investors and FII space nowadays."

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals received during November-December 2015 for the reference of Faculty/Students & Members of the Institute.

1 Accountancy

Accounting Standards- Gaps in Gaap-Unabsorbed Losses and Depreciation-Difference in Treatment by Dolphy D'Souza. *Bombay Chartered Accountant Journal*, November 2015. pp.88-91.

Seeking Sustainability: The Next Few Months will be a Critical Time for Action on Climate Change and Sustainable Development—and Accountancy has a Key Role to Play by Rachel Jackson. *Accounting and Business*, November 2015, Vol.18/10, pp.38-40.

Steps to GAAP Conversion with just Two Months until the Deadline for FRS 102 Conversion by Andrew Davies. *Accountancy*, November 2015, pp.64-65.

2 Auditing

Corrective Action Plans by Advocating for Timely Correction of Audit Deficiencies, Internal Auditors can Reinforce a Strong Control Environment by David Harvey and Bernice Lemaire. *Internal Auditor*, October 2015, pp.17-19.

Evolve or Die: Imagine You had the Audit Profession in your Office as a Client. What Course of Action would you Advise? Evolve or Die by Nick Jeffrey. *Accounting and Business*, November 2015, Vol. 18/10, pp.41-43.

Fraud Findings -The Abuse of Executive Power: An Inattentive Board of Directors Allows a CEO's Wrongdoings to go Unnoticed by John L. Verna and Christopher T. Marquet. *Internal Auditor*, October 2015, pp.23-25.

Highlights of Fraud Research: Recent Research Brings New Insights into Fraud Prevention and Detection by Cynthia E. Bolt-Lee and Sara Kern. *Journal of Accountancy*, November 2015, pp.41-45.

IT Audit - Shutting the Door on Social Engineering: Internal Audit can Help Organizations Thwart Efforts to Manipulate Employees to Gain System Access by Ken Pyzik. *Internal Auditor*, October 2015, pp.20-21.

3 Economics

Concept of "Supply of Goods & Services"- Global Practices Relevant for India by Prashant Deshpande. *The Chamber's Journal*, November 2015, Vol. 4/2, pp.48-50.

Dichotomy between Regulatory Bodies vis-a-vis Competition Commission of India: An Analysis with Reference to Telecom, Electricity and Financial Sectors by Dr. Susmitha P. Mallaya. *Company Law Journal*, November 2015, pp.51-64.

Finances of Non-Government Non-Financial Private Limited Companies, 2013-14. *RBI Bulletin*, November 2015, pp.25-34.

Indian Economy Strong Sustainable Growth by Dr. Raghuram Rajan. *The Global Analyst*, November 2015, Vol. 4/10, pp.34-38.

Inter-Sectoral Linkages in the Indian Economy by Rajib Das and Binod B. Bhoi. *RBI Bulletin*, November 2015, pp.37.

4 Investment

Regulation of Intermediaries in SEBI's Equity Crowdfunding Milieu by Aditya Singh Rajput And Ashish Patel. *Company Law Journal*, November 2015, pp.33-43.

SEBI Introduces More Stringent Provisions vide New Regulations on Insider Trading by Vijaya Agarwala. *Chartered Secretary*, November 2015, pp.19-25.

5 Law

Principal of Arbitrability in International Commercial Arbitration by Dr. Qazi Mohammed Usmaan. *Company Law Journal*, November 2015, pp.44-50.

6 Management and Technology

Corporate Social Responsibility and Swachh Bharat Abhiyan by Sathyanarayana Reddy P. and Dr. V. Balachandran. *Chartered Secretary*. November 2015, pp.64-71. ■

Full Texts of the above articles are available with the Central Council Library, ICAI, which can be referred on all working days. For further inquiries please contact on 011-30110419 and 011-30110420 or by e-mail at library@icai.in; kmray@icai.in.

Monetary Limit for Filing Appeals in Tax Cases Raised

Seeking to reduce tax litigation by about 50 per cent, the finance ministry has raised the monetary limit for filing appeals to ₹10 lakh in appellate tribunal, and ₹20 lakh in high courts (HCs). It has been decided to withdraw appeals filed by the income tax (I-T) department in Income Tax Appellate Tribunal (ITAT) and high courts for cases involving tax effect of below the new monetary limit. There are 75,000 cases pending in ITAT and HC. Tax effect refers to the difference between what the I-T department's assessment of tax liability and assessee's assumption. However, the cases involving substantive question of law would be pursued irrespective of the monetary limit. The government and the Central Board of Direct Taxes (CBDT) have also decided to set up a collegium of two chief commissioners to decide on withdrawal of appeals filed by the department.

(Source: www.thehindubusinessline.com/)

FPI's Tax Returns without Balance Sheet Not to be Treated as Defective: CBDT



Income tax returns filed by foreign portfolio investors without balance sheet or profit and loss account will not be treated as defective, the Central Board of Direct Taxes has said. The clarification brings relief to foreign portfolio investors (FPIs) and puts to rest the controversy over imposition of minimum alternate tax (MAT) on them. Foreign institutional investors or portfolio investors that are registered with Sebi and have no permanent establishment or place of business in India or have provided requisite information will benefit from this move. This will put to rest a matter which has been a concern for corporate FPIs filing tax returns in India. The government accepted the A P Shah panel's recommendation that MAT will not apply to foreign companies that do not have a permanent establishment or a place of business in India and decided to amend the income tax law retrospectively from April 1, 2001.

(Source: <http://www.business-standard.com/>)

CBDT Orders I-T Offices to Set Up Grievance Cells

In a bid to tackle high-pitched and unreasonable tax assessment orders, which result in heavy income tax (I-T) demands, the Central Board of Direct Taxes (CBDT) has issued a notification requiring setting up of local grievance committees across I-T offices in India. The CBDT, in its notification, acknowledges that: "The tendency to frame high-pitched and unreasonable I-T 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 the I-T department." Such unreasonable I-T orders, especially in the realm of international taxation and transfer pricing, have been a cause of concern for the finance ministry.

