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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

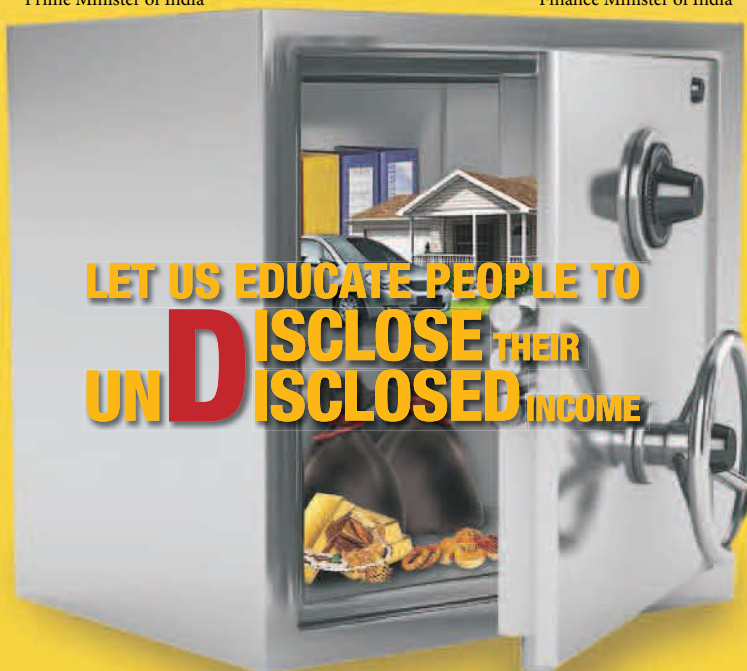
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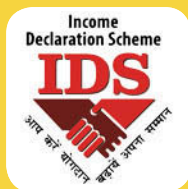
Shri Narendra Modi
Prime Minister of India



Shri Arun Jaitley
Finance Minister of India



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UNDISCLOSED THEIR
UNDISCLOSED INCOME



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Minister of State for Finance



Arjun Ram Meghwal
Minister of State for Finance
and Corporate Affairs



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IDS 2016 and Scourge of Black Money — The Role Chartered Accountants Can Play

Our Economy, which is tenth-largest in the world by nominal GDP and the third-largest by purchasing power parity, remains irrefutably robust even in present times of irregular global growth. However, the grand underlying vision and path of national economy are riddled with formidable hurdles and challenges. And the scourge of black money remains one of the biggest challenges in this regard. Black money has emerged as a grave menace affecting overall growth of our nation. There is no doubt that manifestation of black money in social-economic and political space of our lives can have diminishing effects on the institutions of our governance and conduct of public policy in our nation.

As the non-inclusion of such undisclosed wealth in the economic mainstream has far-reaching negative effects on the economy, the government is rightly geared up to check the menace. As such, a very important dimension to our tax administration in recent years has been the fight against the scourge of black money, which has been very forcefully taken care of in the Budget proposals in recent years. In this regard, the Income Declaration Scheme 2016, (IDS) as announced in Budget Proposals earlier this year, is the latest addition to the Government's anti-black money drive.

As a one-time compliance window of opportunity for defaulters, it is open till September 30 this year, the IDS 2016—incorporated as Chapter IX of the Finance Act 2016, is a welcome move to curb the generation and spread of black money and to make citizens the compliant tax payer. The scheme, which applies on undisclosed/unaccounted domestic income and assets for any assessment year prior to Assessment Year beginning on the 1st day of April 2017, gives an opportunity to tax evaders to disclose their unaccounted income or assets, and come out clean by paying the applicable tax, cess and penalty totalling 45% of the undisclosed income.

"There will be no questions asked by the government regarding the source of the income, this is an opportunity to make oneself a compliant tax payer," says Finance Minister Arun Jaitley adding: *"this is a 'disclosure' scheme and not an 'immunity' scheme... Immunity scheme allows discrimination against the honest tax payer. We don't want that; we want the honest tax payer to get premium."* It is hoped that the IDS 2016 emerges successful in achieving its objective like the Voluntary Disclosure of Income Scheme (VDIS) of 1997, which garnered revenue of over Rs. 7,800 crore for the government.

The Black money is a menace not only for national economy but global economy too. It transcends the borders and has created a global quandary. To check India-bound Black Money generation across borders, the *'The Black Money (Undisclosed Foreign Income and*

Assets) and Imposition of Tax Act, 2015' had also been enacted on 26th May, 2015, which provides for stringent taxation of undisclosed income in relation to foreign income and assets and acts as a strong deterrent against black money stashed away abroad by Indians. Soon after this new Act had been enacted, money held by Indians in Swiss banks fell to 1,815 million Swiss francs (about ₹12,615 crore). As a result, India moved down to 61st place in terms of foreigners' money in Swiss banks and accounted for a meagre 0.123% of the total global wealth worth \$1.6 trillion in the banking system of Switzerland.

Meanwhile, with the advent of tremendous increase in capital mobility and cross border transactions, state-run tax laws have been abused to evade double taxation and create black money. The information exposed through the *'Panama Papers'* leak has, unquestionably, impacted the tax administrators' wisdom worldwide. The global complexities in taxation laws arose owing to Base Erosion and Profit Shifting (BEPS). BEPS has led to massive revenue losses to the governments, particularly the developing countries.

The OECD and G20 countries collectively grasped this inventiveness to rationalise that every country gets its due share of tax and the tax payers do not elude paying tax in any country or pay the least tax by adopting different planning devices which are to a large extent tactics to evade tax. The OECD has formulated 15 Action Plans which provide tools to the establishments to encounter BEPS. India too has keenly participated in the process.

In this backdrop, as a partner in nation building, the Indian Chartered Accountant fraternity can play a crucial role in making the all-encompassing anti-black money drive a great success. Be it Income Declaration Scheme 2016, *The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015'* or BEPS, the Chartered Accountants, given their unique skill sets and exposure to every layer of Indian business and economy, are in a very strong position to implement the provisions of related laws, ensure compliance, spread awareness and convince Indian businesses against generation of black money in any form. It is worth mentioning that the ICAI is proactively helping the Government in promoting and propagating the Income Declaration Scheme 2016 through its nation-wide network.

It is indeed a difficult task to eradicate black money but it is achievable with the help of Indian CA fraternity. The recent measures taken by our Government can go a long way in this regard and help realise the dream of Indian economy going in for the double digit growth trajectory. ■

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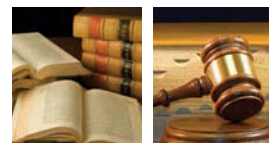
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From the President



CA. M. Devaraja Reddy
President, ICAI

“In his message to our Institute, Union Defence Minister Shri Manohar Parrikar had said: *The accountancy function (in India) continues to play a strategic role in providing value-added services to the stakeholders and takes key leadership roles to guide their organisations as creators, enablers, preservers and reports of sustainable value through the process of embedding sustainability deep within an economy.* Having expressed these words of sincere appreciation for CA profession, Hon'ble Defence Minister honoured us with his gracious presence at the Institute's main CA Day function as its Chief Guest on 1st July 2016. ”

My Dear Professional Colleagues,

The month of August holds a special significance for we people of India as we rejoice the event of our independence, remember and commemorate the hard work and sacrifices of our forefathers who made the dream of a free nation possible, as *Independence Day* on the 15th day of this month.

To me, our Independence Day means a strong memory of Mahatma Gandhi who chose a path less trodden, a path of Ahimsa - a non-violent, yet resilient struggle and a path of truth that causes our Father of Nation to be remembered and celebrated not yesterday or today but perhaps forever. Events such as these help us recollect our past, value our present and strive for a better future.

Of late, we have been into the process of introspection and self-transformation, reinforcing our commitment to act responsibly and with integrity. We believe that our commitment as a regulator should transcend the borders of legal and regulatory frameworks and stretch to being good in as many ways as it can. Some of these initiatives are:

Our Planet, Our Mother

As you recall, at ICAI, we had successfully implemented a new environment-friendly and paperless meeting management system on an enterprise wide basis and decided to phase out our Regional Council and Branch newsletters to digital mode. This only reaffirms my commitment that we are only responding to your command for a better environment.

Our Country, Our Support

With a will to harness our huge member base, i.e., about 2.6 lakh members, we have been constantly engaged with the Government to serve the nation. We have supported its policies and schemes, and its flagship programmes. For example, we have contributed for *Swachh Bharat Abhiyan*, *Swachh Vidyalaya Abhiyan* and *Swachh Bharat Pakhwada*.

We have willingly come forward and contributed to various dynamic laws and regulations including Companies Act, Income Computation and Disclosure Standards, Income Declaration Scheme, Model GST Law and Black Money Act. We have been quite conscious about our role in strengthening the fabric of financial framework of our nation. Challenges have always inspired us and made us agile and relevant. They in fact complete us. To agree with our Prime Minister

From the President

Shri Narendra Modiji here, I must say, *we love to challenge our challenges*.

Our students, Our Future

Ongoing revision in the CA curriculum will further improve the quality of our profession. We have held a series of meetings and workshops, held our ear to the ground and attempted to consolidate as much syllabus-related feedback to ensure that the new curriculum will be best in class and make us all very proud.

Let me now bring the focus on some of the important developments that have taken place in accountancy profession over the last one month:

68th CA Day— Celebrating 67 Years of Our Service to the Nation

CA Day, celebrated on 1st July every year, is yet another date to remember in our professional existence. Since I took over, I have realised that we need to decisively re-examine and rediscover our Institute. We realise that we have to do different things *and* do things differently. With constant efforts and endeavours, I must say, ICAI will emerge as an organisation that is more relevant, contemporary and a harbinger of economic and perhaps even social change.

In his message to our Institute, Union Defence Minister Shri Manohar Parrikar had said: *The accountancy function continues to play a strategic role in providing value-added services to the stakeholders and takes key leadership roles to guide their organisations as creators, enablers, preservers and reports of sustainable value through the process of embedding sustainability deep within an economy.*

Having expressed these words of sincere appreciation for CA profession, Hon'ble Defence Minister honoured us with his gracious presence at the Institute's main CA Day function as its Chief Guest on 1st July 2016. I am happy that our members and students at our Regional Councils, Branches and overseas chapters, joined hands and celebrated the CA Day by participating in a series of programmes and events like cleanliness drive, tree plantations, distribution of literacy kits and blood donation camps and more importantly in the programmes on Income Declaration Scheme, 2016. These activities demonstrated our commitment to nation and renewed our resolve to provide enlightened value-added services to the society. At the CA Day function in Delhi, very useful informative and participative sessions on the themes of

Emotional Intelligence and Income Disclosure Scheme, 2016 were conducted. A detailed report about the main CA Day function has been published in this issue of the Journal.

We Greet New Minister of State for Finance and Corporate Affairs

On behalf of the CA fraternity, I heartily congratulate and welcome Shri Arjun Ram Meghwal for taking over as the new Minister of State for Finance and Corporate Affairs. Recently I, along with Member of Parliament CA. Kirit Somaiya and ICAI Vice President CA. Nilesh Vikamsey met Shri Meghwal and re-committed our full support to various Government initiatives and policies. Shri Meghwal has been Member of various Parliamentary Committees and was awarded the Best Parliamentarian Award in 2013. I take this opportunity to also congratulate another Minister of State for Finance Shri Santosh Kumar Gangwar who earlier held the post of textiles minister. As we look forward to continued support from Ministry of Finance, I am sure that the two new Ministers of State will take Indian financial and corporate world into a new era of growth and development. Meanwhile, we also recently met Union Minister of Finance Shri Arun Jaitley to discuss issues of mutual interest and recommit our support in achieving the objectives of the Ministry.

Income Declaration Scheme, 2016—An Opportunity to Pay Tax and Come Clean

Hon'ble Union Finance Minister Shri Arun Jaitley recently voiced his concerns at three of the ICAI platforms, complimenting the ICAI for its role in disseminating and propagating the Income Declaration Scheme, 2016 not only amongst our members but also among business persons and other citizens.

On 2nd July 2016, the Hon'ble Finance Minister addressed through an ICAI webcast for *Citizen & Member Awareness Programmes on Income Declaration Scheme*. Later on 10th July, I had the privilege of sharing the stage with the Finance Minister when he addressed at a National Seminar on the Income Declaration Scheme in Ahmedabad, which was jointly organised by the Govt. of Gujarat in partnership with ICAI. Gujarat Chief Minister Ms. Anandiben Patel and Revenue Secretary Shri Hasmukh Adhia were also present at the Seminar. Appreciating the efforts put in by the ICAI, the Hon'ble Finance Minister said that the Institute jointly with the Department, promoted this initiative in a campaign mode throughout India so that assessee

From the President

can get prepared and take maximum benefit out of the Scheme. Finance Minister informed that the Income Declaration Scheme, 2016 aimed at giving the people an opportunity to declare their undisclosed income, pay taxes and come clean, without terrorising the people and being vindictive to them. He said: *...there is a sizeable dip in the Indian holdings outside the country. Today, there is a panic among people who hold illegal assets outside...This isn't an immunity scheme, but a disclosure scheme. This is a lifetime opportunity for those who have not disclosed their income.* He welcomed the fact that G-20 nations that control approximately 85 per cent of the world economy, have decided to extend their cooperation to the Govt of India in this regard by sharing information of illegal assets.

Then on 23rd July 2016, the Finance Minister addressed another programme on the Income Declaration Scheme, 2016 in Bengaluru, jointly organised by ICAI, FICCI FKCCI (Federation of Karnataka Chambers of Commerce and Industry) and Department of Income Tax. Here also, he expressed similar sentiments as at the Ahmedabad programme and said: *I do hope it is an opportunity for taxpayers to come out clean, sleep well and live with their heads held high. Those who pay taxes lead a life without fear and I am sure it is an opportunity which is granted.*

I am happy to share that earlier at a meeting called by Union Finance Minister on the Income Declaration Scheme, 2016, on 28th June 2016, we had the opportunity to separately raise some other issues of professional concerns and interests. We had also earlier met the Union Minister of State (Independent Charge) for Ministry of Commerce & Industry, Smt. Nirmala Sitharaman, as the Ministry of Commerce and Industry had sought our support in creating awareness about the Scheme.

Let's Help Government Achieve Financial Inclusion Agenda

Let us appreciate that Government's financial inclusion drive has started yielding results. With more than 23.37 crore accounts, Pradhan Mantri Jan Dhan Yojana has already provided access to banking services to more than 15% of unbanked population. More importantly cumulative balance of these accounts has also reached ₹40,000 crore. This is an encouraging trend which needs to be sustained. With our exposure to all levels of Indian business and society, we can play a vital role in facilitating financial inclusion and spreading financial literacy in the country for the ultimate benefit of economy.

We Convinced Govt. to Defer Applicability of ICDS by One Year

The Central Board of Direct Taxes (CBDT) has vide press release dated 6th July 2016 clarified that the Income Computation & Disclosure Standards (ICDS) shall be applicable from 1.4.2016 i.e. previous year 2016-17 (Assessment Year 2017-18). It is pertinent to inform that the ICAI had made detailed representation to CBDT and Hon'ble Finance Minister for deferment of implementation of ICDS and followed it up with several meetings with senior CBDT officials to highlight the difficulties that would be faced by stakeholders on implementation of ICDS. The representations made by ICAI were considered positively by the Expert Committee on ICDS and ICAI was asked to prepare detailed FAQs and amendments to ICDS which were duly submitted. The CBDT officials agreed with most of ICAI's recommendations and also agreed to bring out clarifications by way of issuing FAQ's and amendments in ICDS. However, in view of delay in redressal of issues in ICDS, delay in notification of FAQs and non-revision of tax audit report formats, it was requested to Finance Minister that implementation of ICDS and notification of revised tax audit report formats be postponed. We are thankful to the Government for favourably responding to the concerns of the stakeholders that were put forward by ICAI and deferring of applicability of ICDS by one year.

Applicability of Provisions of Rotation of Auditors as per Section 139 (2) of the Companies Act, 2013

At this juncture, I wish to take this opportunity to inform all our stakeholders that based on a representation made by the Institute, a Removal of Difficulty Order has been issued by the Ministry of Corporate Affairs recently wherein it has been stated that the provisions of Rotation of Auditors as per Section 139 (2) of the Companies Act, 2013, shall be complied by the company not later than the Annual General Meeting of the year 2017. The order will help in the removal of difficulties in implementing provisions of the rotation of auditors.

Lok Sabha MP CA. (Dr.) Kirit Somaiya Addresses ICAI Council

As the leader of Indian accounting fraternity, I thank one of our prominent members and Member of Parliament (Lok Sabha) CA. (Dr.) Kirit Somaiya for his continued support and guidance to the profession.

From the President

In line with that spirit, he recently addressed our Council and spoke his mind on how best the Indian accountancy profession could play a role in the best interests of the country and in making various growth-oriented government schemes and policies a success. While we commit our full support to his vision, we look forward to his backing to the profession in all times to come.

Our International Conference on 22nd-23rd October 2016 in Hyderabad

I am happy to inform that as part of the continuous professional development of our members, ICAI is organising a two-day International Conference *jñāna yajña—The Quest for Excellence* on 22nd-23rd October 2016 in Hyderabad. An apt platform to facilitate the exchange of ideas between global and local accountancy fraternities, the International Conference will be a window to future aiming to acclimatise the accounting fraternity to the demands of present economy. However, I would request my professional colleagues to register online for the Conference in advance at http://www.icaai.org/new_post.html?post_id=12786. I will again request everybody to block your dates so that you can plan your visit to Hyderabad and participate in the Conference.

Results of CA Final Examinations and CPT Declared

Results of the CA Final Examinations and Common Proficiency Test (CPT) held in May and June 2016 respectively have been declared recently. In the CA Final Examinations, 11.36 per cent candidates passed in both Groups and in Groups I and II, percentage was 14.47 and 21.30 respectively. I congratulate Mr. Sri Ram S from Salem for getting All India First Rank in the CA Final Examination. Mr. Kantheti Naga Venkata Viswa Upendra from Vijayawada and Mr. Yash Manoj Kumar Goyal from Jamnagar should also be congratulated for securing All-India Second and Third Rank respectively. At CPT held in June 2016, 38.98 per cent of the total candidates have passed, of which male and female percentage was 38.41 and 39.75 respectively. Let us congratulate all who have cleared their examinations. However, I would advise rest of the students to work harder and prepare better for the examinations again.

Encouraging Response to 'I Go Green with ICAI' initiative

You will appreciate that as part of ICAI's continuous green drive, we have taken a series of measures.

The latest initiative titled 'I Go Green with ICAI' encourages our members to discontinue receiving the hard copy of *The Chartered Accountant* journal and instead make use of its digital versions. In this regard we have created a micro web-page wherein members can unsubscribe the hard copy to support this initiative. However, there is also an option there to re-subscribe the hard copy at any given point of time.

I am happy to note that members have responded quite favourably and so far in a short span of a week, we have received consent from about 6000 members regarding discontinuation of receiving hard copy Journal. Let us opt to discontinue receiving the hard copy of *The Chartered Accountant* journal following a very simple process at our website.

Let me take this opportunity to wish all of you on the upcoming festivals of August—*Janmashtami* (also known as Krishna-Janmashtami or Krishnashtami, where we celebrate the birth of Lord Krishna), *Parsi New Year* (i.e. Nowruz) and *Raksha Bandhan* (celebrated as *Janai Purnima* in Nepal too). We must appreciate that these festivals give us opportunity to enjoy our community life and celebrate our togetherness and diversity.

Dalai Lama says: *This is my simple religion. There is no need for temples; no need for complicated philosophy. Our own brain, our own heart is our temple; the philosophy is kindness...Love and compassion are necessities, not luxuries. Without them, humanity cannot survive.*

Being a land of diversity, India has quite successfully survived as one of the most tolerant countries in the world for decades. Let us preserve its diversity and integrity respecting the existence of everybody around us, while not disturbing the order of love and harmony of our nation.

Best wishes

CA. M. Devaraja Reddy

President, ICAI

Hyderabad, 24th July 2016

Photographs

CA Day Celebrations in New Delhi



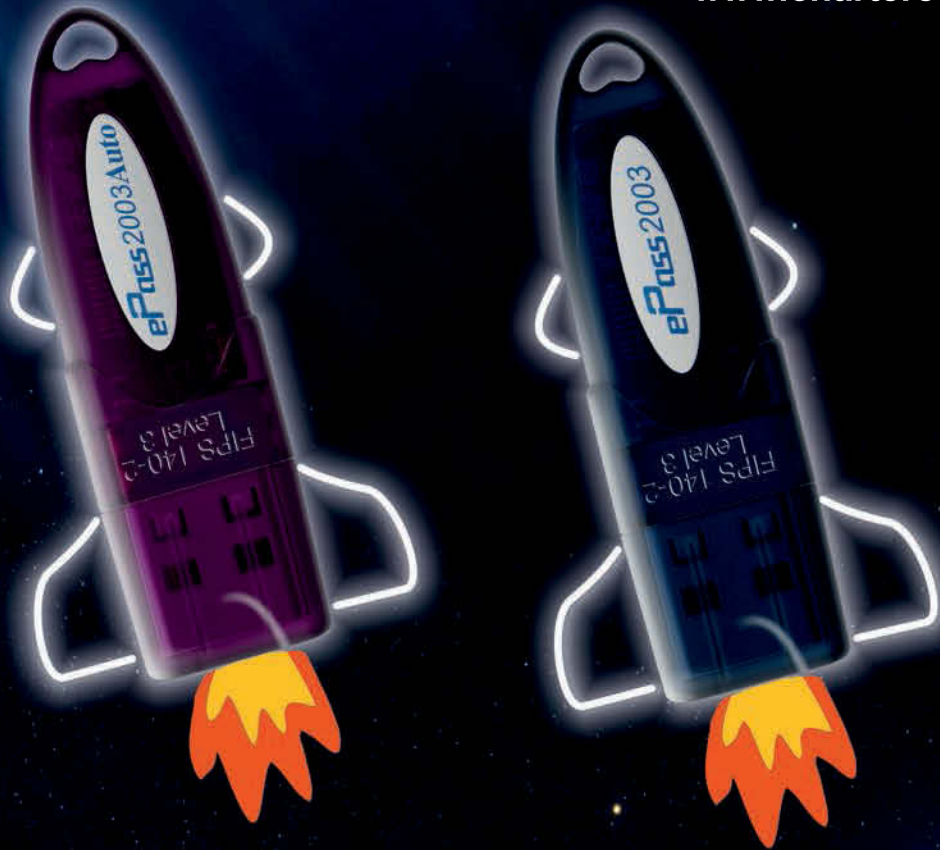
Rising to ICAI Motto Song

Union Defence Minister Shri Manohar Parrikar as Chief Guest at the dais along with ICAI President CA. M. Devaraja Reddy, Vice-President CA. Nilesh Shivji Vikamsey, Central Council member CA. Sanjay Agarwal, NIRC Chairman CA. Deepak Garg and ICAI Secretary Shri V. Sagar (1st July 2016)



ICAI Council Poses before ICAI Flag

ICAI President CA. M. Devaraja Reddy and Vice-President CA. Nilesh Shivji Vikamsey, along with their Central Council and NIRC colleagues and ICAI Secretary Shri V. Sagar, on the occasion (1st July 2016)



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Meeting with Union Finance Minister in New Delhi

ICAI President CA. M. Devaraja Reddy presents bouquet and greets Union Finance Minister Shri Arun Jaitley, in the presence of his Central Council colleagues CA. Ranjeet Kumar Agarwal and CA. Rajesh Sharma (2nd July 2016)



Meeting with Minister of State for Finance and Corporate Affairs in New Delhi

ICAI President CA. M. Devaraja Reddy and Vice President CA. Niles Shivji Vikamsey, along with Lok Sabha MP CA. (Dr.) Kirit Somaiya, in a meeting with Minister of State for Finance and Corporate Affairs Shri Arjun Ram Meghwal (13th July 2016)



IFAC Delegation Welcomed at ICAI

ICAI President CA. M. Devaraja Reddy presents memento to IFAC President Ms Olivia Kirtley, and ICAI Vice-President CA. Niles Shivji Vikamsey presents that to IFAC Executive Director Mr. Russell Guthrie. ICAI past President CA. K. Raghu and Central Council member CA. M. P. Vijay Kumar along with ICAI Secretary Shri V. Sagar and Director Shri Rakesh Sehgal share the moments (24th June 2016)



Karnataka State-Level CAs' Conference in Bangalore

Karnataka Minister for Large and Medium Industries & Tourism Shri R. V. Deshpande and Infosys Co-Founder Shri N. R. Narayana Murthy light the lamp to inaugurate the conference in the presence of ICAI President CA. M. Devaraja Reddy and Bangalore Branch Chairman CA. Pampanna B. E., among other members of SIRC and Branch managing committee (16th July 2016)

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Seminar on IDS, 2016 in Ahmedabad

ICAI President CA. M. Devaraja Reddy and his Central Council colleague CA. Dhinal Ashvinbhai Shah share the dais with Union Finance Minister Shri Arun Jaitley and Gujarat Chief Minister Smt. Anandiben Patel, while Ahmedabad Branch Chairman CA. Vikash Kumar Jain and other members of Branch Managing Committee share the moments (10th July 2016)



Citizen & Member Awareness Programme on IDS, 2016 in New Delhi

ICAI President CA. M. Devaraja Reddy and CBDT Chairman Shri Atulesh Jindal along with Central Council members CA. Sanjay Agarwal and CA. Naveen N. D. Gupta, and CBDT member Ms. Rani Singh Nair, among other officials of CBDT, at the programme jointly organised by ICAI, Ministry of Commerce & Industry and Ministry of Finance (2nd July 2016)



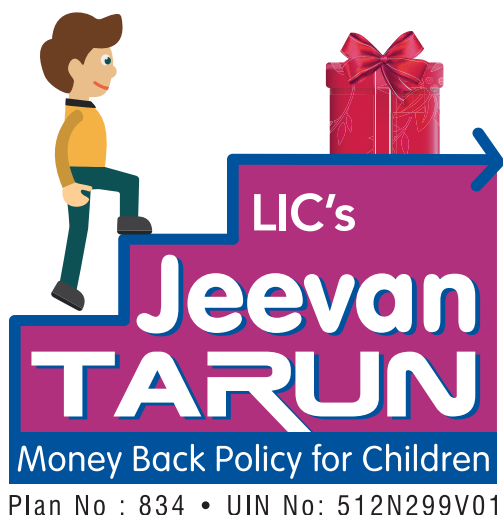
Interactive Session on IDS, 2016 in Mumbai

ICAI President CA. M. Devaraja Reddy and Vice President CA. Nilesh Shivji Vikamsey, along with Principal Chief Commissioner of Income Tax Shri D. S. Saxena, CIT-Mumbai Shri Vishwanath Jha, Central Council members CA. Sanjay Vasudeva and CA. Manu Agrawal, and WIRC Chairperson CA. Shruti Shah, among IT officials and members (14th July 2016)

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Investor Awareness Programme at Ernakulam Branch

ICAI Central Council member CA. Babu Abraham Kallivayalil and Branch Chairman CA. T. N. Suresh share the space with Union Railway Minister CA. Suresh Prabhakar Prabhu and Minister of State for Water Resources, River Development and Ganga Rejuvenation and the then Minister of State for Agriculture and Farmers Welfare Dr. Sanjeev Kumar Balyan, among other members of SIRC and Branch Managing Committee (16th June 2016)



Five-Day Workshop on Hedge Funds & Private Equity in Mumbai

ICAI President CA. M. Devaraja Reddy, Central Council members CA. Tarun Jamnadas Ghia and CA. Dhiraj Kumar Khandelwal and WIRC Chairperson CA. Shruti Shah, among others, at the inauguration of the workshop (15th July 2016)



Sub-Regional Conference of SIRC of ICAI

ICAI President CA. M. Devaraja Reddy lights the lamp to inaugurate the Conference, while his Central Council colleagues CA. Nihar Niranjan Jambusaria, CA. Rajesh Sharma, CA. Babu Abraham Kallivayalil and CA Sripriya Kumar, SIRC Chairman CA. E. Phalguna Kumar, and Branch Chairman CA. T. N. Suresh, among other members of SIRC and Branch Managing Committee (19th July 2016)

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The ICAI's International Conference "**Jñāna Yajña: The Quest for Excellence**" will be an *Idea lab* for propounding new thought leadership in areas at intersection between Governance, Standards Setting, Financial Reporting, Regulatory/Societal expectations, technological evolutions to augment growth for meeting aspirations of society at large. The International Conference would be an apt platform for ideas exchange and interactive dialogue amongst the global and local accounting fraternity. The International Conference is "**Window to Future**" to acclimatise the accounting fraternity to demands of a market driven economy; while being the Trustee of Public Interest.

Particulars	Online Delegate Fees Till 30 th September, 2016	Online Delegates From 1 st October, 2016
Members	INR 3000	INR 3500
Non Members	INR 3500	INR 4000
Foreign Delegates	USD 50	USD 100
SAFA/CAPA Country members	INR 3000	INR 3500

Complete details regarding the Conference will be available on the website www.icaai.org shortly. As a part of Green Initiative, we request the delegates to register and make payment online at www.icaai.org. Should that not be feasible, then only offline registration be sent. The Draft/Cheque should be issued favouring **Secretary, International Conference 2016 Hyderabad Collection A/c**.

For further details, please contact:

CA. Ravi Shankar Reddy M: 9397020120 Tel: 040 - 65356676	Mr. S. V. Ramana Reddy Tel: 040-65874333	Mr. M. Srinivas Reddy Tel: 040-65356676
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This is for the information of Members/subscribers who fail to receive *The Chartered Accountant* journal despatched to them either due to un-intimated change of address or postal problems.

Members and Students are requested to inform the respective regions immediately after you change the address to ensure regular and timely delivery of journals to you as the mailing list is drawn from ICAI's centralised database updated till 15th of every month. Subscribers are requested to mail their changed address to eb@icai.in.

Members can also update their address online in the 'Members' section placed on the top bar of ICAI website. The required link in the 'Members' section is titled 'Members: Update Your Residential and Professional Addresses' (<http://www.icai.org/addupdate/>). Fill the Membership No and Date of Birth to open the Form. Fill the Form to update your changed address.

After updating the address online, the member is also required to download the updated Form and submit the same at their respective regions with their signature. Please note that once updated in the respective regional head offices' records, the new address gets automatically updated in the centralised data base of the Institute, from where the journal mailing list is prepared.

While updating the address members can opt for their 'Residential Address' to receive the copy of the journal by clicking the option "Do you want to get your journal on Residential Address" at the bottom of the Form. Thereafter you will get your copy of the Journal at your residential address.

Any queries or complaints in this regard can also be sent by email at journal@icai.in (for members) and eb@icai.in (for students and Subscribers) or contact at 0120-3045921.

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(...Continued from July 2016 issue of 'The Chartered Accountant Journal')

CA. Piyush Goyal, Minister of State (Independent Charge) Power, Coal and New & Renewable Energy

पीयूष गोयल
PIYUSH GOYAL



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Message

I am delighted to note that Institute of Chartered Accountants of India (ICAI) is bringing out a special issue of its journal 'The Chartered Accountant' to commemorate the CA day i.e. on 01 July, 2016.

As many of you must be aware that India is leading the World by becoming the fastest growing economy and attracting highest FDI. This achievement was possible with various initiatives of Government such as Make in India, Start up India, Skill India, National Infrastructure Investment Fund, Pradhan Mantri Jan Dhan Yojana etc., coupled with the collaborative efforts of all the stakeholders including the ICAI for their role in ensuring stability and sustainability.

I appreciate the efforts of ICAI for the role played by them in disseminating high quality financial information and instilling confidence among various stakeholders and thereby propelling growth.

I convey my best wishes to my fellow Chartered Accountants on the eve of 'CA day' and urge them to partner Government of India, in shaping the economic and financial systems to provide sustainable double digit growth.

Piyush Goyal

Shram Shakti Bhawan, New Delhi-110 001 Phone : +91-11-23717474, 23710411, Fax : +91-11-23710065
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Ms. Vasundhara Raje, Chief Minister, Rajasthan



VASUNDHARA RAJE

CHIEF MINISTER RAJASTHAN

Message

I am glad to know that The Institute of Chartered Accountants of India (ICAI) is bringing out July-2016 Special Issue of ICAI Journal 'The Chartered Accountant' to mark its foundation day on 1st July, 2016.

I am confident that the ICAI will strive for constantly equipping its members with skills to deliver professional services of the best standards.

I wish the publication the very best.

(Vasundhara Raje)

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Shri Raghubar Das, Chief Minister, Jharkhand

रघुवर दास
Raghubar Das



मुख्यमंत्री
झारखण्ड सरकार
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MESSAGE

I am glad to know that The Institute of Chartered Accountants of India (ICAI) is celebrating 'Chartered Accountants Day' on 1st July, 2016 and a special issue of ICAI Journal 'The Chartered Accountant' is also being published to mark the occasion.

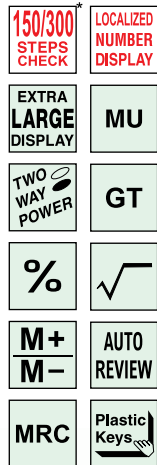
The Chartered Accountants are playing a crucial role in the management of financial system. With globalization and progress of economy, a rising number of businesses are being set up each day. This has brought into light their importance as Chartered Accountancy is the core of all businesses.

My best wishes on 'Chartered Accountants Day'.


(Raghubar Das)

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Calculators for CA Aspirants....



MJ-120DPlus

MJ-12Da

DJ-120DPlus



*150 steps – MJ-12Da

FOR CONSTANT / REPEATED CALCULATION

First make a number constant for required repeated calculation. After entering the number to be made constant, enter the calculation button twice for required repeated calculation. "K" will appear on the screen. (Now first number is always made constant)

For Multiplication (to repeatedly multiply any no. by 10)

-Enter 10 then enter $\times$ $\times$ (now 10 is constant multiplier)
-Enter next number you want to multiply e.g.50, now Enter $=$ 500 (ANS)
Enter $=$ again 5000 (ANS) and so on....

For Division (to repeatedly divide any no. by 10)

-Enter 10 then enter $\div$ $\div$ (now 10 is constant divider)
-Enter next number you want to divide e.g.50, now Enter $=$ 5 (ANS)
Enter $=$ again 0.5 (ANS) and so on....

For Addition (to repeatedly add any no. by 10)

-Enter 10 then enter $+$ $+$ (now 10 is constant additiorner)
-Enter next number you want to add e.g.50, now Enter $=$ 60 (ANS)
Enter $=$ again 70 (ANS) and so on....

For Subtraction (to repeatedly subtract any no. by 10)

-Enter 10 then enter $-$ $-$ (now 10 is constant subtractor)
-Enter next number you want to subtract from e.g.50, now Enter $=$ 40 (ANS), Enter $=$ again 30 (ANS) and so on....

HOW TO CALCULATE NPV USING CASIO D-PLUS & DA SERIES CALCULATOR

Example Question: There is a projects A . The initial capital outlay of A is Rs.1,35,000. There will be no scrap value at the end of the life of the projects .the cost of capital 16%. the cash inflows as under:

Year	1	2	3	4	5
Project A	—	30,000	1,32,000	84,000	84,000

Calculate NPV?

Steps: $NPV = \left[\frac{0}{(1.16)} + \frac{30000}{(1.16)^2} + \frac{132000}{(1.16)^3} + \frac{84000}{(1.16)^4} + \frac{84000}{(1.16)^5} \right] - 1,35,000$

1.Enter 1.16 then enter $\div$ $\div$ to make it constant for repeated calculation.

2.Enter 0 $=$ get 0 for 1st year

3.Enter 30000 $=$ $M+$ Get 22294.88 for 2nd Year

* $M+$ key is acting as $=$ and doing next division at the same time adding in memory also.

4.Enter 132000 $=$ $=$ $M+$ Get 84566.81 for 3rd Year

5.Enter 84000 $=$ $=$ $M+$ Get 46392.45 for 4th year

6.Enter 84000 $=$ $=$ $M+$ 39993.50 for 5th year

7.Enter MRC (you will get total sum 193248)

8.193248-135000 $=$ 58248 (Ans).

Example Question: A loan of Rs.30,000 at the interest rate of 6% compounded annually is to be amortized by equal payments at the end of each year for 5 years, find the annual payment.

Solution—

Steps 1. Type 1.06 $\div$ $\div$ (K sign will appear on the screen) Then enter 1 then enter $M+$ 5 times (.74725817283 will appear)

Step 2.Then type 30,000 then enter $\div$ button then enter MRC button then $=$ key ; we get the required result (Ans. 7121.89 will appear)

Profit/selling price Calculation

Method 1 :
 $100 + 10\% = 110$

Method 2 :
 $100 \times 10\% + 100 = 110$

Method 3 :
 $100 M+ \times 10\% M+ MRC = 110$

Discount/net price Calculation

Method 1 :
 $100 - 10\% = 90$

Method 2 :
 $- 100 \times 10\% + 100 = 90$

Method 3 :
 $100 M+ \times 10\% M- MRC = 90$

Method 4* :
 $100 \times 10(+/- \text{ key}) \% + 100 = 90$

*Applicable in DJ-220/240D Plus, MJ-12/100/120Da only.

Ms. Mehbooba Mufti, Chief Minister, Jammu & Kashmir



CHIEF MINISTER
Jammu & Kashmir



MESSAGE

I am glad to learn that the Institute of Chartered Accountants of India (ICAI) is bringing out a special issue of ICAI Journal- 'The Chartered Accountant', to mark celebration of 'Chartered Accountants Day', coinciding with its Foundation Day on July 1, 2016.

ICAI has an onerous responsibility of ensuring that its members conform to the exacting standards of accountancy. This has a direct bearing on the nature of corporate governance in this country, particularly in an environment where space for free enterprise is progressively increasing across many sectors. Investors have always kept an abiding faith in the accountants, because of their ability to check malpractices and, in the process, help protect their investments. Accountants have to ensure that the investors' faith in them is not eroded.

ICAI would also need to consider evolving a value based framework for the accountants. A system, which is underpinned on ethics, has always proved to be enduring. This is also necessary, as the chartered accountants are increasingly being associated these days in mounting oversight on the public moneys by way of certification of the spends made by the public entities. Since they are not subject to the same penal and disciplinary provisions as the government employees, it is imperative that the ICAI devises a failsafe architecture of checks and balances for them.

I hope that the ICAI would continue to provide not only the competent leadership to its members, but also keep guiding both the public and private sector institutions in improving their accounting regimes.

I wish the ICAI all the very best for its future endeavours.


(Mehbooba Mufti)

Treatment of expenditure incurred by the company on roads for transportation of coal

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

A. Facts of the Case

1. A company (hereinafter referred to as 'the company') was incorporated under the Companies Act, 1956 on 3rd April, 1992 after taking over of assets and liabilities of a company, S Limited in respect of mines in the state of Orissa. 100% of its equity is held by another company, C Ltd. and its nominees. The main objective of the company is to produce coal and its sale/despatch to various customers.
2. The querist has stated that during the year 2014-15, the company had revenue from operations of ₹11668.48 crore and profit before tax was ₹5314.24 crore. The balance sheet as at 31.03.2015 and profit and loss statement for the year 2014-15 has been supplied by the querist for the perusal of the Committee. It has 10 (ten) operating areas and each area is having number of mines. Most of the mines are opencast mines. One area Basundhara is situated in Sundargarh district, Orissa, which is very remote and 40 k.m. away from district city Sundargarh. It has no railway connectivity. This area has at present two operating mines Basundhara (West) open-cast and Kulda open-cast having last year's (2014-15) production of 37.23 lakh tonnes and 48.04 lakh tonnes, respectively. The surrounding areas are coal bearing and having huge future prospects. Siarmal and Garjanbahal are future approved projects in this area having projected annual production of 400 lakh tonnes and 100 lakh tonnes respectively. The rail connectivity between Jharsugada and Sardega (Basundhara area) is under construction.
3. The querist has further stated that due to non-availability of rail connectivity, despatch is done through road transport to nearest Kanika railway siding which is around 27 k.m. away from mines. The existing two lane road from Banki Bahal to Kanika railway siding through which coal is transported, is also extensively used by local villagers for transportation/communication purpose. This mixed traffic of local people with cycles, motor cycles, four wheelers, etc. along with coal loaded trucks and dumpers is causing inconvenience, traffic jams and is also causing regular accidents due to which blockage of roads and damage of vehicles are common phenomena in this road. The average coal transportation from mines of basundhara area is approximately 18000 tonnes per day. In future, there will be more coal transportation to liquidate more production. Hence, there was a business necessity and compulsion to widen this road to liquidate the coal stock and to maintain continuity of production. This road belongs to Works Department of the State Government. To find a solution to the management problem of transporting the coal, the company had a MOU dt. 07.05.2013 with the Works Department, Government of Odisha, for widening of two lane road to four lane from Banki Bahal to Kanika railway siding and for construction of two other roads.
4. The querist has also stated that the District Collector vide order dt. 12.08.2013 restricted movement of commercial vehicles from Banki Bahal to Kanika siding from 9 AM to 5 PM in compliance of order of Hon'ble High Court of Odisha dt. 12.07.2013. Further, the High Court directed to construct four lane road from Banki Bahal to Kanika Siding to avoid traffic congestion (copy of letter enclosed).
5. Accounting policies of the company for booking of development and prospecting and boring are enumerated below:
 - (1) Development:
Expenses net of income of the projects/mines under development are booked to Development Account and grouped under capital work-in-progress till the projects/mines are brought to revenue account. Except otherwise specifically stated in the project report to determine the commercial readiness of the project to yield production on a sustainable basis and completion of required development activity during the period of construction, projects and mines

under development are brought to revenue considering the following criteria:

- (a) From beginning of the financial year immediately after the year in which the project achieves physical output of 25% of rated capacity as per approved project report, or
- (b) 2 years of touching of coal, or
- (c) From the beginning of the financial year in which the value of production is more than total expenses.

- Whichever event occurs first.

(2) Prospecting & Boring and other Development Expenditure:

The cost of exploration and other development expenditure incurred in one 'Five year' plan period will be kept in capital work-in-progress till the end of subsequent two 'Five year' plan periods for formulation of projects, before it is written-off, except in the case of blocks identified for sale or proposed to be sold to outside agency which will be kept in inventory till finalisation of sale. Prospecting, boring and development expenditure are amortised from the year when the mine is brought under revenue in 20 years or working life of the project whichever is less.

6. The querist has also stated that based on the Memorandum of Understanding (MOU) with Works Department and since this is a deposit work, the company's management approved an estimate for widening of two lane road to four lane from Banki Bahal to Kanika railway siding (25.75 k. m.) for ₹266.50 crore with an instruction that the related expenditure to be booked under 'Intangible Assets' to be amortised every year. Accordingly, the deposits made to Works Department as per MOU during the year 2014-15 amounting to ₹39.43 crore was shown as 'Intangible Assets under construction' - Note 10(C) forming part of balance sheet (line item-Development) as at 31.03.2015. As per article 2.7 of the MOU, after completion of the projects, the roads shall be maintained by the company. While approving the proposal, it was observed by the management that neither the land to be acquired for widening the road nor the road will be the property of the company and these will remain the property of the Works Department, Government of Odisha with the company's responsibility to maintain the road as per

MOU. The proposed deposit work will facilitate unrestricted movement of coal laden trucks (in terms of timing) and the nearby villagers will also be beneficiaries.

7. During supplementary audit conducted by the Comptroller and Auditor General of India (CAG) under section 143(6) of the Companies Act, 2013, the booking of expenditure incurred during the year 2014-15 and its debit to intangible asset under construction were questioned and the management gave an assurance to CAG that the related matter would be referred to the Institute of Chartered Accountants of India for its perusal and valued opinion.
8. According to the querist, the management debited this expenditure to intangible asset on reasoning that the benefit of this expenditure will accrue to the entity for periods beyond one year and by MOU, the company gets an unrestricted right to use this asset by incurring annual running repair and maintenance expenditure. The future running repair and maintenance expenditure will be booked to revenue account to get a fair view of profit for the years.

B. Query

9. Based on the facts and the analysis as above, the querist has sought the opinion of the Expert Advisory Committee on the treatment of above expenditure.

C. Points considered by the Committee

10. The Committee notes that the basic issue raised by the querist relates to whether expenses incurred for widening of two lanes road to four lanes road, which is not owned by the company can be recognised as intangible asset. The Committee has, therefore, considered only this issue and has not considered any other issue that may arise from the Facts of the Case, such as, propriety of accounting policy for development, prospecting and boring expenses, accounting treatment of expenses on coal blocks, treatment of future running repair and maintenance expenditure incurred on roads, etc.
11. The Committee notes from the Facts of the Case that the company has two operating mines in Basundhara Area, from where the company produces coal for its sale/despatch to various customers. However, due to non-availability

of rail connectivity, despatch of coal is done through road transport (two lane road), where there is some restriction of movement of commercial vehicles. Therefore, the company has entered into an MoU with the Works Department, Govt. of Odisha, for widening of the existing two lanes to four lanes. As per the querist, in future, there will be more coal transportation to liquidate more production and hence, there is business necessity and compulsion to widen this road to liquidate the coal stock and to maintain continuity of production. However, the land on which the road is situated and the road will be the property of the Works Department, Government of Odisha. Now, the issue is whether expenses incurred for widening of two lanes road to four lanes road can be recognised as intangible assets in the books of the company. In this context, the Committee notes the following paragraphs from AS 26:

“6.1 An intangible asset is an identifiable non-monetary asset, without physical substance, held for use in the production or supply of goods or services, for rental to others, or for administrative purposes.

