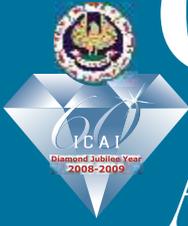


Volume 57 | No. 11 | May, 2009 | Rs. 100



THE C HARTERED A C C O U N T A N T

JOURNAL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

Diamond Jubilee International Conference
“Winds of Challenges — Global Strategies for
Accounting Profession” at Agra
on 3rd- 5th July, 2009

India's Journey Towards
Accrual Accounting in Government

Tax Exemptions in GST —
Principles and Practices

Global Economic Crisis and Challenges
for the BRIC Economies

CELEBRATING
60th Year of
Excellence



ACCOUNTING STANDARD 11

The National Advisory Committee on Accounting Standards (NACAS), by virtue of the powers conferred to it under Section 210 (3), has recommended a revision to Accounting Standard (AS) 11 'The Effects of Changes in Foreign Exchange Rates' based on a reference made to it by the Central Government. This reference was on the basis of representations made by CII, Indian National Ship Owners' Association (INSA), FICCI and other Industry Associations.

For the first time, since the constitution of NACAS a recommendation relating to accounting standards has been made without the recommendation of the ICAI in the matter of framing/ revision of accounting standards in India. Government of India, Ministry of Corporate Affairs, vide Notification dated March 31, 2009, has amended the Companies (Accounting Standards) Rules, 2006 by the addition of a new paragraph 46 by revising accounting norms as previously prescribed under AS 11 in respect of long term foreign currency monetary items as a transitional measure up to 31st March, 2011, the targeted date for full convergence of the National Standards with the International Financial Reporting Standards. The amendment applies in respect of companies coming under the purview of the Companies Act, 1956, in respect of accounting periods commencing on or after 7th December, 2006 (the date of Notification of the Standard) and ending on or before 31st March, 2011. Consequently, the applicability of a revision to entities not coming under the purview of Companies Act, 1956, would remain unaltered and the accounting treatment prescribed in AS 11 prior to the amendment would apply. Even in the case of corporates, accounting periods between 1st April, 2004 and 7th December, 2006, when the standards were mandatory in nature as a document issued by the ICAI and the latter date when the standards were notified through the Companies (Accounting Standards) Rules, 2006, would not be affected by the amendment.

The accounting treatment in respect of foreign currency monetary items is optional for companies but once the option is exercised the same is irrevocable and it is exercised retrospectively for all accounting periods on or after 7th December, 2006 and up to 31st March, 2011.

The Institute has always desired to work closely with Industry and Government in both framing and revising accounting standards and had taken all steps in this matter to arrive at a consensus decision. The industry association made a strong representation for modifying AS 11 in respect of long term foreign currency items as the existence of corporates itself was threatened with high volatility in forex rates, which would hit corporate bottom lines and affect investor sentiment in the country. The corporate focus on projecting growth figures on a quarterly basis for investor sentiment needed to be tempered with a

shift to the longer-term perspective of maintenance of capital. The Institute of Chartered Accountants of India in the above backdrop and with a view to revisit the provisions of AS 11 began a consultative process normally undertaken for framing and revising accounting standards so that a cross section of views could be considered before a course of action could be recommended to NACAS. The Institute was in the process of examining the revision to the accounting standards in the context of the principles of consistency, prudence and going concern basis so that the action recommended by the Institute would be in the best interest of all concerned. In this consultative process, a lot of issues and concerns of accounting professionals were thrown up such as when fluctuations in foreign currency and volatility in foreign exchange markets were a given factor today and why the managements of corporates had not analysed the risks involved on foreign currency fluctuations and why they had not hedged this risk when a mechanism was available.

The Institute also examined the question of whether such a revision of a standard in the scenario of convergence with IFRS would be considered a retrograde step towards commitments given by ICAI and the Central Government to various Securities regulators and the International Accounting Community in general. In this context, industry arguments of unpredictable one way movement of US \$ Indian Rupee foreign exchange conversion rate as an extraordinary situation, the view of the accounting community was that there was no 'extraordinary circumstances' in the context of current thinking on which IFRS was based. The Institute felt that corporates would gain from a longer-term perspective and corporate managements would be forced to act more responsibly towards foreign exchange exposures. It would also perhaps curb speculative non-core motives of management and reflect the true financial position of the company. An amendment as requested by Industry representatives may lead to situations of payment of dividend out of capital when in reality profits shown would not have been available if the foreign currency monetary items had been marked to market at year end.

The debatable question on this issue of amendment was whether a broader debate initiated by the ICAI amongst the accounting fraternity would yield a more desirable outcome which could have been considered by NACAS or whether a short deliberation by NACAS on the issues and ramifications was adequate for recommending an amendment in Companies (Accounting Standards) Rules, 2006, to the Government.

-Editorial Board

ICAI- Celebrating 60th Year of Excellence

CONTENTS

EDITORIAL BOARD

EDITOR	CA. UTTAM PRAKASH AGARWAL
JOINT EDITOR	CA. AMARJIT CHOPRA
MEMBERS	CA. VED JAIN
	CA. RAJKUMAR S. ADUKIA
	CA. JAYDEEP N. SHAH
	CA. MAHESH P. SARDA
	CA. PREETI MAHATME
	CA. V. MURALI
	CA. K. RAGHU
	CA. V. C. JAMES
	CA. KASHI P. KHANDELWAL
	CA. SUBODH K. AGRAWAL
	CA. ANUJ GOYAL
	CA. VIJAY K. GARG
	CA. VIJAY K. GUPTA
	CA. ANIL DANI
	CA. KRISHAN LAL BANSAL
	CA. K. GOPAL
	CA. DHIRAJ KHANDELWAL
	CA. WIG SINBAD
SECRETARY	CA. NITIN JAIN

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
ICAI Bhawan, Post Box No.7100, Indraprastha Marg,
New Delhi-110002, Tel: +91 (11)39893989.
E-mail: journal@icai.org, Website: www.icai.org

ADVERTISEMENTS & MARKETING

SPENTA MULTIMEDIA

MUMBAI: Spenta Multimedia, Peninsula Spenta, Mathuradas Mill Compound, N. M. Joshi Marg, Lower Parel, Mumbai- 400013. Tel: +91 (22)24811022/24811025, Telefax: -91(22) 24811021.

DELHI: No.7, 1st Floor, Nizamuddin (West) Market, New Delhi-110013. Tel: +91 (11) 46699999. **BANGALORE:** House No. 64, 5th block, 4th Cross, Koramangala, Bangalore - 560095. Tel: +91(80) 2553 4105/2553 9512. **KOLKATA:** 206-Jodhpur Park, Kolkata - 700068. Tel: +91(33) 2473 5896. Telefax: +91(33) 2413 7973.

CHENNAI: AKS Pooja Complex, 2nd Floor, Old No: 203 New No: 154, R. K. Mutt Road, Mandavelli (Next to Jagan Mohan Clinic), Chennai - 600 028. Tel: +91(44)4218 8984/85. **HYDERABAD:** Flat No. 2, Vimala Vihar Apts. Goutham Nagar, Dilshukh Nagar, Hyderabad - 500 060.

CLASSIFIEDS:

Minimum Rs.1000/- for the first 25 words or part thereof and Rs. 250/- for five words or part thereof over and above first twenty five words. Please contact: The Journal Section at ICAI Bhawan, Noida or call at +91(120)3054847 or e-mail at journal@icai.org

ICAI RESERVES THE RIGHT TO REJECT ADVERTISEMENTS

SUBSCRIPTION RATES
Inland subscribers : Rs. 1000 per annum
Overseas : \$ 150 per annum (subscribers by sea mail)

For Overseas Members/Subscribers

Air Mail Surcharge : Rs. 2100 per annum
Sea Mail Surcharge : Rs. 1100 per annum
CA students : Rs. 1400 for 3.5 years
Rs. 400 per annum

Other students & Faculties: Rs. 600 per annum

Printed and published by Vijay Kapur on behalf of The Institute of Chartered Accountants of India (ICAI) - Editor CA. Uttam Prakash Agarwal

Published at ICAI Bhawan, P. O. Box No. 7100, Indraprastha Marg, New Delhi - 110002 and printed at Spenta Multimedia, Peninsula Spenta, Mathuradas Mill Compound, N. M. Joshi Marg, Lower Parel, Mumbai - 400013

The views and opinions expressed or implied in THE CHARTERED ACCOUNTANT are those of the authors and do not necessarily reflect those of ICAI. Unsolicited articles and transparencies are sent in at the owner's risk and the publisher accepts no liability for loss or damage. Material in this publication may not be reproduced, whether in part or in whole, without the consent of ICAI.

DISCLAIMER: The ICAI is not in any way responsible for the result of any action taken on the basis of the advertisement published in the Journal. The members, however, may bear in mind the provision of the Code of Ethics while responding to the advertisements.

TOTAL CIRCULATION : 1,88,000



IN THIS ISSUE

EDITORIAL	1843
FROM THE PRESIDENT.....	1846
READERS WRITE	1852
INTERNATIONAL CONFERENCE	1854
PHOTOGRAPHS.....	1856
FIRST WEBCAST OF ICAI	1858
T-20 CRICKET MATCH - A GLIMPSE.....	1860
LEGAL UPDATE	1864
Legal Decisions	
Circulars & Notifications	
Disciplinary Case	
EAC OPINION.....	1882
CLASSIFIEDS.....	1959
REVISED GUIDELINES OF NETWORK	1964
NATIONAL UPDATE.....	1970
INTERNATIONAL UPDATE.....	1971
ECONOMIC UPDATE	1972
ACCOUNTANT'S BROWSER	1973
SURVEY REPORT - Accountancy Profession: Profile and.....	1974
Competencies	
ICAI NEWS	1978
- Empanelment of Faculty for Master in Business Finance Certificate Course and Preparation of Study Material	
- Master in Business Finance Certificate Course (MBFCC)	
- Invitation for Research Proposals	
- Journal on Management Accounting and Business Finance - Invitation for Articles	
- Committee on Public Finance - Announcement	
- New Publications from the Committee on Information Technology	
- Important Council Decisions - Transfer of Articles	
- Recent Publications - Research Committee	
- Invitation of Questions for D.I.S.A. (ICAI) Question bank	
- New Publication - Technical Guide on Internal Audit of Stock Brokers	
- Corrigendum	
- Certificate Course on Enterprise Risk Management (ERM)	
- For the Attention of Members - Membership and Certificate of Practice Fee for the year 2009 - 2010	
- Announcement Regarding Working Hours of the Articled Assistants	
- Peer Review of Audit Firms of Listed Companies	
- Formation of Study Circles for Members in Industry	
SPECIMEN MULTIPURPOSE EMPANELMENT FORM 2009 - 10	1996
EVENTS	2001
Auditors Training Programme on Finacle CBS	1991



ACCOUNTING



TAXATION



INTERNATIONAL TAXATION



HEALTH



GLOBAL PERSPECTIVE

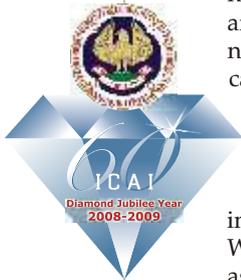


NGO

CONTENTS

- 1884 ACCOUNTING**
India's Journey Towards Accrual Accounting in Government
- CA. G. Srinivas
- 1890** Accrual Accounting in Government - Its Practical Sides
- CA. Atanusasan Mukhopadhyay
- 1899 TAXATION**
Tax Exemptions in GST – Principles and Practices
- R. Sekar
- 1906** Goods and Service Tax: Tax Compliance and Level Playing Field
- CA. C. M. Bachhawat
- 1912** Confusion on the Applicable Date for Reverse Charge under Service Tax Law
- CA. K. R. Girish, CA. Amitabh Khemka
- 1918 INTERNATIONAL TAXATION**
Controversy on Taxation of Bandwidth Charges – Solution Goes Begging
- S. P. Singh, CA. Sharad Goyal
- 1923** The 2008 Revised OECD Model Tax Convention and India's Position
- CA. Sunil D. Shah
- 1933 CORPORATE AND ALLIED LAWS**
Practical Arbitrator - An Overview
- CA. Anil Seth
- 1939 NON-GOVERNMENTAL ORGANISATIONS**
Non-Governmental Organisations' Formation Procedures
- CA. U. D. Prithviraj
- 1945 GLOBAL PERSPECTIVE**
Global Economic Crisis and Challenges for BRIC Economies
- Ishita G. Tripathy, Dr. Surendra S. Yadav, Dr. Seema Sharma
- 1952 BANKING & FINANCE**
Open Offer: What and How
- CA. Vikrant Ganeriwal
- 1960** Meltdown: A Mask to Camouflage Underperformance?
- CA. C. N. Srivatsan
- 2004 HEALTH**
Health Tips
- CA. R.S. Agrawal
- 2005 INFORMATION TECHNOLOGY**
Range of Threats to Computer
- Nikhil Sharma
- 2008 GENERAL**
Chartered Accountancy and Bharathanatyam
- CA. Subhashni Giridhar
- 2012** Prosperity Through Feng Shui
- CA. C. S. Sarda
- 2015 VASTU SHASTRA**
Choice of a Land for Construction Purpose
- Kashyap Nitin Pathak
- 2017 KNOW YOUR FUTURE**
This Month for You
- Puja Mathur
- 2018 BACK PAGE**
Crossword 035
Cartoon
Smile Please

IN THIS ISSUE



Dear CA Pariwar,

By the time you read this communication, the election process would well be underway and many of you would have discharged your duty towards the country by exercising your franchise. Going by media reports, it is the educated and the urban middle class that would make the difference this time as they have apparently shed their indifference and are coming out in large numbers to vote. This news is indeed heartening as I am sure that our campaign this year to urge our members and students to vote has had a positive impact.

The collective wisdom of not only our *Pariwar* but also our inner circle of influence is a vote powerhouse that can truly impact the future course of our great country. We are indeed true partners in nation building as we have taken up the responsibility to bring about betterment of society at large.

Satyam Fiasco

To update all of you about developments on this front, it is for the first time in the 60-year history of our Institute that the powers vested with the Council under Section 15 of the Chartered Accountants Act, 1949 were invoked and interrogation of members by ICAI team, other than the Disciplinary Committee, was permitted by a competent court, on an application filed by the Institute under Sections 167 and 267 of Code of Criminal Procedure, 1973.

I myself, along with another member of the High Powered Committee, examined and recorded the statements of CA. Vadlamani Srinivas, CA. S. Gopalakrishnan and CA. Talluri Srinivas, the three accused members lodged in Chanchalguda Central Prison, Hyderabad on 5th April, 2009. Within hours of the interrogation, three more key functionaries of Satyam were also arrested in connection with Satyam fiasco.

On the same day a report prepared by an ICAI Group, constituted to assist the Multi-disciplinary Investigation Team of the CBI, particularly on the role of auditors in compliance with the Auditing and Assurance Standards issued by the Council, was submitted to the CBI investigation team. The details of the report are not being disclosed since the investigation by the CBI is still on.

Further, a Panel of Reviewers as constituted by the Financial Reporting Review Board (FRRB) has considered the general purpose financial statement of Satyam Computer Services Ltd. for the year ended 31st March, 2008 and has started examining hard copy of audit evidences as submitted by the PWC. The

Panel had requested the auditors for certain additional information for further verification and the same has been received.

As a proactive measure, the FRRB also decided to select appropriate number of enterprises wherein the Independent Directors have resigned in the Post- Satyam period.

The Future is Here

Our *CA Pariwar* has grown manifold during recent years and I felt the need of such a new technology through which communication within the *Pariwar* may be improved. There was a need of a technology through which the vast experience and knowledge of limited available experts could be shared with a large number of members and students at reduced costs, cutting across geographical boundaries. In this direction, we took a revolutionary technological step on 17th April, 2009 by communicating with our members through first ICAI National Webcast, starting a new chapter of new generation e-learning CA. Mohan Das Pai, Director, Infosys Technology also addressed the members through webcast on the topic 'Global Economic Crisis – Changing Role of CAs'. The event received an overwhelming response from members from all over the country. I compliment CA. K. Raghu, Chairman IT Committee and our IT Directorate for this path-breaking initiative.

As such, our Institute has become pioneer in using this technology for distance learning, which would not only result in considerable savings of travel costs and time but also offer an opportunity to members across the globe to participate in ICAI events, which otherwise remain out of bounds because of their geographical locations. Many more such webcasts will be organised regularly, on a fortnightly and monthly basis, wherein we would invite industry leaders to discuss matters of topical interest. I hope that more and more of you will become part of this futuristic experience.

Better Services Through Technology

In keeping with my mission to provide better services to members and students, more and more initiatives are being taken to keep our Institute at the forefront of technology.

Last year, I observed that many members found it extremely difficult to submit their empanelment form online because of certain issues with technology involved. That is why this year we have taken initiative to simplify the online Multipurpose Empanelment Form

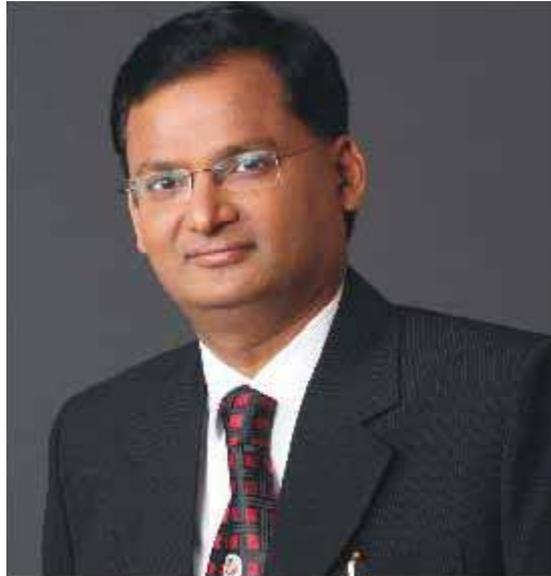
(MEF). The new empanelment form eliminates the need for a member to go through the technical manual and settings required in downloadable version of the form which existed till last year. This year the system clearly distinguishes an Individual from Sole Proprietor and Partnership firms. An Individual shall always enter the system with membership number and a sole proprietor or partnership firm shall enter the system with a Firm Registration Number. The system is ready and would be operational by the time you read this message.

I had noticed that many of our members, particularly those serving in industry and those who stay in smaller cities/mofussil areas, found it difficult to get our publications. Besides this, it was noticed that physical cheques sent by the members towards membership and other fee were sometimes lost in the transit causing undue hardship to them. To overcome these problems we have launched yet another important IT initiative – online payment of membership fees and online ordering of Institute's publications. A new user friendly web interface has been introduced to enable members to pay their membership fees online and order Institute's publications online using the Institute's website www.icaai.org. The new interface allows online payment using Axis Bank and ICICI Bank payment gateway facilities and Net Banking facility from 13 banks. Further a user friendly web interface has been developed to enable Regional Offices, Noida Store and Committee Secretaries to view all successful online payments on day-to-day basis.

You will recall that in my last communication to you, I had mentioned that in order to provide better and user-friendly services to our members and students, we would introduce IT enabled systems under the project 'Parivartan'. The aim is to re-look at our business processes and in this regard I am pleased to inform you that Infosys Technologies has been awarded the contract for the study of Enterprise IT Architecture for ICAI. As a part of the study, Infosys will deliver enterprise IT strategy, blueprint of enterprise IT infrastructure and IT Roadmap documents. The study will prepare the Institute to develop and implement next generation Information and Communication Technology to provide web-enabled IT services and world class IT education to members and students.

Peer Review

In order to ensure quality and bring about greater transparency and accountability, the



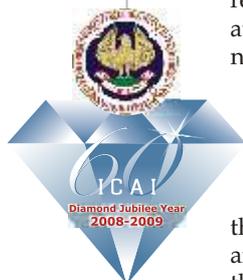
Council had taken a very pro-active step in 2007 and recommended to SEBI that the auditor of listed companies appointed for accounting periods commencing on or after 01-04-2009, must have a certificate from Peer Review Board. Accordingly, 1,240 more firms which were auditors of Listed Companies but not yet been covered by the Peer Review process were also identified with the aim to fast track their Peer Review so as to comply with the SEBI's recommendations. With this further inclusion of 1,240 auditor firms of listed companies, total firms selected under the Peer Review Process now stands at 11,234.

Accounting Standard-11

Despite our efforts to convince the members of NACAS as to why the change/modification in Accounting Standard (AS) 11 should not be brought about by fully apprising them of various issues involved and giving detailed reasoning during our meeting, NACAS preferred to take a decision otherwise.

The Institute's position was subsequently made known to the public by me through the media. I stressed the fact that the Institute has all along played a very proactive role in the matter for resolving the issues of the industry and that all the members of the Council were in support of the process initiated for the purpose of the revision of the accounting standards.

But vide a notification, a new Paragraph-46 was inserted in the AS-11 as a result of which AS-11 as issued by the Institute shall continue to apply to only those entities other than those registered under the Companies Act, 1956. Now that the change has been effected, we have formed a group to study the impact of this change.



Statutory Bank Audits

We have sent a very comprehensive letter to the Executive Director of RBI citing various anomalies observed while implementing managerial autonomy by the Board of Public Sector Banks in the matter of appointment of their statutory auditors.

The allocation list, which has been recommended by the RBI for branch statutory audit assignments, contains a larger number of names as compared to last year.

I had also advised all the allottees against completing the assignments in undue haste under unnecessary pressure from the Banks and signing documents prepared by the branch without checking them thoroughly. The haste in completing the audit and signing the reports would not only defeat the very purpose of audit but would also fail to do the desired value addition to the banks.

Though banks often impress upon Branch Statutory Auditors to complete the audit in the first fortnight of April, 2009, it is necessary that the audit is conducted in the most diligent manner within a reasonable time frame by applying appropriate professional skill and judgment and making ample use of various types of guidance provided by the Institute like guidance note on bank audit, standards on auditing, etc.

CAs – Always in Demand

At a time when one hears of retrenchment all around, salary cuts and poor response to campus placements of even the institutions of international repute, it gives me great pride to inform you that despite the slowdown, in our Campus Placement programme we could get as high as 48 recruiting entities with 89 interview panels. Three of our young members were offered a starting remuneration of Rs. 22 lakhs per annum.

This is indeed a defining moment for the Institute and a true reflection of the confidence our profession enjoys in the industry and the corporate world. The Institute has proved itself as an important destination to recruit entry level finance, audit and compliance executives.

Reaching Out

I am glad to inform you that a T-20 Day & Night Diamond Jubilee Cricket Match between Team-ICAI and Team-IRS officers was organised on 4th April, 2009 at Ferozeshah Kotla, New Delhi. It is a matter of happiness that our Member team won a keenly fought match and defeated Team-IRS. Earlier a Ceremonial Match between ICAI Council

Members and CBDT functionaries was also played. The entire event was covered live on DD Sports which provided opportunity for many of our members, who could not come to the venue, to watch the match live from within the comforts of their home or office. There was also repeat telecast for the benefit of those who missed the live telecast of the match. The match received an enthusiastic and overwhelming response.

An invitation was extended to Shri S.S.N. Moorthy, Chairman, Central Board of Direct Taxes (CBDT) to address to the Council on 17th April, 2009 which he graciously accepted. I emphasised the need for better co-operation between us and extended an invitation to the nominees of CBDT on the *Direct Taxes Committee* and *Committee on International Taxation* of ICAI. The CBDT Chairman appreciated the ICAI's role as a regulator of accounting and auditing profession and its endeavour to uplift the quality of education and profession. He appreciated the efforts of ICAI as an Institution of prominence in the global arena to promote Corporate Governance and professional excellence. He said that the Income-tax Department placed great reliance on the various reports and certificates given by the Chartered Accountants under the Income-tax Act, 1961.

Shri S.S.N. Moorthy was also apprised of the need of e-filing the tax audit report, the practical difficulties regarding section 145A of the Act and about the procedural problems faced and the need to ensure quality of assessments to which he assured the Council that he would look into the issues.

I am also pleased to inform you that I have been recently appointed by the Government as a member of the Disciplinary Committee of the Institute of Actuaries of India.

Widening the Scope of Profession

I had the opportunity to attend the meeting of the Governing Board of National Institute of Public Finance and Policy (NIPFP) as a member wherein I made the recommendations that they should consider appointing such persons having our Accounting Technician Course certificate instead of only graduates for their accounting related vacancies and to consider the feasibility of having joint programmes with us on areas of mutual interest. I am pleased to inform you that both the suggestions were accepted by the NIPFP. This would create professional job opportunities for those who have qualified under our Accounting Technician Course.

International Opportunities

It has been my constant endeavour to create more international opportunities for our members. In this regard, I am pleased to inform you that the notification process to Australia's competition regulator, the Australian Competition & Consumer Commission has been completed and Mutual Recognition Agreement (MRA) with CPA Australia has become effective from 1st April 2009. As regards the fees to be charged from CPA Australia members it has been decided in principle to charge fees on equitable basis as being charged from ICAEW members in order to become member of ICAI.

We have also decided that all applications in regard to Certificate of Good Standing, CPE Credits and request of transcripts shall be processed only after receiving the consent from the chapter of which the applicant is a member. This would increase the visibility and ensure the effectiveness of our overseas chapters.

Building Infrastructure

You would recall that my major thrust this year is on developing infrastructure. It is my vision to see that the entire network of our Institute across the length and breadth of the country has the best of infrastructure and facilities.

I met Hon'ble Governor of Karnataka, CA. Rameshwar Thakur on 21st March 2009 at Raj Bhavan, Bangalore in connection with the land allotted for the Centre of Excellence at Bangalore.

It is also heartening to share with you that we have been able to lay foundation stones for two more of our branches at Baroda and Hubli. I may also mention here that Hubli Dharwad Development Association has allotted the land at Hubli measuring 4,305 sq. yards for Rs. 22 lakhs as against the market price of Rs. 8 crore. I may further inform you that the land at Baroda measuring 2,934 sq.m. has been acquired at a cost of Rs. 75 lakhs.

The Pune Branch of WIRC of ICAI has also acquired a building measuring 5,800 sq. ft. built up area for the branch. The registration and physical possession of the building has also been completed.

Further, a plot of land measuring 1277.75 sq. ft. area has also been acquired from Urban Improvement Trust by the Kota branch of CIRC of ICAI at a cost of about Rs. 22 lakhs.

Students – My Top Priority

I am happy to inform that a number of students took the Online CPT examination for the second time at eight centres across the

country. Two more Online CPT examinations are scheduled before the next CPT paper-pencil examination is held in June 2009.

To ensure that all our students are provided with adequate facilities nearer to their homes we are constantly opening more ITT Laboratories. Two ITT Laboratories were recently inaugurated by me - one a state-of-the-art ITT Lab measuring 5,400 sq. ft. area at Kandivali East, Mumbai with 180 installed computers and an additional seating capacity of 50, a small computer library-cum-study room with a seating capacity of 20 students along with extension counters – and another ITT lab at Anand.

With these two additions we now have 131 ITT labs operational, with a total of 3,770 computers installed at 112 branches out of a total of 118. We have imparted training to 61,915 students till 31st March 2009 through these Labs.

In order to mitigate the transitional difficulties being experienced by members and students in the matter of transfer of articles, effected on or prior to 27th March, 2009 it has been decided, as a special case, that Form 109, complete in all respects received in the Institute up to 30th April, 2009 be processed as per the norms in place prior to the publication of the announcement dated 27th March, 2009. Therefore, any Form 109 received on or after 1st May 2009 shall not be taken on record, irrespective of the reason(s) for delay in submission. This information was put up on our Institute website for the benefit of affected members and students.

Many of us must have made plans for beating the sweltering summer heat by going on vacations during the holidays announced by schools and colleges. It is indeed a good opportunity to spend quality time with the family and loved ones. However, I sincerely hope that all of you have planned your holidays around the elections so that you would be able to cast your valuable vote before you go on vacation. Only then one can justify taking that much needed break.

In the words of Grenville Kleiser, "You were intended not only to work, but to rest, laugh, play, and have proper leisure and enjoyment. To develop an all-around personality, you must have interest outside of your regular vocation that will serve to balance your responsibilities."

With pranaams to all,



CA. Uttam Prakash Agarwal

April 25, 2009

READERS WRITE

April 09 Issue of Journal Highly Informative and Interesting

Many congratulations for coming out with such a good quality April 2009 issue of the Journal. I further congratulate the Institute for incorporating topics such as Vastu Shastra, Know Your future, Health Tips, Yoga, Meditation etc in the journal which will make the journal interesting for our family members as well as non-professional friends. The topics covered under Taxation and Auditing sections of the journal in this issue were very useful for all professionals irrespective of size of practice. I hope many more new topics will be included in the journal in the times to come.

– CA. R.K.Osatwal, Bewar



Introduction of the feature titled "Health Tips" among many others interesting sections in the journal would really benefit the members and readers. Additionally, I convey my sincere thanks to the ICAI for making "Crossword", an unstructured CPE hour gainer without bothering about to get the name in the list of first 10 correct entries for CPE credit.

– CA. Arvind Talan

The April '09 issue of the Journal was indeed refreshing and salutary for all of us. The report on the Yoga Camp and the article titled 'Yoga, Meditation and Profession' were particularly interesting and useful for all the chartered accountants.

– CA Arijit Chakraborty, Kolkata

Innovative Decisions are Welcome

I congratulate the ICAI leadership for taking innovative and bold decisions for betterment of CA *parivar* and for boosting the image of CA profession. Introduction of new features like 'Health Tips', 'Astrology' and 'Vastu Shastra' in the journal are welcome. Lowering the membership fee for senior citizens is particularly a step in right direction. In fact, we should rope in more and more senior citizens having vast knowledge and experience about industry and government organizations for the benefit of younger members.

– CA. T. N. Bansal

I commend the ICAI leadership's efforts and initiatives to obtain reciprocity from other professional bodies across the world. I am also happy to hear about various programmes being organised as part of Diamond Jubilee celebrations, including the International Conference in Agra.

– CA. Malladi R. Shastry, USA

It is good to see the progress of our Institute under able leadership. I suggest that as India is going to converge to

IFRS, the ICAI should take steps to attract its members working abroad under IFRS regime. Given the situation around the world and better performance of Indian economy it might be an opportunity to reverse the brain drain situation.

– CA. Deepak Saboo

I admire the ICAI's new step of exploring the opportunities in agricultural sector, particularly for SMPs. Setting up a separate committee for SMPs will also prove fruitful. The concept of 'CA *Parivar*' is also welcome. However, the Institute should avoid frequent changes in CA curriculum. I also congratulate the ICAI for making the Journal very informative and interesting.

– CA. Mahesh Agarwal

The expression 'CA *Parivar*' gives a sense of affiliation. I particularly appreciate the ICAI's decisions to set up Small and Medium Practitioners Committee and Infrastructure Committee. Shifting of examination dates from May to June will also help the members at large in managing the audit of banks and its branches.

– CA. Jayesh Goyal

Centres of Excellence –New face of ICAI

The ICAI Centres of Excellence would add altogether a new dimension to the existing chartered accountancy framework and would go on to significantly enhance the brand image of the profession. It sends across a strong message to the industry and other knowledge-based fraternities across the globe that the ICAI is speedily moving forward on the foundations of research so as to develop world class chartered accountants with a huge potential to add value wherever they go. These Centres would indeed be a very useful gift for the upcoming generations of chartered accountants. Such proactive steps on the part of the Institute should continue for a brighter future of the profession.

– Sumit Kr. Dhanuka, Mumbai

EDITOR

For the Attention of Readers

Readers' attention is specifically invited to the fact that the views and opinions expressed or implied in *The Chartered Accountant* journal are the views and opinions of the authors only, and not those of the ICAI. The ICAI bears no responsibility of any sort whatsoever in case of an action taken by any reader based on any article published in the journal.

Write to Editor

'Information is Power' and our ever-evolving profession needs more and more of that today than ever before. Do you have any relevant points to make, experiences to share, and views to spread among the CA fraternity? If yes, e-mail us at eboard@icai.org/nadeem@icai.org or write to: The Editor, The Journal Section, ICAI Bhawan, C-1, Sector 1, Noida (U. P.) 201 301.



Diamond Jubilee International Conference

Organised by The Institute of Chartered Accountants of India

Title	'Winds of Challenges – Global Strategies for Accounting Profession'
Inauguration by	Smt. Pratibha Devisingh Patil, <i>Hon'ble President of India*</i>
Date	3 rd - 5 th July, 2009
Venue	Hotel Jaypee Palace (International Convention Center), Agra

*Confirmation awaited

Discussion Sessions

The Conference will *inter alia* dwell on issues emerging out of following:

Strategy for Strengthening SMPs:

SMPs/SMEs form the backbone of the Indian manufacturing sector and have become engine of economic growth in India. The needs of SMPs who provide accounting and assurance services principally but not exclusively to clients who are small and medium entities (SMEs) and other accountants to the extent that they support SMEs, will be deliberated.

Reforms in Government Accounting:

Development imperatives and the rapid pace of globalization of the Indian economy along with the increasing convergence of accounting standards makes a cogent case for calibrating reform in Government Accounting and in building a constituency for it.

Value Creation: Challenges & Opportunities of Capital Market, Banking and Insurance Sector: The process of creating value for stakeholders could be either looked as Compulsion or as an Opportunity. Nowadays, corporate performance is subject to microscopic view by stakeholders, prospective arbitrator, FDI partners, FII Investors and hence compliance/disclosure is the basic regime in the financial markets.

Global Competitiveness: Impact of Convergence of Accounting Standards & Auditing Standards: The country needs to have fair and transparent markets, which could maintain and foster market vitalities. The importance of investors' viewpoint needs to be reaffirmed, and the confidence in our capital markets needs to be enhanced. The convergence of standards is critically important in this regard.

Governance and Corporate Social Responsibility: The increasing public

and stakeholder concern about the social and environmental impacts of business practices is forcing companies to come to terms with a much broader set of interests and expectations.

Carbon Credit Market: Opportunities & Challenges: Carbon trading has brought a huge opportunity for Indian companies. Companies can earn CERs by adopting energy saving and environment protecting methods and in turn can earn huge incomes by selling them and is a USP in today's context.

Serving the Public Interest in Emerging Economies: A global perspective: Good financial reporting enables decision makers to make informed and balanced decisions. If financial information is not reported properly, there is no assurance that financial resources are being managed properly. This is as usual the epitome for the profession.

Global Development of Accountancy Profession: Accountancy profession like any other is today at threshold. With the dynamic and ever-changing phase of the economies world-wide, the responsibility is cast more on the accountancy profession as unlike others it touches upon vast segment of society. The challenges of utility technology, trust, relevance are all the more important and should form the part of "must do" for each one of us.

Bridging the Expectation Gap: Changing Dimensions of Accountants Role: The market place has seen a gradual shift in the expectation of the users of Accountancy services from accounting functions alone to a range of value added services. Next decade would be of significant consequence for all of us as the growth



attractions
CULTURAL
EXTRAVAGANZA

Go Green Run | 5th July, 2009

Why one should attend

- ✦ The presence of the distinguished Indian and international personalities will be an apt occasion to savour and get enlightened from their erudition. Opportunity is also at hand to have a tete-a-tete with the leaders of the profession from across the globe and be guided on a range of core professional accountancy issues and also on the themes of governance, corporate social responsibility, cross border services and, above all, the avowed role of professional accountants in the evolving dynamic context.
- ✦ It is an opportunity no thinker or doer associated with the accounting profession can afford to miss. The Conference presents a matchless forum for the exchange of ideas amongst renowned accounting experts, international doyens from the field of finance and corporate honchos. The Conference provides an excellent platform for ICAI Members, those working in Corporate Sector, Academia to upgrade themselves on emerging paradigm.
- ✦ In view of stature of the events and the opportunity(ies) available for likely value addition for participants at large at the said International Conference and opportunity of interaction with accounting experts throughout the world; ICAI recommends this Conference to be attended by all who wish to update themselves on emerging paradigm.

Delegate Fees	Members	Rs. 2750
	Non Members	Rs. 4000
	Foreign Delegates	US \$ 125
On the spot Registration	Members	Rs. 3500
	Foreign Delegates	US \$ 150

How to Register

For registration and further details, please visit International Conference web page at <http://www.icai.org/icaiinternationalconference/main.html>

Write to : **Diamond Jubilee Committee**
The Institute of Chartered Accountants of India
ICAI Bhawan, Indraprastha Marg
New Delhi – 110 002
Email: ic@icai.org; ic@icai.in; djc@icai.in
Phone: 011-30110485/87

or

Agra Branch of CIRC of ICAI
77/8, M K Towers, 1st floor, Sanjay Place
Agra - 282002
Email: icaiagra@gmail.com; icaiagra@yahoo.co.in
Phone: 0562 – 2856598, 4040598

Register online at:
<http://www.icai.org/ccm.html?progid=28&makepay=1>

Organizers

Conference Chairman	Conference Vice-Chairman	Conference Convenor
CA. Uttam Prakash Agarwal President, ICAI	CA. Amarjit Chopra Vice-President, ICAI	CA. Anuj Goyal Central Council Member, ICAI Mob: 91-9810041371 Email: anujgoyal@icai.org



PHOTOGRAPHS



BARODA

CA. Uttam Prakash Agarwal, President, ICAI, laying the Foundation Stone of ICAI Bhawan, Baroda along with CA. Jaydeep Narendra Shah, Central Council Member, CA. Ashok Thakkar, Chairman, Building Committee and other dignitaries.



HUBLI

CA. Uttam Prakash Agarwal, President, ICAI, laying the Foundation Stone of ICAI Bhawan, Hubli along with Shri Jagdish Shettar, Speaker, Karnataka Legislative Assembly; CA. K. Raghu, Central Council Member; CA. Devaraja Reddy, Chairman SIRC and other dignitaries.



BANGALORE

Photograph taken during meeting of CA. Uttam Prakash Agarwal, President, ICAI, with Shri Rameshwar Thakur, Hon'ble Governor of Karnataka at Bangalore on 21st March 2009. CA. K. Raghu, Central Council Member is also seen in the photograph.



ANAND

CA. Uttam Prakash Agarwal, President ICAI inaugurating the ITT Lab of Anand Branch along with CA. Jaydeep Narendra Shah, Central Council Member, CA. B.C. Jain, Chairman, WIRC, CA. Piyush D. Panchal, Chairman, Anand Branch, CA. Dhiraj Khandelwal, Past Secretary, WIRC and other dignitaries.



MUMBAI

Inauguration of ITT Lab at Kandivali (E), Mumbai by CA. Uttam Prakash Agarwal, President ICAI along with Shri Gopal Shetty, Maharashtra President of BJP. CA. Jaydeep Narendra Shah, Central Council Member; CA. B.C. Jain, Chairman, WIRC; CA. B.M. Agarwal, Past Chairman, WIRC and CA. Dhiraj Khandelwal Past Secretary, WIRC are also seen in the photograph.



JAKATRA

CA Uttam Prakash Agarwal, President, ICAI, during Interactive session with the members of Indonesian Chapter of ICAI. Others seen in the picture are CA. Ved Jain, immediate Past President, ICAI, and CA. Kamlesh Vikamsey, Past President, ICAI.

First National Webcast of ICAI

A Technological Revolutionary Event to Reach out to Members at Large Globally



The Institute of Chartered Accountants of India (ICAI) launched the first National Webcast on "Global Economic Crisis – Changing Role of CAs" on 17th April 2009 to reach out to its members at large globally. Within few minutes from start of the event, more than 2000 members hooked on to the web and viewed the event. CA. Mohan Das Pai, Director, Infosys Technologies delivered the key note address on 'Global Economic Crisis – Changing Role of CAs'.

The event was inaugurated by the President of ICAI, CA. Uttam Prakash Agarwal in the presence of Vice President of ICAI CA. Amarjit Chopra and Chairman (IT Committee) CA. K. Raghu. As such, seminars on web became a reality during this diamond jubilee year of ICAI. The President, while inaugurating the event, said 'we are able to reach to more learners in less time. It is another milestone in the history of the Institute. ICAI is the first professional Institute to do it and I feel many others will follow our path.' While explaining the benefits of WebCast & Webinars, CA. Uttam Agarwal said "the concept of on-demand learning environment using web will go a long way and soon you will see more such events happening from ICAI. We will invite industry leaders to address our members on various topics related to the profession. Such events will not only save travel and costs associated with traditional on-site training but also create unique experience for learners. The impossible is made possible. It created a platform for many of our members residing abroad who are wanting to participate in

the seminars of the Institute but not able to do so because of their geographical location to view the seminars of the Institute live."

CA. Amarjit Chopra, Vice President of the Institute in his address welcomed this ushering revolutionary concept backed by cutting-edge information technology and said, "This initiative is in synergy with our Institute's objective to provide improved services to our members. Launch of such events makes the education & training more efficient".

Chairman (IT Committee) CA. K. Raghu welcomed the delegates and said "our members will like this initiative. It is the need of the hour. It is an effort to radically alter the process, in order to deliver a pedagogically more acceptable and administratively more efficient training to fulfil members and students, right to convenience and comfort."

CA. Mohan Das Pai complimented the President (ICAI), CA. Uttam Agarwal and said he looked forward to more such initiatives from ICAI.

Many members appreciated the initiative of the Institute that enables access to the seminars of the Institute from the remote locations. They congratulated ICAI President CA. Uttam Prakash Agarwal in taking steps to adopt the latest means of technology available to reach out to members & students.

A recording of this live event is available on www.icai.org for one month from the event date for the benefit of members who could not join and for members who decide to revisit important aspects.



The Institute of Chartered Accountants of India (ICAI), as part of its Diamond Jubilee Celebrations, organized a T-20 Cricket Day & Night match at Ferozeshah Kotla Stadium, New Delhi on April 4, 2009 between the Chartered Accountants and the members from IRS (Income Tax) selected from all over the country.



Trophy presentation to CA. Nitin Chudhury, Best Batsman, Team-ICAI.



Shri S. S. N. Moorthy, Chairman, CBDT, Chief Guest of the occasion, addressing the gathering.

The match was inaugurated by **Shri S. S. N. Moorthy, Chairman, CBDT** in the presence of CA. Uttam Prakash Agarwal, President, ICAI, CA. Anuj Goyal, Chief Co-ordinator and Central Council Members.



Chairman, CBDT, Chief Guest at the T-20 cricket match.

In a keenly contested match, Team-ICAI beat Team-IRS by 42 runs. Batting first, the Team-ICAI made 144 runs for the loss of 8 wickets. The main contributors were Nitin Chaudhry and Abhay Bagmar, both of whom chipped 37 runs. Other notable scorer was Abhay Chhajed who made 27 runs while Raj Kapoor of Team-ICAI excelled with the ball claiming 4 wickets for 12 runs.



CA. Uttam Prakash Agarwal, President, ICAI presenting runners-up trophy to Mr. Abhay Damle, Captain, Team IRS.

In reply, the Team-IRS could muster 102 runs after losing 6 wickets. Abhay Damle top scored with 32 runs while Dilip Brar and Srinivasan scored 30 and 31 runs respectively. CA. Raj Kapoor of Team-ICAI was declared Man of the Match for his contribution.



Team ICAI celebrating their win on Team IRS in the All India Diamond Jubilee T-20 Cricket match.

Earlier a Ceremonial T-10 Match between the Team President 11 ICAI and Team Chairman 11 CBDT also took place. The event was covered live on DD Sports and evoked a good Response.



Trophy presentation to CA. Raj Kapoor, Man of the Match, Team ICAI.

All India Diamond Jubilee T-20 Cricket Match – A Glimpse

One Profession Versatile Roles

CA

A Total Business Solution Provider

Ever since its inception sixty years ago, ICAI has achieved recognition as a premier accounting body not only in the country but also globally, for its contribution in the fields of education, professional development, maintenance of high quality accounting, auditing and ethical standards.

With ever changing economic and financial scenario on global front, the need arises for well rounded professionals who can tackle corporate matters. From laws to disputes, finance to taxation, ICAI's curriculum is aptly designed and formulated to turn CAs into all round professionals, that is truly a Complete Business Solution provider.