(Source: www.financialexpress.com)

CBDT Switching to Computer-Assisted Tax Scrutiny



The process of selecting tax cases for scrutiny on a random basis is being replaced by a system-based centralised approach, the government has said. "It may be clarified that for the past several years, the process of selection of cases for scrutiny on a random basis has been dispensed away with," Finance Minister Arun Jaitley informed the Rajya Sabha. Instead, CBDT has devised a system-based method in a centralised manner through CASS (Computer Assisted Scrutiny Selection) whereby the selection is made on the basis of detailed analysis of risk parameters and 360 degree data profiling of taxpayers." Jaitley added: "This has substantially reduced the manual intervention in the selection process."

(Source: <http://www.expressindia.com>)

FinMin Says Govt. Open to Scrapping 1% Additional Tax

The government would consider doing away with the proposed one per cent additional tax on inter-state sale under the goods and services regime, a senior finance

National Update

ministry official has said. "If after consultation with various industry and political parties, it is felt that we should drop one per cent additional tax, then we are open to it," said Rashmi Verma, special secretary, department of revenue, in her address to an event organised by industry body Assocham. "I also agree with one per cent additional tax going (away), GST structure will improve considerably, because even if it is going to be there for only two years, there will be some amount of cascading effect," she added. Verma, however, pointed out that the government has already made changes in the constitution amendment Bill on GST, to minimise cascading effects of one per cent additional tax on inter-state movement of goods.

(Source: <http://www.economictimes.com>)

Govt. Inks 11 Pacts to Sort Transfer-Pricing Issues



The government has concluded 11 agreements to tax multi-national companies via the transfer-pricing mode. Of these, one advance pricing agreement (APA) has a 'rollback provision', which means those relating to previous years. The government has signed 22 APAs so far in the current financial year and 30 more are expected to be inked in FY16, providing a climate of certainty and non-adversarial tax regime to foreign companies. The APAs were signed with companies in sectors ranging from investment advisory, contract research & development, and shipping services. The conclusion of APAs will facilitate the clearance of the large backlog of around 550 applications with the authorities, and ensure the lowering of tax litigations in the country.

(Source: Press Information Bureau)

Expedite Refunds Below ₹ 50,000: CBDT to Tax Dept

The Central Board of Direct Taxes (CBDT) has directed the Income Tax Department to expedite issuance of pending refunds which are below ₹ 50,000 in all cases except those selected for scrutiny. The initiative is expected to significantly reduce taxpayer grievances and enhance the taxpayer satisfaction, the CBDT said. "The status of outstanding refunds

was reviewed recently. Following the review, the CBDT has issued directions to its field formations to expedite the issue of pending refunds below ₹ 50,000 for assessment years 2013-14 and 2014-15 in all such cases which have not been selected for scrutiny," a CBDT statement said. According to the government data, ₹ 5,496 crore is locked in pending refunds for these two AYs.

(Source: <http://www.business-standard.com/>)

Govt. Exempts Shipbuilding Inputs from Customs, Excise Duties

To promote indigenous shipbuilding industry as part of the 'Make in India' initiative, inputs used in ship manufacturing and repair have been exempted from customs and central excise duties, the government has said. "Inputs used in ship manufacturing and repair have been exempted from Customs and Central Excise Duties with effect from November 24, 2015," an official statement said. Prior to this exemption, while ships could be imported at almost negligible rates of Basic Customs Duty (BCD) and nil rates of Countervailing Duty (CVD), the inputs used in ship manufacturing and repair attracted normal rates of BCD and CVD.

(Source: www.thehindubusinessline.com/)

Direct, Indirect Tax Wings to be Merged under Revenue Dept?



India has begun to merge its tax departments. For the upcoming Budget, the departments of direct and indirect tax will operate under a single financial authority - department of revenue. The orders were issued over the weekend after top-level consultations within the government. Finance minister Arun Jaitley has given the go-ahead for the step, which is being seen as a major reform of India's tax administration by the investors. However, a government official said it would be too early to say the two boards will be merged. But the developments are in sync with an evolving trend to create synergy in their functioning.

(Source: www.financialexpress.com)

IFAC Joins Climate Action, Highlights role of Accountancy Profession



International Federation of Accountants, the global body of accounting fraternity, has recently submitted a letter to the United Nations Framework Convention on Climate Change (UNFCCC) expressing its support of the UNFCCC's facilitation of international climate negotiations at the 21st session of the Conference of the Parties. As the global organization for the accountancy profession, IFAC is advocating for a universal agreement and effective international dialogue that encourages the transition toward resilient, low-carbon societies and economies. In addition to providing its commitment to climate action on long-term global emissions, IFAC is raising awareness of the important role played by the accountancy profession and professional accountants in facilitating governments, capital markets, and organisations to implement plans for climate change mitigation and adaptation.

IAESB Proposes Drafting Changes to suite of 8 IES

The International Accounting Education Standards Board (IAESB) has issued for comment proposed drafting changes to its suite of eight IES, *Framework for International Education Standards for Professional Accountants and Aspiring Professional Accountants*, and *IAESB Glossary of Terms*. The IAESB has performed this maintenance review of its pronouncements to address changes, matters of language, or drafting issues, and minor changes necessary to maintain consistency and accuracy across the body of IES. The IAESB invites all stakeholders to comment on its drafting proposals.