6.2 An asset is a resource:

(a) controlled by an enterprise as a result of past events; and

(b) from which future economic benefits are expected to flow to the enterprise.”

“14. An enterprise controls an asset if the enterprise has the power to obtain the future economic benefits flowing from the underlying resource and also can restrict the access of others to those benefits. ...”

From the above, the Committee notes that an expenditure incurred by an enterprise can be recognised as an asset only if it is a ‘resource controlled by the enterprise’. Thus, it is the control over the resource that is important for recognising an expenditure as an asset. The Committee further notes that as per paragraph 14 of AS 26, an enterprise controls an asset if the enterprise has the power to obtain the future economic benefits flowing from the underlying resource and also can restrict the access of others to those benefits. In this regard, the Committee notes from the Facts of the Case that the neither the land to be acquired for widening the road nor the road will be the property

of the company. These will remain the property of the Works Department, Government of Odisha, with the company’s responsibility to maintain the road as per the MOU. Further, it is noted that the querist has stated that the nearby villagers will also be beneficiaries. From this, it appears that although the work of widening the road will facilitate unrestricted movement of coal for the company, the company does not enjoy control in terms of restriction of access of others to the benefits arising from the widened road facility. Therefore, the Committee is of the view that the expenditure incurred on widening and construction of road on the land which is not owned by the company does not meet the definitions of the terms ‘asset’ and ‘intangible asset’. Accordingly, such expenditure cannot be capitalised as an intangible asset.

D. Opinion

12. On the basis of the above, the Committee is of the opinion that the expenditure incurred for widening of two lanes road to four lanes road cannot be capitalised as an intangible asset, as discussed in paragraph 11 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 January 11, 2016. The Opinion must, therefore, be read in the light of any amendments and/or other developments subsequent to the issuance of Opinion by the Committee. |
| 3 | The Compendium of Opinions containing the Opinions of Expert Advisory Committee has been published in thirty four volumes. A CD of Compendium of Opinions containing thirty four volume has also been released by the Committee. These are available for sale at the Institute's office at New Delhi and its regional council offices at Mumbai, Chennai, Kolkata and Kanpur. |
| 4 | Recent opinions of the Committee are available on the website of the Institute under the head ‘Resources’. |
| 5 | Opinions can be obtained from EAC as per its Advisory Service Rules which are available on the website of the ICAI, under the head ‘Resources’. For further information, write to eac@icai.in . |

Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC, FEMA, MCA, 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. Exemption from TDS to securitisation trust on income received from activity

of securitisation - Notification No. 46/2016, dated 17-06-2016

Section 197A provides that no deduction of tax shall be made under specified sections in the case of an individual, who is resident in India, if such individual furnishes to the person responsible for paying any income of the nature referred to specified sections, a declaration in writing in duplicate in the form 15G/15H and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil. Section 197A(1F) empowers the Central Government to notify specified payment to specified institution, association or body or class of institutions, associations or bodies, in respect of which no deduction of tax shall be made. Accordingly, the Central Government has notified that no deduction of tax under Chapter XVII of the Income-tax Act shall be made on the payments of the nature specified in section 10(23DA)¹ received by any securitisation trust as defined in clause (d) of the Explanation to section 115TC. The notification shall come into force from the date of its publication in the Official Gazette.

2. Exemption from TDS on specified payments made to banks etc. - Notification No. 47/2016, dated 17-06-2016

The Central Government deriving power under section 197A(1F) has notified that no deduction of tax shall be made on the payments of the nature specified below, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934, excluding a foreign bank, or to any payment systems company

authorised by the Reserve Bank of India under Section 4(2) of the Payment and Settlement Systems Act, 2007, namely:-

- (i) bank guarantee commission;
- (ii) cash management service charges;
- (iii) depository charges on maintenance of DEMAT accounts;
- (iv) charges for warehousing services for commodities;
- (v) underwriting service charges;
- (vi) clearing charges (MICR charges) including interchange fee or any other similar charges by whatever name called charged at the time of settlement or for clearing activities under the Payment and Settlement Systems Act, 2007;
- (vii) credit card or debit card commission for transaction between merchant establishment and acquirer bank.

The notification shall come into force from the date of its publication in the Official Gazette.

3. Extension of timeline specified for review of pre-existing individual account-Amendment in Rule 114H of Income-tax Rules, 1962-Notification No 48/2016, dated 20-06-2016.

The Rule 114H of the Income-tax Rules, 1962 has been amended vide this Notification.

In order to provide sufficient time to the reporting financial institutions for completing the due diligence procedure in respect of other reportable account referred to in Rule 114H (3)(d) (ii), which is high value account as on 31st December, 2015, the timeline specified for review of pre-existing individual account has been extended from 30th June, 2016 to 31st December, 2016. The timeline in case of U.S. reportable account which is low value account as on the 30th June, 2014, shall continue to be 30th June, 2016.

Similarly, in respect of other reportable account referred to in Rule 114H(5)(e)(i), timeline specified for review of pre-existing entity account has been extended from 30th June, 2016 to 31st December, 2016. The timeline in case of a U.S. reportable

¹ Section 10(23DA) provides that any income of a securitisation trust from the activity of securitisation shall not be included in its total income.

account shall continue to be 30th June, 2016. Further, Form No. 61B (Statement of Reportable Account under section 285BA(1)) has been substituted w.e.f 1st January, 2017.

4. Rule 10U amended to provide for prospective application of GAAR provisions-Notification No 49/2016, dated 22-06-2016

The Finance Act, 2012 had introduced the General Anti Avoidance Rules (GAAR) in the form of Chapter X-A by inserting sections 95-102 in the Income-tax Act, 1961. The provisions of Chapter X-A would be applicable in respect of assessment year 2018-19 and onwards. Section 101 empowers the CBDT to frame guidelines and conditions for proper application of this chapter. Accordingly Rules 10U to 10UC were notified providing for application of GAAR. Rule 10U dealing with certain cases for non-application of chapter X-A has been amended vide this Notification to provide for prospective application of GAAR provisions w.e.f 01.04.2017. By effect, the provisions of Chapter X-A shall now apply to any income accruing or arising to, or deemed to accrue or arise to, or received or

deemed to be received by, any person from transfer of investments made on or after 01.04.2017 (instead of 30.08.2010) by such person. Further, it is also provided that the provisions of Chapter X-A shall apply to any arrangement, irrespective of the date on which it has been entered into, in respect of the tax benefit obtained from the arrangement on or after 01.04.2017 (instead of 01.04.2015). These rules are called the Income-tax (16th amendment) Rules, 2016 and shall come into force from the date of their publication in the Official Gazette.

5. Procedure for online submission of TDS/TCS statements-Notification No 11/2016, dated 22-06-2016

The provisions relating to the statement of deduction of tax under section 200(3) and the statement of collection of tax under proviso to section 206C(3) of the Income-tax Act, 1961 are prescribed under rule 31A and rule 31AA of the Income-tax Rules, 1962 respectively. As per rule 31A(5) and rule 31AA(5), the Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes of furnishing and verification of the

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statements and shall be responsible for the day to day administration in relation to furnishing and verification of the statements in the manner so specified.

In exercise of power conferred by rule 31A(5) and rule 31AA(5), the Principal Director General of Income-tax (Systems) has laid down the following procedures of registration in the e-filing portal, the manner of the preparation of the statements and submission of the statements as follows:

The deductors/collectors will have the option of online filing of e-TDS/TCS returns through e-filing portal or submission at TIN Facilitation Centres. Procedure for filing e-TDS/TCS statement online through e-filing portal is as under:

- a. **Registration:** The deductor/collector should hold valid TAN and is required to be registered in the e-filing website (<https://incometaxindiaefiling.gov.in/>) as "Tax Deductor & Collector" to file the "e-TDS/e-TCS Return".
- b. **Preparation:** The Return Preparation Utility (RPU) to prepare the TDS/TCS Statement and File Validation Utility (FVU) to validate the Statements can be downloaded from the tin-nsdl website (<https://www.tin-nsdl.com/>). The statement is required to be uploaded as a zip file and submitted using either Digital Signature Certificate (DSC) or Electronic Verification Code (EVC). For DSC mode, the signature for the zip file can be generated using the DSC Management Utility (available under Downloads in the e-Filing website <http://incometaxindiaefiling.gov.in/>). Alternatively, deductor/collector can e-Verify using EVC.
- c. **Submission:** The deductor/collector is required to login to the e-filing website using TAN and go to TDS -> Upload TDS. The deductor/collector is required to upload the "Zip" file along with the signature file (generated as explained in para (b) above) or EVC.

EVC can be generated using one of the following modes:

- a. Net Banking - Principal contact person's net banking login (linked to the registered PAN) can be used to generate the EVC for the TAN of the deductor/collector.
- b. Aadhar OTP - The principal contact person's PAN can be linked with AADHAAR to use this option.
- c. Bank Account Number - The principal contact

person can use his pre-validated bank account details to avail this option.

- d. Demat Account Number - The principal contact person can use his pre-validated demat account details to avail this option.

This pre-generated EVC can be used to e-Verify the TDS return.

Once uploaded, the status of the statement shall be shown as "Uploaded". The uploaded file shall be processed and validated. Upon validation, the status shall be shown as either "Accepted" or "Rejected" which will reflect within 24 hours from the time of upload. The status of uploaded file is visible at TDS -> View Filed TDS. In case the submitted file is "Rejected", the rejection reason shall be displayed.

6. Relaxation from deduction of tax at higher rate under section 206AA - Notification No 53/2016, dated 24-06-2016

Section 206AA provides for deduction of tax at the higher of rate specified in the relevant provision of the Act or rate in force or at the rate of 20% in case of non-furnishing of PAN by the deductee to the deductor. Section 206AA(7) has been substituted by the Finance Act 2016 to, *inter alia*, provide that the provisions of the said section would not apply to a non-resident, not being a company, or to a foreign company subject to conditions to be prescribed. In exercise of the powers conferred by section 206AA(7)(ii) read with section 295, the CBDT has inserted new Rule 37BC to provide for relaxation from deduction of tax at higher rate under section 206AA. The provisions of section 206AA shall not apply to a non-corporate non-resident, or to a foreign company not having PAN in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset on furnishing to the deductor information like name, e-mail id, contact number, address in the country or specified territory outside India of which the deductee is a resident and tax identification number/unique number of the deductee in the country or specified territory of residence.

7. Foreign Tax Credit Rules notified - Notification No 54/2016, dated 27-06-2016

In exercise of the powers conferred by section 295(2)(ha) of the Income-tax Act, 1961, the CBDT has inserted a new Rule 128 in the Income-tax Rules, 1962 providing for procedure to be followed

by resident assesseees to claim credit of taxes paid in a foreign country from income chargeable to tax in India. These rules shall come into force on 01.04.2017.

The resident assesseees shall be allowed credit for any foreign tax paid in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India. Further, in a case where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India.

Foreign tax credit shall be available against the amount of tax, surcharge and cess payable under the Act but not in respect of any sum payable by way of interest, fee or penalty.

The credit will not be available in respect of any disputed foreign tax. However, the credit of such disputed tax shall be allowed for the year in which such income is offered to tax or assessed to tax in India if the assessee within six months from the end of the month in which the dispute is finally settled,

furnishes evidence of settlement of dispute and an evidence to the effect that the liability for payment of such foreign tax has been discharged by him and furnishes an undertaking that no refund in respect of such amount has directly or indirectly been claimed or shall be claimed.

The credit of foreign tax shall be the aggregate of the amounts of credit computed separately for each source of income arising from a particular country or specified territory outside India and shall be lower of the tax payable under the Act on such income and the foreign tax paid on such income.

The Rule also deals with the situation where Minimum Alternate Tax and Alternate Minimum Tax under section 115JB and 115JC, respectively, is applicable and the manner in which credit of foreign tax shall be allowed against such tax payable.. Further, it provides for documents to be furnished for claiming foreign tax credit which inter alia includes Statement in Form No 67 verified in the specified manner.

The Statement in Form No 67 shall be furnished on or before the due date specified for furnishing



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return of income under section 139(1) in the same manner as furnishing of return of income.

It is mandatory to furnish Form No 67 in a case where the carry backward of loss of the current year results in refund of foreign tax for which credit has been claimed in any earlier previous year or years.

8. Fair market value and reporting requirement for Indian concern - Indirect transfer provisions - section 9(1) of the Income-tax Act, 1961 - Notification No 55/2016, dated 28-06-2016

Under section 9 of the Income-tax Act, 1961, any income arising from transfer of any share of or interest in a foreign company or entity that derives its value substantially from the assets located in India, is deemed to accrue or arise in India.

For this purpose, following were to be prescribed:

- the manner of computation of fair market value (FMV) of Indian and global assets of the foreign company or entity,
- determination of income attributable to assets situated in India, and
- information or documents required to be maintained and furnished by the Indian concern under section 285A.

The draft rules in this regard were formulated and placed in public domain on 23-5-2016 for comments from stakeholders and general public. After due consideration of the comments received, the Government has notified the Rules vide S.O. No. 2226 (E), dated 28-6-2016. New Rules 11UB (Fair market value of assets in certain cases), 11UC (Determination of income attributable to assets located in India) and 114DB (Information or documents to be furnished under section 285A) have been inserted in Income-tax Rules, 1962. Also, new forms have been introduced for the purpose i.e. Form No. 3CT (Income attributable to assets located in India under section 9 of the Income-tax Act, 1961) and Form No. 49D (Information and documents to be furnished by an Indian concern under section 285A).

These rules will be applicable from the date of publication in the Official Gazette, i.e.; 28-6-2016. The rules and formulation thereof is part of the Government's continuing effort at providing predictable, transparent and fair tax regime.

9. Information contained in valid declarations under the Income Declaration Scheme, 2016 to be kept

confidential - Notification No 56/2016, dated 06-07-2016

Section 138 provides for provisions relating to disclosure of information in respect of assessee. Section 138(2) having a non-obstante clause provides that the Central Government may having regard to the practices and usages customary or any other relevant factors, by order notified in the Official Gazette, direct that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assessee or except to such authorities as may be specified in the order. The government in order to keep its commitment regarding keeping the confidentiality of the information submitted via a valid declaration by the person declaring undisclosed income under the Income Declaration Scheme, 2016 has issued an Order through this notification by exercising power under section 138(2). The Central Government having regard to all the relevant factors, has directed that no public servant shall produce before any person or authority any such document or record or any information or computerised data or part thereof as comes into his possession during the discharge of official duties in respect of a valid declaration made under 'the Income Declaration Scheme, 2016', contained in Chapter IX of the Finance Act, 2016.

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. Clarification on provisions of section 206C(1D)- Circular No. 23/2016, Dated 24-06-2016

In order to curb the cash economy, Finance Act, 2016 has amended section 206C of the Income-tax Act to provide that the seller shall collect tax at the rate of one per cent from the purchaser on sale in cash of certain goods or provision of services exceeding two lakhs rupees. The CBDT clarified certain issues relating to scope of provisions of section 206C by way of FAQs vide circular No. 22/2016 dated 8th June, 2016. The CBDT has further decided to clarify the issue as regards applicability of the provisions relating to levy of TCS where the sale consideration received is partly in cash and partly in cheque by issue of an addendum to the said circular in the form of question and answer. The FAQs have clarified that in a case where the sale consideration

received is partly in cash and partly in cheque, the TCS provisions would be applicable on the cash component of the sale consideration, and not the entire sale consideration. Further, if the cash receipt is less than ₹2 lakhs, TCS provisions would not be attracted even if total sale consideration exceeds Rs 2 lakhs.

2. Clarifications on the Income Declaration Scheme, 2016 via issue of FAQs—Circular No. 24/2016, Dated 27-06-2016 and Circular No 25/2016, Dated 30-06-2016

The Income Declaration Scheme, 2016 incorporated as Chapter IX of the Finance Act, 2016 provides an opportunity to persons who have not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totalling in all 45% of such undisclosed income declared. The Scheme came into effect on 1st June, 2016. Declarations under the Scheme may be filed upto 30th September, 2016. The Income Declaration Scheme Rules, 2016 have been notified. In this regard, Circular No. 17 of 2016 dated 20th May,

2016 issued by the CBDT provided clarifications to 14 queries. The CBDT has since received further queries from stakeholders seeking clarifications about various provisions of the Scheme. The CBDT has considered the same and the certain clarifications by way of FAQs are issued by way of Circular Nos 24/2016, dated 27.06.2016 and 25/2016, dated 30.06.2016. Circular No 24/2016, *inter alia*, provides clarifications on validity of declaration in case of part payment, eligibility of a non-resident to avail the scheme, furnishing of PAN and attaching the valuation report in form 1 (declaration) etc.

Circular No. 25/2016, *inter alia*, provides clarifications on issues such as confidentiality of information disclosed in the declaration, allowability of TDS credit against declared income, enquiry in respect of source of income and payment of tax and initiation of enquiry against third parties on the basis of information furnished in the declaration.

An issue regarding the advantage of declaring undisclosed income and assets under the Scheme vis-à-vis declaration of the same as current income for Assessment Year 2017-18 was also raised. In

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this regard it has been clarified that declaration of undisclosed income and assets as current income for Assessment Year 2017-18 would attract prosecution for false verification and also cannot explain acquisition of undisclosed assets in the past years. Attention of taxpayers has also been drawn to the comprehensive data-mining programme launched by the Department which will provide pin-pointed information about transactions undertaken by the taxpayer and the year to which the same relate. For detailed FAQs, please refer the said Circulars.

3. Applicability of section 197A(1D) and section 10(15)(viii) of the Income-tax Act, 1961 to interest paid by IFSC Banking Units (IBUs) - Circular No. 26/2016, Dated 04-07-2016

Section 197A of the Income-tax Act, 1961 provides the circumstances in which deduction of tax at source is not required to be made under Chapter XVII of the Act. Sub-section (1D) of this section provides that deduction is not required to be made by an Offshore Banking Unit on interest paid on deposit made on or after 1.4.2005 by a non-resident or a person not ordinarily resident in India, or on borrowing on or after 1.4.2005 from such persons. Section 10(15)(viii) provides that such interest will not be included in the total income. Offshore Banking Unit is defined in section 2(u) of the Special Economic Zones Act, 2005 as a branch of a bank located in a Special Economic Zone, which has obtained the permission under section 23(1)(a) of the Banking Regulation Act 1949.

The issue of applicability of section 197A(1D) and section 10(15)(viii) to interest paid by IFSC bank Units (IBUs) has been addressed by the CBDT in this Circular. IBUs are branches of Indian Banks or Foreign Banks having presence in India, which are established in accordance with the RBI Scheme dated 1.4.2015, in the International Finance Service Centers (IFSCs) that are set up within the Special Economic Zones, as per Section 18 of the Special Economic Zone Act, 2005. Thus, the IBUs fulfil the necessary criteria for being considered Offshore Banking Units as defined in section 2(u) of the Special Economic Zones Act, 2005.

In view of the above, the CBDT has clarified that in accordance with the provisions of Section 197A(1D), tax is not required to be deducted on interest paid by such IBUs, on deposit made on or after 1.4.2005 by a non-resident or a person who is not ordinarily resident in India, or on borrowings made on or after 1.4.2005 from such persons.

4. The Income Declaration Scheme 2016 - Issue of further FAQs - Circular No. 27/2016, Dated 14-07-2016

The Income Declaration Scheme, 2016 provides an opportunity to persons who have not paid full taxes in the past to come forward and declare their undisclosed income and assets. The Board has issued three sets of clarifications in the form of FAQs. The fourth set of Frequently Asked Questions (FAQs) providing clarification on various issues is issued via this Circular.

Queries have been received from various stakeholders whether the payment under the Scheme can be made out of undisclosed income without including the same in the income declared, thereby bringing down the effective rate of tax, surcharge and penalty payable under the Scheme to around 31%. The fourth set of FAQs seeks to set this issue at rest as follows:

“Question No. 6: With reference to Question No.5 issued vide Circular No.25 of 2016, wherein it has been stated that the department will not make any enquiry in respect of sources of income, payment of tax, surcharge and penalty, it may be clarified that whether the payment under the Scheme can be made out of undisclosed income without including the same in the income declared, thereby bringing down the effective rate of tax, surcharge and penalty payable under the Scheme to round 31 per cent?

Answer: It is clarified that the intent of the clarification issued vide Question No.5 of Circular No. 25 of 2016 was limited to conduct of enquiry by the Department. It in no way intends to modify or alter the rate of tax, surcharge and penalty payable under the Scheme which have been clearly specified in the Scheme itself. Sections 184 & 185 of the Finance Act, 2016 unambiguously provide for payment of tax, surcharge and penalty at the rate of 45 per cent of undisclosed income. This is illustrated by the following example—

In a case a person declares ₹100 lakh as undisclosed income, being the fair market value of undisclosed immovable property as on 1st June, 2016 and pays tax, surcharge and penalty or ₹45 lakh (30 lakh + 7.5 lakh + 7.5 lakh) on the same out of his other undisclosed income. In this case the declarant will not get any immunity under the Scheme in respect of undisclosed income of 45 lakh utilised for payment of tax, surcharge and penalty but

not included in the declaration filed under the Scheme. To get immunity under the Scheme in respect of the entire undisclosed income of ₹145 lakh (₹100 lakh being undisclosed income represented by immovable property and ₹45 lakh being the payment made from undisclosed income) and pay tax, surcharge and penalty under the Scheme amounting to ₹65.25 lakh i.e., 45 per cent of ₹145 lakh."

Other queries related to revision of declaration, chargeability of capital gain and TDS on transfer of property from benamidar to beneficial owner etc. have also been dealt with in the circular.

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

III. PRESS RELEASES/INSTRUCTIONS/OFFICE MEMORANDUM

1. Threshold Limit of tax audit under section 44AB and section 44AD - Press Release, dated 20-06-2016

Section 44AB of the Income-tax Act makes it obligatory for every person carrying on business to get his accounts of any previous year audited if his

total sales, turnover or gross receipts exceed one crore rupees. However, if an eligible person opts for presumptive taxation scheme as per section 44AD(1), he shall not be required to get his accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed two crore rupees. The higher threshold for non-audit of accounts has been given only to assessee's opting for presumptive taxation scheme under section 44AD.

2. Indo- Cyprus Double Taxation Avoidance Agreement- Press Release, dated 01-07-2016

An official level meeting between India and Cyprus took place in New Delhi on 28 and 29 June, 2016, to finalise the new India Cyprus Double Taxation Avoidance Agreement, wherein all pending issues, including taxation of capital gains, were discussed, and in principle agreement was reached on all pending issues. It was agreed to provide for source based taxation of capital gains on transfer of shares. However, a grandfathering clause would be provided for investments made prior to 1.4.2017, in respect of which capital gains would be taxed in the country of which taxpayer is a resident. These provisional

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agreements will now be placed before the Cabinet for its approval, subsequent to which the new tax treaty can be signed by the two countries.

Both sides also discussed the issue of notification of Cyprus under section 94A of Income-tax Act, 1961. It was agreed that India will consider rescinding the said notification with effect from 1st November, 2013, and will be initiating the process for the same. Both sides expressed satisfaction with the progress achieved in the meeting, and hoped that it would lead to resolution of all pending matters at the earliest.

3. Applicability of Income Computation and Disclosure Standards (ICDS) notified under section 145(2) of the Income-tax Act, 1961 – Press Release, dated 06-07-2016

Vide Notification No. SO 892 (E) dated 31st March, 2015, Central Government notified 10 Income Computation and Disclosure Standards (ICDS). These ICDS are applicable from 1.4.2015 i.e. previous year 2015-16 (Assessment Year 2016-17). Subsequent to notification of the ICDS, a number of representations were received which were examined by an Expert Committee. The Committee has recommended amendments to the notified ICDS and also issuance of clarification in respect of certain points raised by the stakeholders.

The revision of ICDS/issue of clarifications as recommended by the Committee, is under consideration. The revision of the Tax Audit Report is also being made for ensuring the compliance with the provisions of ICDS and for capturing the disclosures mandated by the ICDS.

Some of the tax payers might have filed their return of income and obtained Tax Audit Report without incorporating the compliance with the ICDS and related disclosures in the absence of the revised Tax Audit Report. Considering these facts, it has been decided that the ICDS shall be applicable from 1.4.2016 i.e. previous year 2016-17 (Assessment Year 2017-18).

4. The Income Declaration Scheme 2016 - Relaxation of time schedule for making payments under the Scheme – Press Release, dated 14-07-2016

During the course of meetings and seminars held in different parts of the country, various stakeholders have expressed concern that the time period available under the Scheme up to 30th November, 2016 for making payment of tax, surcharge and penalty is very short, especially where funds in liquid form are not readily available with the declarants. It

has also been mentioned that for making payment by 30.11.2016, the declarants may have to opt for distress sale of the assets.

Taking into consideration the practical difficulties of the stakeholders, the Government has decided to revise the time schedule for making payments under the Scheme as under:

- (i) a minimum amount of 25% of the tax, surcharge and penalty to be paid by 30.11.2016;
- (ii) a further amount of 25% of the tax, surcharge and penalty to be paid by 31.3.2017; and
- (iii) the balance amount to be paid on or before 30.9.2017.



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

A. SERVICE TAX

1. Services Provided prior to 31st May 2016 exempt from Krishi Kalyan Cess (KKC)

The Central Government vide Notification No. 35/2016-ST dated June 23, 2016 has exempted taxable services for which the invoice for the service has been issued on or before the 31st May, 2016, from the whole of Krishi Kalyan Cess provided that provision of service has been completed on or before the 31st May, 2016.

[Notification No. 35/2016 – ST dated June 23, 2016]

2. Transportation of goods by a vessel from outside India upto the customs station in India prior to 31st May 2016 exempt from Service Tax

The Central Government vide Notification No. 36/2016-ST dated June 23, 2016 has exempted from service tax the taxable services by way of transportation of goods by a vessel from outside India upto the customs station in India for which the invoice has been issued on or before the 31st May, 2016, provided that the import manifest or import report required to be delivered under section 30 of the Customs Act, 1962 has been delivered on or before the 31st May, 2016 and the service provider or recipient produces Customs certified copy of such import manifest or import report.

[Notification No. 36/2016-Service Tax, Dated: June 23, 2016]

B. CENTRAL EXCISE

3. Common registration and return for First Stage Dealer and Importer

The Central Government vide Notification No. 30/2016-Central Excise (N.T.), Dated: June 28, 2016

has provided that an assessee who is registered as a First Stage Dealer is exempt from taking registration as an importer and vice-versa. A single registration would suffice for both the activities at the option of assessee.

It has also been clarified that assessees opting for a single registration for both activities need to file a single quarterly return giving details of transactions as a first stage dealer and an importer, one after the other in the same table of the return.

[Notification No. 30/2016-Central Excise (N.T.), Dated: June 28, 2016 & Circular No. 1032/20/2016-CX, Dated: June 28, 2016]

4. Time limit for taking Registration under Central Excise by Jewellers

The Central Government vide Circular No. 1033/21/2016-CX dated July 1, 2016 has extended the time limit for taking central excise registration of an establishment by a jeweller upto 31st July 2016. Further, the central excise duty is liable to be paid from 1st March 2016, however jewellers may make the payment of excise duty for the months of March, 2016; April, 2016 and May, 2016 along with the payment of excise duty for the month of June, 2016

upto the extended date of July 31, 2016.

[Circular No. 1033/21/2016-CX dated July 1, 2016]

5. Procedure for supply of bunker fuels to Indian vessels carrying containerised cargo

Central Government vide Circular No. 1034/22/2016-CX, Dated: July 01, 2016 has prescribed procedure for clearance of indigenous bunker fuels (i) IFO 180 CST (ii) IFO 380 CST without payment of Central Excise duty for use in ships or vessels from bonded stocks of bunker fuel being maintained by the Oil Manufacturing Companies (OMCs) at the ports located in the coastal areas where the specified ships/vessels operate.

Procedures are prescribed for availing exemption, Submission of utilisation certificate, Reconciliation and recovery in the aforesaid clearance.

The same facility has also been extended the facility of removal of specified excisable goods from the factory of production to a warehouse or from one warehouse to another warehouse without payment of duty to bunker fuels for use in ships or vessels

[Circular No. 1034/22/2016-CX, Dated: July 01, 2016] [Notification No. 31/2016-Central Excise (N.T.), Dated: July 4, 2016]

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6. Recovery of confirmed demands during the pendency of stay application

Earlier the Central Government vide Circular No. 967/1/2013-CX dated 01.01.2013 provided clarification on the issue of recovery of confirmed demands during the pendency of stay application filed by the assessee. However, Hon'ble High Court of Punjab and Haryana judgment in case of M/s PML Industries Ltd. Vs Commissioner of Central Excise-2013-TIOL-201-HC-P&H-CX pronounced that during the pendency of stay, irrespective of the conduct of the assessee, no recovery could be made. SLP filed by the Department against this judgment has also been dismissed by the Hon'ble Supreme Court, thus upholding the decision of the Hon'ble High Court. Based on the decisions, Circular No. 967/1/2013-CX dated 01.01.2013 has been rescinded by the Government.

Also, in cases where stay application is pending before Commissioner (Appeals) or CESTAT for periods prior to 06.08.2014, no recovery will be made during the pendency of the stay application. For subsequent period i.e. from 06.08.2014 onwards, if the assessee has made the payment of stipulated amount as pre-deposit of 7.5% / 10%, and the copy of appeal memo is filed with the appellate authority to the jurisdictional authorities, no coercive measures for recovery of the balance amounts can be taken during the pendency of the appeal.

Further, as a measure of liberalisation and to ensure uniformity of practice the Central Government has clarified that recovery proceeding in relation to an order of Hon'ble High Court or Tribunal confirming demand of duty, may be initiated only after a period of 60 days from the date of order of the Hon'ble Tribunal or Hon'ble High Court, where no stay has been granted by Hon'ble High Court or Hon'ble Supreme Court against the order of Hon'ble Tribunal or Hon'ble High Court, respectively.

[Circular No. 1035/23/2016-CX dated July 4, 2016]

7. Excise duty on Jewellery-Increase in SSI Limit

As per the recent press release made by CBEC, Central Government has decided to increase for manufacturers of articles of jewellery or parts of articles of jewellery or both:

- a) The SSI Eligibility limit from ₹12 Crore to ₹15 Crore;
- b) The SSI Exemption limit from ₹6 Crore to ₹10 Crore in a financial year and ₹85 lakh for the Month of March, 2016;

Further, the government has accepted the recommendations of the sub-committee of the High Level Committee (Lahiri Committee) which are as follows:

- a. No requirement to submit any ground plan of the premises for taking Excise registration
- b. Excise Duty on jewellery is payable at first sale invoice value;
- c. In case the invoice does not show excise duty separately, the value for VAT will be treated as cum duty value [i.e. Value + Excise Duty];
- d. No Excise Duty may be payable on the sale of traded goods;
- e. Records maintained for State VAT and other private records, showing details of inputs, stocks, manufactured goods, sold/exported goods, etc. to be accepted for excise purposes. Stock details to be maintained on weight and cartage basis;
- f. Movement of jewellery, which does not involve sale, for example, movement of jewellery, to be shown as samples, branch transfers not involving sale, for display in exhibition, for hallmarking, and for approval before sale, may not be liable to excise duty. No transit checks by excise officers;
- g. When a retail customer brings jewellery [other than in form of gold or any precious metal] to a jeweller which is converted into new jewellery by the jeweller or a job worker of such jeweller, excise duty will be payable only on value addition, including cost of additional materials and labour charges charged, subject to the maintenance of certain records;
- h. Repairs and alterations, which do not change the identity, character and use of the goods and do not result in a new item is not "manufacturing" and may not attract excise duty;
- i. Excise Duty of 1 % without input and capital goods tax credit or 12.5 % with credit may apply to parts of articles of jewellery, made of platinum, gold and silver;
- j. An optional scheme may be prescribed for jewellers who are not able to maintain separate physical stocks and/or records of manufactured and traded goods. For availing the optional scheme, a principal manufacturer of jewellery shall maintain separate stocks on weight and/or carat basis separately for:
 - Silver studded jewellery;
 - Gold or platinum jewellery studded with diamonds; and

- Other gold or platinum jewellery [that is other than gold or platinum jewellery studded with diamonds]
- k. No excise audit may be carried out, for the first two years, for units whose duty payment (cash plus credit) is less than ₹1 crore, [that is turnover of manufactured goods less than ₹100 crore.]
- l. No visit, search and seizure at job workers premises;
- m. No visit to premises of the principal manufacturer [jeweller], except on the basis of specific intelligence and with the approval of Commissioner or equivalent rank officer
- n. Summons may be issued only with the approval of Commissioner

[Office Memorandum No. F. No.296/07/2016-CX.9 Dated: July 13, 2016]

C. CUSTOMS

8. Honnavar port in Karnataka appointed for unloading of imported goods and loading of export goods

CBEC vide *Notification No. 97/2016-CUSTOMS (NT)*, Dated: July 8, 2016 has declared the following as Customs Port in State of Karnataka for the purpose mentioned against it:

S. No.	Place	Purpose
1.	"(9) Honnavar	Unloading of imported goods and loading of export goods or any class of such goods."

[Notification No. 97/2016-CUSTOMS (NT), Dated: July 8, 2016]

9. Launch of special drive from 1.7.2016 to 30.9.2016 to resolve pending issues in drawback cases

Central Government vide *Instruction No. F.No.609/14/2014-DBK dated June 30, 2016* has decided to launch a concerted drive from 1.7.2016 to 30.9.2016 to -

- a) Weed out generalised queries or irrelevant requests for information in queried cases by undertaking a review of the database of queries and resolve such queried cases;
- b) Redress the above cited type of zero-zero drawback cases where exporters have produced the documents/replied to queries.

Further, zones are required to continue ensuring that there is no hold up of drawback and that processable case are disbursed timely.

[Instruction No. F.No.609/14/2014-DBK dated June 30, 2016]

10. Sale of goods at Duty Free Shops in Indian Currency

Central Government vide *Circular No. 31/2016-CUSTOMS*, Dated: July 6, 2016 has provided that the passengers are now permitted to purchase goods at duty free shops in Indian rupees up to an amount not exceeding ₹25,000/- as against earlier limit of ₹5,000/-.

Further, the Duty Free Shops are requested to display prices in Indian Rupees alongwith the rate of exchange as published by the commercial banks for conversion of foreign currency or the rate of exchange notified by the CBEC on a fortnightly basis for import and export of goods. Accordingly, the websites of DFS/Airports need to

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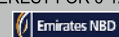
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be accurately updated with regard to the facility and limit in use of Indian currency for making purchases.

[Circular No. 31/2016-CUSTOMS, Dated: July 6, 2016]

11. Procedure for accounting storage etc. for Duty Free Shops

Central Government vide Circular No. 32/2016-CUSTOMS, Dated: July 13, 2016 has prescribed a system of accounting of receipt, storage, operations and removal of goods with regard to Duty Free Shops. The following has been provided for:

- Maintenance of records of warehoused goods only in digital form effective 14th May 2016.
- Filing of returns in relation to warehoused goods
- Acknowledgement of the receipt of goods in the warehouse
- Facilities such as computer, photocopier, scanner and printer at the warehouse.
- Procedure for removal of goods from the warehouse and accounting thereof
- Security and Solvency Requirements
- In-flight duty free shop
- Recovery of costs
- Administrative arrangements

For detailed circular, please visit www.cbec.gov.in

[Circular No. 32/2016-CUSTOMS, Dated: July 13, 2016]

12. Amendment in Import of Goods at Concessional Rate for manufacture of excisable goods rules.

Central Government vide Notification No. 100/2016-Customs (NT), Dated: July 14, 2016 has amended Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 to provide that these rules will apply mutatis mutandis to a service provider and any reference to the expressions manufacture, manufacturer, excise duty and factory in these rules will be construed as service, service provider, service tax and registered premises respectively of a service provider referred to in chapter V of the Finance Act, 1994 and the rules made thereunder.

Further, the time limit for Re-export or clearance of unutilised or defective goods under Rule 7 has been increased to 6 months from the existing limit of 3 months.

[Notification No. 100/2016-Customs (NT), Dated: July 14, 2016]



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

A. Foreign Exchange (Compounding Proceeding) Rules, 2000

A.P. (DIR Series) Circular No. 73 dated

May 26, 2016

To ensure more transparency and greater disclosure, it has now been decided as hereunder:

I. Public Disclosure of Compounding Orders

The compounding orders passed on or after June 1, 2016 will be hosted on website of Reserve Bank in following format:

Sr. No.	Name of Applicant	Amount imposed under compounding order	Whether the amount imposed has been paid	Download Order
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A new sub para no. 8.6 is added in Master Direction on Compounding.

II. Public Disclosure of guidelines on the amount imposed during compounding.

It has been decided to put the guidance note for calculation of amount imposed during compounding on the Bank's website for information of general public. The guidance note is meant only for the purpose of broadly indicating the basis on which the amount imposed is derived by the compounding authorities. The actual amount imposed may vary depending on the circumstances of the case taking into account the factors mentioned at para 7.3 of Master Direction.

The computation matrix is as under:

Type of Contravention	Existing Formula
i. Reporting Contraventions	Fixed Amount: ₹ 10,000/- (applied once for each contravention) +
a. FEMA 20	Variable amount as under:
Para 9(1)(A), 9(1)(B), Part B of FC-GPR, FCTRS (Reg 10), and taking on record FCTRS (Reg 4)	Upto 10 lakhs – 1000 per year
b. FEMA 3 - Non submission of ECB statements	₹ 10 – 40 lakhs – 2500 per year
c. FEMA 120 – non reporting / delay in reporting of acquisition/setup of subsidiaries/step down subsidiaries/changes in shareholding pattern	₹ 40 – 100 lakhs – 7000 per year
d. Any other reporting contraventions (except those in Row 2 below)	₹ 1 – 10 crore – 50000 per year
e. Reporting of contraventions by LO/BO/PO	₹ 10 – 100 crore – 100000 per year
	Above ₹ 100 crore – 200000 per year
	As above, subject to ceiling of Rs. 2 lakhs. In case of Project office, the amount imposed shall be calculated on 10% of total project cost.

Type of Contravention	Existing Formula
ii. AAC/APR/Share certificate delays In case of non submission / delayed submission of APR / shares certificates (FEMA 120) or AAC (FEMA 22) or FCGPR (B) returns (FEMA 20)	₹10,000/- per AAC/APR/FCGPB(B) return delayed. Delayed receipt of share certificate – ₹10,000/- per year, the total amount being subject to ceiling of 300% of the amount invested.
iii. A. Allotment refunds Para 8 of FEMA 20/2000-RB (non-allotment of shares or allotment/refund after the stipulated 180 days) B. LO/BO/PO (other than reporting contraventions)	₹30,000/- + given percentage: 1 st year – 0.30% 1-2 years – 0.35% 2-3 years – 0.40% 3-4 years – 0.45% 4-5 years – 0.50% > 5 years – 0.75% (For project offices the amount of contravention shall be deemed to be 10% of the cost of project).
iv. All other contraventions except corporate guarantee	₹50,000/- + given percentage: 1 st year – 0.50% 1-2 years – 0.55% 2-3 years – 0.60% 3-4 years – 0.65% 4-5 years – 0.70% > 5 years – 0.75%
v. Issue of corporate guarantee without UIN/without permission or any other contravention related to issue of corporate guarantees	₹5,00,000/- + given percentage: 1 st year – 0.050% 1-2 years – 0.055% 2-3 years – 0.060% 3-4 years – 0.065% 4-5 years – 0.070% > 5 years – 0.075% In case the contravention includes issue of guarantees for raising loans which are invested back into India, the imposed may be trebled.

The above amounts presently are subject to following provisos viz.

- The amount imposed should not exceed 300% of the amount of contravention.
- In case the amount of contravention is less than ₹1 lakh, the total amount imposed should not be more than amount of simple interest @ 5% p.a. calculated on the amount of contravention and for period of the contravention in case of reporting contraventions and @ 10% p.a. in respect of all other contraventions.
- In case of paragraph of 8 of Schedule I to FEMA 20/2000 RB contraventions, the amount imposed will be further graded as under:
 - If the shares are allotted after 180 days without the prior approval of Reserve Bank, 1.25 times the amount calculated as per table above [subject to provisos at (a) & (b) above]
 - If the shares are not allotted and the amount is refunded after 180 days with the Bank's permission: 1.50 times the amount calculated as per table above [subject to provisos at (a) & (b) above]
 - If the share are not allotted and amount is refunded



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without Bank's permission: 1.75 times the amount calculated as per table above [subject to provisos at (a) & (b) above]

- d. In the cases where it is established that the contravener has made undue gains, the amount thereof may be neutralised to a reasonable extent by adding the same to the compounding amount calculated as per the chart.
- e. If a party who has been compounded earlier applies for compounding again for similar contravention, the amount calculated as above may be enhanced by 50%

For calculating amount in respect of reporting contraventions at Point 1 of table above, the period of contravention may be considered proportionately [(approx. rounded off to next higher month/12) X amount for 1 year]. The total no. of days does not exclude Sundays/holidays.

B. Consolidated Foreign Direct Investment Policy Circular of 2016 dated June 07, 2016

Government of India issued consolidated FDI Policy of 2016. The present consolidation subsumes and supersedes all press notes/press releases/circulars issued by DIPPI, which were in force as on June 06, 2016 and reflect the FDI Policy as on June 07, 2016.

Following amendments have been made in the consolidated FDI Policy Circular of 2016:

- i. Some definitions have been amended and some new definitions have been added to the FDI Policy of 2016. Amended and new definitions are as under:
 - a. Definition of "Capital" has been amended and warrants and partly paid shares have been included in definition of capital. In erstwhile Policy of 2015, warrants and partly paid shares could be issued only under government approval route. The revised definition is as under:

'Capital' means equity shares; fully, compulsorily & mandatorily convertible preference shares; fully, compulsorily & mandatorily convertible debentures and warrants.

Note: *The equity shares issued in accordance with the provisions of the Companies Act, as applicable, shall include equity shares that have been partly paid. Preference shares and convertible debentures shall be required to be fully paid, and should be mandatorily and fully convertible. Further, 'warrant' includes Share Warrant issued by an Indian*

Company in accordance to provisions of the Companies Act, as applicable.

- b. Definition of "Control" is amended to include control in respect of Limited Liability Partnership and states that for the purposes of Limited Liability Partnership, 'control' will mean right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of the LLP.
- c. New definition of "Employees Stock Option" is included. It reads as under:

"Employees' Stock Option" means the option given to the directors, officers or employees of a company or of its holding company or joint venture or wholly owned overseas subsidiary/subsidiaries, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price.
- d. New definition of "Investment Vehicle" is included in FDI Policy of 2016. It reads as under:

'Investment Vehicle' shall mean an entity registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose and shall include Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (InvITs) governed by the SEBI (InvITs) Regulations, 2014 and Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012.
- e. Definition of "Non-Resident Indian" is amended and the new definition reads as under:

'Non-Resident Indian' (NRI) means an individual resident outside India who is a citizen of India or is an 'Overseas Citizen of India' cardholder within the meaning of section 7 (A) of the Citizenship Act, 1955. 'Person of Indian Origin' cardholders registered as such under Notification No. 26011/4/98 F.I. dated 19.8.2002 issued by the Central Government are deemed to be 'Overseas Citizen of India' cardholders.
- f. Definition of company "owned" by resident India citizens is amended and limited Liability Partnership is also included in the amended definition. In terms of amended definition a Limited Liability Partnership

will be considered as owned by resident Indian citizens if more than 50% of the investment in such an LLP is contributed by resident Indian citizens and/or entities which are ultimately 'owned and controlled by resident Indian citizens' and such resident Indian citizens and entities have majority of the profit share.