- **Financial Reporting**
- **Auditing** : Compliance Audit, Management Audit, Forensic Audit.
- **Taxation and Corporate Laws**
- **Internal Audit and Control** : Enterprise Risk Management
- **Financial Management** : Corporate Restructuring, Mergers and Acquisitions, Forex and Treasury Management, Due Diligence.
- **Information Technology** : ERP Implementation, Systems Audit, Software Development.
- **Valuation**
- **Arbitration**
- **Insurance and Risk Management**
- **Strategic Management**
- **Knowledge Management**
- **Management Consultancy and much more**



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

ICAI - ENRICHING THE NATION WITH PROFESSIONAL EXCELLENCE

LEGAL DECISIONS¹

DIRECT TAXES

Income-tax Act, 1961

Section 5 read with Section 9 of the Income-tax Act, 1961- Total income – Accrual of

Where applicant does not earn any income in India because its activities are confined to the purchase of goods, which are exported by the Indian vendors to the applicant or its nominees

Ikea Trading (Hong Kong) Ltd., Hong Kong, In Re (AAR) 23rd December 2008

Applicant is a company incorporated under the laws of Hong Kong and is a tax resident of Hong Kong. Applicant has established a liaison office in New Delhi for the purpose of undertaking liaisoning activities in connection with purchase of goods from India. The questions for consideration are (i) whether any income would accrue or arise or deemed to accrue or arise in India in terms of section 5(2)(b) of Income - tax Act, 1961; (ii) Whether various activities carried out by liaison office of applicant in India is covered under the phrase 'through or from operations which are confined to the purchase of goods in India for the purpose of export' as used in part (b) of Explanation 1 to Section 9(1)(i); and (iii) Whether the whole or any part of applicant's income (if so what part) is liable to be taxed in India.

While arriving at the deemed income accruing or arising directly or indirectly through a business connection in India, no part of the income shall be attributed to the operations limited to the purchase of goods for the purpose of export.

It was held that there was no material to hold that the applicant received service fee or commission from its sister concerns and that no sale price was received by the



applicant. The applicant does not earn any income in India because its activities are confined to the purchase of goods, which are exported by the Indian vendors to the applicant or its nominees. Admittedly, the applicant does not effect any sales in India. Thus, no income accrues or arises in India.

The next point is, no income can be attributed to the purchase operations in India by resorting to deeming fiction under Section 9(1)(i) because the Explanation thereto excludes such attribution. While arriving at the deemed income accruing or arising directly or indirectly through a business connection in India, no part of the income shall be attributed to the operations limited to the purchase of goods for the purpose of export. In the instant case, the activities set out by the applicant are all in relation to and integrally connected with purchases and hence fall within clause (b) of Explanation 1. The fact that actual export is done by the Indian seller does not detract from the position that the goods purchased by the applicant through the aegis of its liaison office were meant to be exported. The intimate and perhaps inextricable link between purchase and export is an undeniable fact. The result is, if the applicant's case falls under the substantive part of the charging provision contained in Section 9(1)(i), Explanation 1(b) comes to the rescue of the applicant. It is then not possible to attribute or apportion any income on account of purchase operations. Thus, either from the standpoint of Section 5(2) or Section 9(1)(i) read with Explanation 1(b), it cannot be said that the applicant can be brought within the net of taxation under the Income-tax Act, 1961.

Section 32 of the Income-tax Act, 1961- Depreciation

Once spares are considered as emergency spares, assessee can seek capitalization and depreciation

Commissioner of Income Tax-IV, New Delhi vs. Insilco Limited (DEL) 27th February 2009

The question for consideration is whether Tribunal was correct in law in allowing depreciation to the assessee on spare parts?

The High Court observed that expression 'used for the purposes of business' appearing in s. 32 of Income tax Act, 1961 also takes into account emergency spares which even though ready for use are not as a matter of fact consumed or used during the relevant period, as these are spares specific to a fixed asset and will in all probability be useless once the asset is discarded, thus, the concept of passive user which is applied to standby machinery will be applicable to emergency/insurance spares. Once spares are considered as emergency spares required for plant and machinery as found by the Tribunal, the assessee was entitled to seek capitalization of the entire cost of spares amounting to Rs 1, 41, 64, 495/- and claim depreciation thereon - Assessee was right as found by the Tribunal in claiming depreciation on the entire capitalized cost of spares.

The appeals were dismissed.

Section 32 read with Section 37(1) of the Income-tax Act, 1961— Depreciation [Assessment Year 2000-01]

Allowability of depreciation to certain expenditure relating to the plant and machinery

Allowability of Corporate Membership paid by the assessee

ACIT, Aayakar Bhavan, Mumbai vs. Indexport Limited, Hindustan Lever House (ITAT-Mum) 29th January 2009

The assessee is carrying on the business of sea food culturing and processing.

The issues were whether expenditure incurred by assessee for relocating its machinery in view of the

¹ These cases have been compiled and contributed by www.indlaw.com. Readers are invited to send their comments on the selection of cases and their utility at ebboard@icai.org. For the convenience of readers full text of these cases have been hosted on the website of the institute at the link: www.icai.org/post.html?post_id=967&c_id=59

Edited by Mr. Susanta K. Sahu, Secretary, Committee on Economic and Commercial Laws.



A cut above the rest Indian Chartered Accountants are the best

A Chartered Accountant is a professional who understands the areas of accounting, auditing, corporate finance, project evaluation, company and other business laws, taxation and corporate governance. The multi-faceted knowledge a Chartered Accountant possesses through comprehensive academic curriculum blended with unique practical training is what the business and industry need with the advent of liberalisation, privatization and globalisation. No wonder the final product is a valuable asset not just for the nation but for the world as well.

ICAI offers:

World best education system

Comprehensive curriculum

Rigorous training

Practical hands on experience coupled with latest IT Techniques

Best of managerial & soft skills

MAKING OUR CAs A CLASS OF MATCHLESS PROFESSIONALS SCALING NEW HEIGHTS OF EXCELLENCE



The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

For more details log on to www.ical.org

ICAI - ENRICHING THE NATION THROUGH PROFESSIONAL EXCELLENCE

LEGAL UPDATE

Legal Decisions¹

fact that the lease deed of the old premises had come to an end, is capital in nature and whether the claim of the assessee on account of Corporate Membership Fee paid on account of Membership Fee availed by the personnel of the assessee company is to be allowed.

The Tribunal held that in case certain expenditure relating to the plant and machinery has been capitalized in the hands of the assessee, depreciation is to be allowed on such expenditure as per law.

The claim of the assessee with regard to the Corporate Membership paid on account of Membership availed by the personnel of the assessee company is to be allowed.

Section 37(1) of the Income-tax Act, 1961 – Business expenditure

Provision for a liability is amenable to a deduction if there is an element of certainty

Commissioner of Income Tax-IV, New Delhi vs. Insilco Limited (DEL) 27th February 2009

The questions for consideration is whether Tribunal was justified in rejecting appeal of Revenue on the issue of allowance of provision for "Long Service Award" payable by the assessee to its employees. Revenue contended that liability under the 'long service award' scheme of the assessee is contingent as the payment under the same scheme is dependent on the discretion of the management.

Held, if a liability arises within the accounting period, the deduction should be allowed though it may be quantified and discharged at a future date, therefore, the provision for a liability is amenable to a deduction if there is an element of certainty that it shall be incurred and it is possible to estimate the liability with reasonable certainty even though the actual quantification may not be possible as such a liability is not of a contingent nature - Provision was estimated based on actuarial calculations, therefore, deduction claimed by the assessee had to be allowed.

The appeals were dismissed.

Section 50C read with Section 48

of the Income-tax Act, 1961 - Capital gain – Full Value of consideration [A.Y. 2005-2006]

Section 50C has application only to the extent of determining sale consideration for computation of capital gain and it cannot be applied for determining the income under other heads

Inderlok Hotels Private Limited vs. Income Tax Officer, Mumbai (ITAT-MUM) 05th February 2009

Assessee company undertook construction of the residential building. During Assessment Year 2005-06 the assessee sold two flats and shown profit on sale of flats as business income which was accepted by the AO. But in respect of the sale of the two flats, the AO was of the opinion that as the valuation made for the purpose of the stamp duty was more than the sale consideration shown in the sale deeds, hence, in view of the provisions of section 50C, the valuation adopted for the purpose of the stamp duty should be treated as the sale consideration. Accordingly addition was made.

The Tribunal held that basic intention to insert section 50C is for the purpose of determining full value sale consideration for the purpose of computation of capital gains under section 48 of the Act. Section 50C has application only to the extent of determining sale consideration for computation of capital gain under chapter IV-E of the Act and it cannot be applied for determining the income under other heads. Sale of the flats is treated as the business income and not as a capital gain; hence, the provision of the section 50C is not applicable.

Section 56 read with Section 4 and 14 of the Income-tax Act, 1961 – Income from other Sources [Assessment Years 2001-02 and 2002-03]

Interest earned on funds primarily brought for infusion in the business could not have been classified as income from other sources

Indian Oil Panipat Power Consortium Limited vs. Income Tax Officer (DEL) 26th February 2009

Issue which arose for consider-

ation of the authorities below was as to the treatment which was to be accorded to the interest earned on monies received as share capital by the assessee which were temporarily put in a fixed deposit awaiting acquisition of land which had run into legal entanglements on account of title. The Assessing Officer had treated the interest as 'income from other sources', whereas the Commissioner (Appeals) had accepted the stand of the assessee that the interest was in the nature of capital receipt which was liable to be set off against pre-operative expenses. On appeal, the Tribunal reversed the decision of the Commissioner (Appeals).

The test which permeates through the judgment of the Supreme Court in Tuticorin Alkali Chemicals and Fertilizers Ltd vs. CIT (1997) 227 ITR 172 is that if funds have been borrowed for setting up of a plant and if the funds are 'surplus' and then by virtue of that circumstance they are invested in fixed deposits the income earned in the form of interest will be taxable under the head "income from other sources". On the other hand the ratio of the Supreme Court judgment in CIT vs. Bokaro Steel Ltd. (1999) 236 ITR 315 is that if income is earned, whether by way of interest or in any other manner on funds which are otherwise 'inextricably linked' to the setting up of the plant, such income is required to be capitalized to be set off against pre-operative expenses.

On facts, once it is held that the assessee's income is an income connected with business, which would be so in the present case, in view of the finding of fact by the CIT(A) that the monies which were inducted into the joint venture company by the joint venture partners were primarily infused to purchase land and to develop infrastructure - then it cannot be held that the income derived by parking the funds temporarily with Bank, will result in the character of the funds being changed, in as much as, the interest earned from the bank would have a hue different than that of business and be brought to tax under the head 'income from other sources'.

It is well-settled that an income received by the assessee can be taxed under the head "income from other sources" only if it does not fall under any other head of income as provided

LEGAL UPDATE

Legal Decisions¹

in Section 14. It is clear upon a perusal of the facts as found by the authorities below that the funds in the form of share capital were infused for a specific purpose of acquiring land and the development of infrastructure, therefore, the interest earned on funds primarily brought for infusion in the business could not have been classified as income from other sources.

The appeals were allowed.

Section 194C of the Income-tax Act, 1961 – Deduction of tax at source - Payments to contractors and sub-contractor

Various services rendered by a hotel to its customers would be outside the purview of Section 194C

East India Hotels Limited, Calcutta vs. Central Board of Director Taxes, New Delhi (MUM) 06th March 2009

The petitioner No.1 company operates a number of Five Star Deluxe Hotels all over India. The services rendered by the petitioners apart from boarding and lodging are, providing highly trained/experienced multi-lingual staff, 24-hour service for reception, information and telephones, house-keeping of the highest standard, select restaurants, bank counter, beauty saloon, barber shop, car rental, shopping centre, laundry/valet, health club, business centre services etc. The issue is whether these services would constitute 'carrying out any work' under Section 194C.

The High Court observed that the word 'carrying out any work' in Section 194C is limited to any work which on being carried out culminates into a product or result. As services rendered by a hotel to its customers do not involve carrying out any work which results into production of the desired object and, therefore, it would be outside the purview of Section 194C.

The petition was allowed.

Section 199 of the Income-tax Act, 1961- Deduction of Tax at source – Credit for tax deducted

Apportionment of tax deducted at source, is to be in the same proportion, as the income earned by the

parties (sharing the fruits of the common investment)

Commissioner of Income Tax, Patiala vs. Punjab Financial Corporation (P&H) 2nd February 2009

In terms of agreement between the respondent and the State of Punjab amounts deposited by the State of Punjab with the respondent are invested by the Punjab Financial Corporation Limited and the income is shared between them in the ratio of 2:1. Whatever income is derived on account of equity dividend, by the aforesaid two sharing parties, is also liable to deduction of tax at source. The afore-stated benefit of deduction on account of tax deducted at source, is liable to be in the same ratio in which the parties share the income.

On facts the Court held that there can be no doubt that the credit for tax deduction at source should be available to the Punjab Financial Corporation Limited as also the State of Punjab in the same proportion as their income. Thus apportionment of tax deducted at source, is to be in the same proportion, as the income earned by the parties (sharing the fruits of the common investment). Hence, the Punjab Financial Corporation could claim credit on account of the tax deduction at source in the same proportion as it shares the income from dividend income/income from preference shares with the State of Punjab.

Section 245R read with Section 9 of the Income-tax Act, 1961– Advance ruling – Procedure on receipt of application

Microsoft Operations Pte. Ltd., In Re (AAR) 27th February 2009

Applicant is a company incorporated in Singapore. The questions for considerations are (i) Whether payments received by MOL Corporation (MOLC) from applicant for functions performed in Singapore under license agreement granting manufacturing and distribution rights to applicant are in nature of 'royalty income' sourced and arising in India and taxable in India under provisions of section 9(1)(vi) of Income-tax Act, 1961 and/or provisions of DTAA between India and USA from which tax is required to be withheld by

applicant?, (ii) Whether under arrangement payments made by independent Indian distributors to Microsoft Regional Sales Corporation ('MRSC') should be regarded as licensing revenues accruing to MOLC which are taxable as 'royalty income' under provisions of section 9(1)(vi) of Act and/or provisions of DTAA between India and USA, from which tax is required to be withheld by applicant?

It was held that tax withholding issue can only be determined by recording a finding on liability of MOLC to pay income tax in India in respect of income derived by it under relevant agreements to which applicant is also a party. The obligation of applicant to withhold tax at source cannot be decided de hors issues raised concerning liability of MOLC. The findings of appellate authority in Gracemac's appeals and outcome of further appeal to Tribunal will have inevitable bearing on questions raised in present application.

It was further held that definition of 'advance ruling' is given in clause (a) of Section 245-N, definition of 'applicant' is in clause (b). The manner of making application is set out in Section 245-Q. Section 245-R lays down "procedure on receipt of application". The eligibility criteria for being an applicant and scope and parameters of advance ruling are set out in definition clause. Unless advance ruling sought conforms to said provisions in definition clause, Authority cannot proceed to consider application. Then comes sub-section (2) of section 245R. The language clearly admits of an element of discretion to this statutory body while passing an order under Section 245 R(2). Going by clear language, discretion is implicit in provision. Each one of clauses in Proviso operates as a legal bar to entertainment of application and hearing same on merits. Authority is precluded from 'allowing' application if application is hit by any of embargoes laid down in proviso. It is not open to Authority to ignore legal bar created by proviso notwithstanding discretion conferred on Authority in apparently wide terms under main provision i.e., sub-section (2). However, it does not follow that application is bound to be admitted and heard on merits once factors set out in proviso do not come in way of admission. The proviso to

Section 245-R(2) does not have effect of taking away discretion to reject application on other unspecified grounds.

It was held that on basis of facts, it is not possible to draw an inference on a prima facie consideration that question raised in application "arises out of a transaction designed prima facie for avoidance of income tax". The resultant effect of transaction by itself is not determinative of applicant's design to avoid tax. Moreover, when department itself did not set up such a case in assessments made against Gracemac and MRSC, Court cannot say on basis of material available, that there was no real commercial purpose behind post-1998 transactions/ arrangements. Hence, objection of Revenue on this aspect is over-ruled.

The application is rejected.

Section 271(1)(c) read with Sections 32A and 72A of the Income-tax Act, 1961 read with Section 32 of the Sick Industrial Companies (Special Provisions) Act, 1985 – Penalty for concealment of income

Set off of unabsorbed depreciation and investment allowance – Limitation

Assistant Commissioner of Income Tax, Mumbai vs. Supreme Industries Limited (ITAT-Mum) 12th December 2008

Assessee claimed set off of unabsorbed depreciation and investment allowance. AO held that part of unabsorbed investment allowance has lapsed in the AY 1996-97 and that assessee attracted the penalty provisions by deemed concealing the particulars of income by way of claiming the expired investment allowance. Accordingly penalty under section 271(1)(c) was levied.

The issues arise that whether assessee's belief that the period of 8 years commences from the year of amalgamation is a bona fide belief in the light of the order of the BIFR as well as the provisions relating to section 32 of the SICA, 1985 read with section 72A(1) of ITA, 1961; And whether the provisions of 271(1)(c) read with its expn. 1 are attracted

when the assessee made such claim in the absence of any express provisions or directions in the order of the BIFR?

Losses of the amalgamating company should be deemed to be the losses of the amalgamated company in the year in which amalgamation was effected and other provisions of ITA, 1961 relating to the set off of carry forward of loss shall apply. The Tribunal held that neither the scheme of amalgamation specifies any proposal for such waiver by the Central Government nor the order of the BIFR contains any specific direction to that effect that the period of eight years was commenced from the year of amalgamation in case of the losses for the purpose of set off - In the absence of the same, the other provisions of the ITA, 1961 such as the provisions of section 72(3) or section 32A, shall apply to the case of the assessee. There is no provision or order in favour of the assessee to suggest that the assessee is entitled to claim the said expired loss beyond eight years, thus, the claim is patently wrong and such wrong or false claim cannot avoid penalty. Assessee wrongly claimed the brought forwarded investment allowance after expiry of eight years in violation of the provisions of sections 32A(6) and 72A(1), further, the assessee's explanation, which basically revolves around the order of the BIFR and the provisions of section 32 of SICA, 1985 is neither substantiated nor proved bona fide, therefore the instant case is fit case for levy of penalty.

Appeal was allowed.

Wealth – tax Act

Section 2(ea) of the Wealth-tax Act, 1957 read with Section 40 of the Finance Act, 1983 – Assets [Assessment Years 1997-98 and 1998-99]

If the asset is not used but given on lease, then the asset would be considered for computing net wealth

Anand Estate Private Limited vs. Deputy Commissioner of Income Tax (MUM) 13th February 2009

The assessee is in the business of warehousing. The Tribunal held that the godowns in question were given on rent for both assessment years

under appeal and as such occupied by the lessee for their business and were not occupied by the appellants for their business. Hence, the value of the godowns is to be included in the net wealth of the assessee. The issue is whether merely because the rental income derived therefrom was shown under the head "Income from House Property", it becomes the asset of the appellant.

The High Court observed that it is only the building or land appurtenant thereto other than building or part thereof used by the assessee for the purpose of his business or as residential accommodation for his employees and the like which would be excluded. If the asset is not used but given on lease, then the asset would be considered for computing net wealth. As the business of the assessee is of running a warehouse, the building would not fall within the expression "asset" for the purpose of computing net wealth. Once there be a specific provision in so far as closely held company is concerned which deals with the expression "asset" then the general definition would be excluded. In this case admittedly the assessee is closely held company and as such for the purpose of computing net wealth it will be the provisions of Section 40(3) of the Finance Act, 1983 which are relevant.

The appeals were dismissed.

INDIRECT TAXES

**Custom & Excise
Section 110 read with Section 111 of the Customs Act, 1962 - Seizure of goods, documents and things**



Till the assessment is set aside, the customs authorities could seize the goods assessed and cleared under a Heading on the ground that the goods were liable to be assessed under another Heading

Vodafone Essar South Limited, New Delhi and others vs. Union of India, Ministry of Finance, Department of Revenue, New Delhi and others (MUM) 04th March 2009

The petitioners are engaged in the business of providing telecommunication services in various states in

LEGAL UPDATE

Legal Decisions¹

India. The petitioners have been importing optic fibre cables (OFC) from time to time. The Assistant Commissioner adjudicated one of the consignments imported by the petitioners and held that OFC are classifiable under Heading 90.01. On appeal, the Commissioner set aside the adjudication order and held that OFC are classifiable under Heading 85.44. The petitioners started filing Bill of Entry under Heading 85.44. The consignments of OFC imported and cleared by the petitioners on payment of duty as assessed under Heading 85.44 were seized by the customs officers on the footing that OFC are classifiable under Heading 90.01 and not under Heading 85.44. Differential duty was demanded and the goods were seized.

The issue is whether different duty can be collected although the assessment orders have not been set aside and whether the seizure of goods was justified.

The Court observed that action of seizing the goods and collecting money from the petitioners is wholly unjustified as (1) the Commissioner of Customs (A) in the petitioners own case has held that the OFC imported by the petitioners are classifiable under Heading 85.44. So long as the decision of the Commissioner of Customs (A) in classifying the goods under Heading 85.44 holds the field, filing of bills of entry by classifying OFC under Heading 85.44 cannot be faulted. Also, the Bills of Entry filed by the petitioners by classifying the goods under Heading 85.44 have been assessed under Heading 85.44 and the goods have been cleared only on payment of duty as assessed. Therefore, till the assessment is set aside, the customs authorities could not have seized the goods assessed and cleared under Heading 85.44, on the ground that the goods were liable to be assessed under Heading 90.01. In the absence of any reassessment order passed determining the duty liability, there would be no question of recovering differential duty.

The petition was disposed of.

Sales Tax

Section 3 of the Central Sales Tax Act, 1956 – Inter-state sales -

[Assessment Year 1974-75]

Sale of chemicals by the assessee to its purchasing dealers who in turn were obliged to effect their sales in their respective territories outside Delhi involved inter-State movement of goods inter-State sales

DCM Limited vs. Commissioner of Sales Tax, Delhi (SUPREME COURT) 27th February 2009

The Assessing Authority did not grant exemption in respect of the sales on the ground that purchasing dealers had been assigned specific territories, under the Contract(s), outside Delhi and that they were under contractual obligations with appellant to supply goods to the specified on a price fixed. On appeal, Addl. Commissioner dismissed the appeals on the ground that the transaction(s) in question were inter-State sales. Appellant contended that the sales were "local sales" as the said chemicals stood sold in Delhi itself. However, the Appellate Authority observed that the assessee should be given an opportunity to produce 'C' Forms in respect of the sales in question and accordingly it remanded the case on the limited point to the Assessing Authority to give an opportunity to assessee to produce the 'C' Forms. Aggrieved by the decision of the Appellate Tribunal, the assessee approached the High Court of Delhi. The High Court directed the assessee to adduce evidence before the Assessing Authority to show that the chemicals were locally sold by the purchasing dealer and that they were not transferred to branches outside Delhi or sold in the territories outside Delhi.

Issue before the Court was whether the taking of the delivery in Delhi by the purchasing dealers for their assigned territories outside Delhi would take away the transactions in question from the category of inter-State sale?

The Supreme Court held that determinative test to be applied in this case is: whether the purchasing dealers were obliged contractually to remove the goods from Delhi, in which they were bought, to the assigned territories and whether in fact the goods stood actually removed. In the

instant case the sale of chemicals effected by the assessee to its purchasing dealers who in turn were obliged to effect their sales in their respective territories outside Delhi involved inter-State movement of goods and, therefore, the sales in question were inter-State sales.

Section 4 read with Section 65 of the Rajasthan Sales Tax Act, 1994 - Levy of tax & its rate [Assessment Year 2000-01 to 2005-2006]

Credit notes given by manufacturer to dealer in discharge of its warranty obligations to customers cannot be taxed under sales tax laws in the hands of the dealer

C.T.O. (Ae), Jodhpur vs. Marudhara Motors, Jodhpur (RAJ) 16th March 2009

Issue in this appeal is whether the assessing authority could impose tax on the assessee, a dealer of TATA Vehicles on the value of credit notes issued by the Manufacturer TATA Motors for defective parts of cars and other vehicles supplied by the assessee, a dealer of the manufacturer under a warranty agreement between the manufacturer and the ultimate customer to whom such vehicles are sold by the assessee?

From the perusal of the agreement between the respondent assessee and the manufacturer, it appears that the respondent assessee is merely working on behalf of manufacturer in discharge of manufacturer's contractual obligation under the warranty agreement while replacing such spare parts which have gone defective and such defective parts are sent back by the respondent assessee to the manufacturer, who may either physically replace or replenish them or issue credit notes of value of the new parts replaced on its behalf of the respondent dealer. Since title of property in goods namely spare parts passes from the hands of respondent assessee to the customer free of cost and such title of property in spare parts does not pass from assessee dealer to the manufacturer, no taxable sale can be said to have taken place in the hands of respondent assessee at all.

Moreover, where there is supply of spare parts to the customer by the dealer there is no consideration

passing as it is free of cost and where such consideration or payment is being received by the dealer from the manufacturer in the form of credit notes in discharge of manufacturer's warranty obligations, there is no transfer of property in goods viz. spare parts from dealer to the manufacturer. These two transactions viz. one between customer and dealer, and another between dealer and manufacturer are independent and are not linked to each other. First is sans consideration against goods and second one is sans transfer of property in goods. The credit notes given by manufacturer to dealer in discharge of its warranty obligations to customers cannot be taxed under sales tax laws in the hands of the dealer.

For levying tax on the sale in the hands of respondent assessee, it is sine qua non by definition of 'sale' itself that transfer of property in goods takes place for consideration. Admittedly, customer is not charged anything for the parts replaced by the respondent assessee as a dealer of the manufacturer M/s TATA Motors under the warranty agreement between the manufacturer and the customer. The manufacturer in discharge of its warranty obligation either replaces those defective parts which are physically sent back by the dealer or gives the equal credit in the form of credit notes against the debit notes sent by the assessee dealer and, therefore, such credit notes cannot be said to be consideration or payment for such spare parts supplied by assessee to the customer free of any cost

Credit notes received from manufacturer by the assessee dealer could not be taxed as sale value of spare parts replaced for defective parts under warranty by the manufacturer to the customer.

Petitions dismissed.

OTHER ACTS

Arbitration Act



Section 5 read with Sections 8 and 16 of the Arbitration and Conciliation Act, 1996 read with Sections 34 and 41 of the Specific Relief Act, 1963 – Extent of Judicial intervention

Declaration that arbitration agreement is null and void and Suit is barred

Stock exchange is competent to apply to the court under section 8 of Arbitration and Conciliation Act

Roshan Lal Gupta vs. Parasram Holdings Private Limited and Another (DEL) 11th February 2009

Issues before the Court were:

- (1) Whether a suit for declaration that the agreement containing an arbitration clause is fabricated, forged and thus null and void and legally inoperative and claiming the consequential relief of permanent injunction of restraining the other party to the impugned agreement from invoking arbitration and the arbitrator from proceedings with the arbitration maintainable in law?
- (2) Whether stock exchange is a non party to the arbitration agreement and whether it can be impleaded as party to the suit, applying under section 8 of

LEGAL UPDATE

Legal Decisions¹

Arbitration and Conciliation Act, 1996?

The High Court observed that suit for declaration that an agreement containing an arbitration clause is forged, fabricated and unenforceable and thus null and void and for injunction restraining arbitration does not lie and is barred by s. 5 of ACA, 1996 and ss. 34 and 41(h) of SRA, 1963 r/w s. 16 of ACA, 1996.

The High Court further held that stock exchange being the institution to whose arbitration the petitioner/appellant were alleged to have agreed and as per whose byelaws such matters are to be referred to arbitration thus had a vital interest in the arbitration and was competent to apply to the court under section 8, it cannot be called a stranger to the arbitration - Stock exchange being the institution to whose arbitration the petitioner/appellant and stock broker had agreed, is held entitled to maintain an application under section 8. Irrespective of the genuineness or validity of the Member Constituent Agreement, the claims of a stock broker against its client/constituent would be arbitrable in accordance with byelaws of the stock exchange - Since an order allowing an application under section 8 conclusively determines the right of the plaintiff to maintain a suit, it should fall within the definition of a decree - Order allowing the application under section 8 is not appealable under Arbitration and Conciliation Act, 1996 and otherwise under Civil Procedure Code, 1908.

The appeal was dismissed

Banking Laws

Section 138 of the Negotiable Instruments Act, 1881 — Dishonor of cheque

Jurisdiction of Court cannot be assumed merely because it is stated in the demand notice that the payment shall be made at that place

Dipti Kumar Mohanty vs. Videocon Industries Limited (MUM) 17th February 2009

The head office of both Companies was at Mumbai. Both the companies carried on business at Ahmednagar, goods were delivered

by branch offices at Bhubneshwar, cheques were issued and drawn on branch of the Bank at Orissa and demand notice was served on the concerned accused at the places situated in Orissa State.

The issue pertains to territorial jurisdiction of the Court, i.e. whether mere presentation of the cheque in question at Ahmednagar would give cause of action to the Court there.

The High Court observed that transactions pertaining to delivery of goods did not take place within the territorial jurisdiction of the Court at Ahmednagar. The words "the bank" referred to in clause (a) to the Proviso to section 138 would mean the drawee Bank on which the cheque is drawn and not any other Bank. The receipt of notice and non-payment of demanded amounts are ingredients which will have precedence over place wherefrom notice of demand was issued, therefore, the Court of Judicial Magistrate at Ahmednagar cannot have jurisdiction to entertain the complaints. In the absence of any written agreement to pay the amounts at Ahmednagar, jurisdiction cannot be assumed to be with the said Court merely because it is stated in the demand notice that the payment shall be made there.

The petitions were disposed of.

Companies Act

Section 163 read with Sections 10F, 621 and 629 of the Companies Act, 1956 – Place of Keeping, and inspection of, registers and returns

Mere fact of being a Director of the company would not affect his right under section 163 as a shareholder

Shree Shridharkrupa Builders and Realtors Private Limited vs. Mahen J. Dholam (MUM) 16th March 2009

Whether a shareholder of a company has no locus standi to maintain a petition for reliefs under section 163 if he is also a Director of the company; and Whether the Company Law Board has the power and jurisdiction in a petition for reliefs under sections 163, 621 or 629 to advise the Registrar of Companies to take necessary action as per law in

the event of the Petitioner in a petition for reliefs under section 163 making an application under section 629.

The High Court observed that neither of sections 163, 621 or 629 confer jurisdiction upon the Company Law Board to advise the Registrar of Companies to initiate prosecution for a contravention of section 163 in the event of the Petitioner seeking relief under section 163 makes an application under section 629. Even assuming that the Registrar of Companies has the power to issue directions to the company to comply with any requisition under section 163, the Company Law Board does not direct the Registrar of Companies to in turn direct the company to furnish the information sought by the Petitioner.

Mere fact of being a Director of the company would not affect his right under section 163 as a shareholder. Under section 163 it is the company and not any individual Director that is bound to allow inspection of the records mentioned therein, thus, even if a Director desires inspection of the records referred to in section 163, it is always open to him to apply to the company for the same by invoking the provisions of that section.

The Appeal was allowed.

Sections 529 read with 529A of the Companies Act, 1956 – Application of insolvency rules in winding up of insolvent companies

Assets of the company in liquidation are required to be distributed to the creditors in order of preference, once the property is sold

Ai Champdany Industries Limited vs. Official Liquidator and Another (SUPREME COURT) 19th February 2009

The Appellant purchased assets of the company in liquidation in a court sale. The sale was confirmed by the Company Judge. The appellant was served with a notice by the Municipality claiming payment of arrears of property tax. The issue whether a purchaser is liable to pay the property tax prior to the date of purchase and remedy of the respondent municipality, if any, was to have

its claim satisfied from the sale proceeds in terms of Sections 529 and 529A.

The Supreme Court held that the fact that the company went in liquidation was given due publicity. But, the respondent-Municipality did not file its claim before the official liquidator. The dues in relation to the Municipal Tax in terms of the provisions of the Act do not create any encumbrance on the property. It does not create any charge. It is considered to be a personal liability.

The seller is bound to pay all public charges due in respect of the property up to the date of sale, when a property is sold in auction. Section 55 refers to a contract only. Unless there is a contract to the contrary, the rights and obligations of the parties to a sale would be as indicated in Section 55. Such a contract to the contrary must be express and not implied, as a result whereof the meaning of term encumbrance would be expanded. Once the property is sold, the assets of the company are required to be distributed to the creditors in order of preference. As the respondent-Municipality was not a secured creditor, it cannot have a claim over the sale proceeds over the secured creditor.

The appeal was allowed.

FEMA

Sections 18 read with section 68 of Foreign Exchange Regulation Act, 1973 – Payment for exported goods



As Form 32 filed before the due date for realization of the export proceeds, petitioner ceases to be director on the date of commission of offence under section 68 (1)

Satish Kumar Bhalla vs. Union of India and Another (DEL) 26th February 2009

Complaint case filed against company and petitioner in terms of section 18(2) and (3) read with section 68. Petitioner sought to be held responsible for the conduct of the business of company only on account of his 'being' a director. The issue before High Court was that whether petitioner could be held liable for just being a Director of Company even when he had resigned as Director of Company before due date for realization of the export proceeds.

The High Court observed that complaint, when read as a whole, does not make out even a prima facie case against the Petitioner for the offence section 18(2) and (3) read with section 68. Form 32 was filed with the Registrar of Companies showing that the Petitioner ceased to be a director, even before the due date for realization of the export proceeds, therefore, on the date of the alleged commission of offence the deeming provision of section 68 (1) was not attracted as far as the Petitioner is concerned.

The petition was disposed of.

Campus Placement Programme

For

Newly Qualified Chartered Accountants

Exclusively structured for Small & Medium sized Enterprises (SMEs)

An Unique Opportunity to Small & Medium sized Industries

From Committee for Members in Industry of ICAI

Transform your Business

by

Infusing Young & talented Chartered Accountants

into your Organisation through a cost effective mode of recruitment

In its endeavour to provide **quality Accounting, Finance, Tax, Audit and Management Consultancy personnel to small and medium sized Industries** and to provide a platform to the newly qualified Chartered Accountants, CMII would be conducting an exclusively structured Campus Placement Programme:

Centres	Dates		
Bigger Centres: Bangalore, Chennai, Kolkata, Mumbai and New Delhi	22 nd , 23 rd , 24 th May 2009		
Smaller Centres: Ahmedabad, Chandigarh, Hyderabad, Jaipur, & Pune	30 th May 2009		
Minimum Salary Offer Requirements (Per annum)	Rs. 3,00,000/-		
Participation Fees*			
Particulars	Fee per centre per day (Rs.)**		
	Day 1	Day 2	Day 3
Bangalore, Chennai, Kolkata, Mumbai and New Delhi	15,000	10,000	8,500
Ahmedabad, Chandigarh, Hyderabad, Jaipur, & Pune	10,000		
Common to all Centres:			
Conducting interviews on the immediate following day of the day of initial interviews	5000		
Written Test	5000		
For Further Details:			
Dr. T. Paramasivan, Secretary, CMII of ICAI Mr. Ajeet Nath Tiwari, Placement Co-ordinator, ICAI	Website	www.cmii.icai.org	
	Email	placements@icai.org chairmancmii@icai.org	
	Telephone	011-30110450, 30110549, 30110548	
	Fax	011-30110583	
Last Date of Registration for Companies			
Bigger Centres:	18 th May 2009		
Smaller Centres:	25 th May 2009		

* Service Tax as applicable.

** Day/Slot will be allotted based on First Come First Serve Basis and Number of Jobs offered.

Organised By:

Committee for Members in Industry

The Institute of Chartered Accountants of India,

'ICAI BHAWAN', Post Box Number 7100, Indraprastha Marg, NEW DELHI - 110 002





Campus Placement Programme

For
Newly Qualified Chartered Accountants
Exclusively structured for Small & Medium sized CA Firms

COMMITTEE FOR MEMBERS IN INDUSTRY of ICAI
Provides unique opportunity for the Small and Medium sized CA Firms

In its endeavour to provide **quality Accounting, Finance, Tax, Audit and Management Consultancy personnel to small and medium sized Chartered Accountants Firms** and to provide a platform to the newly qualified Chartered Accountants, **CMII** would be conducting a Campus Placement Programme:

Centres	Dates	
Bigger Centres: Bangalore, Chennai, Kolkata, Mumbai and New Delhi	22 nd , 23 rd , 24 th May 2009	
Smaller Centres: Ahmedabad, Chandigarh, Hyderabad, Jaipur, & Pune	30 th May 2009	
Minimum Salary Offer Requirements (Per annum)	Bigger Centres	Rs. 2,75,000/-
	Smaller Centres	Rs. 2,40,000/-

Participation Fees*

Particulars	Fee per centre per day (Rs.)**		
	Day 1	Day 2	Day 3
Bigger Centres			
Firms having up to 6 partners	8,500	7,000	6,000
Firms having more than 6 partners	10,000	8,500	7,000
Smaller Centres			
Any CA Firm (irrespective of number of partners)	6,000		
Common to all Centres:			
Conducting interviews on the immediate following day of the day of initial interviews	5000		
Written Test	5000		
For Further Details:			
Dr. T. Paramasivan, Secretary, CMII of ICAI	Website	www.cmii.icai.org	
	Email	placements@icai.org chairmancmii@icai.org	
Mr. Ajeet Nath Tiwari, Placement Co-ordinator, ICAI	Telephone	011-30110450, 30110549, 30110548	
	Fax	011-30110583	

Note: Candidates registered for Campus Placement Programme conducted during March-April 2009 are automatically eligible for this Campus Placement Programme i.e. they need not register themselves again.

* Service Tax as applicable.

** Day/Slot will be allotted based on First Come First Serve Basis and Number of Jobs offered.

Organised By:

Committee for Members in Industry
The Institute of Chartered Accountants of India,
'ICAI BHAWAN', Post Box Number 7100, Indraprastha Marg, NEW DELHI - 110 002

CIRCULARS / NOTIFICATIONS

DIRECT TAXES

I. Notifications

1. Notification No. 28/2009, Dated 16-3-2009



In exercise of the powers conferred by section 295 read with section 199(3) and section 206C(4) of the Income-tax Act, 1961, the Central Board of Direct Taxes has through the Income-tax (Sixth Amendment) Rules, 2009 inserted the following rules:

- a) Rule 37BA: Credit for tax deducted at source for the purposes of section 199.
- b) Rule 37I: Credit for tax collected at source for the purposes of section 206C(4).

These Rules shall come into force with effect from the 1st April, 2009.

2. Notification No. 30/2009 [F. No. 142/19/2007-Tpl]/S.O. 857(E), Dated 25-3-2009

In exercise of the powers conferred by section 295 read with section 195(6) of the Income-tax Act, 1961, the Central Board of Direct Taxes, has, through the Income-tax (Seventh Amendment) Rules, 2009, inserted Rule 37BB relating to furnishing of information under section 195(6), which shall come into force with effect from 1st July, 2009. Apart from other provisions, the rule provides that the information to be furnished under section 195(6) has to be given in Form No. 15CA has to be verified in the manner indicated therein. Further, the certificate from an accountant defined in the Explanation to section 288 has to be obtained in Form No. 15CB.

3. Notification No. 31/2009 [F.No.142/22/2008-Tpl]/S.O.858(E), Dated 25-3-2009

In exercise of the powers conferred by section 295 of the

Income-tax Act, 1961, the Central Board of Direct Taxes, has, through the Income-tax (Eight Amendment) Rules, 2009 has substituted Rules 30, 31, 31A and 31AA with new Rules 30, 31 and 31A. Further, Rule 37A relating to returns regarding tax deducted at source in case of non-residents has been omitted.

Also, Rules 37CA and 37D have been substituted by new Rules 37CA and 37D relating to time and mode of payment of TCS and the certificate for collection of tax at source.

These amendments shall come into force on 1st April, 2009

4. Notification No. S. O. 866(E), Dated 27-3-2009

In exercise of the powers conferred by section 295 of the Income-tax Act, 1961, the Central Board of Direct Taxes has through the Income-tax (9th Amendment) Rules, 2009 notified the new ITR Forms for the Assessment year 2009-10.

5. Notification No. 36/2009 Dated 13-4-2009

In exercise of the powers conferred by section 295 read with section 44AB of the Income-tax Act, 1961, the Central Board of Direct Taxes, has, further amended the Income-tax Rules, 1962 through the Income-tax (Tenth Amendment) Rules, 2009 to provide "In the Income-tax Rules, 1962, in Appendix II, in Form No. 3CD after item 17, the following shall be inserted, namely:- 17A. Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006."

Section 23 of the Micro, Small and Medium Enterprises Development Act, 2006 provides that the amount of interest payable or paid by any buyer, under or in accordance with the provisions of the Act, shall not, for the

purposes of computation of income under the Income-tax Act, 1961, be allowed as a deduction.

The complete text of the above-mentioned notification can be downloaded from the following link: <http://law.incometaxindia.gov.in/TaxmannDit/DisplayPage/dpage1.aspx?m d=31>

(Contributed by Direct Taxes Committee of the ICAI)

INDIRECT TAXES EXCISE

I. Notification:

1. Notification No. 5/2009 CE (NT) dated 05-03-2008



has inserted new rule 14A in Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 to provide that notwithstanding anything contained in these rules or in the Central Excise Rules, 2002-

- (i) no notified goods shall be exported without payment of duty; and
- (ii) no material shall be removed without payment of duty from a factory or warehouse or any other premises for use in the manufacture or processing of notified goods which are exported out of India

The complete text of the above-mentioned notification can be downloaded from the following link: <http://www.cbec.gov.in/excise/cx.act/notfns-2k9/cent05-2k9.htm>

SERVICE TAX

I. Notifications:

1. Notification No. 9/2009 ST dated 03-03-2009



has been issued in supersession of Notification No. 4/2004 ST

dated 31-03-2004. Any taxable service which is provided in relation to the authorised operations in a Special Economic Zone, and received by a developer or units of a Special Economic Zone shall be exempt from whole of the service tax leviable thereon provided certain condition as specified in the notification are satisfied.

The complete text of the above-mentioned notification can be downloaded from the following link: http://www.servicetax.gov.in/servtax_notfns_idx.htm

2. Notification No. 10/2009 ST dated 17-03-2009 has amended 'Form ST-3' in Service Tax Rules, 1994 to furnish the name and identification No. of Service Tax Return Preparers in case the return has been prepared by them.

The complete text of the above-mentioned notification can be downloaded from the following link: http://www.servicetax.gov.in/servtax_notfns_idx.htm

II. Circular:

1. Notification No. 41/2007-ST dated 06-10-2007 allows the refund of service tax on specified services used for export of goods. CBEC has issued Circular No. 112/06/2009 dated 12-03-2009, to further clarify certain issues, in order to resolve the procedural difficulties in implementation of above mentioned notification.

The complete text of the above-mentioned circular can be downloaded from the following link: <http://www.servicetax.gov.in/st-circularmainpg.htm>

(Contributed by Indirect Taxes Committee of the ICAI)

FEMA
RBI/2008-09/415 A. P. (DIR Series) Circular No. 59 dated March 24, 2009



Deferred Payment Protocols dated April 30, 1981 and December 23, 1985 between Government of India and erstwhile USSR

The rupee value of the special currency basket has been fixed at Rs. 67.2425 with effect from March 05, 2009 as against earlier value of Rs. 65.0272.

RBI/2008-09/421 A. P. (DIR Series) Circular No. 60 dated March 26, 2009

On-line downloading of GR Forms

In terms of Regulation 3 of Notification No. FEMA/23 dated 3rd May 2000 [Foreign Exchange Management (Export of Goods and Services) Regulations, 2000] as amended from time to time, every exporter of goods or software in physical form or through any other form, either directly or indirectly, to any place outside India, other than Nepal and Bhutan, shall furnish to the specified authority, a declaration in one of the forms set out in the Schedule thereto.

At present, GR Forms [to be completed in duplicate for export otherwise than by Post including export of software in physical form i.e. magnetic tapes / discs and paper media] can be obtained by the exporters from the Regional Offices of the Reserve Bank at the cost of Re. 1. As part of simplifying the procedures, it has been decided to make the GR Forms available on-line on the Reserve Bank's website www.rbi.org.in. Accordingly, the exporters have the option to use the GR Forms available on-line as well. While downloading the GR-Forms, the exporter may ensure to use 'Legal' size paper i.e. 8.5*14 inches.