Global 2015 Handbook of International Quality Control

The IFAC has come out with the latest edition of a handbook that includes new and revised Auditor

Reporting standards designed to enhance auditor's reports for investors and other users of financial statements, as well as changes to other International Standards on Auditing to address the auditor's responsibilities in relation to going concern, financial statement disclosures, and other information (i.e., annual reports). These substantive changes will be effective for audits of financial statements ending on or after December 15, 2016. Volume III continues to include the IAASB's *Framework for Audit Quality: Key Elements that Create an Environment for Audit Quality*, a topic that is a key area of focus in the Board's current Work Plan.

IFAC Global Regulatory Survey to help Governments

The latest *IFAC Global Regulatory Survey* voices the perspectives of 313 accounting, finance, and business professionals around the world, in a diverse range of sectors, and provides an important gauge of the state of regulation and its impacts on the global economy. Eight years after the start of the financial crisis, global economic discourse continues to be dominated by the urgent need for genuine, sustained economic growth. These results should be a serious wakeup call for us to examine the impact of regulation, including the large amount of regulation and reform introduced since the crisis.

IFAC Issues Briefing on Accounting for Sustainability



The IFAC has recently issued a Briefing which supports accountants in developing a greater awareness of how they can help their organisations address issues of sustainability and more fully incorporate these issues into business strategy. *Accounting for Sustainability. From Sustainability to Business Resilience* clarifies the important role accountants can, and must, play in embracing sustainability to ensure that the organisations they serve are resilient by linking sustainability to a

International Update

broader business agenda and strategy. In addition to highlighting the key elements of developing a sustainable strategy, and how professional accountants can help address opportunities and challenges, the briefing includes references to some of the many resources and tools available to professional accountants to help develop their knowledge and skillset. All listed references are available on the **Global Knowledge Gateway** on IFAC website (under Sustainability in the subtopic “business resilience”).

IFAC Strategy Survey for 2016-2018 Highlights Global Trends



In a recent Strategy Survey for 2016-18, IFAC has obtained the views of member organisations (including members, associates, affiliates, regional organisations, and accountancy groupings), Forum of Firms members, and other stakeholders to inform the development of *IFAC's Strategic Plan 2016–2018*. The results indicate strong support for IFAC's strategic objectives, key areas of focus, and activities and will help IFAC hone its comparative advantages and identify areas for new or intensified activities in response to key global trends.

New IAESB Consultation Paper on Future Expectations

The International Accounting Education Standards Board (IAESB) has published a Consultation Paper, *Meeting Future Expectations of Professional Competence: A Consultation on the IAESB's Future Strategy and Priorities*. It presents the proposed vision and strategy for the next five years that builds on the completion of its newly revised International Education Standards and its work to support the implementation of these standards. In issuing this Consultation Paper, the IAESB recognises that professional accountants are operating in an environment that is continuously changing. This has an impact on the initial and continuing professional development needs of professional accountants and

the demands placed on professional accountants globally.

Handbook of International Public Sector Accounting Pronouncements



IFAC has come out with a new Handbook which contains the complete set of the International Public Sector Accounting Standards Board's (IPSASB) pronouncements on IPSAS. It also includes the *Conceptual Framework for General Purpose Financial Reporting by Public Sector Entities*, which was published in October 2014. The 2015 edition is available only in electronic format. The 2016 Handbook of International Public Sector Accounting Pronouncements is scheduled to be available in second quarter of 2016 and will be available in print and electronic versions.

Driving the Change: What Big Data Is Doing to Accounting



Change often creeps up on us slowly, and then it's all over us. That's happening in accounting circles today particularly as it pertains to big data. And, the changes it's triggering will cause fundamental reassessments of what practitioners do and what accounting educators teach, says Brian Sommer, a Technology Industry Expert, in IFAC's Global Knowledge Gateway. Big data has burrowed its way into virtually every aspect of accounting. Businesses are using it to do a better job of developing budgets, plans, and forecasts. It's particularly effective in finding potential fraud. It also helps business operations reduce a number of costs and identify revenue generation opportunities, he says adding that having expertise in analyzing big data will take accountancy professionals a long way.

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 January, 2016 are as follows:

Location	Scheduled Dates	Registration and Course Details
Patna	January 2 & 3, 9 & 10 and 16 & 17, 2016	http://resource.cdn.icai.org/39524iasb-patna-210.pdf
Sikar	January 2 & 3, 9 & 10 and 16 & 17, 2016	http://resource.cdn.icai.org/40119iasb-sikar-217.pdf
New Delhi	January 3 & 9, 10 & 16 and 17 & 24, 2016	http://resource.cdn.icai.org/40141iasb-nirc-200.pdf

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Committee for Members in Industry **The Institute of Chartered Accountants of India**

(Set up by an Act of Parliament)

The Committee for Members in Industry of ICAI is organising comprehensive

ICAI-CMII Corporate Forum **on 15th - 16th January, 2016** **at** **New Delhi**

This mega event comprises the following sub-events:

1

Corporate Conclave

Two days National Convention on contemporary topics to enrich the knowledge and to enhance the skill sets of members. This convention focuses on various important aspects that are of practical relevance to the members of the Institute and are beneficial for keeping them updated in this dynamic environment.

2

ICAI Awards 2015 on 16th Jan, 2016

Would honour the exemplary work of the Chartered Accountants in Industry by recognizing those who have demonstrated excellence in their professional life, personal life and are the role models for others in industry. The ICAI awards 2015 also seek to acknowledge Chartered Accountants who have created value to their company's stakeholders on a sustainable basis.

3

Financial Services Expo

A platform where Chartered Accountants and Corporates from all over India would mark their presence. This would enable various organizations involved in Banking, Insurance, Mutual Funds, Capital Markets, Real Estate, Information Technology products & services and other technological products to interact with Chartered Accountants, Investors, Finance Fraternity and Corporate Decision Makers.