- g. New definition of "Sweat Equity Shares" is included in FDI Policy of 2016. It reads as under:

'Sweat Equity Shares' means such equity shares as issued by a company to its directors or employees at a discount or for consideration other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

- h. New definition of "unit" is included in FDI Policy of 2016. It reads as under:

'Unit' shall mean beneficial interest of an investor in the Investment Vehicle and shall include shares or partnership interests.

i. Definition of "Venture Capital Fund" is amended. The revised definition reads as under:

'Venture Capital Fund' (VCF) means an Alternative Investment Fund which invests primarily in unlisted securities of start-ups, emerging or early-stage venture capital undertakings mainly involved in new products, new services, technology or intellectual property right based activities or a new business model and shall include an angel fund as defined under Chapter III-A of SEBI (AIF) Regulations, 2012.

ii. Following shall be treated as eligible investors:

- A company, trust and partnership firm incorporated outside India and owned and controlled by NRIs can invest in India with the special dispensation as available to NRIs under the FDI Policy.
- A Non- Resident Indian may subscribe to National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA), provided such subscriptions are made through normal banking channels and the person is eligible to invest as per the provisions of the PFRDA Act. The annuity/accumulated saving will be repatriable.

iii. Eligible Investee Entities:

- FDI in LLPs is now permitted under automatic route in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions.
- An entity being 'investment vehicle' registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose including Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (InvIts)

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governed by the SEBI (InvIts) Regulations, 2014, Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012 and notified under Schedule 11 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 is permitted to receive foreign investment from a person resident outside India (other than an individual who is citizen of or any other entity which is registered/incorporated in Pakistan or Bangladesh), including an Registered Foreign Portfolio Investor (RFPI) or a non-resident Indian (NRI).

iv. Eligible Instruments:

An Indian company may issue warrants and partly paid shares to a person resident outside India.

v. Foreign investment in companies with no operations:

In erstwhile FDI Policy foreign investment into Indian company with no operations and does not have any downstream investment was under government approval regardless of the amount of investment. This has been amended and as per FDI Policy of 2016 for undertaking activities which are under automatic route and without foreign investment linked performance conditions, Indian company which does not have any operations and also does not have any downstream investments, will be permitted to

have infusion of foreign investment under automatic route. However approval of the 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.

vi. Share Swap:

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 (Earlier investment by swap of shares was under government route only).

vii. Limits of approval for cases under Government route:

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 ₹5000 crore. (Earlier this limit was ₹2000 crore)

The recommendations of FIPB on proposals with total foreign equity inflow of more than ₹5000 crore would be placed for consideration of Cabinet Committee on Economic Affairs (CCEA). (Earlier this limit was ₹2000 crore).

viii. Sectoral caps and sector specific conditions:

In following sectors/activities, changes have been made in sectoral caps or sector specific conditions:

Sector/Activity	% of equity cap/FDI cap	Entry route
Tea sector including Tea plantations Newly added - Coffee Plantations, rubber plantations, cardamom plantations, palm oil plantations, olive oil plantations	100%	Automatic
Manufacturing sector - A manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce without Government approval. (In erstwhile policy this was restricted only to manufacture of items reserved for MSEs)	100%	Automatic
Teleports (setting up of up-linking HUBs/Teleports); Direct to Home (DTH); Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalisation and addressability); Mobile TV; (5) Headend-in-the Sky Broadcasting Service (HITS)	100%	Automatic up to 49% Government route beyond 49%
Cable Networks (Other MSOs not undertaking upgradation of networks towards digitalisation and addressability and Local Cable Operators (LCOs))	100%	Automatic up to 49% Government route beyond 49%
Terrestrial Broadcasting FM (FM Radio), subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations	49%	Government
Up-linking of 'News & Current Affairs' TV Channels	49%	Government
Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels	100%	Automatic

Sector/Activity	% of equity cap/FDI cap	Entry route
Air Transport Service Non-Scheduled Air Transport Service	100%	Automatic
Ground Handling Services subject to sectoral regulations and security clearance	100%	Automatic
Construction Development: Townships, Housing, Built up Infrastructure. Conditions: a. Investor will be permitted to exit either on completion of project or after development of trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage or on after completion of lock in period of three years. b. Conditions for minimum area and capitalisation have been removed. c. Earning of rent/income on lease of property, not amounting to transfer, will not amount to real estate business. d. "Transfer", in relation to FDI policy on the sector, includes,— (i) the sale, exchange or relinquishment of the asset ; or (ii) the extinguishment of any rights therein; or (iii) the compulsory acquisition thereof under any law ; or (iv) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882) ; or (v) any transaction, by acquiring shares in a company or by way of any agreement or any arrangement or in any other manner whatsoever, which has the effect of transferring, or enabling the enjoyment of, any immovable property.	100%	Automatic
Satellites- establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	100%	Automatic
Cash and Carry Wholesale trading / wholesale trading (including sourcing from MSEs) - Following condition has been amended: A wholesale/cash & carry trader can undertake single brand retail trading, subject to the conditions of single brand retail trading. An entity undertaking wholesale/cash and carry as well as retail business will be mandated to maintain separate books of accounts for these two arms of the business and duly audited by the statutory auditors. Conditions of the FDI policy for wholesale/cash and carry business and for retail business have to be separately complied with by the respective business arms.	100%	Automatic
Single brand retail trading - Following conditions have been added/modified: a. A single brand retail trading entity operating through brick and mortar stores, is permitted to undertake retail trading through e-commerce b. An Indian manufacturer is permitted to sell its own branded products in any manner i.e. wholesale, retail, including through e-commerce platforms. c. Indian manufacturer would be the investee company, which is the owner of the Indian brand and which manufactures in India, in terms of value, at least 70% of its products in house, and sources, at most 30% from Indian manufacturers. d. Indian brands should be owned and controlled by resident Indian citizens and/or companies which are owned and controlled by resident Indian citizens. e. Government may relax sourcing norms for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible.		
E-commerce activities - E-commerce entities would engage only in Business to Business (B2B) e-commerce and not in Business to Consumer (B2C) e-commerce.	100%	Automatic

FDI Policy Circular of 2016 can be accessed at following link: http://dipp.nic.in/English/Policies/FDI_Circular_2016.pdf

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

Press Release dated 20th June 2016 and DIPP Press Note No. 5 (2016 Series) dated June 24, 2016

The Government of India has reviewed the extant FDI Policy on various sectors and made following amendments in the Consolidated FDI Policy Circular of 2016 issued on June 07, 2016.

This is the second major reform after the last radical changes announced in November 2015. Now most of the sectors would be under automatic approval route, except a small negative list.

The details of amendments made are as under:

- After para 3.7.1 of FDI Policy, following new para 3.7.2 is added:
For establishment of branch office, liaison office or project office or any other place of business in India if the principal business of the applicant is Defence, Telecom, Private Security

or Information and Broadcasting, approval of Reserve Bank of India is not required in cases where FIPB approval or License/permission by the concerned ministry/regulator has already been granted.

ii. **Para 5.2.1 is amended Animal Husbandry**

As per FDI Policy 2016, FDI in Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture and Apiculture is allowed 100% under Automatic Route under controlled conditions. It has been decided to do away with this requirement of 'controlled conditions' for FDI in these activities. Accordingly, conditions relating to animal husbandry "under controlled conditions" have also been deleted from the said para.

iii. **Para 5.2.5 of the FDI Policy is amended- Radical Changes for promoting Food Products manufactured/produced in India**

Following is added to para 5.2.5— Notwithstanding the FDI Policy provisions on trading sector, it has now been decided to permit 100% FDI under government approval route for trading, including through e-commerce, in respect of food products manufactured or produced in India. Applications for FDI in food products retail trading would be processed in the Department of Industrial Policy & Promotion before being considered by the Government for approval.

iv. **Para 5.2.6 is amended - Foreign Investment in Defence Sector up to 100%**

FDI above 49% was permitted through government approval on case to case basis, wherever it was likely to result in access to modern and 'state of art' technology in the country. In this regard, the following changes have inter-alia been brought in the FDI policy on this sector:

- The condition of access to 'state-of-art' technology in the country has been done away with. Thus, foreign investment beyond 49% has now been permitted through government approval route, in cases resulting in access to modern technology in the country or for other reasons to be recorded.
- FDI limit for defence sector has also been made applicable to Manufacturing of Small Arms and Ammunitions covered under Arms Act 1959.

v. **Para 5.2.7.1 is amended-Broadcasting Carriage Services**

FDI policy on Broadcasting carriage services has also been amended. New sectoral caps and entry routes are as under:

Sector/Activity	New Cap and Route
5.2.7.1.1 (1) Teleports (setting up of up-linking HUBs/ Teleports); (2) Direct to Home (DTH); (3) Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalisation and addressability); (4) Mobile TV ; (5) Headend-in-the Sky Broadcasting Service(HITS)	100% Automatic
5.2.7.1.2 Cable Networks (Other MSOs not undertaking upgradation of networks towards digitalisation and addressability and Local Cable Operators (LCOs))	
Infusion of fresh foreign investment, beyond 49% in a company not seeking license/permission from sectoral Ministry, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, will require FIPB approval	

vi. **Para 5.2.9 of FDI Policy is amended - Civil Aviation Sector**

- The extant FDI policy on Airports permits 100% FDI under automatic route in Greenfield Projects and 74% FDI in Brownfield Projects under automatic route. FDI beyond 74% for Brownfield Projects is under government route. It has now been decided to permit 100% FDI under automatic route in Brownfield Airport projects.
- As per the present FDI policy, foreign investment up to 49% is allowed under automatic route in Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline and regional Air Transport Service. It has now been decided to raise this limit to 100%, with FDI up to 49% permitted under automatic route and FDI beyond 49% through Government approval. For NRIs, 100% FDI will continue to be allowed under automatic route. However, foreign airlines would continue to be allowed to invest in capital of Indian companies operating scheduled and non-scheduled

air-transport services up to the limit of 49% of their paid up capital and subject to the laid down conditions in the existing policy.

vii. **Para 5.2.13 of FDI Policy is amended-Private Security Agencies**

The extant policy permits 49% FDI under government approval route in Private Security Agencies. FDI up to 49% is now permitted under automatic route in this sector and FDI beyond 49% and up to 74% would be permitted with government approval route.

viii. **Para 5.2.15.3 of FDI Policy is amended - Single Brand Retail Trading**

It has now been decided to relax local sourcing norms up to three years and a relaxed sourcing regime for another five years for entities undertaking Single Brand Retail Trading of products having 'state-of-art' and 'cutting edge' technology. Thereafter provisions of para 5.2.15.3 (2)(e) will be applicable.

ix. **Para 5.2.27 of FDI Policy is amended - Pharmaceutical**

The extant FDI policy on pharmaceutical sector provides for 100% FDI under automatic route in Greenfield Pharma and FDI up to 100% under government approval in Brownfield Pharma. It has now been decided to permit up to 74% FDI under automatic route in Brownfield pharmaceuticals and government approval route beyond 74% will continue.

FDI in Brownfield pharmaceuticals, under both automatic and government approval route is further subject to following conditions:

- a. The production level of National List of Essential Medicines (NLEM) drugs and/or consumables and their supply to the domestic market at the time of induction of FDI, being maintained over the next five years at an absolute quantitative level. The benchmark for this level would be decided with reference to the level of production of NLEM drugs and/or consumables in the three financial years, immediately preceding the year of induction of FDI. Of these, the highest level of production of any of these three would be taken as the level.
- b. R&D expenses being maintained in the value terms for 5 years at an absolute quantitative level



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at the time of induction of FDI. The benchmark for this level would be decided with reference to the highest level of R&D expenses which has been incurred in any of the three financial years immediately preceding the year of induction of FDI.

- c. The administrative ministry will be provided complete information pertaining to the transfer of technology, if any, along with the induction of foreign investment into the investee company.

D. Foreign Exchange Management (Foreign Currency Accounts by a Person resident in India) Regulations, 2015

A.P. (DIR Series) Circular No. 77 dated June 23, 2016 and Notification No. FEMA 10R/1/2016-RB dated June 1, 2016

Regulation 5 of FEMA 10R has been amended and new sub Regulation E is inserted:

To be in line with Government's initiative of start-up India, it has been decided that an Indian startup, having an overseas subsidiary, may open a foreign currency account with a bank outside India for the purpose of crediting to the account the foreign exchange earnings out of exports/sales made by the said startup or its overseas subsidiary.

The balances in such accounts to the extent they represent exports from India, shall be repatriated to India within the period prescribed in Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 dated January 12, 2016, as amended from time to time, for realisation of export proceeds.

Explanation: For the purpose of this sub-regulation a 'startup' means an entity which complies with the conditions laid down in Notification No. G.S.R 180(E) dated February 17, 2016 issued by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India."

In addition, payments received in foreign exchange by an Indian startup arising out of sales/export made by the startup or its overseas subsidiaries will be a permissible credit to the EEFC account maintained by the startup in India.

Regulation 5 is amended and existing sub regulation E is renumbered as sub regulation F and sub regulation F(3) is substituted by following:

Insurance/reinsurance companies registered with Insurance Regulatory and Development Authority

of India (IRDA) to carry out insurance/reinsurance business may open, hold and maintain a Foreign Currency Account with a bank outside India for the purpose of meeting the expenditure incidental to the insurance/reinsurance business carried on by them and for that purpose, credit to such account the insurance/reinsurance premia received by them outside India.

E. Permitting writing of options against contracted exposures by Indian Residents

A.P. (DIR Series) Circular No. 78 dated June 23, 2016

As announced in the Bi-Monthly Monetary Policy Statement on April 7, 2015, in order to encourage participation in the Over the Counter (OTC) currency options market and improve its liquidity, it has been decided to permit resident exporters and importers of goods and services to write (sell) standalone plain vanilla European call and put option contracts against their contracted exposure, i.e. covered call and covered put respectively, to any AD Cat-I bank in India subject to operational guidelines, terms and conditions given in Annex I to this circular.

F. External Commercial Borrowings – Approval Route cases

A.P. (DIR Series) Circular No. 80 dated June 30, 2016

In terms of the Circular/Direction of ECB, cases coming under the approval route were required to be considered by an Empowered Committee set up by the Reserve Bank based on the parameters stated therein.

With a view to rationalising and expediting the process of giving approval, it has been decided that ECB proposals received in the Reserve Bank above a certain threshold limit (refixed from time to time) be placed before the Empowered Committee. The Reserve Bank will take a final decision in the cases taking into account the recommendation of the Empowered Committee.

G. Settlement System under Asian Clearing Union (ACU)

A.P. (DIR Series) circular No. 81 dated June 30, 2016

Presently participants in ACU mechanism have the option to settle their transactions either in 'ACU Dollar' or in 'ACU Euro'. The 'ACU Dollar' and 'ACU Euro' is equivalent in value to one US Dollar and one Euro, respectively.

As the payment channel for processing 'ACU

Euro' transactions is under review, it has become necessary to temporarily suspend operations in 'ACU Euro' with effect from July 01, 2016. Accordingly, all eligible current account transactions including trade transactions in 'Euro' are permitted to be settled outside the ACU mechanism until further notice.

H. Discontinuation of reporting of Bank Guarantee on behalf of service importers

A.P. (DIR Series) Circular No. 82 dated July 07, 2016

Presently in terms of para no. of the Master Direction No.8 dated January 01, 2016 on 'Other Remittance Facilities' in terms of which, AD Category-I banks were permitted to issue guarantees in favour of a non-resident service provider on behalf of their resident customers importing services, subject to the conditions laid therein. AD Category-I banks were also advised vide para no.1, Part X of the Master Direction on 'Reporting under Foreign Exchange Management Act, 1999' dated January 1, 2016, to report to the Chief General Manager-in- Charge, Foreign Exchange Department, Foreign Investments Division (EPD), Reserve Bank of India, Central Office, Mumbai-400001 details about invocation of bank guarantee for service imports.

On a review of the reporting requirements and to reduce the burden of compliance, AD Category I banks are advised to discontinue submission of such reports with immediate effect. They may, however, maintain records of such invocations and furnish the required details to RBI whenever sought.

CORPORATE LAWS



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

MCA (www.mca.gov.in)

MCA notification no. G.S.R(E) dated 14th July 2016 - Companies (cost records and audit) Amendment Rules, 2016

MCA has amended the Companies (cost records and audit) Rules 2014 with the aforesaid notification. The amendments deal with aspects like definition of cost audit report, certifications before appointment of cost auditor, provisions for removal of cost auditor, filing of returns with ROC etc. The amendments also deal with applicability of cost records and audit to certain industries. For complete text of the

notification, please refer the link: http://www.mca.gov.in/Ministry/pdf/Rules_15072016.pdf

SEBI (www.sebi.gov.in)

SEBI circular no. CIR/CFD/FAC/62/2016 dated 5th July 2016 – Revised Formats for Financial Results and Implementation of Ind-AS by Listed Entities

SEBI has issued the aforesaid circular to prescribe various guidelines for implementation of IndAS for listed entities. The circular specifies formats for declaration of Unaudited/Audited quarterly financial results by the listed companies. It also lays down detailed guidelines with respect to Implementation of Ind-AS during the first year i.e. financial year 2016-2017 and various other clarifications on issues with regard to Ind-AS implementation. For complete text of the circular, please refer the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1467712561526.pdf

RBI (www.rbi.org.in)

RBI Master Circulars dated 1st July 2015 and Master Directions dated 7th July 2016

As an annual practice RBI has issued master circulars and directions applicable for various financial market entities. These circulars and consolidate instructions on the subject matters issued up to June 30, 2015. For a complete list of all master circulars, please refer the links: https://rbi.org.in/Scripts/BS_ViewMasterCircularDetails.aspx and https://rbi.org.in/Scripts/BS_ViewMasterDirections.aspx

RBI Circular no. DBR.BP.BC.No.106/21.07.001/2015-16 dated 23rd June 2016 - Implementation of Indian Accounting Standards (Ind AS)

Banks have already been directed by RBI to be in preparedness to submit proforma Ind AS Financial Statements from the half-year ended September 30, 2016 and onwards. RBI has directed that Banks shall also refer to the Report of the Working Group on "Implementation of Ind AS by Banks in India". The Proforma Ind AS Financial Statements shall include the Balance Sheet including Statement of Changes in Equity, Profit and Loss Account and Notes. The circular also lays down the various disclosure requirements for significant accounting policies and the approach on exemptions under Ind AS 101 First Time Adoption of Indian Accounting Standards. For complete text of the circular, please refer the link: <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10456&Mode=0> ■

Legal Decisions¹



Income Tax

LD/65/01

Commissioner of Income Tax, New
Delhi

Vs.

Dinesh Jain

12th April 2016 (SC)

Section 271D / 271E: Penalty on failure to comply with Sec. 269SS and 269T regarding accepting or repaying loans in cash exceeding ₹ 20,000/-.

Revenue's SLP against Delhi HC order deleting penalty levied u/s 269T dismissed; However, question of law of limitation for purposes of Sec. 275(1)(c) left open.

The assessee Mr. Dinesh Jain had assigned the loan taken from one MGF Development to his wife by passing a journal entry and no repayment of loan was made to the lender either by the assessee or his wife. The AO initiated penalty proceedings u/s 271E for AY 2009-10 and passed the assessment order on 11/12/2011. Assessee contended there was no loan repayment to MGF Development Ltd but "only substitution of one debtor by another", due to which no penalty u/s. 271E was leviable.

A notice was issued by the JCIT on 12/03/2012. The JCIT imposed penalty on 14/09/2012. CIT (A) held that since AO had initiated penalty proceedings on 05/12/2011 itself, the penalty order was beyond the period prescribed u/s 275 (1) (c). ITAT also ruled in favour of assessee.

As per sec. 275(1)(c), no penalty order shall be passed after expiry of the financial year in which proceedings in the course of which action for imposition of penalty has been initiated, are completed or 6 months from end of month in which action for imposition of penalty is initiated, whichever is later.

ITAT noted that assessee has transferred the loan by way of journal entry to his wife and observed that "When the assessee has transferred the loan from himself to his wife by way of journal entry, it is only the substitution of one debtor by another debtor." So far as creditors i.e. MGF Developments Ltd. was

concerned, it had not received any amount. Since the creditors had not received any amount, it cannot be said that there is a repayment of loan. ITAT observed that "Section 269 would come into play only when there is actual repayment of loan. Merely because loan is assigned by the assessee to his wife by way of journal entry, it cannot be said that there is a repayment of loan, otherwise, than by account payee cheque or account payee bank draft, so as to penalize the assessee u/s. 271E."

Aggrieved, Revenue filed an appeal before Delhi HC. The Revenue contended that given the structure and phraseology of Sec. 271D/271E, the period of six months limitation particularly emphasizing the words "whichever is later" would commence only from the date when the appropriate and competent officer authorized to impose penalty initiates the proceedings. It was submitted that since notice was issued by the JCIT on 12/03/2012 and penalty was imposed on 14/09/2012, the limitation period ought to have been counted 12/03/2012.

HC referred to ruling in case of *Jitendra Singh Rathore*, [(2013) 352 ITR 327] wherein it was held that even though the Joint Commissioner is the authority competent to impose penalty u/s 271D "the period of limitation for the purposes of such penalty was not to be reckoned from the issue of the first show cause notice by the Joint Commissioner, but the period of limitation was to be reckoned from the date of issue of first show cause for initiation of such penalty proceedings".

Ruling in favour of assessee, Delhi HC held that "In view of the express wording of Section 271D/271E which only mandated that the Joint Commissioner is authorised to issue the penalty order, the ITAT concluded that there was no power of initiation of proceedings by the AO." Aggrieved, Revenue filed an SLP before the SC.

Dismissing Revenue's petition, SC held "Since on merits, it has been found that there is no penalty, this Special Leave Petition is dismissed, however, leaving the question of law on limitation open."

LD/65/02

Adobe Systems Incorporated

Vs.

Asst. DIT

16th May, 2016

¹ Contributed by CA. Sahil Garud, CA. V. Raghuraman, Indirect Taxes Committee and ICAI's Editorial Board Secretariat.

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Chapter X does not artificially broaden, expand or deviate from the concept of 'real income'; Even if the subsidiary of a foreign company is considered as its PE, only the income attributable to PE can be brought to tax in India.

The Assessee, Adobe Systems Incorporated, a US company, preferred writ petitions under Article 226 and 227 of the Constitution of India before Delhi HC, impugning three separate notices issued under Sec 148 of the Income Tax Act, 1961 for AY 2004-05, 2005-06 and 2006-07 respectively. The Assessee further impugns three separate orders passed by AO rejecting the objections raised by the Assessee against the assumption of jurisdiction u/s. 148. Adobe India provides software related Research and Development services to assessee. Assessee paid for R & D services on cost plus basis and claimed that the agreement was on principal to principal basis. However, based on the services rendered, the Assessing Officer held that Adobe India ought to be considered as Permanent Establishment of assessee.

HC observed that Adobe India was already assessed to tax on arm's length basis. HC held that the TP scrutiny/adjustments in respect of the activities of Adobe India must be read to have resulted in capturing the entire income from the said activities in the net of tax. HC reasoned that Sec. 92, which fell under Chapter X of the Act, mandates that any income arising from international transactions shall be computed having regard to the ALP. The purpose of enacting the transfer pricing regulations is to ensure that income from transactions between the related parties are not shifted out of India so as to escape or mitigate the incidence of tax payable under the Act. Thus, the transfer pricing regulations are to be read as providing the framework, to tax the real income of an assessee derived from international transactions with a related party and they cannot be read as provisions to impute any hypothetical income in the hands of an assessee.

HC relied on Sony Ericsson Mobile Communications India Pvt Ltd vs. CIT [(2015) 374 ITR 118 (Del)] wherein the Delhi HC held that "As a concept and principle Chapter X does not artificially broaden, expand or deviate from the concept of 'real income'."

The HC noted that the method of determining the ALP for the said transaction, i.e. TNMM, had been accepted for AYs 2004-05, 2005-06, 2006-07; although for AY 2007-08, the TPO had sought to

use the PSM, the same was not upheld by the DRP. Thus, undisputedly, the real income of Adobe India, which was related to the activities carried out by Adobe India has been brought to tax in its hands and even if there was any dispute relating to the same, it was liable to be resolved in proceedings relating to Adobe India.

The HC referred to Article 7 of the Indo-US DTAA and held that even if the subsidiary of a foreign company is considered as its PE, only the income attributable to PE could be brought to tax in India. HC noted that even if the subsidiary of a foreign company is considered as its PE, only such income as is attributable in terms of paragraphs 1 and 2 of Article 7 can be brought to tax and in the current case, there was no dispute that Adobe India, which according to the AO was the Assessee's PE, had been independently taxed on income from R&D services and such tax has been computed on the basis that its dealings with the Assessee are at arm's length (that is, at ALP). Thus, HC held "*even if Adobe India is considered to be the Assessee's PE, the entire income which could be brought in the net of tax in the hands of the Assessee has already been so taxed in the hands of Adobe India.*"

HC relied on *DIT (International Taxation) v. Morgan Stanley & Company Inc.* [(2007) 292 ITR 416 (SC)] and *DIT vs. E-Funds IT Solution* [(2014) 364 ITR 256 (Delhi)] wherein it was held "*The term 'through' postulates that the taxpayer should have the power or liberty to control the place and, hence, the right to determine the conditions according to its needs.*"

Thus, ruling in favour of assessee, HC held that even if the AO was correct in its assumption that Adobe India constituted the Assessee's PE in terms of Article 5(1), 5(2)(l) or 5(5) of the Indo-US DTAA, the facts in this case did not provide the AO any reason to believe that any part of the Assessee's income had escaped assessment under the Act. Thus, HC quashed reassessment.

LD/65/03

Rajmandir Estates P. Ltd.
Vs.

Prin. Commissioner of Income Tax, Kolkata
13th May 2016 (KOL)

Sec. 263: Revision of orders prejudicial to Revenue

Order of CIT u/s 263 directing further investigation into share application money for AY 2009-10

upheld; CIT believed “that unaccounted money is laundered as clean share capital by creating a façade of paper work, routing the money through several bank accounts and getting it the seal of statutory approval”.

The assessee, Rajmandir Estates Private Limited had share capital of ₹55.15 lakhs as on 31.03.2008. During AY 2009-10, assessee raised additional share capital of ₹1.34 odd Crores by issuing 7,92,737 shares of ₹10/- each at a premium of ₹390/-share. AO issued notice u/s 148 and 142(1) seeking details like name of share applicants, their address, date of receipt and the total amount received. Assessee submitted that share capital was subscribed by 39 corporate applicants. 15 out of them were issued notices under Section 133(6) of the Income Tax Act and the source of money in respect of each of the 39 applicants including their confirmation and bank statements were disclosed by the assessee. Noting that assessee submitted share application details, AO did not make any addition on account of share application money.

CIT issued notice u/s 263 exercising its revisionary powers. It was observed that details of share application forms like date of allotment, number of allotment, number of shares allotted, share ledger folio, allotment register folio, application number were kept blank by some applicants. Further, shares were subscribed by closely held companies owned by the Promoters/ Directors or their close relatives or friends. CIT had the belief that unaccounted money is laundered as clean share capital by creating a façade of paper work, routing the money through several bank accounts and getting it the seal of statutory approval by getting the case reopened u/s 147 suo motu. Thus, CIT issued directions for a thorough enquiry to the AO. This act of CIT was also upheld by ITAT.

Before the Calcutta HC, assessee challenged the reopening of assessment u/s 263. Assessee submitted that provision of taxing of share capital receipt was inserted u/s 56(2)(viib) w.e.f. 01/04/2013 and was not applicable to instant AY 2009-10, and thus the AO's order was not prejudicial to Revenue. Further relevant provisions of Domestic transfer pricing and the proviso to Sec. 68 were also added w.e.f. April 01/04/2013. Assessee argued that enquiry directed by the Commissioner was therefore bound to be an exercise in futility. Before HC, Revenue referred to provisions of Black money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

and The Prevention of Money Laundering Act, 2002 in support of his actions.

Referring to the Lexis Nexis, 2014 commentary on the Prevention of Money Laundering Act, 2002, HC remarked that “Identity of the alleged share-holders is known but the transaction was not a genuine transaction. The creditworthiness of the alleged shareholders is also not established because they did not have any money of their own. Each one of them received from somebody and that somebody received from a third person.” Further, just before cheques were issued to assessee, matching amounts were found credited in the bank accounts of applicants. Companies formed by some of the applicants were mere paper companies and also the blank share application forms proved that alleged application for shares and the alleged allotment were not in the usual course of the business.

HC distinguished the rulings in *CIT vs. Steller Investment Ltd.* [Delhi HC] and Calcutta HC ruling in *CIT vs. Precision Finance Pvt. Ltd.* HC referred to SC ruling in *CIT vs. Lovely Exports Pvt. Ltd.* wherein it was held that share capital would be taxed u/s 68 only after AO had verified applicants and held them to be bogus. HC noticed that there was a reasonable suspicion of culpability in instant case.

HC this observed Commissioner had reasons to entertain the belief that this was or could be a case of money laundering which went unnoticed because the assessing officer did not hold requisite investigation except for calling for the records. Thus the CIT was justified in treating the assessment order erroneous and prejudicial to the interest of the revenue.

LD/65/04

Prin. Commissioner of Income Tax
Vs.

Nilkanth Concast P. Ltd.
13th May 2016 (DEL)

**Sec. 142(2C): Extension of time to furnish special audit report prescribed u/s 142(2A).
Sec. 153A: Assessment in case of search or requisition.**

Assessment u/s 153A held as barred by limitation; AO's extension of time limit for furnishing of audit report u/s 142(2C) upon request made by nominated auditor for AY 2005-06 quashed; Auditor nominated by Commissioner cannot be said to be an agent of assessee.

A special audit u/s 142(2A) was ordered in case of assessment in case of assessee Nilkanth Concast Pvt Ltd. At the request of Chartered Accountant nominated by Commissioner, the AO extended the due date for furnishing the audit report and the assessment order for AY 2005-06 was passed by AO on 03/08/2007 after report was submitted. The assessee contended that the order u/s 153A was barred by limitation since as the provisions of sec 142(2A) for AY 2005-06, there was no power with to AO to suo motu extend the date for filing the special audit report u/s 142(2A). ITAT ruled in favour of assessee holding that the assessment was barred by limitation u/s 153(1B). ITAT noted that such suo-moto powers were granted by statute to the AO only from AY 2008-09 prospectively.

Aggrieved Revenue then filed an appeal before Delhi HC.

HC examined whether ITAT exceeded its jurisdiction in examining the question that *"whether the AO was justified in extending the time for the auditor nominated under Section 142 (2A) to submit the audit report"*. HC held that since the said question was incidental to the main question urged regarding the assessment being barred by limitation, it has to be necessarily examined not only by the CIT(A) but consequently by the ITAT as well. Reliance was placed on SC ruling in *National Thermal Power* [(1998) 229 ITR 383] wherein it was held that the powers of ITAT are wide enough to even consider a point which may not have been urged before CIT(A) as long as said question requires to be examined in the interest of justice.

HC observed that the power to *suo moto* extend the time limit for furnishing the special audit report by the AO was introduced after amendment by Finance Act, 2008. Further, such amendment was prospective in nature. Reliance was placed upon decision in case of *CIT v. Bishan Saroop Ram Kishan Agro Pvt. Ltd.*

Further, HC rejected Revenue's contention that the request made to AO by the nominated auditor should have been considered to be a request made by assessee itself. HC observed that *"In terms of Section 142(2A), special audit is conducted under an order passed by the AO, by an accountant as defined in Explanation below Section 288(2) of the Act who is nominated either by the Commissioner and such nominated auditor is permitted to furnish an audit report in the prescribed form. When the said provision is read with Explanation below*

Section 288(2) of the Act, it is apparent that the said nominated auditor is not expected to be in a relationship of an agent of the Assessee or in any other capacity except as a nominee of the Commissioner. It is perhaps for this reason the proviso to sub-Section 2C of Section 142 specifically states that the extension of time for submitting the audit report can be made by the AO "on an application made in this behalf by the Assessee". If the legislative intent was to permit the application to be made by the auditor nominated by the commissioner it would have been expressly provided in the proviso to sec 142(2C). HC remarked that if the submissions of learned counsel for the Revenue were to be accepted, then it would mean that the application can be made not only by the Assessee but by a Chartered Accountant of the Assessee nominated by the Commissioner in terms of Section 142 (2A) of the Act.

HC thus dismissed Revenue's appeal.

LD/65/05

S. T. Microelectronics P. Ltd.

Vs.

Dy. Commissioner of Income Tax, Kolkata

18th May 2016 (DEL)

Sec 144C: Reference to dispute resolution panel

Quashes assessment u/s 143(3) read with Sec 144C for AY 2009-10, presumes that order was not passed within the prescribed time-limit as Revenue could not prove service of final assessment order u/s 144C on assessee.

The assessee, ST Microelectronics Pvt. Ltd., is engaged in the business of development of integrated circuit design, Computer Aided Design tools and computer software. The assessee shifted to a new address and the new address was updated in the PAN database which was duly recorded. All communications were thereafter received by assessee from the Respondents at the new address. The assessee listed out all the communications received by it at the new address beginning with a notice dated 31st August, 2010 u/s. 143(2) for AY 2009-10 and ending with a notice dated 22nd April, 2014 issued to it u/s. 221. During the proceedings for AY 2009-10, the Assessing Officer passed draft assessment order u/s 144C with addition by TPO and by making further addition on account of training expenses which was received by assessee on 22nd March, 2013. The assessee did not receive final assessment order nor did it receive the penalty notice u/s 221(1) and Sec.

271(1)(c) issued by DCIT. It was only in response to the show cause notice received that the final orders were provided to assessee. The Revenue could not provide the proof of dispatch when asked for the same. The assessee contended that final assessment order was not passed on the date mentioned therein and was probably antedated in order to avoid the expiry of the period of limitation as stipulated u/s 144(C).

HC noted *"The point involved in this case concerns the passing of the final assessment order by the AO and whether, in fact, it was done within the time period stipulated under Section 144(C)(4) of the Act read with Section 144(C)(3) of the Act."* HC further noted that assessee's specific case was that the final assessment order was not passed on the date mentioned therein, i.e., 22nd April, 2014 and was probably antedated in order to avoid the expiry of the period of limitation as stipulated under Section 144(C)(4) r/w sec. 144(C)(3).

HC held that *"entire assessment order contained the date only in one place and that date was written by hand and the notice issued to the Petitioner on the same date u/s. 274 had the date typed. In the circumstances it was absolutely essential for the Respondents to have made the effort of demonstrating that the final assessment order was in fact passed on 22nd April, 2013. However, the Respondents have failed to do so and therefore strengthen the doubts as to whether, in fact, the final assessment order was passed on that date."*

HC acknowledged that when the assessee sought to inspect the file to see whether there was any entry in the dispatch register, he was not allowed such inspection and later came to conclusion that there was no such dispatch register available which would have shown the date of dispatch of the final assessment order and proof of service of such assessment order.

HC relied on the case of *M. M. Rubber and Co* and held that *"...it was incumbent on the Department to demonstrate that the AO who passed the assessment order ceased to have any control over such order and that it left his hand soon after it was passed. The Department having failed to do so, a presumption has to be drawn that the final assessment order was not passed within the time period specified under Section 144(C) (4) read with Section 144(C)(3) of the Act."*

Thus, the HC quashed the assessment order and the penalty order u/s 271(1)(c) and Sec. 221(1).

LD/65/06

S. S. Jyothi Prakash

Vs.

The Addl. Commissioner of Income Tax

7th June 2016 (BLR)

Section 69: Unexplained Investments

Only payment of additional stamp duty on basis of the valuation made by the valuer of the stamp Act authority, cannot be said to be a valid ground to initiate the proceedings u/s 69 of the Income Tax Act.

The assessee is engaged in the transport business and running his proprietary concern namely "Shri. Shivalinga Transport" at Shimoga. He was also receiving interest and remuneration in capacity of partners. He filed a return of income for the AY 2006-07, declaring his total income at ₹18.11 Lakhs. In the course of regular assessment proceedings, an addition of ₹51.69 lakhs was made u/s 69 of the Act as unexplained investment in a residential house at Shimoga. The assessee had purchased a residential house for a consideration of ₹66.56 lakhs which included the stamp duty. The value of the property by the AO was taken at ₹90.51 lakhs as against actual consideration reflected in the sale deed at ₹60.07 lakhs. After document was presented for registration, the objection was raised by the stamp department for the deficit stamp duty, which was paid by the assessee. The matter was then referred to the valuer for the purpose of valuation and consequently the difference of ₹51.69 lakhs was added by applying the provisions of Section 69 of the Act.

The CIT(A) confirmed the order of the AO. Further, the ITAT held that the impugned property was already valued by the Departmental valuer, approved valuer of the assessee and also District Registrar/Appellate Authority for the stamp duty purpose. ITAT dismissed the appeal and upheld the valuation decided by the District Registrar, and directed the AO to re-compute the capital gain on the basis of such valuation.

Aggrieved assessee approached Karnataka HC.

HC analysed the provisions of section 69 and relied upon rulings in case of *CIT vs. Puneet Sabharwal* [(2011) 338 ITR 485] and *CIT vs. Sadhna Gupta* [(2013) 352 ITR 595]. HC observed that in the case of unexplained investment, the primary burden to prove the understatement is on the Revenue and only once such burden is discharged, it would be permissible to rely upon the valuation given by the District Valuation Officer.

HC observed that there was no evidence to conclude that the assessee had paid extra consideration over and above what was stated in the sale deed. HC stated that unless and until there is some other evidence to indicate that extra consideration had flowed in the transaction of purchase of property, the report of DVO cannot form basis of any addition on the part of the revenue.

Ruling in favour of assessee, HC held that the payment of additional stamp duty may be on the basis of the valuation of the valuer of the stamp Act authority, but the same *ipso facto* cannot be said to be a valid ground to initiate the proceedings under Section 69 of the Act or to invoke power u/s 69 on the premise that additional consideration was paid or received”.

LD/65/07
R. K. P. Company
Vs.
Income Tax Officer
24th June, 2016 (Raipur)

Section 40: Amounts not deductible

Rule of resolving ambiguity in favour of assessee did not apply where the interpretation in favour of assessee would have to treat the provisions unconstitutional; Allows Retrospective benefit of second proviso to Sec 40(a)(ia) inserted vide Finance Act, 2012

During the course of the assessment proceedings for AY 2010-11, the Assessing Officer disallowed a payment made to NBFCs on account of interest charges without deduction of tax at source, u/s. 40(a)(ia). On appeal, assessee relied upon Delhi High Court's judgment in the case of *CIT Vs Ansal Landmark Townships Pvt Ltd* [(2015) 377 ITR 635 (Del)], but CIT(A) upheld the assessing Officer's order. Aggrieved, assessee filed an appeal before Raipur ITAT.

The Revenue contended that that even if insertion of second proviso to Section 40(a)(ia) could be construed as retrospective in effect, the corresponding rule in the Income Tax Rules 1962 was not, and had not been held to be, retrospective, and the second proviso to Section 40(a)(ia) could not, therefore, be give retrospective effect; and, that there was no decision on this issue by jurisdictional High Court and, as such, the stand of the Assessing Officer could not be faulted.

ITAT held that the rule of resolving ambiguity in favour of assessee did not apply where the

interpretation in favour of assessee would have to treat the provisions unconstitutional, as held in the matter of *State of M. P. vs. Dadabhoy's New Chirmiry Ponri Hill Colliery Co. Ltd.* [AIR 1972 (SC) 614]. Thus, the view expressed by Delhi High Court in the case of *Ansal Landmark (supra)*, which was in favour of assessee, was required to be followed.

On the issue of second proviso to Section 40(a)(ia) being held to be retrospective, without corresponding enabling provision in the rules being held to be retrospective, ITAT commented that the said argument was '*hyper technical and too pedantic approach*.' ITAT further noted that the second proviso to Section 40(a)(ia) was held to be retrospective in the context of finding solution to the problem to the taxpayer, and the matter was set aside to the file of the Assessing Officer with certain directions about factual verifications on the recipient having included the same in the receipts based on which taxable income was computed, and the income having been offered to tax. ITAT noted that the decision was not on the retrospectivity of the proviso alone, it was also on deletion of disallowance in the event of the recipient having taken into account these receipts in the computation of income, and further held that "*...the judge made law is as binding on the authorities below as is the legislated statute. The hyper technical stand of the Departmental Representatives, therefore, does not merit our approval*"

ITAT held that a High Court being a non-jurisdictional High Court did not alter the position as laid down by Jurisdiction High Court i.e. Bombay High Court in the matter of *CIT vs. Godavari Devi Saraf* [(1978) 113 ITR 589 (Bom)] and as analysed by coordinate bench in the case of *ACIT Vs Aurangabad Holiday Resorts Pvt. Ltd.* [(2009) 118 ITD 1 (Pune)].

Thus, ITAT remitted matter to the file of the Assessing Officer for limited verification on the aspect as to whether recipient of payment had included the same in his computation of business income offered to tax, and, if found to be so, ITAT directed deletion of the disallowance in question.

LD/65/08
Pr. Commissioner of Income Tax
Vs.
Sun Pharmaceutical Industries Ltd
1st March, 2016 (AHD)

Section 115JA: Deemed income relating to certain companies.

Lease Equalisation reserve is not in the nature of reserve and thus the same amount will not be added while computing the book profit u/s 115JA; lease equalisation charge was not in the nature of a reserve, in as much as, the amount of lease equalisation charge over a period of lease was equal to the difference between the quantum of principal recovered and the residual value.

Assessee, Sun Pharmaceutical Industries Ltd, filed its return for AY 2000-01 declaring its income u/s 115JA. Assessment was framed u/s 143(3) and income reported by assessee stood enhanced. AO made addition on account of lease equalisation charges while computing book profits for Sec. 115JA invoking explanation to Sec. 115JA(2). On appeal, CIT(A) had dismissed assessee's appeal. However, on further appeal ITAT relying upon Delhi HC ruling in *GE Capital Transportation Finance Services Ltd.* [113 ITD 22] and Madras HC ruling in *TVS Finance & Services Limited* allowed the appeal. Aggrieved Revenue filed appeal before Gujarat HC.

Assessee contended before the High Court that manner of computation of book profits under normal provisions and under MAT provisions are different and while computing book profits under normal provisions, assessee always have an option whether to make a claim or not. Assessee contended that provisions of Sec. 115JA are similar to that of Sec. 115JB and lease equalisation charge did not fall under clauses (a) to (g) of Sec. 115JA, therefore, question of adding it back did not arise.

Revenue countered that when assessee had added lease equalisation charges under the normal provisions, it could not be given a different treatment under MAT provisions. It was submitted that lease equalisation charge was nothing but a 'Reserve,' therefore, explanation to Sec. 115JA(2), would get attracted. Revenue in support of its contentions relied upon Karnataka HC ruling in *CIT and Anr vs. Weizmann Homes Ltd.* Gujarat High court referred Madras HC ruling in *TVS Finance and Services Limited vs. JCIT* [2009 (318) ITR 435], wherein it was held that the lease equalisation charge was not in the nature of a reserve, in as much as, the amount of lease equalisation charge over a period of lease was equal to the difference between the quantum of principal recovered and the residual value.

Gujarat HC also referred *CIT vs. Virtual Soft Systems Limited* [2012 (341) ITR 593] and observed that lease equalisation charge was a method of recalibrating the depreciation claimed by the assessee in a given accounting period. HC further observed that, over the lease term, the debits and credits in the P & L account would square off with each other, thus that the same stood neither in the form of a reserve nor a deduction.

Thus, Gujarat HC held that lease equalisation charge would not fall within the ambit of clause (b) of the Explanation to Sec. 115JA(2) and dismissed Revenue's appeal.

Service Tax

LD/65/09

General Manager-Food Corporation of India

vs.

Union of India
(Gujarat)

When no amount is payable by service recipient to service provider on account of deficiency in provision of service, the Revenue cannot initiate garnishee proceedings under Section 87 on such service recipient.

Food Corporation of India (FCI) engaged various agencies for handling transportation of food cargo and other related activities. Though said activities were exempt from payment of service tax, one of such agencies, Kailash Enterprises recovered service tax of ₹5.37 crores from FCI. However, Kailash Enterprises did not deposit this service tax amount in the government's treasury. Accordingly, the service tax department initiated proceedings against Kailash Enterprises for recovery of service tax of ₹5.37 crores under Section 73A of Finance Act, 1994. In the adjudication order, the commissioner held that even though the services in question were exempt from service tax, Kailash Enterprises was required to deposit service tax collected by it from FCI in terms of provisions Section 73A.

Between FCI and Kailash Enterprise there were multiple disputes of deficiency in service provided by the latter. On finding that service tax paid by FCI was retained by Kailash Enterprises with itself and also, as a result of various issues of non/un-satisfactory performance of some contractual obligations, FCI utilised the performance bank guarantees issued by Kailash Enterprise to FCI and recovered a sum of ₹3.52 crores. Also, civil suit

had been instituted by FCI for further recoveries from Kailash Enterprise. In this background, the Revenue sought to recover from FCI the said amount of 3.52 Crores towards demand of service tax by invoking provisions of Section 87 of Finance Act, 1994. Therefore, FCI filed petition challenging Revenue's recovery notices issued to it.

Hon'ble Gujarat HC observed that the enforcement of bank guarantee by FCI was relatable not only to non-payment of service tax by Kailash Enterprises to government's treasury, (which was recovered from FCI) but also as a result of failure to perform contractual obligations. The recovery of ₹3.52 crores had an element of deficiency in services by Kailash Enterprises and was not restricted only to non-payment of service tax. High Court held that, Section 87 of Finance Act, 1994, provides a mechanism for initiation of garnishee proceedings by central government to recover unpaid dues of a person liable to pay the sum to the Government from any other person or requiring any other person from whom money is due or may become due to such defaulting person. The Court noted that in present case since no amount was payable by FCI to Kailash Enterprises on account of deficiency in provision of service, the invocation of section 87 is not justified. Consequently, recovery notices issued by the revenue to FCI were quashed.