Further, both the printer (printing preference) and the paper size in the page setup option have to be set to legal size before printing. The GR number will be automatically allotted when the document goes to the print queue.

The exporters will continue to have the facility of purchasing the GR Forms from the Regional Offices

of the Reserve Bank, as hitherto. However, this facility would be phased out within a period of one year.

The full text of the Circular can be viewed at following link http://www.rbi.org.in/Scripts/BS_ApCircularsDisplay.aspx

(Contributed by CA. Manoj Shah and CA. Hinesh Doshi)

CORPORATE LAWS

1. Amendment to Mutual Fund Regulations

www.sebi.gov.in



The SEBI has issued Circular No. LAD-NRO/GN/ 2009-10/01/159601 dtd. 08-04-2009 amending the SEBI (Mutual Funds) Regulations, 1996 in relation to,

- Obtaining a prior in-principle approval by the trustees of the mutual fund from the recognized stock exchange(s) where the units under any launch of any scheme are proposed to be issued, which would also be the obligation of the asset management company.
- The offer document shall also contain the disclosure regarding the above referred in-principle approval.
- The provisions relating to listing of close ended-schemes are replaced and that the listing will now be required to be within time period and subject to conditions as specified by SEBI as against the six-months time limit currently prevalent.
- Repurchase of units of a close-ended (other than equity linked) scheme cannot be done before the end of maturity period of the scheme
- Issuance of statement of accounts /unit certificates within 30 days from the closure of the subscription list.
- Close-ended scheme units listed on recognized stock exchange can be traded if they are in demat form.

One may refer to the above citation for further details.

2. Interpretative letter of clarification by SEBI
www.sebi.gov.in

The SEBI has issued letter ref. no. CFD/DCR/TO/RM/159346/09 dated 02-04-2009 under the SEBI (Informal Guidance) Scheme, 2003 to a company in relation to applicability of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and its provisions relating to creeping acquisition to preferential allotment to promoters. It is clarified by SEBI that if the increase in promoters' holding do not exceed by more than 5% coupled with the fact of there being no change in control, the acquirers would not be required to make a public announcement under the Takeover Regulations. It may be noted that SEBI has further clarified that this view would not affect the applicability of any other law or requirements of SEBI (DIP) Guidelines, 2000 or listing agreement with concerned stock exchanges, with respect to proposed preferential allotment. One may refer to the above citation for further details.

3. Amendment to Companies Accounting Standards Rules
www.mca.gov.in

The Ministry of Corporate Affairs has issued Notification No. GSR 225(E) dtd. 31-03-2009 amending Accounting Standards-11 on "The Effects of Changes in Foreign Exchange Rates" whereby companies are now allowed option to amortise / capitalise foreign exchange differences arising out of long-term monetary items. This will act as an alternative method to that provided in AS-11 of forthwith recognising foreign exchange gain/loss on long-term monetary items. One may refer to the above citation for further details.

4. Applicability of LLP Act, 2008
www.llp.gov.in

The Ministry of Corporate Affairs has issued Notification No. 891(E) dtd. 31-03-2009 notifying certain provisions of the Limited Liability Partnership (LLP) Act, 2008 to be applicable and in force with effect from 31-03-2009. These provisions are specifically in relation to easing the formation of an LLP on and from 01.04.2009. One may refer to the above citation for further details.

5. LLP Rules, 2009
www.llp.gov.in

The Ministry of Corporate Affairs has issued Notification No. 229 (E) dtd. 01-04-2009 notifying the Liability Partnership Rules, 2009 and providing that certain rules shall become applicable and in force with effect from 01-04-2009. The notification of the Rules is specifically in relation to easing the formation of an LLP on and from 01-04-2009. One may refer to the above citation for further details.

6. Revised position limits for exchange traded currency derivatives
www.sebi.gov.in

The SEBI has issued Circular No. SEBI/DNPD/Cir-45/2009 dated 24.03.2009 modifying the client and trading member for exchange traded currency derivatives. For client level, the gross open position of a client across all contracts shall not exceed 6% of the total open interest or 10 million US \$, whichever is higher, instead of 6% of the total open interest or 5 million US \$, as prescribed earlier. For non-bank trading member level, the gross open position of a Trading Member, who is not a bank, across all contracts shall not exceed 15% of the total open interest or 50 million US \$ whichever is higher, instead of 15% of

the total open interest or 25 million US \$, as prescribed earlier. One may refer to the above citation for further details.

7. FII investment in debt securities
www.sebi.gov.in

The SEBI has issued Circular No. IMD/FII & C/38/2009 dtd. 13.03.2009 clarifying that USD 8 billion shall be allocated to the FIIs/sub-accounts in an open bidding platform out of the increased the cumulative debt investment limit increased by the Government by US \$ 9 billion (from US \$ 6 billion to US \$ 15 billion) for FII investments in Corporate Debt. It is clarified that the remaining limit for investment in corporate debt shall be allocated among the FIIs/sub-accounts on a 'first come first served' basis subject to a ceiling of Rs. 249 cr. per registered entity. One may refer to the above citation for further details.

8. Competition Commission of India financial statements
www.mca.gov.in

The Government has notified the Competition Commission of India (Form of Annual Statement of Accounts) Rules, 2009 whereby the Competition Commission of India (CCI) shall maintain its accounts in the form of financial statements annexed to the rules and in maintaining the financial statements, the CCI shall follow the instructions and accounting principles as are indicated by the Central Government from time to time. One may refer to the above citation for further details.

(Contributed by
CA. Jayesh Thakur)



DISCIPLINARY CASE

*Summary of a disciplinary case - Council of the Institute of Chartered Accountants of India vs. Y. M. Mansuri*¹ (Chartered Accountant Reference No. 1 of 2001) decided on 11.01.2005 by the High Court of Gujarat under Section 21 (6) of the Chartered Accountants Act, 1949.

Facts of the case

The Commissioner of Income Tax, Gujarat (hereinafter referred to as the "Complainant") filed a complaint against Shri Y.M. Mansuri, Chartered Accountant, Ahmedabad (hereinafter referred to as the "Respondent") under Section 21 of the Chartered Accountants Act, 1949 (hereinafter referred to as the 'Act') to the Institute of Chartered Accountants of India (hereinafter referred to as the 'Institute') alleging, *inter alia*, that the respondent in his statement on oath u/s 131 of the Income-tax Act, 1961 on 11.11.1992 mentioned that books of account of M/s Arti Enterprises for Financial Year 1990-91 were audited by him under Section 44AB in the month of January, 1992 and the certificate for the audit was given to the party some time in February, 1992, whereas, the Respondent signed the Audit Report on back date, i.e., 30th October, 1991 much before the date of completing the audit to oblige his friend Shri Bhupendra L. Patel who was the consultant of M/s Arti Enterprises at that time. The Respondent signed the back dated report to save M/s Arti Enterprises from the rigours of the penalty under Section 271B of the Income-tax Act, 1961. The Complainant also alleged that there were no markings anywhere in the books by the Respondent, which is normally done when the books are audited, therefore, it appears that the Respondent had prepared the Audit Report u/s 44AB of Income-tax Act, 1961 without proper verification of the books of account.

The Council of the Institute *prima facie* opined that the respondent was guilty of professional and/or other misconduct and referred the case to the Disciplinary Committee for enquiry.

The Disciplinary Committee on perusal of the documents on records, after recording of evidence and hearing of the submissions made by the

Complainant came to the conclusion that the respondent was guilty of professional misconduct within the meaning of Section 21 read with Section 22 of the Chartered Accountants Act, 1949 under Clauses (5), (6) and (7) of Part I of Second Schedule to the said Act.

The Council on consideration of the Report of the Disciplinary Committee accepted the Report of the Disciplinary Committee and found that the respondent was guilty of professional misconduct within the meaning of Clauses (5), (6) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The Council recommended to the High Court that the name of the respondent be removed from the Register of Members for a period of six months. As required under Section 21(5) of the Act, the matter was referred to the Gujarat High Court with the recommendations of the Council.

The Judgment of the Division Bench of the High Court of Gujarat at Ahmedabad comprising of Hon'ble Mr. Justice D. A. Mehta and Hon'ble Ms. Justice H. N. Devani is summarized below:

Decision of the Hon'ble Court

The Hon'ble Court observed that the facts available on record are undisputed. The respondent has admittedly issued a back dated certificate. The contention that back dating of the tax audit report has not occasioned any loss of revenue nor has it benefited anyone does not merit acceptance. Though in financial terms, the respondent may be correct in stating that there is no loss of revenue, but the said contention is bereft of any substance when the underlying idea of obtaining tax audit report is considered. The Hon'ble Court further observed that apart once statutory obligation is cast on a person and such statutory obligation provides for a period of limitation within which a

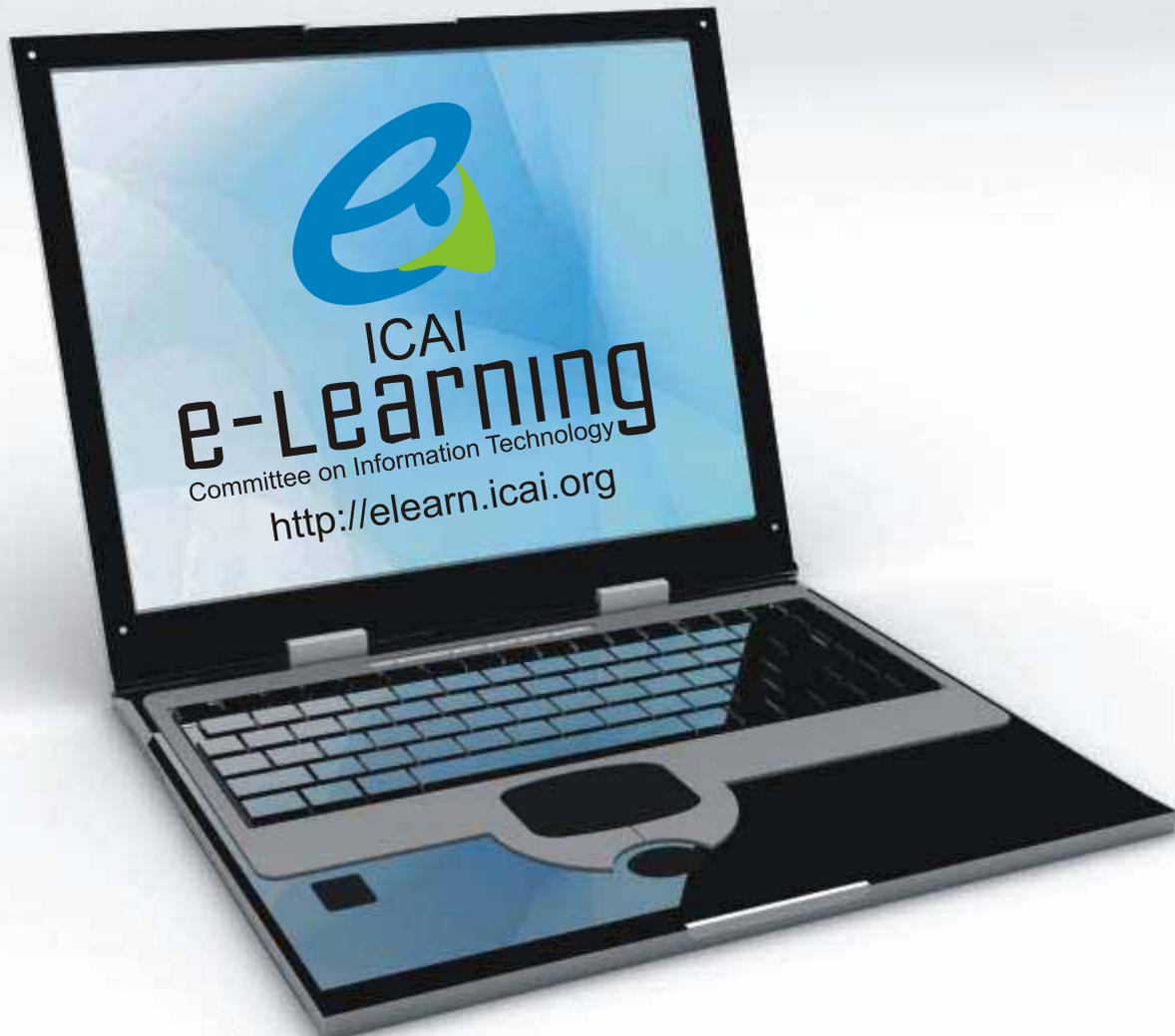
particular document is required to be submitted, failure to do so within prescribed period of limitation, is by itself liable to be visited with penalty, unless explained by a reasonable cause. In the present case, at the cost of repetition, it is necessary to state that the respondent has no reasonable cause to plead, the only defence being – the respondent wanted to oblige his friend. In the circumstances, there is no infirmity in the finding recorded by the Disciplinary Committee and the Council in relation to the first charge.

The Hon'ble Court as regards the second charge is concerned was of the view that, it is apparent from the record that both the Disciplinary Committee and the Council have recorded concurrent finding that books of accounts had in fact not been audited. The finding *per se*, is a finding recorded after appreciation of evidence on record and as stated earlier, there is no submission that there was any violation of principles of natural justice. In the circumstances, even the second charge stands proved and there is no reason to interfere with the finding recorded by the Disciplinary Committee and the Council. The Hon'ble Court was of the view that in light of what is stated hereinbefore there is no ground made out calling for any interference with the recommendation made by the petitioner Council.

On overall consideration of the matter, the Hon'ble High Court accepted the finding of the Council that the respondent was guilty of professional misconduct within the meaning of Clauses (5), (6) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in terms of Section 21 read with Section 22 of the said Act and ordered that the name of respondent be removed from the Register of Members for a period of six months.

¹ For full text of the Judgment please see Institute's publication viz. Disciplinary Case Vol.VIII, Part I, p. 1031 or visit Editorial Board page on the ICAI website at the link http://www.icaai.org/post.html?post_id=967&c_id=59

ICAI launches its e-Learning Portal and e-learning course on Service Tax



Welcome to the world of e-Learning. We trust that you will enjoy the experience of learning from the comfort of your home or office and will continue to come back to the portal for more. Do share your experience with us and with your colleagues and friends. In case of any clarification, kindly contact **CA. K.Raghu**, Chairman, Committee on Information Technology at cit@icai.in

ICAI has always been striving to provide better learning opportunities to its members and students. The challenge is to make these learning opportunities available to members across the country in a convenient and empowered manner. The learning materials and modules help members adapt to environmental changes in business, thereby giving them a cutting edge advantage in their work delivery.

With the Unstructured CPE Learning Activities made mandatory from 1st January 2008, there was a need to implement learning opportunities using technology and the Internet to provide members with a learning experience that is professional and at their own convenience. This has led to the introduction of the e-Learning initiative by the Committee that provides members with the opportunity to:

- Keep abreast with current information in all core areas
- Familiarise themselves with new subject content related to Professional Development

Avail 6 Hours CPE Credits for Service Tax e-learning course

ICAI e-Learning Initiative

In a progressive and technology driven world, ICAI recognising this reality is driven by its commitment to provide its members and students with quality learning in a convenient manner, is proud to launch its first e-Learning course.

ICAI has planned a series of e-Learning courses that will provide members with quality content and learning through well produced multi-sensory learning techniques in the convenience of their homes or offices.

Some of the other topics that will be covered through this e-learning initiative are:

- Fringe Benefit Tax
- IFRS
- BASEL II
- SOX
- Foreign Direct Investments
- Transfer Pricing
- Investment Banking
- Treasury Management
- Due Diligence

ICAI has ensured that state-of-the-art technology, high production values and an elegant set design will provide an interactive learning experience.

e-Learning Course on Service Tax

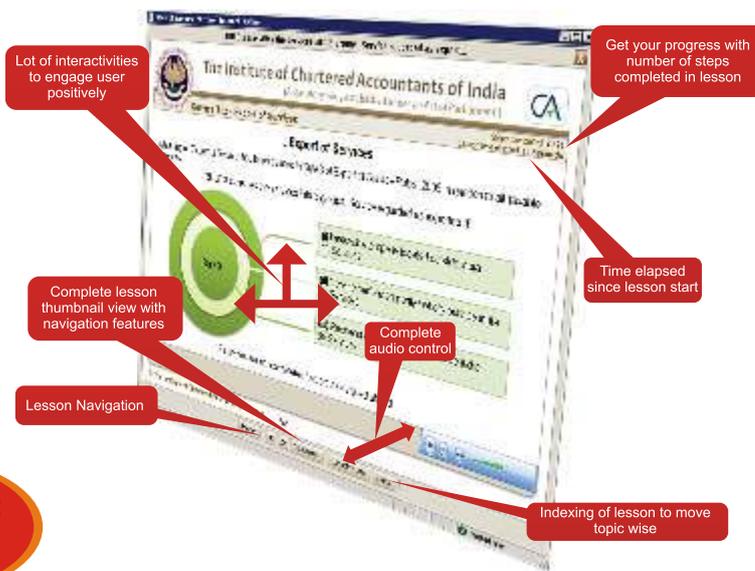
Service Tax is here to stay and the Government of India has consistently brought more and more businesses and professionals under the Service Tax umbrella. Being informed, up-to-date and empowered with a detailed understanding of the Service Tax Act and its impact on business, consultants and professional service providers is of utmost importance and hence ICAI has launched "Service Tax" as its first learning module.

Coverage of e-Learning Course on Service Tax

No effort has been spared to ensure that the content of this e-learning course on Service Tax is comprehensive and up-to-date. The major topics covered in the course are:

- Introduction to Service Tax
- Applicability of Service Tax
- Service Tax Rate Structure
- Export of Services
- Import of Services
- Classification of Services
- Valuation of Services
- Assessment
- Rectification of Mistakes
- Penalty
- Refund of Service Tax
- Service Tax Procedural Aspects under Service Tax Rules, 1994
- Cenvat Credit Rules, 2004
- Quiz

**Course Fee:
Rs. 500/-**



Get registered at ICAI e-Learning

- Send a DD/Cheque at PAR to the Institute favouring The Secretary, ICAI payable at New Delhi to the Secretary, Committee on Information Technology The Institute of Chartered Accountants of India ICAI Bhawan, Plot No. 52-54, Vishwas Nagar, Shahdara, Delhi - 110 032, India Website: www.icai.org E-mail: ellearn@icai.in Tel: +91 11 30210619
- Pay online by going to <http://ellearn.icai.org/epayments> On receipt of the payment by the IT Committee, the Committee will provide you a "Redeem Code" to create your account on e-Learning Portal.

Creating an Account

- On your web browser, just go to the link: <http://ellearn.icai.org>
- Click the button "Create New Account..."
- At the account creation page, fill all your relevant details along with the provided "Redeem Code".
- Click the button "Submit"
- Your account has been created successfully.
- Now click the button "Return to Login" to go to your e-Learning account.



Committee on Information Technology
The Institute of Chartered Accountants of India
ICAI Bhawan, Plot No. 52-54, Vishwas Nagar, Shahdara, Delhi - 110 032, India
Website: www.icai.org E-mail: ellearn@icai.in Tel: +91 11 30210619

An Initiative of the Committee on Information Technology

Accounting for expenditure incurred on development of corporate portal

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

A. Facts of the Case

1. A company was incorporated on 27th September, 1999 under the Companies Act, 1956 as a Government company as a part of Indian Railways' wider organisational reform and to strengthen its marketing and service capabilities in the areas of rail catering, tourism, and passenger amenities. The company obtained the certificate for commencement of business on 2nd December, 1999. The authorised share capital of the company is Rs. 50 crore and paid up share capital is Rs. 20 crore. The total paid up capital is subscribed by the Ministry of Railways.

2. The main activities of the company are as under:

- On-board catering services and static catering units on the Indian Railways network.
- Selling of railway tickets by way of e-tickets and i-tickets through the company's web portal.
- Managing and operating all India Railway Enquiry Call Centre.
- Setting up of food plazas with private partnerships at railway stations on Indian Railways network.
- Running of special train charters, special coach charter and promotion of rail tour packages and value added tours.
- Manufacturing packaged drinking water for Indian Railways passengers.
- Managing the departmental catering units, taken over from the Indian Railways.
- Establishment of budget hotels / management of existing Rail Yatri Niwas / budget hotel.
- Organising special train charters on hill railways.

3. During the year 2005-06, the company had awarded a contract for design and development of the corporate portal of the company to M/s XYZ Ltd. at Rs. 32.20 lakh. The corporate portal is leveraging the web/internet technologies/tools for

dissemination of information and allow a familiar, easy to use web. The portal is being accessed through internet and/or intranet. The portal is facilitating the users throughout the enterprise to access a wide variety of information, e.g., company's announcements, tender calendar, etc. Also employees of the company can view human resource details. Portal is also helping in the speedy and efficient dissemination of information.

4. The querist has stated that an amount of Rs. 32.20 lakh was incurred on development of web portal. As per the accounting policy adopted by the company, the amount incurred on development of web portal was capitalised along with the computer/server. A disclosure in this regard was given in the notes to the accounts.

5. During the course of supplementary audit of the accounts of the company under section 619 of the Companies Act, 1956 by the Audit Party of Comptroller and Auditor General (C&AG) of India, it was observed that:

“ 'Fixed Assets – Computers' includes a sum of Rs. 32.20 lakh incurred on web portal of the company. It is a software and is an intangible asset and as stated under Accounting Standard (AS) 26, 'Intangible Assets', besides disclosing method and rate of amortisation the following disclosures are also to be made:

(i) Whether it is an internally generated intangible asset or not.

(ii) A distinction has to be made between internally generated assets and other intangible assets.

(iii) The gross carrying amount and the accumulated amortisation (aggregated with accumulated impairment losses) at the beginning and end of the period.

(iv) A reconciliation of the carrying amount at the begin-

ning and end of the period showing (a) additions, indicating separately those from internal development and through amalgamation; (b) retirements and disposals; (c) impairment losses recognised in the statement of profit and loss during the period (if any); (d) impairment losses reversed in the statement of profit and loss during the period (if any); (e) amortisation recognised during the period; and (f) other changes in the carrying amount during the period.

Thus, requisite disclosures in terms of mandatory AS 26 pertaining to an intangible asset have not been made.”

6. The querist has stated that as per Accounting Standard (AS) 10, 'Accounting for Fixed Assets', a fixed asset is an asset held with the intention of being used for the purpose of producing or providing goods or services and is not held for sale in the normal course of business. As per paragraph 10 of Accounting Standard (AS) 26, 'Intangible Assets', “an asset may incorporate both intangible and tangible elements that are, in practice, inseparable. In determining whether such an asset should be treated under AS 10, Accounting for Fixed Assets, or as an intangible asset under this Standard, judgement is required to assess as to which element is predominant. For example, computer software for a computer controlled machine tool that cannot operate without that specific software is an integral part of the related hardware and it is treated as a fixed asset. The same applies to the operating system of a computer. Where the software is not an integral part of the related hardware, computer software is treated as an intangible asset.”

7. The querist has further stated that hardware and software platform for the said corporate portal was advised

by M/s. XYZ Ltd. As per the requirements given, the said developed software would operate through web and application server and data server. The said computer machines were not supposed to be operated as stand-alone machines. In the view of the company, the application software developed by M/s XYZ Ltd. is an integral part of the web application server and data based server. Accordingly, the company has decided to capitalise the cost of Rs. 32.20 lakh incurred on designing of web portal of the company, along with computers, as per the accounting policy followed by it. A disclosure in this regard has been made as per note no. 20 of the notes to accounts. In view of the above, according to the querist, the amount of Rs. 32.20 lakh incurred on web designing of web portal has been correctly accounted for.

B. Query

8. The querist has sought the opinion of the Expert Advisory Committee of the Institute of Chartered Accountants of India as to whether the accounting policy followed by the company with regard to capitalisation of software along with computers is correct or the same is needed to be rectified, as pointed out by the Audit Party of the C&AG of India.

C. Points considered by the Committee

9. The Committee notes from the Facts of the Case that the company has incurred an expenditure of Rs. 32.20 lakh on designing and development of the corporate portal of the company. The Committee notes that the basic issue raised in the query relates to whether the accounting policy of the company of capitalising such development costs related to portal to 'Fixed Assets – Computers' is proper or not. Accordingly, the Committee has answered this particular issue and has not touched upon any other issue arising from the Facts of the Case, such as, whether or not such expenditure has properly been classified as being related to the development phase of the generation of an internally generated asset, viz., portal, as per the provisions of AS 26. The Committee

has presumed that the entire expenditure in respect of which the query has been raised relates to the development phase of the portal.

10. The Committee notes paragraph 10 of AS 26, which provides as follows:

“10. In some cases, an asset may incorporate both intangible and tangible elements that are, in practice, inseparable. In determining whether such an asset should be treated under AS 10, Accounting for Fixed Assets, or as an intangible asset under this Standard, judgement is required to assess as to which element is predominant. For example, computer software for a computer controlled machine tool that cannot operate without that specific software is an integral part of the related hardware and it is treated as a fixed asset. The same applies to the operating system of a computer. Where the software is not an integral part of the related hardware, computer software is treated as an intangible asset.”

From the above, the Committee notes that from purely accounting point of view, there are broadly two types of computer software, viz., (a) computer software which is an integral part of the computer and without which that computer cannot operate, such as, an operating system, which is a foundation software of a machine that controls the operation of a computer and allows users to enter and run their software packages; and (b) other software. The Committee is of the view that the basic difference between the two is that the first type of software helps the computer machine to run and forms a platform for running other computer software. Therefore, the Committee is of the view that it is only the first type of computer software that should be capitalised along with the related hardware.

11. The Committee notes from the Facts of the Case that the company has capitalised the application software internally developed by the company along with the web application server and data based server for which the reason is stated to be that the application software is an integral part

of the web application server and data based server and that the said computer machines were not supposed to be operated as stand-alone machines. In this regard, the Committee notes that application software is a software program running on the top of the operating system that has been created to perform a specific task for a user. The said computer machines can still be run through the operating system without the application software, though not for the desired tasks. Thus, the Committee is of the view that the application software cannot be treated as an integral part of the related machines and cannot be capitalised along with the said computer machines. Accordingly, in the view of the Committee, the computer software under consideration should be treated as separate internally developed intangible asset provided it meets the requirements of AS 26.

D. Opinion

12. On the basis of the above, the Committee is of the opinion that the accounting policy followed by the company with regard to capitalisation of software along with computers is not correct and the same needs to be rectified on the lines of 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 Compendium of Opinions containing the Opinions of Expert Advisory Committee has been published in twenty five volumes. These volumes are also available in the form of a CD, viz., CD of Compendium of Opinions with user friendly features. These are available for sale at the Institute's office at New Delhi and its regional council offices at Mumbai, Chennai, Kolkata and Kanpur.
3. Recent opinions of the Committee are available on the website of the Institute at URL: http://www.icai.org/category.html?c_id=146

India's Journey Towards Accrual Accounting in Government



Having accepted the recommendation of the 12th Finance Commission, the Government of India has embarked on a crucial, exciting and challenging journey towards accrual accounting in the Government. This is a journey in which the paths are not very clear but the destination is. The goal of this journey is highly attractive and envisages transforming the present General Purpose Financial Statements of the Government into highly informative documents facilitating multiple stakeholders take better decisions. This article seeks to trace this journey of India based on experiences elsewhere in the world and possibly defog some of the possible paths towards the goal.



CA. G Srinivas

*The author is a member of the Institute.
He can be reached at
srinivas.gurazada@icai.org*

"India should progressively migrate towards accrual basis accounting", was the recommendation made by the Twelfth Finance Commission to the Government.

Government of India has, in principle, accepted the recommendation, and the journey towards accrual accounting in government has begun. This is perhaps one of the most exciting journeys that government accounting has embarked upon ever since the present system of accounting came into place. This is also a journey where the paths are not very clear but the destination is. The goal of this journey is highly attractive. The goal of the reform agenda is to transform the present General Purpose Financial Statements (GPFS) of the Government into highly informative documents facilitating multiple stakeholders take better decisions. Is this goal achievable by the change of 'basis' of

accounting? Is the 'basis' of accounting the key constraint in the present system of financial reporting in government? Opinions differ as widely as the very 'basis' of accounting.

Present System of Accounting in Government

Government Accounting in India essentially follows Cash-basis accounting with a few exceptions. Article 150 of the Constitution lays down the enabling provisions: The accounts of the Union and the States shall be kept in such form, as the President may, on the advice of the Comptroller and Auditor General of India prescribe. The form of account is understood to include 'basis' of accounting. Rule 21 of Government Accounting Rules lays down as follows: *with the exception of such book adjustments as may be authorised by these rules or by any general or special orders issued by the Central Government on the advice of the Comptroller and Auditor General of India, the transactions in the Government accounts shall represent the actual cash receipts and disbursements during the financial year as distinguished from amounts due to or by Government during the same period.*

The present system of accounting, therefore, records transactions only when cash is received or paid in the reporting period. There is no recognition to the expenditure incurred but not paid and the income earned but not received. Distinction between capital and revenue transactions is maintained in accounts at the time of recording. GPFS are the financial statements available to public like the Income Statement, Balance Sheet and Cash flow statements in case of commercial entities. The GPFS in case of government are the Appropriation Accounts and the Finance Accounts. These essentially are a compilation of actual cash receipts and payments, though certain other information is also provided in few statements. The distinction between capital and revenue transactions is limited to depiction in the GPFS as it relates to cash inflow and outflow. Complete recording of assets and liabilities as it is done in accrual basis accounting is not done.

Limitations of Existing System of Accounting

Can a company, say Infosys or Reliance Industries Ltd, function effectively with cash basis accounting if law permits. Can this cash-basis accounting enable key decision-makers, including shareholders, to take informed decisions about the activities of the company? The answer is definitely in the negative. If commercial entities feel the need for much more information than just cash flow statements, how can governments and people be satisfied with myopic view limited to cash flows? Why does not the placing of the Finance Accounts and Appropriation Accounts on the floor of the legislature generate the kind of interest that declaration of financial results of a major listed company generates amongst stakeholders? Can we attribute it to mere inertia or is there something more fundamental to that? The answer clearly indicates to the inherent limitations of 'basis' of accounting that governments follow.

The present basis of accounting is simple and easy to implement. It requires less skilled personnel and supports the key objective of government i.e., cash management. Government financial management has historically been equated with cash management. Budget and compliance with budget as depicted in accounts is treated as the ultimate aim of financial accountability of executive towards the legislature and thereby to the people. Critics of cash basis accounting find that it is not the most informative way of accounting for government transactions. It is criticized because it is seen to result in short-sighted decision-making in government. Some of the limitations of the existing system of government accounting in India include:

- Failure to record expenditure incurred, but payment not made
- Non-accounting of revenue earned, but cash not received
- Incomplete or partial asset accounting
- Incomplete liability accounting to exclude current liabilities and pension liability
- Violation of principle of matching expenditure with revenue
- Non recognition of some period costs like

Why does not the placing of the Finance Accounts and Appropriation Accounts on the floor of the legislature generate the kind of interest that declaration of financial results of a major listed company generates amongst stakeholders? Can we attribute it to mere inertia or is there something more fundamental to that? The answer clearly indicates to the inherent limitations of 'basis' of accounting that Governments follow.



depreciation, while recognizing others like interest accrued on GPF Accounts of government liabilities

- Failure to depict in the GPFS, nature of expenditure (object head wise classification) of expenditure (salaries, subsidies, rent, etc)
- Full cost of Government services is not identifiable
- Long term sustainability of government cannot be identified
- Does not aid decisions on intergenerational equity
- Limited use in asset stewardship and accountability of government transactions

Accrual Accounting in Government

As the 'basis' for accounting shifts from cash to accrual, the nature and timing of recognition undergoes a fundamental change. Transactions are recorded at the time when economic value is created, exchanged, transformed, transferred or impaired irrespective of whether cash is actually exchanged or not. The general principles may involve the following:

- Revenues are recognized when there is an increase in future economic benefit related to increase in an asset or a decrease in liability. Revenue received but not earned in the reporting period will be treated as Current liability. Revenue earned and not received will be treated as a Current Asset. Ex: Tax assessed but not received; licence fee / royalty due but not received.
- Expenses are recognized when there is a decrease in future economic benefit related to a decrease in an asset or an increase in liability. Expenses are recognized in the period to which

they relate irrespective of whether or not they are paid. Expenses incurred and not paid would be accounted as Current Liabilities. An estimate of receivables not collectible by Government would be charged off as an expense. Depreciation is recognized in the reporting period as an expense. Impairment of assets is accounted for as an expense.

- Assets are recognized in accounts when future economic benefits or service potential flows to the entity on account of past events. Both Current and Long term assets are recognized. At present, capital expenditure is consolidated into a single cumulative figure in the Finance Accounts and write-offs charged to this amount. This does not give information about the kinds of assets nor is depreciation charged. In accrual accounting, assets may have to be classified into categories and consumption of fixed assets in terms of depreciation be accounted for as per accounting policies. Inventories are recognized at cost or net realizable value which ever is lower. Receivables are accounted for along with provision for doubtful receivables.
- Liabilities are recognized when there is a present obligation from the past events which could result in outflow of economic resources. At present only long term liabilities are recognized in government. In accrual system, both long term liabilities and current liabilities may have to be recognized. The existing Defined benefit Pension liability may be shown on actuarial valuation basis.
- The existing GPFS may be replaced as indicated in the financial statements

Existing Cash basis GPFS		Possible Accrual basis GPFS	
Statement	Information focus	Statement	Information focus
Appropriation Accounts	Compliance reporting on legislative appropriations & grants	Statement of Operating Performance	Income and Expenditure using matching concept and the operating surplus or deficit
Finance Accounts	Statement of functional head distribution of government receipts & disbursements during the year; debt and other obligations at the end of the year; Financial Assets and guarantees	Statement of Operating Position	Balance Sheet of Government indicating all assets and liabilities
		Statement of Sources & Uses of Cash	A cash flow statement with either inbuilt structure to include appropriation accounts for budget compliance requirements or a separate statement to supplement

A Case for Accrual Accounting in Government

There is a strong case for accrual basis accounting for governments in India. Accrual accounting is expected to result in improved financial discipline and decision-making in India. The key advantages include:

- Financial decisions would not be seen from merely the standpoint of cash inflow and outflow but would consider
 - their impact on the asset liability position of the Government
 - future sustainability of the programmes
 - future funding requirements of asset maintenance and replacement
 - plan for repayment of liabilities
 - management of liquidity position of the Government
- More complete and comprehensive view of assets and liabilities is provided
- Better information of expenses and revenues is provided
- Provides a financial estimate of loss of revenues on account of failure of administration
- Full cost of goods and services is available for appropriate pricing decisions
- Comparison of cost at which services are provided by government in different reporting periods and regions is possible
- Both implicit and explicit subsidies can be captured
- Intergenerational equity issues can be better handled as the financial statements would depict the burden the present government is passing on to the future governments

Can Accounting be on Accrual Basis and Budgeting on Cash Basis?

Articles 112 and 202 prescribes the constitutional responsibility of government to lay 'Annual Financial Statements' i.e., the budget before each house of legislature. At present, the Budget and Accounts in the Government are on cash basis. As in the case of accrual accounting, different views exist on whether India should adopt accrual

budgeting. A case for accrual budgeting gains significance in the background of Government of India's experiments with Performance budgeting and Outcome budgeting. Supporters of accrual budgeting generally feel that accrual budgeting is a precondition to the success of Outcome Budgeting or Performance Budgeting. Advocates of status quo feel accrual budgeting brings in too much of subjectivity and dilutes the financial control of legislature over executive.

Accrual budgeting can be understood to include full set of forecast financial statements, including assumptions used in preparing those statements. Formal budget appropriations (cash) may continue as in case of current budgeting system, but they should be directly linked to forecast financial statements. In accrual budgeting, estimates would reflect the complete liability in respect of expense and not merely for those that involve cash flow. Similarly entire revenue is accounted for instead of amount collectible.

Accrual budgeting is not a pre-condition of accrual accounting. The international experience on budgetary and accounting reforms indicates a wide variety of models. In most of the countries that embarked on accrual accounting, budget continues to be made on cash basis (USA, Spain, Canada, etc). On the other hand few countries like Australia and New Zealand have embarked on a integrated financial management and accounting reforms agenda to include accrual budgeting. Some in support of accrual budgeting stress that full benefits of accrual accounting can be gained only when budget also moves to accrual basis and hence reforms in accounting and budgeting to be taken together. Many other prefer either cash budgeting to continue or accrual budgeting to be implemented after accrual accounting stabilizes.

Transition Path to Accrual Accounting in India

While accrual accounting has been discussed time and again by various committees and experts since eighties, it gained real impetus with the Government accepting in principle the recommen-

Accrual accounting is expected to result in improved financial discipline and decision-making in India. A key advantage is that financial decisions would not be seen from merely the standpoint of cash inflow and outflow but would also consider their impact on the asset liability position of the Government, future sustainability of the programmes, future funding requirements of asset maintenance and replacement, plan for repayment of liabilities and management of liquidity position of the Government



dition of the 12th Finance Commission to progressively migrate towards accrual basis accounting. Government has entrusted the task



At present, the Budget and Accounts in the Government are on cash basis. As in the case of accrual accounting, different views exist on whether India should adopt accrual budgeting. A case for accrual budgeting gains significance in the background of Government of India's experiments with Performance budgeting and Outcome budgeting.

of drawing up a detailed roadmap and preparation of an operational framework to Government Accounting Standards Advisory Board (GASAB) constituted by the Comptroller and Auditor General with the support of Government of India. GASAB has drawn up a detailed roadmap involving various steps to be taken during the course of migration. Taking into account the vastness of the country and the international experiences, roadmap has visualized a time frame of 10-12 years. GASAB has also prepared an Operational framework indicating the stages in which migration may take place. It also indicates the deviations from the commercial system of accounting on account of specific requirements of government activities.

The responsibility for compilation of accounts of Government of India rests with the Controller General of Accounts. The accounts of all the State Governments are compiled by the Comptroller and Auditor General of India. Both the accounting authorities have embarked on pilot studies at Union and States respectively to arrive at the appropriate model of accrual accounting in India. GASAB has been working on development of the model formats for GPFS and principles of recognition of transactions under accrual accounting.

Accounting Standards for Accrual System

Government Accounting has traditionally depended on rules as laid down in various official pronouncements. With the international trend in both governments and commercial sector to migrate from rule based system to principle based systems, GASAB has been vested with the responsibility of development of Accounting Standards for government's consideration and notification. GASAB needs to issue Accrual basis accounting standards to facilitate migration to accrual accounting. One possible option that can be considered is to adopt or adapt International Public Sector Accounting Standards (IPSAS) issued by International Federation of Accountants (IFAC). IPSAS are specially developed standards for the public sector (i.e., core government and not public sector undertakings as one usually refers to in India). IPSAS are gaining acceptance in more and

more countries. IFAC has also issued a Study on *'Transition to the Accrual Basis of Accounting: Guidance for Governments and Government entities.*

GASAB has embarked on issue of Accounting Standards on accrual basis for facilitating pilot studies at Government of India and State Governments. These standards are issued as 'Indian Government Financial Reporting Standards' (IGFRS) and are harmonized with IPSAS.

The Challenges

Migration to accrual basis accounting in India is a challenging task. The general inertia towards accounting reforms which is broadly an international phenomenon can be overcome only with strong political will and champions for the reforms at the top. Development of a robust IT system, preferably in the nature of an ERP application may help the process of migration. Government would need the support of huge number of accounting professionals to implement accrual accounting. While many of these administrative issues can possibly be resolved relatively quickly, there are technical issues needing decision. Each line item in the GPFS would possibly open up unique challenge. Five such key issues are discussed below.

Asset Accounting and Valuation: Traditionally, the link between Asset Register and the Balance Sheet that usually exists in case of commercial entity, is absent in the case of governments. Governments may not have a comprehensive list of assets and their values. Governments may have to embark on a massive exercise of preparation of Asset registers. Further, heritage assets, military assets, infrastructure assets like roads, culverts, dams, natural resources like forests etc. require distinct treatment on accounting and valuation. For example, heritage assets are valued at nominal value in some countries while many other countries do not reflect them in the accounts. Further the rate of depreciation to be charged on them needs to be arrived at. While the task of preparation of Asset Registers and valuation of assets is huge, the benefits would be far higher in terms of better stewardship of assets.

Non-exchange Revenues: Non exchange revenues arise from those transactions where the government receives income as a matter of its right without any obligation to provide specific services. Examples include Income tax, Excise duty, Vehicle tax, Drug licence fees. Estimating the amount of income tax and recognizing in the financial statements poses unique issues. When should the Government treat the income tax as accrued. The options vary in a continuum from the time income accrues to the assessee to the time tax is actually deducted or paid. Further, the question of whether it is justified to accrue income tax revenue and later charge it as unrecoverable for the amount that is eventually not recoverable. Few suggest that only assessed income tax should be accrued while others argue that entire income tax revenue should be estimated and accrued. A few others feel that all tax revenues should be on cash basis while non-tax revenues (motor vehicle registration charges, drug licence fees etc.) should be on accrual basis to make the system simple.

Pension Liability: Governments owes to their employees liability on account of its 'Defined Benefit Pension Plans'. Pension essentially being deferred wages has to be charged as expense in the years on which the employee serves the Government and a liability has to be created. The present system involves recording of pension payments only in the reporting period when it is actually paid. This needs to be modified with actuarial valuation of Pension liability in the financial statements. This would also facilitate governments being aware of their pension liability and could take into consideration intergenerational equity issues.

Inventories: Government financial statements do not reflect any inventories. All stocks are treated

as charged to Government Account on the date of recording the transaction of purchases. Under accrual accounting inventories need to be specifically maintained and valuation methods developed. This would facilitate calculation of correct cost of goods and services and thereby appropriate pricing.

Current Assets and Current Liabilities: At present, these are not maintained in books of account except for cash. Materiality should be the paramount consideration to decide on the threshold for accruing expenses/ payables and revenues/receivables. This would also warrant development of detailed principles as the authority at which the items needs be accrued. Government expenditure is essentially incurred at the level of Drawing Disbursing Officer (DDO) and it would perhaps be the most appropriate level to record accrual transactions.



The Road Ahead

With the decision of the Government to embark on accrual accounting, the count-down for the first set of financial statements based on accrual accounting has begun. While the debate on individual line items may still continue, the question of whether or not to go in for accrual accounting should no longer exist. The inherent limitations of present system of accounting and reporting limit the use of GPFs by stakeholders. The reform may eventually lead to full accrual or modified accrual (with some items on cash and others on accrual) depending on the general consensus. Whatever be the model, the accounting system would scale up from its present status as budget compliance reporting system to a robust financial reporting system satisfying multiple stakeholders' information requirements.

Government has entrusted the task of drawing up a detailed roadmap and preparation of an operational framework to Government Accounting Standards Advisory Board, which has drawn up a detailed roadmap involving various steps to be taken during the course of migration. Taking into account the vastness of the country and the international experiences, the roadmap has visualized a time frame of 10-12 years.



Accrual Accounting in Government – Its Practical Sides



The 12th Finance Commission has recommended initiating switchover to accrual-based accounting from the existing cash-based accounting. The Government has accepted the recommendation and has formulated a broad framework of the transition to accrual accounting, which has been spread under five stages involving a total period of 10-12 years. This article provides an overview of various issues and aspects of the desired transition to accrual-based accounting and how Chartered Accountants can assist in this process.



CA. Atanusasan Mukhopadhyay

*The author is a member of the Institute.
He can be reached at
mukhopadhyayatanusasan@icai.org*

Why Accrual Accounting in Government

Following the 12th Finance Commission's recommendation for adopting accrual-based accounting in the government in place of the existing cash-based accounting, Government of India has formulated a broad framework of transition to accrual accounting. The Central Government has accepted the recommendation of the Commission in principle, and has already started taking up necessary measures in this respect. As government functions mostly relate to social services, the accrual-based accounting system of the government will be different from that applicable to Government Business Enterprises (GBE) i.e. the Public Sector Enterprises. It is, therefore, a matter of immense importance to look forward to the various publications of the Government

Accounting Standard Advisory Board (GASAB) in this respect. In the '*Operational Framework of Accrual Basis of Accounting in Governments in India*'— a publication of the GASAB, the broad framework for transition to accrual accounting has been spread under five stages involving a total period of 10-12 years. It has been shown in the framework that when Stage-V will be reached, all expenses, revenue, assets and liabilities will be accounted for on accrual methodology. Also the contingent liability of the government shall be shown at the fifth stage.