We are expecting more than 2000 high profile professionals from various industries across the country to participate in the Corporate Forum. The organizations can use the ICAI-CMII Corporate Forum 2015 for marketing their products/showcase themselves. By sponsoring the events, sponsors would be contributing to the main objective of searching and recognizing talent in the Industry at a higher level.

We earnestly invite you to participate in ICAI-CMII Corporate Forum 2015 and utilize this excellent opportunity. Details are available at www.corporateforum.icaic.org. Members interested for participation in Corporate Conclave, ICAI Awards 2015 may kindly contact CMII Secretariat at 011-30110525/555/549/430.

We eagerly look forward to meet you in the ICAI-CMII Corporate Forum 2015.

With kind regards,

Chairman,
Committee for Members in Industry

CAMPUS PLACEMENT PROGRAMME

February-March, 2016

For Newly Qualified Chartered Accountants

The Committee for Members in Industry of the Institute organises Campus Placement Programme for newly qualified Chartered Accountants at various centres all over India. The scheme has been evolved to provide an opportunity both to employing organisations as well as the young professional aspirants to meet and explore the possibility of taking up positions in Industry.

Invitation to Organisations/CA Firms

Campus Placement Programme will be organized at various centres viz. Ahmedabad, Bangalore, Baroda, Bhubaneswar, Chandigarh, Chennai, Coimbatore, Ernakulam, Hyderabad, Indore, Jaipur, Kanpur, Kolkata, Ludhiana, Mumbai, Nagpur, Navi Mumbai, New Delhi, Pune, Thane & Vasai. The programme would be organized in the months of February-March, 2016 for the candidates who would be passing in the CA Final examination held in November, 2015 and also for others who are eligible.

The schedule of programme is given below.

Schedule of the Campus Placement Programme February-March, 2016

Centre	Dates
Chandigarh & Ludhiana	12th February, 2016
Baroda, Coimbatore, Ernakulam & Navi Mumbai	15th – 16th February, 2016
Bhubaneswar, Kanpur, Thane & Vasai	16th – 17th February, 2016
Indore, Nagpur	17th – 18th February, 2016
Ahmedabad & Pune	18th – 19th February, 2016
Jaipur	19th – 20th February, 2016
Mumbai & New Delhi	14th, 15th, 16th, 17th, 18th & 19th March, 2016
Bangalore, Chennai & Kolkata	15th, 16th, 17th, 18th & 19th March, 2016
Hyderabad	16th, 17th, 18th & 19th March, 2016

The programme would be organized in the months of February-March, 2016 for the candidates who would be passing in the CA Final examination held in November, 2015 and also for others who are eligible.

Chairman
Committee for Members in Industry
The Institute of Chartered Accountants of India



Organised By:
Committee for Members in Industry (CMII)
The Institute of Chartered Accountants of India
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Committee for Members in Industry (CMII)
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

The Committee for Members in Industry (CMII) of The Institute of Chartered Accountants of India (ICAI) is, inter-alia, the one stop destination for providing the placement services to the members of the Institute. The CMII organizes Campus Placement Programmes to provide placement assistance to the Members twice a year. CMII augments the venture of getting the Chartered Accountants placed in apex industries through the ICAI Job Portal.

We are extremely happy to inform that the ICAI Job Portal supplements the existing placement assistance provided by the Committee for Members in Industry to the Newly qualified Chartered Accountants and Experienced Members, by providing a converging platform for the potential employers as well as the Members of the Institute.

Welcome to the ICAI Job Portal

The ICAI Job Portal has been designed on the lines of the premium Job Sites and aims to provide world-class services free of cost to our Members. This Job Portal is unique in the sense that it serves as one stop destination to Chartered Accountants as they don't need to visit other Job sites for Job Search.

The Prominent Features of this portal are as follows:

For Employers:

- Hot Vacancy-Premium Job Posting Services
- Advanced Search Tools

- Reach through Job Alerts
- Resume Database Access Subscription
- Unlimited writing for Job Advertisement
- Extremely fast display of Job Advertisement
- Facility to monitor the activities such as a 'MIS' on the number of logins, duration of logins, candidates contacted etc done through the Account.

For Candidates

- Update Alert for CV
- Job Messenger and SMS Facility
- Email Alerts
- Resume Building Services
- Job Search Facility on the Basis of Functional Area, Industry, Experience, Locations, Expected Salary, Job Type, Freshness etc
- Hot Employer/Preferred Employer marking facility

We sincerely hope that this Job Portal will be extremely helpful to the recruiting entities in their venture.

ICAI Job Portal –World Class Job Portal for recruiting World Class Finance and Accounting Professionals.

Chairman, CMII

For more details please contact:

CMII Secretariat at 011-30110548/491/450,
ruchi_gupta@icaai.in; campus@icaai.in; placements@icaai.in

New dedicated Chapter helpdesk for queries related to members/students based abroad

The Institute of Chartered Accountants of India is committed to provide the best services to its members. Considering the same, the International Affairs Committee of the Institute has reactivated its logistic framework through a dedicated email foreigndesk@icai.in at ICAI HO level, to coordinate and communicate effectively the concerns/inputs/queries of different ICAI chapters and members who are settled abroad.

This email id can be used as one stop point for any queries/suggestions of the Members/

Students by the ICAI Chapters and members based abroad.

Secretariat
International Affairs Committee
The Institute of Chartered Accountants of India
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Office of The Comptroller and Auditor General of India 9, Deen Dayal Upadhyaya Marg, New Delhi-110124.