LD/65/10

Suresh Kumar Bansal

vs

UOI

(Delhi)

The service tax on services provided by preferential location u/s 65(105)(zzzzu) are constitutionally valid. However, in the absence of any machinery provisions relating to quantification of service portion in Act or Rules made thereunder, service tax cannot be levied on services provided in relation to construction of complex u/s 65(105)(zzzh) to the extent Explanation under section 65(105)(zzzh) seeks to include composite contracts for purchase of units in a complex within the scope of taxable service.

The Petitioners entered into separate agreements with a builder to buy flats in a multi-storey group housing project. The builder, in addition to the consideration for the flats, also recovered service tax from the Petitioners, under two categories namely (i) services in relation to construction of complex under

Section 65 (105)(zzzh) and (ii) services in relation to preferential location under section 65(105)(zzzzu). Aggrieved by the levy of service tax, the Petitioner challenged levy of service tax on both these services.

The Petitioners challenged constitutional validity of taxing entries and levy of service tax on these services on the following grounds:

- The Parliament does not have the power to levy tax on immovable property; thus, the levy of service tax on agreements for purchase of flats was beyond the legislative competence of the Parliament.
- The power of Parliament to levy tax would be limited to only on the service component after excluding the value of goods as well as the value of land from such contracts. Since, neither the Act nor the rules made thereunder provide any machinery provisions for ascertaining the service component of such composite contracts, the levy of service tax must fail.
- Section 65(105)(zzzh), read with Section 66 of the Act did not restrict the levy of service tax only to the service element of 'composite contracts'. However, the said provisions could be applied only for imposition of service tax on service contracts simplicitor and therefore their application to composite contracts would render the said provisions unconstitutional. For this proposition, the Petitioner relied upon decision of Hon'ble Supreme Court in the case of *Larsen & Toubro Ltd. v. State of Karnataka* (SC).
- There is no service element in preferential location charges which are levied by a builder and the same relates only to the location of the immovable property and, hence are not exigible to service tax.
- The services covered under Section 65(105)(zzzh) and 65(105)(zzzzu) are now sought to be taxed by virtue of Section 66E(b), read with Section 65B(22) and Section 65B(44) of the Act. The challenge laid by the Petitioners to the provisions of Section 65(105)(zzzh) and 65(105)(zzzzu) of the Act would also be equally valid for the taxing provisions introduced with effect from 1st July, 2012.
- Only the services rendered after execution of the flat buyer's agreement could be subjected to tax as prior to the said date, in absence of the service recipient, the service in relation to

construction of a complex, if any, is rendered by the builder to itself and cannot be subjected to service tax.

The Department contended that, concerned legislative amendment introduced by the Finance Act, 2010, namely, insertion of Explanation to Section 65(105)(zzzh) and clause (zzzzu), were valid and enforceable on following grounds:

- Decision of Hon'ble Bombay High Court in the case of *Maharashtra Chamber of Housing Industry v. Union of India* and decision of Karnataka High Court in the case of *Confederation of Real Estate Developers' Association of India v. Union of India* were relied upon in which the aforesaid entries u/s 65(105) were held valid and enforceable.
- The development of a project results in the substantial value addition on bare land and includes various services such as consulting services, engineering services, management services, architectural services etc. These services are subsumed in the taxable service as contemplated under Section 65(105)(zzzh) of the Act.
- In case of construction services, as the gross amount charged to buyers include value of land and construction material, only 25% of the Base Selling Price (BSP) charged by a builder from the ultimate consumer is subjected to levy of service tax. However in case of preferential location charges collected separately, the entire amount charged by a developer is for value addition and, therefore, the gross amount charged for such services is chargeable to service tax under Section 66, read with Section 65(105)(zzzzu) of the Act

The Hon'ble High court noted that the Department did not seek to levy tax for taxable service under Section 65(105)(zzzza) of the Act (which was introduced by virtue of the Finance Act, 2007) as according to them builders engaged in constructing complexes and selling units are liable to pay service tax on the transaction with the purchaser only with effect from 1st July, 2010 by virtue of the impugned Explanation to Section 65(105)(zzzh) of the Act. Therefore, although such composite contracts for development of complex and sale of units therein would fall within the scope of works

contract as held by the Supreme Court in *Larsen and Toubro Ltd.(supra)*, Hon'ble Court did not examine whether services involved in construction of complexes is exigible to service tax as services in relation to execution of a works contract falling within the scope of Section 65(105)(zzzza) of the Act or under Section 65B(44) after the amendments brought about in the Act by virtue of Finance Act, 2012 as the said controversy was outside the scope of these petitions.

Interpreting section 65(105)(zzzh), the High court held that, the grant of completion certificate implies that the project is complete and at that stage all services and goods used for construction are subsumed in the immovable property; thus at that stage sale of a complex or a part thereof to a buyer constitutes an outright sale of immovable property, which admittedly is not chargeable to service tax.

The High court also clarified that, in cases where construction is carried on by a builder on behalf of or for another person it can hardly be disputed that the builder renders a host of services which are involved in construction. However, the controversy as to whether any services are rendered arises only in cases where the builder does not carry on the development activities on behalf of the purchaser but on his own but with an intention to sell the developed units; he enters into agreements with prospective buyers to sell fully developed units as and when such buyers are found. He may do so before commencing any construction/development activity or during the course of developing the complex.

The Court further explained that, construction of a complex essentially has three broad components, namely, (i) land on which the complex is constructed; (ii) goods which are used in construction; and (iii) various activities which are undertaken by the builder directly or through other contractors. The object of taxing services in relation to construction of complex is essentially to tax the third component and the resultant value created by such activities.

The Court held that when buyer pays the agreed consideration to the builder, at the time of booking and construction linked payments, although title to the unit (the immovable property) does not pass to the prospective buyer at the stage of booking, it can hardly be disputed that the buyer acquires an economic stake in the project and in one sense,

the services subsumed in construction (i.e. services in relation to a construction of the complex) are rendered for the benefit of the buyer. The court however explicitly mentioned that, but for the legal fiction introduced by the Explanation, such value addition would be outside the scope of services because in strict sense, no services, as commonly understood, are rendered in a contract to sell immovable property.

As to validity of explanation, the court held that, the Legislature is competent to enact a deeming provision for the purpose of assuming the existence of a fact which does not even exist. The use of a legal fiction is a well known legislative device to assume a state of facts (or a position in law) for the limited purpose for which the legal fiction enacted, that does not exist. The Parliament is fully competent to enact such legal fiction. In the present case the Parliament has done precisely that; it has enacted a legal fiction, where a set of activities carried on by a builder for himself are deemed to be that on behalf of the buyer.

Consequently the High Court held that, imposition of service tax in relation to a transaction between a developer of a complex and a prospective buyer does not constitute impingement on the legislative field reserved for the States under Entry-49 of List-II of the Seventh Schedule to the Constitution of India, as the imposition of service tax by virtue of the impugned Explanation is not a levy on immovable property, but the clear object of imposing the levy of service tax in relation to a construction of a complex is essentially to tax the aspect of services involved in construction of a complex the benefit of which is available to a prospective buyer who enters into an arrangement.

As regards measure of tax, the Hon'ble high court stated that, the measure of tax must have a nexus with the object of tax and it would be impermissible to expand the measure of service tax to include elements such as the value of goods because that would result in extending the levy of service tax beyond its object and would impinge on the legislative fields reserved for the State Legislatures. As regards, the present case, the Court held that, undisputedly, the contract between a buyer and a builder/promoter/developer in development and sale of a complex is a composite one. The arrangement between the buyer and the developer is not for procurement of services simplicitor. Thus,

while the legislative competence of the Parliament to tax the element of service involved cannot be disputed but the levy itself would fail, if it does not provide for a mechanism to ascertain the value of the services component which is the subject of the levy. Clearly service tax cannot be levied on the value of undivided share of land acquired by a buyer of a dwelling unit or on the value of goods which are incorporated in the project by a developer. Referring to section 67 of the Finance Act, 1994 and Service Tax (Determination of Value) Rules 2006, The court held that, in this case, there is no machinery provision for ascertaining the service element involved in the composite contract, as neither the Act nor rules provide for ascertaining the value of services involved in relation to construction of a complex. As regards, Rule 2A of Valuation Rules, the Court clarified that, whilst the said rule provides for mechanism to ascertain the value of services in a composite works contract involving services and goods, the said Rule does not cater to determination of value of services in case of a composite contract which also involves sale of land. Therefore relying upon *Larsen & Toubro Ltd.* (supra) and *CIT v. B.C Srinivasa Shetty* [1981] 2 SCC 460, the Court held that, in absence of machinery provisions to exclude non-service elements from a composite contract, the levy on services referred to in Section 65(105)(zzzh) could only be imposed on contracts of service simplicitor-that is, contracts where the builder has agreed to perform the services of constructing a complex for the buyer-and would not take within its ambit composite works contract which also entail, transfer of property in goods as well as immovable property. The Department's contention that, an assessee is entitled to abatement to the extent of 75% and only 25% of the gross amount charged by a builder from a flat buyer is charged to service tax, was not appreciated by the High Court stating that, circulars or other instructions could not provide the machinery provisions for levy of tax. The charging provisions as well as the machinery for its computation must be provided in the Statute or the Rules framed under the Statute. Therefore, the abatement to the extent of 75% by a notification or a circular cannot substitute the lack of statutory machinery provisions to ascertain the value of services involved in a composite contract. Consequently, the High Court set aside the impugned Explanation to the extent that it seeks to

include composite contracts for purchase of units in a complex within the scope of taxable service.

As regards, challenge to the levy of service tax on taxable services as defined under Section 65(105) (zzzzu), the Hon'ble High Court did not accept the contention of the Petitioners that, there is no element of service involved in the preferential location charges levied by a builder and that such charges relate solely to the location of land. The Court held that, preferential location charges are charged by the builder based on the preferences of its customers. They are in one sense a measure of additional value that a customer derives from acquiring a particular unit. Such charges may be attributable to the preferences of a customer in relation to the directions in which a flat is constructed; the floor on which it is located; the views from the unit; accessibility to other facilities provide in the complex etc. Since, service tax is a tax on value addition and charges for preferential location in one sense embody the value of the satisfaction derived by a customer from certain additional attributes of the property developed. Such charges cannot be traced directly to the value of any goods or value of land but are as a result of the development of the complex as a whole. Therefore, the High Court rejected the Petitioner's challenge to levy of insertion of section 65(105)(zzzzu).

LD/65/11
Qatar Airways
Vs.

Commissioner of Service Tax
12th May 2016 (MUM)

Services received from foreign based Computerised Reservation System (CRS) regarding ticket booking not taxable as "online database access or retrieval services" under reverse charge mechanism.

The assessee is an international airline having headquarters at Dubai and Doha respectively. The assessee has branch offices located in India and operate airlines and have registration for discharge of service tax liability under the category of "Transportation of Passengers", "Cargo Handling Services" and "Transportation of Goods by Air".

Assessee-appellant offers sale of tickets and make reservation of seats on scheduled flights through 2 different channels (1) through branch offices located in different countries, and (2) through Global Distribution System (GDS) platform provided by other companies operated facilities

for "Computerised Reservation System" (CRS) also located outside India viz. Galileo, USA, Abacus, Singapore, Amadeus, Spain and Sabre. This CRS companies facilitated the sale of products or services as to seat inventory in a specific flight by using an online computer system, which are used by Travel Agents. Assessee's HO had entered into an agreement with the CRS companies for making payment to them on booking of tickets. These CRS companies raise invoices on assessee for the tickets booked, based upon such agreement and bills are settled by the HO of assessee.

Revenue concluded that assessee's branch offices in India are liable to discharge service tax liability under the category of "online information and data base access or retrieval service" for the payments made in respect of tickets issued by various transport agents for individuals based in India. Revenue took a stand that the branch offices are permanent establishments and they remitted the charges collected for tickets from transport agents, to their HOs in Dubai and Doha. Revenue held that payments to CRS companies by HOs were taxable under reverse charge mechanism in the hands of the branch offices.

Before CESTAT, assessee argued that the service provided by CRS companies cannot be qualified as import of services and that the branch office does not "access or receive" data of CRS companies. CRS companies provide online information to the passengers / transport agents about availability of the flight or seats for travelling at the date chosen thereby. The HOs settle the bills raised by such CRS companies for the issuance of tickets to the passengers. Assessee argued that Sec 66A would not apply in this case as branch offices were not making any payment to CRS companies.

Revenue argued that the instant services were covered under the category of "on-line data base access or retrieval service" which was brought into service tax net w.e.f. July 16, 2001 as per Sec 65(75) r/w Sec 65(105)(zh) of the Finance Act. Revenue submitted that the beneficiary of services were the Indian offices and that the tickets are for the passengers embarking in India for international journeys and therefore, the users of services provided by CRS companies would be the assessee and not their foreign based HOs.

CESTAT observed that assessee had correctly relied on CESTAT judgment in British Airways. In this case, it was held that assessee- branch has to

be treated as a separate person from HO. Since the HO received services from CRS companies located outside India, and the same were consumed outside India, Indian branch could not be held as recipient of services so as to make it liable under reverse charge mechanism u/s 66A.

CESTAT thus ruled in favour of assessee.

LD/65/12
Mega Cabs Pvt. Ltd.
Vs.
Union of India
3rd June, 2016 (DEL)

Rule 5A(2) as amended in terms of Notification No. 23/2014- Service Tax dated 05/12/2014, to the extent that it authorises the officers of the Service Tax Department, the audit party deputed by a Commissioner or the CAG to seek production of the documents mentioned therein on demand was ultra vires the Finance Act.

The assessee, Mega Cabs Pvt Ltd, is in the business of running a radio taxi service and is also engaged in selling advertisement space. The assessee got registered with the Service Tax Department in Delhi on 27th December 2004 and since then it is stated to be regularly been paying service tax and also filing its service tax returns. By a Notification dated 28th December 2007, the Central Government in the Ministry of Finance, Department of Revenue inserted Rule 5A in the ST Rules. Consequent thereto, the CBEC also issued an instruction on 1st January 2008 explaining the scope of the powers of the various officers of the Department to carry out audit or scrutiny of the records of service tax payers.

Both the Notification dated 28th December 2007 inserting Rule 5A as well as the CBEC Instruction dated 1st January 2008 were challenged before this Court in a writ petition by Travelite (India). The challenge in the said petition was also to a letter issued by the Commissioner of Service Tax dated 7th November 2012 seeking the records of the said Petitioner Travelite (India) for the years 2007-08 till 2011-12 to be made available for scrutiny by an audit party. In *Travelite (India) v. Union of India*, a Division Bench of this Court struck down Rule 5A(2) as being ultra vires Section 72A read with Section 94(2) of the FA. The consequent Circular of CBEC Instruction dated 1st January 2008 was also struck down. It was clarified that Service Tax Audit Manual, 2011 was merely an instrument of instructions for the Service Tax authorities and has no statutory force.

Meanwhile on 9th July 2013, the Additional Commissioner (Audit) issued a letter with 6 annexures to the Petitioner seeking information for conducting audit of the records of the Petitioner under Rule 5A of the ST Rules, 1994 as it then stood for the years 2008-09 to 2012-13. The Petitioner in a reply sought deferment of the audit in view of the challenge to Rule 5A of the ST Rules as it then stood in the petition filed before this Court by Travelite (India). After the insertion of Section 94 (2) (k) of the FA, the Assistant Commissioner of Service Tax Department issued a letter dated 25th September 2014 stating that the Department has deputed its officers to conduct the verification/scrutiny of the records of the Petitioner. By a reply dated 8th October 2014, the Petitioner referred to the decision in *Travelite (India)* and took the stand that the Department had no power to conduct an audit.

The Delhi HC clarified that while decision co-ordinate bench in *Travelite (India)* had been stayed by SC the present petition dealt with the question of constitutional validity of the amended Rules and which was independent of the decision in *Travelite (India)*.

HC asserted “*there is a distinction between auditing the accounts of an Assessee and verifying the records of an Assessee. Audit is a special function which has to be carried out by duly qualified persons like a Cost Accountant or a CA. It cannot possibly be undertaken by any officer of the Service Tax Department.*”

HC held that Rule 5A(2) exceeds the scope of the provisions under the FA. This is the result whether Rule 5A(2) is tested vis-a-vis Sec 72A of the FA which pertained to special audit or Sec 72 which pertains to assessment or Sec 73 which pertained to adjudication or even Sec 82 which relates to searches. HC further held “*...under the garb of the rule making power, the Central Government cannot arrogate to itself powers which were not contemplated to be given it by the Parliament when it enacted the FA. This is an instance of the Executive using the rule making power to give itself powers which are far in excess of what was delegated to it by the Parliament.*”

HC further held that verification of the records can take place by the officers of the Department provided such officers are authorised to undertake an assessment of a return or of adjudication for the purposes of Sec 73 of the FA and it is not any and every officer of the Department who could be entrusted with the power to demand production of

records of an Assessee. Therefore, the Court does not agree with the submission that the expression 'verify' is wide enough to permit the audit of the accounts of the Assessee by any officer of the Service Tax Department.

HC quashed CBEC Circular No. 995/2/2015-CX prescribing detailed norms to be followed by Audit Commissioners, states that Circular did not have any statutory backing under Finance Act and cannot be relied to legally justify audit undertaken by Service Tax Department Officers. HC further noted that Circular or Manual could not travel beyond scope of the statute itself and struck down Circular No. 181/7/2014-ST which stated that legal backing for Service Tax Department Officers to conduct audit was available in terms of Sec 92(4)(k).

Thus, HC declared that Rule 5A(2) as amended in terms of Notification No. 23/2014 - Service Tax dated 5th December 2014 of the Central Government, to the extent that it authorised the officers of the Service Tax Department, the audit party deputed by a Commissioner or the CAG to seek production of the documents mentioned therein on demand was ultra vires the FA and, therefore, struck it down to that extent.

Excise

LD/65/13

CCE

Vs.

M/s. EID Parry (India) Ltd
20th June, 2016 (MAD)

Rule 6 of CCR 2004: Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services.

Madras High Court sets aside the order of CESTAT and remands the matter to Adjudicating Authority to consider the issue afresh; Earlier, CESTAT had allowed CENVAT credit on entire Captive Power Plant without examining eligibility of individual components used as 'inputs' or 'capital goods'.

The assessee, M/s. EID Parry, is manufacturer of sugar and molasses falling under Chapter 17 of the First Schedule to the Central Excise Tariff Act, 1985. The assessee had installed a captive power plant or co-generation plant in their sugar factory located at Kurumbur, Aranthangi Taluka, Pudukottai District. It availed credit of duty paid on the components and accessories used for setting up the cogeneration plant

in terms of the CENVAT Credit Rules 2004 (CCR). Subsequently, show cause notice was served on the assessee stating that it have availed Cenvat credit of the duty paid on the Machineries, Components and other accessories used in installing the Captive Power Plant and 3 Captive Power Plant is a Turnkey project. The Revenue raised the demand contending that Captive Power Plant was a Turnkey project, and therefore neither excisable goods nor goods confirming to the description of any machinery which falls in the Chapters mentioned in Rule 2(a)(A)(i) of CCR.

The Assessee replied that the various component machineries which are brought into the factory were by themselves capital goods as they individually fall under the chapter heading specified in the definition of capital goods and that the subject goods are used within the factory of production and they had not contravened Rule 6(1) and 6(4) of CCR 2004. Assessee contended that the Rule 6 of CCR 2004 is not at all applicable in the present scenario and that invocation of Rule 6(4) of CCR 2004 was not correct as the captive power plant was not used exclusively in the manufacture of electricity but only within the factory in the manufacture of sugar and molasses. However, adjudicating authority confirmed the demand towards wrong credit taken on component parts used in installing Captive Power Plant alongwith equivalent penalty. Aggrieved by the order, assessee preferred an appeal before CESTAT where assessee's appeal was allowed by relying on coordinate bench ruling in *Tata Engineering and Locomotive Co. Ltd. vs. CCE* [2005 (191) E.L.T. 209 (Tri. - Mumbai)].

Aggrieved, Revenue preferred an appeal before Madras High Court. However, assessee submitted that in the event of allowing the appeal, the matter may be remanded to the adjudicating authority, to consider afresh.

Thus, the Madras High Court set aside the order of CESTAT and remanded the matter to Adjudicating Authority to consider the issue afresh. Thus, the High Court ruled in favour of the Revenue while allowing the appeal.

Customs

LD/65/14

Bhatia Global Trading Ltd.

vs.

Commissioner of Customs
(Karnataka)

Assessee's representation requesting for adjustment of duty/tax deposited during investigation/audit proceedings, towards mandatory pre-deposit for maintaining appeal cannot be rejected by revenue authorities summarily, without assigning any cognate reason. Further, after amendment by Finance Act 2014, Tribunal has no power to relax or waive such condition of pre-deposit- The High Court passed strictures on the approach adopted by Commissioner in rejecting assessee's representation.

An appeal was filed by the petitioner before CESTAT against an order confirming demand of ₹8.31 crores. Also, a detention notice was issued to the petitioner so as to restrict the petitioner from selling of any of goods belonging to it which were under control of customs authorities. During the course of audit and investigation, petitioner had made payment of ₹1.49 crores towards duty at various instances. Since, as per provisions of Section 129E of the Customs Act, 1962 (as amended by Finance Act 2014), the petitioner was required to pay mandatory pre-deposit of 7.5% or 10%, as the case may be, for maintenance of appeal before CESTAT, a representation was made by petitioner to the Commissioner of Customs for adjustment of such amount paid by petitioner during investigation proceedings towards the amount of mandatory pre-deposit. Without assigning any reason, the Commissioner rejected petitioner's representation by issuing communication through superintendent which was not even signed by the commissioner. Thus, petitioner's appeal was not entertained by CESTAT and it remained pending. The revenue department contended that the Commissioner has no control over deposits made by the petitioner as these deposits were made at different places subject to different proceedings during investigation and audit before various authorities. The revenue department further submitted that Tribunal itself being competent authority to pass order for such adjustment towards pre-deposit, petitioner's matter shall be relegated to the tribunal itself.

The Revenue's contention of relegating petitioner's case to tribunal for adjustment of sums paid earlier towards pre-deposit was rejected by the Hon'ble HC stating that, Tribunal's powers to relax or waive requirement of mandatory pre-deposit for maintaining appeal have been withdrawn by

amendment to Section 129E made by Finance (No.2) Act, 2014.

As regards rejection of petitioner's representation by non-speaking order by the commissioner, the High Court passed strictures on the approach of the Department.

The High Court held that, the representations made by the petitioner assessee before the learned Commissioner of Customs was simple and depended upon the determination of the relevant facts and figures by the Commissioner as to whether any such excess deposit was available with the Department or not and a part of which could be adjusted against the mandatory pre-deposit. This determination of facts required a quasi judicial determination with the application of mind by the respondent Commissioner of Customs to the relevant facts and it required an opportunity of hearing to be given to the assessee before disposing or deciding the representations made by the assessee in this regard. Unfortunately, nothing of this sort appears to have been undertaken by the respondent Commissioner in this case. High Court further held that, the rejection purportedly made on the office files of the learned Commissioner appears to be blithely communicated to the petitioner. These kind of communications display arrogance and non-application of mind by responsible officer of the Department viz., Commissioner who, in fact, was expected to pass appropriate quasi-judicial order after giving an opportunity of hearing to the assessee on the representations made by it, since on the result of that order depended a substantive right of the assessee to maintain his appeal before the CESTAT in terms of S.129 E of the Customs Act.

Recording its displeasure on the tenor of the letter, the High Court also stated that, no public authority or public servant much less a quasi-judicial authority like the Commissioner of Customs can be allowed or permitted to pass these kind of communications or direct their subordinates to communicate such orders in the aforesaid kingly manner. The High Court concluded by saying that there was not only a breach of principles of natural justice but the said communication also smacks of arbitrary act and non-application of mind by the learned Commissioner of Customs.

In the facts and circumstances of the case, and considering that, the reconciliation of the deposits and the extent of pre-deposit required to be made for maintaining the present appeal in question

before the CESTAT, the matter was remanded back to the learned Commissioner to decide the representations of the petitioner once again by a detailed speaking order, after giving him an opportunity of hearing.

High Court also granted stay in respect of operation of detention notice in respect of petitioner's goods under control of officers of customs and directed the Tribunal not to reject the appeal for want of mandatory pre-deposit. It further held that, after verification of assessee's representation, the amount to the extent of pre-deposit required can be adjusted out of such 'spare' or 'extra' amounts already lying deposited with the same Department, irrespective of the different locations of the deposits and subject to pending 'Investigation & Audit', and the Commissioner will issue the requisite Certificate of 'such pre-deposit requirement' having been satisfied by the assessee petitioner. Otherwise, the cogent reasons will have to be recorded by the said respondent Commissioner for not accepting such representations of the petitioner assessee.

LD/65/15

**Mr. Fayaj Gulam Godil
Vs.**

Union of India

6th June, 2016 (MUM)

Section 2(33) of the Customs Act, 1962: 'prohibited goods'.

Act of smuggling in relation to any goods is covered by section 2(39) of the Customs Act, 1962; Foreign currency cannot be taken out of India unless compliances made with the other law for the time being in force, namely, Foreign Exchange Management Act, 1999, r/w Foreign Exchange Management (Current Account Transaction) Rules, 2000.

The assessee smuggled foreign currency to Hong Kong concealed in their baggage. These persons were deported back from Hong Kong. Upon landing back in India, they were intercepted by the Directorate of Revenue Intelligence (DRI) officials after crossing the green channel on their arrival from Hong Kong. On examination, it was found that the foreign currency was concealed. On search of one of the person's the foreign currency was found. Thus, the statements were recorded, Panchanamas drawn and after the requisite formalities were completed, both confiscation proceedings and criminal prosecution were launched.



Aggrieved, the assessee preferred an appeal before the Bombay High Court.

The High Court held that the act of smuggling in relation to any goods is covered by Section 2(39) of the Customs Act, 1962. The High Court further noted CESTAT's observation that the foreign currency could not have been taken out of India unless compliances were made with the other law for the time being in force, namely, Foreign Exchange Management Act, 1999, r/w Foreign Exchange Management (Current Account Transaction) Rules, 2000. HC further held that once this was the act attributed to these persons, then, it was the discretion of the Adjudicating Authority to allow redemption or to resort to absolute confiscation.

The High Court observed that the definition of 'prohibited goods' given u/s 2(33) of the Act meant *"any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported, have been complied with."* Thus, the acts of assessee were falling within the meaning of Sec 113 since foreign currency was attempted to be improperly exported. Thus, HC concluded that it is at the discretion of authority to either confiscate the goods or allow payment of redemption fine.

High Court rejected assessee's reliance on Division Bench ruling in *Rostam Parvaresh* and held that in *Rostam Parvaresh* case, the Revisional Authority had failed to consider a specific contention raised by the assessee. Whereas in the instant case, HC observed that all the contentions raised were already been duly noted and considered by the CESTAT.

Thus, the High Court upheld CESTAT ruling wherein it upheld confiscation of property in light of Sec 113 and rejected assessee's appeal. ■

Defence Minister Manohar Parikkar Urges Chartered Accountants to Support Government and Prime Minister's Vision of Growth

ICAI Celebrates its 68th CA Day: A Brief Report



The Institute of Chartered Accountants of India (ICAI) has completed 67 years of professional excellence with outstanding achievements in accountability and integrity. Since its inception in 1949, the ICAI has considerably grown along multiple professional tangents. Recently, it celebrated its 68th Foundation Day with a massive participation of its members and students at Vigyan Bhawan in New Delhi on 1st July 2016. Celebrations started with the flag-hoisting ceremony at the ICAI headquarters in Delhi. At the function organised at Vigyan Bhawan, the ICAI evaluated its development and vowed to serve its stakeholders before an august gathering of more than 2,000 dignitaries including Govt. officials, ICAI past-Presidents and Council members. Union Defence Minister Shri Manohar Parrikar was the Chief Guest on the occasion. ICAI President CA. M. Devaraja Reddy welcomed the audience and the vote of thanks was given by ICAI Vice-President CA. Nilesh Shivji Vikamsey. We present a brief report on the proceedings of the CA Day celebrations that took place on 1st July 2016, to commemorate the 68th Foundation Day of the ICAI. Read on...

The Institute of Chartered Accountants of India celebrated its 68th Foundation Day as the Chartered Accountants' Day on 1st July 2016. Celebrations started at the ICAI headquarters with hoisting of the ICAI flag by the **ICAI President CA. M. Devaraja Reddy**, in the presence of **ICAI Vice-President CA. Nilesh Shivji Vikamsey** and other Central Council members and **ICAI Secretary Shri V. Sagar**, among other members, guests and employees of the Institute. ICAI President, Vice-President and Secretary addressed the audience, and assured that the ICAI would leave no stone unturned while working in the best interests of the profession. Employees were congratulated for their keen interest and efforts towards the development of profession, and advised to work in tandem with the expectations of our times.

Later, the grand CA Day functions resumed at the Plenary Hall of Vigyan



Bhawan in New Delhi, with a useful address on *Emotional Intelligence* (EI) by **Brahma Kumaris Dr. Girish Patel**, a psychotherapist

from Mumbai, where Dr Patel discussed the significance of being an emotionally intelligent person in social and professional progress, while dealing with the knowhow of the management of emotions. While explaining the meaning of hope as 'hold on pain ends', Dr. Patel explained how EI helps people connect effectively to their stakeholders and in possessing the power to forgive, seek forgiveness and express gratefulness. He conducted many exercises with the audience to drive his message.

Key function started with the arrival of its **Chief Guest Union Defence Minister Shri Manohar Parrikar** at the Vigyan Bhawan. Apart from the Chief Guest, ICAI President and Vice-President, and ICAI Secretary, **Central Council members CA. Sanjay**

Agarwal and CA. Naveen N. D. Gupta, and **NIRC Chairman CA. Deepak Garg** were also present on the dais.



ICAI Secretary Shri V. Sagar welcomed the Chief Guest and all other dignitary guests including ICAI President, Vice-President, past Presidents, Central Council members, past Central Council members, Regional Council members, and media professionals, among others. After thanking the Honourable Union Defence Minister, Shri Manohar Parrikar, for accepting the invitation to preside over the CA Day function, Shri Sagar briefly spoke on the significance of CA Day and the glorious past of Indian accountancy profession. He fondly referred to the achievements and sacrifices of the forefathers and seniors in the profession, requesting all stakeholders to take this glory forward to greater heights.

ICAI President CA. M. Devaraja Reddy welcomed the Union Defence Minister Shri Manohar Parrikar and other dignitaries from the Government as well as the profession, and offered his sincere wishes to all stakeholders on the occasion. He spoke at length on the legacy of accountancy profession: *...I am humbled by the enormous legacy of this prestigious institution that we carry forward as a team. This day – July 1 marks the dawn of a new era when this great institution the Institute of Chartered Accountants of India rededicates itself to the Nation, albeit in a deeper, stronger and more focused orientation...* While talking about the ICAI's role in nation-building, he gave out a promise on behalf of the profession: *The last few months however have been path breaking in our attempt to re-discover and*





re-define ourselves into newer roles and unexplored territories and this is what I seek to speak to you all about. In the next few years, you will see a new ICAI emerging from our academic shadows into an organisation of national eminence.

ICAI President CA. Devaraja Reddy categorically mentioned how ICAI was in the process of introspection and self-transformation, referring to the ICAI's new environment-friendly (i.e. paperless) meeting management system and phase-wise shift from hard copy publication of Regional Council and Branch newsletters to digital version. Referring to the ongoing revision in CA curriculum and HR processes of the ICAI, he assured the stakeholders of an improved quality control and strengthened regulatory mechanism.

On the possibility of ICAI's greater participation in the Government's initiatives, he said: (with)...over 2 lakh members and 8.6 lakh students...We would like to harness this immense intelligent power for the cause of the nation. He reminded the stakeholders

of the ICAI's engagement with Ministry of Railways as well as State Governments, and its contribution to the Government's flagship programmes like *Swachh Bharat Abhiyan* and *Swachh Vidyalaya Abhiyan*, while referring in particular to the physical verification of school toilets constructed by NTPC in Karimnagar district of Telangana. With pride, he informed how the Institute had come forward and participated in the *Swachh Bharat Pakhwada*, an initiative of Ministry of Corporate Affairs. ICAI President referred to the ICAI's constant engagement with the Government and its efforts in providing suggestions on various dynamic laws and regulations including Companies Act, 2013, ICDS, IDS, GST and Black Money Act. He concluded by expressing the ICAI's commitment: *We are ...highly conscious of our role in strengthening the fabric of the financial framework and would leave no stone unturned in our quest for Accounting and Audit Excellence. Challenges...inspire us and make us agile, responsive, alert and relevant...to borrow the*

words of our beloved Prime Minister, we like to challenge our challenges.

At the very beginning, **Union Defence Minister Shri Manohar Parrikar** remarked



pertinently, talking to the compère who introduced the Minister in Hindi while using English otherwise: *But I am more comfortable in English. You introduced me in Hindi because you thought I am a politician.* Then he emphasised again: *I said, you introduced me in Hindi but I am more comfortable in English, and assured the audience: ...if you want me to speak in Hindi, I can do it.*

Union Defence Minister then thanked the ICAI for extending invitation to him: *I think, Defence Ministry is the only Ministry which does not look towards chartered accountants. (I was invited) May be because the (ICAI) President thought of taking one more opinion from one more Ministry so that one more option of business can be open.* Responding to his well-received humour, he said: *From the claps I can make out that the humour is not a difficult issue for chartered accountants. I appreciate that.* Recounting his own experiences of being misread by the media, he requested the present media professionals to take his *speech minus the humour* and not to misread that. In a lighter vein, he commented on the session

on Emotional Intelligence: I never knew that chartered accountants can get stressed.

Then the Chief Guest recalled the three beautiful key verses from the Indian philosophy, completing what, in fact, the ICAI President had started while lighting the lamp during inauguration: *Asatoma sadgamaya; tamasoma jyotirgamaya; mrtiyorma amrtgamya*, that is—*lead us from ignorance and unreal to knowledge and truth, from darkness to light and from death to immortality.* On one hand he appreciated the religious nature of the ICAI President and thanked him for his nice small gestures, and on the other, he accepted that he was not that religious; he further said that whenever he was in trouble, he did remember God and prayed, which provided him *strength to proceed further in life.*

Union Defence Minister recalled many humorous instances from his own experience and the audience kept responding to that. He talked about the strengthened Goan economy and recounted how Goa's tourism had grown big in the last decade with increased influx of national and international tourists during his tenure. During his Chief Minister's term, he mentioned, he had successfully tried to revive the mining scenario in Goa by introducing interesting offers and schemes. He is of the view that it is always better to correct the system if the system is flawed, and never to destroy the system. As CM of Goa, the Defence Minister acknowledged, *I am very glad to tell you that after consulting many chartered accountants, I could ramp up the income of Goa by recovering money from mines.* An amount of ₹2000 crores was generated in just two-year span, which is considerably big for Goa. He fondly recalled how he used the suggestions of chartered accountants in the matters relating to assessment of mining, VAT issues, etc., and said: *I have no problems in interacting with chartered accountants even in the Ministry of Defence, subject to security clearance.* That



can be done. He called upon the ICAI for an exchange of ideas: *...I would advise you to come forward sometime to have discussion with me.*

Expressing his faith in the leadership of the country and the Prime Minister's vision, the Defence Minister accepted that the country was moving in the right direction. He appealed: *I would urge you to support the Government and the Prime Minister's vision by participating (in that) or even pointing out to us there are some errors we are doing. I can assure you one thing we don't commit any error on purpose. Intentions are good...* His message to the ICAI was clear: *The right professional body should bring it and should not be worried about the consequences, which I think is required today.*

After the Chief Guest's speech, vote of thanks was aptly delivered by the ICAI Vice-President **CA. Nilesh Shivji Vikamsey**, who thanked the Chief Guest for his faith in the Indian accountancy profession. He reiterated the ICAI's commitment before the Minister: *On behalf of the ICAI, I assure full support to the Indian Prime Minister as well as to our Government in making India the best in the world.* He praised the Union Defence Minister for his efficient work in the



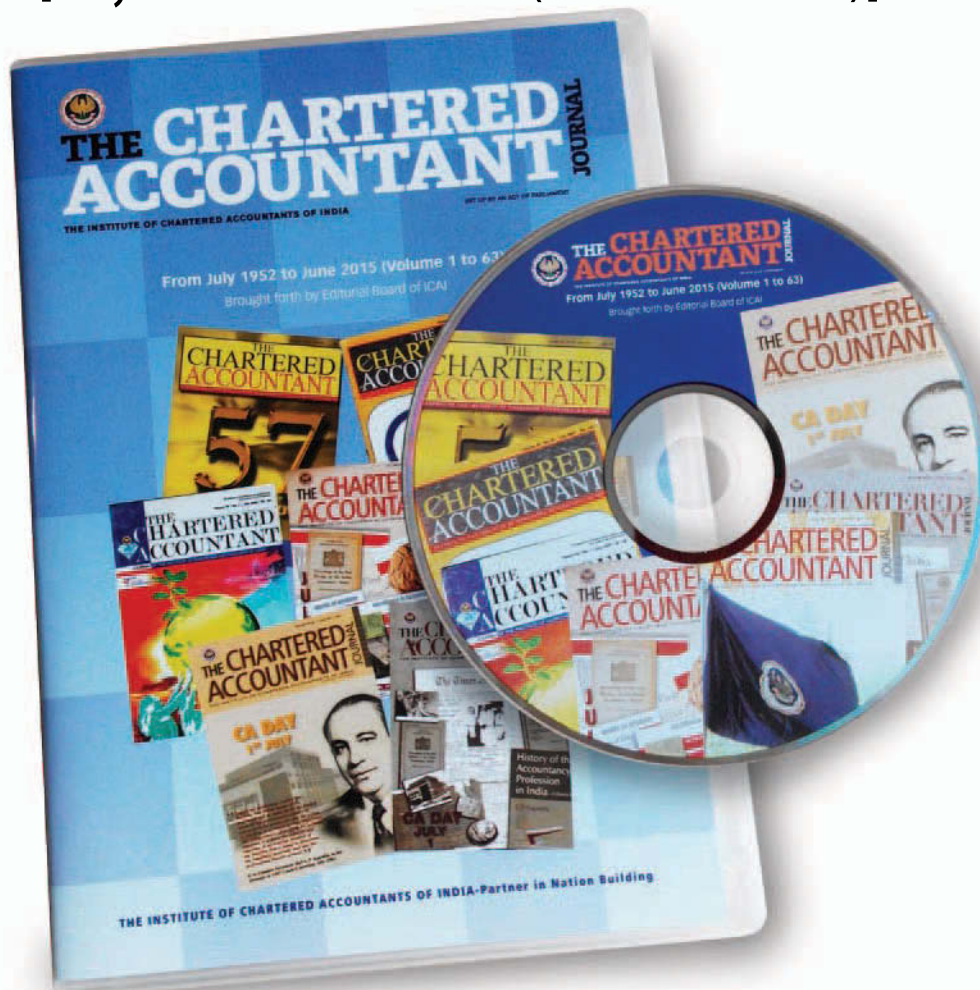
past and present, i.e. as Goa's Chief Minister and India's Defence Minister, and for his innovative and effective schemes. ICAI Vice-President went on and responded to the Chief Guest's call: *Though the ICAI has been supporting all the schemes, including GST and IDS, the ICAI would be able to contribute more to the nation if the Indian Government involves the ICAI and its members in the drafting stage of such schemes.* He reminded the Chief Guest how Indian chartered accountants were recognised worldwide for their excellence and integrity. He promised on behalf of the profession that the ICAI would continue to play a key role in consolidating the economy of the resurgent India with its initiatives and measures.

After the vote of thanks, all ICAI past-Presidents, i.e. **CA. V. Rajaraman**, **CA. T. S. Vishwanath**, **CA. N. D. Gupta**, **CA. Kamlesh Shivji Vikamsey**, **CA. Ved Jain** and **CA. Amarjit Chopra**, and present Central Council members gathered at the dais for a group photograph with the Chief Guest. Later on the occasion and at the same venue, **CA. (Dr.) Girish Ahuja** delivered a lecture on Income Disclosure Scheme, 2016, and updated the professional fraternity. ■



DVD of The Chartered Accountant Journal

[July 1952 to June 2015 (Volume 1 to 63)]



The Editorial Board of the Institute of Chartered Accountants of India has brought out a dynamic HTMLised searchable DVD of the past issues of *The Chartered Accountant Journal* from July 1952 to June 2015 (Volume 1 to 63).

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Challenges and Opportunities of Accountancy Profession— SAFA Perspective



Accounting has a positive role to play in the process of economic development and the profession can have a vital role in helping nations to advance and meet future business needs. High-quality corporate reporting is the key to improving transparency, facilitating the mobilisation of domestic and international investment, creating a sound investment environment and fostering investor confidence, thus promoting financial stability. There is an increasing diversity in the accountancy profession. Cooperation and collaboration among nations is crucial in order to enhance competitiveness and financial stability. In this regard, the South Asian Federation of Accountants (SAFA) has contributed immensely to the success and growth of the accountancy profession across the SAARC region. SAFA member bodies share a history, and together have worked to develop the accounting profession as well as the role of accountants. Read on to know more...

During the late 19th century, the earliest professional accounting was concerned mostly with the concept of insolvency, insurance, debt collection and book keeping. Over the years, accountancy has expanded to cover costing and information systems, fraud prevention, asset and business valuation, prospectuses and takeovers. Auditors and financial analysts provide value to supply chain management, portfolio investment analysis,

project appraisal, assurance to risk management, governance and internal control process through high-quality corporate reporting. Financial sector development plays an important role in increasing economic growth, through improvement in the capital accumulation. There are a lot of roles that accountancy play, but they are not well understood or known by most individuals, specifically in the developing countries.

Accounting has a positive role to play in the process of economic development and the profession can have a vital role in helping nations to advance and meet future business needs. High-quality corporate reporting is the key to improving transparency, facilitating the mobilisation of domestic and international investment, creating a sound investment environment and fostering



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investor confidence, thus promoting financial stability. A strong and internationally comparable reporting system facilitates international flows of financial resources while, at the same time, helping to reduce corruption and mismanagement of resources. It also strengthens international competitiveness of enterprises in attracting external financing and taking advantage of international market opportunities.

In the wake of various financial crises, continued efforts are being made towards improving the quality of corporate reporting as an important part of measures towards strengthening the international financial architecture. In this regard, the implementation and application of internationally recognised standards, codes and good practices in the area of corporate reporting has been strongly encouraged as a reflection of the increasing pace of globalisation and international economic integration. However, the effective adoption and implementation of such standards and codes remains a challenge for many developing countries and economies in transition, as they lack some of the critical elements of corporate reporting infrastructure—from weaknesses in their legal and regulatory frameworks, to lack of human capacity and relevant support institutions. In the face of these challenges, there is a need for a coherent approach to building capacity in this area, as well as for tools to measure and benchmark progress and identify priorities for further actions.

To build an accountancy infrastructure is a complicated process because it is part of an economy's legal and regulatory system. It needs to be attuned to the interests of many stakeholders and the availability of financial, educational and human resources. Capacity building helps reinforce proper legal frameworks and institutional arrangements. It is concerned with developing and upgrading certain skills, competencies and performance. It is also about enhancing the capacity of individuals, groups or institutions that are to carry out corporate reporting, for it is reporting and transparency that often drive improvements.

Various findings had proved that capacity building, public interest and sustainability, as proven areas where accountancy can contribute to enhancing and improving the social welfare of citizens. Undoubtedly, one area which gives huge impetus to national development is the long-term continual process of development

involving the capacities of individuals, institutions and governments. Accountancy help to develop individual, institutional and government capacities through establishing quality financial institutions since, all stakeholders of national development need additional competencies for stronger and efficient collaboration. Nevertheless, what will profit the country if it plans national development, yet fails to increase the knowledge and skills base of its citizens and government? Accountancy therefore, plays its essential role by building government's capacity thus enhancing its ability to collect revenue, prepare national yearly budget and allocation, and promote private participation and civic engagement.

For example, the World Bank introduced 'Reports on the Observance of Standards and Codes' (ROSCs) produced as a joint initiative with International Monetary Fund for audit and accounting, which took into account the different levels of development and varying priorities in different countries. With such capacity initiatives, a country's access to proper legal frameworks, institutional arrangements, technical resources and human capacity which serve as additional competencies, must be carried out. Also, accountability measures will minimise the proliferation of corruption which is a major setback in national development through international comparable reporting system, knowledge of relevant law, integrity and objectivity. Indeed, accountancy is the heart of capacity building and a strong accountancy profession in this region is essential to economic development and also economic confidence both in the public and private sectors.