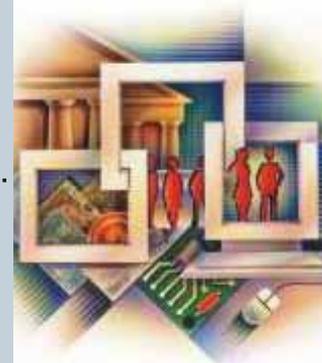
In the '*Primer on Accrual Accounting*' issued by the GASAB, it has been stated that by following the accrual system of accounting, government will be better positioned to assess their financial performance and financial position. Also, assets and liabilities of the government, fund management and evaluation of performance of various departments, estimating cost of services, etc. would be better managed by applying the accrual accounting. Government now feels that cost of resources consumed during a period needs to be linked to the revenue from output of the corresponding period. It means that one of the underlying objectives of accrual-based accounting, viz., resorting to the matching principle in accounting, is now gaining ground in the government parlance. It is also clear that government is willing to know its complete financial position through a comprehensive presentation of Assets and Liabilities. Briefly the benefits from accrual accounting as perceived by Government are – (i) Better management of receivables and payables, (ii) Better management of assets, (iii) Better management of liabilities, (iv) Better management of contingent liabilities, (v) Assessment of full cost of service delivery (vi) Assessment of fiscal sustainability of operations, and the like. GASAB has closely watched the position of government finance in international scenario. Some encouraging positive results of accrual

accounting in other countries are matters of interest in this regard. Examples of United Kingdom and New Zealand, which have benefited from accrual accounting, have been cited in the GASAB publications. As a result of adopting accrual-based accounting, United Kingdom has reportedly identified a good number of idle assets which were not being put to any gainful use while New Zealand has been able to quantify huge receivables from fines and other charges levied by various departments and could institute positive follow-up on collection.

Reporting Entities for Implementation of Accrual Accounting

The term 'government' means the Central as well as the State Governments and Union Territories with Legislature. Naturally, switchover to accrual-based double entry accounting in the case of government seemingly involves huge tasks. The point is how far down the line the process of accrual accounting will be percolated. At present, information at all Drawing and Disbursing Officer (DDO) level is captured but such information is not an integral part of the Annual Financial Statement. Annual Financial Statements are currently prepared by the Union Government, State Governments and Union Territories with Legislature. They are the reporting entities. It has been proposed in the publications of GASAB that the present boundaries of Reporting Entities need to be maintained. But since different Union Ministries may be at different levels of preparedness for implementation of accrual

In the '*Operational Framework of Accrual Basis of Accounting in Governments in India*'— a publication of the GASAB, the broad framework for transition to accrual accounting has been spread under five stages involving a total period of 10-12 years. It has been shown in the framework that when Stage-V will be reached, all expenses, revenue, assets and liabilities will be accounted for on accrual methodology. Also the contingent liability of the government shall be shown at the fifth stage.



accounting, each Union Ministry has been proposed to be treated as separate reporting entity



By following the accrual system of accounting, government will be better positioned to assess their financial performance and financial position. Also, assets and liabilities of the government, fund management and evaluation of performance of various departments, estimating cost of services, etc. would be better managed by applying the accrual accounting.

as an interim measure till such point of time when the entire central government completes the transition for switchover to accrual accounting. This will naturally hold good in the case of State Governments if not also in the case of Union Territories with Legislature.

Constitutional Formalities

Assent of the President of India is required before implementing accrual accounting in governments. Article 150 of the Constitution of India empowers the President of India to prescribe the maintenance of government accounts in the form as advised thereon by the Comptroller and Auditor General of India. The form of government accounts is cash basis as laid down in Chapter 3, Rule 21 of the Government Accounting Rules (GAR), 1990. The said Rule provides: *“With the exception of such book adjustments as may be authorized by these rules or by any general or special orders issued by the Central Government on the advice of the Comptroller and Auditor General of India, the transactions in the government accounts shall represent the actual cash receipts and disbursements during the financial year as distinguished from amounts due to or by Government during the same period.”*

Chapter 2, Rule 19 of the Government Accounting Rules (GAR), 1990, on the other hand provides: *“The accounts of government are based, in the main, on the single entry system and the double entry system will be applied only in regard to the maintenance of a set of technical accounts called the Journal, Ledger and Trial Balance Sheet. The main purpose of the Journal and Ledger is to bring out by a scientific method, the balances of accounts in regard to which government acts as a banker, or remitter or borrower or lender. Though such balances are worked out in the regular government accounts, their accuracy can be guaranteed only by a periodical verification with balances brought out in the double entry system. In the case of the Central Government, the various Accounts Officers shall prepare Ledger and summary of balances in accordance with the procedure separately prescribed*

for the purpose by the Controller General of Accounts. State Accountants General will maintain separate Journal and Ledger for all transactions of the State Government, from which the annual summary of Balances or Trial Balance Sheet is prepared by them.”

It is, therefore, imperative that before actually going in for accrual-based double entry system of accounting (it is presumed that with accrual basis of accounting, double entry system will be naturally adopted, for, without the latter the former is almost meaningless), Chapter 3, Rule 21 of the Government Accounting Rules (GAR), 1990 will be suitably amended to prescribe accrual basis of accounting. Also, in such a situation, Chapter 2, Rule 19 of the Government Accounting Rules (GAR), 1990 becomes irrelevant. However, after necessary amendments to the Government Accounting Rules (GAR), 1990, cash basis of accounting may be replaced by accrual basis of accounting. No amendment to the Constitution would be necessary as the President of India on the advice of the Comptroller and Auditor General of India can change the form of accounts under Article 150 of the Constitution.

Existing Constitutional Requirements vis-à-vis Accrual Accounting

Government accounting is based on certain legal and constitutional requirements which should not be affected by the form of accounts to be in operation – whether single entry or double entry accounting, or whether cash-based or accrual-based accounting. In terms of Articles 266 and 267 of the Constitution, government accounts are maintained in three parts, viz., (a) Consolidated Fund of India; (b) Contingency Fund of India; and (c) Public Accounts of India. These three parts have to be maintained under accrual-based accounting. Therefore, it seems appropriate to design fund-based accounting as the correct module for accrual-based double entry accounting in government. The module should be such that financial statements would be separately prepared under

each of the funds, and consolidated financial statements would also be drawn up, all the funds taken together.

Articles 112 and 202 of the Constitution of India require the depiction of (a) 'Charged' and 'Voted' expenditure, and (b) showing expenditure on 'Revenue Account' separately from 'Other expenditure' (i.e., depiction of revenue and capital expenditure) in the Annual Financial Statement.

Expenditure of Government is either 'Charged' or 'Voted' in nature. Expenditures charged on the Consolidated Fund of India do not require legislators' assent. A few examples of Charged expenditures are – (a) the emoluments and allowances of the President and other expenditure relating to his office; (b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People; (c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt; (d) (i) the salaries, allowances and pensions payable to or in respect of judges of the Supreme Court, (ii) the pensions payable to or in respect of judges of the Federal Court, (iii) the pensions payable to or in respect of judges of any High Court; (e) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor General of India (f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal and the like. Expenditures that are not charged in nature need to be passed by the legislators and they are known as voted expenditures. Charged and Voted expenditures are captured in the existing 17-digit alpha numeric expenditure code under one alphabet digit. This will not be necessary once accrual-based double

entry accounting is adopted because separate ledgers under fund-based module would easily take care of them. Similarly, Revenue and Capital expenditure would be efficiently managed in the system.

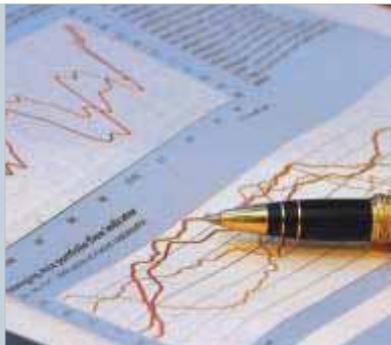
Reporting (a) Plan and (b) Non-plan expenditure is another requirement. Currently, this is done by using two alphabet digits in the 17-digit alpha numeric expenditure code. This will not be necessary once accrual-based double entry accounting is adopted. GASAB publications opine that the practice of presenting two audited annual accounts, viz., (a) 'Finance Accounts' and (b) 'Appropriation Accounts' should continue. Also, reflection of (a) 'Fiscal deficit' and (b) 'Revenue deficit' in Budget documents is necessary.

Plan of Action of Accrual Accounting

- During the five stages covering the period of 10 to 12 years, time-bound detailed Plan of Action and Action Taken Report at every stage will be of much help. For the purpose, developing a Log Frame, scheduling all activities with reference to set timelines, and checking the progress at stages with reference to the Log Frame may be a positive step. In the 'Operational Framework of Accrual Basis of Accounting in Governments in India' GASAB has specified certain steps from which the following plan of actions can be identified:
- **Studying departure required from existing system:** Through pilot study and detailed process study of various activities and accounting practices, departure required from the existing system to implement accrual accounting will require elaborate assessment.
- **Framing policies and preparing Manual:** Policies on which will the base of accrual accounting depend, need to be framed and detailed

Accounting Manual for accrual accounting needs to be prepared. The manual should cover guidelines relating to methodology for capturing information of assets and liabilities vis-à-vis preparation of open-

Switchover to accrual-based double entry accounting in the case of government, seemingly involves huge tasks. The point is how far down the line the process of accrual accounting will be percolated. At present, information at all Drawing and Disbursing Officer (DDO) level is captured but such information is not an integral part of the Annual Financial Statement.



ing Balance Sheet, procedure for recording day-to-day transaction entries, and steps for



It seems appropriate to design fund-based accounting as the correct module for accrual-based double entry accounting in government. The module should be such that financial statements would be separately prepared under each of the funds, and consolidated financial statements would also be drawn up, all the funds taken together.

finalisation of accounts at various reporting entities. Since reporting entities will be quite high in number, a generic specification of the manual may be prepared as a common set of guidelines, and various Task Forces to be set up for individual Reporting Entities may re-orient or customize the same in accordance with the constitution of each reporting entity.

- **Training Modules:** Training modules covering both initial as well as repeat training should be designed.
- **Capacity Building:** Capacity building of the personnel, who would be associated with the relevant tasks, should be given utmost importance and detailed plan in this regard needs to be formulated.
- **Help Desks:** Once the operations under accrual accounting commence, uninterrupted activities will be essential. In order to ensure uninterrupted functions, opening Help Desks at various points would be a positive step. This should be given due consideration beforehand.
- **Drawing up opening Balance Sheet:** Capturing information relating to assets will involve physical identification and listing of assets and registering them at relevant assets registers initially at historical costs to be ascertained through direct or some acceptable indirect methods. The process of verification and counter verification may then follow. Later, finally the assets under different captions may be shown in Schedules forming part of the Balance Sheet. A similar exercise should be followed for funds and liabilities as well. After all the assets and liabilities are taken into account, the assets and liabilities should be incorporated in a user-friendly transparent format of Balance Sheet providing scope for accurate depiction of complete financial position. The date of first balance sheets may be different for different reporting entities as would be notified by the competent authori-

ties. This is quite natural as the period of transition is not the same for all reporting entities. As to the format of balance sheet, it is better to design a vertical form of balance sheet in order to exhibit Sources of Funds and Application of Funds. Non-liquidity of assets should be a better criterion for marshalling of the balance sheet of the Government. There should be a clear demarcation between Current and Non-current periods of assets and liabilities which would require separate captions for Current and Non-current Assets and Current and Non-current Liabilities.

- **Codification and Chart of accounts:** The objective behind designing Codification structure and Chart of Accounts is to ensure uniformity in accounting operations at entire DDO level across the country and to facilitate use of computer and generating various MIS reports. For accommodating accrual elements, GASAB has recommended a minimalist approach to changes in existing classification structure of codification. The present structure of codification of accounts, as prescribed by C&AG and uniformly applicable in government establishments across the country, is alpha-numeric with 17 digits for Payments plus additional two digits for accommodating sub-detailed heads under the relevant detailed heads. The present structure contains four digits for Major Head, two digits for Sub-major-Head, three digits for Minor Head, two alphabetical digits for Plan Status, three digits for Sub-head, one alphabet digit for showing Charged/Voted expenditure, and two digits for Detailed Head. Two additional digits for sub-detailed heads may be used wherever applicable. In the case of Receipts, two alphabetical digits for showing Plan Status and one alphabet digit for showing Charged/Voted expenditure are not applicable. Thus, Receipt codes have 14 digits. In the above codification structure, Major Head denotes

Function, Sub-major-Head denotes Division with function, Minor Head denotes Programme, Sub-head and Detailed Head denote Name of Scheme and Object of Expenditure respectively.

However, for maintenance of accounts in three parts (as per Articles 266 and 267) viz., (a) *Consolidated Fund of India*, (b) *Contingency Fund of India*, and (c) *Public Accounts of India*, Fund-based Accounting will be necessary with scope for overall consolidation. This may be ensured by adding four-digit Fund code – Major Fund 2 digit, and Minor Fund 2 digit, as prescribed in the *National Municipal Accounting Manual* published under the aegis of the Union Ministry of Urban Development.

- **Developing a new IT system and suitable Accounting Software:** Since accounting information has to be captured from down the line accounting offices, combining all such accounts and consolidation at different levels would be necessary through a uniform system, and the process would go up to the highest level. In fact, the success of the accrual system of accounting will mostly depend on the efficiency of the IT system that will be in position and the software that will be used.
- **Pilot implementation at select reporting entities:** It has been clarified well in the publications of GASAB that all reporting entities are not on equal footing and equal readiness to implement accrual accounting. Pilot implementation in certain select points is, therefore, the feasible start-up venture. The positive results of the pilot entities can be replicated in other reporting entities.
- **Full implementation:** If policy framing, training, codification structure etc. are completed beforehand, drawing up opening balance sheet and accounting under new method should go hand in hand to prove the period of transition realistic.

A cut off date of effect for migration to accrual accounting should be fixed for each reporting entity with effect from which recording of transaction entries in the new method should invariably be started even if

preparation of opening balance sheet remains partially pending. The idea is that the opening entry input at a later date in the system, which has already begun recording of day-to-day transactions on real-time basis, will immediately update the system.

Is Cent Per Cent Accrual Realistic?

In the broad framework for transition to accrual accounting designed by GASAB, all items of Expenses, Revenues, Assets, Liabilities, and Contingent Liabilities have been proposed to be gradually brought under the domain of accrual accounting. The question is how far this will be realistic. Inherently, accrual accounting means a conservative approach, i.e., an approach which does not encourage any estimation or assumption which has no solid foundation. Accrual accounting may thus come out to be a measure of efficiency.



A better and more realistic approach would, therefore, be – Accrual accounting from the holistic view in respect of each reporting entity, and ascertaining certain individual items on cash basis in order to be more down-to-earth. Adopting modified accrual approach rather than cent per cent accrual is thus a better option.

This efficiency measurement may, however, get frustrated if certain individual items for which cash-based approach seems to be more appropriate, are accounted for on accrual basis. A better and more realistic approach would, therefore, be – Accrual accounting from the holistic view in respect of each reporting entity, and ascertaining certain individual items on cash basis in order to be more down-to-earth. Adopting modified accrual approach rather than cent per cent accrual is thus a better option. The separate task forces to be set up for different reporting entities will be required to look into this matter.

Capturing Assets Before Drawing Up Opening Balance Sheet

In November 2008, GASAB has issued an Accrual Exposure Draft (AED) 2 on Property, Plant and Equipment. Assets will come under the

Many items of assets peculiar to different reporting entities may warrant special dealing as to how they should be registered, valued and accounted for. It is expected that separate task forces, to be set up for each of such important reporting entities, will settle such specific matters peculiar to different situations.



definition of Property, Plant and Equipment, if they enable an entity to derive future economic benefits or service potential from related assets. At the stage of preparation of opening balance sheet, assets coming under Property, Plant and Equipment would be valued at historical costs. The assets shall be shown at historical cost less accumulated depreciation/impairment losses. If the assets are acquired through non-exchange transactions, the costs shall be the fair value. If determination of fair value is difficult due to first time recognition, nominal value of Re 1/- would be applicable. Where cost and date of purchase/construction are ascertainable – these will be the bases for cost, depreciation, and carrying value of assets. Where cost cannot be known but date of purchase/construction is ascertainable, and asset has outlived its estimated life as evaluated by qualified Engineer, Value is Re 1/-. If neither cost nor date of purchase is available, value will be Re 1/-.

On the above bases, some of the items of Assets would be considered in the following manner for the purpose of opening balance sheet:

Land:

- Under land register will be included all vacant lands, lands related to any building of any nature, lands on which some infrastructure assets such as roads, bridges, culverts, flyovers, water reservoirs, parks and playgrounds etc. are built. Valuation of land is the cost of land plus registration charges and stamp duty plus cost of developing land, cost of filling of land etc., when acquired through purchase.
- When acquired through any other mode (gifted, donated etc. free of cost), valuation shall be Re 1/- plus all the above applicable incidental expenditure.
- For land acquired through compulsory acquisition, value will be equivalent to the compensation amount.

Building:

- In the case of purchased building, stamp duty/registration charges and other incidental

expenses shall be added to the cost of building.

- In case of buildings acquired through any other mode, incidental expenditures shall be added to Re 1/-.
- If cost is not available but the date of construction/ purchase is available and the building has not outlived its useful life, value will be put on the basis of per sq. ft. rate or plinth area as on the date of changeover less accumulated depreciation for the relevant years.
- If standard plinth area or per sq. ft. rate is not available, recent replacement cost deflated till the year of construction based on wholesale price index less depreciation, will be the value.

Heritage Assets:

- All Heritage Assets meeting the definition of Property, Plant and Equipment, would be shown at the original cost.
- Original cost of the Heritage Assets shall continue to remain as such without any depreciation being applicable.
- Heritage Assets that do not meet the definition of Property, Plant and Equipment, would be shown at the nominal value of Re 1/-.

Infrastructure Assets:

- Infrastructure Assets meet the definition of Property, Plant and Equipment, and hence would be shown at the original cost.
- They are part of a system or network; they have no alternative uses; they are immovable.
- Road networks, bridges, culverts, subways, causeways, underpass, sewer systems, water and power supply systems, communication networks etc. are examples of Infrastructure assets.

Some other important items of Fixed Assets as following, will naturally meet the definition of Property, Plant and Equipment, and would be considered on the aforesaid bases:

- **Plant & Machinery** which will include conservancy or watering carts, road rollers, earth moving vehicles, ladder, scale weights, water treatment plants, sewerage treatment plants,

- etc.
- **Vehicles** which will include carts, hand rickshaws, animal drawn carts, three/four wheelers, conservancy vehicles, etc.
 - **Office and other equipment** which will include computers, photocopiers, telephone, fax machine, fans, electrical equipment, air conditioners etc.
 - **Furniture and Fixture:** As generally known.
 - **Capital works in progress (CWIP)** are to be valued on the basis of bills raised, covering the period till the date of opening balance sheet. Borrowing cost for CWIP would be capitalised. No maintenance expenses and depreciation are applicable to CWIP. As soon as any item of assets is commissioned and put to use, the same should be taken out of CWIP and booked under proper assets account.

Assets Not Dealt With in AED on Property, Plant and Equipment

-Sensitive and certain other Assets: Sensitive Assets, which obviously meet the definition of Property, Plant and Equipment, may not be shown at such details – both in physical quantity/volume as well as in value, as in the case of other items of assets, as for example – Assets belonging to Defence/Para-military/Police forces, every detail of which cannot be made public for the sake of security of the country/ threats from terrorist activities, etc.

-Growing Assets belonging to Forest department, specially valuable trees, earmarked from the very beginning for sale on auction, may have peculiarity in that they grow both in physical volume as well as in monetary worth.

Likewise, many other items of assets peculiar to different reporting entities may warrant special dealing as to how they should be registered, valued and accounted for. It is expected that

separate task forces, to be set up for each of such important reporting entities, will settle such specific matters peculiar to different situations.

Implementation of Accrual Accounting

Once the preliminary steps are taken, such as studying departure required from existing system, framing policies and preparation of detailed accounting manual, designing modules for training and capacity building of the personnel, and the like, implementation of accrual accounting will thereafter pass through three major stages. These are – (i) drafting opening balance sheet, (ii) authentication and certification of the opening balance sheet, and (iii) regular recording of transaction entries as a routine operation. Of these three operations, regular recording of transaction entries is strictly an in-house operation. The remaining two, however, may be partially outsourced because of dearth of professional hands in the government offices.

- Drafting Opening Balance Sheet: The Representatives of C&AG cannot actively take part in drawing up opening balance sheets of different reporting entities because of C&AG's quasi-judicial role as statutory auditor of the governments. On the other hand, not all the reporting entities are professionally equipped to handle the situation both in central and state government levels as well as in the union territories. The personnel of governments involved in keeping accounts are more conversant with the cash-based single entry system of accounting, and thus engagement of external agency while implementing accrual-based double entry accounting may not be out of place.

- Authentication and certification of OBS: Definitely C&AG's men may take up this task. However, certification of each opening balance sheet will mean certification of balance sheet in its entirety even if based on cent per cent verification



The competence of Chartered Accountants in relation to accrual-based double entry accounting does not require any explanation. The fact is that if Chartered Accountants are called upon to manage accrual-based double entry accounting in the government environment, they need to have necessary skill beforehand which will require them to know the basic features of government accounting and budgeting practices, Finance and Accounting Rules, Regulations, and to have some concept on the relevant Articles of the Constitution of India.



of representative samples. C&AG's statutory audit conducted in government departments is generally the audit of a certain percentage of the transactions. The major reason for that is the insufficient number of C&AG's men in comparison to the workload. In view of this, it is unlikely that the certification of opening balance will be comprehensively managed by C&AG's officers. Engagement of external agency is, therefore, a possible solution in this field also.

- How far CAs can assist the Government in these functions? The competence of Chartered Accountants in relation to accrual-based double entry accounting does not require any explanation. It is, however, worthwhile to note that the practices of government finance, accounting, budgeting and the ancillary matters are in a way exacting, and quite different from that obtaining in the corporate environment. Not many Chartered Accountants happen to come across these procedures. The fact is that if Chartered Accountants are called upon to manage accrual-based double entry accounting in the government environment, they need to have necessary skill beforehand which will require them to know the basic features of government accounting and budgeting practices, Finance and Accounting Rules, Regulations, and to have some concept on the relevant Articles of the Constitution of India. A Chartered Accountant's knowledge and expertise in the field of mercantile accounting in corporate environment, coupled with built-in knowledge in government finance, accounting, budgeting and the ancillary matters, would make a perfect combination of the required skills in this regard.

Reading of the following Rules and Manuals and following portions of the Constitution of India may help a Chartered Accountant to prove his worth in this area:

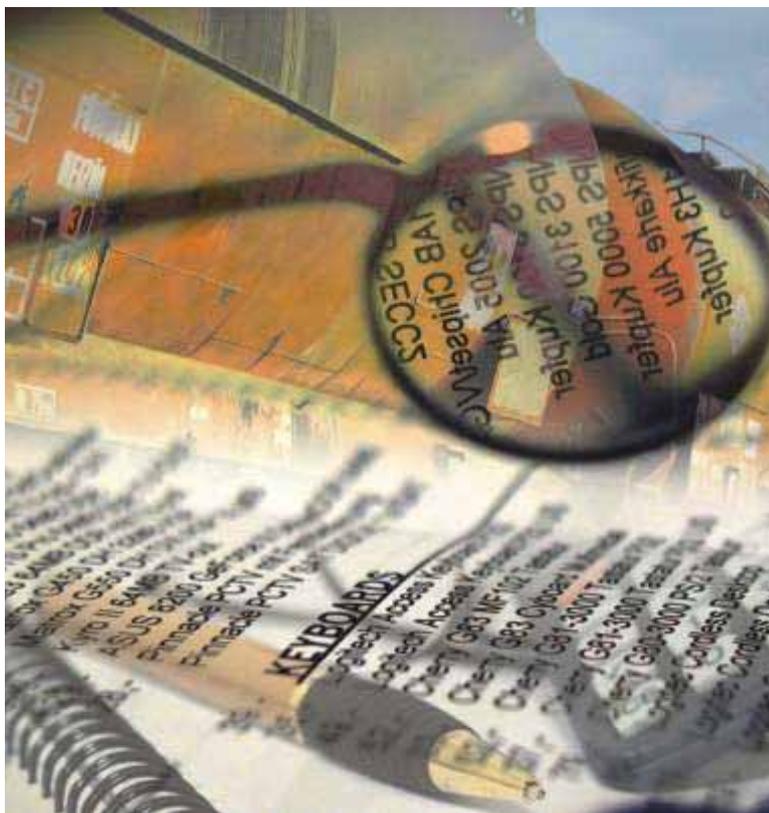
(i) *Central Government Accounts (Receipts and Payments) Rules, 1983;*

- (ii) *Central Government Compilation of General Financial Rules (Revised Edition 2005);*
- (iii) *Government Accounting Rules 1990 ;*
- (iv) *Articles 148 to 151 (Part V), Articles 198 to 209 (Part VI), Articles 264 to 293 (Part XII) of the Constitution of India*

Note: In the course of one's reading the above, it is strongly recommended that one should give special focus on, and attempt to make oneself conversant with:-

- (a) An overall idea on Appropriation Accounts and Finance Accounts (The Finance Accounts and the Appropriation Accounts of the Union Government, annually prepared by the Controller General of Accounts, are presented before the Parliament after their statutory audit by the Comptroller and Auditor General of India. The cycle of budgetary process is completed through submission of Appropriation Accounts to Parliament. Through Appropriation Accounts, Parliament is informed about the expenditure incurred against the appropriations made by the Parliament in the previous financial year. All the expenditures are duly audited and excesses or savings in the expenditure are explained. The Finance Accounts show the details of receipts and expenditure for all the three funds in the form of various statements, including liabilities of the government such as guarantees etc. and loans given to states, union territories and public sector undertakings);
- (b) The principles of Government Budgeting in India – Budget formulation and implementation;
- (c) Treasury Operations;
- (d) Compilation of Departmental Accounts; and Codification structure followed in Government Accounting.

Tax Exemptions in GST — Principles and Practices



Extensive use of tax incentives, apart from reducing the availability of resources required in funding essential public sector activities, complicates tax administration, facilitates evasion, encourages corruption, increases litigation and makes the tax system inefficient. The tax exemptions encourage rent seeking and provide scope for lobbying and special interest groups. This article analyses the principles and practices vis-à-vis exemptions in Goods and Service Tax.



R. Sekar

The author is Commissioner of Customs, Pune. He can be reached at jstru.sekar@gmail.com

Universe and life in Universe often do not conform to a linear mathematical model. In spite of best intention and efforts, it is difficult to design a perfect tax system which is universally applicable for all times to come. Ability to adapt to changing realities is critical for a tax system to sustain and be relevant. Tax Policy and Tax Administration are no exception and do require to move with time and place reflecting the social, economic, cultural and political realities.

Tax on consumption of goods and services on value added basis known as Value Added Tax (VAT) or Goods and Service Tax (GST) has been emerging as tax of the future. In an increasingly globalised and competitive environment, direct taxes are being reduced and the current global trend is to derive higher proportion of revenue from indirect taxes.

VAT is an indirect tax on consumption of goods and services, covering

VAT is the best form of general consumption tax. However, equity and distributional effects of VAT and its potentially distorting economic effects are matters of debate. There is also a view that VAT is a regressive tax. There is, therefore, a strong reason to introduce measures which will protect the poor when implementing GST.



every single commercial transaction and recovered at each stage of value addition until one reaches the final consumer. It is distinct from turnover tax. VAT catches all manner of transactions and the word supply indicates any output. The scope of supply is more than sales. In VAT, it is of no consequence as to whether the supplier is a manufacturer, wholesaler or a retailer, supplying goods and services or acting as principle or as agent. VAT is charged down the chain of distribution until reaching a consumer who is not registered for VAT.

Under VAT, tax is imposed and collected at each stage of value addition in the course of production and distribution of goods and services. Tax imposed and paid on input goods and input services are reclaimed as input credit and the total tax liability at each stage is calculated after granting input tax credit. Generally, a registered person can claim credit for input VAT on goods and services purchased and used in connection with the taxable outputs. Claims of input tax credit reduce tax liability. Tax base is effectively limited to each stage of value addition. VAT secures revenue by being collected throughout the process of production – distribution without distorting production decision.

VAT is generally required to be paid by the supplier of goods and services. However, it is the consumer who ultimately bears the burden of VAT as part of the consumer price. Supplier merely acts as an agent to collect the tax from the consumer and deposits the amount with the government. VAT being a tax on consumption of goods and services, VAT paid at intermediate stages are only passed through transactions. However, differentiating taxes as direct and indirect based on the person who bears the burden of the tax is debatable since burden of a direct tax like Income Tax may also be shifted to consumers.

Fiscal and Monetary Policies are tools available with government to achieve socio-economic and political objectives. Challenge before any government is to balance growth with development and equity. Policy on economic growth

should appropriately factor the distributional-objective of reducing disparity, known as inclusive growth. Growth with equity is the foundation of democratic system.

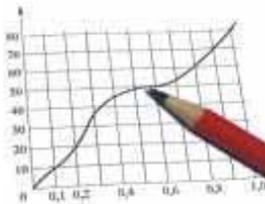
VAT is the best form of general consumption tax. However, equity and distributional effects of VAT and its potentially distorting economic effects are matters of debate. There is also a view that VAT is a regressive tax. There is, therefore, a strong reason to introduce measures which will protect the poor when implementing GST. Though VAT is accepted as an efficient and simple method to tax goods and services and raise revenue, the issue of equity and consequent impact on maintaining political equilibrium while designing VAT cannot be ignored. Re-distributional effect of tax policies, especially in the context of globalization and liberalization, acquires more importance when designing a politically acceptable tax system. Tax policy cannot ignore historical realities.

Taxation and Spending reflected in the Revenue and Expenditure Budgets of the Government are two dimensions of the Fiscal Policy. Re-distributing income through expenditure is directly used to reduce disparity. Primary objective of tax policy is to mobilize resources without affecting efficiency and competitiveness. However, policy makers do need to appropriately factor the distributional aspects so that the burden of taxation is distributed in a fair and just way. Empirical evidences support the view that the most efficient way to reduce income inequality over the long term is to increase public investment on the human capital of the poor and making available the public goods and services to the needy.

Unlike Income tax, consumption taxes encourage savings which is critical for developing and transitional economies.

Forms of VAT differ in different countries depending upon the varieties of objectives to be achieved and their priority. Needs and concerns of developing and transitional economies may not be similar with that of developed economies. Though features like single rate with no exemptions, zero-

rating instead of exemptions, immediate refund of unutilized credit are considered as desirable characteristics of an ideal VAT design, these may not be possible or desirable in the



Exemptions are derogations to main principles and reduce the tax base. Primary causality of tax exemptions is simplicity. Exemptions inevitably make tax laws and tax administration complex and provides scope for avoidance and litigation. Tax exemptions lead to net revenue loss to government, increase in compliance cost to business and increase in administrative cost to tax administration.

context of a particular country or particular time, for political and practical reasons. Some of the bad features may be inevitable for successful adoption in the first place. It depends a lot on the ability to make difficult choices. Political considerations influence most tax policy decisions. VAT design needs to be consistent with the objective to sustain the political equilibrium and to balance equity, efficiency and sustainability in the fiscal sphere.

Though single rate is considered as ideal and widely recommended, it is only Denmark in European Union that follows single rate. Deviation between standard and weighted average VAT rate in the European Union varies in percentage terms between 0% in Denmark and 32% in Spain. Exemptions vary even more widely from country to country. Even in Denmark where there is one rate, exemptions are provided including passenger's transport.

VAT is widely followed in developed and developing countries and it is a major and buoyant source of governments' revenue. VAT with broad base and uniform rate is neutral to transactions and does not interfere with patterns of production and consumption. Non-uniform rates and extensive exemptions affect the neutrality of tax incidence, distort patterns of consumptions as well as production and distribution and complicate the tax structure.

Exemptions are derogations to main principles and reduce the tax base. Special treatment is granted by exempting particular categories of goods and services. Primary causality of tax exemptions is simplicity. Exemptions inevitably make tax laws and tax administration complex and provides scope for avoidance and litigation. Direct consequences of tax exemptions are,—

- net revenue loss to government.
- increase in compliance cost to business
- increase in administrative cost to tax administration. Invisible consequences of tax exemptions, often adverse, are many.

Appearances could be deceptive. What seems obvious may be different from what is real. Form may not necessarily reflect the substance. Tax exemptions, especially mid-stream tax exemptions, apart from making the tax system complex also result into unintended and adverse tax consequences.

There are two types of tax exemptions.

- Exemptions without the right to deduction of tax paid on inputs.
- Exemptions with the right of deduction of tax paid on inputs, known as zero-rating.

It is necessary to standardize exemptions in order to achieve a common basis of assessment. Certain exemptions are required in the public interest e.g. Medical and Educational services. Certain exemptions are provided on the reasoning that the supplies are made almost exclusively by Public Authorities.

Governments have been increasingly moving away from business activities. Consequently, supplies which are traditionally provided only by public authorities, are increasingly being provided by non-public operators within a competitive environment. Taxing a supply provided by private operators but exempting the same supply if provided by public authorities create distortions of competition. Principle of fiscal neutrality requires treating supplies which are in competition with each other in the same way irrespective of the status of the supplier. Status of the supplier should not be the criteria to determine the tax consequences of a transaction.

In certain cases, exemption may give rise to



distortion of competition not immediately but in the future. This effectively prevents private operators from providing such supplies in future and such cases cannot be merely treated as hypothetical possibility. Exemptions based on the status of the service provider by itself give rise to distortion of competition, either immediately or in the future. If governmental units make sales of goods and services, there is no general justification in exclusion from tax simply because the vendor is a governmental unit. Specific justifications for the exemption need to be provided.

Exempted goods and services suffer taxes paid on domestic inputs (VAT) and imported inputs (CVD). Exemption results into denial of credit of VAT and countervailing duty (CVD) paid on inputs used in the exempt outputs. Suppliers of outputs cannot recover input taxes which relate to exempt outputs and hence cannot pass the input tax to customers. Exemptions for products used at intermediate stages of production or distribution result into break in the tax credit chain and result into cascading effect and multiple taxation. Midstream exemptions have the effect of increasing the consumer prices and the VAT revenue.

To avoid tax on inputs, there will be tendency to provide inputs in-house instead of purchasing from other suppliers. Exemptions to intermediate goods used in the production of final consumption goods, thus, provide incentive towards vertical integration. This will affect especially small and medium level suppliers of intermediate goods and services.

A midstream exemption under a credit-invoice system of VAT is harmful to business. Grant of exemption for domestic supply complicates the tax system. Apart from increasing the consumer prices and administrative and compliance costs, exemption leads to adverse consequences on trade and industries. Exemption to final consumption products may have impact on retail prices.

Problem becomes more acute wherein a business provides both taxable and exempt supplies. In order to deny credit of input taxes on

purchases attributable to exempt activity, a business needs to either maintain separate accounts or to allocate the common credit between taxable and exempt supplies.

Output is not taxable on exempt supplies. A person who is making exempt supplies cannot charge any output tax from his customers and not being a taxable person cannot be registered. At the same time he cannot also recover the input tax he incurred which is related to those exempt supplies. Input tax, which cannot be claimed, because it relates to an exempt supply, is known as "exempt input tax".

A registered business which makes both taxable and exempt supplies cannot charge VAT on the exempt supplies and also cannot claim VAT incurred on inputs used for exempt supplies. If a business is not fully taxable, it cannot recover all its input tax. It is, therefore, necessary to determine how much of the input tax incurred cannot be reclaimed. Input credit is not available for goods and services used exclusively in making exempt supplies. This is known as direct attribution. In respect of input taxes used both for taxable and exempt supplies, residual input tax needs to be apportioned to determine how much is attributable to exempt supply. The percentage of residual input tax attributable to exempt supplies is calculated as follows:

$$\frac{\text{Value of exempt supplies (excluding VAT)}}{\text{Value of all supplies (excluding VAT)}} \times 100$$

For the purpose of this calculation, value related to capital goods shall be excluded.

Partial exemption occurs when a business has both exempt and taxable outputs. VAT, which relates to exempt outputs known as "exempt input tax", is required to be disallowed. The main principles to compute "exempt input tax" are relatively straightforward but applying them in practice is much more complicated because of the infinite variety of situations. There are two methods to calculate exempt input tax

- Standard method.
- Special method.

Stage one is to determine input tax which are

Cascading effect is one of the major adverse consequences of mid-stream tax exemption. Exempt seller cannot issue a tax invoice. Purchaser cannot claim any input credit on such purchases. Embedded taxes become part of the price and will be subject to VAT again. The purchaser shifts the embedded tax as cost and passes on to the customers in the form of higher prices.



Exempt entity that is denied credit of VAT on inputs used in its exempt business activities may attempt to avoid tax on some purchases by providing them in-house rather than purchasing them from outside taxable suppliers. To prevent such incentive towards vertical integration, some countries treat certain self-supplies by exempt entities or organisations as taxable supplies to themselves, notwithstanding the general exemption from VAT on their outputs.



directly attributable to exempt supplies. Stage two is to apportion residual tax using either the Standard method or the Special method. The Standard method apportions the residual tax to exempt outputs in the ratio of value of exempt outputs to total outputs. This method presumes that there is a direct and proportionate relationship between the VAT paid on inputs and the value of the output. Though this method has the virtue of relative simplicity, it may distort the recovery of input tax in favour of or against the supplier in large number of cases. If the transaction is not understood appropriately, the ratio could be potentially dangerous. There may not necessarily be a direct relationship between output value and the input tax incurred for the output. Supplier need not necessarily use Standard method but can apply Special method for apportioning the residual tax. If the Department is of the opinion that the Standard method is distortive and they cannot agree with the Special method suggested by the supplier, Department has got the right to suggest a Special method. Depending upon the business, different criteria are adopted to arrive at Special method.

Certain exemptions do not depend upon the kind of goods and services provided by the supplier but depend upon the nature of the entity. Such exemptions are known as "Entity exemptions". Entity exemptions under VAT are of two types. The first type is exemption provided to small businesses based on the annual sales that are below the exemption threshold limit prescribed. Businesses availing small business exemption generally are not registered and also do not claim input credit of tax on their taxable purchases. Goods and services purchased by customers from the suppliers who avail small business exemption are also denied any VAT benefit.

The second type is exemption provided for all sales or particular sales made by an entity because of the nature of the entity e.g. Insurance premium supplied by specific insurance companies.

Exemption based on the nature of the seller is generally provided to government and other specific non-profit organizations. These entities being the supplier of exempt outputs, are outside the VAT system, but these entities are still required to pay tax on inputs and imports.

Exempt entity that is denied credit of VAT on inputs used in its exempt business activities may attempt to avoid tax on some purchases by providing them in-house rather than purchasing them from outside taxable suppliers. To prevent such incentive towards vertical integration, some countries treat certain self-supplies by exempt entities or organizations as taxable supplies to themselves, notwithstanding the general exemption from VAT on their outputs.

Zero-rating is a mechanism in VAT system to completely neutralize taxes from a particular transaction. A supplier of zero-rated transaction does not charge VAT on the supply. Still such supplies are classified as taxable supply but subject to zero rate. Unlike exempt supplies, the supplier of zero-rated supplies is entitled to recover input credit on the taxable purchases attributable to the supply. Exports of goods are generally zero-rated. Under the destination principle, services consumed outside the taxing country are zero-rated and gets taxed in the country of consumption. It is felt desirable to zero-rate only exports though some countries do zero-rate certain otherwise taxable domestic transactions.

Cascading effect is one of the major adverse consequences of mid-stream tax exemption. Exempt seller cannot issue a tax invoice. Purchaser cannot claim any input credit on such purchases. Embedded taxes become part of the price and will be subject to VAT again. The purchaser shifts the embedded tax as cost and passes on to the customers in the form of higher prices.

Exemption granted under the credit-invoice VAT at intermediate stage of production or distribution may increase the price paid by the

TAXATION

final consumer as compared to a situation where these exemptions are not provided. Following

examples illustrate the effect of mid-stream exemptions.

Table I. VAT rate is assumed at 10% *ad valorem*

Amount in Rupees

Supplier	Inputs			Value addition	Sale Price			VAT liability on output		
	Purchase Value	VAT paid	Total		Value	VAT payable	Total	Through Input Credit	On Value Addition	Total
A	1000	100	1100	500	1500	150	1650	100	50	150
B	1500	150	1650	1000	2500	250	2750	150	100	250
C	2500	250	2750	1500	4000	400	4400	250	150	400
D	4000	400	4400	500	4500	450	4950	400	50	450
Total				3500					350	

Final price to consumer Rs. 4950/-, VAT paid on value addition Rs. 350/-

Table II. Assessee B is the exempt supplier.

Amount in Rupees

Supplier	Inputs			Value addition	Sale Price			Tax Paid		
	Purchase Value	VAT paid	Total		Value	VAT payable	Total	Through Input Credit	On Value Addition	Total
A	1000	100	1100	500	1500	150	1650	100	50	150
B	1500	150	1650	1000	2750	-	2750	-	-	-
C	2750	-	2750	1500	4250	425	4675	-	425	425
D	4250	425	4675	500	4750	475	5225	425	50	475
Total				3500					625	

Final price to consumer Rs. 5225/-, VAT paid on value addition Rs. 625/-

Table III. Assessee C is the exempt supplier.

Amount in Rupees

Supplier	Inputs			Value addition	Sale Price			Tax Paid		
	Purchase Value	VAT paid	Total		Value	VAT payable	Total	Through Input Credit	On Value Addition	Total
A	1000	100	1100	500	1500	150	1650	100	50	150
B	1500	150	1650	1000	2500	250	2750	150	100	250
C	2500	250	2750	1500	4400	-	4400	-	-	-
D	4400	-	4400	500	4900	490	5390	-	490	490
Total				3500					640	

Final price to consumer Rs. 5390/-, VAT paid on value addition Rs. 640/-

It may be seen that VAT paid on value addition when there is no exemption is Rs. 350/- and whereas VAT paid on the same value addition is Rs. 625/- when B's supply is exempt and Rs. 640/- when

C's supply is exempt. Consequently consumer prices for the same product in these three situations are Rs. 4,950/-, Rs. 5,225/- and Rs. 5,390/- respectively. Variation is on account of break in

Tax system should reduce the operating cost in the formal sector and increase the operating cost in the informal sector. Exemptions may discourage formalization of the economy. Despite continuing popularity and demand for exemptions, tax incentives through exemptions prove to be ineffective. They reduce revenue and complicate the fiscal system without achieving the stated objectives.



credit chain which results into cascading effect.

Retail stage exemption reduces revenue but there is a possibility for reduction in the retail prices in such cases. Although exemptions on retail sales may be expected to reduce prices to the consumers and VAT revenue to the Government, exemptions granted in the middle of the production and distribution chain actually increase the consumer prices and also VAT revenue over the amounts that would occur if those mid-stream sales are taxable.

When goods are exempt from VAT, countervailing duty (CVD) is not imposed on similar goods imported. Tax on imported goods being totally neutralized in the exporting country, imported goods without CVD have clear competitive advantage over similar domestically produced goods. Exemption thus becomes injurious to domestic producers.

In principle, a more inclusive tax base combined with targeted subsidy to the consumption basket of the poor would be a desirable option. If that is not possible, it may be better to supply such items at a reduced rate rather than to exempt them completely. However, for administrative and other practical considerations in certain cases it may be justifiable to exclude these items which constitute major consumption expenditures of the poor.

Tax system should reduce the operating cost in the formal sector and increase the operating cost in the informal sector. Exemptions may discourage formalization of the economy. Despite continuing popularity and demand for exemptions, tax incentives through exemptions prove to

be ineffective. They reduce revenue and complicate the fiscal system without achieving the stated objectives. Simple tax system encourages people to come to formal sector from informal sector. A complex tax system has got inbuilt tendency to discourage entrepreneurs to move towards formal tax system. Experiences show that loading more and more objectives on a tax system through incentives, however well meaning they are, do not achieve the desired objectives.