Empanelment of Chartered Accountant firms/LLPs for the year 2016-2017

Online Applications are invited from the Chartered Accountant firms/LLPs who desire to be empanelled with the office of the Comptroller and Auditor General of India for appointment as auditors of Government Companies/Corporations for the year 2016-2017. The online application format will be available on our website: www.saiindia.gov.in from 1st January 2016 to 15th February 2016, the firms/LLPs can apply/update the data showing the status of their firms as on 1st January 2016. After filling/ updating the data, they are required to generate

online acknowledgement letter for the year. They are also required to submit hard copies of the relevant documents in support of their online application along with a print out of the acknowledgement letter generated online. The application which does not have an online acknowledgement letter would not be entertained as a valid application.

Sd/-
Sr. Administrative Officer/CA-V

ONLINE
MENTORING



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 the mentor (our senior and experienced members) encourages and advises our young members by sharing their own experiences and knowledge of the profession. Mentoring Programmes realizes the value of Networking to the Young Members and familiarize them with the Corporate/Practice Protocol so that they can provide better service to the Industry/Client.

Mentoring 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. 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

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 form/ 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 facebook brand page
- Optimization of YouTube channel.
- Making video viral by sharing them on other social media platforms.
- Posting some documentary



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.

[Download](#) | [E-Service](#) | [Contact us](#)

**Career Counselling Committee, ICAI**
The Institute of Chartered Accountants of India
(Setup by an Act of Parliament)

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Messages

President, ICAI	Vice President ICAI (Ex-Officio)	Chairman CCC, ICAI	Vice Chairman CCC, ICAI
View Message	View Message	View Message	

Resource Materials

- [Brochure of Career Counselling Committee](#)
- [Poster of Career Counselling Committee](#)
- [Banner of Career Counselling Committee](#)

[More...](#)

Announcement and News

Invitation for Expression of Interest from POUs i.e. Branches & Regional Councils to host the Career Counselling Programmes in the year 2015-16

Invitation for empanelment as Resource Persons for the programmes to be organized by the Career Counselling Committee in the Year 2015-16

Career Counselling Committee (CCC), ICAI is organizing Career Counselling Programme on 16th June, 2015 at Pune





Video/Webcasts

[ICAI and Regional Councils](#) | [Disclaimer](#)

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Get FREE of Cost e-library on Corporate/Business Laws "e-CLA Journal" (Corporate Law Adviser)

Young Members Empowerment Committee (YMEC) of ICAI constantly endeavours to Empower the Young Chartered Accountants by through various modes and mediums. As we know 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 educations.

To gain an edge in the present competitive scenario, YMEC has made the arrangement with the Corporate Law Adviser for providing Corporate Law/ Business Law Journal. , 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

- **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.

Contents of e-CLA

- Latest Case Laws from Supreme Court & all High Courts with unmatched head notes.
- Latest Orders of Company Law Board, SAT, Competition Commission, etc.
- Accurate head notes/synopsis to judgments with reference of Para numbers in the head note for easy reference
- Extended coverage of Case Laws through Short Notes on Court rulings.
- Latest Legislations (Acts, Rules, Regulations, etc.)
- Articles on Contemporary Issues and Latest happenings.
- Queries and Replies on interesting aspects of Law.
- Latest Notifications, Circulars, etc.

Features of e-CLA electronic version of "Corporate Law Adviser"

- Soft copies (PDF) of all issues on your Computer / Mobile communicated via email
- Instant delivery and no worries of issue getting lost in transit
- Anywhere Anytime access
- All issues stacked at one place in a library format
- Option of saving the file for permanent record

Chairman, YMEC

-

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Events

Forthcoming Events¹

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
Committee for Members in Industry				
1.	Corporate Conclave – A Two Day National Convention	15 th & 16 th January, 2016	Hotel Imperial, New Delhi	12
Topics	- Converging to IFRS - Moving the Western way - Decoding GST - CSR: India's Journey Towards Corporate Sustainability - Disruption : A Mandatory Paradigm Shift - Foreign Direct Investment- Global Economic Integration - International Taxation and its effects on Financial Reporting - Credit Rating –Challenges during distressed markets - Automated Fraud Detection and Prevention - Equity Valuation strategies in global Uncertainty - Expanding Role of Private Equity Funding - Mergers & Acquisitions : Drivers & Challenges - Position in India post crises - Dealing with Stress Management- Through the Techniques of Ancient Sages - Professional Opportunities for Chartered Accountants			
Fees	For Members- ₹ 2200/- . Fees can be paid by E-mode at http://online.icai.org/ccm.html?progid=1193 . For Non Members- ₹ 2700/- . Fees can be paid by E-mode at http://online.icai.org/ccm.html?progid=1194 . Fees can also be paid through account payee cheque/draft drawn in favour of the Secretary, The Institute of Chartered Accountants of India, payable at New Delhi to be deposited CMII, 4 th Floor, ICAI Bhawan, Indraprastha Marg, New Delhi-110002			
Contact Person	CA. Shweta Goel, 011-30110555, shweta.goel@icai.in ; CA. Neha Bansal, 011-30110549, neha.bansal@icai.in			
Board of Studies				
CA. V. Murali, Chairman, Board of Studies				
2.	Sub Regional CA Students Conference (Central India) Theme: Gyan Deep: The Enlighten	3 rd & 4 th January 2016	Agrasen Bhawan, Sindhi Colony, Pali	
Topics	1. Corporate Laws (i) Exemption to Private Companies/Small Company and One Person Company (ii) Auditors Report Under Companies Act- Issues on CARO, Documentation, Reporting and Disclosure Requirement (iii)Schedule II- Depreciation – Practical Issue 2. Indirect Tax (i) Point of Taxation Rules and Service Tax (ii) Joint Charge & Reverse Charge Mechanism 3. Direct Tax (i) Income Computation and Disclosure Standards- An Overview (ii) Transfer Pricing – Domestic Transfer Pricing Law and Practice 4. Recent Developments in Indian Economy (i) E Commerce: Risk & Control Issues (ii) Digital India (iii)Curbing Black Money- Recent Initiatives 5. Motivational Session on Unlock Your Potential – Create Values- Face Challenges 6. Discussion on Opportunities for CAs (i) Debate: Practice V/s Industry V/s Business (ii) Make in India- Role of CAs 7. Winning Strategies for CA Examination (i) Balancing of Time by an Articled Student: Training/Study/Co-Curricular (ii) Making the Most of Articleship			
Fees	₹ 300 /-Per Student	Accommodation (if required) @ ₹ 200/- per student per day excluding taxes on sharing basis.		
Contact Person	➤ CA. Vijay Garg, Conference Convener & Chairman, Committee on Public Finance and Government Accounting & Career Counselling Committee, ICAI ➤ CA. Shanu Parakh, Conference Coordinator & Chairman, Pali Branch of CIRC of ICAI ➤ CA. Harish Agarwal, Conference Coordinator & Chairman, Pali Branch of CICASA For Registration & Further Details contact at 02932-232220, Email: icaipalibranch@gmail.com Website: http://www.icai.org/new_category.html?c_id=121&newbg=true			