Furthermore, another major area of national development is public interest. Recently, countries invested much in branding the nations, so as to enhance its ability to secure foreign direct investments. If global standards of accounting are practiced, it will facilitate transparency and feasibility analysis during its negotiations with developed

The South Asian Federation of Accountants (SAFA) is the regional federation of professional accountancy bodies in South Asian Association for Regional Co-operation (SAARC) Region dedicated to ensure its continued eminence in the world of accountancy; in the public interest and towards broad economic development of the region.

countries and at global capital markets. The profession provides Programme Based Budgeting (PBB) and International Financial Reporting Standards (IFRS) which are globally practiced over 100 countries since these ethical frameworks are prerequisite for national development. Professional accounting thereby, facilitates the mobilisation of international investments, fostering investors' confidence, reduce corruption and mismanagement of resources, and eliminate the practice of restructuring transactions and financial engineering.

National development plans, to a large extent, depend on sustainability. Sustainable development is a process of change in which the exploitation of resources, the direction of investments and the orientation of technology development and institutional changes are in harmony and enhance both current and future potential to meet human need and aspirations. This needs to be measured and reported with respect to integrity through quality information. Taxes, subsidies, rating and benchmarking, voluntary codes, tradable permit and stakeholder interest are mechanisms and activities constituting an accounting infrastructure which promotes the language sustainability. These mechanisms must be supported by various stakeholders who obviously will rely on credible information which professional accountants do in exerting pressure on the activities of the nation in the quest of sustainability. This will shape the way in which government; tax authorities and market regulators operate; thereby influencing the country. Despite challenges in the capital market, the profession still contributes to national development through sustainability reporting and verification. This concept of sustainability is well incorporated in accountancy and often goes beyond publishing sustainability reports. Accountancy's role in sustainability involves providing assurance through

SAFA is working on several important fronts through active engagement of several of its committees.

Among the important works is the one towards harmonising the accounting education in the SAARC region with the objective of having in due course a qualification that could be recognised as South Asian qualification. SAFA is also trying to raise a united voice to present the views of developing economies in the international forum.

use of performance indicators, strategic planning, formulating corporate policies and managing effects of sustainability issues.

The South Asian Federation of Accountants (SAFA) is the regional federation of professional accountancy bodies in South Asian Association for Regional Co-operation (SAARC) Region dedicated to ensure its continued eminence in the world of accountancy; in the public interest and towards broad economic development of the region. SAARC has recognised SAFA as one of its apex bodies. SAFA has currently nine accounting bodies. SAFA, through its member bodies, provide necessary technical support to development of accounting profession in those countries.

SAFA is working on several important fronts through active engagement of several of its committees. Among the important works is the one towards harmonising the accounting education in the SAARC region with the objective of having in due course a qualification that could be recognised as South Asian qualification. SAFA is also trying to raise a united voice to present the views of developing economies in the international forum.

SAFA has contributed immensely to the success and growth of the accountancy profession across the SAARC region. SAFA member bodies share a history, and together have worked to develop the accounting profession as well as the role of accountants.

There is an increasing diversity in the accountancy profession. Cooperation and collaboration among nations is crucial in order to enhance competitiveness and financial stability. As the region works through the current challenging economic environment, nations will achieve competence and competitiveness at a macro level. These qualities are central – to create smart, inclusive and sustainable growth, which in turn will increase employment, expand access to education and reduce poverty.

Accountancy will forever respond to emerging demands and market changes. Developing our human resource base, ensuring public interest through global standards like IFRS and implementing sustainability framework such as Global Reporting Initiative (GRI) on capital maintenance will create a future out of poverty for developing countries.

To conclude, let's recall a famous quote by Abraham Lincoln: *the best way to predict the future is to create it*. Therefore, if developing countries yearn for improved living conditions, then such a future can hardly be decoupled from Accountancy. ■

Income Declaration Scheme, 2016 is an Opportunity for People to Pay Tax and Come Clean, Says Finance Minister Arun Jaitley



To complement the ICAI's role as a partner of Government in disseminating and propagating the Income Declaration Scheme 2016, Hon'ble Finance Minister Shri Arun Jaitley recently shared the ICAI and ICAI-associated platforms to speak his mind on the scheme. On 2nd July 2016, the finance Minister addressed the members and other citizens in a webcast organised by the ICAI titled 'Citizen & Member Awareness Programmes on Income Declaration Scheme'. Later the Finance Minister also addressed a National Seminar on IDS 2016 on 10th July 2016 at Ahmedabad, which was organised by Gujarat Government in partnership with the ICAI. Gujarat Chief Minister Ms. Anandiben Patel and Revenue Secretary Shri Hasmukh Adhia were also present at this seminar. On both the occasions, the Finance Minister Shri Jaitley said the Income Declaration Scheme 2016 is aimed at providing an opportunity to persons who have not paid full tax in the past to come forward and declare the undisclosed income, pay tax and come clean.

Giving the background of the Income Declaration 2016, Shri Jaitley said the Government's measures have ensured that there is a 'significant dip' in the illegal foreign assets held by Indians. "The recent reports have indicated that there is a sizable dip in the Indian holdings outside the country. Today, there is a panic among people who hold illegal assets outside. If you take from 1947 to 2014, the cumulative effect of all steps taken would not even be a miniscule

percentage of what this government has done in the last two years," Jaitley said in Ahmedabad. Jaitley said the Government was trying to make the Tax Department assessee-friendly.

'A disclosure scheme'

"This is a part of our overall approach, we do not want to be vindictive on any section. We don't want to terrorise people. Therefore, we want to give them an opportunity to come out clean. This isn't an immunity scheme, but a disclosure scheme. This is a lifetime

(contributed and compiled by Editorial Board Secretariat of the ICAI)

opportunity for those who have not disclosed their income," he said. "G-20 nations, which control about 85 per cent of the world economy, have decided to cooperate in this direction to share information of illegal assets. It is believed that by 2017, we will have real time information about all those who have assets stashed abroad under the FATCA agreement that we have signed with the US," Jaitley added.

He said the contact between the government and those who voluntarily declare their black money assets through the one-time compliance window till September 30 will be minimal. "Personal contact between the assessing authority and the assessee must be the least possible amount. There will be no questions asked by the government regarding the source of the income, this is an opportunity to make oneself a compliant tax payer," he said.

Emphasising that this is a 'disclosure' scheme and not an 'immunity' scheme, Jaitley said, "Immunity scheme allows discrimination against the honest tax payer. We don't want that; we want the honest tax payer to get premium."

Welcoming the IDS 2016, the Institute of Chartered Accountants of India (ICAI) appealed to its members and clients to come forward and make use of the opportunity provided by the scheme. "This scheme will help in stopping the money from going into safe heavens. Because once the amount is in white, we can start investing here. Now that the scheme is open, there is more trust because of the confidentiality. So it is a good opportunity for businessman and professionals, who have missed the compliance of law," said M Devaraja Reddy, President, ICAI.

Revenue Secretary Hasmukh Adhia, who was also present in Ahmedabad seminar, ruled out any possibility of giving an extension beyond September.

In her address, Gujarat Chief Minister Anandiben Patel said the State had contributed ₹34,865 crore to the Central I-T collections last fiscal with 30 lakh tax payers and 1.57 crore PAN card holders.

Income Tax Dept: Blackmoney Disclosure in AY17-18 to Face Prosecution

The Income Tax Department has warned black money holders of prosecution if they tried to pass off such wealth as current income instead of disclosing it in the one-time compliance window. In its third set of FAQs, the I-T department assured full confidentiality of information even from other law enforcement agencies and no enquiry of source of income. It said the Income Disclosure Scheme (IDS)-2016 provides immunity under the I-T Act, 1961,

Wealth-tax Act, 1957 and the Benami Transactions (Prohibition) Act, 1988. The I-T department assured full confidentiality of information even from other law enforcement agencies and no enquiry of source of income.

Vide Circular No. 24 and 25 2016, the Central Board of Direct Taxed has issued further clarifications in the form of FAQs. The Circular No. 25 inter alia provides clarifications on issues such as confidentiality of information disclosed in the declaration, allowability of TDS credit against declared income, enquiry in respect source of income and payment of tax and initiation of enquiry against third parties on the basis of information furnished in the declaration.

An issue regarding the advantage of declaring undisclosed income and assets under the Scheme vis-à-vis declaration of the same as current income for Assessment Year 2017-18 was also raised. In this regard it has been clarified that declaration of undisclosed income and assets as current income for Assessment Year 2017-18 would attract prosecution for false verification and also cannot explain acquisition of undisclosed assets in the past years. Attention of taxpayers has also been drawn to the comprehensive data-mining programme launched by the Department which will provide pin-pointed information about transactions undertaken by the taxpayer and the year to which the same relate.

Government Revises Time Schedule for Making Payments under IDS 2016

According to a press release by Press Information Bureau, during the course of meetings and seminars held in different parts of the country, various stakeholders have expressed concern that the time period available under the Scheme up to 30th November, 2016 for making payment of tax, surcharge and penalty is very short, especially where funds in liquid form are not readily available with the declarants. It has also been mentioned that for making payment by 30.11.2016, the declarants may have to opt for distress sale of the assets. Taking into consideration the practical difficulties of the stakeholders, the Government has decided to revise the time schedule for making payments under the Scheme as under: (i) a minimum amount of 25% of the tax, surcharge and penalty to be paid by 30.11.2016; (ii) a further amount of 25% of the tax, surcharge and penalty to be paid by 31.3.2017; and (iii) the balance amount to be paid on or before 30.9.2017. A Notification to this effect shall be issued shortly. ■

Income Declaration Scheme, 2016 — an Opportunity



As a wise measure of the Government of India to use the economy's black money for productive purposes, Income Declaration Scheme, 2016 has been incorporated as Chapter IX of the Finance Act, 2016, which provides an opportunity to everyone to officially convert their black money into white money. Union Finance Minister Shri Arun Jaitley in his Union Budget speech this year used the phrase 'Past Transgressions' which recognizes the past wrongdoings of taxpayers and offers them an exit door by way of a payment of 45% of their undisclosed income. This step has been lauded as a welcome step for the purpose of removal of black money from the Indian economy. Read on to know more about this scheme...

Introduction

Government has taken a wise initiative to convert the economy's black money into white which could be used for productive purposes. For this, **Income Declaration Scheme, 2016** has been incorporated as Chapter IX of the Finance Act, 2016, which provides an opportunity to everyone to officially convert their black money into white. Union Finance Minister Shri Arun Jaitley in his Union Budget speech this year had used the phrase past transgressions

which recognizes the past wrongdoings of Indian taxpayers and offer them an exit door by way of the payment of 45% of their undisclosed income. This is a welcome step to remove black money from the economy.

Broad Mechanics of the Scheme

The Scheme applies to undisclosed/ unaccounted domestic income and assets which were earned in any year prior to the financial year (FY) 2016-17, i.e. FY 2015-16 and earlier years. The Scheme does not apply to any undisclosed foreign income and asset to which the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 applies.

Applicability of the Scheme

As per the Scheme, persons who have not declared



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As per the Scheme, persons who have not declared their income correctly chargeable to tax under the Income-tax Act, 1961 (IT) for any assessment year prior to the assessment year beginning on the 1st day of April 2017, they can come forward and declare such undisclosed income(s).

their income correctly chargeable to tax under the Income-tax Act, 1961 (IT) for any assessment year prior to the assessment year beginning on the 1st day of April 2017, they can come forward and declare such undisclosed income(s). This income can be in the form of investment, asset or any such thing. Declaration can be filed in the following situations:

- 1 If the person has failed to furnish Income Tax Return (ITR) under section (u/s) 139 of the IT Act and has income chargeable to tax.
- 2 If the person has failed to declare the income in ITR under IT Act before commencement of Income Declaration Scheme 2016.
- 3 If the income has escaped assessment by reason of omission or failure on the part of such person to furnish a return under the Act, or
- 4 If the person has failed to disclose fully and truly all material facts regarding income that are required for the assessment.

The scheme shall remain in force for a period of four months, i.e. from 1st June 2016 to 30th September 2016, for filing of the declarations.

Payments towards taxes, surcharge and penalty must be made latest by 30th November 2016. Declarations can be filed online or with the jurisdictional Principal Commissioners or the Commissioners of Income-tax across the country.

Scheme not to Apply to Certain Persons, Certain Offences, etc.

The scheme is not to apply to

- (a) any person -
 - in respect of whom an order of detention have been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
 - notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.
- (b) in relation to prosecution for any offence punishable under:

- Chapter IX or Chapter XVII of the Indian Penal Code;
 - the Narcotic Drugs and Psychotropic Substances Act, 1985;
 - the Unlawful Activities (Prevention) Act, 1967;
 - the Prevention of Corruption Act, 1988.
- (c) any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of tax Act, 2015.
 - (d) undisclosed income chargeable to tax for any assessment year prior to assessment year 2017-18 for which:
 - notice has been issued under sections 142/ 143(2)/ 148/ 153A/ 153C of assessment under the Act and proceeding is pending before the AO; or
 - the time-limit for issuing the notice under sections 143(2)/ 153A/ 153C has not expired pursuant to search, requisition or survey carried out under sections 132/ 132A/ 133A under Income-tax Act.
 - any information has been received under a DTAA in respect of such undisclosed asset.

In above cases, if the declaration of income is made under the said scheme then it shall be deemed as if the declaration was never made and all the provisions of the Act, including penalties and prosecutions, shall also apply accordingly.

Applicable Tax Rate

Under the Scheme, such income as declared by the eligible person would be taxed at:

Particular	Rate	Effective Rate
Tax Rate	30% of Total Income	30.00%
Surcharge (to be called Krishi Kalyan Cess)	25% of Tax	7.50%
Penalty	25% of Tax	7.50%
Total		45.00%

The Scheme is all about declaration of the undisclosed domestic income. So, there arises a question why people would disclose their income under this Scheme and pay tax at such a higher rate.

Taxation

Signatories for Declaration:

Declaration under the said scheme can be filed by any person but shall only be signed by the person authorized to sign Income Tax Return as per Income-tax Act. These persons are:

S. No.	Person	Signing Authority
1	Individual	a) By the individual himself or if he is absent from India, then his authorized representative. b) Where Individual is mentally incapacitated, by his guardian or any other competent person on his behalf.
2	HUF	By Karta, where Karta is absent from India or mentally incapacitated, by any adult member of such HUF
3	Company	By the Managing Director or by any Director, if there is no Managing Director(MD)/MD is unable to sign due to unavoidable reason
4	Firm	By the Managing Partner or where there is no managing partner(MP)/MP is unable to sign due to unavoidable reason, by any other partner
5	Any other Association	Any member or principal officer of the association
6	Any other Person	By that person or any other person competent to act on his behalf.

Why would People Declare Income under this Scheme?

The Scheme is all about declaration of the undisclosed domestic income. So, there arises a question why people would disclose their income under this Scheme and pay tax at such a higher rate. The Scheme that has been designed thoughtfully, enumerate the below-mentioned benefits:

1. Declared income will not be added to the declarant's/concerned person's total income that is already filed under Income-tax Act, 1961.

Asset	Fair Market Value
Bullion, jewellery or precious stone or archaeological collections, drawings, paintings, sculptures or any work of art	Higher of • Cost of acquisition; or • Price that such asset shall ordinarily fetch if sold in the open market on 1st June, 2016 on the basis of valuation report obtained by the declarant from a registered valuer.

Where the income chargeable to tax is declared in the form of investment in any asset, the fair market value of such asset as on the date of commencement of scheme, i.e. 1st June 2016 shall be deemed to be the undisclosed income. The fair market value (FMV) of the asset(s) shall be determined as per the Income Declaration Scheme Rules, 2016 (Notification No 33/2016, dated 19.05.2016).

2. Declarations made under the scheme shall be exempt from wealth-tax in respect of assets specified in declaration.
3. If the undeclared income is shown as asset, No wealth tax will be levied on the said assets.
4. No scrutiny and enquiry under the Income-tax Act and Wealth-tax Act will be undertaken in respect of such declarations.
5. Immunity from penalty and prosecution under such Acts to be provided.
6. The declared income will not affect any of the already completed tax assessments of any previous year or future assessment years.
7. Immunity from the Benami Transactions (Prohibition) Act, 1988 will be provided for such declarations subject to certain conditions.

Value of the Asset under the Scheme

Where the income chargeable to tax is declared in the form of investment in any asset, the fair market value of such asset as on the date of commencement of scheme, i.e. 1st June 2016 shall be deemed to be the undisclosed income. The fair market value (FMV) of the asset(s) shall be determined as per the Income Declaration Scheme Rules, 2016 (Notification No 33/2016, dated 19.05.2016). While determining the FMV of the assets, no allowances or deductions will be made. FMV shall be determined for the various assets as per the following:

Asset	Fair Market Value
Shares and securities (quoted on recognized stock exchange)	Higher of • Cost of acquisition; and • Average of lowest and highest price of such share and security quoted on a recognized stock exchange on 1st June, 2016 or immediately preceding date in case not traded on 1st June.
Shares and securities (unquoted)	Higher of • Cost of acquisition; and • FMV on 1st June, 2016 determined by formula $((A+B-L)/PE) \times PV$, where: A= Book Value of all the assets in the Balance Sheet (other than bullion, jewellery, precious stones, artistic works, shares, securities and immovable property) as reduced by any amount of Income Tax paid adjusted with refund, if any and any amount shown as asset including unamortised amount of deferred expenditure which does not represent the value of any asset; B= FMV of bullion, jewellery, precious stones, artistic works, shares, securities and immovable property as determined in the manner provided in the rules; L= Book Value of liabilities shown in the Balance Sheet excluding following amounts: • Paid-up capital of equity shares • Amount set apart for dividend • Reserves and surplus other than those set apart for depreciation • Excess Provision for taxation (i.e excess provision over the tax payable on book profits), - other than income tax paid less income tax refund • Provision for unascertained liabilities • Contingent liabilities other than arrear of dividends of cumulative preference shares PE= Total amount of paid up equity share capital as shown in the balance sheet; PV= Paid up Value of such equity shares;
Unquoted Shares and securities (other than equity shares in a company)	Higher of • Cost of acquisition; and • Price that the share or security shall ordinarily fetch if sold in the open market on 1st June, 2016 on the basis of valuation report obtained by the declarant from a registered valuer.
An immovable property	Higher of • Cost of acquisition; or • Price that such property shall ordinarily fetch if sold in the open market on 1st June, 2016 on the basis of valuation report obtained by the declarant from a registered valuer.
Interest of a person in a partnership firm or AOP or LLP of which he is a member	• First net asset of the firm or AOP or LLP shall be determined as on 01.06.2016, • then net asset equal to the amount of its capital shall be allocated among partners or members in the proportion of capital contributed by them • Residue net asset shall be allocated in accordance with the agreement for distribution of assets in the event of dissolution, in the absence of such agreement, in the profit sharing ratio. • The sum total of the amount so allocated to a partner or member shall be treated as the value of the interest of that partner or member. • Net asset will be calculated as (A+B-L) determined in the manner provided under unquoted shares and securities as above.
Any other asset	Higher of • Cost of acquisition or the amount invested; and • Price that the asset would ordinarily fetch if sold in the open market on 1st June, 2016

Note: Subsequent sale of assets disclosed in form of investment shall be liable to tax under the head 'Capital Gains'. The Cost of Asset for the said purpose would be the FMV as calculated above as on 1st June 2016 and the period of holding shall start from the said date.

Procedure for Declaration

1. A declaration of income or income in the form of investment in any asset under Section 183 shall be made in **Form-1**.
2. The declaration shall be furnished:-
 - (a) Electronically under digital signature; or
 - (b) Through transmission of data in the form electronically under electronic verification code; or
 - (c) In print form, to the concerned Principal Commissioner or the Commissioner who has the jurisdiction over the declarant.
3. The Principal Commissioner or the Commissioner shall issue an acknowledgement in **Form-2** to the declarant within fifteen days from the end of the month in which the declaration under section 183 has been furnished.
4. The proof of payment of tax, surcharge and penalty shall be furnished by the declarant in **Form-3**.
5. If the declarant fails to pay the tax, surcharge and penalty in respect of the declaration made by 30.11.2016, such declaration filed shall be deemed never to have been made under this Scheme.
6. The Principal Commissioner or the Commissioner shall grant a certificate in **Form-4** to the declarant within fifteen days of the submission of proof of payment of tax, surcharge along with penalty.

Invalid/Void Declaration

There are some instances under which the declaration made will not be considered as valid. These are:

1. If the declarant fails to pay entire amount of tax including surcharge and penalty on or before 30th November 2016
2. Where the declaration has been made by misrepresentation or suppression of facts or information.
3. Each person is allowed to make only one declaration in respect of his income or as a representative assessee in respect of income of any other person. If any such other declaration was subsequently made, it shall be treated as void.

In above cases, although the declarant may not be subjected to any penal consequences under the scheme but the information submitted may be used by the revenue authorities for assessment/reassessment of such income under the existing provisions of the Act.

Other Relevant Points

1. Nothing contained in the Scheme shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Scheme.
2. In cases where any declaration has been made but no tax, surcharge and penalty referred to in the scheme has been paid within the time specified, i.e. by 30.11.2016, the undisclosed income shall be chargeable to tax under the Income-tax Act in the previous year in which such declaration is made.
3. Though assets and investments in any assets can be shown as the income under this scheme, but undisclosed foreign assets and income chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 will not be considered under this Scheme.
4. Information in respect of the declaration furnished will be kept confidential similar to filing of returns by the taxpayers (Section 138 of the Income-tax Act, 1961).
5. Any amount paid as tax, surcharge or penalty in pursuance of a declaration made under the scheme shall not be refundable. Once the tax payment is done, no refunds will take place at any point of time.

Conclusion

This is a kind of amnesty scheme offering defaulters a chance to come clean, and is reminiscent of the Voluntary Disclosure of Income Scheme (VDIS) of 1997, which garnered a revenue of over ₹7,800 crore (INR 78 billion) for the Indian Government.

Under the current scheme (Income Declaration Scheme, 2016), the tax is calculated on the basis of current fair market value of the assets instead of the Cost of Asset. This may be an obstacle in the success of the said scheme as declarant may find it difficult to pay the huge tax burden in one go and may face liquidity problem, which might change their mindset to disclose income.

The Finance Minister is urged to review the Scheme and provide for charging tax on the basis of actual cost of assets to be declared by the assessee instead of FMV. If the Scheme proves to be a success, it can generate huge money for the economy.

The full text of the Scheme is available at www.incometaxindia.gov.in. ■

The CESS Story—Analysis of Clean Energy, Swachh Bharat, Infrastructure and Krishi Kalyan Cess as Levied by Central Government



The author duo in their article introduces the readers to a discussion on 'cess' and its analysis in the context of two terminologies—tax and fee—and then goes on to describe the four cess, namely, Clean Energy Cess, Swachh Bharat Cess, Infrastructure Cess and Krishi Kalyan Cess. While analysing the four cess levied by the Central Government, the author duo also reflects on the rationale behind them in an interesting manner. Read on to know more about the story of the four cess of our Central Government...



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What is a CESS?

The term 'Cess' in general refers to a type of tax. One can say it as an alternative term for a tax and the term 'cess' is used in countries like Britain, Ireland and Scotland as 'tax'.

The Supreme Court in *Shinde Brothers vs. Deputy Commissioner*—AIR 1967 SC 1512 has held that "the

Fees confer a capacity, although the special advantage, as for example in the case of registration fees for documents or marriage licences, is secondary to the primary motive of regulation in the public interest.

word cess means a tax and is generally used when the levy is for some special administrative expense". Further, Supreme Court observed that "The word 'cess' is used in Ireland and is still in use in India although the word rate has replaced it in England. It means a tax and is generally used when the levy is for some special administrative expense which the name (health cess, education cess, road cess, etc.) indicates".

It appears that the term 'cess' has its origin to the practice of Irish farmers, as those who have the most successful yield pay the most tax on their crop to the Government (cess for assess) and the term 'cess' has been derived from the mistaken connection with the word 'census'.

In India, there is no statutory definition of the term 'cess' and in India, cess is generally referred with the qualifying word prefixed, to any taxation, such as education cess, health cess, irrigation-cess, etc.

As regard the meaning and definition of the term 'cess', the Supreme Court in *M/s Guruswamy and Co. vs. State of Mysore AIR 1967 SC 1512* observed that "the word 'cess' is used in Ireland and is still in use in India although the word rate has replaced it in England. It means a tax and is generally used when the levy is for some special administrative expense which the name (health cess, education cess, road cess etc.) indicates. When levied as an increment to an existing tax, the same matters not for the validity of the cess must be judged of in the same way as the validity of the tax to which it is an increment."

On similar lines, the Supreme Court in *State of West Bengal vs. Kesoram Industries Ltd AIR 2005 SC 1646*, it was held that 'Cess' is a tax and is generally used when the levy is for some special administrative expense, suggested by the name of cess, such as health cess, education cess, road cess etc.

Whether 'CESS' be Termed as Tax or Fee?

It is relevant to note that 'cess' is generally referred as 'tax', however, depending on the fact that whether the levy of 'cess' is in the nature of 'common burden'

or is there any special benefit involving 'quid pro quo'. The former is a tax and latter would be a fee.

Meaning of terms 'Tax' and 'Fee'

The term 'tax' could be understood from the definition of the term 'taxation' as defined in Article 366(28) wherein the 'taxation' includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly. It is clear that the term 'tax' is generally understood to mean imposition of tax or impost, whether it is for general or local or special.

The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden while a fee is a payment for a special benefit or privilege. Fees confer a capacity, although the special advantage, as for example in the case of registration fees for documents or marriage licences, is secondary to the primary motive of regulation in the public interest. Public interest seems to be at the basis of all impositions, but in a fee it is some special benefit which the individual receives. It is the special benefit accruing to the individual which is the reason for payment in the case of fees; in the case of a tax, the particular advantage if it exists at all is an incidental result of State action. [See *Commissioner Hindu Religious Endowments vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt AIR 1954 SC 282*]

It is clear from the above that the term 'fee' is a sort of return or consideration for the services rendered and it is absolutely necessary that the levy of fees should on the face of the legislative provision be correlated to the expenses incurred by Government in rendering the services. If the money thus collected by the Government is set apart and appropriated specifically for the performance of such work and the same is not merged in the public revenues for the benefit of the general public, such amount collected/imposed could be termed as fees and not a tax.

Further, the Supreme Court in the case of *Vijayalakshmi Rice Mills vs. Commercial Tax Officers, Palakol-2006 (201) E.L.T. 329 (S.C.)*, dealt with the meaning of the terms 'tax' and 'fee' and it was held that 'Tax' is compulsory exaction of money for public purposes by State, whereas the 'Fee' is charge for special service rendered by governmental agency where 'Quid pro quo' is necessary. This view was reiterated by the Supreme Court in *State of Bihar vs. Shree Baidyanath Ayurveda Bhavan P. Ltd. - 2005 (191) E.L.T. 3 (S.C.)* with regard to 'license fee' which has a regulatory character and therefore quid pro

quo of rendering of service by State, as in case of a compensatory fee, was not required.

Further, it is relevant to note that the Constitution Bench of Supreme Court in *Jindal Stainless Ltd. and Anr. vs. State of Haryana and Ors.* [(2006) 7 SCC 241] has held that the 'Tax' is levied as a part of common burden. The basis of a tax is the ability or the capacity of the tax payer to pay. The principle behind the levy of a tax is the principle of ability or capacity. In the case of a tax, there is no identification of a specific benefit and even if such identification is there, it is not capable of direct measurement. A fee is generally a term of a licence. A tax is a payment where the special benefit, if any, is converted into common burden.

The Supreme Court in *State of West Bengal vs. Kesoram Industries Ltd* AIR 2005 SC 1646, held that depending on the context and purpose of levy, the 'cess' may not be a tax but a fee. In the above context, it was held that levying a cess on the said royalty is not a tax on tax since royalty on mines is not, per se, a tax or fee and it is only a return on the usage of mines. It would be noted that this matter now stands referred to a Larger Bench of 11 judges.

It is relevant to note that 'cess' levied could be in the nature of 'tax' or 'fee' depending on whether there is any quid pro quo involved. The Supreme Court in *Dewan Chand Builders and Contractors vs. UOI* 2011 (274) ELT 161, held that the classic distinction between the term 'tax' and 'fees' is that there is a quid pro quo, which though not with arithmetical exactitude, would suffice to uphold the levy as a fee. In this case, where the welfare cess legislation in respect of construction workers were sought to be struck down as being a tax on land and buildings and being beyond the Union's legislative competence, Supreme Court negated it by holding that the nexus was established between payer of Cess and services rendered for industry, thereby satisfying element of quid pro quo in the scheme and therefore the levy of cess was a 'fee' and not a tax.

The Supreme Court in *State of West Bengal vs. Kesoram Industries Ltd* AIR 2005 SC 1646, held that depending on the context and purpose of levy, the 'cess' may not be a tax but a fee. In the above context, it was held that levying a cess on the said royalty is not a tax on tax since royalty on mines is not, per se, a tax or fee and it is only a return on the usage of mines.

In the context of the term 'cess', it is relevant to note that Article 270 of Constitution of India provides that all taxes and duties along with 'cess' levied for specific purposes under any law made by the Parliament (other than those mentioned in Article 268) shall be levied and collected by the Government of India and such sums shall be distributed among those States in accordance with such principles of distribution as may be formulated by such law. In India, the Government has been levying various 'cesses' for various purposes like 'education', 'clean energy', 'clean India' etc and it appears that the Government of India is increasing levying certain 'cesses' to collect the amount for specific purposes rather than collecting them by way of 'taxes' which will go to 'common fund'.

Analysis of various Cesses imposed by Central Government:

A. Clean Energy Cess

'Clean Energy Cess' was introduced in the year 2010 vide Finance Act, 2010 which imposed the 'Clean Energy Cess' on coal, lignite and peat produced from coal mines in India.

Clean Energy Cess is a kind of carbon tax and is levied in India as a duty of excise under Section 83 (3) of Finance Act, 2010 on Coal, Lignite and Peat (goods specified in the Tenth Schedule to the Finance Act, 2010) in order to finance and promote clean environment initiatives, funding research in the area of clean environment or for any such related purposes. The imposition of 'clean energy cess' is a step towards taking initiatives for 'clean energy' and demonstrates India's commitment in tackling 'climate change'.

It is relevant to note that in India carbon taxes are levied only on coal and its variants - lignite and peat. Even though many countries have had introduced the carbon taxes not only on coal but also on other fossil fuels like petroleum, natural gas etc., in recent years, number of countries have reduced the carbon taxes or postponed the imposition of such taxes. In any case, subsequent to the global financial crisis of 2008, many countries have either abolished or reduced or postponed their decisions on such carbon taxes.

It is relevant to note that the levy of 'clean energy cess' has been brought into effect from 1st July 2010 vide Notification No.1/2010-CEC dated 22.06.2010 issued under Section 83(2) of Finance Act, 2010.

It is relevant to note that in India carbon taxes are levied only on coal and its variants - lignite and peat. Even though many countries have had introduced the carbon taxes not only on coal but also on other fossil fuels like petroleum, natural gas etc., in recent years, number of countries have reduced the carbon taxes or postponed the imposition of such taxes.

It is also relevant to note that as Clean Energy Cess is levied as a duty of excise, it would also apply to imported coal, including washed coal under Section 3(1) of the Customs Tariff Act in the form of additional duty of customs (CVD).

As 'Clean Energy Cess' has been levied as a duty of excise, sub-section (7) of Section 83 of Finance Act, 2010 provides that the Central Government may, by notification in the Official Gazette, declare that any of the provisions of the Central Excise Act, 1944, relating to levy of, and exemption from duty of excise, refund, offences and penalties, confiscation and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary, be applicable in respect of clean energy cess. This has been notified vide Notification No.2/2010-CEC dated 22.06.2010.

The rate of 'clean energy cess' levied vide Section 83(3) of Finance Act, 2010 read with Tenth Schedule to Finance Act, 2010 is specified as under:

Sl. No.	Chapter, heading, sub-heading or tariff item	Description of goods	Rate
(1)	(2)	(3)	(4)
1.	2701	Coal; briquettes, ovoids and similar solid fuels manufactured from coal	₹100 per tonne
2.	2702	Lignite, whether or not agglomerated, excluding jet	₹100 per tonne
3.	2703	Peat (including peat litter), whether or not agglomerated	₹100 per tonne

Government had granted partial exemption on 'clean energy cess' vide Notification No. 3/2010-CEC dated 22.06.2010 wherein the rate of 'clean energy cess' was reduced to ₹50 per tonne. However, the

rate of cess was increased by the Government to ₹200 per tonne vide Notification No. 1/2015-CEC dated 1.3.2015.

Further, it is relevant to note that Government has notified an exemption for all goods falling under tariff heading 2701, 2702 and 2703 other than raw coal, raw lignite and raw peat vide Notification No.4/2010-CEC dated 22.06.2010. Effectively, 'clean energy cess' is leviable only on raw coal, raw lignite and raw peat.

As regards the notified goods which are subject to 'clean energy cess', the Government has granted specific exemption to notified goods which are produced in the State of Meghalaya vide Notification No.5/2010-CEC dated 22.06.2010.

For the purpose of 'collection and assessment' of clean energy cess, the Government has notified Clean Energy Cess Rules, 2010 vide Notification No.6/2010-CEC dated 22.06.2010 which provides for registration, payment of cess, assessment of cess, manner of payment etc as regards levy of 'clean energy cess'.

Usage of Clean Energy Cess Collected

The amount collected by the Government by way of 'clean energy cess' is being used for the National Clean Energy Fund (NCEF) for funding research and innovative projects in clean energy technologies or renewable energy sources to reduce dependence on fossil fuels.

National Clean Energy Fund (NCEF) is a fund created in 2010-11 (announced in Union Budget 2010) for using the carbon tax. Thus, projects aiming at reduction of emissions with innovative technologies from different sectors get considered under this funding mechanism.

The usage of the fund collected as 'clean energy cess' is used for any project/scheme relating to Innovative methods to adopt to Clean Energy technology and Research & Development are eligible for funding under the NCEF.

An indicative list of such projects is as follows:

- Projects supporting the development and demonstration of integrated community energy solutions, smart grid technology renewable applications with solar, wind, tidal and geothermal energy;
- Projects in critical renewable energy infrastructure areas such as Silicon Manufacturing;

- Projects which result in replacing existing technology in energy generation with more environmentally sustainable approach;
- Projects related to environment management, particularly in the geographical areas surrounding the energy sector projects;
- Renewable/Alternate Energy- includes advanced solar technologies, geothermal energy, bio-fuels from cellulosic biomass/algae/any waste, offshore Marine Technologies (Wind, Wave & Tidal) & Onshore wind energy technologies, Hydrogen & fuel cells.
- Clean Fossil Energy- include power, oil, gas and coal technologies including coal gasification, shale oil/gas, lignite/Coal Bed Methane, advanced turbine and technology for IGCC power plants, methane hydrates, enhanced recovery from unconventional resources and fossil energy advanced research, carbon capture and sequestration as also carbon capture and reformation.
- Basic Energy Sciences - include energy storage for hybrid and plug-in electric vehicles, solid state lighting, catalysis, biological and environmental research, advanced computing, high energy and nuclear physics etc.
- The Fund may also support pilot & demonstration projects for commercialization in the relevant field.
- Mission projects identified in the National Action Plan on Climate Change (NAPCC) and projects relating to R&D to replace existing technologies with more environment friendly ones under National Mission on Strategic Knowledge for Climate Change (NMSKCC).
- The projects relating to creation of power evacuation infrastructure for renewables.

[Source: www.arthapedia.in]

B. Swachh Bharat Cess

Swachh Bharat Cess (SBC) was introduced vide Section 119 of the Finance Act, 2015 on all or selected taxable services. The monies collected as Swachh Bharat Cess shall be utilised financing and promoting Swachh Bharat initiatives (Clean India campaign).

It is relevant to note that 'Swachh Bharat Cess was notified with effect from 15.11.2015 vide Notification No. 21/2015-S.T., dated 6.11.2015. In terms of Notification No. 22/2015-S.T., dated 6.11.2015, effective rate of (SBC) would be @ 0.5% on

value of all taxable services. It shall be noted that this cess shall be leviable in addition to any other cess or service tax leviable under Chapter V of Finance Act, 1994 and value for the purpose of computation and this cess shall be determined in terms of Section 67 of Finance Act, 1994 read with rules issued under the said section.

Exemption and Abatement: Further, where any service is exempted from service tax by way of issue of a notification, SBC would also be exempt on such services. Similarly, part of the value of service is exempt (in terms of Notification No. 26/2012-ST dt. 20.06.2012), SBC shall be levied only on the portion which is liable to service tax.

Reverse charge: It shall be noted that in case of reverse charge or joint charge, the Swachh Bharat Cess shall be computed on the value of taxable services on which such person is liable to pay service tax in terms of the Notification 30/2012 ST dt. 20.06.2012. For instance, in case of a works contract services provided by an individual to a company, the company would be liable to pay 50% of the total SBC under reverse charge and balance 50% shall be liable to be paid by the service provider under forward charge.

Exemption to SEZ and Rebate: In terms of the amendment to Notification No. 12/2013-ST, dt 1.7.2013 vide, Notification No. 2/2016-S.T., dated 3-2-2016, SBC on services to SEZ developer or SEZ unit would be either exempt *ab initio* or would be eligible for refund. Similarly, SBC paid on services exported outside India would be eligible for rebate in terms of Notification No. 39/2012-ST dt 2.06.2012.

Cenvat Credit: It is to be noted that vide Notification No. 2/2016-C.E. (N.T.), dt 3.2.2016, Rule 3(4) of Cenvat Credit Rules, 2004 has been amended to provide that CENVAT credit shall not be utilised for the purpose of payment of SBC.

However, on the issue of availment of credit of SBC, there is no restriction under the Cenvat Credit Rules, 2004. In this connection, a view could be taken that credit of SBC could be availed on the ground that SBC is collected as service tax and all the provisions including rules issued thereunder would be applicable to SBC also. This view is supported by the decision of the High

Court of Karnataka in the case of *Shree Renuka Sugars Ltd. reported in 2014 (302) E.L.T. 33 (Kar.)*, which dealt with a similar issue in relation to sugar cess levied under Sugar Cess Act, 1982.

Administration: The provisions of Chapter V of Finance Act, 1994 relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as be, apply in relation to the levy and collection of the Swachh Bharat Cess on taxable services.

C. Infrastructure Cess

'Infrastructure Cess' is the new cess levied vide Finance Act, 2016 wherein Section 162 under Chapter VII imposes levy of Infrastructure Cess on all goods specified in Eleventh Schedule to be effective from 1.3.2016.

It should be noted that even though Finance Act, 2016 has received Presidential Assent on 14.05.2016, the levy of 'Infrastructure Cess' has come into effect from 1st March 2016 vide Provisional Collection of Taxes Act, 1931 as declared in Finance Bill 2016.

It is provided in sub-section (1) of Section 162 that as regards the goods specified in the Eleventh Schedule, which are being the goods manufactured or produced, there shall be levied and collected for the purposes of the Union, a duty of excise, to be called the Infrastructure Cess, at the rates specified in the said Schedule for the purposes of financing infrastructure projects.

Further, it is provided in Sub-section (2) of Section 162 that 'Infrastructure Cess' shall be in addition to any other duties of excise chargeable on such goods under the Central Excise Act, 1944 or any other law for the time being in force.

Sub-section (3) of Clause 162 provides that the provisions of the Central Excise Act, 1944 and the rules made thereunder, including those relating to assessment, non-levy, short-levy, refunds, interest, appeals, offences and penalties, shall, as far as may be, apply in relation to the levy and collection of 'Infrastructure Cess' in respect of the goods specified in the Eleventh Schedule as they apply in relation to the levy and collection of the duties of excise on such goods under the said Act or the rules, as the case may be.

It is relevant to note that Sub-section (4) of Section 162 specifically provides that 'Infrastructure Cess' shall be for the purposes of the Union and the

proceeds thereof shall not be distributed among the States. Therefore, notwithstanding the fact that 'Infrastructure Cess' is being collected as duties of excise, the same would be exclusively for the Union Government and shall be available for the States.

As regards the rate of 'Infrastructure Cess', the Eleventh Schedule to Finance Act, 2016 specifies the goods which are subjected to 'Infrastructure Cess' which are "All goods falling under heading 8703 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)" and rate of 'Infrastructure Cess' specified is at the rate of 4%.

In view of the above, the 'Infrastructure Cess' shall be levied on all goods falling under heading 8703 – "Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars" as duty of excise at the rate of 4%.

However, an exemption has been given to ambulances, electric vehicles, three wheeled vehicles, hybrid vehicles, taxis. Smaller petrol vehicles will be charged 1% and smaller diesel vehicles 2.5%. [Refer Notification No. 1/2016-Infrastructure Cess, dated 1.3.2016]

As regards utilisation of Cenvat credit for payment of this cess, the provisions of Cenvat Credit Rules, 2004 has been amended so as to insert a proviso to Rule 3(4) to provide that Cenvat credit shall not be utilised for payment of 'Infrastructure Cess'. It would be worthwhile to note that since this is a new cess the same would apply only to goods manufactured after the coming into force of this cess as per the ratio of the decision of the Supreme Court in *CCE vs Vazir Sultan Tobacco co.Ltd 1996 (83) ELT 3 (SC)*.

D. Krishi Kalyan Cess

Finance Act, 2016 vide Section 161 provides for levy a new cess by name Krishi Kalyan Cess with effect from 1.6.2016. This cess would be in the nature of service tax and would be at the rate of 0.5% on all or select taxable services.

In terms of the statutory provisions, this cess would be utilised for the purposes of financing and promoting initiatives to improve agriculture or for any other purpose relating thereto.

On the administrative side, this Cess would be levied, collected and administered in the same manner as that of administration of service tax collection, recovery etc. Clause 161 of Finance Act, 2016 provides that the statutory provisions relating to service tax [Chapter V of the Finance Act, 1994]

and the rules made thereunder, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, be applicable to Krishi Kalyan Cess on taxable services.

Consequent to enactment of Finance Act, 2016 on 14.05.2016, wherein the levy of Krishi Kalyan Cess has come into effect from 1st June 2016, the following notifications have been issued:

1. Notification No.27/2016-ST provides that 'reverse charge' under Notification No.30/2012-ST would be applicable for KKC as well.
2. Notification No.28/2016-ST provides that all exemption applicable for 'service tax' would also be applicable for KKC. Further, all abatements provided under Notification No.26/2012-ST would also be applicable for KKC.
3. Notification No. 29/2016-ST: Rebate on input/input services on 'export of services' under Notification No.39/2012-ST would be available for KKC also.
4. Notification No.30/2016-ST: Amends Notification No. 12/2013-ST which grants exemption to services provided in SEZ unit or Developer—to include KKC. [There is also another amendment of clause (b) which is not relevant to KKC].
5. Notification No.31/2016-ST: Service Tax Rules, 1994 is amended—Rule 6: sub-rule (7D) is amended to include KKC and new Sub-rule (7E) is inserted to include KKC in all 'optional schemes' with special rates for various sectors specified in various sub-rules of Rule 6.

As regards availment or utilisation of credit Krishi Kalyan cess or utilisation of other credits for payment of Krishi Kalyan Cess, the provisions relating to Cenvat Credit Rules, 2004 have been amended vide Notification No. 28/2016-CE(NT) dated 26.05.2016 which are summarised as follows:

1. Rule 3 of CCR, 2004 has been amended to insert Sub-rule (1a) which provides that 'provider of output services' shall be allowed to take cenvat credit on KKC. There is no provision enabling the 'manufacturer' to avail cenvat credit on KKC.
2. Further, a proviso is inserted in sub-rule (4) of Rule 3 to provide that 'cenvat credit on any duty' shall not be utilised for payment of KKC.
3. Further, Rule 3 (7) is amended to insert new clause (d) to provide that Cenvat credit on KKC shall be utilised only towards payment of KKC

Point of Taxation of KKC

As KKC is being levied vide Section 161 contained in Chapter VI of Finance Act, 2016, wherein it is specifically provided that the provisions of this Chapter shall come into force from 1st June 2006. Accordingly, there is no doubt regarding the fact that KKC is a new levy which is in termed as 'service tax'.

In the above context, the question to be examined as to whether KKC is payable even on the amount outstanding from the customers (Debtors) as on 1st June 2016 as per Rule 5 of Point of Taxation Rules, 2011 wherein Explanation 1 provides that this Rule shall apply mutatis mutandis in case of new levy of service.

It should be noted that where the service has been provided prior to 1.6.2016 and the invoice has also been raised, then the service having been rendered prior to 1.6.2016 and accordingly, there is no question of subjecting the very same transaction to levy of KKC by invoking Rule 5 of Point of Taxation Rules, 2011. In this regard, reference can be made to the decision of Supreme Court in Collector v. Vazir Sultan Tobacco Co. Ltd. - 1996 (83) E.L.T. 3 (S.C.) where in the context of dutiability of goods manufactured prior to levy of duty but cleared thereafter, it was held that such goods are not liable to excise duty as the levy is not there at the time when the goods are manufactured or produced in India, it cannot be levied at the stage of removal of the said goods. The idea of collection at the stage of removal is devised for the sake of convenience. It should be noted that the ratio of the above decision will squarely apply in the present case as regards levy of KKC on the services with effect from, 1.6.2016. What was not subjected to levy of KKC during the period prior to 1.6.2016 cannot be subjected to levy of KKC by invoking Rule 5 of Point of Taxation Rules, 2011.