Extensive use of tax incentives, apart from reducing the availability of resources required in funding essential public sector activities, complicates tax administration, facilitates evasion, encourages corruption, increases litigation and makes the tax system inefficient. Experiences clearly prove that tax exemptions encourage rent-seeking and provide scope for lobbying and special interest groups. Though the world is full of opportunities, seizing and encashing the opportunities is in one's own hand. Growing may not be a painless process. Difficult decisions are to be taken to secure our future. World be-longs to

the strong and not the meek. India has to continue the journey with pride and confidence. We have to be an active player in creating the future instead of being a spectator in watching it happen.

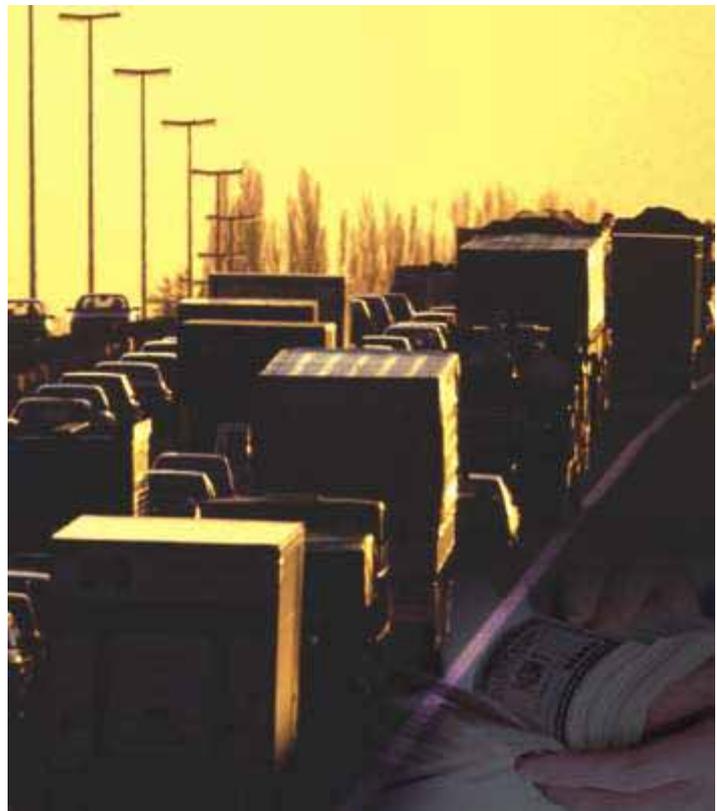
“Destiny is not matter of chance.
It is a matter of choice.
It is a not thing to be waited for,
It is a thing to be achieved”

– William Jennings Bryan



Goods and Service Tax: Tax Compliance and Level Playing Field

The next revolutionary reform in indirect taxes will be in the form of Goods and Service Tax, which will not only integrate Goods and Services tax structure but also integrate tax structures of Government of India and State Governments, with a fresh look at tax exemptions and rate structure. In this regard, good governance will play more vital role in increasing tax compliance and will yield better revenue. Providing level playing field is an important factor in good governance. This article deals with various aspects of level playing field in tax compliance.



CA. C. M. Bachhawat

The author is a member of the Institute.

*He can be reached at
cmbachhawat@icai.org*

Objectives of Taxation Policy

Non-compliance of taxation laws and sub-optimal realisation of the benchmark tax revenue, with reference to the provisions of the tax laws and the prevailing tax rates, have engaged the maximum attention of the government. Majority of the improvements in the taxation laws, organisational set-up and tax monitoring systems have been effected with an aim to remove various deficiencies.

The objective of any taxation policy and structure should be, first, that trade and industry, particularly small business units, should be able to comply with the provisions of tax laws with the least of time and money cost. The taxation laws need to be simple and unambiguous and the nature of records to be maintained, returns to be submitted, in terms of the contents and periodicity, should be commensurate with the size and

complexities of the business units. Secondly, the taxation rates should not be prohibitive. These two factors are considered to be the most important in inducing tax compliance.

Single point tax system, whether at the first point or the last point was considered an inefficient way of taxation because it led to huge tax evasions, very high rates of tax, multiplicity of tax rates and huge number of disputes. Major historic step in this regard was adoption of Value Added Tax (VAT) system, which mainly brought about two rate structure, transparency in VAT realised by the dealers, removal of the cascading effect of local sales tax, widening of tax base etc. The next revolutionary reform in indirect taxes will be in the form of Goods and Service Tax (GST), which will not only integrate Goods and Services tax structure but also integrate tax structures of

'doctrine of promissory estoppel', provisions for advance ruling, right to information, various other provisions for simplification of law such as deemed assessments, time-barred assessments and appeals, proper authority and home-work before carrying out enforcements on the business premises, have been developed with an aim to improve the governance. The area of operation of these tools is likely to increase further in the interest of accountable and transparent governance. The Supreme Court of India has also emphasised the same when it stated that consistency in interpretation of law alone can lead to public confidence in the system (*SI Rooplal & Another vs L.G. of New Delhi* – AIR 2000 594 SC), where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed

'Level playing field' would essentially mean providing equal economic and regulatory framework to the trade and industry so that market forces may determine the performance of the business units. Thus, success of any business unit would depend upon economic, technical and managerial efficiencies such as production, finance, marketing, after-sales service, innovations, etc.



Government of India and State Governments, with a fresh look at tax exemptions and rate structure.

Good Governance and Level Playing Field

Simple tax laws and low tax rates are very important factors in increasing tax compliance. However, good governance plays more vital role in increasing tax compliance and yields better revenue. Good governance would include designing simple rational taxation laws, efficient administration of the tax laws as well as optimum utilisation of the tax and other revenues of the government. Broadly speaking, good governance encompasses accountability, transparency and consistency in interpretation of the provisions of law and its enforcement, stability in the administration, easy access to stakeholders, participation of stake holders, rule of law, capacity & competence. Providing level playing field is an important factor in good governance since many of the attributes are common in the concepts of level playing field and good governance.

In fact, some of the judicial and legal tools such as principles of '*res judicata*' and prospective ruling,

that position to be sustained by not challenging the order. As such, it would not be at all appropriate to allow the position to be changed in a subsequent year (*Radhasoami Satsang vs CIT (1992) 193 ITR 321 (SC)*). It has also been observed that the revenue authorities should normally not take conflicting stands. This is particularly because the revenue authorities are acknowledged to be technical persons on whom assesses and dealers are expected to repose utmost faith. At the same time, it has been stressed that doctrine of promissory estoppel would not imply continuation of decisions which are considered wrong by the revenue authorities, when it has been held that earlier misclassification cannot prevent the Department from making correct classification (*Plasmac Machine Mfg. Co. P. Ltd. vs. Collr of Central Excise* AIR 1991 SC 999), to permeate an error is no heroism, to rectify it is the compulsion of judicial conscience (*Hotel Balaji 1993 88 STC 98 SC*). To sum up, actions considered contrary to law prior to the date of declaration may be validated in larger public interest, while the law as declared may apply prospectively, that is, to future cases.

'Level playing field' would essentially mean

providing equal economic and regulatory framework to the trade and industry so that market forces may determine the performance of the business units. Thus, success of any business unit would depend upon economic, technical and managerial efficiencies such as production, finance, marketing, after-sales service, innovations, etc.

Elements of Level Playing Field

Legislative aspect would basically mean ensuring equality of law. Equality of law would, in turn, call for that situations should not be created whereby extraordinary or large fiscal incentives are offered to new industrial units or

even existing enterprises, with no quantified economic justification, so as to result in significantly unequal situation for other existing or new units. Thus, grant of excise duty concessions and sales tax concessions could mean benefit to such an extent that an existing unit cannot even compete with the units enjoying such incentives, despite having comparable technical, economic and managerial efficiency. This could be a very important reason for non-compliance of the tax laws. This is particularly so where the cost of production is the primary factor in price determination such as iron and steel, chemicals and fertilisers, cement, foodgrains, sugar and other agro-products, etc. Several instances of the existing units closing down and new units being located in the same State or different State to avail of fiscal incentives could be cited as such instances.

Another important aspect is various amnesty schemes which are periodically brought out by the Government to reduce the disputes and also realise part of the arrears in the process of settling disputes. This has also led several units to adopt various measures to create disputes and avail of the mechanism of settlement of disputes, even in cases where the demand of taxes is prima facie undisputed. The process of law, therefore, has to be such that backlog of cases is not created and the disputes are settled expeditiously.

Still another extremely important legislative factor is differential tax rates for the same products across the country and particularly in relation to

the adjacent states. This leads to physical or paper diversion of the trade and various unlawful trade practices, with very adverse impact on the compliance of law. In fact, many times various transactions may be carried out perfectly in a legal manner, while depriving a particular state of its 'intended legitimate revenue' due to legislative process resulting in unequal law.

Administrative aspects would, on the other hand, refer to the next stage of ensuring not only



Lack of equal interpretation and enforcement of law erodes faith in the administrative system. This has direct impact on the viability of several disadvantaged units, leading only to increased non-compliance of the law. It, thus, helps in unjust enrichment of a few individuals, generally in collusion with corrupt government officials, political patronage etc.

the equal interpretation of the different provisions of law amongst all the dealers but also equal enforcement of different provisions of law among all the dealers. This, in turn, is an outcome of transparency and accountability in the administration, accompanied by capacity and competence. This is further supplemented and ensured by an objective and independent judicial system.

Lack of equal interpretation and enforcement of law erodes faith in the administrative system. This has direct impact on the viability of several disadvantaged units, leading only to increased non-compliance of the law. It, thus, helps in unjust enrichment of a few individuals, generally in collusion with corrupt government officials, political patronage etc.

Various instances of unequal interpretation of law could be cited as some transactions being interpreted differently by separate assessing officers such as categorisation of the same product as electrical goods, pollution control devices or capital goods. Similarly, the same type of transaction could be treated as works contract in one case



and sale in another case. An input in the same type of industry could be found to be eligible for input tax credit by one assessing officer but not by the other officer.

Various instances of unequal enforcement emanate from different yardsticks in enforcement of law on different set of dealers in the same market. It could happen because of discriminatory enforcement by the same administrative officer or by differing capabilities of different enforcement officers in different jurisdictions. It could mean that a class of dealers may indulge in unaccounted transactions with impunity, while the other dealers may not be able to do the same. This, in turn, would help a class of dealers in marketing their products at lower prices, creating unequal situations in the market. The other instance could be evasions in the procurement of inputs such as heavy power theft, procurement of tax evaded inputs etc. Instances are not uncommon that one particular set of dealer or transporter is visited several times by enforcement officials, while the other class of dealers may not face such situations. This all leads to non-compliance of the provisions of law by other dealers, finding different ways of survival in the market.

Long existence of various practices in the markets and government makes it very difficult to bring about sudden increase in compliance. These practices tend to develop into a typical culture identified with the particular trade, industry or a geographical area. Such established practices or culture can only be changed with very strong political and administrative will and genuine efforts being launched on a sustained basis, and wide spread publicity of the consequences of non-compliance. Reforms in the power sector, where power theft was an accepted norm amongst all the sections of the society, is a successful example of demolishing wrong practices. This was a result of comprehensive reforms in the power sector.

Some of the factors which could be considered responsible for unequal enforcement of law are: corruption in the public offices, lack of good

training of the officers and staff, lack of effective supervision, improper monitoring of information system and lack of transparency.

An Integrated View

An attempt has been made to analyse the different reasons responsible for non-compliance of the tax laws so that an integrated and balanced view may be taken for improving the tax compliance.

Undoubtedly, higher tax rates have been an important factor resulting in massive tax evasions. However, simpler tax laws are essential in facilitating compliance, reducing transaction costs and in making it easier to do business. Hence, the tax policies have to aim at simpler tax laws, keeping in view the nature and size of business. However, various rules and regulations, which require detailed information, periodic reports including real time reporting, or which grow complicated with the growing economic complexities, however, are not the real reasons for tax evasion. Requirement for information from the tax payers or the dealers is likely to increase in future for cross verification purposes, besides the data being captured through electronic surveillance etc. In fact, submission of structured and accurate information has become very easy with maintenance of electronic records by almost all the dealers who are required to comply with such requirements.

However, policy makers have to make conscious efforts to evolve an administrative and legal framework which ensures level playing field to the various business units in the same class of business in its final impact, which would include aggregate impact on the profits due to fiscal and non-fiscal benefits. Final impact, of course, has to be assessable with respect to viability of the business. In fact, this factor is internationally recognised, more so in the context of globalisation. This is the reason that tariff-barriers, domestic subsidies and even exploitation of labour or other domestic laws are closely studied by the competitors in other

Dual Goods and Service tax proposed to be levied by the Government of India and the States on the common base, is expected to bring about further substantial reforms, which should result in removing remaining distortions in the tax structure which hamper level playing field.



countries to assess the impact on the level playing field. Anti-dumping duties, safeguard duties and ban on imports from certain countries are imposed only to provide domestic industries a level playing field.

Recent Trends in Tax Reforms

Several steps have been taken in recent years towards the creation of a level playing field. The reforms are continuing in this regard.

The first major step in this regard was adoption of uniform floor rates during the financial year 1999-2000 by consensus in many of the major tax yielding commodities across the country by the Empowered Committee of State Finance Ministers, led by Dr. Asim Kumar Dasgupta, Finance Minister, West Bengal. At the same time, the Empowered Committee of State Finance Ministers had also decided to discontinue grant of new tax incentives to industrial units in all the states.

This was then followed up in a major way at the time of implementation of Value Added Tax system in India since April, 2005. Most of the states have adopted schedules, compiled by the Empowered Committee, barring a few deviations, which are negligible in a vast federal set-up like India and unparalleled in the world.

A Major Move Towards Tax Reforms — Goods and Service Tax

Dual Goods and Service tax, proposed to be levied by the Government of India and the States on the common base, is expected to bring about further substantial reforms, which should result in removing remaining distortions in the tax structure which hamper level playing field. Several State level and Central indirect taxes such as Value Added Tax, Entry Tax, Tax on consumption of goods, Luxury tax, Entertainment tax, Central

Sales Tax, Central Excise Duty, Service Tax and Cenvat on imports are likely to be subsumed in Goods and Service Tax. Besides, Goods and Service Tax also aims at completing the process of destination-based tax, which has been initiated in the case of goods only with the introduction of VAT, by CST being phased out gradually. While it will remove distinction between goods and services so far as taxability is concerned, it will also broaden the tax base by bringing under tax net untaxed services of all kinds and classes except the services consciously exempt.

Tax base is also likely to significantly expand in case number of goods and services under exempted category and tax exemptions, area based or goods and services based, granted under Central and State laws are prospectively withdrawn so that it is not likely to be hit by doctrine of promissory estoppel. In fact, technically also it would become almost impossible for various industrial units, based on area specific exemption or individual unit based incentive, to avail of the benefit of exemption since the basis of taxation is proposed to be shifted completely from origin based to destination based tax, besides tax incidence being shifted from manufacture to sale in case of central excise duty. At the same time, cascading effect of various taxes will also go away and tax structure will become extremely transparent. This initially is expected to happen with reference to movable goods only but may in future extend to immovable goods also, as has also been recommended by Dr. Vijay Kelkar, Chairman of the 13th Finance Commission of India, in subsuming of various taxes including stamp duties, in his recent address at IGIDR, Mumbai¹.

It would, therefore, result in substantial ease of compliance for dealers who will be required to deal with less number of agencies. Since GST will involve both Government of India and States,

In view of integration of various taxes and Goods and Service Tax being zero rated, it would almost eliminate export of taxes, making the cost of production for exportable goods more competitive, while GST on imports will also ensure level playing field for domestic producers vis-à-vis imported goods which at present, in some cases, enjoy the unfair advantage.



¹Copy of the Convocation Address at Indira Gandhi Institute of Development Research by Dr. Vijay Kelkar, Chairman, 13th Finance Commission of India, delivered at Mumbai on 6th February, 2009 can be found at : http://fincomindia.nic.in/writereaddata/html_en_files/IGIDR060209.pdf



there is bound to be near uniformity in the Acts and Rules of various states which will help in easier compliance not only by multi-state organisations also. At the same time, it will consciously create complete level playing field, encouraging more and more economic efficiency.

Goods and Service tax is the first comprehensive tax structure which is expected to bring to reality a concept of 'national common market': removing geographical tax barriers to movement of goods. Tax rate structure is likely to be extremely simple with minimum number of tax rates. Stability in tax rates and tax laws are likely to be the main focus of the reforms. This, in turn, should help in creating an immense need and opportunity for use of advanced technology solutions for tracking inter-state and intra-state transactions including movement of goods and services. With reduced human inter-face and technological solutions, this indeed is bound to bring about substantial increase in tax compliance and help in increased economic efficiency.

Goods and Service tax will also provide an opportunity for sharing of the data base by various agencies such as Income Tax, Goods and Service Tax authorities, banks and others, which should also help in prompt detection of tax defaults and evasions. All this would help in creating level playing field and promote healthy competition, bringing benefits to the society in terms of cost efficiency, through vertical and horizontal integration, transparency and moderate tax structure. In view of integration of various taxes and Goods and Service Tax being zero rated, it would almost eliminate export of taxes, making the cost of production for exportable goods more competitive, while GST on imports will also ensure level

playing field for domestic producers vis-à-vis imported goods which at present, in some cases, enjoy the unfair advantage.

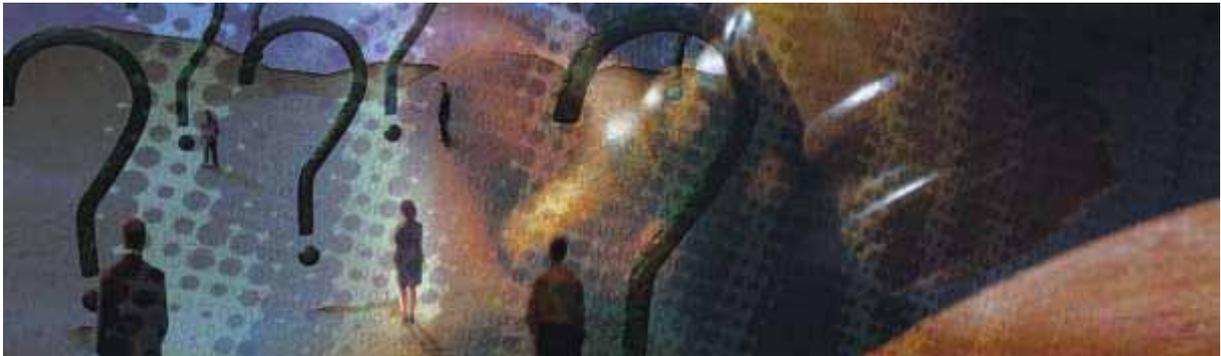
The GST, therefore, has potential to bring in additional revenue gains on account of fair tax system, by providing level playing field to the dealers, along with widened tax base and moderate tax rates. Prerequisites, of course, remain a well-designed GST, comprehensive preparatory steps and effective monitoring at the implementation stage over a period of time.

Role of Chartered Accountants

Professionals such as Chartered Accountants can play an active role, individually as well as collectively as a professional body, in creating an effective voice for level playing field, thereby increasing tax compliance. Instances of this kind will bring the profession into the limelight of the society and benefit the profession. At the same time, it is duty of the Chartered Accountants to highlight departures from tax compliance.

The role of the Chartered Accountants is unique in this respect due to various reasons. First, being intimately connected with the business activities of the entrepreneurs and having access to the primary records, their knowledge of the several aspects of business is bound to be correct. As a result, they can make rational and convincing recommendations. Secondly, based on inputs from various business units and also other professional colleagues, it is possible for them to arrive at general conclusions and their response time can be minimum. Thirdly, being a statutory body set up by the Government of India, they can always present their views on reforms and corrective actions.

Confusion on the Applicable Date For Reverse Charge Under Service Tax Law



Applicability of service tax under reverse charge mechanism i.e. on import of services has been a contentious issue for quite some time which has led to numerous amendments and judicial pronouncements in this regard. The two dates, 1st January, 2005 and 18th April, 2006, have been contended for applicability of service tax under reverse charge mechanism. Tribunals have ruled in favour of both these dates in different cases leading to confusion. The article looks into this issue.



CA. K. R. Girish CA. Amitabh Khemka

*The authors are members of the Institute.
They can be reached at
krgirish@icai.org and akhemka@icai.org*

Applicability of service tax under reverse charge mechanism (i.e. a receipt of services from a person who is non-resident or is from outside India, not having office in India, in other words, 'import of services') has been a contentious issue. There have been numerous amendments and judicial pronouncements on the subject matter.

The two dates that are being contended for applicability of service tax under reverse charge mechanism are 1st January 2005 and 18th April 2006. Tribunals have pronounced decisions in favour of both these dates i.e. the reverse charge mechanism is not applicable prior to 1st January 2005/18th April 2006.

Question remains as to which is 'the date' for applicability of service tax under reverse charge mechanism. Let us analyze the same:

Effective from 18th April 2006, Section 66A has been inserted in Chapter V of the Finance Act, 1994 incorporating provisions regarding charge of service tax on services received from outside India (Explanation to Section 65(105) was deleted effective from such date) along with Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 (by Notification No. 11/2006-ST dated 19th April 2006).



Legislative History

The legislative history is summarized as following to appreciate the views taken by the Tribunals –

- Section 68(2) of Chapter V of the Finance Act, 1994 (the statute governing the service tax related law in India) states that in respect of any notified taxable service, the service tax would be paid by such person as may be prescribed.
- Section 65(105) specifies the taxable services
- Circular issued by Central Board of Excise & Customs clarifying that services provided beyond the territorial waters of India are not liable to service tax (Circular No. 36/4/2001 dated 8th October 2001)
- Effective from 1st March 2002, the provisions of Chapter V of the Finance Act, 1994 were extended (by Notification No. 1/2002-ST dated 1st March 2002) to the designated areas in the Continental Shelf and Exclusive Economic Zones of India as declared.
- Effective from 16th August, 2002 it was prescribed (by Notification No. 12/2002 dated 1st August, 2002) in the Service Tax Rules that the “person liable to pay service tax” would be the person receiving the taxable service in India in respect of any taxable service provided by a person who is non-resident or is from outside India, not having office in India (though, generally, under the service tax law the person liable to pay service tax is the person providing the taxable service)
- Effective from 1st January, 2005 the taxable services under Section 68(2) were notified (by Notification No. 36/2004 dated 31st December, 2004) which included “any taxable service provided by a person who is non-resident or is from outside India, not having office in India”
- Effective from 16th June, 2005, it was declared, for removal of doubts, as Explanation to Section 65(105), that any service received in India from a non-resident would be deemed to be a taxable service

- Effective from 18th April 2006, Section 66A has been inserted in Chapter V of the Finance Act, 1994 incorporating provisions regarding charge of service tax on services received from outside India (Explanation to Section 65(105) was deleted effective from such date) along with Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 (by Notification No. 11/2006-ST dated 19th April 2006).

Decisions Dealing With 1st January 2005 as 'The Date' for Reverse Charge Mechanism

- The Delhi Tribunal (single member bench)¹ held that the Rule, effective from 16th August, 2002 specified in the definitions – the 'person liable to pay service tax' as service receiver and this provision in itself may not suffice the revenue authorities to direct the assessee to pay service tax as service receiver. Further, the Notification under Section 68(2) was issued only on 31st December, 2004 to be effective from 1st January, 2005 notifying the service receiver from non-resident to pay service tax, as receiver of service. If the contention of the revenue is to be accepted, then there was no necessity for the Government to issue such a notification. By issuing such notification, Central Government intended to tax the service receiver from non-resident, with effect from 1st January, 2005 and hence no service tax is payable by this category prior to such date. The tribunal further held that the Rules are subservient to the Sections and if Sections do not provide for discharge of service tax by the recipient of services from non-resident, then it would be a futile exercise to rely upon the Rules to collect the tax. The assessee in this case had also submitted that it was never authorized by the non-resident consultant to pay service tax on their behalf and for this reason also it cannot be made liable to pay service tax.

¹Aditya Cement v. Commissioner of Central Excise [2007 (7) S.T.R 153 (Tri. - Del.)]

- The Mumbai tribunal (a division bench)² reaffirmed the view taken in Aditya Cements.
- However, the Delhi Tribunal (a division bench)³ after referring to the decision in Aditya Cement held that service tax was payable by the assessee as a recipient of service by virtue of Rule effective from 16th August, 2002 (Rule 2(1)(d)(iv) of the Service Tax Rules, 1994. Notification 36/2004 dated 31st December, 2004 effective from 1st January, 2005 was only a repetition of the said Rule and there was no need to issue any further notification to repeat what was already prescribed by the said rule. The said rule was clearly relatable to Section 68(2).
- The Bangalore tribunal (division bench)⁴ noting the conflicting views of the tribunals in Aditya Cement and Samcor Glass had referred the matter to a larger bench to decide the question of levability of service tax on the service recipient prior to 1st January, 2005.

It is important to note that all the above decisions did not deal with the insertion of Section 66A in Chapter V of the Finance Act, 1994 effective from 18th April, 2006 (incorporating specific provisions regarding charge of service tax on services received from outside India). Hence, it is important at this stage to look at other view in the matter after insertion of Section 66A.

It is also important to know at this stage that on the appeal of the Union of India against the order of tribunal in case of Aditya Cement, the High Court of Rajasthan⁵ dismissed the appeal stating that it did not find any substantial question of law and held that there was no infirmity in the tribunal's order holding that recipient of service is liable to pay service tax from 1st January, 2005.

Decision Dealing With 16th June, 2005 as 'The Date' for Reverse Charge Mechanism

Certain decisions dealt with 16th June, 2005, the day Explanation to Section 65(105) was inserted to deem any service received in India from a non-



It would be important to note that Delhi High Court while confirming the constitutional validity of Section 66A observed by way of an example that if a person in India goes abroad and has a hair cut, there is no question of such service of haircut having been received in India and liable to service tax.

resident to be a taxable service, as 'the date' for reverse charge mechanism. For fullness, let us also make note of this.

- The Commissioner Appeals, Vadodara in case of In re: Modern Petrofils⁷ held that the services received from abroad will be taxable only from 16th June, 2005, when such explanation was introduced.

Decision Dealing With 18th April, 2006 as 'The Date' for Reverse Charge Mechanism

- The Ahmedabad Tribunal in case of Foster Wheeler Energy⁷ held that services rendered by the Appellant under the category of on-shore services are liable to service tax and the services rendered under the category of off-shore services are not taxable for the period prior to 18th April, 2006.

It is important to note that the distinguishing fact in case of Foster Wheeler case is that the services were rendered off-shore i.e. outside India (and apparently no service was received in India).

- Delhi Tribunal in case of *Arisht Spinning Mills v. CCE, Chandigarh*⁸ was examining the taxability of commission paid by manufacturer exporter for procuring export orders. The assessee argued that service tax would not apply before 18th April, 2006 relying on Foster Wheeler case and the tribunal held that whether the service was received abroad or within the country would need to be looked into at the time of hearing the appeals and ordered pre-deposit.

Decisions similar to that of Arisht Spinning Mills were taken in couple of other cases also.

At this moment, it would be important to note that Delhi High Court⁹ while confirming the

²Ispat Industries Ltd. v. Commissioner of Central Excise (Tri-Mumbai) [2007 (8) S.T.R.282]

³Samcor Glass Ltd. v. Commissioner of Central Excise (Tri-Del) [2007 (8) S.T.R 633]

⁴Molex (India) Ltd. v. Commissioner of Central Excise (Tri-Bang) [2008 (9) S.T.R 369]

⁵Union of India v. Aditya Cement (2008-TIOL-483-HC-RAJ-ST)

⁶Modern Petrofils [2007 9&0 (S.T.R) 490 (Comm. Appl.)]

⁷Foster Wheeler Energy Ltd. v. CCE & C, Vadodara-II [2007 (7) S.T.R. 443 (Tri. - Ahm.)]

⁸[2008-TIOL-433-CESTAT-DEL]

constitutional validity of Section 66A observed by way of an example that if a person in India goes abroad and has a hair cut, there is no question of such service of haircut having been received in India and liable to service tax.

Decision Dealing With 1st January, 2005 / 18th April, 2006 as 'The Date' for Reverse Charge Mechanism

- In case of (a) Sterlite Industries (India) Ltd. and (b) Sharadha Terry Products Ltd.¹⁰ the assesseees had received services under the category of 'management consultancy services' (for which the appellants paid fee to the foreign companies) and under the category of 'business auxiliary services' (service provider were authorised to act as agents to market the appellants products in foreign countries) respectively.
- The contention of the assesseees was that the services were provided outside India by persons stationed outside India, who have no office presence in India. The assesseees also referred to the Board's Circular No. 36/4/2001-ST dated 8th October, 2001, wherein it was clarified that the services provided beyond the territorial waters of India were not liable to service tax. It is also pointed out by the assesseees that this circular was withdrawn on 10th May, 2007 vide Circular No. 93/04/07-ST. It was also pointed out by the assesseees that, for the period up to 1st January, 2005, the question whether service tax could be levied from an Indian resident-recipient of taxable service provided by a person resident abroad, under Rule 2(1)(d)(iv) of the Service Tax Rules, is pending before larger bench pursuant to the order in the case of Molex India Ltd.
- *The Tribunal observed that "... in the present cases, it has also to be examined as to whether any taxable service provided by a person resident abroad without any office in India can be considered to have been received abroad or in India by a person resident in India. It appears that a distinction is sought to be made between the expressions "providing of service" and "rendering of service". It appears to us that a person resident in India pays for a service provided by a person resident abroad, upon receipt of such service in India. Such transaction involves receipt of*

service in India unless it is proved that the person resident in India receives such service through his office situated abroad and that the consideration for such service was also paid by such office. Seemingly, these are ancillary questions which require to be considered when the appeals arise for final hearing." Awaiting the decision of larger bench for the period prior to 1st January 2005 and noting the decision in *Foster Wheeler* for the subsequent period, waiver of pre-deposit and stay of recovery was granted.

- The larger bench in case of *Hindustan Zinc Ltd.*¹¹ observed that Notification No. 12/2002 effective from 16th August, 2002 inserted another sub-clause in clause (d) of Rule 2 which is the definition clause of the Service Tax Rules. The definition clause cannot be read as a substantive provision creating a liability much less in a tax statute. The notification/amendment simply enlarged the definition of 'person liable to pay service tax' in relation to "any taxable service provided by a person who is a non-resident or from outside India. It did not specify, and possibly could not have brought into action the particular service or services in relation to which recipient would be liable to pay service tax. This was done by Notification No. 36/2004 effective from 1st January, 2005 which was issued under Section 68(2) of the Chapter V of the Finance Act, 1994 specifying the taxable services "for the purposes of the said sub-section i.e. sub-section (2) of section 68".

The Court also observed that from a close reading of Section 68(2) it would appear that the provision can be broadly divided into two parts.

- The first part contemplates specifying the 'service(s)' in relation to which the person - other than the provider of taxable service - is to



⁹Orient Crafts Ltd. v. Union of India [2006 (4) STR 81 (Del.)]

¹⁰(a) Sterlite Industries (India) Ltd. and (b) Sharadha Terry Products Ltd. v. (a) CCE Tirunelveli (b) CCE Salem [2008-TIOL-987-CESTAT-MAD]

¹¹Hindustan Zinc Ltd. v. CCE, Jaipur [2008-TIOL-1149-CESTAT-DEL-LB]

Till 31st December, 2004 - reverse charge would not be applicable at all whether services are rendered in India or outside India. From 1st January, 2005 to 17th April, 2006 - reverse charge would be applicable only on taxable services rendered by non-residents in India. From 18th April, 2006 – reverse charge would be applicable to taxable services rendered in India as well as outside India subject to import of services related Rules.



be made liable. Clearly, the services have to be identified and specified for this purpose. This is to be done by way of a notification published in the official gazette.

- The second part contemplates specifying the 'person' liable to pay service tax on such service(s) i.e. the service(s) notified under the first part. This is to be done by making Rules which is clear from the words "as may be prescribed".

The court, concurring with Tribunal's Order in Aditya Cement and Ispat Industries case held that that a combined reading of Notification No. 12/2002 effective from 16th August, 2002 and Notification No. 36/2004 effective from 1st January 2005 shows that the former makes the 'person' i.e. the recipient of taxable service in India provided by a non-resident or from outside India liable to pay service tax – without specifying the taxable service, in relation to which he is so made liable. Notification No. 36/2004 does not specify the person liable to pay service tax; it merely specifies the taxable services for the purpose of Section 68(2) of the Act. Both the notifications, therefore, have to be read as complimentary and supplemental to each other and in the absence of either, service tax cannot be collected or recovered (in respect of the specified services).

The court also stated that it is to be kept in mind that the levy is on rendering of the taxable service and not on the person. No sooner than the taxable event takes place, tax must be collected and, therefore, provision has to be made to fasten the liability to pay tax.

The court also noted that the Explanation to Section 65(105) has no relevance to the issue involved. Importantly, the court also noted that although not relevant for this case, with effect from 18th April, 2006, section 66A was inserted in the Finance Act, 1994 by Finance Act, 2006 incorporating provision regarding charge of

service tax on services received from outside India. With the incorporation of Section 66A, the dispute in the matter of levy of service tax on services received from abroad afterwards has generally come to an end.

The above larger bench decision has been relied upon in number of decisions by the tribunals.

- Recently the Bombay High Court, in case of Indian National Shipowners Association¹² (INSA), enquiring as to whether during the period from 1st March 2002 to 17th April 2006 there a valid law authorising levy of service tax in relation to services rendered outside India, held that service tax would not apply for the said period in relation to services received outside India from persons who are non-residents. While coming to this conclusion, the court observed the following:

- By notification dated 1st March 2002, service which is rendered or provided in the Continental Shelf Exclusive Economic Zone and Territorial Waters of India has been made taxable. The notification does not have the effect of levying service tax on the recipients of the service.
- Under Section 68(2), the recipient of the service became liable for paying the service tax provided the service was received *in India*.
- By notification dated 31st December, 2004 any taxable service provided by a person who is a non-resident or is from outside India has been notified. If Rule 2(1)(d)(iv) is taken to be rule framed pursuant to this provision, then a person who receives taxable service *in India* from a person who is non-resident becomes taxable and not service rendered outside India by a person who is non-resident.
- By Explanation to Section 65(105), services provided by a non-resident outside India to

¹²Indian National Shipowners Association v. Union of India & Others [2008-TIOL-633-HC-MUM-ST]

a person residing in India has been declared to be a taxable service. Therefore, though the services provided to the members of the Petitioners-Association outside India becomes taxable service, the charge of the tax continues to be on the provider of service as per the scheme of the Act.

- It is apparent that before enactment of Section 66A there was no authority vested by law in the respondents to levy service tax on a person who is resident in India, but who receives services outside India. In that case, till Section 66-A was enacted a person liable was the one who rendered the services.¹³
- It is only after enactment of Section 66-A that taxable services received from abroad by a person resident in India started being taxed. In such cases, the Indian recipient of the taxable services is deemed to be a service provider. Before enactment of Section 66-A, there was no such provision in the Act.

Conclusion

- Relying on larger bench decision in case Hindustan Zinc, Rajasthan High Court decision in case of Aditya Cement and Bombay High Court decision in case of INSA and constitutional validity of Section 66A being upheld by Delhi High Court the following position emerges;
- Till 31st December, 2004 - reverse charge would not be applicable at all whether services are rendered in India or outside India.
- From 1st January, 2005 to 17th April 2006 - reverse charge would be applicable only on taxable services rendered by non-residents in India.
- From 18th April, 2006 – reverse charge would be applicable to taxable services rendered in India as well as outside India subject to import of services related Rules.

¹³This could open a new Pandora box of litigation – with service tax authorities serving show cause notices on non-resident service providers

Controversy on Taxation of Bandwidth Charges - Solution Goes Begging



With dedicated bandwidth being provided by several companies to facilitate transmission of huge amount of data and voice, a question has come before the Authority of Advance Rulings (AAR) in the case of *Dell International Services India Pvt. Ltd.* and before Delhi High Court in the case of *Estel Communication P. Ltd.* as to whether a payment against this facility is liable to taxation in India or not, particularly when the service provider is outside India. The decisions on this question will have far reaching implications as most of the outsourced units in India depend on such services for their smooth functioning. This article discusses the salient features of these decisions.



S. P. Singh

The author is former Deputy Secretary, Foreign Tax Division & Former Director of Income-tax, International Tax

They can be reached at eboard@icai.org



CA. Sharad Goyal

The author is a member of the Institute.

Developments in the field of telecommunication have reduced distances creating seamless transfer of information between offices of a company located in various countries spread over all possible time zones. To facilitate transmission of huge amount of data and voice, dedicated bandwidth are being provided by several companies. A question has come before the Authority of Advance Rulings (AAR) in the case of *Dell International Services India Pvt. Ltd.* (305 ITR 37) and before Delhi High Court in the case of *Estel Communication P. Ltd.* (217 CTR 102) whether a payment against this facility is liable to taxation in India or not particularly when the service provider is outside India. In their decision dated 18th July, 2008, the AAR held that the payment cannot be characterized as royalty or fees for

technical services. However, in the absence of sufficient information they did not decide whether the service provider constitutes a permanent establishment in India or not. In the case of Estel, the question before High Court was whether the services provided can be said to be technical services or not. In their order dated 7th March, 2008 the court held that the Internet bandwidth does not amount to providing technical services. These two decisions would have far reaching implications as most of the outsourced units in India depend on such services for their smooth functioning. This is important not only from the perspective of service provider, but also from the perspective of service recipient as a failure to deduct tax, if the payment is liable to tax, would result in disallowance of expense and would be a heavy financial burden.

In fact, telecommunication service providers have been under the microscope by not only the Income Tax authorities but also under other taxes. A question had come before the Supreme Court in the case of *BSNL vs. Union of India [Writ Petition (Civil) 183 of 2003]* whether the facility provided by mobile phone connections amounted to sale or service. If it is a sale then the States are legislatively competent to levy sales tax on the transaction under Entry 54 List II of the Seventh Schedule to the Constitution of India. If it is a service, then the Central Government alone can levy service tax under Entry 97 of List I (or Entry 92C of List I after 2003). And if the nature of the transaction partakes of the character of both sale and service, then the moot question would be whether both legislative authorities could levy their separate taxes together or only one of them. In the landmark ruling dated 2nd March 2006, the Court held that there was no delivery of goods and the subscriber to a telephone service could not have intended to purchase or obtain any right to use electro-magnetic waves.

However, the above decision would not address the situation where the service provider, for the purpose of affording the facility to the customer, provides special infrastructure or network such as a dedicated circuits (leased lines). The services are through telecom bandwidth. Bandwidth is the capacity of transmission medium or amount of

data that can be transferred through a dedicated (leased) transmission circuit. Since, the customer pays for the transfer of voice and data traffic through transmission lines specifically dedicated to it, issue may arise whether the customer is paying for the use of these dedicated lines. In other words, there may be a question whether a payment of bandwidth charges is liable to taxation as royalty or fees for technical services or is it in the nature of business income liable to taxation on the existence of a permanent establishment. These are the issues before the AAR in the case of Dell International Services India Pvt. Ltd. (Dell India)

In order to fully appreciate the controversy and the ruling of the Authority, let's have a look at the facts of the case. Brief facts are that Dell India is a part of Dell group of companies. Based in Bangalore, Dell India is mainly engaged into the business providing call centre, data processing and information technology support services to its group companies. For rendering these services, it obtained bandwidth services from a US based company viz. BT America (BTA). Dell India's parent company in US had entered into a Master Service Agreement with BTA pursuant to which BTA was providing Dell India with two way transmission of voice and data through telecom bandwidth.

International half circuit from the US/Ireland was provided by BTA, the Indian half circuit was being provided by Indian service providers, viz. Bharti and VSNL with whom BTA had a tie-up. The bandwidth so provided by BTA gave full country coverage in both the countries of delivery, i.e. India and US. The telecom bandwidth was provided through a huge network of private optical fibre cables laid under seas across several countries. This cable network run into more than 20,000 kilometers and was owned by a consortium of 16 international telecom companies including

A question had come before Supreme Court in the case of *BSNL vs. Union of India [Writ Petition (Civil) 183 of 2003]* as to whether the facility provided by mobile phone connections amounted to sale or service. In the landmark ruling dated 2nd March, 2006, the Supreme Court held that there was no delivery of goods and the subscriber to a telephone service could not have intended to purchase or obtain any right to use electro-magnetic waves.



Bharti, Airtel and VSNL from India. For these services a fixed monthly recurring charge was payable by Dell India to BTA. Installation charges were also payable separately.

Based on the above facts, Dell India sought an advance ruling from the Authority. The issues, *inter alia*, raised before the AAR were whether the payments to BTA for bandwidth charges is in the nature of royalty under the explicit mandate of section 9(1)(vi) of the Income-tax Act (the Act) vis-à-vis Article 12(3) of the India-US treaty, precisely, under the provisions of clause (iv.a) of Explanation 2 to section 9(1)(vi), which is not materially different from India-US treaty. According to the said clause, the consideration for the 'use' or 'right to use' any industrial, commercial or scientific equipment comes under royalty. Whether any consideration is payable for the use or right to use the scientific/commercial equipment is the question that looms large in the instant case. Another question before the AAR was whether these services are in the nature of fees for technical services.

Dell India's main contention was that the arrangement entered into with BTA does not involve the use or right to use any equipment, therefore the consideration paid to BTA by the applicant is not in the nature of royalty. Both

The Authority of Advance Rulings has held that bandwidth charges cannot be regarded as charges for the use or right to use of equipment. So, they do not fall under the ambit of 'royalty' as described in the Act and the India-US tax treaty. The Authority also disregarded departmental contention that these services may be regarded as fees for technical/included services under Section 9(1)(vii) of the Act vis-à-vis Article 12(4) of the India-US treaty.

possession and control of the leased circuit and related equipment is only in the hands of BTA and not with the applicant. BTA has to maintain and monitor the network and infrastructure for the purpose of rendering service to the applicant. Dell India has no right over any equipments of BTA. The space in the cable network is not dedicated to Dell India alone but is also used by hundred of BTA's customers in and outside India. The transaction is essentially one of providing bandwidth service for the two-way transmission of voice and

data. No equipment or machinery has been installed at the applicant's premises much less they were kept at the disposal of the applicant. The equipment, if any, placed at Dell's premises cannot be changed or tampered with by the applicant. Such placement is only for rendering of service by BTA, but not to facilitate its use by the applicant. Further, the use of expression 'rental charges' in the Agreement is not apt but it has borrowed the usage in vogue in telecom industry.

The department argued that Dell India is clearly in physical possession of the equipment since it is installed in its premises, even though the ownership thereof rests with BTA. The bandwidth produced by the circuits is also equipment over which Dell India has control. The fixed rental or charge is relatable to the equipment which comes into the custody and control of applicant under the terms of the Agreement. The charges have no nexus with the volume and frequency of the transmission. Hence, they are nothing but rental charges for the equipment/network installed and made available to the applicant. Dedicated private circuits have been provided by BTA through its network for the use of Dell India. The utilization of bandwidth up to the requisite capacity is assured on account of this. The electronic circuits being equipment are made available for constant use by



Dell India for transmission of data. Therefore, the consideration paid is towards rent for circuits and the physical components that go into the system. The services are merely incidental to BTA granting right to use or

permitting the 'use' of its point to point circuit by the applicant and, therefore, the consideration charged partakes the character of 'royalty' as defined in Section 9 of the Act and Article 12 of the India-US treaty.

After earful consideration to rival contentions, the Authority observed that 'service' is an unbroken thread running through the entire fabric of agreement between the parties. There is no doubt that the entire network consisting of under-sea cables, domestic access lines and the equipment

whichever is kept at the connecting point, is for providing a service to facilitate the transmission of voice and data across the globe. One of the many circuits forming part of the network is devoted and earmarked to the applicant. Part of the bandwidth capacity is utilized by the applicant. From that, it does not follow that the entire equipment and components constituting the network is rented out to the applicant or that the consideration in the form of monthly charges is intended for the use of equipment owned and installed by BTA.