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
3.	National Conclave for CA Students Theme: SATSANG – Together for Progress	9 th & 10 th January 2016	At Nalanda Auditorium, Kurrial Ln, Mananchira, Kozhikode, Kerala	
Topics	1. Indirect Taxation (i) Reverse Charge Mechanism under Service Tax (ii) Service Tax on Works Contracts (iii) GST Regime – Impact on Indian Economy and Opportunities for CAs 2. Auditing under Companies Act, 2013 (i) Auditors Report under Companies Act, 2013 (ii) Companies (Auditor’s Report) Order, 2015 (iii) Schedule II – Depreciation – Practical Issues 3. Direct Taxation (i) Role of CAs in curbing Black Money (ii) Income Computation & Disclosure Standards- (ICDS) (iii) Tax Issues of HUF 4. Legal and Regulatory Framework (i) Strategies for Business Expansion- Case Studies (ii) Raising of Funds-Different Options (iii) Valuation of Shares – Recent Developments 5. Corporate Governance under Companies Act, 2013 (i) Corporate Social Responsibility (ii) Women Directors (iii) Independent directors 6. Information Technology and CA Profession (i) Challenges for IT and The Need of Stringent Cyber Law (ii) Forensic Accounting: Process and Scope (iii) Information System Audit 7. Special Motivational Session 8. Discussion on Opportunities for CAs in Future			
Fees	₹500/- per student	Accommodation (if required) @ ₹700/- per student		
Contact Person	➤ CA. Vinod Kumar A.P, Conclave Coordinator & Chairman, Calicut Branch of SIRC ➤ CA. Raghunandan S., Conclave Coordinator & Chairman, Calicut Branch of SICASA For Registration & Further Details contact at 0495-2770124, 2771008 & Email: calicut@icai.org Website: http://www.icai.org/new_category.html?c_id=121&newbg=true			
4.	National Convention for CA Students Theme: Empowering Excellence	22 nd & 23 rd January, 2016	Yogi Sabhagruha, Nr. Dadar Station, Dadar East, Mumbai	
Topics	1. Accounts & Taxes (i) Scrapping Wealth Tax & Increasing Service Tax to 14% - Revenue Impact (ii) IND AS or AS given by ICAI 2. Law, Audit & IT (i) Money Laundering Act (ii) Taxation on Permanent Establishments 3. Finance (i) Social Media as an Emerging Financial Opportunity (ii) How to win a better deal for your company? 4. Indian Economy (i) Indian Infrastructure & its comparison with the world (ii) Swacch Bharat Abhiyan: One Year Later (Current Scenario) 5. Special Session on Cloud Computing& Emerging Technologies 6. Debate Discussion: Worth of 3 years Articleship Training 7. Untapped Opportunities for Chartered Accountants 8. Panel Discussion: CAs as Entrepreneurs			
Fees	₹350/- per student			
Contact Person	➤ CA. Sanjeev Maheshwari, Convention Convener & Chairman, Accounting Standards Board, ICAI ➤ CA. Sunil Patodia, Convention Coordinator & Chairman, WIRC For Registration & Further Details contact at 022-33671424/21, Email: wicasa@icai.in Website: http://www.icai.org/new_category.html?c_id=121&newbg=true			