Further, it is interesting to note that Explanation 1 to Rule 5 was amended with effect from 1.3.2016 (vide Notification No.10/2016-ST dated 1.3.2016) under the provisions of Section 67A(2) of Finance Act, 1994 even though the said provision of Section 67A(2) was inserted vide Finance Act, 2016 with effect from, 14.05.2016 only. Therefore, it appears that the amendment made to Rule 5 of Point of Taxation Rules, 2011 has no legal basis as the enabling provision in Section 67A(2) has come into effect only from 14.5.2016. Further, it must be noted that Section 67A(1) still stands in the statute book and the said rules are ultra vires this provision. ■

Lease Accounting under IFRS 16



On 13th January 2016 the International Accounting Standards Board (IASB) finished its long-standing project on lease accounting and published IFRS 16, Leases (hereinafter referred to as IFRS 16 or the new standard). The new standard provides a comprehensive model for identification of lease arrangements and their treatment in the financial statements of both lessees and lessors and sets out recognition, measurement, presentation and disclosure principles with respect to leases. IFRS 16 is designed to provide more transparency for investors and other stakeholders and will bring in significant change to the way companies account for leases. The biggest change, however, is for lessees - many of which have significant lease commitments that currently don't appear on their balance sheets. Read on to know more...

Background

The IASB has calculated that listed companies following IFRS or US GAAP - have approximately US\$3.3 trillion of lease commitments and more than 85 per cent of those commitments don't appear on their balance sheets. To set this right, the new standard, IFRS 16 Leases, will require most of these leases to be recorded on balance sheet.

IFRS 16 seeks to usher in significant changes to lessee accounting with distinction between operating and finance lease removed and assets and liabilities recognised in respect of all leases barring limited exceptions for short-term leases and lease of low-value assets. Some of the other key changes brought in by the new standard include a new definition of a lease, new lease accounting models and the separation of the lease and non-lease components of a lease contract.



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Further, the new standard introduces a clear demarcation between lease agreements and service contracts—wherein leases are brought on the balance sheet, whereas service contracts will normally remain off-balance sheet, unless the lessee decides to apply a practical expedient envisaged in paragraph 15 of IFRS 16.

IFRS 16 is effective for annual reporting periods beginning on or after 1 January 2019. Earlier application is permitted for entities that apply IFRS 15 *Revenue from Contracts with Customers* on or before the date of initial application of IFRS 16.

Identification of a Lease

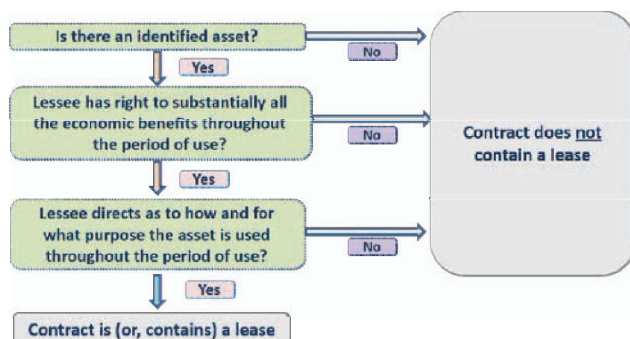
Paragraph 9 of IFRS 16 requires an entity to assess, at the inception of a contract, as to whether the contract is (or, contains) a lease. It further stipulates that a contract is (or, contains) a lease if the contract conveys the right to control the use of an **identified asset** for a **period of time** in **exchange for consideration**.

Accordingly, to be considered as a lease, a contract must convey the right to control the **use of an identified asset**. Typically, an asset is **specifically identified** in a contract, though it can also be **implicitly identified** at the time it is made available for use by the customer.

However, where a lessor has a **substantive right of substitution** throughout the period of use, the lessee does not have a right to use an identified asset.

In contrast, a contract is considered to convey the **right to control the use of an identified asset** if, throughout the period of use, the lessee has the right to (a) obtain substantially all of the economic benefits from the use of the identified asset and (b) direct the use of the identified asset (i.e., direct how and for what purpose the asset is used).

The following chart depicts the key elements that an entity considers in determining whether a contract is, or contains, a lease:



Identifying and Separating Lease and Non-Lease Components

In many situations, a contract may contain a lease coupled with additional non-lease components. For instance, lease of an asset may be accompanied with provision of a maintenance service. In these situations, the non-lease components are *normally* identified and accounted for separately from the lease component, unless the lessee decides to apply a practical expedient envisaged in paragraph 15 of IFRS 16. In cases where a lessee elects to apply a practical expedient, by class of *underlying asset*, then it is not required to separate non-lease components from lease components; rather it can account for each lease component and any associated non-lease components as a single lease component.

If, however, the lessee exercises this policy choice, it is required to allocate the consideration in the contract to the lease and non-lease components on a *relative standalone price basis* in accordance with the principles laid down in IFRS 15 to allocate the consideration in the contract.

Lessee Accounting under IFRS 16

IFRS 16 envisages fundamental changes to the accounting treatment of leases by lessees. Under IAS 17, a lessee is required to make a distinction between a finance lease (on balance sheet) and an operating lease (off balance sheet). However, IFRS 16 eliminates the classification of leases as either operating leases or finance leases **for a lessee**. Instead, it introduces a **single, on-balance sheet lease accounting model** that is similar to current finance lease accounting under IAS 17. IFRS 16 now requires a lessee to recognize (i) a 'right-of-use asset' for virtually all lease contracts and (ii) a corresponding lease liability reflecting future lease payments.

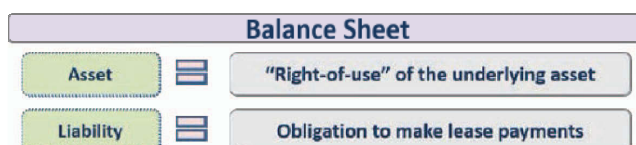
Applying the *single, on-balance sheet lease accounting model*, a lessee is required to recognize:

- o assets and liabilities for all leases with a term of more than 12 months, unless the underlying asset is of low value; and
- o depreciation of lease assets separately from interest on lease liabilities in the income statement

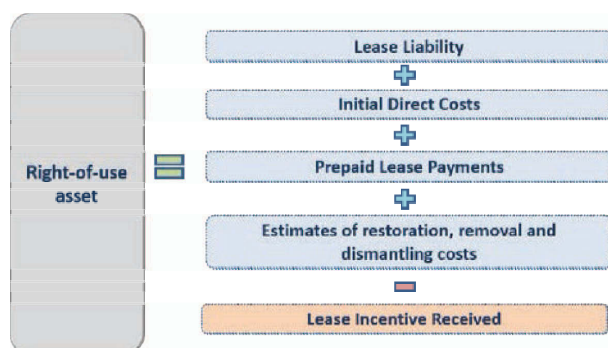
Put differently, IFRS 16 requires that leases are 'capitalized' by recognizing the *present value of the lease payments* and showing them either as *lease assets (right-of-use assets)* or together with property, plant and equipment.

Initial Recognition and Measurement

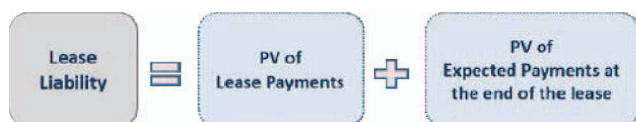
- Paragraph 22 of the new standard requires that a lessee, on commencement of lease, recognizes (i) a right-of-use asset; and (b) a lease liability.
- The *commencement date of the lease* is defined in Appendix A to IFRS 16 as the date on which a lessor *makes an underlying asset available for use by a lessee*.
- Accordingly, a lessee is required to **initially** recognize (i) a **right-of-use asset** for the right to use the underlying asset for the lease term; and (ii) a lease liability for the obligation to make lease payments – as shown in the below chart:



- The right-of-use asset is **initially measured at cost**, viz. at the amount of the lease liability, as adjusted for lease prepayments, lease incentives received, the lessee's initial direct costs (say, commission) and an estimate of restoration, removal and dismantling costs—as shown in the below chart:



- Likewise, the lease liability-at lease commencement date-is measured at the present value of the lease payments to be made over the lease term, using the effective interest method—as depicted in the below charts:



Lease payments				
Fixed payments	Purchase options* (exercise price)	Residual value guarantees – amounts expected to be payable (lessees only)	Termination option penalties*	Variable lease payments that depend on an index or rate

* Include only if reasonably certain of exercise.

- For this purpose, the lease payments are discounted using the **interest rate implicit in the lease**, if that rate can be readily determined—else, the **incremental borrowing rate for the lessee** is used as the discount rate.
- However, a lessee may elect not to apply the recognition requirements envisaged in IFRS 16 to the following categories of leases:
 - leases with a lease term of 12 months or less (i.e. short-term leases); or
 - leases for which the underlying asset is of low value when it is new (even if the effect is material in aggregate)

It is pertinent to note that the accounting policy election by a lessee for a short-term leases is made by class of *underlying asset*, whereas that relating to leases of low-value assets can be made on a *lease-by-lease basis*.

- If a lessee elects to apply either of the above recognition exemptions, then the lease payments are recognized as an expense on either a straight-line basis over the lease term, or another systematic basis if that basis is more representative of the pattern of the lessee's benefit.

Subsequent Measurement

- After the commencement date, a lessee generally measures the right-of-use asset by applying a cost model at:

Cost less accumulated depreciation less accumulated impairment

- However, in the following two situations, *alternative subsequent measurement bases* for the right-of-use asset is potentially applicable for a lessee:
 - If a lessee applies the fair value model in IAS 40 *Investment Property* to its investment property, the lessee shall also apply that **fair value model** to right-of-use assets that meet the definition of investment property in IAS 40; and
 - If right-of-use assets relate to a class of property, plant and equipment (PPE) to which the lessee applies the revaluation

model in IAS 16, then a lessee may elect to apply that revaluation model to *all of the right-of-use assets* that relate to *that class of the PPE*.

- The related right-of-use asset is depreciated in accordance with the depreciation requirements of IAS 16 Property, Plant and Equipment.
- Further, right-of-use assets are subject to impairment testing and hence a lessee shall apply IAS 36 *Impairment of Assets* to determine whether the right-of-use asset is impaired and to account for any impairment loss identified.
- After the commencement date, a lessee – as per para 36 of IFRS 16 – shall measure the lease liability by:
 - o *increasing* the carrying amount to reflect interest on the lease liability;
 - o *reducing* the carrying amount to reflect the lease payments made; and
 - o *re-measuring* the carrying amount to reflect any reassessment or lease modifications specified in paragraphs 39 to 46 of IFRS 16
- Thus, the lease liability is re-measured by the lessee upon the occurrence of certain events (e.g., change in the lease term, change in variable rents based on an index or rate). The following chart summarizes how changes in the carrying amount of lease liability triggered from various events are accounted for:



Presentation

The following table summarizes how a lessee will present leases in its financial statements in accordance with the requirements of the new standard:

Balance Sheet	Income Statement	Cash Flow Statement
Right-of-use assets are either presented separately from other assets on the balance sheet or disclosed separately in the notes to the financial statements	In the Income Statement, Interest expense on the lease liability is presented separately from the depreciation charge for the right-of-use asset	Cash payments for the principal portion of the lease liability is classified within financing activities

Balance Sheet	Income Statement	Cash Flow Statement
Right-of-use assets that meet the definition of investment property under IAS 40 are presented within Investment Property	Interest expense on the lease liability is a component of finance cost, and is presented separately in the income statement	Cash payments for the interest portion of the lease liability is presented consistently with other interest payments
Lease liability is either presented separately from other liabilities on the balance sheet or disclosed separately in the notes to the financial statements		Short-term lease payments, payments for lease of low-value assets and variable lease payments not included in the measurement of lease liability within operating activities

Lessor Accounting under IFRS 16

IFRS 16 substantially carries forward the lessor accounting requirements in IAS 17. Accordingly, a lessor continues to classify each of its leases as either an operating lease or a finance lease, using the same classification principles as in IAS 17.

Initial Recognition and Measurement

- Lessors classify all leases using the same classification principle as in IAS 17 and distinguish between two types of leases, viz. *operating leases* and *finance leases*.
- Accordingly, a lease that transfer substantially all the risks and rewards incidental to ownership of the underlying asset is classified by the lessor as a finance lease and all other leases are classified as operating leases.
- For operating leases, a lessor will continue to recognize the underlying asset.
- However, for finance leases, lessors will de-recognize the underlying asset and recognise a net *investment in the lease*-similar to today's requirements in IAS 17. Any selling profit or loss is recognised at lease commencement.

Subsequent Measurement

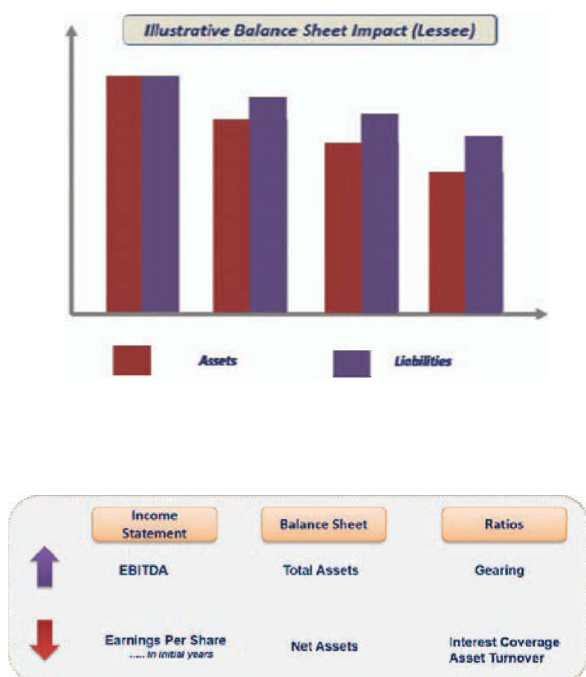
- For operating leases, lessors recognize lease income on either a straight-line basis or another systematic basis that is more representative of the pattern in which benefit from the use of the underlying asset is diminished.
- For finance leases, lessors recognize interest income for the accretion of the net investment in the lease and reduce that investment for payments received.

- The net investment in the lease is subject to de-recognition and impairment requirements in IFRS 9 Financial Instruments.

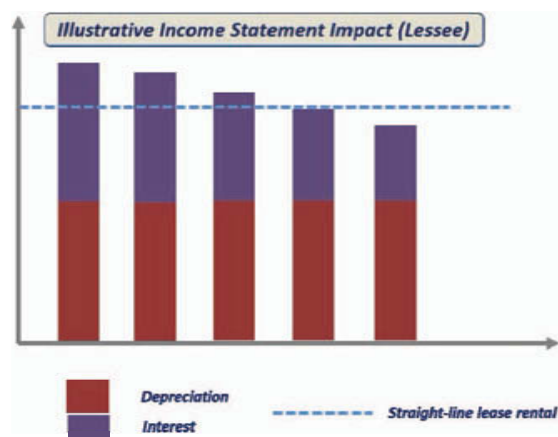
In general, one can say that the *lessor accounting model under IFRS 16* essentially remains unchanged from IAS 17.

Potential Impact of IFRS 16 on Lessee

IFRS 16 is likely to have a significant impact on the financial statements of a number of lessees. The most significant effect of the new requirements in IFRS 16 will be an increase in lease assets and financial liabilities. This is because a lessee is required to account for a right-to-use asset *and* lease liability onto its balance sheet for practically all leases. For companies with material off balance sheet leases, there will be a change to key financial metrics derived from the company's assets and liabilities (for example, leverage ratios). Depending on the particular industry and the number of lease contracts previously classified as operating leases under IAS 17, the new approach will result in a significant increase in debt on the balance sheet. This may impact bank covenants such as Debt/Equity ratio. Entities will need to consider revising bank covenants likely to be impacted upon adversely on adopting IFRS 16. This is depicted in the following chart:



From an Income Statement perspective, under the existing guidance in IAS 17, operating leases are typically expensed on a straight line basis. However, under the requirements of the new standard, a lessee will have to present separately interest expense on the lease liability *and* depreciation on the right-of-use asset in their income statement. In comparison to operating leases under IAS 17, this will change not only the *expense category* but also the *total amount of expenses recognized* for each period of the lease term. The combination of straight-line depreciation of the right-of-use asset and the effective interest rate method applied to the lease liability will result in a **higher total charge** to profit or loss in the *initial years of the lease*, and decreasing expenses during the *latter part of the lease term*. In other words, IFRS 16 will have the effect of **front loading of expenses in the income statement**, which will reduce over the life of the lease. This is depicted in the following chart:



The new guidance under IFRS 16 will also change the cash flow statement, because lease payments that relate to contracts that have previously been classified as operating leases are no longer presented as operating cash flows in full. Only the part of the lease payments that reflects interest on the lease liability can be presented as an operating cash flow (if it is the entity's policy to present interest payments as operating cash flows). Cash payments for the principal portion of the lease liability are classified within financing activities. Payments for short-term leases, for leases of low-value assets, and variable lease payments not included in the measurement of the lease liability are presented within operating activities.

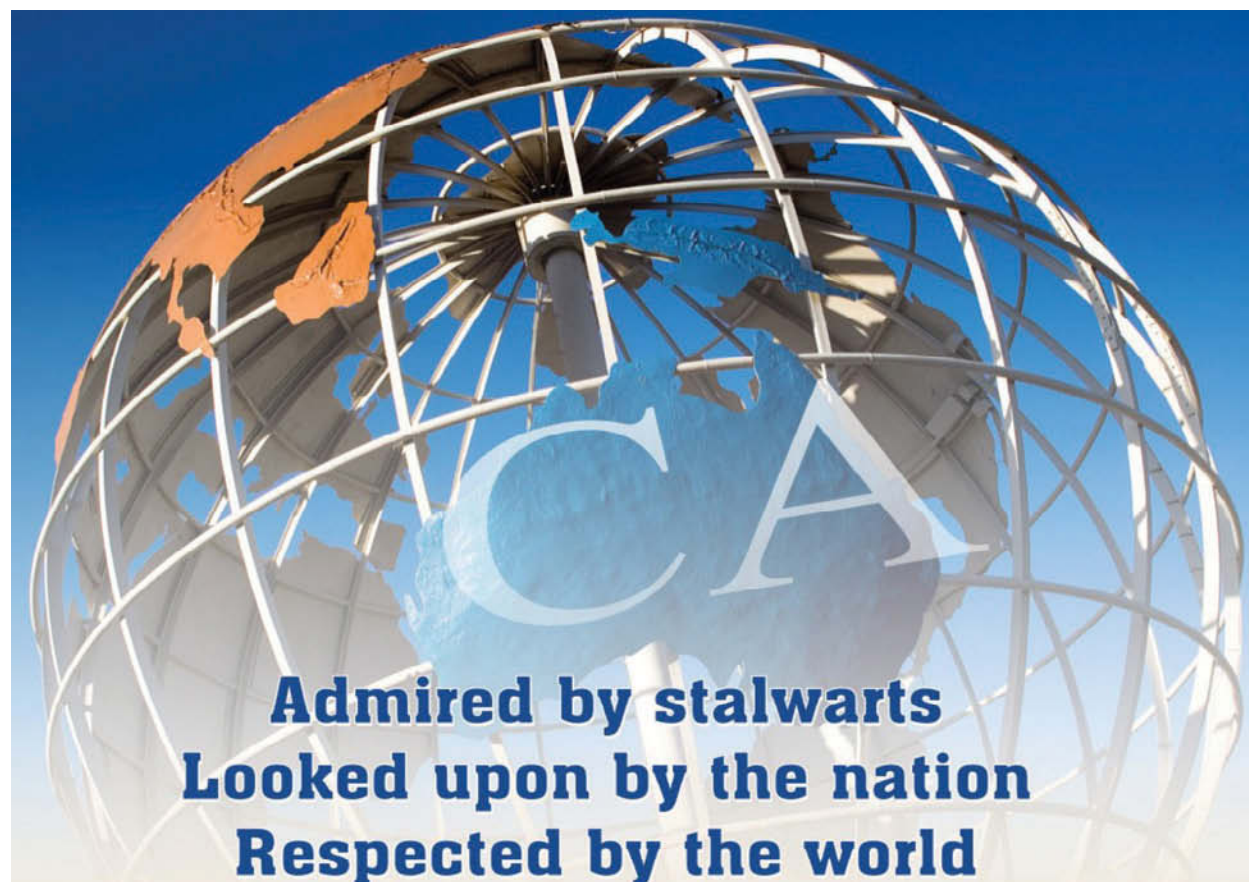
Transition

The new standard permits lessees to use either a full retrospective or a modified retrospective approach on transition for leases existing at the date of transition, with options to use certain transition reliefs. However, once a choice is made by the

lessee on the transition methodology, it should be applied consistently to all of its leases. It is pertinent to note that in case a lessee elects to follow modified retrospective approach, then it is not required to restate comparative information. Rather, the cumulative effect of initial application of the new standard is recorded as an **adjustment to equity** as at the date of initial application of IFRS 16.

Next Steps

From the preceding discussion, it is evident that IFRS 16 is a significant change from current IFRS – more specifically for lease accounting by lessees. In the best interest, entities should initiate preliminary impact assessment as soon as possible, to determine how the new lease accounting requirement under IFRS 16 will affect their financials and the business processes. Entities will also need to ensure that they have systems, processes and internal controls in place to collect the necessary information to implement the new standard. ■



Crypto Currency Transactions: Concept, Accounting & Audit



In the last 20 years almost every part of organisation has been transformed due to digital revolution. Internet, social media and now mobile devices have changed the way companies do business. Crypto currencies are next step in this process and it is bound to reshape the ways in which companies do business. These currencies are more than a new way to make sale and purchase and can be termed as a protocol for exchanging values over Internet without role and need of any intermediary like banks. These are the currencies that are born in the Internet and can be used in the physical world. Bitcoin, being one of the commonly known and used crypto currencies in the world, is used in this article to represent crypto currencies. The article addresses the basic concept of Bitcoins and accounting and audit issues of Bitcoins transactions. Read on to know more...



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BITCOIN

(i) Basic Concept

The concept of Bitcoin was introduced in a 2008 paper by pseudonymous developer named as Satoshi Nakamoto. Bitcoin is a peer-to-peer, electronic cash system. It provides a digital alternative to traditional money. Bitcoins are created and transfer based

on an open-source cryptographic protocol that is independent of any central authority. Bitcoins can be transferred through a computer or smartphone directly. There is no role of any intermediate financial institution like banks. Bitcoin is a digital medium of exchange that is created, acquired, held and traded electronically.

(ii) How Bitcoins are created

Bitcoins are created via a process called mining. Mining involves solving continuously increasingly difficult cryptographic problems. Mining requires progressively more powerful computers for productive mining. The problems being solved, register and validate Bitcoin transactions on the Blockchain. Blockchain is a public ledger recording all bitcoin transactions. The public nature of the blockchain and the system of confirming transactions by consensus allow the bitcoins to be verified during exchanges and prohibit users from spending the same bitcoin twice.

(iii) Participants in bitcoin generation and transactions:

There are various participants in bitcoin generation and transactions. These are as follows:-

- (i) **Miner:** Miner creates bitcoins from mining process and pump bitcoins into circulation in digital world. Miner creates bitcoins through mining process which takes place using specialised computer hardware and software to solve complex algorithms. Every time the algorithms become tougher to create new bitcoins similar to as mining of gold becomes tougher over the time.
- (ii) **Consumer:** Consumer obtains bitcoins either through mining or purchase and who use bitcoins for any business transactions.
- (iii) **Dealer:** Dealer in bitcoins transactions buy and sell bitcoins and/or operate specialised bitcoin exchanges;
- (iv) **Trader:** Traders generally speculate on short term price movements of bitcoins. By speculating, traders sale or purchase bitcoins on exchanges or privately and make profit.
- (v) **Investor:** Investor holds bitcoins with the hopes of long term price appreciation.

(iv) How Bitcoin works

Bitcoins once created reside in a digital or cyber wallet and are not issued in the form of coins or paper

bills. They only appear as a string of characters on a computer. The wallet can be either cloud based for mobile payments or can be stored on a local system ensuring maximum security. Each Bitcoin wallet is associated with an address. An address can be a unique series of numbers and characters. However, the identity of the user is not known to others which allows the confidentiality of participants in any bitcoin transactions.

Bitcoin transaction requires a peer-to-peer computer network. This depends on the participation of many computers and users. They maintain the integrity of the system by participating in the transaction. The participants also inject bitcoins in circulation and verify transactions through an electronic log.

The bitcoin ledger is not owned or controlled by any one party. This blockchain ledger can never be altered and records can never be destroyed. Information can only be added to the ledger and never removed. Before anything can be added to the ledger, it needs to be validated and confirmed by the network's users who secure the legitimacy of the network and the transactions passing through it.

Each completed bitcoin transaction has a public key and a private key. The public key is like an email address and can be seen by everyone. On the other hand, the private key is like an email password and can only be seen by the party to the transaction.

When a transaction is created by a user, its effect date is stamped. The transaction is then added to the chronology of an ongoing chain transaction. Independent users employ specialised software to verify that transactions are correctly entered into the system. The system compensates these users by awarding bitcoins to them.

BITCOINS UNDER THE EYES OF VARIOUS AUTHORITIES:

The legal authorities of various countries have come up with their opinion on bitcoin and bitcoin transactions. Opinions expressed by some of the

Internet, social media and now mobile devices have changed the way companies do business. Crypto currencies are next step in this process and it is bound to reshape the ways in which companies do business. Bitcoin is one such commonly known and used crypto currency in the world.

prominent legal authorities in world are as per exhibit I

Exhibit I

Authority	Country	Opinion
U.S. Government Accountability Office	USA	A digital currency is, generally, a digital unit of exchange that is not backed by a government issued legal tender.
Bank Secrecy Act/Anti-money Laundering	USA	Virtual currency is a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency. In particular, virtual currency does not have legal tender status in any jurisdiction. This guidance addresses convertible virtual currency. This type of virtual currency either has an equivalent value in real currency, or acts as a substitute for real currency.
Internal Revenue Service	USA	Bitcoin is not a currency, but rather property and taxable as such.
HM Revenue and Custom	UK	It has issued a note 09/14 on the tax treatment of activities involving bitcoin.
German Federal Ministry of Finance	Germany	It recognised bitcoins as a unit of account comparable with foreign exchange accounting units that are not legal tender.

HOW BITCOIN DERIVE ITS VALUE

Gold and gold mining is a classic example with which bitcoin creation in system can be compared. As the gold derived its value from supply and demand rules, bitcoin also derive the value from supply and demand rules.

As gold mining difficulties has increased and continuously increasing over the time, creation of bitcoin will also get tougher over the time. Like gold is not found in abundance, only a finite amount of bitcoin can ever be created. The amount of Bitcoins is limited to 21 million bitcoins by 2140. That mean by year 2140, only 21 millions bitcoins can be generated. It will continue to become more difficult as miners near the 21 millionth bitcoin, the maximum allowed under the protocol. This feature ensures a controlled supply of bitcoins which is essential for a functioning of any currency.

This makes bitcoin contradict with national currency of any country the supply of which is continually increasing and governed by any federal agency. Bitcoin supply can't be regulated. This leads to any country's inability to intervene in monetary policy driven by bitcoins. Therefore any adjustments to the money supply to regulate macroeconomic factors would be impossible in a bitcoin oriented monetary system.

MEASUREMENT AND DISCLOSURE OF BITCOIN TRANSACTIONS IN BOOKS OF ACCOUNTS*

The adoption of Bitcoin for business transactions may carry various accounting and taxation implications. If a business transaction is occurred in bitcoin and not in the traditional currencies, then the question of proper accounting and disclosure arises. None of the renowned accounting standard setting bodies like ICAI, FASB or IASB has come up with any guidance in this matter so far. Therefore

Gold and gold mining is a classic example with which bitcoin creation in system can be compared. As the gold derived its value from supply and demand rules, bitcoin also derive the value from supply and demand rules.

* It is presumed that readers are aware of basic accounting requirements for recording of a normal business transaction viz. Accounting principles and standards.

Audit of Bitcoin transactions possess significant challenges pertaining not only to risk involved in bitcoin transactions but requiring deep understanding of information Technology involved in bitcoin transactions.

obvious questions arises that, can we apply existing accounting standards governing business transactions in traditional currencies for bitcoin transaction as well? To some extent, the answer is yes. Existing revenue recognition, balance sheet presentation, tax implication and mark to market principles, disclosure requirement can be applied to greater extent as discussed below:-

(i) Revenue recognition

The company receiving bitcoin as payment for goods or services must include the fair market value of the bitcoin while recognising revenue. It is not significantly different from existing revenue recognition transactions recorded in the reporting currency of any company. In case the reporting currency of company is not bitcoin, then the bitcoin can be converted to the reporting currency of the company based upon the available conversion rate of the Bitcoin at the time of transaction.

(ii) Balance sheet recognition

The Company receiving bitcoin as value for goods sold or services rendered must measure the bitcoin in hands at the time of reporting so as to reflect the fair market value of the bitcoin. The reference to fair value of the bitcoin can be taken from any bitcoin exchange resulting any change in value in income statement. The fair market value of the bitcoin will be measured in the reporting currency of the entity.

The bitcoin in the hand will be disclosed either as a part of cash and bank balances. It is preferably that this is disclosed in a separate line item with a note describing the number of bitcoin in hand and its valuation.

(iii) Mark-to-market valuation

The Company having Bitcoin in its wallet at the reporting date shall disclose the bitcoins in financial at fair value. Due to deep volatility, Bitcoin shall be disclosed at fair market value of the bitcoin at not at the historical value. The mark to market valuation

can be done at recently traded rates of bitcoin in any bitcoin exchange like Bitstamp, Bitfinex etc. and accordingly can be measured in the reporting currency. The rate can be the exchange rate on or close to balance sheet date.

(iv) The characterisation of profits and losses for tax purposes.

The tax implications will depend upon the fact that bitcoin is a capital assets or not. The fair market value can be the tax basis of the bitcoins received as payment for goods or services by the taxpayer. Unlike real currencies, the character of any gain or loss realised on bitcoin depends on whether the virtual currency is a capital asset in the hands of the Company as a taxpayer.

If bitcoin is a capital asset in hands of a tax payer, a taxpayer will realise capital gain or loss on the sale or exchange of bitcoin. For example, bitcoin held for trading or investment is generally a capital asset that will give rise to capital gain or loss on a sale or exchange.

If the bitcoin is not a capital asset in hands of a tax payer (e.g. a dealer who hold bitcoin for sale to customers in a trade or business) the tax payer will generally realise ordinary gain or loss on the sale or exchange of the bitcoin in its own currency. This normal gain or loss will be liable to taxation.

AUDIT OF BITCOIN TRANSACTIONS IN BOOKS OF ACCOUNTS

Audit of Bitcoin transactions possess significant challenges pertaining not only to risk involved in bitcoin transactions but requiring deep understanding of information Technology involved in bitcoin transactions.

To illustrate it further, we may refer audit function of twentieth century. This was the time when computers invaded the accounting functions. At that time it was felt that traditional audit techniques like vouching etc. were inadequate and not up to the penetration level of information technology applications in business. At that time, auditor had to involve computer experts to assist in the audit process through the new technology. Without computer expert support, reliability of numbers was a distanced vision. Furthermore, the impact of information technology applications was not limited to the audit but also with control environment as well.

Use and acceptance of Bitcoin transactions will increase over the time and the bitcoin transactions framework will take concrete shape once it takes a legal proclamation by countries in the World. The accounting and audit profession will also undergo a major disruption and challenge in the coming years due to bitcoin use in business.

While auditing the bitcoin transactions, the things to check are as per exhibit II

Exhibit II

S No.	Points to note
1	Bitcoins transactions are properly reconciled with the bitcoin e-wallets or not.
2	Are entries for bitcoins transactions are reflected in company's general ledger or not?
3	What is the basis of deriving the fair market value of the bitcoin? Are the basis rationale?
4	What are the controls in place to protect the bitcoins from theft, loss, or improper use? Are these control are adequate or not.
5	Are bitcoin Password security and encryption are in place?
6	As the blockchain is public what are the means of privacy devised in the process.
7	How company has divided funds into several different wallets stored on separate systems. Is the total of bitcoin in these several wallet is reflected in the financial.
8	Are the persons in companies who normally sign and countersign checks are properly entrusted with the passwords to prevent unauthorised payments?
9	Is the physical system is properly secured by way of password etc.
10	Is there any password policy in place that addresses security threat with the risk of one person (if any) being responsible for an unrecoverable password.
11	Is wallets are stored and backed up on encrypted drives attached to dedicated systems?
12	For Bitcoin balance at the reporting period, confirmation letter to a 3rd party wallet custodian is sent or not requesting to confirm the balance from the block chain?
13	Ensure that tools (like Block Explorer) are run to check the independent authenticity of existence of each and every individual bitcoins.

S No.	Points to note
14	For further assurance, auditor may develop a cash-flow statement from available information by reviewing new address for each bitcoin transaction. This will reflect the movement of bitcoin values during the audit period.

While doing the audit of the bitcoin transaction, auditor can assert as per the exhibit III.

Exhibit III.

S. No.	Assertion criteria	Assertion
1	Bitcoin balance	Does the bitcoin balance exist at the reporting period?
2	Occurrence of bitcoin transactions	Is the bitcoin transaction took placed or not during the reporting period and if yes, when?
3	Bitcoin ownership	Who own the bitcoin?
4	Bitcoin obligation	To whom the bitcoin obligation is?
5	Balance valuation	How it is valued and in what currency (if currency is not bitcoin).
6	Recording of bitcoin transaction	Is recorded during the reporting period?
7	Presentation in financial statement	How bitcoin is shown in financial. Is it shown as a part of cash and bank balance or not?

CONCLUSION

Bitcoin, by virtue of their nature, are not tied to any legal jurisdiction in world. Historically, bitcoin have extreme volatility and so far have not got general acceptance alongside of the conventional currencies of countries in world. Still, in days to come, bitcoins are bound to transform the conduct of financial transactions. Use and acceptance of Bitcoin transactions will increase over the time and the bitcoin transactions framework will take concrete shape once it takes a legal proclamation by countries in the World. The accounting and audit profession will also undergo a major disruption and challenge in the coming years due to bitcoin use in business. ■

Corporate Fraud Reporting

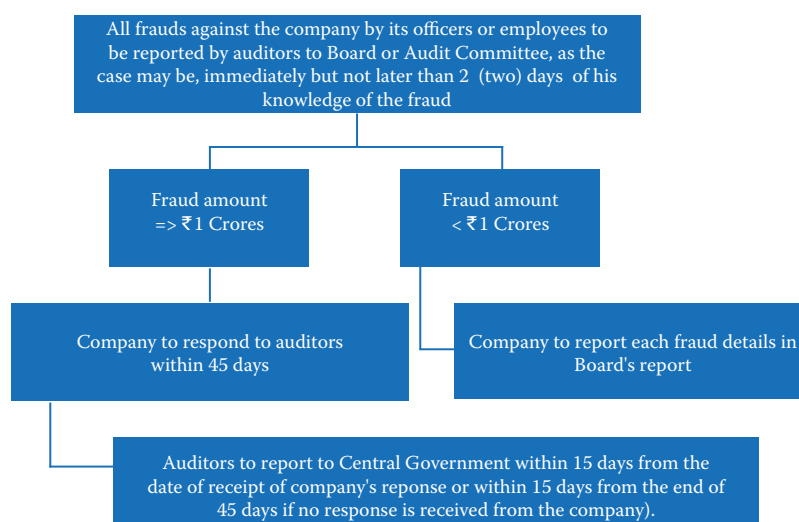


Increase in corporate accounting frauds is being debated loudly in last decade with likes of Ketan Parek Security scam, Satyam, Saradha Chit Fund, NSEL and so on. Primarily responsibility for prevention & detection of fraud rests with the management and those charged with governance. The Companies Act 2013 had also made the statutory auditor a whistle blower and report to the Central Government the frauds committed against the company by its officers or employees regardless of materiality of the amount of fraud involved. The Central government has now modified the reporting procedure and also introduced the concept of materiality through amendment by Section 13 of the Companies Amendment Act, 2015 and consequential changes to Companies (Audit and Auditors) Rules. Read on to know more...



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Existing provision	Amended provision	Our comments / views
i) Specified the monetary limit for reporting of fraud by the auditor to the Central Government		
The auditor of the company, in the course of the performance of his duties as auditor, has sufficient reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, than auditor shall report the matter to the Central Government.	If an auditor of a company, in the course of the performance of his duties as a statutory auditor, has a reason to believe that an offence of fraud which involves or is expected to involve individually an amount of Rs. 1 Crore and above is being or has been committed against the company by its officers or employees should be reported to the Central Government.	• This is a positive development / change as frauds below the threshold limit need not be reported to the Central Government. • The MCA has laid down ceiling limit for reporting of fraud irrespective of the size of the company. • The MCA may clarify the term 'individual frauds' and circumstances under which multiple frauds of similar nature / type could be aggregated to determine the limit of ₹1 crore. • It should be noted that the responsibility of reporting the fraud is only if the fraud has been identified by the auditor i.e. if the management has informed about the fraud to the auditor, then auditors are not required to report on the same to the Board of Directors / Audit Committee / Central Government. • Under the erstwhile Rule 13(1), the auditor was required to have 'sufficient reason to believe' before reporting the fraud (even though section 143(12) mentioned reason to believe). Under the new rule the reporting now will have to be done on the basis of 'reason to believe'. As a result of amendment, situations will arise where before sufficient reasons have been gathered to the effect that fraud has been committed, the Auditor will be obligated to report the event to the Board/ ACM.
ii) Time limit of 2 days for reporting of fraud by the auditor to Audit Committee or Board		
The auditor shall report the matter related to fraud (against the company by its officers or employees) to the Board or the Audit Committee, as the case may be, immediately after auditor comes to knowledge of the fraud, seeking their reply or observations within 45 days.	The auditor shall report all fraud (against the company by its officers or employees) to the Board or the Audit Committee, as the case may be, immediately but not later than 2 days of auditor's knowledge of the fraud. There is no change in time limit of 45 days for obtaining response from company.	• The time line of 2 days given to auditors for estimating the quantum of fraud is a herculean task. Practically, auditor would not be in a position to quantify the amount.

Existing provision	Amended provision	Our comments / views
iii) Matters to be included while reporting the fraud to Audit Committee or Board where fraud amount is less than ₹1 Crore		
Details to be reported were not specified.	In case of a fraud (committed against the company by its officers or employees) involving lesser than Rs. 1 Crore, the auditor within 2 days shall report the matter to Audit Committee or to the Board specifying the following:- (a) Nature of Fraud with description; (b) Approximate amount involved: and (c) Parties involved.	- The auditor may not have the expertise to determine the intricacies of fraud and it would be pre-mature for auditors to identify the parties involved in 2 days of knowledge of fraud. - The auditor would require legal assistance / advice from legal experts before initiating such a reporting. - Identification of all the parties involved may not be practical in a deep routed fraud.
iv) Matters to be included while reporting the fraud in the Board's Report where fraud amount is less than ₹1 Crore		
No such requirements.	In case of a fraud (against the company by its officers or employees) involving lesser than Rs. 1 Crore, the following details of each of the fraud reported to the Audit Committee or the Board shall be disclosed in the Board's Report: (a) Nature of fraud with description (b) Approximate amount involved (c) Parties involved, if remedial action not taken and (d) Remedial actions taken	- Details of each fraud below ₹1 Crore would now be available in the public domain and in the annual report of the company. - Details of fraud for ₹1 Crore and above is not mandated to be reported under the Board's report, however as a better practice and corporate governance it may be included.

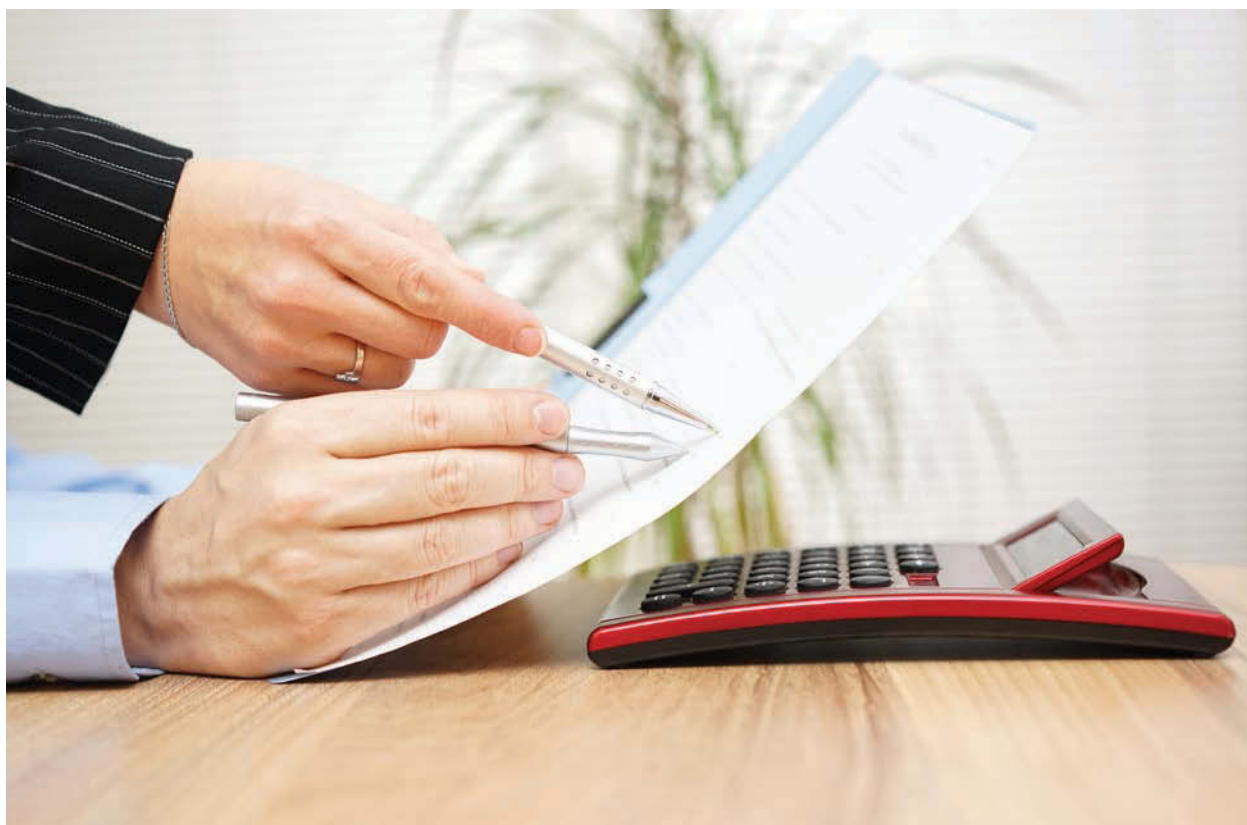
The ICAI had earlier issued Guidance Note on fraud reporting which minutely covers various aspects and as per the guidelines given thereunder the auditors have to apply "professional skepticism" before flagging such cases to the government and take into account the measures already taken by the companies internally. During the course of performance of the duties as auditor, the auditors will also have to consider the Standard on Auditing 240 'The Auditors Responsibilities relating to frauds in an Audit of Financial Statements'. The stakeholders will look forward positively that the auditors will now be extra cautious in carrying out the attest functions with

integrity and in right spirit. The Central Government based on the frauds reported may hand over to SFIO i.e. SERIOUS FRAUD INVESTIGATION OFFICE to further investigate the serious financial frauds involving public interest.

Corporates should also play a vital role and take initiatives for training their employees on fraud prevention and educating the code of ethics.

It is anticipated that like India being polio free country, corporate financial fraud will be eradicated from its roots and abide by the principles of GOOD CORPORATE GOVERNANCE which will aid our nation and all stakeholders. ■

India- Mauritius Tax Treaty – Amendment in the Protocol



The India-Mauritius Double Taxation Avoidance Agreement (DTAA) provided that capital gains from sale of shares can be taxed only in the country, where the holder of the share is resident. Accordingly, capital gains on sale of Indian shares by Mauritius entities are taxable only in Mauritius as per the DTAA. The agreement helped Mauritius in rising as a financial center, and becoming the source of the biggest foreign investment into India. However, from last several years, India has been trying to re-negotiate the tax pact with Mauritius to avoid round tripping and treaty abuse. Recently, the Central Board of Direct Taxes ('CBDT') has issued press release dated 10 May 2016 in relation to amendment in the protocol of the Indian Mauritius DTAA. With this press release, India gets a right to tax the capital gains arising out of the sale of shares. Read on ...



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India-Mauritius Tax Treaty- Journey So Far

The Indian-Mauritius tax treaty gone through various debate and discussions and travelled a long journey. The key highlights are as under:

- The Government of India entered into Double Tax Avoidance Agreement (DTAA) or treaty with Mauritius which came into effect from 1 April 1983.