Regarding department's argument that consideration to BTA is rental, the Authority observed that the expression 'rental' denotes the consideration paid in a transaction of lease or hire. Such transaction pre-supposes the transfer of interest in the property or goods. Right to exclusive possession/custody and enjoyment thereof over a stipulated period of time are its necessary attributes. There is nothing in the present Agreement, which indicates that particular equipment has been leased out to the applicant and the applicant has been put in exclusive custody and control thereof. Provision of telecom bandwidth facility by means of dedicated circuits and other network installed and maintained by the BTA or its agent does not, in the absence of specific and clear indication, amount to a lease of equipment. The expression 'rental' used here and there in the Agreement is not used in its legal sense nor can it be treated as a decisive factor.

As to the interpretation of terms 'use' or 'right to use' the equipment etc. as used in the definition of royalty under the Act and India-US treaty, the Authority observed that the word 'use' in relation to equipment occurring in (iv.a) is not to be understood in the broad sense of availing of the benefit of an equipment. The context and collocation of the two expressions 'use' and 'right to use' followed by the words 'equipment' suggests that there must be some positive act of utilization, application or employment of equipment for the desired purpose. If an advantage is taken from sophisticated equipment installed and provided by another, it is difficult to say that the customer uses the equipment as such. The customer merely makes use of the facility, though he does not himself use the equipment. The Authority remarked that "What is contemplated by the word 'use' in clause (iv.a) is that the customer comes face to face with the equipment, operates it or controls its functioning in some manner, but, if it does



nothing to or with the equipment (in this case, it is circuit, according to the Revenue) and does not exercise any possessory rights in relation thereto, it only makes use of the facility created by the service provider who is the owner of entire network and related equipment."

Based on the above, the Authority held that there is nothing in any part of the Agreement which could lead to a reasonable inference that the possession or control or both has been given to the applicant in the course of offering the facility. The applicant is not concerned with the infrastructure or the access line installed by BTA or its agent or the components embedded in it. The fact that the international circuit as well as the access line is not meant to offer the facility to the applicant alone but it ensures to the benefit of various other customers is another pointer that the applicant cannot be said to be the user of equipment or the grantee of any right to use it. May be, a fraction of the equipment in visible form may find its place at the applicant's premises for the purpose of establishing connectivity or otherwise. But, it cannot be inferred from this fact alone that the bulk of consideration paid is for the use of that item of equipment.

It is worth notable that in order to reach above conclusion, the Authority also placed reliance over renowned author Klaus Vogel and quoted an example from his commentary on Double Taxation Convention to bring out the distinction between the rendering of service by a person using his own equipment vis-à-vis the grant of the right to use the equipment to the recipient of service. It is stated: "...the use of a satellite is a service, not rental; this would not be the case only in the event that the entire direction and control over the satellite such as piloting, steering were transferred to the user".

Alternate argument of the department that the applicant makes use of or is conferred with the right to use a 'secret process' within the meaning of clause (iii) to Explanation (2) to Section 9(1)(vi) of the Act was rejected by the Authority. That clause speaks of "the use of any patent, invention, model, design,



A bandwidth service provider would not be charged on its receipts as royalty income or fees for technical services. However, it is possible that its receipts may be taxed as business income provided it is found that it has a permanent establishment in India. In such cases, the whole income would not be taxed in India; rather only that part would be liable to taxation which can be attributed to the permanent establishment.

secret formula or process or trade mark or similar property". The Authority held that the use of secret process is alien to the minds of contracting parties. The Authority remarked that "we may mention that it was brought to our notice that similar bandwidth services through private circuits are being provided by many other telecom operators. Hence, the royalty definition under the Treaty relating to secret process is not attracted here."

Accordingly, the Authority held that bandwidth charges cannot be regarded as charges for the use or right to use of equipment. So, they do not fall under the ambit of 'royalty' as described in the Act and the India-US tax treaty.

Authority also disregarded the departmental contention that these services may be regarded as fees for technical/included services under Section 9(1)(vii) of the Act vis-à-vis Article 12(4) of the India-US treaty. The Authority observed that for a payment to be characterized as fees for technical services under Article 12(4) of the India-US treaty, such services should 'make available' technical knowledge, experience, skill, etc. to the service receiver, which is not in the instant case. It is an established principle that the phrase 'make available' refers to the situations where the person receiving the service is enabled to apply the technology. As there is no transfer of any technology in the sense that the recipient of the service is enabled to apply technology by itself, the payment does not constitute a fee for technical/included service under Article 12(4) of the India-US treaty. The Authority did not go further into the discussion of fees for technical services under Section 9(1)(vii) of the Act since, the provisions of tax treaty more beneficial would supersede provisions of the Act.

It may be observed from this ruling of the Authority; one considerable force behind the conclusion of the Authority was the well known principal of looking into the transaction from the real intention of parties involved. As in this case, the Authority went into the intention of the parties entering into the Agreement and observed that

their intention was to provide and receive services for voice and data transfer. Nowhere, their intention was to make use of equipment owned by BTA.

The issue regarding permanent establishment of BTA in India was left by the AAR to be decided by the appropriate authorities. However, they made an important observation that even if it is held that there is a permanent establishment only that portion of profit would be liable to taxation in India which can be attributed to the operations of the permanent establishment. The AAR has clarified with emphasis that the total payment of BTA shall not be regarded as business income. This is in line with the observations made by the Supreme Court in the case of Morgan Stanley.

In the case of Estel it was argued by the company that it is providing Internet access of a certain bandwidth to its subscribers. The main Server, on the base of which the Internet services are being provided is located in USA. For the services rendered by the company to the subscribers in India, it levies a charge and out of this, some amount is paid to M/s Teleglobe International Corporation of USA, which actually makes available Internet Bandwidth. The argument of Revenue was that this amounted to technical services. Though at the first appeal level the taxpayer lost the case, it got favourable decisions at the level of the Income Tax Appellate Tribunal and later at Delhi High Court. It was held at the latter two levels that the payment would not amount to fees for technical services under the Act.

Thus, a combined reading of the two decisions shows that a bandwidth service provider would not be charged on its receipts as royalty income or fees for technical services. However, it is possible that its receipts may be taxed as business income provided it is found that it has a permanent establishment in India. In such cases, the whole income would not be taxed in India; rather only that part would be liable to taxation which can be attributed to the permanent establishment.



The 2008 Revised OECD Model Tax Convention and India's Position



The 2008 Update to the Organization for Economic Cooperation and Development (OECD) Model Tax Convention was adopted by the OECD Council on 17th July 2008. The update includes changes to one of the Articles in the Model Convention, changes to the Commentary on several Articles and changes in the positions of non-member countries. In a significant development, India's position on the OECD Model has been stated for the first time. This article focuses on this development.



CA. Sunil D. Shah

*The author is a member of the Institute.
He can be reached at
sunilshah@icai.org*

The large and multiple flow of cross-border transactions globally in the fields of investment, trade and services has given rise to several taxation issues, the foremost being double taxation. Double taxation occurs in an international transaction because the income is sought to be taxed both by the country of residence i.e. where the taxpayer entity resides and by the country of source i.e. where the income arises. Double taxation could place an enormous burden on an enterprise and be an impediment in the growth of international trade and investment. Realising this, several countries have concluded agreements for avoidance of double taxation. Unlike the World Trade Organisation which is a global multilateral agreement, most of the Double Taxation Avoidance Agreements are bilateral in nature. There are some exceptions to the bilateral nature of the agreements, for example, the Nordic Convention on Income and Capital between the Scandinavian countries.



The Model Convention is often used as a base for negotiations and likewise the Commentary is used to assist in interpretation. Consequently, although the Model Convention and Commentary do not have the force of law, the Model Convention and Commentary have considerable persuasive value in practice, for member countries and non-member countries

The OECD Model Tax Convention

Drafting of a Double Avoidance Taxation Agreement (DTAA) involves several complex issues to be negotiated between the countries concerned. These include for example, the items of income to be covered by the agreement, persons to be covered, residence rules, exemptions to be granted by the country of source or by the country of residence, relief in rates of tax, grant of tax credits, resolution of disputes, etc. To facilitate the drafting of DTAA's and encourage uniformity, several international organizations have framed model Conventions which could act as a framework for drafting a DTAA. For example, we have the OECD Model Tax Convention on Income and on Capital prepared by the OECD, the UN Model Income and Capital Tax Convention prepared by the United Nations, etc.

The OECD is an international organization of thirty member countries headquartered in Paris. India is not a member but has been offered enhanced engagement, with a view to possible membership. The OECD provides a forum for discussion of policies in several economic areas including taxation. To facilitate the process of concluding DTAA's by providing guidance to the respective countries and to ensure uniformity and a sound policy basis for DTAA's, the OECD published its first Model convention in 1963. The Convention was updated from time to time to reflect changes in the variety and scale of international trade and evolving thoughts on fiscal policy and practice. In addition to the Model Convention, there is also a detailed Commentary interpreting and analysing the Articles of the Convention.

Although the OECD Council has recommended that member countries conform to the OECD Model and follow the Commentary, neither the Model Convention nor the Commentary are binding on members or on non-members. Even though non-binding, several member and non-member countries have stated reservations to some of the Articles and

observations on the Commentary with the intention of clarifying their positions.

In practice, however, the Model Convention is often used as a base for negotiations and likewise the Commentary is used to assist in interpretation. Consequently, although the Model Convention and Commentary do not have the force of law (unlike for example, the WTO or the Directives of the European Commission), the Model Convention and Commentary have considerable persuasive value in practice, for member countries and non-member countries. Analysis of the Model Convention and Commentary is helpful even in case of DTAA provisions which are not drafted strictly as per the Model Convention.

The 2008 OECD Update

As mentioned above, the OECD Model Tax Convention has been updated from time to time over the last 45 years. The most recent update was approved in July 2008. Apart from change in one of the Articles of the Model Convention, the update makes several changes in the Commentary on several Articles. There are also changes in the positions of member and non-member countries. A unique feature of the latest update and what makes it significant for India is that for the first time India has stated its reservations on the Articles and observations on the Commentary. This has helped to clarify and communicate the position of the Indian Revenue on international tax issues.

We will divide our discussion into three parts:

1. Update to the Model Convention
2. Update to the Commentary
3. India's position.

1. Update to the Model Convention

The solitary change in the Convention is with respect to Article 25 dealing with Mutual Agreement Procedure (MAP). The MAP is an arrangement by which the competent authorities of the two countries concerned can attempt to reach agreement on a disputed issue on the request of a taxpayer. Under current MAP rules, there is no time limit for reaching agreements or

even any obligation on the authorities to reach agreement. Experience has been that in several cases, the MAP gets delayed or remains inconclusive.

In the new Model, if an agreement is not reached within two years, an option has been given to the taxpayer to request that any issues which remain unresolved under the MAP shall be submitted to arbitration. This will enable a conclusion to be reached on disputed issues.

2. Update to the Commentary

The major updates to the Commentary are as following:

(i) Residence

Under Article 4, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. In case of dual residence of a person other than an individual (for example, a company) the tie-breaker rule provides that the person shall be resident of the State in which its place of effective management is situated.

The Commentary previously provided that place of effective management will ordinarily be the place where the senior-most persons (Board of Directors) make decisions. In the revised Commentary, this observation has been deleted and the Commentary now simply states that the place of effective management is the place where key management and commercial decisions that are necessary for the business as a whole, are made. In case of enterprises which have a management or executive committee, for example, it may well be the place where the committee meets.

(ii) Permanent Establishment

A significant change in the Commentary is the discussion of what is commonly known as “services permanent establishment”. While there is no services permanent establishment

provision in the OECD Model, such a provision does exist in the UN Model.

Since there is no services permanent establishment in the OECD Model Convention, profits from services performed by an enterprise of a country are not taxable if they are not attributable to a permanent establishment in the other country even though the services may be performed in that country. The OECD supports this position on several policy and administrative considerations. However, several countries believe that services performed in a country ought to be taxable even though there may not be a classical permanent establishment in the form of a fixed place of business. The OECD has not agreed with this principle of extended taxation. However, since several countries prefer to have such taxing rights, the OECD has laid down three principles to be followed in such a situation. These are as follows:

- (a) Services performed by a non-resident outside the country should not be taxable in that country.
- (b) The tax on services should be on the net profits and not on the gross fees.
- (c) There should be a minimum level of presence in the country before services can be taxed.

Keeping in mind the above principles, the OECD has provided a draft of a provision relating to services permanent establishment. This draft is not included in the Model Convention but is instead provided in the Commentary.

The draft provides for two situations when services may be taxed:

- (a) when an enterprise of a country performs services in other country through an individual who is present in the other country for more than 183 days in any 12-month period and more than 50% of the gross active business revenue is derived from such services.



In the revised 2008 Model, India has been invited for the first time to state its observations and reservations. These are useful because they indicate India's position on taxation of several types of international transactions. Since India has taken this position for the first time, India's reservations and observations cover the entire Model Convention and Commentary and are not restricted only to the latest amendments.

(b) when an enterprise of a country performs services in other country for more than 183 days in any 12-month period for the same project or for connected projects through one or more individuals present in the other country.

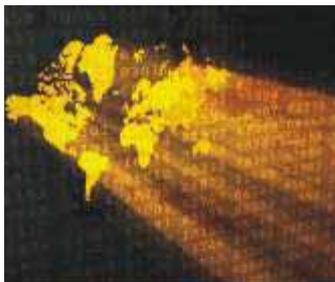
Para (a) basically covers one-man companies. Para (b) covers a wide range of situations where an enterprise of one country performs services in the other country.

It has been clarified that the services to be taxed must be provided by the enterprise to third parties. Services provided to the enterprise itself cannot create a services permanent establishment. For example, if an employee provides manufacturing services to an enterprise that sells manufactured products, no services permanent establishment is created because no services are provided by the enterprise to third parties.

It has been clarified that a day will count as a single day regardless of the number of individuals performing services during that day. For example, if six people work simultaneously for two days it will count as two days. On the other hand, if one person works for five days, it will count as five days. This clarification accords with the view taken by the Mumbai Tribunal in the case of *Clifford Chance, United Kingdom vs. DCIT* 82 ITD 106. In counting the days when services are provided, only working days are to be considered including idle days if the client is charged standby charges.

The draft provision specifically states that services performed by an individual will be considered only if the individual works under the supervision, direction or control of the enterprise. For example, if an enterprise sub-contracts any services to another enterprise and the employees of the sub-contractor work independently of the main contractor, the services of the sub-contractor's employees will not be counted.

A specific example has been given in the Commentary which is relevant to India (although, as we shall see later, India has expressed a reservation on that example). The example concerns a company ZCO which has



Several countries believe that services performed in a country ought to be taxable even though there may not be a classical permanent establishment in the form of a fixed place of business. The OECD has not agreed with this principle of extended taxation.

outsourced to another company OCO the work for providing technical support on telephone to the clients of ZCO. OCO has several other customers in addition to ZCO. Since the employees of OCO are not under the supervision, direction or control of ZCO, their services do not create a services permanent establishment for ZCO.

(iii) Attribution of Profits to a permanent establishment

Profits attributable to a permanent establishment are to be determined as if it were a distinct and separate enterprise dealing independently with the enterprise of which it is a permanent establishment. Consequently, the profits attributable to a permanent establishment need not be restricted to the profits of the whole enterprise. Profits may be attributable to a permanent establishment even though the enterprise as a whole may not have made profits and *vice versa*.

It is also possible that the profits which are taxed in the source country may be different from the profits taxed in the country of residence owing to different computation rules.

Determination of profits attributable to a permanent establishment involves a two-step approach. The first step is identification of the activities carried in through the permanent establishment through a functional and factual analysis. In the second step, the profits of the dealings between the permanent establishment and the enterprise are to be determined by applying the arm's length principle by reference to the functions performed, assets used and risk assumed.

A permanent establishment sometimes arises through a dependent agent. In such a situation, the dependent agent and the enterprise constitute two separate taxpayers.

Consequently, profits attributed to the deemed permanent establishment on account of dependent agent will be separate from the income of the dependent agent itself. This may imply that payment of an arm's length consideration by the enterprise to the dependent agent may not eliminate the tax liability of the enterprise. This view of the OECD does not accord with the view taken by the Bombay High Court in the recent case of *Set Satellite (Singapore) Pte. Ltd. vs. DDIT 2008-TIOL-414-HC*. Consequently, this view of the OECD may not constitute good law for Indian tax purposes.

In determining the profits attributable to a permanent establishment, expenses are to be deducted but this will be subject to any conditions on deductibility imposed under domestic law (for example, the condition of deduction of tax at source under section 40(a) of the Income-tax Act, 1961)

The Commentary contains new paragraphs on deduction for interest. Except for banks, no deduction is to be allowed for interest on internal debts and receivables. As regards interest paid on external borrowings, part of such interest may be deducted in computing the profits of a permanent establishment after allocating an appropriate amount of "free capital" to the permanent establishment. Free capital means the enterprise's own funds on which no interest is payable.

(iv) Real Estate Investment Trusts (REITs)

The Commentary on Article 10 dealing with dividends has been amended to give an alternative to countries to tax the income from small investors in REITs at the lower rate prescribed for dividend and to deny this benefit to income received by large investors. An option has also been given under the Article 13 to grant exemption for capital gains to small investors in REITs.

(v) Royalties

Article 12 of the Model Convention contains the definition and provisions for taxation of royalties. Royalties are paid for the use or the

right to use intellectual property. A payment for the transfer of ownership of property is not in consideration "for the use of, or the right to use" the property and, therefore, does not represent royalty. This position was endorsed by the Kolkata High Court in the case of *CIT vs. Davy Ashmore India Limited* 190 ITR 626.

Payments made for obtaining exclusive distribution rights are not royalties because they are not made in consideration for the use of or the right to use property.

A payment for a design, model or plant can be covered under the royalties definition only if the design, model or plan already exists. If the payment is for development of a new design, model or plan, it will not be royalty but will be business income.

The royalty definition also includes payments for information covering in-dustrial, commercial or scientific experience. This covers secret information arising from previous experience. Payments for new information obtained as a result of performing services for the payer will not be royalties but will instead be fees for technical services or business income.

An important clarification relates to software copyright. The new Commentary considers a situation where a software distributor is granted the right to distribute copies of a programme without the right to reproduce that programme. In such a transaction, the distributors pay only for acquiring copies of the software and not for using any right in the software copyright. Consequently, such payments would not be royalties but would be business income.

(vi) Non-discrimination

Non-discrimination is dealt with in Article 24. The Article does not protect against indirect discrimination. For instance, while Article 24(1) protects against discrimination based on nationality, it does not protect against discrimination based on residence.

(vii) Mutual Agreement Procedure

Article 25 deals with Mutual Agreement Procedure. New portions have been added in





India has not accepted the interpretation that the place of effective management is the place where key management and commercial decisions are made. India is of the view that the place where the main and the substantial activity of the entity is carried on is also to be taken into account.

the Commentary consequent on the revision in the Article providing for arbitration. A sample mutual agreement on arbitration has also been annexed. The new Commentary clarifies that even if there is no requirement in the DTAA to make a corresponding adjustment by the resident country consequent on a transfer pricing adjustment in the source country, the Mutual Agreement Procedure can still be initiated by a taxpayer if no corresponding adjustment is made.

3. *India's position on the Model Tax Convention and Commentary*

India is not a member of the OECD. The OECD Model Convention and Commentary are not binding on members or on non-members. However, the OECD has invited several non-member countries to state their reservations on the Articles of the Model Convention and their observations on the Commentary. In the revised 2008 Model, India has been invited for the first time to state its observations and reservations. These are useful because they indicate India's position on taxation of several types of international transactions. Since India has taken this position for the first time, India's reservations and observations cover the entire Model Convention and Commentary and are not restricted only to the latest amendments.

India's position is based on various domestic law and policy considerations. India's domestic tax regime is source-oriented and seeks to tax several transactions of non-residents even where the income may be sourced and arise outside India. While the source-oriented taxation is partially mitigated in India's DTAA's, there is still greater source-based taxation in India's DTAA's than is contemplated under the OECD Model or even under the UN Model. Most of the observations and reservations set out by India in the OECD Model arise out of India's desire to retain its scheme of source-based taxation.

The principal positions taken by India are discussed below:

(i) Partnerships

The OECD Commentary provides that where a country treats a partnership as fiscally transparent and taxes the partners on their shares, the partnership itself may not be considered to be a resident of that country. In such a case, the Commentary provides that the partners should be entitled to claim the benefit of the DTAA. India has not agreed with this interpretation. Consequently, if a non-Indian partnership is denied DTAA benefits in India, India may not extend DTAA benefits to the partners even though the income of the partnership may be taxed in the residence country in the hands of the partners.

India has reserved the right that an Indian partnership must be considered as residents of India. This would be the case even otherwise since an Indian partnership itself is a taxable entity.

(ii) Person

India has reserved the right to include in the definition of "person" only those entities which are treated as taxable units. Thus, a fiscally transparent entity such as a non-Indian partnership may not qualify as a person in such a definition.

(iii) Residence

India has not accepted the interpretation that the place of effective management is the place where key management and commercial decisions are made. India is of the view that the place where the main and the substantial activity of the entity is carried on is also to be taken into account. Thus, for example, a company having most of its activities in India could be treated as having place of effective management in India even though key decisions may be made outside India.

(iv) Insurance Enterprises

India has reserved the right to provide that an insurance or reinsurance enterprise shall be deemed to have a permanent establishment in a country if it collects premiums in that country or insures risks situated therein through a person other than an independent agent.

(v) Permanent Establishment

India has reserved the right to treat an enterprise of a country as having a permanent establishment in the other country if a person habitually secures orders in the other country wholly or almost wholly for the enterprise. Thus, for example, if a non-Indian company has an agent in India working only for such company and the agent habitually secures orders in India, such agent would be treated as a permanent establishment even though he may have no authority to contract.

India has also clarified that an agent who acts wholly or almost wholly on behalf of an enterprise will not be considered to be independent.

The OECD Commentary states that mere leasing of equipment or intangible property without maintaining a fixed place of business does not create a permanent establishment. India has taken the position that tangible or intangible properties may by themselves constitute a permanent establishment of the lessor in certain circumstances, which have not been specified. How intangible property without a fixed place of business could create a permanent establishment is unclear as an intangible property in itself cannot normally be a fixed place of business.

In the OECD Commentary, scientific research is considered as a preparatory or auxiliary activity, not creating a permanent establishment. India has not agreed with this interpretation. Consequently, performance of

India has reserved the right to add a clarification that allowance of expenses as a deduction will be subject to limitations under domestic law. Many of India's DTAAs already contain such a provision. In fact, this reservation is in line with OECD's Commentary where it has been acknowledged that deduction of expenses would be subject to domestic law.

scientific research in India could create a permanent establishment.

Under the OECD Model, if a dependent agent has authority to conclude contracts on behalf of an enterprise, a permanent establishment would result. The Commentary clarifies that the mere fact that the person has attended or participated in negotiations will not be sufficient to hold that a person has authority to conclude contracts. India has not agreed with the view and has taken the position that the mere fact that the person has attended or participated in negotiations can in certain circumstances be sufficient by itself to conclude that the person has an authority to conclude contracts. This could create a dependent agent permanent establishment.

India has taken the position that when an enterprise is a member of a multinational group and is engaged in manufacture or providing services for another enterprise of the same group, a permanent establishment may result if other requirements of Article 5 are fulfilled. This interpretation could create permanent establishment exposure in case a company in India carries out contract manufacturing or provides services to a group company outside India.

India has taken the position that a website may constitute a permanent establishment in certain circumstances, which again have not been spelt out. It is not clear how a website (as distinct from the server on which it resides) can be a permanent establishment as it cannot be a place of business.

India has taken the position that hosting of a website on a server may create permanent establishment even though the enterprise may not own, lease or operate the server on which the website resides.

(vi) Services Permanent Establishment

Some of the most significant changes to the Commentary particularly in the Indian context are those relating to the services permanent establishment. The amendments have already been discussed above.

Under the Indian domestic law, taxation of services is source-based and far reaching in scope. "Fees for technical services" are defined as payments for services of a technical, managerial or consultancy nature

India has reserved the right to include in the royalties definition, payments for the use or the right to use industrial, commercial, or scientific equipment. This is in line with India's domestic law and several of India's DTAA's which already contain this definition.



including the provision of services of technical or other personnel. This encompasses a wide range of services. Even financial advice has been found to be covered in the definition by the Andhra Pradesh High Court in the case of *G.V.K. Industries Limited vs. ITO* 228 ITR 564.

Under the deeming provision of the Income-tax Act, 1961, fees for technical services paid by a resident are deemed to accrue or arise in India regardless of where the services are performed. Such fees are taxed on a gross basis where there is no permanent establishment. Even fees for technical services paid by a non-resident are deemed to accrue or arise in India if the payment is made for the purpose of a business or source of income in India. Several of India's DTAA's such as those with Germany, Italy, etc. contain similar provisions with slight modifications.

Many of the DTAA's signed by India in the last 20 years beginning with the India-US DTAA contain a restricted definition of "fees for technical services" confining the scope of the definition to cases where technology or knowhow is made available to the payer. In these DTAA's, however, we have a corresponding paragraph for services permanent establishment. The wording of the "services permanent establishment" paragraph in India's DTAA's is broadly similar to that set out in the new OECD Commentary. There are, however, a few significant points of distinction:

- (a) In India's DTAA's, technical services are excluded from the definition of "services permanent establishment".
- (b) The threshold for creation of services permanent establishment in India's DTAA's is 90 days as opposed to 183 days in the OECD Commentary. In case of related enterprises, the threshold is reduced to 30 days or even 1 day as in the case of India-US treaty.
- (c) Under the OECD draft, a services permanent establishment can arise only if individuals are present and performing

services in the country concerned. No such limitation exists in India's DTAA's which only provide that services should be furnished in India.

- (d) Under the OECD draft, only days in relation to the same project or connected projects are considered. There is no such limitation in India's DTAA's, so that all days are to be aggregated including those of unconnected projects.
- (e) the OECD draft excludes services performed by a sub contractor unless the enterprise supervises, directs or controls the manner in which services are performed by the subcontractor's employees. There is no such limitation in India's DTAA's.

India's reservations on the "services permanent establishment" Commentary are in line with the provisions relating to services permanent establishment in India's DTAA's. India's views are as follows:

- (a) A country may tax services even when the services are furnished by a non-resident from outside that country.
- (b) A country is entitled to tax the gross amount of the fees for services.
- (c) Taxation may extend to services performed outside the territory of a country. For furnishing services in a country, physical presence of an individual is not essential.
- (d) There need not be a minimum level of presence in a country before services may be taxed.
- (e) India has not agreed with the interpretation given in the OECD's Commentary in the example concerning ZCO (described above). This implies that a services outsourced to a sub-contractor may create a permanent establishment for an enterprise. This interpretation has far reaching implications since it could place at risk outsourcing activities where a BPO unit located in India performs services for customers of an enterprise located outside India. To take the same example of ZCO, the call centre operated by the outsourcing company OCO to clients of ZCO could

constitute a services permanent establishment of the enterprise ZCO.

(vii) Attribution of Income to a Permanent Establishment

India has reserved the right to add a clarification that allowance of expenses as a deduction will be subject to limitations under domestic law. Many of India's DTAA's already contain such a provision. In fact, this reservation is in line with OECD's Commentary where it has been acknowledged that deduction of expenses would be subject to domestic law.

India has reserved the right to provide that income attributable to a permanent establishment during its existence may be taxable even if payments are received after the permanent establishment has ceased to exist. It may be noted that even without such a specific provision, the Mumbai Tribunal in the case of *DCIT vs. Roxon Oy*. 106 ITD 489 has held that such receipts are taxable.

India has taken the view that in case of a construction permanent establishment, the scope of taxable income may include profits arising from supply of goods by the enterprise.

(viii) Shipping and Aircraft Business

India has reserved the right to apply the royalties Article to profits from leasing ships or aircraft on a bare charter basis. Such profits could, therefore, be denied the exemption under the shipping and aircraft Article and be taxed as royalties for the use of equipment.

(ix) Dividends

India has reserved the right to modify the definition of the term dividends. This is significant in the context of the Indian deeming provisions where an upstream loan by a company to a shareholder may sometimes be treated as dividends.

(x) Interest

India has reserved the right to treat the interest element of credit sales as interest and not as sale proceeds.

India has reserved the right to treat the difference between the redemption value and the issue price of bonds and debentures in accordance with domestic law, which may be interest as against capital gains.

(xi) Royalties and Fees for Technical Services

India has reserved the right to include in the royalties definition, payments for the use or the right to use industrial, commercial, or scientific equipment. This is in line with India's domestic law and several of India's DTAA's which already contain this definition.

India has reserved the right to define royalties and fees for technical services at source particularly by reference to its domestic law. Many of India's DTAA's broadly reflect these definitions with the exception of some treaties where the definition of fees for technical services is restricted to services where knowhow or technology is made available.

India has reserved the right to tax royalties and fees for technical services at source and define the source of such payment. Broadly speaking, in India's domestic law, the source of royalties and fees for technical services is the place where the right or services are utilized. Under India's DTAA's, the source is the payer (where the payer is a resident of India) or a permanent establishment of the payer in India (where the payer is not resident in India). The India-USA DTAA has an additional source provision similar to that in the domestic law i.e. the place where the right is used or where services are performed.

India has taken the position that the following payments may constitute royalties:

- (a) Payment for transfer of full ownership of property.
- (b) Payments in consideration for obtaining exclusive distribution rights in a territory.
- (c) Payments for the development of a design, model or plan that does not already exist.
- (d) Payments for limited rights to reproduce a software programme or copy the programme onto the computer's memory even





The OECD in keeping with changing times has updated its Commentary on international tax. With India formally stating its position, there is now greater awareness of Indian tax implications. However, the validity of many of India's positions is yet to be tested in courts of law.

though it may be necessary to enable the user to operate the programme.

- (e) Payments under licence arrangements in which the licensee obtains rights to make multiple copies of a computer programme even though it may be only for operation only within its own business.
- (f) Payments to a software copyright holder by a distribution intermediary for the right to distribute copies of a program even without the right to reproduce that programme.
- (g) Payments for electronic downloads of digital products for the customer's own use.

(xii) Capital Gains

India has reserved the right to tax gains from the alienation of shares or rights in a company which is a resident of India. Most of India's DTAA's already grant India the right to tax capital gains on shares in an Indian company with the exception of few DTAA's such as Mauritius, Cyprus, Singapore, etc.

(xiii) Other Income

India has maintained the right to tax income (not falling under any of the specific Articles) arising from sources in India. This provision already exists in several of India's DTAA's.

(xiv) Non-discrimination

India has reserved the right to provide that the non-discrimination provision cannot prevent a country from charging a permanent establishment of a foreign company at a rate of tax higher than that charged on a domestic company.

Conclusion

The OECD in keeping with changing times has updated its Commentary on international tax. With India formally stating its position, there is now greater awareness of Indian tax implications. However, the validity of many of India's positions is yet to be tested in courts of law.

ICAI NEWS

Panel of Arbitrators

The Institute of Chartered Accountants of India (Institute) recognises that in the emerging globalised scenario, the Alternative Dispute Resolution (ADR) system is a cost and time effective alternative to the heavily overburdened Courts. Appreciating the larger role of members in Alternative Dispute Redressal Mechanism as well as the significance of dispute settlement in the development process, the Institute is desirous of promoting the area of practice amongst its members. It offers immense professional opportunities for members given their expertise in Commercial, Financial and Taxation matters. Members of this profession are also known for their independence and are therefore trusted by the business community.

Realising the need, the Council has recently approved the framework for promoting Arbitration as an emerging area of practice amongst the members.

In line with above decision of the Council, the Committee on Economic and Commercial Laws has organised 6th and 7th batch of the Certificate Course at

New Delhi and Mumbai respectively. The Committee has also planned to organise more batches of the Course at Metros and Non-Metros across the country. Earlier 5 batches of the Course had already been conducted during the Year 2005-2006.

The Institute is maintaining the Panel of Arbitrators. The names of the members who have undergone the Course successfully have been included in the Panel.



The Institute is promoting awareness about benefits to the parties in utilizing the services of the members empanelled on the **ICAI Panel of Arbitrators**.

The Panel of Arbitrators is hosted at the Institute's website www.icaai.org.

Chairman
Committee on Economic and Commercial Laws (CECL)

Practical Arbitrator – An Overview



CA. Anil Seth

*The author is a member of the Institute
and an advocate.
He can be reached at
anil_seth@icai.org*

With the courts overburdened with pending cases, more and more companies are resorting to arbitration for speedy and mutual resolution of their various disputes. This scenario has brought arbitrators into focus and has created plethora of opportunities for Chartered Accountants and allied professionals to act in the capacity of arbitrators. The article deals with aspects which an arbitrator must keep in view during the course of arbitral proceedings, and offers guiding tips to act as an arbitrator for adjudicating the disputes arising in commercial contracts.

Before dealing with the practical aspects, it is necessary to know the meaning of 'Arbitrator' and how it is different from a 'court of law'.

Russell on Arbitration, 20th Edition, P. 104 has dealt with the term 'Arbitrator' in very lucid manner. The same reads as under:–

“An Arbitrator is neither more nor less than a private Judge of a private court (called an Arbitral Tribunal) who gives a private judgment (called an Award). He is a Judge in that a dispute is submitted to him”.

“He is private in so far as:

- (1) He is chosen and paid by the disputants
- (2) He does not sit in public
- (3) He acts in accordance with privately chosen procedure so far as that is not repugnant to public policy
- (4) So far as the law allows he is set up to the exclusion of the State Courts

Neither the parties nor the courts have powers to remove the arbitrator once appointed validly. The arbitrator has been vested power under Section 16 of the Act to decide his own jurisdiction, validity of the arbitration clause, decide challenge on doubts raised by any party as to his independence or impartiality.



- (5) His authority and powers are only whatsoever he is given by the disputants agreement
- (6) The effectiveness of his powers derives wholly from the private law of contract and accordingly the nature and exercise of these powers must not be contrary to the proper law of the contract or the public policy of England, bearing in mind that the paramount public policy is that freedom of contract is not to be interfered with".

An arbitrator cannot be equated with a court of law because he is creation of arbitration agreement between the parties. While court has inherent powers, an arbitrator does not have any such power. It is a tribunal of limited jurisdiction. Its jurisdiction is circumscribed by the terms of reference. An arbitrator can act only within the four-corners of the contract between the parties and the law, but not beyond.

In India the arbitration proceedings are regulated by Arbitration & Conciliation Act, 1996 (hereinafter referred as an 'Act'). The main objects of the Act are expeditious adjudication of the disputes and to minimize the supervisory role of courts. The scheme of the Act makes Arbitral Tribunal master of the arbitration proceeding by curtailing the interference of courts during the arbitration, which was not so under the old Arbitration Act of 1940. Section 5 of the Act provides that 'no judicial authority shall intervene except whereso provided in this part'.

Neither the parties nor the courts have powers to remove the arbitrator once appointed validly. The arbitrator has been vested power under Section 16 of the Act to decide his own jurisdiction, validity of the arbitration clause, decide challenge on doubts raised by any party as to his independence or impartiality. Under the Arbitration Act of 1940, the above powers were only with the Civil Court. The arbitrator, after his appointment, is master of the arbitration proceedings and award passed by Tribunal (with majority) is equivalent to

decree of the court. The award is also not subject to interference on facts and the award can be set aside by the court only on limited grounds as provided under Section 34(2) of the Act.

The Act of 1996 has reposed more faith in the arbitrator, who should act fairly (being independent and impartial) and must give equal treatment to both the parties, comply with principles of natural justice, pass an award on the basis of the facts, terms of the contract and as per the applicable laws. The Act of 1996 aids/facilitates implementation of arbitration agreement. It is necessary for the Arbitral Tribunal to proceed with the arbitration proceedings with due expedition.

Section 28 of the Act casts an obligation on the Arbitral Tribunal to decide the disputes submitted to arbitration in accordance with applicable substantive law and to decide in accordance with the terms of the contract and take into consideration the usages of the trade applicable to the transactions. The Arbitral Tribunal has no jurisdiction to decide the disputes on the basis of sympathy or equity (as distinguished from law). The substantive laws are Contract Act, Transfer of Properties Act, Limitation Act, etc.

It is necessary for the Arbitral Tribunal to consider the following aspects during the course of the arbitration proceedings:-

- i) Arbitration Agreement between the parties
- ii) Appointment of arbitrator is strictly in terms of the arbitration agreement
- iii) Existence of the disputes before invocation of the arbitration, which forms part of 'Terms of Reference'
- iv) Declaration by the arbitrator of his independence and impartiality
- v) Decide challenge to jurisdiction of the arbitrator immediately, if it was raised by one of the parties
- vi) Power to give direction for necessary measure
- vii) Equal treatment to the parties
- viii) Seek assistance of expert and court, if necessary
- ix) The Arbitral Award must state reasons for the Award

- x) Termination of Arbitration proceeding
- xi) Correction of Award.

i) Arbitration Agreement: Section 7 of the Act defines the term 'Arbitration Agreement'. It is necessary that the arbitration agreement between the parties must be in existence. The Arbitration Agreement can be entered into at any stage:-

- (a) In anticipation of the disputes at the time of entering into main commercial contract.
- (b) At the time when the dispute(s) arise.
- (c) It can be referred to arbitration by court at any stage of the court proceedings under Section 89 of the CPC.

As per Section 7 of the Act, the arbitration agreement must be in writing, it can be integral part of main Agreement or in the form of a separate agreement. Even though the arbitration agreement must be in writing it is not necessary that the arbitration agreement must be signed by the parties. The arbitration agreement can be incorporated by referring to a document, which is having an arbitration agreement e.g. Bye-laws of any institutions.

The essential conditions of an arbitration agreement are as follows:-

- a) There must be a present or a future difference in connection with some contemplated affair.
- b) There must be the intention of the parties to settle such difference by a private tribunal.
- c) The parties must agree in writing that the award by the Tribunal shall be final and binding on the parties.
- d) The parties must be "*ad idem*".

The law does not provide for any particular format of the 'Arbitration Agreement'. The Agreement fulfilling the above conditions will be treated as an 'Arbitration Agreement' even though the term 'arbitration' is not mentioned in such an agreement. Without a valid

arbitration agreement between the parties the arbitration cannot proceed.

ii) Appointment of Arbitrator: Appointment of Arbitrator has to be strictly in terms of the procedure agreed by the parties for the constitution of the Arbitral Tribunal. In case appointment is not as per the procedure agreed by the parties, the appointment is not valid and the appointment can be challenged by any party to the arbitration agreement under Section 16 of the Act before the Arbitral Tribunal.

In case of failure of the procedure for appointment of the arbitrator or if the parties fail to agree on the name of the arbitrator, the arbitrator shall be appointed by court under Section 11 of the Act. The court will have right to decide the issue as to whether arbitration agreement exists, whether dispute subsists and is capable of being arbitrated upon, qualification of the Arbitrator etc. The order of the court in such respect shall be final and binding and shall not be subject to challenge before arbitrator under Section 16 of the Act. In case the arbitral tribunal has been constituted without recourse to Section 11(6) of the Act, the arbitral tribunal will have the jurisdiction to decide the above matters, as provided under Section 16 of the Act (*S.B.P. & Co. vs. Patel Engineering Ltd.* (2005) 3 SCC 618).

iii) Disputes: It is necessary that the 'disputes' or 'differences' must be in existence on the date of invocation of the arbitration and only the same can be referred to the Arbitral Tribunal for adjudication. The 'issues' or 'claims', which have not been crystallised into 'disputes' are beyond the Terms of Reference and jurisdiction of the Arbitral Tribunal. A dispute arises when there is a claim by one party and denial or repudiation of the claim by the other party'. The existence of disputes is prerequisite for appointment of an Arbitrator (*Inder Singh Rekhi vs. DDA – AIR 1988 S. C. 1007*).



Section 12(2) of the Arbitration & Conciliation Act, 1996 casts an obligation on the arbitrator to disclose to the parties without any delay in writing any circumstances which are likely to give justifiable doubts as to his 'independence or impartiality' at the time of acceptance of his appointment which he shall maintain throughout the arbitral proceedings.

Section 16 of the Arbitration & Conciliation Act, 1996, vests jurisdiction with the arbitrator to rule on its own jurisdiction, including ruling on objection with respect to existence or validity of the Arbitration Agreement. Section 16(1) clearly provides that arbitration clause which forms part of the contract shall be treated as an agreement, independent of other terms and conditions of the contract.



iv) Reference to Arbitrator: The jurisdiction of the arbitrator to adjudicate the claims is limited to the disputes referred to the arbitrator. The arbitrator has got no jurisdiction to enlarge the scope of the arbitration by entertaining new claims, which were not referred to him, unless both the parties agree in writing to enlarge the scope of reference. The jurisdiction of the arbitrator flows from the Reference to Arbitrator and the Reference can only be made by either party with regard to such disputes which are contemplated by the agreement containing the arbitration clause. In case any claim is excluded or barred by the contract between the parties such a claim cannot be adjudicated upon by the arbitrator.

v) Declaration by Arbitrator: Section 12(2) of the Act casts an obligation on the Arbitrator to disclose to the parties without any delay in writing any circumstances which are likely to give justifiable doubts as to his 'independence or impartiality' at the time of acceptance of his appointment which he shall maintain throughout the arbitral proceedings. In case of non-declaration or wrongful declaration the same can be taken as a ground by the parties for setting aside for Arbitral Award.

vi) Challenge to Arbitral Process: Under Section 12(3) of the Act, parties have right to challenge appointment/continuation of an Arbitrator if the circumstances give rise to justifiable doubt as to his independence or impartiality or if he is not possessing the requisite qualifications. Unless the other party to the arbitration agrees to such a challenge or the arbitrator agrees to withdraw, the arbitrator has the right under Section 13(3) of the Act to decide on such a challenge. If the challenge is not successful, the arbitrator shall continue the arbitral proceedings and make an award. The challenge to decision of the arbitrator to continue and pass award can be raised after passing of the award.

The arbitration proceedings shall not be interfered with by the Court till the award is passed.

Section 16 of the Act vests jurisdiction with the Arbitrator to rule on its own jurisdiction, including ruling on objection with respect to existence or validity of the Arbitration Agreement. Section 16(1) clearly provides that arbitration clause which forms part of the contract shall be treated as an agreement, independent of other terms and conditions of the contract. Section 16(2) enjoins that respondent wanting to raise a plea that Arbitral Tribunal does not have the jurisdiction must file objection not later than the submissions of his statement of the defence. The party who has nominated the arbitrator shall also not be precluded from raising the plea of jurisdiction of arbitrator. After the Arbitral Tribunal rejects the objection to his jurisdiction, the Arbitral Tribunal shall continue with the arbitral proceeding and shall make an arbitral award. The decision of the Tribunal rejecting the challenge is not subject to challenge in court before passing the final award.

vii) Necessary Measures: The Arbitral Tribunal can, at the request of the one party, order other party to take necessary measure of protection in respect of the subject matter of the dispute unless the parties agree otherwise (Section 17 of the Act). The power of the arbitrator is limited and it cannot go beyond the 'Reference' or the 'arbitration agreement' and only the parties can be bound by such a direction and not any third party. The arbitrator has no power to enforce his order nor can he seek judicial enforcement thereof.

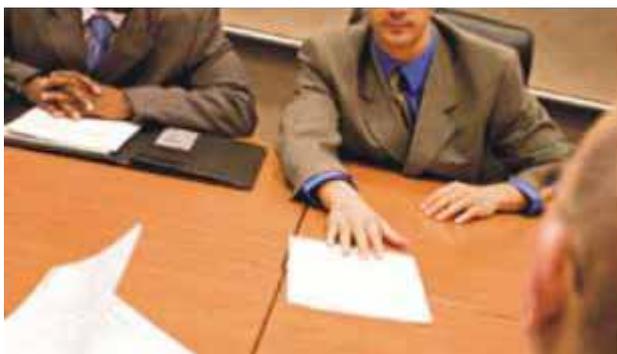
viii) Equal Treatment to Parties: After his appointment, the arbitrator is like a judge and has to give equal treatment to both the parties (Section 18). The arbitrator is under an obligation to conduct the proceeding in accordance

with the principles of natural justice and the proceeding of arbitration must adhere to justice, equity, law and fair play in the action so that the same lead to proper resolution of the disputes (*FCI vs. Joginder Prasad* – AIR 1989 S. C. 1263).