Events

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
5.	National Conclave for CA Students Theme: Spark The Light Ignite The Dream	23 rd & 24 th January, 2016	Shree Ram Ashram School, Majitha Road, Amritsar	
Topics	1. Direct Taxes (i) MAT & Allied Issues (ii) Taxability of Gifts (iii) Tax Issues relating to Business Restructuring 2. Banking & Finance (i) Risk Based Internal Audit under CBS (ii) Credit Analysis & Credit Management 3. Indirect Taxes (i) Reforms of Indirect Tax System under GST (ii) Reverse Charge Mechanism in Service Tax 4. Corporate Laws (i) New Companies Act, 2013-Burden or Opportunities for CAs (ii) Related Party Transactions-Procedures & Compliances (iii) Roles & Responsibilities of BOD 5. Accounts & Audit (i) Shift Towards IND-AS (ii) Forensic Accounting & Auditing -Tools of Investigation (iii) Due Diligence 6. Opportunities for CAs in Public Administration 7. Mock Income Tax Tribunal 8. Use of Finacle under CBS Environment 9. Dream Big, Think Big & Act Big			
Fees	₹500/- per student till 5 th January 2016 and thereafter Rs 600/- per Student	Accommodation (if Required) @ ₹1000/-		
Contact Person	➤ CA. C S Nanda, Conclave Convener & Chairman, Internal Audit Standards Board & Committee for Members in Industry, ICAI ➤ CA. Gaurav Gupta, Conclave Coordinator & Chairman, Amritsar Branch of NIRC ➤ CA. Bhavesh Mahajan, Conclave Coordinator & Secretary, Amritsar Branch of NIRC For Registration & Further Details contact at (0183) 2506361,9115003864/65/66/67, Email: amritsar@icai.org Website: http://www.icai.org/new_category.html?c_id=121&newbg=true			
6.	National Conclave for CA Students Theme: Stand Up! Stand Out!	25 th and 26 th January, 2016	ICAI Bhawan, Rajapuram, Tirupur	
Topics	1. Current Issues in Accounting (i) Schedule III of the Companies Act, 2013 (ii) Financial Reporting and Financial Frauds (iii) Towards Greener Accounting World 2. Developments in Financial Management (i) Raising money for your new startup (ii) Inflation - Influence a nation's economy (iii) Capital Budgeting – Planning it long 3. Taxation (i) Taxation of Capital Gains (ii) Survey, Search and Seizure under Income Tax Act (iii) GST – a “Game Changer” 4. Corporate and Other Laws (i) MCA 21 : Service Transformation (ii) Directors under Companies Act, 2013 (iii) Right to Information Act, 2005 5. Motivational Session 6. Winning Strategies for CA Examinations			
Fees	₹300 /-Per Student	Accommodation (if required) ₹250/- per student		
Contact Person	➤ CA. S. Rajesh Kannan, Chairman, Tirupur Branch of SIRC ➤ CA. Sonia Kumari Gupta, Chairperson, Tirupur Branch of SICASA For Registration & Further Details contact at 9894082482 and Email: tirupur@icai.org Website: http://www.icai.org/new_category.html?c_id=121&newbg=true			

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
7.	Sub Regional CA Students Conference Theme: BODHI 2015	26 th and 27 th January 2016	Hotel Merlin International, Near Railway Station, Trichur	
Topics	1. Goods and Services Tax (i) Impact on Indian Economy (ii) GST - International Experiences 2. Income Computation and Disclosure Standards (ICDS) (i) Analysis of ICDS II- Valuation of Inventory & ICDS III – Construction Contracts (ii) Analysis of ICDS IV- Revenue Recognition & ICDS IX- Borrowing Cost 3. Companies Act, 2013 (i) Exemptions to Private Company, Small Company and One Person Company (ii) Provisions of Companies Act relating to Auditors 4. Limited Liability Partnership (i) LLP vs. Private Company (ii) Accounting and Tax implications on Conversion of Companies in to LLP 5. International Taxation (i) Basics of International Taxation (ii) Concept of Arms length price in International Transfer Pricing 6. Foreign Exchange Management Act (FEMA) (i) Analysis of FDI Policy in the back drop of MAKE IN INDIA (ii) Capital and Current Account Transactions 7. Motivational Session 8. Success Strategies for CA Examinations– A winner’s Perspective			
Fees	₹300 /-Per Student	Accommodation @ ₹200/- Per Student		
Contact Person	➤ CA. Joseph TI, Conference Coordinator & Chairman Trichur Branch of SIRC ➤ CA. Vipin K K, Conference Coordinator & Chairman Trichur Branch of SICASA For Registration & Further Details contact at 0487-2253400, 2253800 Email: trichur@icai.org Website: http://www.icai.org/new_category.html?c_id=121&newbg=true			
8.	National Convention for CA Students Theme: Unlock Horizons Increase Opportunities	29 th & 30 th January, 2016	ICAI Bhawan, 43, Sector-20A, Faridabad	
Topics	1. Indirect Taxation (i) GST a broad overview (ii) Service tax – Reverse Charge Mechanism (iii)Returns under Central Excise Act & Rules 2. Direct Taxes (i) Scrutiny Assessment under Income Tax Act – emphasis on possible disallowances (ii) Effective Direct tax Planning for salaried person including emphasis on increase of net worth (iii)Search and Survey under Income Tax Act, introductory view 3. Self Development (i) CA as a complete business service provider (ii) Unlock your potential, create value, face challenges (iii)Path for a newly qualified CA – Attaining heights step by step 4. Information Technology/Economics (i) ERP Implementation – Role of CA (ii) Cloud Computing (iii)Competition Act, 2002 – Opportunities for CAs 5. Corporate Law (i) Companies Act, 2013 – emphasis on financial reporting aspects (ii) Appointment, Removal and Resignation of Auditors under Companies Act, 2013 (iii)NFRA – Critical Analysis 6. Self Motivation to Succeed (i) “Get-Set-Go” – A Journey towards achievement of goal (ii) “Secret of Success” – learn from others – Improve yourself (iii)3 D (Dream, Desire, Do) – “Win” 7. Winning Strategies for CA Examinations			
Fees	₹300 /-Per Student	Accommodation (if required) ₹1000/- per student		
Contact Person	➤ CA. C S Nanda, Convention Convener & Chairman, Internal Audit Standards Board & Committee for Members in Industry, ICAI ➤ CA. Santosh Kumar Agrawal, Chairman, Faridabad Branch of NIRC For Registration & Further Details contact at 0129 2223343, 2264343 & Email: faridabad@icai.org Website: http://www.icai.org/new_category.html?c_id=121&newbg=true			