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- This treaty was corroborated by Circular No 682, dated 30.03.1994, which clarified that capital gains from alienation of shares in Indian companies was taxable in Mauritius only.
- The treaty has been controversial ever since, despite the fact that the treaty was most prone and became synonymous to “treaty shopping” and abuse, it always had the blessings of the government in India, as FDI was flowing into the country.
- In the year 2000, the CBDT further reassured through Circular No 789 dated 13.04.2000, which provided that Tax residency certificate issued by the Mauritius Tax Office is sufficient to claim treaty benefits. This was a defining circular which ensured that tax officials don’t pierce the corporate veil and question the Mauritius entity.
- Writ petitions have been filed by in Delhi HC for challenging the validity of the circular 789 and the Delhi High Court has struck down the circular issued by CBDT.
- On further appeal the Hon’ble Supreme Court in *Union of India v Azadi Bachao Andolan (2003) 263 ITR 706 (SC)*, has overturned the ruling of the HC and held that under the constitution of India, the government had the power to enter into treaties with other countries and that judiciary has no power to judge the legality of treaty shopping merely because one section of thought considers it improper.
- The SC further noted that, if the intention of the legislature was to restrain a resident/national of a third country from enjoying the benefits of the treaty, then it would have incorporated suitable limitation of benefits clauses to arrest such abuse. Hence it ruled that the circular was good in law. This landmark ruling has laid to rest any controversy on the treaty. Subsequently many rulings have been at other fora drawing from this judgement.

Based on discussions with the authorities in Mauritius, the two governments finally entered into

Based on discussions with the authorities in Mauritius, the two governments finally entered into a protocol modifying the treaty on 10 May 2016. This protocol brings certain most needed changes to the treaty to address misuse. The government has thus addressed a long pending issue.

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Review of Protocol

The following are the provisions of the Protocol, as seen from the perspective of the taxability in India of the income of a resident of Mauritius:

I. Taxation of Capital Gain

The protocol addresses some of the key areas that have been left to be plugged earlier, the core issue of capital gains has been addressed for the first time. Protocol gives the source state right to tax over capital gains arising from the transfer of shares of a company resident in that source State. The intention of the government has to be lauded, wherein it has given ample time for a smooth change in a gradual and a phased manner. The key highlights of the amendments are as under:

- India will now be able to tax capital gains on investments in shares made post 1 April, 2017 from Mauritius.
- A transition window of 2 years from 1 April, 2017 to 31 March, 2019 has also been provided for, wherein the tax rate on capital gains on investment made in the intervening period would be limited to 50% of the domestic tax rate in India subject to fulfillment of conditions mentioned in the Limitation of Benefits (LoB) clause. The LOB specifies certain criteria for claiming the 50% abatement during the transition window. Both of which have to be satisfied for claiming the relief. There are two tests for qualifying for the benefits : 1) The affairs should not be arranged with the primary intention of availing the benefit provision granting reduced rate of tax (Main purpose test) 2) The company should not be a ‘Shell or Conduit company’ (Bonafide business test).
- A company is not deemed ‘Shell or Conduit’ if it incurred an expense of at least INR 2.7 Mn (MUR 1.5 Mn) in the immediately preceding 12 months in home country or is listed on a recognised stock exchange in the home country.
- Taxation in India at full domestic rate will be applicable for capital gains arising from 1 April, 2019 onwards.
- A new article 27A has been introduced in the treaty to provide the clauses, subject to which the residents of states can avail treaty benefits.

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Briefly put, after the amendment in protocol, the taxability of capital gain on sale of shares acquired by a Mauritius resident in Indian company is as under:

Acquisition of Shares	Sale of Shares	Taxability as per treaty/protocol
Prior to 1 April, 2017	Any Time	Taxable in Mauritius
From 1 April, 2017 to 31 March, 2019	From 1 April, 2017 to 31 March, 2019	Capital Gain taxed in India at 50% of the domestic tax rate, subject to satisfaction of LOB conditions.
From 1 April, 2017 to 31 March, 2019	After 31 March, 2019	Taxable in India at normal rates.
After 31 March, 2019	Any Time	Taxable in India at normal rates.

Key observations & implications

- Going forward, there would be a tax on capital gains arising to a Mauritius company on the transfer of shares companies' resident in India.
- It should be noted that gains arising on transfer of shares of companies that are not resident in India should continue to be not taxable in India. Similarly, gains from alienation of debt instruments should also continue to be not taxable in India.
- The LOB clause incorporated in the protocol appears similar to the one in the treaty with Singapore wherein Article 24 of the India – Singapore DTAA, provides certain quantum of expenses to be incurred in a 24 month prior period. Further this limit is applicable only for the abated tax rate and not for other benefits which the treaty provides.

Further clarity is yet to emerge on instruments like Compulsory Convertible Debentures (CCDs), Convertible Preference Shares and other hybrid instruments which are in existence and due to be converted into shares at a future date.

- An Explanation has been inserted through the protocol as per which, legal entities not having bona fide business activities shall be covered by Article 27A(1) of the Convention. It appears that the satisfaction of main purpose test may be difficult for the entities as there is no guiding principle with quantitative thresholds as to what would constitute a "Main Purpose" and hence becomes subjective and might be prone to litigation. It would be good if certain rules are framed to address the matter so as to not leave it open ended as to what may be construed as "Main Purpose".

- The government will have to also address and make appropriate changes to General Anti Avoidance Rules (GAAR) notified in 2013, which among others prescribes the cutoff date for investments that are not subject to GAAR as 31 August 2010. Though now GAAR has been deferred to 2017 and also the benefit under the treaty has now been extended to be co-terminus with the said date, a need arises to bring further clarity, to GAAR rules wherein the grandfathering date for the investments for GAAR purpose may have to be extended to April 1, 2017 to eliminate unwanted confusion and interpretation by the tax authorities which is not in the spirit of what the government wanted. There are also concerns whether protocol could be used to bring transfer of Participatory Notes under the tax net.
- Based on the Protocol, there may be an impact on the India-Singapore DTAA since the relevant provisions have been linked to the continuation of the corresponding provisions of the India Mauritius treaty. In this respect, the Indian government intends to renegotiate the treaty with Singapore to bring it on par.
- Abuse of tax treaties emerged as a global concern which is also considered in the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan 6. The Action Plan 6 provides guidance on preventing the granting of treaty benefits in inappropriate circumstances. India-Mauritius Treaty was a classic example of treaty abuse. To sum-up, the amendment is in line with India's commitment to the BEPS initiative to avoid treaty abuse and curb the double non-taxation.

II. Permanent Establishment (PE):

The protocol has also expanded the definition of PE contained in Article 5, with inclusion of service PE clause wherein deployment of personnel for a period of more than 90 days in any 12 month period shall constitute a PE. The service activity includes activity of furnishing of services, including consultancy services. Any entity earlier using this route to provide services to India will now lose this benefit.

III. Fees for Technical Services (FTS):

The existing treaty does not have an article dealing with taxation of FTS income. To this effect, FTS income is considered as Business Profits and was taxable in source country only in case of presence of a PE. The Protocol inserts a new article 12A to

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provide that source country a right of taxation over such FTS at a rate of 10% (on gross basis) if the beneficial owner is a resident or the other contracting state. FTS has been defined to include consideration for managerial, technical or consultancy services, including the provision of services of technical or other personnel. The definition of FTS is made wide enough without any make available clause.

IV. Interest income

The Protocol has amended the treaty to provide exemption from tax on interest income arising in source country to a bank of a resident country carrying on bona fide banking business on outstanding/existing debt claims on or before 31 March, 2017. The debt claims existing before 31 March, 2017 have been grandfathered. In other cases such income shall be taxable in source country @ 7.5% (on gross basis), provided the recipient is the beneficial owner of such interest income without regard to LOB.

V. Other income

The existing treaty provides that other income not connected with PE and not dealt with in other articles shall be taxable in resident State. A new non obstante clause overriding the earlier provisions is now inserted to grant a right of taxation to the source state as well in case such income arises.

VI. Information exchange Amendment

The protocol amends the existing Article 26 to align the information exchange in line with the international standards of transparency. It also provides that the contracting state shall use its information gathering measures to obtain the information requested by the other contracting state even if that other state may not need the information for its tax purposes. Now India can also insist on information in respect of persons who are not residents of Mauritius, as long as such information is in the possession of Mauritius as the restrictions placed in para 3 of Article 26 are amended. It would be possible now to exchange information held by banks or financial institutions.

The amendment in treaty and the information sharing mechanism put in place, will over a period of time, take away the attractiveness of Mauritius route into India for treaty shoppers.

Overall this has been a great move by the government to promote a stable tax and predictable tax regime and attract FDI inflows. The measures will widen the tax base and will also help aligning the taxation to the BEPS initiatives.

VII. Assistance in Collection of Taxes

Article 26A is newly introduced in the treaty to provide that both the countries shall lend assistance to each other in collection of revenue claims/taxes. The aim is to ensure that states are able to collect their revenue with assistance from the other state when they are not able to do on their own. The other state (Say Mauritius) will help in collecting the same in accordance with the provisions applicable in Mauritius on enforcement and collection as if the same is a revenue claim of Mauritius.

The finance ministry has constituted a working group to examine the issues arising as a consequence of the changes in the treaty to submit a report to CBDT within three months after examining the relevant issues.

Conclusion:

Mauritius has always been the highest contributor of FDI to India, approximately a third of all the FDI flowing into India in the period 2000 – 2015 was routed through Mauritius. The amendment in treaty and the information sharing mechanism put in place will, over a period of time take away the attractiveness of Mauritius route into India for treaty shoppers.

It also address the issue of round tripping of funds from India. The incorporation of the clauses pertaining to capital gains exemption phase out reflects the alignment to the principles of BEPS initiatives and provide clarity on the tax reforms. The amendments have been proposed to be implemented prospectively and that too in a phased manner. This gives a breather to those currently invested in India as the treaty benefits based on which investments have been made, stands protected. It also acts as a guiding source to those planning to invest in India's growth story in future.

Overall this has been a great move by the government to promote a stable tax and predictable tax regime and attract FDI inflows. The measures will widen the tax base and will also help aligning the taxation to the BEPS initiatives. ■

Regulation 33 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 - At a Glance



This article details certain requirements of notified Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('Listing Regulations 2015'). Regulation 33 of the Listing Regulations 2015 corresponds to Clause 41 of the erstwhile Listing Agreement which provided guidance on the requirements for financial results for equity listed entities. This article seeks to provide an overview on some key changes made applicable in Regulation 33 as compared to Clause 41. This article also discusses some key challenges faced by the entities in abiding by Regulation 33. Read on to know more....

Introduction

Securities and Exchange Board of India ('SEBI') notified Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements)



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Regulations, 2015 ('Listing Regulations 2015') on 2nd September 2015. This regulation has been made effective from the 90th day of this notification in the Official Gazette i.e. 1st day of December, 2015 except for Regulation 23(4) – (Passing of an ordinary resolution instead of special resolution in case of all material related party transactions subject to related parties abstaining from voting on such resolutions) and Regulation 31A (Reclassification of Promoters as public shareholders under special circumstances) which were made applicable with immediate effect.

Broad Framework of Listing Regulations

- Chapter I** : Preliminary section specifying definitions and scope of Listing Regulations 2015
- Chapter II** : Principles governing disclosures & obligations of Listed Entity
- Chapter III** : Common obligations of Listed Entities
- Chapter IV** : Obligations of Listed Entity which has listed its specified securities
- Chapter V** : Obligations of Listed Entity which has listed its Non-Convertible Debt Securities or Non-Convertible Redeemable Preference Shares or both
- Chapter VI** : Obligations of Listed Entity which has listed its specified securities and either Non-Convertible Debt Securities or Non-Convertible Redeemable Preference Shares or both
- Chapter VII** : Obligations of Listed Entity which has listed its Indian Depository Receipts
- Chapter VIII** : Obligations of Listed Entity which has listed its Securitised Debt Instruments
- Chapter IX** : Obligations of Listed Entity which has listed its Mutual Fund Units
- Chapter X&XI** : Duties & Obligations of the Recognized Stock Exchange(s) and procedures for action in case of default
- Chapter XII** : Miscellaneous Provisions

Key requirements under Regulation 33 of the Listing Regulations 2015

Regulation 33, which falls under Chapter IV of the Listing Regulations 2015, provides guidance around “Financial Results” of the equity listed entity which can be quarterly and/or year-to-date financial results. The financial results of the listed entities are required to be prepared, reviewed/audited and published to stock exchange(s) in India. The main requirement of Regulation 33 of the Listing Regulations 2015 are as follows:

- a) The financial results of the listed entity shall be prepared on the basis of accrual accounting policy and shall be in accordance with uniform accounting practices adopted by the entity for all the periods.

The listed entity shall ensure that the limited review or audit reports submitted to stock exchange(s) are given by an auditor who has subjected himself to the peer review process of the Institute of Chartered Accountants of India and holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India.

- b) The financial results shall be prepared in accordance with the recognition and measurement principles laid down in Accounting Standard 25 or Indian Accounting Standard 34 (AS 25/Ind AS 34 – Interim Financial Reporting), as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder.
- c) The listed entity shall ensure that the limited review or audit reports submitted to stock exchange(s) are given by an auditor who has subjected himself to the peer review process of the Institute of Chartered Accountants of India and holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India.
- d) The listed entity shall make the disclosures specified in Part A of Schedule IV of the Listing Regulations 2015. These disclosures mainly consist of changes in accounting policies, impact of modification in opinion given in respect of financial results, financial impact of any new line of business, dividends paid or recommended during the period, changes in composition of listed entity, segment reporting in accordance with relevant standards etc.
- e) The financial results shall be approved by the Board of Directors of the listed entity and shall be signed by chairperson or managing director or a whole time director or any other authorized director.
- f) The limited review report shall be placed before the board of directors, at its meeting which approves the financial results.
- g) The financial results must be submitted within 45 days of the end of each quarter, other than the last quarter.
- h) If listed entity is having subsidiaries, the entity may submit quarterly/year-to-date consolidated financial results by intimating to stock exchange(s) that the entity opts to additionally

submit quarterly/year-to-date consolidated financial results. This option must be taken in first quarter of the financial year and should not be changed during the financial year.

- i) If unaudited financial results are submitted by the listed entity, they shall be subjected to limited review by statutory auditors of the listed entity with limited review report issued for the same. If audited financial results are submitted, they shall be accompanied by an audit report.
- j) The listed entity shall submit annual audited standalone/consolidated financial results, within 60 days from the end of the financial year along with audit report and Statement on Impact of Audit Qualifications (for audit report with modified opinion). However, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the stock exchange(s) while publishing the annual audited financial results.
- k) The listed entity shall also submit the audited financial results in respect of the last quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year, in case the last quarter is not separately audited.
- l) The listed entity shall also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities as at the end of the half-year.

Key changes under Regulation 33 of Listing Regulations 2015 as compared to erstwhile Clause 41 of the Listing Agreement

- 1) Option to publish consolidated results as per IFRS have been discontinued under Regulation 33 of the Listing Regulations 2015. Accordingly, listed companies will be required to submit consolidated financial results as per existing Indian Standards or Ind AS's as applicable. IFRS results can be submitted additionally with financial results in Indian GAAP.
- 2) As per Para B of Part A of Schedule IV of the Listing Regulations 2015:

*"If the auditor has expressed any modified opinion(s) in respect of **audited financial results** submitted or published under this para, the listed entity shall disclose such modified opinion(s) and cumulative impact of the same on profit or loss, net worth, total assets, turnover/total income, earning per share, total expenditure, total liabilities or any other financial item(s) which may be impacted due to modified opinion(s), while publishing or submitting such results"*

Accordingly, audited financial results should also disclose the impact of modifications in audit opinion on net worth, total assets, turnover, EPS, total expenditure, total liabilities and any other relevant financial items apart from profit or loss. However, in case of quarterly results of first and third quarters where no balance sheet is published, impact on net worth, total assets and total liabilities may not be relevant.

It is not clear whether a modification in limited review report is also to be disclosed. However, as per Para C of Part A of Schedule IV of the Listing Regulations 2015:

*"If the auditor has expressed any modified opinion(s) or other reservation(s) in his audit report or **limited review report** in respect of the financial results of any previous financial year or quarter which has an impact on the profit or loss of the reportable period, the listed entity shall include as a note to the financial results –*

- (i) *how the modified opinion(s) or other reservation(s) has been resolved; or*
- (ii) *if the same has not been resolved, the reason thereof and the steps which the listed entity intends to take in the matter"*

Accordingly, since the above disclosure is required to be given in case of modification/reservation in limited review report, it can be concluded that disclosure requirement of Para B of Part A of Schedule IV of the Listing Regulations 2015 is also applicable to modifications/reservations in limited review reports.

- 3) Disclosures no longer required as part of financial results for the following:
 - a. Public/promoter and promoter group shareholding (However as earlier these are to be filed with stock exchange(s) at least on a quarterly basis).
 - b. Investor complaints pending at beginning

and end of the quarter including the movement to be disclosed to the stock exchange(s) separately from the results.

- 4) Information to be published in the newspaper now limited to key parameters e.g. total income, PAT, equity share capital, reserves, EPS. Weblink to be given so that detailed results can be seen. Annexure XI of SEBI circular dated 30 November 2015 on 'Formats for Publishing Financial Results' provides an abridged format which entities can use for newspaper publishing purpose.
- 5) If the listed entity has submitted both standalone and consolidated financial results to stock exchange(s), the listed entity shall publish in a newspaper, consolidated financial results along-with (1) Turnover, (2) Profit before tax and (3) Profit after tax, on a stand-alone basis, as a foot note; and a reference to the places, such as the website of listed entity and stock exchange(s), where the standalone results of the listed entity are available.
- 6) Ind AS specific disclosures introduced:
 - a. Results for period covered by first Ind AS financial statements to include disclosures as per Ind AS 101 (to the extent applicable for interim financial reports)
 - b. Comparatives for quarterly/annual results should be Ind AS compliant.

Key challenges which the listed entities might face

Applicability of Ind AS

Clause 5 of SEBI circular dated 30th November 2015 on 'Formats for Publishing Financial Results' states as follows:

Companies adopting Ind AS in terms of Companies (Indian Accounting Standards) Rules, 2015 notified by the Ministry of Corporate Affairs on 16 February 2015 while publishing

As per clause 41 of the erstwhile Listing Agreement, in case the listed entity was having subsidiaries and the entity opts to give consolidated financial results, the entity was allowed to give the consolidated results under IFRS. The Listing Regulations 2015 took away this right from the entities and mandated financial results to be prepared under Indian standards subject to subsequent exemption given till 31st March 2016.



quarterly/annual financial results under Regulation 33 of the Listing Regulations, 2015, shall ensure that the comparatives filed along with such quarterly/annual financial results are also Ind AS compliant.

Accordingly, for listed entities falling under the phase 1 of the Ind AS implementation, the financial results of the quarter ended 30th June 2016 including the corresponding figures will have to be prepared in accordance with Ind AS. Therefore, the listed entities are required to prepare the financial results for quarter ended 30th June 2015 as well as for previous year/quarter ended 31st March 2016 under Ind AS as, the same needs to be presented as corresponding figures in the financial results of the quarter ended 30th June 2016.

Consolidated results under IFRS

As per clause 41 of the erstwhile Listing Agreement, in case the listed entity was having subsidiaries and the entity opts to give consolidated financial results, the entity was allowed to give the consolidated results under IFRS. The Listing Regulations 2015 took away this right from the entities and mandated financial results to be prepared under Indian standards subject to subsequent exemption given till 31st March 2016. Going forward, such entities would require to align the consolidated results as per Indian Standards.

Conclusion

After a thorough reading of the Listing Regulations 2015, it can be concluded that, the basic objective behind these changed regulations was to bring the regime of listed entities in line with the Companies Act, 2013 and also to bring all varied SEBI regulations governing Equity, Debt, mutual funds, depository receipts etc under one umbrella of regulations. There are certain challenges and interpretational issues which would be discussed and addressed over a period of time. ■

Choosing a Trade Name: Considerations for those Establishing a Business



You have just incorporated a new company with the Registrar of Companies with no issue having been raised about your company's name and have launched your business when you receive a letter telling you to cease and desist from using the name because it infringes or dilutes another party's trademark rights.

The letter comes as an unwelcome surprise; and you immediately become concerned with avoiding litigation. After some initial research, you learn that litigation for trademark infringement may lead to monetary and penal consequences, is expensive and time consuming, and could require that you change your business name, packaging, advertising and promotional material. How can this be? Read on to know more...

Trade names can violate the rights of trademark owners, even if the trade names are not applied onto actual goods. This is because business identifiers can nevertheless be misleading or cause a likelihood of confusion regarding the source of goods or services in the marketplace depending on the circumstances. Particularly, if the trademark is famous, a trade name can violate or dilute the rights of the trademark owner even in the absence of any relatedness of the goods or services

or of any likelihood of confusion or competition between the famous trademark and trade name owners.

Background

Section 29(5) of The Trade Marks Act, 1999 provides that, if a person uses another's registered trademark as his trade name, part of his trade name, name of his business concern, or part of the name of his business concern, and deals in similar goods or services, that user is infringing the registered trademark.

Even in cases of *un-registered* trademarks, the Courts in India have prevented the use of identical

(Contributed by The Trade Names Subcommittee of the International Trademark Association's Enforcement Committee. Comments can be sent to info@inta.org.)

or similar trade names by any other person for similar *as well as distinct* goods or services, if such use resulted in '*likelihood of confusion*' or deception amongst the members of public and trade. Some reported judgments highlighting this result are mentioned below.

Therefore, as a practical matter, what precautions must be taken to reduce any potential infringement or violation of trademark laws which may result in litigation and damages?

Check before establishing a business (measure thrice, cut once)

You may think you have conducted the appropriate check of names having received the approval of the Registrar of Companies. But a name can still be found by a Court to violate the rights of a third party.

Although the Registrar of Companies checks its records for names that might be similar, the Registrar typically only refuses to register a name if it is identical to an already existing registered company name. *For example*, the Registrar would allow ABC Management Private Limited to be registered even though ABC Engineering Private Limited or ABC-TECH Solutions Limited is already registered. Additionally, the Registrar of Companies does not check the Register of Trade Marks to rule out any conflict with an identical/similar trademark that may be already registered or has rights. Therefore, before choosing your trade name, it is advisable to speak to a trademark professional and to have that person conduct a search of both the Registrar of Companies and of Trade Marks.

In addition to the above searches, a "common law" search should be undertaken through relevant trade directories and Internet search engines to determine whether there are businesses using a similar or identical name in the marketplace. In other words, you also need to do a "use check."

Three Examples Where Trade Names Infringed Trademarks

- A recent case decided in 2013 involved Bloomberg Finance LP, which since 2008¹ had operated "Bloomberg UTV" in India and registered its trademark in India for that service. The defendant, Praful Sakhlecha had registered the trademark "Bloomberg" for similar services and used "Bloomberg" as its trade name. After

It is crucial to cover the bases and conduct a proper initial search for identical or similar trademarks to mitigate the risk of inadvertently infringing or diluting an existing trademark.

evaluating all the material on the record, the Court held that "*while the Defendants may hold the registration for the mark BLOOMBERG, in class 43 that by itself will not preclude the Plaintiff, which holds an earlier registration in other classes from seeking to restrain the Defendants from infringing the Plaintiffs marks...*" The Court prevented Praful Sakhlecha from using "Bloomberg" or any other similar name as its trademark or trade name.

- A similar case decided in 2013 case involved M/s Bhagwan Dass Khanna Jewellers, the registered proprietor of the trademark 'BDK' and 'Bhagwan Dass Khanna' in respect of jewellery goods.² The defendants started using the designation 'BDK' and included 'Bhagwan Dass Khanna' in its corporate name. Upon hearing the arguments of the parties at length, the Delhi High Court issued a detailed interim (non-final) order restraining the Defendant from using the name "Bhagwan Das Khanna" & "BDK" or any similar variation for a jewellery business or any other allied goods activities.
- Another 2013 case involved Icrave LLC, a U.S. company that in India was providing consultancy services in architectural design and was amongst the market leaders in that field worldwide. Even though Icrave's trademark was not registered in India, the court required a newly founded Indian company, Icrave Designs Pvt. Ltd., to change its name finding it misleading.³ Icrave LLC successfully established that: (1) it has considerable goodwill and reputation in India; (2) its trademark/trade name was distinctive with respect to its goods and services and (3) Icrave LLC's trade name/trademark and the trade name/trademark being used by the offending party were identical and therefore likely to cause confusion in the minds of the public.

In addition, as mentioned above, if the trademark is famous or well known, the trademark holder can prevent another from using a similar

¹ Bloomberg Finance LP Vs. Praful Sakhlecha & Others 207 (2014) DLT 35

² M/s Bhagwan Dass Khanna Jewellers Vs. Bhagwan Das Khanna Jewellers Pvt. Ltd. & Ors; 2013(53) PTC 287 (Del).

³ Icrave LLC Vs. Icrave Designs Pvt. Ltd., 2013(53) PTC 323 (Del)

sounding trade name even in the absence of competition between the parties or confusion regarding the source of the goods, i.e., where the goods and services in issue are unrelated. An example is the case of *Kalpataru Properties Pvt. Ltd. v. Kalpataru Hospitality & Facility Management Services (P) Ltd.*⁴, where the High Court of Bombay restrained the defendant from also using the name KALPATARU even where the goods/services of the parties were different. The Court reached this result by applying the principle of ‘passing off’ (misrepresenting your goods or services as that of another).

The lesson from these cases is clear. It is crucial to *cover the bases and conduct a proper initial search for identical or similar trademarks* to mitigate the risk of inadvertently infringing or diluting an existing trademark, becoming the subject of litigation, and potentially having to change the business name and exposing oneself or his company to money damages.

Intention and Use of Personal Name – No Defense

In your concern over the unexpected letter, you may say you did not *intend* to trade off the reputation of the prior trademark or did not mean to infringe, dilute, or otherwise commit passing off. However, your intent in adopting a business identifier is irrelevant because intent is no defense in an infringement, dilution, or passing off action.

Further, you may even be prevented from making *bona fide* use of your own name, surname, or place of business as your trade name where such use is likely to cause confusion. Hence, business owners and those who assist in setting up companies need to exercise caution for this reason as well.

For example, in the matter of *Mahendra & Mahendra Paper Mills Ltd. Vs Mahindra & Mahindra Ltd.*⁵ the Supreme Court of India upheld an injunction prohibiting the use of “Mahendra” in the trade name “Mahendra & Mahendra Paper Mills

Intent in adopting a business identifier is irrelevant because intent is no defense in an infringement, dilution, or passing off action.

Liability implies that the business owners may be vulnerable to injunction as well as damages, even if a company name has been approved by the Registrar of Companies.

Ltd.” because it was too close of a variant to the trademark MAHINDRA. Even though “Mahendra” was the director’s name and there was no business similarity, the Court found that use of the name was likely to suggest a connection with the Mahindra companies and may also affect its business and trading activities.

Although the court orders in some of the above cases were interim, not final, the orders are based on established principles of law and were issued after consideration of the arguments and documents from both sides. Therefore, the orders are not only persuasive but considered good precedents by the Courts.

Conclusion

Before selecting a trade name, it is to be remembered that those establishing a business may be held liable for infringement, dilution, or passing off because of a pre-existing trademark. Liability implies that the business owners may be vulnerable to injunction as well as damages, even if a company name has been approved by the Registrar of Companies. If the name resembles a trademark which enjoys a reputation in India, the subsequent user could be held liable even if its goods/services are unrelated to those of the trademark holder.

Therefore, a stitch in time saves nine! It is advisable that entrepreneurs, before investing in establishment/promotion of businesses, conduct clearance searches through the Register of Companies to verify the availability of a business name, do a search of the records of the Trade Marks Registry to ensure that the business name does not violate any trademark rights, and engage in a use check to see if a similar name is being used in the marketplace. Though these measures are not a guarantee and are dependent on one’s search and analysis, these efforts will go a long way to reduce the risk of receiving any unexpected and unwelcomed letters alleging trademark infringement. ■

⁴ *Kalpataru Properties Pvt. Ltd. and Property Solutions (India) Pvt. Ltd. Vs. Kalpataru Hospitality and Facility Management Services (P) Ltd.*; 2011 (48) PTC 135 (Bom)

⁵ *Mahendra & Mahendra Paper Mills Ltd. Vs Mahindra & Mahindra Ltd.*; AIR 2002 SC 117

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals received during June- July 2016 for the reference of Faculty/ Students & Members of the Institute.

1 Accountancy

Accounting and the Hope of Action by BinoCatusus and Paolo Ferri. *European Accounting Review*, June 2016, Vol. 25/2, pp. 403-419.

Accounting Standards GAAPs in GAAP: Adjustment of Debenture Premium Against Securities Premium in IND AS by Dolphy D'souza. *The Bombay Chartered Accountant Journal*, June 2016, Vol. 48-A/3, pp.123-125.

Average- Based Accounting Approach to Capital Asset Investments: The Case of Project Finance by Carlo Alberto Magni. *European Accounting Review*, June 2016, pp. 275-286.

Better Financial Reporting: Meanings and Means by Shyam Sunder. *Journal of Accounting and Public Policy*, May/June 2016, Vol. 35/3, pp. 211-223.

Internal Control Reporting and Accounting Standards: A Cross-Country Comparison by Amanda L. Wilford. *Journal of Accounting and Public Policy*, May/June 2016, Vol. 35/3, pp. 276-302.

Internal Lobbying at the IASB by Julia Morley. *Journal of Accounting and Public Policy*, May/June 2016, Vol. 35/3, pp. 224-255.

Managing the Review Process in Accounting Research: Advice from Authors and Editors by Derek W. Dalton and Nancy L. Harp. *Issues in Accounting Education*, May 2016, pp.235-252.

Preparing Future Accounting Faculty Members to Teach by Kimberly A. Dunn and Karen L. Hooks. *Issues in Accounting Education*, May 2016, Vol. 31/2, pp. 155-170.

Price Regulation and Accounting Choice by JochenPierk and Matthias Weil. *Journal of Accounting and Public Policy*, May/June 2016, Vol. 35/3, pp. 256-275.

2 Auditing

Analytics & the small audit department: No Matter the Size of an Audit Function, Analytics can be Implemented for Big Gains by Jared Soileau and Laura Soileau. *Internal Auditor*, June 2016, pp.35-39.

Are Joint Audits Associated with Higher

Audit Fees? By Paul Andre and Geraldine Broye. *European Accounting Review*, June 2016, Vol. 25/2, pp.245-274.

Canary in the Organisational Coal Mine: Internal Audit Serves as a Key Warning Indicator, but only when Stakeholders Truly Appreciate its Value by J. Michael Jacka. *Internal Auditor*, June 2016, pp. 69.

Communicating Results: Sharing Audit Observations is one of the most Important Tasks Auditors Perform by JJ Jenkins. *Internal Auditor*, June 2016, pp. 65-67.

Craft Our Role: Encourages Internal Auditors to Create the Role for themselves that is Best for Both the Organisation and their Own Personal Development by Robert Kuling. *Internal Auditor*, June 2016, pp. 52-57.

Fraud and Related- Party Transactions: Internal Auditors can Identify Red Flags and Reduce the Risk and Impact of Related-Party Fraud by James A. Bailey. *Internal Auditor*, June 2016, pp. 58-63.

Practice Variation in Public Sector Internal Auditing: An Institutional Analysis by Marika Arena and Kim Klarskov Jeppesen. *European Accounting Review*, June 2016, pp. 319-345.

Tech-Savvy Auditor: Effective use of Audit Technology can Enable Audit Departments to Provide Valuable Insights by Hans-Ulrich Westhausen. *Internal Auditor*, June 2016, pp.18-21.

3 Economics

Corporate Dividend Policy in India: An Analysis of Trends Across Industries by Pooja Miglani. *Chartered Secretary*, June 2016, Vol. 46/06, pp. 68-74.

Determinants and Economic Consequences of Non-Financial Disclosure Quality by Fang Gao and Chenkai Ni. *European Accounting Review*, June 2016, pp.287-317.

Macroeconomic Impact of Social Protection Programmes in India by Akhilesh K Sharma and M. R. Saluja. *Economic & Political Weekly*, 11 June 2016, Vol.51/24, pp.121-127.. ■

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.

Tax Department Must Trust Assessee: Finance Minister

Making a case for increasing the taxpayer base, Finance Minister Arun Jaitley has said the government's intention is to keep taxation rate "moderate" and emphasised that tax department needs to start trusting the assessee. He also said that all grey areas are being made clearer when it comes to taxation and the tax department. "Ease of communicating with tax department is going to continue. All the grey areas, the unclear areas I think by virtue of clarifications and notifications are now increasingly becoming clear," Jaitley said. Listing out various measures aimed at simplifying the procedures, Jaitley said dispute resolution mechanism has been put in place at the appeals stage with respect to tax matters. He was participating in a programme jointly organised by the Institute of Chartered Accountants of India (ICAI) and the Finance and Commerce and Industry Ministries. He said the tax rate would be reasonable while the tax base has to be much larger and "the tax department has to start trusting the assessee and the taxpayer". In a strong message to those evading tax, Jaitley said such people would face serious action and that the government is plugging the escape routes.

(Source: www.thehindubusinessline.com/)

CBDT Signs 7 Advance Pricing Agreements to Cut Tax Litigation

In a move designed to reduce tax litigation, the Central Board of Direct Taxes (CBDT) has recently signed seven more unilateral Advance Pricing Agreements (APAs) with Indian taxpayers. "With today's signing, the total number of APAs entered into by the CBDT has reached 77. This includes 3 bilateral APAs and 74 unilateral APAs. "In the current financial year, a total of 13 Unilateral APAs have been entered into so far," a Union Finance Ministry statement said. The latest APAs signed with taxpayers pertain to various sectors like banking, information technology and automobiles. APAs provide for signing an agreement between a taxpayer and the income tax department on an appropriate transfer pricing methodology for determining the value of assets and taxes on

intra-group overseas transactions. The scheme attempts to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods of pricing and setting the prices of international transactions in advance, the ministry said.

(Source: www.financialexpress.com)

Companies Face Country-Wise Rules for Transfer Pricing

Professionals obtaining any sum of money under a non-compete agreement will now be subject to tax with the government having plugged a loophole in the Budget. Once non-compete agreements were largely restricted to the manufacturing arena. For instance, an outgoing employee would have to sign on the dotted line that he would not share knowhow or a patent that he had helped develop during his employment. Or if he was an inventor, he could be debarred under the non-compete agreement from starting a similar line of business for a certain period. The money received under such non-compete agreements was duly taxed. The nature of the tax will be based on the nuances of the agreement. The money received could be taxed either as a capital gain or as income from business or profession.

(Source: <http://www.business-standard.com/>)

Government to Use Info Collected under Various Acts to Identify Suspected Tax Dodgers

The government is set to use the information collected under various international tax agreements to identify suspected tax dodgers and urge them to come clean through the ongoing black money scheme that expires on September 30. The income-tax department will soon write to such individuals that they have been identified on the basis of information received under the Foreign Account Tax Compliance Act (FATCA) from the US, various tax information exchange agreements as well as other sources. It will also give these individuals the option of declaring their unaccounted income. These letters will not make people ineligible for making a declaration under the new black money window as these do not fall in the category of formal notices issued by the tax department. These are likely to just point out the undeclared transactions, ask people to explain them, and allow them to pay due tax.

(Source: www.economictimes.com)

Significant Rise in Mergers and Acquisitions in Startup space with 48 deals in Past Three Months

Mergers and acquisitions have picked up significantly in the startup space with 48 deals in the past three months, according to Xeler8, a platform that tracks startup activity in the country. This is in line with the trend towards consolidation among startups. Whether it is a strategic move to eliminate competition, or to take advantage of the conducive market situation, startups are looking at acquiring other ventures. While capital is flowing out of the bigger startups into the smaller ones, industry players believe that their money is well spent as they end up acquiring a technology they otherwise would have to work towards. There are others who spend their money to acquire—that is, buyout for the employee skills and expertise — other startups.

(Source: <http://www.business-standard.com/>)

Tax-Friendly Govt Wants to Help You Settle Disputes

The income tax department will start settling pending tax disputes starting September. Over 3,00,000 tax disputes are pending at various benches of the Income Tax Appellate Tribunals (ITAT) across India, according to a finance ministry official. To this end, the revenue department has asked all the Commissioners of Income Tax -Appeals (first-level appellate authority), to start sending notices to people and entities for resolving their cases under the one-time dispute settlement window.

(Source: www.profit.ndtv.com)

No Indirect Tax Recovery During Pendency of Stay

The Central Board of Excise & Customs (CBEC) has directed its field officials not to proceed with the recovery of a "confirmed" demand in relation to indirect taxes if the matter has been stayed, providing significant relief to industry. "In cases where the stay application is pending before the Commissioner (Appeals) or CESTAT for periods prior to August 6, 2014, no recovery shall be made during the pendency of the stay application," the apex indirect taxes body said in a recent circular.

(Source: <http://www.business-standard.com/>)

Online Verified Tax Returns Cross Over 1 Crore Mark

The Income Tax department's ambitious plan to verify ITRs electronically through an internet-based system by using the Aadhaar and banking database has crossed the one crore mark. As per the latest data, over 1.02 crore Income Tax Returns (ITRs) have been verified by the internet-based electronic filing system of the department. "The figures for e-verified ITRs stand at 1,02,08,715 as of now. The one crore mark was achieved recently and the department wants this to grow by leaps and bounds so that e-filing becomes more popular with taxpayers," a senior official said.

(Source: Press Information Bureau)

PE Transactions Prompt Income Tax Queries over Round Tripping Concerns

Domestic companies raising private equity funding in the near term are likely to face increased scrutiny from tax sleuths looking for instances of round tripping. Multiple sources have told The Indian Express that over half-a-dozen domestic companies that have raised private equity funding in the past few months have received queries from the income tax department seeking detailed information on the source of funds as well as questions related to the identity of some limited partners (LPs) of the investing PE fund. In the private equity industry LPs are essentially individual and institutional investors who commit capital to a PE fund, which acts as a general partner or GP. A sizable chunk of domestic PE funds currently raise money from multiple tax jurisdictions overseas to invest in unlisted Indian companies. India received a record \$22.4 billion in PE investments in 2015 and \$2.3 billion between January and March.

Sources in both the I-T department and the PE industry described the queries as routine but said that the frequency of such queries have risen sharply off late and are understood to be driven by concerns that some promoters could be using the PE route to channel black money as legitimate investments, also known as round tripping.

(Source: www.expressindia.com)

Certificate Course on Forensic Accounting and Fraud Prevention

Committee on Information Technology has restructured the course on FAFP making it more practical, employable. Now the Course starting from 1st July will have following features:

- 
- a. Course Classes duration will be for Seven days with a prerequisite to undergo E-Learning of 17 hours and 30 minutes. (One can learn, sitting at Home/Office).
 - b. 2 Module tests. One for E Learning on First day of class and one on 7th day. (20 Marks each)
 - c. Every Participant will have to submit of one Research paper (min. 10 pages) with PPT, two forensic audit reports within two weeks after completion of the Course (60 Marks).
 - d. A final assessment test of 100 Marks which will be held on quarterly basis.
 - e. The fees for the course is reduced to ₹20000/- per participant.
 - f. Passing Requirement: 100 marks for Written Examination + 40 Marks for two Module Tests + 40 Marks for two Forensic Audit Report + 20 Marks for Research & PPT. The minimum score required for passing is 50% i.e. 100 marks out of 200.

E-Learning includes

Topics

- * Fundamentals of Forensic Accounting
- * Frauds related concepts & Forensic Audit Interview
- * Red Flags- Concepts and Techniques
- * Live Case Study on Financial Statement Analysis
- * International Laws & IT Act vis-à-vis Business Laws

Topics covered during Professional Training of Seven Days

Session Topics

- * Precursor Course on MS Excel
- * Course Introduction, Business Fraud, scenario, and fraudster profile
- * Discussion on types of red flags, types of fraud situations.
- * Methods of investigations – CAATs
- * Case Studies on Frauds, Use of Benford Law, RSF, Luhn's Algo
- * Mathematical Quantification Using CAATs – RSF, Case Studies
- * Financial fraud, interviewing and field investigations
- * Digital Forensics and Cyber law
- * Introduction to Cyber Crime & International Guidance to Cyber Forensics Laws
- * Internal Financial Controls (IFC) as per Companies Act 2013
- * Frauds Reports covering Banks, Corporates, Financial Institutions CA firms



Chairman and Vice Chairman,
IT Committee

Applications Invited for Empanelment as Examiner

Applications are invited from eligible members of the Institute and other professionals including academicians of reputed educational institutions, tax and legal practitioners etc., having a flair for academic activities including valuation of answer books and willing to undertake confidential assignments as a dedicated examiner, for empanelment as examiner in respect of the following papers of the Chartered Accountants Examinations.

Papers	Intermediate (IPC) Examination	Final Examination
Paper -1	Accounting	Financial Reporting
Paper -2	Business Law, Communication and Ethics	Strategic Financial Management
Paper -3	Cost Accounting and Financial Management	Advanced Auditing and Professional Ethics
Paper -4	Taxation	Corporate and Allied Laws
Paper -5	Advanced Accounting	Advanced Management Accounting
Paper -6	Auditing and Assurance	Information Systems Control and Audit
Paper -7	Section A-Information Technology	Direct Tax Laws
	Section B-Strategic Management	

Papers	Intermediate (IPC) Examination	Final Examination
Paper-8	Nil	Indirect Tax Laws

The eligibility criteria for empanelment as examiner are as follows:

- Chartered Accountants with a minimum of four years standing in practice or in service are eligible to apply.
- University Lecturers/Professors with a minimum of five years teaching experience are eligible to apply.
- Lawyers, IT Professionals, MBA (Finance) and other professionals with at least five years experience, either in academic position or in practice or in employment are eligible to apply. Those with work experience having direct relevance to the aforesaid subjects(s) of examination(s) will be preferred.
- Persons above 65 years of age are not eligible for empanelment as examiner.
- Persons who are visually impaired or suffer from such other physical disability that might necessitate taking the assistance of any other person for evaluation of answer books are not eligible to apply.
- Persons who are undergoing any course of the Institute are not eligible to seek empanelment as examiners.
- Those whose applications were rejected earlier or rested/removed from the panel are not eligible to apply again.
- Those who are already empanelled with ICAI as examiners and who have not been rested/removed, need not apply once again or for each exam afresh. Their candidature will be considered in the normal course, at the relevant time.

Application for empanelment as Examiner can be submitted online at: <http://examinerspanel.icaiaexam.icaai.org>

Deputy Secretary (Exam)

CAMPUS PLACEMENT PROGRAMME

for Newly Qualified Chartered Accountants

August-September, 2016

The Committee for Professional Accountants in Business & Industry (CPABI) of ICAI organises Campus Placement Programme for newly qualified Chartered Accountants twice a year at various centres all over India. This initiative on the part of CPABI provides a unique opportunity both to the 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 this time will be organized at 22 (twenty two) centres viz. Ahmedabad, Bangalore, Baroda, Bhubaneswar, Chandigarh, Chennai, Coimbatore, Durgapur, Ernakulam, Hyderabad, Indore, Jaipur, Kanpur, Kolkata, Ludhiana, Mumbai, Nagpur, Navi Mumbai, New Delhi, Pune, Thane & Vasai. The schedule of interview dates is given below.

No.	Centre	Dates
1.	Ludhiana	17th August, 2016
2.	Baroda, Durgapur, Ernakulam, Kanpur, Nagpur & Vasai	19th-20th August, 2016
3.	Bhubaneswar, Chandigarh, Coimbatore, Indore, Navi Mumbai & Thane	22nd-23rd August, 2016
4.	New Delhi & Mumbai	19th, 20th, 21st, 22nd, 23rd & 24th September, 2016
5.	Bangalore, Chennai & Kolkata	20th, 21st, 22nd, 23rd & 24th September, 2016
6.	Ahmedabad, Hyderabad, Jaipur & Pune	21st, 22nd, 23rd & 24th September, 2016

The above Campus Placement Programme is meant for the candidates who would be passing the CA Final examination held in May, 2016 and are otherwise, eligible. Organisations intending to recruit Newly Qualified Chartered Accountants through campus may contact at following details.

Chairman
Committee for Professional Accountants in Business & Industry
The Institute of Chartered Accountants of India



Organised By:

Committee for Professional Accountants in Business & Industry
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
ICAI Bhawan, Indraprastha Marg, New Delhi - 110002,
Tel. No. (011) 30110491/548/549/526/430
Email: campus@icai.in, placements@icai.in
or log on to www.placement.icai.org or <http://www.icai.org> .