By the term 'natural justice' one means that each party must be given reasonable and sufficient opportunity to explain its case and no man should be condemned unheard. It is also essential that both the parties must be heard in presence of each other and the Arbitral Tribunal must not make any private enquiry from any party. The Arbitral Tribunal should also not accept hospitality from any party.

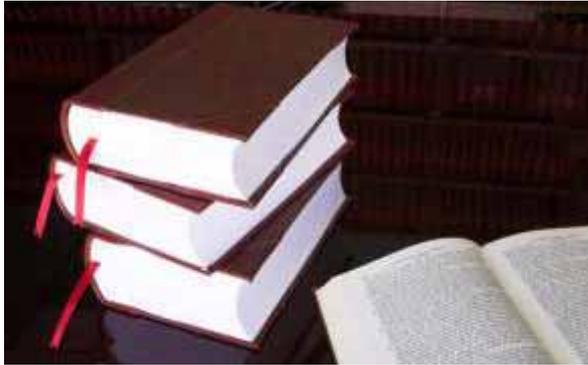
The Arbitral Tribunal is entitled to conduct the proceeding in the manner in which it considers appropriate except where parties have agreed otherwise. The Arbitral Tribunal is not bound by the Code of Civil Procedure (CPC) or by the Evidence Act, but he is not prohibited from drawing the substance from the principles of CPC & Evidence Act (refer Section 19 of the Act – *Rotary Club vs. Sunil Jain* (2007) 3 RAJ 102 (Delhi)). Section 19(3) authorises the Arbitral Tribunal to conduct the proceedings in the manner it considers appropriate and the Tribunal has power to determine the admissibility, relevance, materiability and weight of the evidence. Section 24 of the Act vests power with the Arbitral Tribunal to decide whether to hold hearing for the presentation of evidence or oral arguments or whether the proceedings shall be conducted on the basis of the documents and other material on record unless the parties decide otherwise. The arbitration shall be held normally at the place agreed between the parties, as per Section 20 of the Act.

- ix) **Assistance of Expert and Court under Section 26 of the Act:** Arbitral Tribunal has the power to appoint expert to give report/opinion on specific issue to be determined by the Tribunal (unless otherwise agreed by the parties). The final decision is to be taken by the Tribunal/Court and the said opinion is not binding on the Tribunal/Court. (*Thyssen GmbH vs. SAIL* – (1999) 9 SCC 334). It is necessary that copies of expert report/opinion be provided to the parties for their reaction on the same. The Arbitral Tribunal can also seek assistance of the court in taking evidence.
- x) **Arbitral Award:** The Arbitral Award passed by Arbitral Tribunal shall be in writing and must be signed by all the members of the Arbitral Tribunal. Such an award must state the reasons unless agreed otherwise and must give date and place of making of the award. The award by majority shall prevail. Sub-clause (3) of Section 31 has made obligatory on the Arbitral Tribunal to state the 'reasons' for the award. The award without reasons shall be invalid. It is not necessary to give detailed reasons for making the Award. The 'reasons' will give the flow of thought of the Tribunal in passing the award. It is not necessary that the award indicates the mind of the arbitrator as to how and why he acted in a specific manner. The award must mention the factor on which the conclusion is reached. The Supreme Court in *UOI vs. Mohan Lal* - (1972) 2 SCC 836 defined 'reasons' as 'links between materials on which certain conclusions are based and the actual conclusion.
- xi) **Termination of Arbitral Proceedings:** The arbitral proceedings shall terminate in the following manner:–
- By the final award of the Arbitral Tribunal, or
 - On order of the Arbitral Tribunal terminating the proceeding:–



The award without reasons shall be invalid. It is not necessary to give detailed reasons for making the Award. The 'reasons' will give the flow of thought of the Tribunal in passing the award. It is not necessary that the award indicates the mind of the arbitrator as to how and why he acted in a specific manner. The award must mention the factor on which the conclusion is reached.

- i) Claimant withdraws his claims
- ii) Parties agree on the termination
- iii) Arbitral Tribunal finds that discontinuation of the proceedings has for any other reason become necessary or impossible.



xii) Correction of Award: Section 33 of the Act vests power with the Arbitral Tribunal to correct any computation error, clerical or typographic errors of or any other errors of a similar nature occurring in the Award or to give interpretation of specific point or part of the award, if the request is made by the party within 30 days of receipt of arbitral award. The Arbitral Tribunal has also got the right to correct any error on its own within 30 days of the Arbitral Award. The Arbitral Tribunal has got no power to review its award. (*State of Arunachal Pradesh vs. Damani Construction Co.* – 2007 (10) SCC 742.

Challenge to the Award

Award is a decree unless challenged within three months from the date of receipt of the Award. It is enforced through court of law. Arbitral Award can be set aside only on the ground specified in Sections 34(2)(a) & (b) and not on any other ground. The Supreme Court in the matter of *ONGC vs. Saw Pipes Ltd.* 2003(2) Arb. L. R. 5 has held that:-

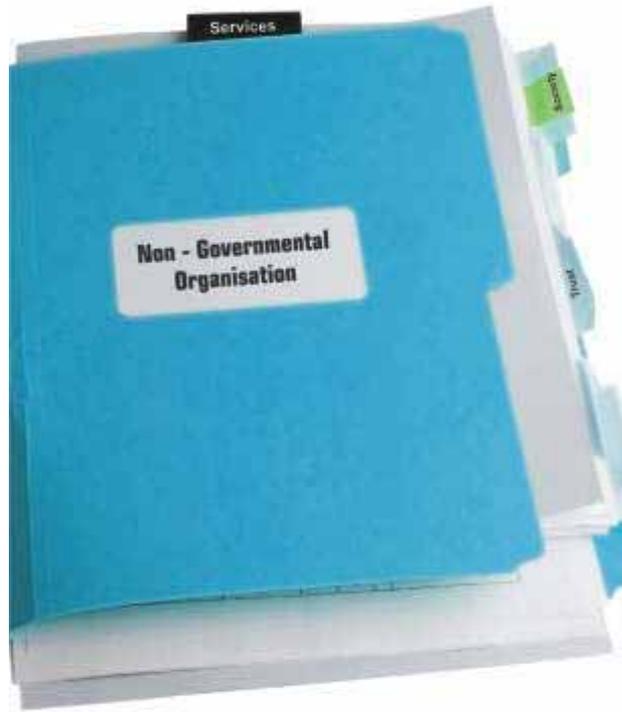
- A. (1) The Court can set aside the arbitral award under Section 34(2) of the Act if the party making the application furnishes proof that:
- i) a party was under some incapacity; or
 - ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication

thereon, under the law for the time being in force; or

- iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration.
- (2). The court may set aside the award:
- (i) (a) if the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties;
 - (b) failing such agreement, the composition of the Arbitral Tribunal was not in accordance with Part-I of the Act.
 - (ii) If the arbitral procedure was not in accordance with:
 - (a) the agreement of the parties, or
 - (b) failing such agreement, the arbitral procedure was not in accordance with Part-I of the Act.

However, exception for setting aside the award on the ground of composition of Arbitral Tribunal or illegality of arbitral procedure is that the agreement should not be in conflict with the provisions of Part-I of the Act from which parties cannot derogate.
 - (c) If the award passed by the Arbitral Tribunal is in contravention of provisions of the Act or any other substantive law governing the parties or is against the terms of the contract.
- (3) The award could be set aside if it is against the public policy of India, that is to say, if it is contrary to:
- (a) Fundamental policy of Indian law;
 - (b) the interest of India; or
 - (c) justice or morality; or
 - (d) if it is patently illegal.
- (4) It could be challenged:-
- (a) as provided under Section 13(5); and
 - (b) Section 16(6) of the Act

Non - Governmental Organisations' Formation Procedures



The Non-Governmental Organisations in India are playing a crucial role in propagating and implementing various national and regional socio-economic, environmental and other novel causes and initiatives for the welfare of society. A large number of NGOs are working in India, but, considering the constantly changing socio-economic climate and the growing needs of the society, more NGOs will be required to be opened in times to come. Chartered Accountants can play an important role in this regard. This article provides an overview of options, procedures and formalities with regard to setting up of non-Governmental organizations in India.



CA. U. D. Prithviraj

*The author is a member of the Institute.
He can be reached at
eboard@icai.org*

Meaning of NGO

Any organisation working for a social, cultural, economic, educational or religious cause is termed as a non-governmental organisation (NGO). In India, the NGOs are doing substantial work for the welfare of needy sections of Indian society, fully taking into account the constantly changing socio-economic climate. NGOs have reached out to all sections of society including women, children, pavement dwellers, unorganised workers, youth, slum-dwellers and landless labourers. NGOs are viewed as vehicles of legitimization of civil society.

An NGO can be formed under various legal identities:

- (i) **Society** registered under Societies Registration Act, 1860.
- (ii) **Trust** (Formed under the Trust deed and registered with Income Tax Authority.)

(iii) **Limited Company** incorporated under section 25 of the Companies Act, 1956

Society

The most common form of non-profit organisations in India is a Society. A Society is formed when people come together to do something with some common purpose, which is legal and useful for others. A society should generally not get into profit making activities.

Formation of a Society:

1. *Seven persons enjoin for a common purpose:*

The first step in forming a society requires the coming together of seven (or more) persons who have agreed to pursue a common objective. Please note that the seven members or more may comprise one or all foreigners, a limited company, a partnership firm or another registered society.

2. *Society's Objective to be literary, scientific or charitable:*

Section 20 enumerates the purposes for which a society may be registered under the Act.

3. *Naming the society:*

The members can decide a suitable name which gives a clue as to the character of the society and which does not amount to an improper use of any name, emblem and official seal specified in the Emblems and Names (Prevention of Misuse) Act, 1950. Such a name should not offend or mislead people and should not be the name of a society already existing. The registrar will object to names containing words like government, ministry, bank, suggesting involvement with the government, which is not allowed. The name of a society can also end with the word "Trust".

4. *Drafting the Memorandum of Association and enrolment of members:*

The Memorandum of Association ("MOA") is perhaps the most important document of a registered Society since it

contains the conditions of association of the members and its Objects Clause dictates what can and cannot be done by the members of the Society. As a Charter of the Society it should ideally include name, objects, details of Governing Body and signatures of subscribers.

5. *Registration of Society:*

The registration of a society is important to give the society a legitimate identity and a legal status and particularly more so when viewed from the angle of consequences and benefits which flow from such fulfilling of the legal formality of registration of society.

Trust

The three parties (settler, trustee and beneficiary of trust) are linked by a trust deed which documents the relationship *inter se* and *vis-a-vis* the trust property. Trusts are commonly classified as private/family and public trusts. The main difference between a private and public trust is that while the beneficiary of a private trust is one or a few individuals (mostly family members of the donor), the beneficiary of a public trust is the general public. For the purposes of forming an NGO ensuring public benefit, a public trust can be set up.

There are two statutes relevant to functioning of Trusts in India: The Indian Trusts Act, 1882; and Charitable and Religious Trusts Act, 1920. Public trusts are, however, governed by general law, though the principles forming the basis of the Indian Trusts Act can be applied in the case.

The trustees control the trust's assets and decide how the income (and capital) of the trust is to be distributed, and ensure that it is in line with the charitable purposes of the trust.

A trust must be created for a lawful purpose. The creator of the trust must indicate with reasonable certainty the following:

- Intention to create trust
- Purpose of the trust
- Beneficiaries of the trust, and
- The trust property





The name of the Society should not amount to an improper use of any name, emblem and official seal specified in the Emblems and Names (Prevention of Misuse) Act, 1950. Such a name should not offend or mislead people and should not be the name of a society already existing. The registrar will object to names containing words like government, ministry, bank, suggesting involvement with the government, which is not allowed.

A public trust is of permanent and indefinite character. A public trust benefits the public at large or at least a section of the community. The property forming subject matter of the trust must be capable of being transferable to the beneficiary - thus property that is inalienable by virtue of public policy or statute does not form valid subject matter for a trust. In terms of section 8 of the Indian Trusts Act, there cannot be a trust of a beneficial interest under a trust i.e. there cannot be a trust upon a trust.

Flexibility in Naming Trust

Trust can be named as family name, or name of an honorable person. The organisation can also be called a "foundation" or "charity" or any similar terms as these words are practically interchangeable in a legal sense.

Non-Profit Company

A non-profit company can be formed for any non-profit activity. It is identical to an ordinary company in all respects except that it is not established for profit and commercial gain. It is also called a Section 25 Company and is a voluntary association of people, registered under the Indian Companies Act, 1956.

Objectives of a Non-Profit Company:

Objectives of a non-profit company can include promotion of commerce, arts, science, religion, charity or any other useful object. Profits are applied for promoting only the objects of the company and no dividend is paid to its members (Section 25 (1) (a) and (b) of the Companies Act, 1956). A non-profit company may be Public or Private. If the non-profit company is a private company, a minimum of only two members are required to form it. However, if the non-profit company is for a public purpose, then a minimum of seven members are needed. A 'Section 25 company' is eligible for certain exemption from provisions of law and concessional rate of fees, etc.

Steps for establishing a section 25 Company:

1. **Application for a name:** Applying for availability of name to the Registrar of Companies is the first step towards registration of the non-profit company. Four names are to be suggested to the Registrar in prescribed Form.
2. **Memorandum and Articles:** Memorandum and Articles of the Non-Profit Company are required to be approved by the Regional Director and the ROC. The documents required for submission of application are:
 - (i) Three printed copies of the memorandum and articles of association of the applicant company, signed by all the promoters with full name, address and occupation (No stamp duty is payable on the Memorandum and Articles of Association)
 - (ii) A declaration by an advocate or a chartered accountant that the Memorandum and articles of Association have been drawn up in conformity with the provisions of the Act and that all the requirements of the Act and the rules made thereunder have been duly complied with, in respect of registration;
 - (iii) List of the names, addresses and occupation of the promoters, members of board of directors, name of companies, associations and other institutions in which promoters of the applicant company are directors or hold positions and description of the positions held by them (three copies)
 - (iv) A statement of assets and liabilities
 - (v) Source of income of the applicant company and estimate of annual expenditure;
 - (vi) A statement giving a brief description of the work, if any, already done by the association and of the work proposed to be done by it after registration in pursuance of section 25;
 - (vii) A statement on grounds on which the application is made under section 25 of the

Companies Act, 1956;

(viii) A declaration by each of the persons making the application that he/she is of sound mind, not an undischarged solvent, not convicted by a court for any offence and does not stand disqualified under section 203 of the Companies Act, 1956 for appointment as director.

3. License under section 25: An application for the license for the section 25 company is to be submitted to the Regional Director (Department of Company Affairs). The license essentially permits the word 'Limited' or 'Private Limited' to be deleted from name of the company. It could take up to 12 weeks after application to receive the license under the section 25 of the Companies Act 1956. Pursuant to application to the Regional Director (within seven days thereafter), the applicant company has to publish a notice in a newspaper as to where the company's registered office is situated and certified copy of the notice has to be filed with the Regional Director.

4. Registration with ROC: Registration certificate is normally granted within one month after filing section 25 licence;

form of either permanent FCRA registration or prior permission on a case-to-case basis.

If a foreign donor agency opens a branch office in India, the Indian office needs FCRA registration or prior permission. Further, second, third, fourth, fifth and all subsequent receivers of foreign funds need FCRA registration or prior permission. It is said that the colour of money never changes and in this regard it is interesting to note that the foreign funds remain 'foreign' in the hands of NGO at all time. The money's foreign origin does not change with transfer and it is only when such foreign money is spent or given to individual beneficiaries that it becomes Indian. An NGO would need prior permission in the following four situations:

1. The NGO does not have permanent FCRA registration;
2. The FCRA number has been cancelled by the Government;
3. The NGO has been asked to get prior permission under section 10(b).
4. The FCRA number is 'frozen' due to change in Governing Body.

FCRA conditions for accepting foreign funds:

Statutory requirement for NGO seeking to receive foreign funds:



An application for the license for the section 25 company is to be submitted to the Regional Director (Department of Company Affairs). It could take up to 12 weeks after application to receive the license under the section 25 of the Companies Act 1956. Pursuant to application to the Regional Director (within seven days thereafter), the applicant company has to publish a notice in a newspaper as to where the company's registered office is situated, and certified copy of the notice has to be filed with the Regional Director.

The Companies Act, 1956 also facilitates the conversion of an existing company to a non-profit company (section 25 company).

There is no bar under Indian law for a foreigner to be a Director in a section 25 company, (relevant permissions prescribed under the Foreign Exchange Management Act.)

Foreign Contribution

The Foreign Contribution (Regulation) Act, 1976 (FCRA) requires that all Indian NGOs which receive foreign contributions, should get clearance from the Ministry of Home Affairs, in the

- (a) Register with the Central Government;
- (b) Intimate the Central Government of (i) the amount of each foreign contribution received by it; (ii) source; (iii) manner in which foreign contribution is received; and (iv) purposes for which and the manner in which such foreign contribution is to be utilised by it.

Those NGOs, which are not registered with the Central Government, can accept foreign contribution only after obtaining the prior permission from the Central Government and should also give intimation to the Central Government as the registered association does.

Procedure for obtaining prior FCRA permission:

- **Apply in Form FC- 1A:** Applicant(s) to file Form FC - 1A along with required documents.
- **FCRA Permission:** Within 90 days thereafter, applicant will receive a registered letter from the Department either granting the permission or stating rejection of your request.
- **Appeal Against Rejection:** Applicants can re-apply after ascertaining and rectifying objections on their file. They can also file an appeal in the High Court within 60 days of the date of letter.
- **Applying Again:** One party can apply for prior permission more than once if needed, considering that projects are varied and or are under different agencies.

When FCRA permission is not needed

Prior FCRA permission is not required for receiving amounts in the following forms:-

- Salary, wages or other remuneration either to individual or payment for business purposes.
- Payment for international trade or for business transacted by him outside India.
- By way of a gift or presentation received as member of any Indian delegation.
- Gift not exceeding Rs. 8,000/- per annum.
Profit-oriented organisations are not covered by FCRA.

Separate Bank Account for Foreign Funds

An NGO is required to open and use a separate bank account exclusively for foreign funds under FCRA.

Income Tax benefits on Foreign Funds

1. **Benefits for the NGO:** Income received by any religious or charitable trust or institution



NON-GOVERNMENTAL ORGANISATIONS

registered with the income tax authorities is not taxable as long as this income is applied for the objects of the organisation

2. **Benefits to Donors:** The donors are also entitled to get an exemption on their donation and the exemption can be 50 percent or 100 percent depending on category of organisations.

Illustrative example of NGOs handling Foreign Money/Materials:

Sponsorships by Foreign Parties:

An occasion can arise where moneyed foreign persons agree to kindly sponsor an NGO's annual charity festival and the foreign funds are forwarded directly towards the expenses for this festival. In this case, the NGO accepting the foreign money for expenses on the festival, has accepted foreign contribution and is under an obligation to intimate the central government. If the NGO does not have requisite FCRA registration or prior permission it cannot accept the sponsorship money in the first place. Let's remember that:

- If the foreign funds are already lying in your account, do not spend the money till you receive permission.
- Form FC-3 is to be filed at the end of each financial year (by 31st July). Filing is required to be done annually till such time the FCRA funds are exhausted.
- Always make two complete sets of documents - one for filings with the FCRA, the other for the NGO records. Wherever documents have been delivered by hand, to obtain written acknowledgment with date, stamp and signatures (when documents are sent by registered post - to retain proof of posting and acknowledgment card (when received back) carefully.
- Documents to be attached with Form FC-8 - Attach one copy of each of the following documents:
 1. Certificate from concern district collector/ department of state government/ministry or department of central government;
 2. Activity report for past three years;
 3. Audited statements of Account for past three years;
 4. List of state or districts of focus of work;

5. Note on socio-economic background of the beneficiaries and of the region to be covered;
6. Where NGO is a society, also attach certified copy of Registration Certificate issued by the Registrar of Societies;
7. Certified copy of registered Trust Deed (if NGO is a Trust);
8. Certified copies of (a) Memorandum and Articles of Association, (b) registration certificate issued by the Registrar of Companies, (c) section 25 license issued by the Regional Director, Department of Company Affairs (if NGO is a non-profit company);
9. FCRA does not allow mixing up of Indian funds and FCRA funds. This means both funds are to be maintained separately.

Thus NGOs play a vital role in society and reduce the burden from Government in many fields. ■



The Foreign Contribution (Regulation) Act, 1976 (FCRA) requires that all Indian NGOs which receive foreign contributions, should get clearance from the Ministry of Home Affairs, in the form of either permanent FCRA registration or prior permission on a case-to-case basis. If a foreign donor agency opens a branch office in India, the Indian office needs FCRA registration or prior permission. Further, the second, third, fourth, fifth and all the subsequent receivers of foreign funds need FCRA registration or prior permission.



Global Economic Crisis and Challenges for BRIC Economies

What had originated as an international banking crisis has grown in dimensions to accentuate into a global financial turmoil and has eventually developed into a worldwide economic catastrophe. The rapidly growing BRIC countries have not been left unscathed by the global tumult, albeit the conflagration has not spread as rapidly as it did in the developed world. All expectations of the “decoupling theory” immunizing these economies have been belied. This article reviews the impact of the current global turbulence on the BRIC countries during the year 2008 and beginning of 2009 and the two-pronged response of the governments and central banks; relying initially on monetary instruments, followed by announcements of fiscal stimulus packages.



***Ishita
G. Tripathy**



**** Dr. Surendra
S. Yadav**



*****Dr. Seema
Sharma**

**The author is an officer of the
Indian Economic Service.*

***The author is Professor of Finance and
Head of the Department of Management Studies
at the Indian Institute of Technology, New Delhi.*

**** The author is Assistant Professor
at the Indian Institute of Technology, New Delhi.
They can be reached at ishita.tripathy@nic.in*

Challenges for BRIC Economies

With the collapse of Lehman Brothers, a leading investment bank, on 15th September 2008, what had originated as an international banking crisis grew in dimensions to accentuate into a global financial turmoil and eventually developed into a worldwide economic catastrophe. The crisis is the first one since the Great Depression (1929-33), which has emanated from a developed economy and has now enveloped the global economy. Its repercussions have been wide and deep, especially in those countries which have a high degree of integration with the global economy.

The rapidly growing BRIC countries, each with trillion-plus dollars of Gross Domestic Product (GDP) and poised to

BRIC is an acronym for the four countries viz. Brazil, Russia, India and China. These economies, which together comprise 25% of the world's geographical land, support 43% of the world population. International Monetary Fund estimates of their GDP indicate that in 2008, these four countries accounted for US \$ 8 trillion. By 2013, this figure is projected to grow to over US \$ 15 trillion.



become world economic powers by 2050, have not been left unscathed by the global tumult, albeit the conflagration has not spread as rapidly as it did in the developed world. BRIC is an acronym for the four countries, viz. Brazil, Russia, India and China, coined by Goldman Sachs. These economies, which together comprise 25% of the world's geographical land, support 43% of the world population. International Monetary Fund (IMF) estimates of their GDP indicate that in 2008, these four countries accounted for US \$ 8 trillion. By 2013, this figure is projected to grow to over US\$ 15 trillion. The rate of growth of these economies, together with their business environment, has provided alluring opportunities to investors.

An indicator of the degree of integration of a country with the global economy is the ratio of its sum of exports and imports to its GDP. The present integration of the BRIC economies with the rest of the world is much more than it was during the South East Asian crisis of 1997 (Table 1). A higher level of integration has essentially contributed to the compounded effect of the current crisis, which has multiplied through the channels of networking.

Table 1. Ratio of Sum of Exports & Imports to GDP in BRIC (%)

Year	Brazil	Russia	India	China
1997	12.5	40.0	21.2	33.4
2007	21.4	44.9	34.7	64.0

Source: <https://www.cia.gov>

The year 2008 started with the expectation that the BRIC nations, with their own growth and demand on world output, would be able to rescue the advanced economies which were reeling under the crisis. However, as the crisis continues to spread, the IMF has been apprehensive about growth prospects. The estimated growth rates of the BRIC countries, except Brazil, during 2008 published by IMF in January 2009 have been revised downwards from the rates projected earlier in October and November 2008 (Table 2).

The growth rate of world output during 2009 is projected to be only half a per cent, being the lowest rate of growth in the past seven decades

Table 2. Annual Growth Rates of BRIC (%)

Year	Actual/ Projected/ Estimated	World	Brazil	Russia	India	China
2006	Actual	5.1	3.8	7.4	9.8	11.6
2007		5.2	5.7	8.1	9.3	13.0
2008	Projected in Oct, 2008	3.9	5.2	7.0	7.9	9.8
	Projected in Nov, 2008	3.7	5.2	6.8	7.8	9.7
	Estimated in Jan, 2009	3.4	5.8	6.2	7.3	9.0
2009	Projected in Jan, 2009	0.5	1.8	-0.7	5.1	6.7
2010	Projected in Jan, 2009	3.0	3.5	1.3	6.5	8.0

Source: *World Economic Outlook Database, International Monetary Fund, various issues*

For Brazil, the crisis ended the three-year long economic boom. Brazil, which was the last of the BRIC countries to be engulfed into the tentacles of the economic turmoil, too, is expected to experience a slowdown during 2009. Its rate of growth during 2009 is projected at 4 percentage points lower than during 2008. After an impressive 7% annual growth during 1997-2007, Russia seems to be the worst off amongst the BRIC nations, with its negative growth projection during 2009.

The growth projection for India made by IMF at 5.1% during 2009 is more conservative than that made by Government of India (GOI), (7%). Unlike in the developed countries where the crisis spread from the financial to the real sector, in India, the real sector was the first to experience a slowdown. This affected the financial sector, which again had a negative impact on the real sector.

The IMF projections of growth rates seem to indicate that in comparison with the other three economies, China with a rate of growth of 6.7% will be better off during 2009, although there is a

definite slump from the 9% growth rate which it is estimated to have had during 2008 (IMF 2008). Undoubtedly, all expectations of the “decoupling theory” immunizing these economies from the ongoing crisis have been belied.

Projections for the year 2010 are brighter than those for 2009 and indicate expectations of a recovery for the total world output and also for each of the BRIC countries. The projected annual growth rates for 2010 are, however, much lower than what the world and the BRIC countries had achieved in the years 2006 and 2007.

This paper reviews the impact of the current global turbulence on the BRIC countries and attempts to assess the implications for these countries. The remainder of the paper has three more sections. The assessment of the impact of the crisis on the four BRIC countries during 2008 and beginning of 2009 is elaborated in the next section.

Impact Assessment for BRIC Economies

The spread of the global economic crisis to the BRIC countries has been mainly through a myriad of indirect channels rather than directly since the banks in the BRIC nations do not have much exposure to the mortgage market in USA. Despite that, overseas financing has almost dried up for banks. The credit crunch has reached Brazil as well and there are no further claims by the government that the Brazilian economy will remain untouched by the “rich world's recession”. Two of Brazil's largest banks, Itaú and Unibanco, announced their merger in November 2008, creating a bank with combined assets of US \$ 263 billion. The banks claim that their merger is primarily a fall-out of the financial turmoil. Russia's credit crunch problems are compounded by its liquidity problems which it faces as far as its short-term external repayment obligations are concerned. China, however, remains one of the few economies whose banking sector has not been paralysed by the global credit crunch, mainly because all big banks of China are state-owned.

The indirect impact on the BRIC economies, on the contrary, has been stronger and varies in severity across the four countries. Some of the indirect impact transmitted via capital flows, financial markets and trade has been analysed in this article.

Imbalances in capital flows and financial markets have further jeopardised the prospects of trade.

With the spread of the crisis, stock markets over the world have crashed, reflecting the loss of confidence of the investors. The value of stock market indicators continued to be eroded during 2008. The tumble down of 72.5% by Russian Trading System Stock Exchange Index during 2008 was the largest amongst the BRIC countries. China's SSE Composite Index, India's BSE Sensex and Brazil's Ibovespa Sao Paulo Index climbed down by 65%, 52% and 41%, respectively, over the same period. The securities markets have shown a high level of volatility due to the overall outflow of Foreign Institutional Investment (FII), particularly during the first week of March 2009 when global investors are estimated to have pulled out record one billion dollar from Asia equity funds.

Trade in the BRIC countries started getting affected by the global slowdown in the later half of 2008 and became more pronounced October onwards. Brazil's trade surplus fell sharply by 38.2% during 2008 to US \$ 24.74 billion as a surge in imports overshoot the growth in exports. Brazilian exports, which had been growing at 30% during the early part of 2008, flattened during October. The fall in world demand has deflated the prices of raw materials which constitute almost 50% of Brazilian exports. Manufacturing items primarily form the other half of exports. These are likely to be slightly less adversely affected than the export of raw materials.

Russia has been affected by the decline in the price of commodities. The country's fiscal and current account surpluses have eroded by the decline in the price of oil and metals, which comprise 80% of its exports.

For India, the dip in exports during October, November and December 2008 as compared to the previous year was as much as 12.1%, 9.9% and 1.1%, respectively. The decline of 16% during January 2009 was the largest since 1998. India's



The spread of the global economic crisis to the BRIC countries has been mainly through a myriad of indirect channels rather than directly since the banks in the BRIC nations do not have much exposure to the mortgage market in USA. Despite that, overseas financing has almost dried up for banks.

cumulative value of exports for the period April-December, 2008 was US \$ 131.99 billion and there was no possibility of reaching the targeted US \$ 200 billion during 2008-09. It was estimated that by the end of March 2009, approximately 10 million jobs will be lost in the Indian export segment, especially in textiles, gems and jewellery, handicrafts and engineering due to a decline in overseas demand, both in terms of cancellation of earlier orders and bleak prospects of new orders. In addition, importing countries are demanding reduction in prices to match those prices which are charged by China for her exports. The loss sustained by Indian exporters in derivatives markets to hedge against currency fluctuations are estimated to be in the range of Rs. 250 crore to Rs. 260 crore.

The exports from the world's biggest exporter, China, which depends heavily on exports of manufactured goods, too have recorded a decline during the preceding few months. From a 3% decline on a year-on-year basis in December 2008, Chinese exports had a record decline of around 26% on a year-on-year basis in February 2009. Imports too have been declining reflecting a decline in local demand.

During the year 2008, while the currencies of Brazil, India and Russia lost their value in the face of global adversity, the Chinese yuan appreciated by 6%, owing much to her US \$ 2 trillion foreign exchange reserves. The real sector depreciated by 45% between August and December 2008. The Rouble remained at almost the same level between end-December 2007 and end-August 2008 and since then has depreciated by almost 44%. The Indian rupee continued to depreciate steadily from Rs. 39.41/US \$ at end-2007 to almost Rs. 52/US \$ in early March 2009. Despite the depreciation, exporters have not gained because of slowing of global demand.

All the three BRIC countries, other than China, reached their peak levels of foreign exchange reserve accumulation during mid-2008 and thereafter experienced depletion of their reserves during the latter half of 2008. Russia suffered a

colossal erosion of her foreign exchange reserves by US \$ 161 billion within six months from a peak level of US \$ 596 billion at end-July 2008. During 2008, China fortified her foreign exchange reserves by adding a further US \$ 416 billion to it. China's reserves which have been built from sustained current account surpluses increased throughout 2008, with a minor decline towards the end of the year.

The external debt of each of the BRIC countries continued to increase during 2008 (Table 3). At the end of September 2008, the latest period for which data is available, Russia's external debt outstanding at US \$ 527.1 billion was the highest amongst those of all developing countries. Amongst the BRIC economies India's external debt outstanding was the lowest at US \$ 221.3 billion.

Table 3: External Debt of BRIC Economies (US\$ billion)

Year	Brazil	Russia	India	China
December 2006	199.4	310.6	160.2	323.0
December 2007	240.5	463.5	203.2	363.0
September 2008	262.4	527.1	221.3	442.0
Position in Developing World in 2008	Fifth	First	Sixth	Fourth

Source: WorldBank

The recent trends in the stock markets, trade, foreign exchange reserves, exchange rates and external debt seem to indicate that the Russian economy is the worst affected amongst the BRIC countries. Standard and Poor's (S&P) reiterated this by downgrading Russia's sovereign credit

The recent trends in the stock markets, trade, foreign exchange reserves, exchange rates and external debt seem to indicate that the Russian economy is the worst affected amongst the BRIC countries.



The impact or the fear of the potential impact of the crisis has been so strong that the underlying principle of capitalism, viz. *laissez faire*, has been undermined and the governments of the BRIC economies have not been diffident about introducing fiscal stimulus packages. IMF has been apprehensive about global growth during 2009 and has called for fiscal and monetary policies to salvage developed countries from recording negative growth for the first time since the Second World War.



ratings from BBB+ to BBB on 8th December, 2008. Russia's outlook is negative, implying that there are chances of a further downward revision of grading. While Brazil's ratings continue to be BBB-, China has an A grade. The rating of India continues to be BBB-. However, the outlook was downgraded from stable to negative on 25th February, 2009.

Government and Central Bank Response in BRIC Economies

The impact or the fear of the potential impact of the crisis has been so strong that the underlying principle of capitalism, viz. *laissez faire*, has been undermined and the governments of the BRIC economies have not been diffident about introducing fiscal stimulus packages. IMF has been apprehensive about global growth during 2009 and has called for fiscal and monetary policies to salvage developed countries from recording negative growth for the first time since the Second World War and a slowing down of developing countries. To mitigate the impact of the global crisis on their respective economies, the response of the governments and central banks of the BRIC countries has been two-pronged. An initial dependence on monetary mechanism has been followed by a fiscal stimulus.

The role of the central banks is no longer limited to price stability, but active financial stability as well. To infuse liquidity into the system, the Reserve Bank of India (RBI) resorted to the use of a multi-pronged approach by reducing cash reserve ratio, cutting the statutory liquidity ratio, using Liquidity Adjustment Facility, revising upwards the ceilings on interest rates on NRI deposits and relaxing the norms of external commercial



borrowings. The CRR has been reduced by a cumulative 4.0 percentage points to 5.0% of net demand and time liabilities since October 2008. Within one quarter, the repo rate was reduced from 9% to 5.5% and the reverse repo rate from 6% to 4%, bringing both rates down to historically lowest levels. To provide foreign exchange liquidity, the ceilings on interest rates on NRI deposits have been revised upwards and the external commercial borrowings (ECB) norms have been relaxed. RBI increased the interest rate ceiling on Non-Resident Indian (NRI) deposits in phases during April-December 2008 to 175 basis points above London Inter-Bank Offer Rate (LIBOR) rate in case of Non Resident (External) Rupee Account [NR(E)RA] deposits and 100 basis points above LIBOR rate in case of Foreign Currency Non Resident (Bank) [FCNR(B)] deposits. The limit on ECB borrowing limit for infrastructure sector was raised to US\$ 500 million per financial year from the earlier limit of US\$ 100 million for permissible end-uses under the approval route.

In China, the central bank cut interest rates five times and reduced the deposit reserve ratio four times since September 2008. The one-year lending rate has dropped down to 5.31% and the deposit rate is 2.25%.

The Russian authorities were the first amongst the BRIC nations to inject US \$ 36 billion into the banking system in October 2008. Further, the government proposed a cut in the profit tax rate from 24% to 20%. A hike of more than 30% in the unemployment benefit has been suggested. Pensions are to be increased during 2009 and 2010.

The government spending on defence would be raised in order to avoid bankruptcies of enterprises in this sector.

This was followed by the Chinese government's announcement of a fiscal package to the tune of a whopping 14% of China's GDP (US \$ 586 billion) in November 2008. The package comprises public works, social welfare and tax reforms. The public works include housing for the poor, infrastructure projects covering railways, roads, airports and power, increased spending on health and education. Further, Chinese exporters have been offered a number of rebates by the government to tide over the crisis. However, critics point out that much of the stimulus package had been planned earlier and only US \$ 220 billion of the package is truly new to counter the slowdown.

The Brazilian government's tax cuts, credit injection and boosts to consumer spending announced in December 2008 cost US \$ 13 billion. The central bank of Brazil has committed US \$ 10 billion dollars from the foreign exchange reserves to finance Brazilian companies struggling to access credit abroad. The Brazilian government has approved a reduction in income tax by creating new tax brackets favouring low-income earners. Besides, banks have been encouraged to lend more money.

Since December 2008, Government of India has announced three stimulus packages, entailing an across-the-board cut of 4% in the *ad valorem* Cenvat rate on all products except petroleum, measures to ensure credit flow to productive sectors, particularly infrastructure and extension of pre-and-post-shipment credit periods of exports and 2% cuts in excise and service taxes.

The Path Ahead for BRIC Economies

The spectrum of impact of the crisis in BRIC countries varies from being the largest in

case of Russia, followed by India and then Brazil, to being the least in case of China. Thus, there is no one-size-fit-all formula which can be applied to the four countries. Monetary instruments such as cuts in the interest rates are more effective in the long-run. In the short-run they may create speculation about further cuts, which makes people postpone borrowing.

There is a worldwide recognition of the need for radical measures by the governments to keep at bay any collapse-like situation. In a crisis, if people were to save more and spend less, demand would be less. This would lead to curtailment of output and laying off of workers, which, in turn, would further reduce the demand. To break this chain effect, the economist, John Maynard Keynes had advocated a hike in government spending, especially in public works, in the aftermath of the Great Depression. Keynes' observation that resorting to only monetary policy may not be successful in a depression has been proved in the current crisis where most economies have been



While there is no consensus amongst the academia or the policy-makers regarding whether the worst of the crisis is over, the comparison of the current crisis to the South East Asian crisis of 1997 sets the ground for an optimistic prediction of a favourable turnaround by early 2010. An important adjunct to note here is that while the South East Asian crisis had originated in the periphery of development, the present crisis has its epicentre in the heart of global economic advancement.

compelled to make use of fiscal rescue missions. While relying on the fiscal mechanism, the lesson that mere reliance on fiscal stimulus, with no efforts to revitalise the banking system perpetuates economic crisis, learnt from Japan's policy of the 1990s, needs to be remembered.

In the backdrop of a widening gap between planned saving and investment, a shrinking demand for exports and a mutually reinforcing slowing down in both the real and financial sectors, an effective policy in the short-run warrants government spending. Deficit spending by the Government helps in tackling the problem of mass unemployment and encourages the flagging confidence of producers and consumers, which are congruent with the slowing down of an economy.



A step in the direction of overcoming the deficit can be in the form of a Keynesian balanced budget exercise by the respective governments, wherein the revenues and expenditures are matched over a business cycle. That calls for more government expenditure, matched by revenues raised through taxes. An increase in taxes would, however, curtail demand further. Thus, the path ahead seems to be a steep uphill task.

Expenditure hikes are preferable to tax/excise cuts since the former can deliver directly. But increased spending would add to fiscal deficits.

A step in the direction of overcoming the deficit can be in the form of a Keynesian balanced budget exercise by the respective governments, wherein the revenues and expenditures are matched over a business cycle. That calls for more government expenditure, matched by revenues raised through taxes. An increase in taxes would, however, curtail demand further. Thus, the path ahead seems to be a steep uphill task.

A recession of the current magnitude needs a co-ordinated global response. To deal with the current crisis, the BRIC economies need to co-ordinate their actions to put the world financial system in order, as decided by the Finance Ministers of BRIC economies during their meeting in Sao Paulo in November 2008 on the eve of the meeting of the Finance Ministers and Central Bank Governors of G-20.

The cushion provided by the foreign exchange reserves has hitherto effectively guarded the BRIC countries against a collapse. During 2008, the BRIC countries have continued to be a preferred destination of foreign direct investment. Investors the world over are looking at BRIC countries for a reversal of the trend of falling market stocks. Research studies indicate that in emerging economies, the accumulation of foreign exchange reserves ensures the stability of FDI inflows. The constituents of the reserves are important to the extent of contributing to a trade contagion, as is



observed in the case of China, where foreign exchange reserves are built through current account surpluses, or exposing the economy to a financial contagion, as is being experienced in India, where the build up of foreign exchange reserves is dependent on capital account surpluses. A possible use of reserves which can be explored by all BRIC countries is for upgrading infrastructure. This would contribute in somewhat offsetting job losses caused by a reduced demand for exports.

In the scenario of a declining demand for the exports from BRIC countries, a growing domestic demand can bolster the attempt of these economies at pulling out of the crisis situation. A young demographic profile of the BRIC economies ensures a high marginal propensity to consume of these economies. Increased domestic spending, together with expenditure on infrastructure, will increase demand for imports, which may go a long way in helping out other countries from the current crisis, as well.

While there is no consensus amongst the academia or the policy-makers regarding whether the worst of the crisis is over, the comparison of the current crisis to the South East Asian crisis of 1997 sets the ground for an optimistic prediction of a favourable turnaround by early 2010. An important adjunct to note here is that while the South East Asian crisis had originated in the periphery of development, the present crisis has its epicentre in the heart of global economic advancement. ■

Open Offer: What and How



There has been a sharp rise in the number of open offers hitting the market in the recent past. In India, Open Offers for listed companies are regulated by SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 which aims at protecting the interest of minority shareholders. This article focuses on the basic concept and regulatory requirements pertaining to Open Offers for listed companies in India.

CA. Vikrant Ganeriwal

*The author is a member of the Institute.
He can be reached at
vikrant.ganeriwal@icai.org*

The number of open offers hitting the market in India has risen sharply in the recent past. This is evident from the table on next page showing the number of open offers announced.

What is an Open Offer?

In case a company is acquired by any person or if there is a change in control of a company, then the acquirer is required to give an option to the remaining shareholders to exit out of the target company by selling their shares to the acquirer. Open Offer is a transparent mechanism which provides equal opportunity to all the shareholders to exit the target company at the option of the shareholders. In India Open Offers for listed companies are regulated by SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 ("SEBI Takeover Regulations"). These guidelines were issued by SEBI to protect the interest of minority shareholders.

When is an Open Offer Triggered?

As a general rule, if an acquirer is acquiring 15% or more shares or voting rights in a listed company, or acquiring 5% additional shares or voting rights in a financial year thereafter, the acquirer is required to make an offer for a minimum 20% additional of voting capital to other shareholders as well. The acquirer cannot acquire shares, until the acquirer makes a Public Announcement in terms of SEBI Takeover Regulations.

As per SEBI Takeover Regulations, Open Offer is triggered in any of the following events:

- if current holding of the acquirer is less than 15%, Open Offer shall be triggered on acquisition of 15% or more share or voting rights (including existing holdings), or
- if current holding is 15% or more but less than 55%, Open Offer shall be triggered on acquisition of more than 5% share or voting rights in any financial year, or
- if current holding is 55% or more Open Offer shall be triggered on acquisition of any additional shares or voting rights. However, the acquirer can acquire up to 5% additional voting rights through stock exchange in normal segment without making an Open Offer; or
- Open Offer shall be triggered on acquisition of Control as well. However, open offer shall not be triggered if such change in control is pursuant to a special resolution passed by the shareholders in a general meeting

In any of such event, the acquirer is required to make a public offer to acquire another 20% of the voting capital of the target company from other shareholders

Open Offer is triggered if the acquirer acquired the shares either through himself or along with person acting in concert. Further, the Open Offer can be triggered in case of acquisition of Control even if shares are not being transferred. Hence it is relevant to understand the concept of "Person Acting in Concert" and "Control", which is explained as below:

Person Acting in Concert: Person Acting in concert comprises persons who for

- a common objective; or purpose of acquisition; or gaining control over a company,
- by way of an agreement; or understanding (formal or informal),
- directly or indirectly co-operate by, acquiring or agreeing to acquire voting rights/shares/

DATABASE COVERAGE: 1997-98 to 2008-09 (12 years)

Year	Amount (Rs. crore)	No. of Issues
1997-98	595	42
1998-99	1,701	67
1999-00	469	75
2000-01	1,582	76
2001-02	3,439	72
2002-03	6,150	83
2003-04	1,921	67
2004-05	4,663	57
2005-06	5,308	103
2006-07	15,127	90
2007-08	14,875	119
Total	55,830	851

+ Current year 2008-09

Source: Primedatabase

control etc, in the target company

Certain entities like holding companies, subsidiaries, companies under same management, directors, etc. will be deemed to be person acting in concert.