Events

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
Committee on Financial Markets and Investors Protection				
Course Chairman: CA. Anuj Goel				
9.	Certificate course on Forex and Treasury Management	12 th Dec,2015	Mumbai	48
		12 th Dec,2015	Chennai	48
		9 th Jan,2016	Kolkata	48
Topics	The Certificate course covers the following topics: Module – I Chapter– 1 Treasury – Organizational 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 Module III Case Studies and Practical Concepts		
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			
Indirect Taxes Committee				
10.	Certificate Course on Indirect Taxes	09 th January, 2016 to 14 th February, 2016 (Only on Weekends) Time: 9.30 am to 5.30 pm	Chennai	70 Hours (50 Structured and 20 Unstructured)
		16 th January, 2016 to 21 st February, 2016 (Only on Weekends) Time: 9.30 am to 5.30 pm	• Mumbai • Hyderabad	
Topics	The Certificate Course covers the following topics: • Service Tax • Overview of Central Excise Law • Overview of Customs Law • CST/ VAT Laws • Foreign Trade Policy • GST • Case Law & Practical Case Studies			
Fees	₹ 20000/-			
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			
11.	Live Webcast on Service Tax,	22 nd January, 2016 Time 4:00pm to 6:00 p.m.	Online	2 hours.
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			
Organised by XBRL India jointly with Bombay Stock Exchange				
Conference Chairman: Chairman, Taxonomy Development & Review Committee, XBRL India				
12.	Conference on “XBRL – Today vs. Tomorrow”	22 th January, 2016 [Time: 9 AM to 5.30 PM]	BSE Convention Hall, P J Towers, Dalal Street, Mumbai- 400001	NIL
Topics	• Introductory Address by Hosts of the Conference • Address by CEO, XBRL International • Status of XBRL Implementation in India and Road Ahead • Technical Updates in XBRL- Formula Linkbase, Table Linkbase, etc. • Assurance in XBRL • Industry specific taxonomies • Impact on Corporate Reporting under Ind AS and the Ind AS Taxonomy • IR Update and the future of Corporate Reporting- Global Perspective • XBRL Solutions - Presentation by IT vendors			
Fees	₹ 900/- per participant			
Contact Person	Conference Co-ordinator: XBRL Secretariat, 011-30110467/457, xbrl@icai.in Koshy John, Mumbai: 022-33671419 For Registration & Further Details: in.xbrl.org			

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- Section 66A, 1545 (SC)

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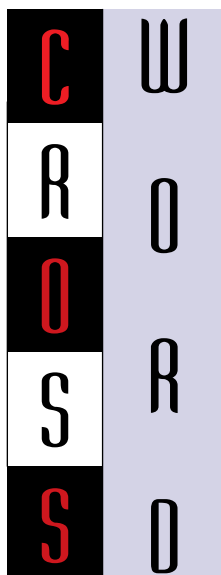
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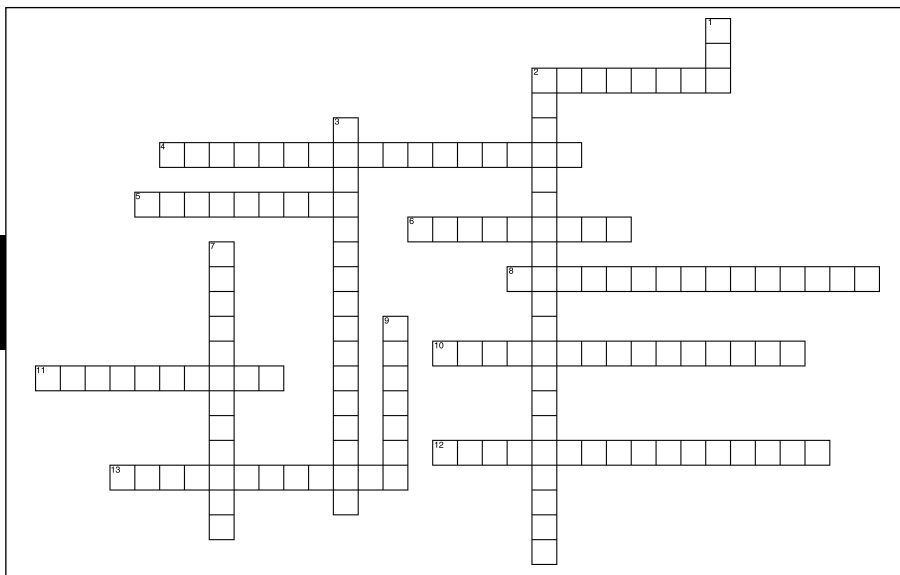
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ACROSS

2. When the auditor is an employee of the organization being audited (auditee), the audit is classified as _____ quality audit.
4. Initiative introduced by the Reserve Bank of India (RBI) which mandates automated reporting system for banks is termed as _____.
5. _____ is the situation when the purchasing power of the currency decreases.
6. The carrying amounts of assets and liabilities at the balance sheet date are adjusted only for _____ events or events that indicate that the going-concern assumption in relation to the whole entity is not appropriate.
8. _____ are assets other than goodwill that contribute to the future cash flows of both the cash-generating unit under review and other cash generating units.
10. _____ interest is the equity in a subsidiary not attributable, directly or indirectly, to a parent.
11. An entity shall _____ borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset as part of the cost of that asset.
12. A measurement system that translates mission, vision and strategy through objectives and measures and provides a framework to describe the key elements in the achievement of the strategy.
13. The difference between the risk-free rate and the bond yield is called.

DOWN

1. Persons who manufacture the excisable goods, which are chargeable to _____ rate of excise duty are not liable for central excise registration.
2. _____ refers to the rigorous process of defining, empirically measuring and communicating the true progress of innovation such as customer retention and usage patterns—whether for start-up companies, for new products or business units within established companies.
3. The process of sharing the risk through sharing the premium.
7. Providing a loan or overdraft facility or a credit limit facility in consideration for payment of interest is covered under _____ of service tax law.
9. Under the new Foreign Trade Policy, SEIS shall apply to the service providers _____ in India instead of Indian service providers.

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: Doctor, will I be able to play piano after the operation?
 B: Yes, of course.
 A: Great! I never could before!

SOLUTION CROSSWORD 114