CAMPUS PLACEMENT PROGRAMME

for Newly Qualified Chartered Accountants

Date Schedule of Companies' Registration:

Centre	Maximum No. of companies in any single day	Last Date of Registration (for Companies) #	Last Date of Short listing by Companies (Ist Round)*	Consent sending by Candidates (Ist Round)*	Date of Short listing by Companies (IInd Round)*	Consent sending by Candidates (IInd Round)#	Pre-placement Talk (PPT)	Written Test/ Psychometric Test (if any)
Baroda, Durgapur, Ernakulam, Kanpur, Ludhiana, Nagpur & Vasai	4	29th July, 2016	9th August, 2016	10th August, 2016	11th August, 2016	12th August, 2016	No PPT	On the day of Interview
Bhubaneswar, Chandigarh, Coimbatore, Indore, Navi Mumbai & Thane	5	29th July, 2016	10th August, 2016	11th August, 2016	12th August, 2016	13th August, 2016	No PPT	19th August, 2016
Chennai, New Delhi & Mumbai	6	22nd August, 2016	5th September 2016	6th-7th-8th September 2016	9th September 2016	10th September 2016	16th September 2016	17th September 2016
Bangalore	6	22nd August, 2016	5th September 2016	6th-7th-8th September 2016	9th September 2016	10th September 2016	16th September 2016	19th September 2016
Ahmedabad, Hyderabad, Kolkata Jaipur & Pune	6	22nd August, 2016	5th September 2016	6th-7th-8th September 2016	9th September 2016	10th September 2016	19th September 2016	17th September 2016

Opening of database for Companies at S No. 1, 2 & 3: 4th August, 2016

Opening of database for Companies at S No. 4,5 & 6: 29th August, 2016

* The process needs to be completed latest by 11:00 PM

The process needs to be completed latest by 05:00 PM



Organised By:

Committee for Professional Accountants in Business & Industry

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

ICAI Bhawan, Indraprastha Marg, New Delhi - 110002,

Tel. No. (011) 30110491/548/549/526/430

Email: campus@icai.in, placements@icai.in

or log on to www.placement.icai.org or http://www.icai.org .

Certificate Course on Concurrent Audit of Banks

The concurrent audit system of banks has become very crucial and important for banks. The main objective of the system is to ensure compliance with the audit systems in banks as per the guidelines of the Reserve Bank of India and importantly, to ensure timely detection of lapses/irregularities. In view of the core competence of the chartered accountants in the area of finance and accounting, risk management, understanding of the internal functioning and controls of banks, etc., the banking sector has been relying extensively on them to comply with these requirements of the regulator. The Internal Audit Standards Board of ICAI conducts six days Certificate Course on Concurrent Audit of Banks. The purpose of the **Certificate Course on Concurrent Audit of Banks** is to provide an opportunity to the

members to understand the intricacies of concurrent audit of banks thereby improving the effectiveness of concurrent audit system in banks, and also the quality and coverage of concurrent audit reports.

The course is open for the members of the Institute of Chartered Accountants of India as well as the students who have cleared CA final examinations.

Please refer link for further details of the Course: http://www.icai.org/post.html?post_id=8236

Course Fees: For metro cities: ₹15,000 per participant, for non-metro cities: ₹12,500/- per participant (Cheque may be drawn in favor of "Secretary, ICAI" Payable at Delhi and should be submitted to respective branch)

The details of the forthcoming batches of the Certificate Course on Concurrent Audit of Banks, organised by the Internal Audit Standards Board in July and August, 2016 are as follows:

Location	Scheduled Dates	Registration and Course Details
Agra	August 6 & 7, 13 & 14 and 20 & 21, 2016	http://resource.cdn.icai.org/42420iasb-agra-260.pdf
Bhopal	August 6 & 7, 13 & 14 and 20 & 21, 2016	http://resource.cdn.icai.org/42421iasb-bhopal-258.pdf
Jodhpur	August 6 & 7, 13 & 14 and 20 & 21, 2016	http://www.icai.org/post.html?post_id=9611
Hyderabad	August 13 & 14, 20 & 21 and 27 & 28, 2016	http://resource.cdn.icai.org/42422iasb-hyderabad-259.pdf
Kakinada	August 13 & 14, 20 & 21 and 27 & 28, 2016	http://resource.cdn.icai.org/42245iasb-kakinada-254.pdf
Bikaner	August 20 & 21, 27 & 28 and September 3 & 4, 2016	http://resource.cdn.icai.org/42185iasb-bikaner-234.pdf
Jamnagar	August 20 & 21, 27 & 28 and September 3 & 4, 2016	http://resource.cdn.icai.org/42423iasb-jamnagar-262.pdf
Jammu & Kashmir	August 20 & 21, 27 & 28 and September 3 & 4, 2016	http://resource.cdn.icai.org/42258iasb-jammu&kashmir-253.pdf

Chairman
Internal Audit Standards Board, ICAI
E-mail: cia@icai.in; concurrentaudit@icai.in

ICAI Awards for Excellence in Financial Reporting : Invitation to participate in the Competition for the year 2015-16

Last date for receipt of entries: 30th September, 2016

Objective

To recognise and encourage excellence in preparation and presentation of financial information.

Award Categories of the Competition 'ICAI Awards for Excellence in Financial Reporting' for the year 2015-16

Category I : Public Sector Banks

Category II : Private Sector Banks (including Co-operative Banks & Foreign Banks)

Category III : Life Insurance

Category IV : Non-Life Insurance

Category V : Financial Services Sector (Other than Banking and Insurance)

Category VI : Manufacturing and Trading Sector (including entities engaged in processing, mining, plantations, oil and gas enterprises) (turnover equal to ₹3000 crores or more)

Category VII : Manufacturing and Trading Sector (including entities engaged in processing, mining, plantations, oil and gas enterprises) (turnover equal to and between ₹500 crores and ₹3000 crores)

Category VIII : Manufacturing and Trading Sector (including entities engaged in processing, mining, plantations, oil and gas enterprises) (turnover less than ₹500 crores)

Category IX : Service Sector (Other than financial services sector) – (Turnover equal to or more than ₹500 crore)

Category X : Service Sector (Other than financial services sector) (Turnover less than ₹500 crore)

Category XI : Not-for-Profit Sector

Category XII : Local Bodies

Category XIII : Infrastructure and Construction Sector (Turnover equal to or more than ₹500 crore)

Category XIV : Infrastructure and Construction Sector (Turnover less than ₹500 crore)

In a case, where an organisation is engaged in more than one business, the dominant source of revenue will determine the category to which the organisation belongs. Turnover will be determined on the basis of standalone financial accounts.

Awards to be distributed

Hall of Fame to be awarded to the entity that has been winning the first prize under the same category continuously in the last five years. One Gold Shield and one Silver Shield in each category for the best entry and the next best entry, respectively. Plaques to be awarded to the entities who are following better financial reporting practices amongst the enterprises that are left in each category after conferring Hall of Fame, Gold Shield and Silver Shield.

Procedure for Participation

1. There is no fee for participation in the competition.
2. Annual report relating to the financial year ending on any day between April 1, 2015 and March 31, 2016 (both days inclusive) is eligible for participation in this competition.
3. Decisions of the Panel of Judges in all the matters relating to the Competition will be final.
4. An entity awarded 'Hall of Fame' may again participate in the competition after three years of getting the award of 'Hall of Fame'.
5. Fill in the Entry Form at the link <http://resource.cdn.icai.org/42660research32443.pdf> and submit with requisite documents on or before September 30, 2016 to:
The Secretary, Research Committee,
Technical Directorate,
The Institute of Chartered Accountants of India, ICAI Bhawan, Indraprastha Marg,
New Delhi – 110 002

For any further information please write to research@icai.in or visit our website www.icai.org.

Investor Awareness Programmes 2016-17
Under the aegis of
Committee on Financial Markets & Investors' Protection, ICAI
And
Investor Education and Protection Fund
Of
Ministry of Corporate Affairs

The Ministry of Corporate Affairs under the aegis of Investor Education and Protection fund (IEPF) had appointed The Institute of Chartered Accountants of India the nodal agency for the noble cause of Investor Awareness and mandated us to conduct Investor Awareness Programmes (IAPs) across the country. ICAI through its Committee on Financial Markets & Investors' Protection (CFM&IP) has taken up this initiative and has so far organized more than 5,000 programmes on PAN India basis with the help of Resource Persons (RPs) & Programme Organising Units (POUs).

Invitation to Program Organising Units (POUs) & Resource Persons (RPs) for conducting IAPs in the FY 2016-17

A POU (Program Organising Unit) of ICAI can be a Regional Councils, Branches, study circles etc. of ICAI.

A Resource Person can be a teacher, Professors of Commerce/Economics, Retired ICLS officers and members of ICAI, ICSI and ICWAI who have requisite experience in the field of teaching on the subjects of financial markets & investors' protection and are duly empanelled with the CFM&IP.

Investor Awareness Programs are conducted to educate the investors and to create awareness among the investors regarding the capital market and enhance the ability of investors to understand their rights and responsibilities and to make investors' aware of grievances handling mechanism and different agencies to be approached for redressal.

The detailed guidelines for the conduction of such programmes are given at the links below:

For POUs

http://www.icaiknowledgegateway.org/media/k2/attachments/Guidelines_for_the_Program_Organizing_Units-2016-17_2.pdf

For empanelled RPs

http://www.icaiknowledgegateway.org/media/k2/attachments/Guidelines_for_Resource_Persons-2016-17.pdf

For more details related to IAP please contact the Committee Secretariat at:

Committee on Financial Markets & Investors' Protection
 The Institute of Chartered Accountants of India
 ICAI Bhawan, A-29, Sector 62, Administrative Wing
 Noida – 201 309, India
 Telephone – 0120 3045945
 Email: cfmip_rp@icai.in, cfmip@icai.in

**Special offer for members of ICAI to access
e-CLA (Electronic version of Corporate Law Adviser)
&
Prolinc (Professional Discovery & Business Platform)**

Continuing Professional Education Committee (CPEC) of ICAI has been constituted with an objective to ensure through all possible means that the members of the ICAI remain continuously updated with respect to developments in existing and emerging disciplines and subject specific areas directly or indirectly related to the profession of Chartered Accountancy and to help impart necessary skills to the members so that knowledge thus garnered by them gets translated into practice. In today's world, Electronic Medium has assumed growing importance as a new approach to continuing education, which has become more useable over the physical form.

The CPEC has entered into a MoU with M/s Prolinc Technologies Pvt. Limited for providing e-CLA (Corporate Law Advisor) to Members of ICAI together with online discovery platform Prolinc (www.prolinc.in) to connect Professionals with the clients. From 1st July, 2016 this online access to e-CLA and Prolinc is available to members for a period of 3 years at a Special Discounted Price.

Normal Subscription Price of Rs 9500/- p.a. (plus Service Tax)

Special Discounted Price

1st year (1st July, 2016-30th June, 2017) - Rs. 1000/- plus Service Tax

2nd year (1st July, 2017-30th June, 2018) - Rs. 1150/- plus Service Tax

3rd year (1st July, 2018-30th June, 2019) - Rs. 1350/- plus Service Tax

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Chairman,
CPE Committee, ICAI
Ph. 0120-3045957/981; E-mail: cpeadmin@icai.in

Setting up of Branch of Southern India Chartered Accountants Students' Association at Kanchipuram District

In pursuance of Regulation 81(5) of the Chartered Accountants Regulations, 1988, read with Rule 4 of the Chartered Accountants Students' Association Rules, the Council of the Institute of Chartered Accountants of India is pleased to announce the setting up of Branch of Southern India Chartered Accountants Students' Association at Kanchipuram District with effect from June 15th 2016.

The Branch shall be known as Kanchipuram District Branch of SICASA.

As prescribed Rule 4(b) of the Chartered Accountants Students' Association Rules, the Branch shall, at all time function subject to the

control, supervision and direction of the Central Council, exercised through the Regional Council or the Regional Students' Association and shall be governed by the directions issued by the Central Council from time to time, for the functioning of the Branches of Students' Association or such other directions that may be issued from time to time.

(V. Sagar)
Secretary

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Board of Studies

The Institute of Chartered Accountants of India



Further Details: e-Mail: StudentLMS.Support@icai.in. Tel.: 0120-3876859

Convocation 2016-17 (1st Round)

In order to promote a sense of comradeship among members and for bringing them closer to the Institute, the Institute of Chartered Accountants of India (ICAI) organise Convocations for distributing certificates to the newly qualified members. In fact, this is an occasion to mark the entry of the new members into the fraternity.

ICAI invites members enrolled during the period October, 2015 to March, 2016 to participate in the Convocation for awarding the "Certificate of Membership" amidst the august gathering of distinguished dignitaries.

The schedule of the proposed Convocation is as follows:

Sr. No.	Place	Date
1	Ahmedabad	17.08.2016 (Wednesday)
2	Mumbai	
3	Pune	
4	Chennai	
5	Hyderabad	
6	Kolkata	
7	Jaipur	
8	Kanpur	
9	Chandigarh	
10	New Delhi	

The details about the venue and timing of the Convocation Programme Schedule will be intimated to the participants by the concerned Regional Offices of ICAI.

For any further information, members are requested to contact the concerned Regional Offices.

**Joint Secretary
MC & MSS**

Results: CPT-June 2016



COMMON PROFICIENCY TEST (CPT) June - 2016

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The result of the Common Proficiency Test held in **June 2016** was declared recently.

The details of percentage of candidates passed in the above said examinations are given below:

GENDER	No. of candidates appeared	No. of candidates passed	% of pass	Exam Centres
MALE	61574	23648	38.41 %	416
FEMALE	45484	18079	39.75 %	
TOTAL	107058	41727	38.98 %	

A. Murad

Results: Chartered Accountants Final Examination - May 2016



**TOPPERS IN
CHARTERED ACCOUNTANTS FINAL EXAMINATION
HELD IN May - 2016**

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The results of the Chartered Accountants Final Examination was declared recently. The details of percentage of candidates passed in the above said examinations are given below:

	Candidates applied for	No. of candidates appeared	No. of candidates passed	% of pass
I	Group-I	37,194	5,382	14.47
II	Group-II	36,906	7,864	21.30
III	Both Group			
a)	Passed Group-I only	40,180	4,145	10.32
b)	Passed Group-II only	40,180	2,045	5.09
c)	Passed Both Group	40,180	7,565	11.36

The details of top three rank holders on the all India basis for the Final Examination held in May-2016 with the marks secured by them are also given herewith.

A Muzdal

	ALL INDIA TOPPER FIRST RANK	ALL INDIA SECOND RANK	ALL INDIA THIRD RANK
PRESS RELEASE			
NAME	SRI RAM S	KANTHETI NAGA VENKATA VISWA VUYYURU	YASH MANOJKUMAR GOYAL
CITY	SALEM	VISAYAWADA	JAMNAGAR
ROLL NO.	507614	522591	402033
MARKS	613	610	599
%	76.63	76.25	74.88
PHONE	9087805505	8187022829	9033355949

A Muzdal



Young Members Empowerment Committee
The Institute of Chartered Accountants of India
(Setup by an Act of Parliament)

ONLINE REGISTRATION FOR PARTICIPATING IN YMEC ACTIVITIES



Young Members Empowerment Committee (YMEC) has been organising various programs/ Workshops/ Seminars across the country on different topics. With the Aim of imparting the Business Leadership skills, Managerial skills, personality development, network building for career growth, YMEC has initiated an innovated measure to provide a platform to Young CAs to engross themselves directly in the activities of ICAI by Active Participation in YMEC Programs.

*Through **active participation in YMEC activities**, young CAs are getting the chance to showcase their ability and talent in the programs. In order to avail this bright opportunity of active involvement in YMEC's various Programs, young CAs may submit their area of Interest, choice of time and place of availability across the country along with other details by filling this online form for their role at YMEC portal <http://ymec.in/registration-form/>. The interested Members may be called in programme and meetings from time to time as per their interested areas as and when needed throughout the year. For more details kindly visit www.ymec.in.*

**Chairman,
YMEC**

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**



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (Committee for Capacity Building of Members in Practice, CCBMP)

Motor Vehicle Insurance Scheme

The Committee for Capacity Building of Members in Practice is a non-standing Committee of the Institute. To support the Members in Practice the Committee has also arranged for Audit and Accounting software, Antivirus Protection software, Medical and Health Insurance, Professional Indemnity Insurance and Loan Schemes at very competitive cost for the members and students of ICAI. The Committee has recently executed MoU with New India Assurance co. Ltd. Providing Motor Vehicle Insurance for Members, Students and Employees of ICAI at highly competitive price and coverage.

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- Add on Covers for Enhancement of Nil Depreciation under conditions
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- Return to Invoice Cover
- No Claim Bonus Protection Cover
- Continuation of NCB even after OD claim
- Engine Protect Cover (due to ingress of water for any reason);
- Additional Towing Charges Cover
- Loss of Contents Cover of personal belongings on accident)

Members desirous to avail the benefits of the aforesaid Motor Vehicle Insurance scheme may please visit: <http://icai.newindia.co.in> & apply online directly for the same. For any other queries please contact, New India Assurance Co. Ltd. At email: nia.113000@newindia.co.in, Telephone: 022-24620311.

***Please visit CCBMP site on www.icai.org.in for details of other available insurance schemes for members.**

Committee Secretariat

CCBMP, ICAI Bhawan, A-29, Sector – 62, Noida - 201309

Phone: 0120-3045994, Email: ccbcaf.query@icai.in



Notification - November 2016

The Institute of Chartered Accountants of India
[Set up by an Act of Parliament]
 Post Box No.7112, 'ICAI BHAWAN', Indraprastha Marg
 New Delhi – 110002

TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA NOTIFICATION

19 July, 2016

No. 13-CA (EXAM)/N/2016: In pursuance of Regulation 22 of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify that the Intermediate (IPC) and Final examinations will be held on the dates given below at the following places provided that sufficient number of candidates offer themselves to appear from each centre.

Similarly, Examinations in Post Qualification Courses under Regulations 204, viz.: Management Accountancy Course (MAC) Part – I, Corporate Management Course (CMC) Part – I, Tax Management Course (TMC) Part – I, Insurance and Risk Management (IRM), and International Trade Laws and World Trade Organisation (ITL & WTO) examinations (which are open to the members of the Institute) will be held on the dates given below at the above places (centres in India only) provided that sufficient number of candidates offer themselves to appear from each of the above places.

INTERMEDIATE (IPC) EXAMINATION

[As per syllabus contained in the scheme notified by the Council under Regulation 28 E (3) of the Chartered Accountants Regulations, 1988]

Group-I: 2nd, 4th, 6th & 8th November 2016

Group-II: 10th, 12th & 15th November 2016

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

FINAL EXAMINATION

[As per syllabus contained in the scheme notified by the Council under Regulation 31 (ii) of the Chartered Accountants Regulations, 1988.]

Group -I: 1st, 3rd, 5th & 7th November 2016

Group -II: 9th, 11th, 13th & 16th November 2016

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

MANAGEMENT ACCOUNTANCY COURSE (MAC) PART - I, CORPORATE MANAGEMENT COURSE (CMC) PART – I, TAX MANAGEMENT COURSE (TMC) PART – I EXAMINATIONS

Group-I: 9th & 11th November 2016

Group-II: 13th & 16th November 2016

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

INSURANCE AND RISK MANAGEMENT (IRM) EXAMINATION

Modules I to IV 9th, 11th, 13th & 16th November 2016

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

INTERNATIONAL TRADE LAWS AND WORLD TRADE ORGANISATION (ITL&WTO) EXAMINATION

Group A 2nd, 4th & 6th November 2016

Group B 8th, 10th & 12th November 2016

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

PLACES OF EXAMINATION CENTRES IN INDIA: (FOR ALL EXAMINATIONS)

Sl. No.	Name of the Cities	Sl. No.	Name of the Cities	Sl. No.	Name of the Cities
1	AGRA	2	AHMEDABAD	3	AHMEDNAGAR
4	AJMER	5	AKOLA	6	ALAPPUZHA
7	ALIGARH	8	ALLAHABAD	9	ALWAR
10	AMBALA	11	AMRAVATI	12	AMRITSAR
13	ANAND	14	ANANTAPUR	15	ASANSOL

Sl. No.	Name of the Cities	Sl. No.	Name of the Cities	Sl. No.	Name of the Cities
16	AURANGABAD	17	BAREILLY	18	BATHINDA
19	BEAWAR	20	BELGAUM	21	BELLARY
22	BENGALURU	23	BERHAMPORE	24	BHARATPUR
25	BHARUCH	26	BHAVNAGAR	27	BHILWARA
28	BHIWANDI	29	BHIWANI	30	BHOPAL
31	BHUBANESWAR	32	BHUJ	33	BIKANER
34	BILASPUR	35	BUNDI	36	CHANDIGARH
37	CHENNAI	38	CHITTORGARH	39	CHURU
40	COIMBATORE	41	CUTTACK	42	DEHRADUN
43	DELHI / NEW DELHI	44	DHANBAD	45	DHULE
46	DURG	47	DURGAPUR	48	ELURU
49	ERNAKULAM	50	ERODE	51	FARIDABAD
52	FATEHABAD	53	FIROZABAD	54	GANDHIDHAM
55	GANDHINAGAR	56	GHAZIABAD	57	GORAKHPUR
58	GUNTUR	59	GURGAON	60	GUWAHATI
61	GWALIOR	62	HISAR	63	HUBLI
64	HYDERABAD	65	ICHALKARANJI	66	INDORE
67	JABALPUR	68	JAIPUR	69	JALANDHAR
70	JALGAON	71	JAMMU	72	JAMNAGAR
73	JAMSHEDPUR	74	JHANSI	75	JHUNJHUNU
76	JIND	77	JODHPUR	78	KAITHAL
79	KAKINADA	80	KANNUR	81	KANPUR
82	KARIMNAGAR	83	KARNAL	84	KISHANGARH
85	KOLHAPUR	86	KOLKATA	87	KOLLAM
88	KOTA	89	KOTTAYAM	90	KOZHIKODE
91	KUMBAKONAM	92	KURNOOL	93	LATUR
94	LUCKNOW	95	LUDHIANA	96	MADURAI
97	MALAPPURAM	98	MANGALORE	99	MAPUSA (GOA)
100	MARGAO (GOA)	101	MATHURA	102	MEERUT
103	MORADABAD	104	MUMBAI	105	MUZAFFARNAGAR
106	MYSORE	107	NAGPUR	108	NANDED
109	NASHIK	110	NAVI MUMBAI	111	NAVSARI
112	NEEMUCH	113	NELLORE	114	NOIDA
115	ONGOLE	116	PALAKKAD	117	PALI MARWAR
118	PANIPAT	119	PANVEL	120	PATIALA

Sl. No.	Name of the Cities	Sl. No.	Name of the Cities	Sl. No.	Name of the Cities
121	PATNA	122	PIMPRI-CHINCHWAD	123	PONDICHERRY
124	PUNE	125	RAIPUR	126	RAJAMAHENDRAVARAM
127	RAJKOT	128	RANCHI	129	RATLAM
130	REWARI	131	ROHTAK	132	ROURKELA
133	SAHARANPUR	134	SALEM	135	SAMBALPUR
136	SANGLI	137	SANGRUR	138	SATARA
139	SHIMLA	140	SHIMOGA	141	SIKAR
142	SILIGURI	143	SIRSA	144	SIVAKASI
145	SOLAPUR	146	SONEPAT	147	SRI GANGANAGAR
148	SRINAGAR	149	SURAT	150	SURENDRANAGAR
151	THANE	152	THIRUVANANTHAPURAM	153	THRISSUR
154	TINSUKIA	155	TIRUCHIRAPALLI	156	TIRUNELVELI
157	TIRUPATI	158	TIRUPUR	159	TUTICORIN
160	UDAIPUR	161	UDUPI	162	UJJAIN
163	VADODARA	164	VAPI	165	VARANASI
166	VASAI	167	VELLORE	168	VIJAYAWADA
169	VISAKHAPATNAM	170	WARANGAL	171	YAMUNA NAGAR

**PLACES OF EXAMINATION CENTRES OVERSEAS:
(FOR INTERMEDIATE (IPC) AND FINAL EXAMINATIONS ONLY)**

1) ABU DHABI	2) DUBAI	3) KATHMANDU	4) MUSCAT
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Payment of fees for the examinations should be made by Demand Draft only. The Demand Drafts may be of any Scheduled Bank and should be drawn in favour of The Secretary, **The Institute of Chartered Accountants of India, payable at New Delhi only.**

The Council reserves the right to withdraw any centre at any stage without assigning any reason.

Applications for admission to Intermediate (IPC) and Final examinations are required to be made either online at <http://icaiaexam.icaai.org> **free of cost (i.e. ₹1000/- for Intermediate (IPC) & Final candidates for the cost of application form shall not be charged if applications are filled in online)** or in the relevant prescribed form, copies of which may be obtained from the Deputy Secretary (Examinations), The Institute of Chartered Accountants of India, 'ICAI BHAWAN', Indraprastha Marg, New Delhi-110002 on payment of ₹1,000/- per application form in respect of Intermediate (IPC) and Final Examination candidates, whereas the Examination

application forms for Management Accountancy Course (MAC) Part – I, Corporate Management Course (CMC) Part – I, Tax Management Course (TMC) Part – I, Insurance and Risk Management (IRM), International Trade Laws and World Trade Organisation (ITL & WTO) examination are to be filled up in the paper based form only and is priced at ₹100/- per application form. The forms shall also be made available in the Regional and Branch Offices of the Institute and can be obtained there from on cash payment on or from **5th August, 2016.**

Applications together with the prescribed fee by Demand Draft of any Scheduled Bank may be sent so as to reach the Deputy Secretary (Examinations) at New Delhi not later than **26th August, 2016.** However, applications will also be received at Delhi Office after **26th August, 2016** and upto **2nd September, 2016** with late fee of **₹600/-**. Applications for the students' examinations only duly filled in will also be received by hand delivery at the office of Institute at New Delhi and at the

Decentralised Offices of the Institute at Mumbai, Chennai, Kolkata, Kanpur, Delhi, Ahmedabad, Bengaluru, Chandigarh, Ernakulam, Hyderabad, Indore, Jaipur, Nagpur, Pune, Surat, Thane and Vadodara upto **2nd September, 2016**. Candidates residing in these cities are advised to take advantage of this facility. Applications received after **2nd September, 2016** shall not be entertained under any circumstances.

However, application forms duly completed for the Post Qualification Course Examinations i.e. Management Accountancy Course (MAC) Part – I, Corporate Management Course (CMC) Part – I, Tax Management Course (TMC) Part – I, Insurance

and Risk Management (IRM), International Trade Laws and World Trade Organisation (ITL & WTO) will be received **only** at the New Delhi office of the Institute.

The candidates who apply online at <http://icaiaexam.icaai.org> from 5th August, 2016 to 26th August, 2016 and remit the fee online by using either VISA or MASTER Credit/ Debit Card shall not be charged ₹1,000/- in case of Intermediate (IPC) & Final examination (i.e. cost of application form fee). They shall however, be required to remit additional ₹600/- towards late fee in case the application online is made after 26th August 2016 and upto 2nd September, 2016.

The fees payable for the various examinations are as under:

Intermediate (IPC)	
For Indian Centre(s)	
Single Group/Unit 1 to 8	₹1200/-
Both the Groups/Unit - 9	₹1900/-
For Overseas Centre(s) i.e. Abu Dhabi, Dubai & Muscat	
Single Group/Unit 1 to 8	US\$ 275
Both the Groups/Unit - 9	US\$ 430
For Kathmandu Centre	
Single Group/Unit 1 to 8	INR 2000
Both the Groups/Unit - 9	INR 3000
Final	
For Indian Centre(s)	
Single Group	₹1500/-
Both Groups	₹2700/-
For Overseas Centres) i.e. Abu Dhabi, Dubai & Muscat	
Single Group	US\$ 300
Both Groups	US\$ 500
For Kathmandu Centre	
Single Group	INR 2000
Both Groups	INR 3600
INSURANCE & RISK MANAGEMENT (IRM)	
	₹2000/-
ITL & WTO	₹2000/- per Group
MAC / CMC / TMC	₹1000/- per Group

OPTION TO ANSWER PAPERS IN HINDI:

Candidates of Intermediate (IPC) and Final Examinations will be allowed to opt for Hindi medium for answering papers. Detailed information will be found printed in the Information Sheets attached to the relevant application form. However the medium of Examinations will be only English in respect of Post Qualification Courses viz.: Management Accountancy Course (MAC) Part –

I, Corporate Management Course (CMC) Part – I, Tax Management Course (TMC) Part – I, Insurance and Risk Management (IRM) Examination and International Trade Laws and World Trade Organisation (ITL & WTO) Examinations.

**V. SAGAR
SECRETARY**

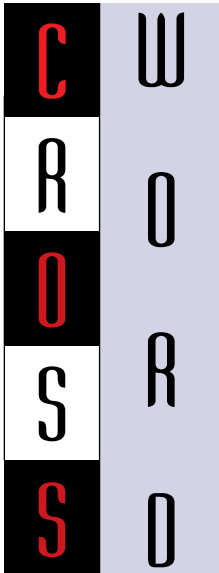
Forthcoming Events¹

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
Committee on Financial Markets and Investors' Protection Course Chairman: CA. G Sekar				
1.	Certificate course on Forex and Treasury Management	20 th August to 11 th Sept, 2016 (organised on weekends)	Delhi and Mumbai	30 hrs
Topics	Module – I Chapter– 1 Treasury – Organisational Structure Chapter– 2 Treasury – Process Chapter– 3 Treasury – Domestic Chapter– 4 Treasury – Forex Chapter– 5 Treasury – Mathematics Chapter– 6 Treasury – Technology Module – II Chapter– 7 Treasury – Accounting Chapter – 8 Treasury – Taxation Chapter – 9 Treasury – Types Chapter – 10 Treasury – Risk Management Chapter – 11 Treasury – Regulation, Supervision And Compliance Chapter – 12 Treasury – Auditing			
Fees	₹ 17,500			
Contact Person	Course Co-ordinator: Committee Secretariat For Course details, Registration and making online payment, please visit: http://icai.org/post.html?post_id=3552&c_id=266 The minimum batch size required for the course is 30-35 participants. For any other queries, contact at: 0120-3045945 or email at: fxtm@icai.in			
2.	National Conference of Information Technology : Facet of Digital Era - Cyber & Forensic	19 th & 20 th , Aug 2016	Hyatt Regency, Ashram Road, Ahmedabad	CPE Hours- 12
Organised by Committee on Information Technology & Hosted by Ahmedabad Branch of WIRC of ICAI Programme/Conference Chairman: CA. Atul Kumar Gupta				
	Day 1		Day 2	
Topics	▪ IT Act vis a vis Business Laws in India. ▪ Disruptive Technologies – IOT. ▪ Digital Security beyond the Internet Empire. ▪ Security Tools – In this new Epoch.		▪ Cyber Security – From Bankers Prospective. ▪ Risk Based Investigation “Forensic Trail”. ▪ Technology Adoption for CA 2.0 Business Transformation. ▪ Transforming SME Business in Digital Age with Technology. ▪ Investigation of Cyber Crime – Approach by Law Enforcement.	
Fees	Participation fees for Members ₹ 1000/- if paid on or before 31 st , July 2016, thereafter it will be ₹ 1500/-			
Contact Person	For Registration & Further Details: CA. Ganesh Nadar. Mobile No. – 9974477447, Email ID– ahmedabad@icai.org , ahmedabad@icai.in			
3.	E-Learning on Forensic Accounting and Fraud Prevention			CPE Hours – 03 Structured
Topics	This e-Learning course on FAFP is available on the e-Learning Server of the Institute at http://elearn.icai.org Some of the salient features of the course are as listed below: 1. Three Structured CPE Credit Hours when you: a) Complete all lessons and b) Devote at least 17 hours & 30 minutes in your FAFP e-Learning course and c) Pass the quiz section 2. Unlimited Access for 90 days from the day you create your account.			

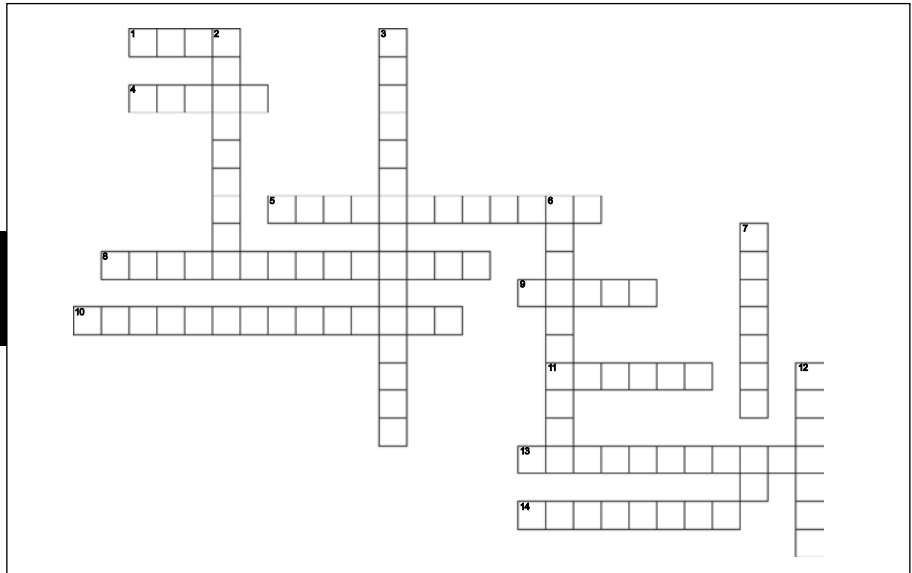
¹ For more details about the forthcoming events, please refer the detailed announcements hosted on the ICAI website www.icai.org

Events

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
Fees	₹575/-			
Contact Person	Programme/Course Co-ordinator: Committee on Information Technology For Registration & Further Details: Contact No. – 0120-3045963			
4.	ISA Batches organised in the month of August			
Topics	The Post Qualification Course on Information Systems Audit is one of the widely received course of the Committee on Information Technology. The details of the classes starting from 6 th , August are as given below:			
Contact Person	Co-ordinator	Venue details		
	S. Sabrigreesan, 04430210335, sabri@icai.in	Chennai, ICAI, 122, M.G. Road, Nungambakkam, Chennai		
	Mr. Piyush Patel, 079 - 39893989, ahmedabad@icai.org	Ahmedabad, Hotel Regenta		
	CA Asha Nand Singla, 9812635653, hisar@icai.org	Hisar, 1542, Sector-13		
	CA Puneet Sakhuja, 9650275656, capuneetsakhuja@gmail.com	Ghaziabad, Hotel Country Inn & Suites, 64/6, Site-IV, Industrial Area, Sahibabad, Ghaziabad, Uttar Pradesh 201010		
	CA. Manpreet Singh Gambhir, 9896341017, anpreetgambhir@live.com	Panipat, Branch Premises (ICAI Bhawan, Panipat Branch, SCO 7 & 8, Sector - 25, HUDA, Panipat)		
Fees	₹20,000/-			
Contact Person	Programme/Course Coordinator: Committee on Information Technology For Registration & Further Details please visit http://cit.icai.org , Contact No. – 0120-3045992			
Committee on Corporate Social Responsibility Programme/Course Chairman: CA. Prafulla Premasukh Chhajed, Chairman, Committee on Corporate Social Responsibility, ICAI, Email id- praful.ccm@gmail.com , Contact no.- 9821090612, 9320350007				
5.	Seminar on Corporate Social Responsibility	6 th Aug, 2016	Hotel Sea Princess, Mumbai	6 hrs
Topics	• The Meaning And Importance of CSR • Sustainable Development Goals • Implementing Effective CSR Programme • Sustainability Reporting • Impact Assessment • Calculating Social Return on Investment			
Fees	₹1,000/- per Member & ₹2,070/- per Non-Member			
Contact Person	Programme/Course Co-Chairman: CA. Rajesh Sharma, Vice-Chairman, Committee on Corporate Social Responsibility, ICAI, Email id - rajeshsharmaca@rediffmail.com , Contact no. - 098102 77394 Programme Director: CA. Dhiraj Kumar Khandelwal, Member, Committee on Corporate Social Responsibility, ICAI, Mob: 09867642684, E-mail id: kdhiraj123@yahoo.co.in For Registration & Further Details: Contact no.-022-33671421/424 & 011-30110538 Email id- wirc@icai.in ; wircevents@icai.in ; csr@icai.in URL of the detailed announcement- http://resource.cdn.icai.org/42477csr32231.pdf			
Indirect Taxes Committee Programme Chairman: CA. Madhukar N. Hiregange, Chairman IDTC				
6.	Three Days Residential Programme on GST	5 th to 7 th August, 2016	Hotel Gardenia , Spa & Resorts , Haridwar	18 Hours
Contact Person	For Information contact: 01334-223617, 221524, haridwar@icai.org , CA. Atul Jindal, 9412912345 Visit website of the Committee: www.idtc.icai.org			
7.	One Day Workshop on GST	5 th August ,2016	Chennai	6 Hours
Contact Person	For Information contact: 044 – 30210380, sircgmcs@icai.in , Shri K Vijayarangan Visit website of the Committee: www.idtc.icai.org			
8.	One Day Workshop on GST	6 th August ,2016	Muzaffarnagar	6 Hours
Contact Person	For Information contact: 0131-2661753, muzaffarnagar@icai.org , CA. Singal Rajeev Kumar, 9412211076 Visit website of the Committee: www.idtc.icai.org			
9.	Two Day National Convention on Indirect Taxes	27 th & 28 th August ,2016	Ahmedabad	12 Hours
Contact Person	For Information contact: 079-39893989,2768 0537, 2768 0946, ahmedabad@icai.org , CA. Vikash Kumar Jain, 9327715892 Visit website of the Committee: www.idtc.icai.org			
Women Members Empowerment Committee Program Chairman: CA. Jay Chhaira, Chairman, Women Members Empowerment Committee, ICAI				
10.	National Conference for Women CAs	27 th & 28 th August, 2016	Hotel Le Meridien, RBM Road, Pune	12
Topics	• Unleashing Blue Ocean Strategies towards Career Progression; Independent Women Directors • Social Media Etiquettes for Effective Networking • Assessments & Appeals • ICAI guidelines on Code of Conduct & Professional Ethics • Transfer Pricing – Demystified • New Laws for Protection of Women Rights • Panel Discussion: CAN AGE BE BAR FOR STARTING CAREER • Important provisions of CSR • Forensic Audits			
Fees	₹1800/-			
Contact Person	Program Co-Chairperson: CA. Kemisha Soni, CCM & Vice-Chairperson, Women Members Empowerment Committee, ICAI Programme Chief Co-ordinators: CA. S.B.Zaware, Central Council Member, ICAI, CA. Shruti Shah, Chairperson, WIRC Programme Convener: CA. Rekha Dhamankar, Chairperson, Pune Branch of Western India Regional Council, ICAI, Ph.No. +91-9326447619 For Online Payment, please visit: http://puneicai.org/events/national-conference-of-women-ca-members/ For Further Information Contact: Secretariat, Women Members Empowerment Committee, Ph: (0120)-3876873, Email id: wmecc@icai.in , info.wmecc@icai.in , Website: www.womenportal.icai.org			



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ACROSS

1. _____ Project is a joint effort of G20 countries and OECD with an objective to achieve greater transparency and coherency in the Global Tax System.
4. The largest accounting body of the world for mutual recognition.
5. Economic development is characterised by structural change in the economy and change in the _____ structure.
8. An _____ economy is characterised by state of deprivation of large proportion of population.
9. Accounting in which data is stored on remote servers.
10. A _____ Asset is defined as a credit facility in respect of which the interest has remained 'past due' for a specified period of time.
11. The letter 'M' in the term SME as used in the financial world means _____.
13. If a cheque is _____ it is called return of the cheque unpaid.
14. Financial Instruments is considered from the perspective of an _____ in Ind AS 109, the converged version of IFRS 9 and in Ind AS 32 (converged version of IAS 32) from an issuer's perspective.

DOWN

2. The deadline for the Income Declaration Scheme, aimed at bringing undeclared income and assets into the tax net to, is extended to _____ 30, 2017.
3. A continuous process that enables to recreate scenarios and develop strategies in progression to the next level of investigation.
6. The Government initiated the process of _____ of RRBs in a phased manner in September, 2005.
7. State Bank of _____ Subsidiary bank that was merged with the State Bank of India on August 13, 2008.
12. _____ has the potential to transform almost every aspect of business from research and development to sales and marketing and to provide new opportunities for growth.

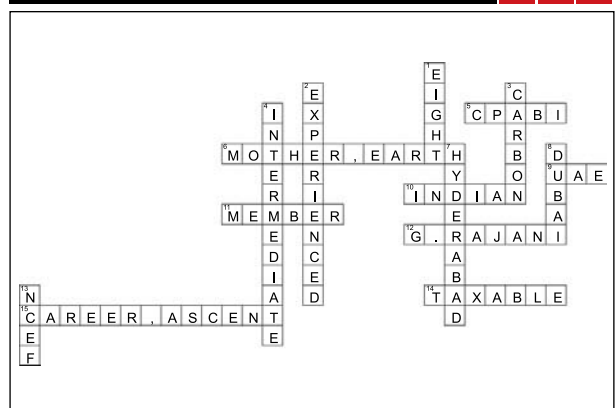
NOTE: Members can claim one hour – CPE Credit – Unstructured Learning for attempting this crossword by filling the details in the self-declaration form to be submitted to your regional office annually to avail CPE hours credit for Unstructured Learning activities under the activity 'Providing Solutions to Questionnaires/puzzles available on Web/Professional Journals'. There is no need to individually send this crossword in hard copy or email.



Pessimist: "Things just can't get any worse!"

Optimist: "Nah, of course they can!"

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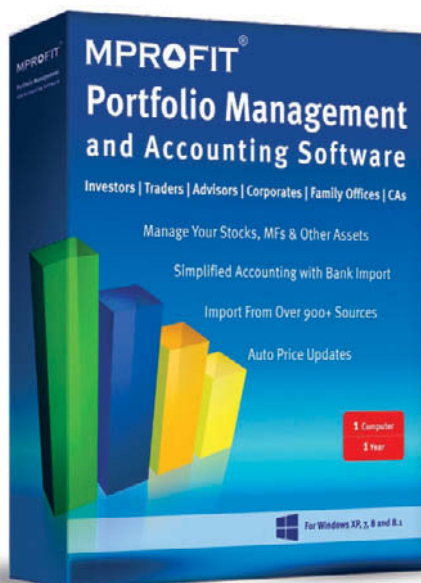
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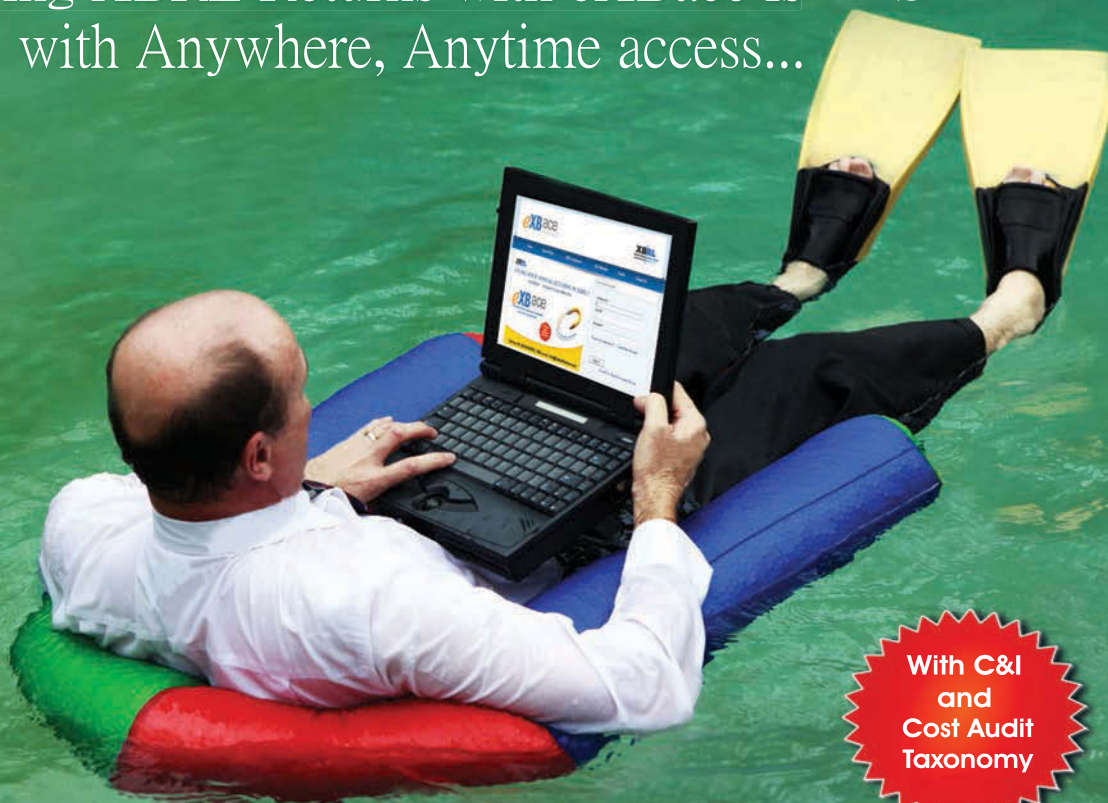
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