Control: Control includes

- the right to appoint majority of the directors, or
- to control the management or policy decisions directly or indirectly, because of their shareholding or management rights or shareholders agreement or voting agreement or in any other manner

Disclosure

Disclosures on Transaction

A: Disclosure on Milestone

The acquirer is required to disclose its share holding or voting rights in the target company to such company and to the stock exchanges where the shares of the target company are listed. Such disclosures are required in case the holding of the acquirer achieves the following milestones (including the existing holding of the acquirer):

- more than 5% shares or voting rights or
- more than 10% shares or voting rights or
- more than 14% shares or voting rights or
- more than 54% shares or voting rights or
- more than 74% shares or voting rights

B: Disclosure of Buy/Sell Transaction

An acquirer whose holding in the target company is 15% or more but less than 55%, is required to make disclosure to the target company

and the stock exchange for acquisition or sale of 2% shares or voting rights in the company. It is important to note that in this case the acquirer is required to disclose a sale transaction as well.

Acquirer is required to make such disclosures in point A and B above within two days. The company is required to disclose the aggregate holding of such acquirer to the stock exchange within seven days of receipt of such information.

For the purpose of disclosure, the acquirer shall include a pledgee (except if such pledgee is a bank or a financial institution). Hence, even a pledgee is required to disclose its holding under this point

Continual Disclosure

A: Disclosure by Members

Following persons are required to make an annual disclosure in respect of its holding as on 31st March, to the company within 21 days from the closure of financial year:

- a) person holding more than 15% shares or voting rights in the company.
- b) promoter and any other person having control over the company.

B: Disclosure by Company

Such company is required to make an annual disclosure to the stock exchange of such holding within 30 days from the financial year ending date.

Exceptions

There are certain cases where an Open Offer would not be triggered. Some of such exceptions are as follows:

- a) Public Issue and Rights Issue
- b) Transfer of shares within Group, Relatives, Qualifying Promoters, Acquirer and person acting in concert, with certain exceptions
- c) Acquisition of shares in ordinary course of business by stock broker on behalf of client or market maker, public financial institution on their own account, banks and public financial institution as pledges.
- d) By way of transmission on succession or inheritance.
- e) Acquisition by government companies with certain exceptions

- f) Transfer by Venture Capital Fund (VCF) or Foreign Venture Capital Investor (FVCI) to promoter of VCF or FVCI
- g) Change in control of borrower company on takeover by secured creditor
- h) Target company is unlisted (exception – by acquiring an unlisted company one gets control etc. in a listed company)
- i) Acquisition on delisting of shares
- j) acquisition of GDR or ADR unless they are converted into shares carrying voting rights

Offer Guidelines

Timelines

Important dates and the timeline of entire process of open offer are as under:

1. The date on which the acquirer is entering into an agreement for acquisition of shares or deciding to acquire shares etc, which would trigger the open offer shall be taken as the Trigger Date.
2. The acquirer shall open the escrow account and fund the same on or before Public Announcement.
3. The acquirer shall within 4 (four) working days of the Trigger Date shall make a Public Announcement through a Merchant Bank. This Public Announcement shall also be submitted to SEBI, Stock Exchange and the Target Company. The date of publishing Public Announcement in newspaper shall be the Public Announcement Date.
4. The acquirer shall file a copy of the draft of the Letter of Offer along with the due diligence certificate of the Merchant Banker to SEBI and shall send a copy of the draft of the Letter of Offer to the target company and the Stock Exchange as well, within 14 days of Public Announcement. Simultaneously, the acquirer shall pay a requisite fee to SEBI.
5. The acquirer shall dispatch the Letter of Offer to shareholders not earlier than 21 days from its submission with SEBI. SEBI may come back to the merchant bank within these 21 days with any comments. However, these letters are required to be sent to the shareholders



As a general rule, if an acquirer is acquiring 15% or more shares or voting rights in a listed company, or acquiring 5% additional shares or voting rights in a financial year thereafter, the acquirer is required to make an offer for a minimum 20% additional of voting capital to other shareholders as well. The acquirer cannot acquire shares, until the acquirer makes a Public Announcement in terms of SEBI Takeover Regulations.

Public Announcement

The acquirer is required to make a Public Announcement through the Merchant Bank. Public Announcement shall be published in all editions of at least one English national daily, one Hindi national daily and one regional language daily at the place where the registered office of the company is situated and at the place of the stock exchange where the share of the company are frequently traded. This Public Announcement shall also be submitted to SEBI, Stock Exchange and Target Company. The date of publishing Public Announcement in newspaper shall be Public Announcement date.

Offer Price

1. Offer price can be paid to successful shareholders in:
 - a) cash, and/or
 - b) equity shares in acquirer (only if acquirer is a listed company), and/or
 - c) secured instruments in acquirer company with minimum A grade rating
2. The Offer Price shall be the highest of:
 - a) price of the transaction between acquirer and seller which triggers the open offer
 - b) price paid by acquirer to acquire shares of the target company during past 26 weeks to Public Announcement
 - c) average of weekly high and low of closing price as quoted on stock exchange where the shares are most frequently traded in past 26 weeks of Public Announcement
 - d) average of daily high and low during past 2 weeks of Public Announcement

In case the shares of the target company are infrequently traded, the point number 'c' and 'd' of above shall be replaced with following:

- c) price determined by the acquirer and merchant

The acquirer is required to make a Public Announcement through the Merchant Bank. Public Announcement shall be published in all editions of at least one English national daily, one Hindi national daily and one regional language daily at the place where the registered office of the company is situated and at the place of the stock exchange where the share of the company are frequently traded.



bank based on other parameters including return on net worth, book value of shares, earnings per share, price earning multiple *vis-à-vis* the industry average etc. However, in such case the SEBI may require the same to be revalued by another independent merchant banker or independent chartered accountant with at least ten years experience.

3. The acquirer may at any time up to 7 (seven) working days prior to the date of the closure of the offer, may revise upwards the offer price.

Minimum Size of Open Offer

1. The acquirer has to offer to acquire a minimum amount of 20% additional voting capital from public in terms of the Open Offer. Please note that the term used here is voting capital and not shares. Also, this is the minimum size of the offer. The acquirer may offer to acquire more than 20% voting capital as well.
2. In case due to the said offer, public shareholding might reduce below the minimum level required as per the listing agreement, the acquirer has following two options:
 - a) the acquirer offers to acquire the shares to public in regular course. On completion of the offer, taking the actual number of shares tendered in response to the open offer, if the public shareholding actually reduces below the minimum level required, the acquirer is required to take necessary steps to facilitate the compliance by the target company with relevant provisions of the listing agreement.
 - b) the acquirer offers to acquire less number of shares, as would, assuming full subscription to the offer, would be in line with the provisions of the listing agreement

Example:

- a) the current holding of the acquirer (along with person acting in concert with the acquire) in the target company is say 70%
- b) further acquisition of say 5% of shares by the acquirer. This transaction would trigger an open offer
- c) minimum public holding as per the listing agreement is say 10%
- d) as per SEBI Takeover Regulations, the minimum offer size

is 20%. In this case if the acquirer offers to acquire 20% in the open offer and assuming full subscription to the offer, the total public holding shall be 5%. This would be lower than what has been stipulated in the listing agreement (10%). Hence, in such case the acquirer has following three options:

- i. the acquirer offers to acquire 20% in the open offer. In such case, if the offer is fully subscribed, or subscribed more than 15% (as 15% subscription taken with current holding would equal to 90%, the maximum holding as per the listing agreement), the public shareholding shall reduce below 10%, as stipulated in the listing agreement. If that happens, the acquirer shall be required to take necessary steps so as to ensure that target company comply with the terms of listing agreement
 - ii. the acquirer offers to acquire 20% in the open offer. In such case, if the offer is subscribed not more than 15%, the public shareholding shall not reduce below 10% as stipulated in the listing agreement. If that happens, the acquirer is not required to take any further action
 - iii. the acquirer offers to acquire 15% in the open offer. With this even after assuming full subscription to offer, the public shareholding would be 10% which shall be in line with the listing agreement
3. If the offer is over subscribed, the acquirer shall accept the shares tendered by public on a proportional basis. This basis shall be finalized by the acquirer in consultation with the merchant banker to the issue.

Escrow

A: Minimum Escrow Amount

1. 25% of the offer size. If the offer size is more than 100 crores, the escrow amount would be 25 crores for initial 100 crores and 10% thereafter.
2. In case the acquirer wishes to appoint a director in the target company before the completion of offer formalities, the minimum escrow amount would be 100% of offer size. The director may be appointed only after 21 days from Public Announcement. On Public Announcement, acquirer has an option of depositing amount as mentioned above, however the acquirer has to deposit additional amount in escrow account



The acquirer has to offer to acquire a minimum amount of 20% additional voting capital from public in terms of the Open Offer. It is to be noted that the term used here is voting capital and not shares. Also, this is the minimum size of the offer. The acquirer may offer to acquire more than 20% voting capital as well.

before the director is appointed, to fulfil the requirement of this clause.

3. In case the offer is subject to a minimum level of subscription, the minimum escrow amount would be 50% of offer size.

B: What can be kept in Escrow?

1. The escrow amount is required to be placed in cash with a scheduled commercial bank
2. However, for point number 1 and 2 of the Minimum Escrow Amount above, the acquirer can provide bank guarantee (favouring the Merchant Banker) or deposit securities with the Merchant Banker for the escrow amount. Even in such cases, the acquirer has to deposit a minimum amount of 1% of the offer size in cash

Permissible Debits to Escrow

All debits to the escrow account would be only on instructions from the Merchant Bank

1. On withdrawal of the offer, 100% of the escrow amount shall go to acquirer
2. On Success of the offer:
 - a. funds upto 90% of escrow amount shall go to special account
 - b. 10% of escrow amount shall go to acquirer
 - c. full escrow amount shall go to acquirer if the offer is for exchange of shares or other instruments
3. On non-fulfilment of any of the obligation by the acquirer, 100% of escrow amount shall go to the Merchant Bank. In such case, the Merchant Bank, after deduction of its own expenses, shall distribute such funds among:
 - a. 1/3rd of the funds to the target company,
 - b. 1/3rd of the funds to stock exchange for credit to investor protection funds etc. and
 - c. 1/3rd of the funds to be distributed on *pro rata* basis among shareholders who accepted the offer

Special Account

1. Acquirer shall open and fund a special account within 7 days of closure of the offer
2. Transfer of funds from escrow account (up to 90%) to special account
3. Acquirer shall fund this account for any deficit for payment to successful shareholders
4. Balance lying in the special account after three years of deposit into special account would be transferred to investor protection fund of stock exchange

Open Offer by a Non-Resident Corporate

In case a non-resident corporate is making an Open Offer under SEBI Takeover Regulations, banks are permitted to open Escrow Account and Special Account on behalf of non-resident corporates, without prior approval of the Reserve Bank, subject to the relevant SEBI Takeover Regulations or any other applicable SEBI regulations or provisions of the Companies Act, 1956. Reserve Bank has also provided that balance in the Escrow Account, if any, may be repatriated at the then prevailing exchange rate (i.e. the exchange rate risk will be borne by the overseas company acquiring the shares), after all the formalities in respect of the said acquisition are completed.

For more details refer RBI Circular Number: RBI/2006-2007/413 A. P. (DIR Series) Circular No. 62 dated May 24, 2007

General Obligations of the Acquirer, Target Company and Merchant Banker

Obligations of the Acquirer

1. Acquirer shall ensure that the Public Announcement and any other brochure, circular or any other material does not contain any misleading information to the shareholders
2. During the period of the offer, acquirer shall not be able to appoint any director on the board in the target company. However, acquirer may

appoint a director after 21 days from the date of Public Announcement provided they have deposited 100% money in the escrow account in terms of point number 5.6(2) above

3. Acquirer shall ensure that firm financial arrangements have been made for fulfilling the obligation under the offer
4. In case the acquirer withdraws the offer, it shall not make any offer for acquisition of shares of the target company for another 6 months from the date of announcement of withdrawal of the offer.
5. In case of non-fulfilment of any obligations of the acquirer, it shall not make any offer for acquisition of shares of any listed company for another 12 months from the date of closure of offer.
6. If the acquirer is acquiring shares pursuant to an agreement, which taken together with the existing holding shall be in excess of 15%, in such case, the said agreement shall contain a clause to the effect that in case the acquirer fails to comply with SEBI Takeover Regulations, such agreement shall not be acted upon
7. The acquirer has to disclose in the Public Announcement its intention of disposing of any asset of the target company (if it is not in the regular course of the business of the company). In case no such disclosure has been made, the acquirer shall not be allowed to dispose such asset for two years from closure of the offer.

Obligations of the Board of Directors of the Target Company:

1. The board shall ensure that the company does not enter into a material contract, sell or dispose its assets, except in the regular course of action, or issue shares carrying voting rights after the Public Announcement, without specific shareholders' approval
2. The board shall not appoint any director after the Public Announcement, which is related to the acquirer in any manner up to completion of



In case a non-resident corporate is making an Open Offer under SEBI Takeover Regulations, banks are permitted to open Escrow Account and Special Account on behalf of non-resident corporate, without prior approval of the Reserve Bank, subject to the relevant SEBI Takeover Regulations or any other applicable SEBI regulations or provisions of the Companies Act, 1956.

the obligations of the acquirer. Any director who is related to the acquirer and is on the board on the date of Public Announcement, shall also not be allowed to participate in any manner related to the offer

3. On receipt of a certificate from the merchant banker of fulfilment of the obligations of the acquirer, the company shall transfer the securities acquired by the acquirer under an agreement or from open market in the name of the acquirer.

Obligations of the Merchant Bank

1. The merchant banker shall send a due diligence certificate to SEBI along with the draft of the Letter of Offer send to SEBI
2. The Merchant Banker shall not deal in the securities of the company from its appointment till 15 days after closure of the offer
3. The merchant banker shall send a final report to SEBI within 45 days of the closure of the offer



Conclusion

We have understood the process and regulatory requirements of an Open Offer. It is important to follow the guidelines strictly as penalties for non-compliance are very stringent, which may go up to suspension or cancellation of the registration of the intermediary and financial and/or criminal proceedings for all defaulting parties.

SEBI Takeover Regulations secure the interest of public shareholders by providing them an option to exit the target company on its substantial acquisition or takeover, at a minimum level of exit price.

An acquirer whose holding in the target company is 15% or more but less than 55%, is required to make disclosure to the target company and the stock exchange for acquisition or sale of 2% shares or voting rights in the company. It is important to note that in this case the acquirer is required to disclose a sale transaction as well.

CLASSIFIEDS-MAY'09

- 4707** A South Delhi-based firm invites merger proposals from firms with exposure to inter-national taxation and audit.
E-mail: sssar038@gmail.com.
- 4708** Bangalore based CA firm needs networking with medium size firms in all Metros in India & outside India on long term basis under contract.
Mail: info@mktyagi.com.
- 4709** Delhi based CA firm requires article trainee with requisite qualification, Chartered Accountant, semi qualified. Suri Malhotra & Associates, 15A/44, Pratap Chambers-II, 202, W.E.A. Karol Bagh, New Delhi.
Contact: 9818555642, 25496826. Email: malhotravirender@yahoo.co.in
- 4710** A Delhi based CA firm requires Chartered Accountants on partnership/assignment/retainership/sub-contract/employment basis, semi-qualified and articulated assistants.
Contact: contact1120@gmail.com.
- 4711** A retired CA with 12 years experience based in Rajasthan also having residential facility in Mumbai seeks professional work on sub contract/assignment basis.
Contact: 09414109534.

Meltdown: A Mask to Camouflage Underperformance?



CA. C. N. Srivatsan

*The author is a member of the Institute.
He can be reached at
srivatsan@icai.org*

In the present times, we have been witnessing all the businesses blaming the time for their bad performances with only a few exceptions. The author takes up the issue and investigates it to discover some interesting findings for us. He questions this attitude of businesses and blames their inefficiency for this negative performance. He analyses the cases of established companies and suggests lessons for the affected companies in this time of recession.

Global meltdown, economic recession or downturn etc., are some of the buzzwords frequently used these days in economic context. This has risen to the status of an epidemic spreading in all organisations, be it an MNC or a local kirana, an airline or a courier. All industries are lamenting this event whether particularly hit or not. But is this the actual scenario?

Published results of the listed Indian companies for Q III, like L&T in the manufacturing sector, Hero Honda in the automotive sector, Bank of India in the financial sector, Bharti in the communication sector have all shown impressive and consistent, both top line and bottom line, growth. This is in spite of the same recessionary scenario the entire economy is cribbing about. The growth in this quarter has been preceded by consistent performances over several years. Similar is the case with multinational companies like Sony, Toyota, etc. These companies

too in their lifetimes have faced recessions from the great depression in 1929 to the current global meltdown. Further, with the Indian government projecting a 7 per cent growth in the GDP for the current fiscal year, where is this phenomenon called recession coming from? Is it being unnecessarily exaggerated by the Indian companies? While there could be a drop in business for those industries dependent on exports, what about those industries supplying to local markets? Are the inefficient companies taking this to their advantage to mask their under performance?

Warren Buffet had said "We simply attempt to be fearful when others are greedy, and to be greedy only when others are fearful". In other words, what the best-managed companies do during the boom times, the inefficient companies do during the recession. For a well-managed company, I feel, it is the boom time that is scary and requires close monitoring. The recession provides them with a great opportunity to grow and consolidate. Don't best-managed companies face the heat? Of course they do, but the effect is not as serious as closing down units, issuing pink slips, postponing very critical capital expenditure, reducing marketing costs, etc., which are the most common activities in the not-so-comfortable companies.

The factors that make the best-managed companies whether the recession times are:

- 1. Milking the resources:** During the boom periods, it is the time to market which rules. Optimum utilisation and maximum efficiency of resources are overlooked. Resources are not milked to the level it should be done and as a result capacities are enhanced unnecessarily. Capacity enhancement is a very dangerous strategy, if not handled properly. Best-managed companies first ensure the optimum availability of assets through best maintenance practices, methods and processes. Human

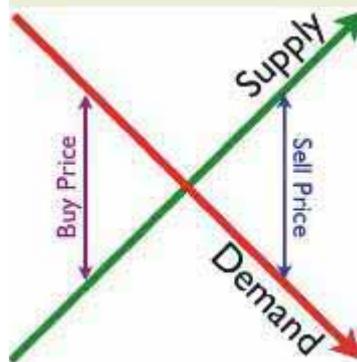
resources are made to bring out their best efficiencies through training, standard operating practices and motivation. Unless the resources are milked to the maximum, these companies do not go for capacity enhancement.

Indian Railways turnaround is one of the best examples of *fully-milking-the-cow* strategy. Effective utilisation of the wagons and passenger rakes, increasing the number of berths, minimal extension of railway platforms, etc., made the Indian Railways see profit. Therefore, having consolidated their cash position during the boom periods, well-managed companies will be in a position to acquire assets at very competitive rates during recession and get ready to meet the demands during the boom period. Mergers and acquisitions are also a strategy for these companies during the recession times. Another standard practice during recession times is to run the resources at sub-optimum levels due to lack of orders, so as to keep the resources occupied. This is a recipe for disaster. Best-managed companies operate always at the optimum level it ought to run until

the orders are exhausted and then keep them idle for the rest of the time. It is extremely difficult to get back to the best efficiency at a later date, when the good times are back.

- 2. Focusing on Top line as well as the Gross margin (The Ying and the Yang):** During the boom periods, it is the top line growth that gets the attention. Moreover, it is customary for most of the companies to have audacious top line growth goals during the boom periods. In order to achieve the targets, sales personnel either sell those products, where the prices are low compared to competitors or sell at the maximum allowed discounted rates. In both the cases, the gross margins take the hit. While the company might achieve the top line target, profitability will be a goner. Well-run companies set target for both the top line and gross margins and they achieve both. Defined

During the boom periods, it is easy to sell what we produce and also easy to sell what we want to produce, since demand exceeds supply. Products without a USP (unique selling proposition), products similar to competition and products which are non-standard and not in line with the existing range are designed and produced.

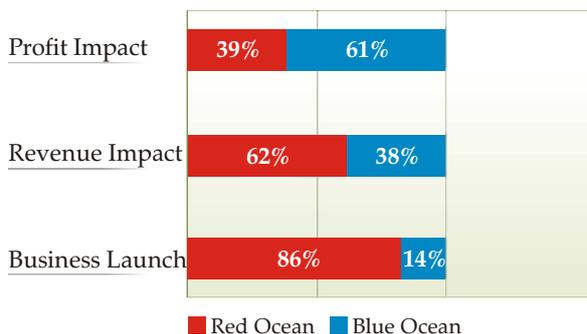


product mix resulting in the targeted gross margins is absolutely essential.

Better-managed companies are always on Value Analysis/Value Engineering (VA/VE) mode. They constantly try to bring down the cost of the product and at the same time enhance the value for customers. This is a continuous exercise and not an exercise geared up during recession times, as adopted by the inefficient companies. Because of the continuous VA/VE exercises, well-run companies are able to bring down the prices for their products during recession and beat the competition.

Well-defined purchase policies, strategic buying, vendor rationalising, standardising components, controlling supply chain cost and rationalising products are some of the strategies that well managed companies undertake during the boom periods to ensure their existence and success during the recession times.

- Blue Ocean Strategy/Disruptive Innovation:** During the boom periods, it is easy to sell what we produce and also easy to sell what we want to produce, since demand exceeds supply. Products without an USP (unique selling proposition), products similar to competition and products which are non-standard and not in line with the existing range are designed and produced. New products and new businesses are considered and investment made, which are most often than not in their core competency



(Source: Blue Ocean Strategy)

In a study of 108 business launches, it was found that 86 per cent of the launches were just line extensions, i.e., incremental improvements within the competition. They accounted for only 62 per cent of the total revenue and a mere 39 per cent of the total profits.

Well-run companies, even though they have great demand for their products during the boom periods, bring out products or start new businesses which are in line with their core competency and which will create uncontested market space, i.e., their products will not compete in the existing market space. They can make the competition irrelevant for their products. They try to break the value-cost trade off and bring in value innovation in terms of cost benefits to the company and value to the buyer. R&D expenditure is increased. Innovation and customer feedback will be the dependable approach. These initiatives will sustain them during the recession periods. To quote John F. Smith, "We listened to what our customers wanted and acted on what they said. Good things happen when you pay attention."

Chick shampoo sachets from Cavin Care, Nano from Tata Motors, Reva the electric car, Colour Bank from Asian Paints and Integrated poultry farming from Suguna Poultry are some of the well known blue ocean strategies that have been successful in recent times. Much more understandable, the hair colour concept which took off from the hair dye product.

- Managing Fund Flow and not the Cash Flow:** During the boom periods, cash flow is not an issue. Cash management is similar to how a small kirana boss or a local caterer manages his funds. As long as there is an adequate cash inflow, he believes he is making profits. No way will he be able to check whether the cash flow is resulting in profits. Well-managed companies' strategic initiative would be first to see how quickly the Cash-to-cash cycle can be turned and the number of times this cycle can be repeated in a given period. This results in manageable working capital and increased profits. What would they be monitoring?



Indian Railways turnaround is one of the best examples of *fully-milking-the-cow* strategy. Effective utilisation of the wagons and passenger rakes, increasing the number of berths, minimal extension of railway platforms, etc., made the Indian Railways see profit.



Boom periods bring in ballooning of the fixed costs. Additional sales outlets are established, manpower is added, travel rules are loosened and premium freight charges incurred are overlooked. The fixed costs are compared as a percentage to the sales and the company is satisfied that the expenses are under control. They also fail to notice the unassuming creep of the break-even sales.

Nothing new. The areas of vigilance and control would be:

- Credit limits to customers
- Procurement lead time for input materials brought to minimum
- Rationalisation of products and standardisation of components are attempted, which will lead to reduction in inventory holding levels.
- Production lead times are re looked to eliminate slack time and Non Value added activities so as to bring out the production at the most efficient time.

During recession, these well-run companies are able to withstand prolonged bouts of economic downturns due to their enviable cash position in addition to taking advantage of the suppressed pricing which is the result of superior technical and economic efficiencies.

5. **Control over Fixed Costs:** Boom periods bring in ballooning of the fixed costs. Additional sales outlets are established, manpower is added, travel rules are loosened and premium freight charges incurred are overlooked. The fixed costs are compared as a percentage to the sales and the company is satisfied that the expenses are under control. They also fail to notice the unassuming creep of the break-even sales. In contrast, during recession these companies take on cost reduction exercises that might affect the long-term strategy of the organisation. For example, companies that non-judiciously slash marketing spending often find that in order to recover, they later must spend far more than they had saved. Even with these cost reduction initiatives, they realise that their break-even sales have gone north and well out of control. Whether it is boom period or recession, lowering or controlling the break-even sales will be the prime objective of well-run

companies. Fixed expenses will be monitored by their absolute values and against well-defined budgets.

Some of the strategies these companies embark upon are as under:

- Stripping the layers of the organisation and hierarchy to see if headcount can be reduced.
- Own staff vs. Outsourced
- Centralising similar functions
- Outsourcing certain activities
- Robust administrative policies which will stand the test of time
- Divesting non core businesses and non profitable businesses

During recession, profitability is manageable due to lower break-even sales. The pressure on cash requirements lessens due to lower fixed costs.

6. Dealings of well-managed Companies during recession:

- A vulnerability assessment and sensitivity analysis of all factors that might affect the company due to recession will be made. A crisis management team will be appointed to handle the situation.
- The corporate intelligence within the organisation will be utilised to the fullest extent to navigate the difficult times
- Managers will be allowed to take risks and make mistakes
- There will be only one goal, one plan, one team with defined priorities

A downturn actually opens up rare opportunities for the well-managed companies to outmanoeuvre rivals. Innovation will be the key for these companies to maintain the market share. As the saying goes, *when the going is tough, the tough gets going*, well-managed companies can get over any recession with a little but continuous amount of careful planning and alertness. ■

Revised Guidelines of Network

1. These Guidelines are called Guidelines for Network amongst the firms Registered with The Institute of Chartered Accountants of India.

2. Definition

(i) Network

“Network amongst two or more firms means an arrangement to facilitate the better functioning of the affiliate member firms in the interest of the profession and not for acquisition of any gain. Such Network shall include the formal Network to use the collective resources such as turnover, infrastructures, manpower, location for execution of Professional services of one or more type.

[Explanation –

1. An affiliation as referred to above shall also include:–

(i) having an association with an accounting entity within or outside India such that it results directly or indirectly in a common professional economic or beneficial interest.

(ii) one or more of the entities holding out that it is so affiliated or networked.

2. An entity shall not be treated as an affiliate of another merely for the reason that they

(a) share professional knowledge and data base;

(b) refer certain professional assignments or authorize the other to represent certain specific matters.

3. If different Indian firms are networked with a common Multi National Accounting Firm (MAF) then irrespective of the presence/absence of any 'affiliate' relationship between the Indian firms *inter se*, they shall be considered as part of a network.]

(ii) Formal Network

Formal network means a network amongst two or more firms registered with The Institute of Chartered Accountants of India (ICAI), where the object of network is to use the collective resources of the affiliates for execution of professional services of one or more types at one and/or at multilocational points. The resources would include financial, technical and other logistic support required to execute the professional assignments. In such type of network, the common resources may be pooled and exhibited together before the service user as those belonging to one particular set of professionals.

(iii) Referral Practice

Referral Practice means a practice to refer professional work by a firm to one of its associate/affiliate either situated at a different place or rendering professional services not provided by it, to the user of the services. The predominant objective of such a network is not to pool in their collective resources and exhibit them as those belonging to one particular set of professionals.

(iv) Act

Act means The Chartered Accountants Act, 1949.

(v) Regulations

Regulations means Chartered Accountants Regulations, 1988.

(vi) Code of Ethics

Code of Ethics means the Code of Ethics issued by the Institute and decisions of the Council in this regard.

(vii) Institute

Institute means the Institute of Chartered Accountants of India.

(viii) Council

Council means the Central Council of the Institute.

(ix) Member

Member means a Member in Practice. Member in Practice

means a Member in Practice as defined in the Chartered Accountants Act, 1949.

3. Name of Network

(i) The Network may have distinct name which should be approved by the Institute. To distinguish a “Network” from a “firm” of Chartered Accountants, the words “& Affiliates” should be used after the name of the network and the words “& Co.” / “& Associates” should not be used. The prescribed format of application for approval of Name for Network is at **Form 'A'** (enclosed).

(ii) Standards prescribed in Regulations 190 of the Chartered Accountants Regulations, 1988 shall be applicable to the name of Network. However, even if a name is provided and subsequently it is found that the same is undesirable then, the said name can be withdrawn at any time by the Institute. The Institute shall reject any undesirable name and the provisions in respect of names of companies as prescribed in the Companies Act, 1956 shall be applicable in spirit.

(iii) The network should neither be permitted to advertise nor to use logo. The firms constituting the network are permitted to use the words “Affiliates/Members of” (a network of Indian CA firms) on their professional stationery.

(iv) Network may work without a Name also.

4. Registration

(i) A Formal Network is required to be registered with the Institute in a prescribed **Form 'B'** (enclosed).

(ii) Referral Practice requires no registration.

(iii) It is for each firm to decide whether its affairs and relations with another firm results in creation of a Formal Network.

Network shall evaluate for itself whether or not it is a formal network requiring registration with the Institute.

- (iv) If different Indian firms are networked with a common Multinational Accounting Firm (MAF) then irrespective of the presence/absence of any 'affiliate' relationship between the Indian firms *inter se*, they shall be considered as part of a network. As such, for these firms the registration with the Institute is not mandatory. It is only if these Indian firms decide to constitute a Formal Network, then the registration with the Institute is mandatory.

5. Ethical Compliance

Once the relationship of network arises, whether registered or not with the Institute, it will be necessary for such a network to comply with all applicable ethical requirements prescribed by the Institute from time to time in general and the following requirements in particular:-

- (a) If one firm of the network is the statutory auditor of an entity then the associate [including the networked firm(s)] or the said firm directly/indirectly should not accept the internal audit or book-keeping or such other professional assignments which are prohibited for the statutory auditor firm.
- (b) The Notification No. 1 CA(7)/60/2002 dated 8th March, 2002 (enclosed) in respect of ceiling on Non-audit fees is applicable in relation to a Network as follows:-
- i) For a constituent member of a Network who is doing statutory audit (including its associate concern and/or firm(s) having common partnership), it shall be the same as mentioned in the said notification; and
 - ii) For other constituent member(s) of the same Network collectively, it shall be 3 times of the fee payable for carrying out the statutory audit of the same undertaking/company.

- (c) In those cases where rotation of firms is prescribed by any regulatory authority, no member firm of the network can accept appointment as an auditor in place of any member firm of the network which is retiring. However, this restriction shall not apply in case of appointment as Statutory Central Auditor of Government agencies/Undertakings such as Public Sector Undertakings (PSUs), Public Sector Banks and Financial Institutions etc.
- (d) The Constituent member firms of a Network & the Network shall comply with all the Ethical Standards prescribed by the Council from time to time.

6. Consent of Client

The network shall obtain consent of the client to engage an affiliate in discharging the professional assignments.

7. Constitution of Network

- (i) Proprietary/partnership firm(s) as well as individual member(s) are permitted to form a Network.
- (ii) A proprietary/partnership firm as well as individual Member are allowed to join only one Formal network.
- (iii) Firms having common partners shall join only one network.

8. Object of Network

The Network itself will not carry on any business for acquisition of gain for itself and only act as a facilitator for its members/constituent Member firms to pursue their professional jobs.

9. Responding to Enquiries

Only one firm/Member can apply on behalf of the network showing the collective strength of all the constituent firms of the network, when responding to any enquiry.

10. Issuing Reports

Only the firm(s)/Member(s) forming Network are eligible to issue/sign/attest any certificate/report/professional document/assignment.

11. Violation of Act

In case of alleged violation of the provisions of the Act, Regulations framed thereunder, guidelines/directions laid down by the Council from time to time and Code of Ethics by the Network firm, the proprietary/partnership firm(s)/individual Member constituting the Network would be answerable.

12. Exit from Network

A constituent Member firm/Member of a Network can exit from the network by sending the declaration in **Form 'C'** (enclosed) to the Institute and also to each and every constituent of the network. The concurrence/acceptance of the same by other firms forming part of the network firm shall not be required.

13. Network with entities outside India

13.1 The duly authorized representative(s) of the Indian Member firm(s)/Member Constituting the Network shall file a declaration with the Institute in **Form 'D'** for registration.

13.2 Proprietary/Partnership firms as well as individual members shall be permitted to join such Network with entities outside India.

Provided that the proprietary/partnership as well as individual member are allowed to join only one formal network and firms having common partners shall join only one such network.

14. Framework of Internal Bye-laws of Network requiring Registration

To streamline the networking, a network shall formulate operational bye-laws. Bye-laws may contain the following clauses on which the affiliates of the network may enter into a written agreement among themselves:

- (i) Appointment of a Managing Committee, from among the managing partners of the member firms of the network and the terms and conditions under which it should function.

NETWORK

- The minimum and maximum number of members of the Managing Committee shall also be agreed upon.
- (ii) Administration of the network
 - (iii) Contribution of membership fees to meet the cost of the administration of the network.
 - (iv) Identifying a partner of any of the member firms of the network to be responsible for the assignment (engagement partner)
 - (v) Dispute settlement procedures through arbitration and conciliation
 - (vi) Development of training materials for members of the network
 - (vii) Issue of Newsletters for staff and clients
 - (viii) Development of softwares for different types of assignments
 - (ix) Development and maintenance of data bases relevant for different types of assignments
 - (x) Library
 - (xi) Appointment of a technical director to whom references can be made
 - (xii) Determining the methodology for drawing resources from each member firm
 - (xiii) Determining compensation to member firms for resources to be drawn from them
 - (xiv) Peer review of the member firms
- These clauses are illustrative.

Form 'A'

**APPLICATION FOR APPROVAL OF NAME FOR NETWORK OF FIRMS
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**
*[See Rule 3 of Guidelines of Network amongst the firms registered with
The Institute of Chartered Accountants of India]*

1. Proposed name of Network (in order of preference) if the Network has a distinct name

1. _____
2. _____
3. _____
4. _____

2. Name(s) of the firm(s)/Member(s) forming network	Firm Name/ Member Name	Firm Regn. No./ M. No.
	1. _____	_____
	2. _____	_____
	3. _____	_____
	4. _____	_____

3. Address of the Office of the Network

_____ Pin _____
E-mail (if any) _____

4. We hereby declare that the above firm(s)/Member(s) proposed/have entered into an understanding to form a network in accordance with Guidelines of Network amongst the firms registered with The Institute of Chartered Accountants of India and further affirm and confirm that the partner signing the application has been duly authorised by the other partners of the respective firms.

Place : _____

Date : _____

Name(s) with Membership No(s). and signature(s) of duly authorized Partner(s)/Proprietor(s) of the firms/ Member constituting Network

Form 'B'

**DECLARATION FOR REGISTRATION OF FORMAL NETWORK AMONGST
FIRMS REGISTERED WITH ICAI
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
PARTICULARS OF NETWORK HAVING INDIAN AFFILIATION**

1. Name of the Network
2. Address of the Network
3. Names and addresses of firms/Member constituting the Network

Names and addresses of Firm(s)/Member(s)	Firm Registration No./M. No.
4. (a) Date of formation of Network
(b) Date on which present network arrangement was entered into
5. We undertake to comply with the guidelines/directions laid down by the Council regarding Network from time to time.

We hereby declare that:

- (a) the network constituents have entered into an agreement to form this network
- (b) that the partner(s) signing this declaration has been duly authorized by the other partners of the firm

Place : _____

Date : _____

Name(s) with Membership No(s). and
signature(s) of duly authorized
Partner(s)/Proprietor(s) of the firms/
Member constituting Network

**Notification No.1- CA(7)/60/2002,
Dated 8th March, 2002**

1-CA(7)/60/2002: In exercise of the powers conferred by clause (ii) of Part II of the Second Schedule to the Chartered Accountants Act, 1949, the Council of the Institute of Chartered Accountants of India hereby specifies that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he accepts the appointment as statutory auditor of Public Sector Undertaking(s)/Government Company(ies)/ Listed Company(ies) and other Public Company(ies) having turnover of Rs. 50 crores or more in a year and accepts any other work(s) or assignment(s) or service(s) in regard to the

same Undertaking(s)/Company(ies) on a remuneration which in total exceeds the fee payable for carrying out the statutory audit of the same Undertaking/company.

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

Explanation

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

2. For the above purpose,
 - (i) the term "other work(s)" or "service(s)" or "assignment(s)" shall include Management Consultancy and all other professional services permitted by the Council pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949 but shall not include:-
 - (i) audit under any other statute;
 - (ii) certification work required to be done by the statutory auditors; and
 - (iii) any representation before an authority

NETWORK

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

(iii) the terms “relative” and “substantial interest” shall have the same meaning as are assigned under Appendix (10) [now Appendix (9)] to the Chartered Accountants Regulations, 1988.

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

aggregate remuneration for such other work(s) or service(s) or assignment(s) payable to the statutory auditor/s together with fees payable to its associate concern(s) or corporate body(ies) do/does not exceed the aggregate of fee payable for carrying out the statutory audit.

4. This notification is applicable for any appointment(s) on or after 1st April, 2002.

Form 'C'

**DECLARATION FOR DISSOCIATION FROM A NETWORK
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
[See Rule 12 of Guidelines of Network amongst the firms registered with
The Institute of Chartered Accountants of India]**

1. Name of the Network

2. Address of the Network

3. Names and addresses of firms/Member constituting the Network

Names and addresses of Firm(s)/Member(s)	Firm Registration No./M. No.

4. Name and address of the firm/member willing to dissociate from the Network

Names and addresses of Firm(s)/Member(s)	Firm Registration No./M. No.

In pursuance to the Rule 12 of Guidelines of the Network issued by The Institute of Chartered Accountants of India, We/I hereby declare our dissociation from the Network w.e.f.

.....

I hereby declare that I have been duly authorised by the other partners to issue this declaration.

Place : _____

Date : _____

Name with Membership No(s). and
signature(s) of duly authorized
Partner(s)/Proprietor of the firm/
Member dissociating from the Network

Form 'D'

**DECLARATION TO BE FILED FOR NETWORK WITH
ENTITIES OUTSIDE INDIA**

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
PARTICULARS OF NETWORK WITH ENTITIES OUTSIDE INDIA**

1. Name of the Network
2. Date on which the Indian firms have joined the present Network arrangement:
3. Name(s) & address(es) of all the Indian firm(s) joined/joining the Network

Names(s) of Firm(s)	Firm Registration Numbers(s)

Verification

I/We solemnly declare and affirm that the information provided is true and correct to my/our knowledge and belief.

Place : _____

Name(s) with Membership No(s), and
signature(s) of a duly authorized
Partner of the Indian firm(s)/
Member joining Network

Date : _____

Note:

- (i) All existing Network should file this declaration on or before 30th June, 2009.
- (ii) Any new network arrangement shall file this declaration within 30 days of entering into the Network arrangement.
- (iii) A copy of the authorisation to be filed with the Institute by the Partner signing the declaration on behalf of the firm.
- (iv) The declaration may be filed jointly or separately with the ICAI by the firms entering the Network.
- (v) Proprietary/partnership firms(s) as well as individual member(s) are permitted to form a Network.
- (vi) A proprietary/partnership firm as well as individual Member are allowed to join only one Formal Network.
- (vii) Firm having common partners shall join only one network.

»» New Tax Rule to Usher in Clarity on TDS Credit

Tax deducted at source (TDS) credit can now be availed by persons other than the deductees. This has been clearly articulated by the Central Board of Direct Taxes (CBDT) in a new rule on TDS credit availment. Bringing relief and certainty to taxpayers, the CBDT has also spelt out the situations and the procedure through which the tax credit will be made available for persons other than deductees. The credit for TDS will be allowed to persons other than the deductees only in cases where the relevant income is assessable to income tax in the hands of such other person. The new CBDT rule has now settled the position that a person who is liable to pay the tax should be eligible for the TDS credit, say tax experts.

»» Corporate Tax Rate in India Much Above Global Average

Corporate tax rate in India is considerably above the global average. The average tax rate globally stands at 25.9% in 2008 while that of India stands at 33.9%. This figure includes a 10% surcharge and a 3% education cess. Corporate tax rate in India is almost eight percentage points higher than that of the global average. And this, without adding the impact of Dividend Distribution Tax (DDT) and Fringe Benefits Tax (FBT) levied on corporates. A FICCI-PwC total tax collection (TTC) survey has revealed that the mean average total tax rate for individual companies is as high as 35.9% of the profits earned before paying any tax (in 2008).

»» Indian Investors Most Optimistic in Asia-Pacific

Investor sentiment in India has improved significantly in the first quarter of 2009, according to a survey conducted by Dutch financial services firm ING. India's score in the ING Investor Dashboard Sentiment Index jumped 75 per cent over the previous quarter, i.e. October-December 2008, with more than half of those surveyed in the country saying that their household financial situation will improve in the next quarter. The survey, which tracks investor sentiment and behaviour of mass affluent investors each quarter from 13 Asia Pacific markets, revealed that India's index moved up from 76 in Q4 of 2008 to 133 in Q1 of 2009, representing a move from pessimistic to optimistic zone. The survey showed investors in India were the most optimistic in Asia. Indian investors are also much more confident about their job security compared to other markets.

<http://economictimes.indiatimes.com>

»» India Inc Likely to Post 77 per cent Growth in PAT

According to Centre for Monitoring Indian Economy (CMIE), India Inc is expected to post a robust 77.9 per cent growth in PAT in 2009-10. This would be a substantial growth, considering that the December 2008 quarter witnessed a sharp 39.7 per cent decline in the same on account of a sudden and steep fall in commodity prices, poor export demand, high cost of borrowings and inventory losses incurred by a host of companies, the report said.

<http://economictimes.indiatimes.com>

»» Private Equity Money Dries up for India Inc

Private equity players invested dramatically lower sums in India in the last three months, as risk aversion continued despite a steep decline in valuation. Private equity deals have dropped a staggering 87% year-on-year and 56% sequentially. Private equity (PE) firms invested about \$ 526 million across 36 deals during the quarter ended March 2009, compared with \$ 3.9 billion across 133 deals during the same period last year. Private equity has dried up globally as an asset class. It is not surprising that India is also feeling the heat because most funds operating in India raise their money abroad. So, industry watchers say the downtrend will continue in the coming quarters.

<http://economictimes.indiatimes.com>

»» RBI Asks Banks to Create Buffers to Fall Back on in Bad Times

The Reserve Bank has advised banks to create buffers in good times to avail them in adverse circumstances. In this connection, RBI will come out with detailed measures later this year to combat adverse financial situation after the global financial stability forums like Financial Stability Forum (FSF), Basel Committee on Banking Supervision (BCBS) and Committee on Global Financial System (CGFS) work out detailed measures on the issue. The central bank has also suggested to all the banks to build floating provisions as a buffer for the possible stress on asset quality later.

www.financialexpress.com

» IPSASB Releases 2009 Handbook of International Public Sector Accounting Pronouncements

The International Public Sector Accounting Standards Board (IPSASB) of the International Federation of Accountants (IFAC) has published the 2009 *Handbook of International Public Sector Accounting Pronouncements*. The handbook provides a single source for financial statement preparers to locate all International Public Sector Accounting Standards (IPSASs). These standards are intended to be used to prepare financial statements for national, state, and local governments and their agencies, as well as international public sector bodies, such as the United Nations and the Organisation for Economic Cooperation and Development. The Handbook contains all pronouncements of the IPSASB as of December 31, 2008, as well as the *Code of Ethics for Professional Accountants* issued by the International Ethics Standards Board for Accountants. The Code is applicable to all professional accountants, including those practicing in the public sector. The handbook can be downloaded free of charge in PDF format from the IFAC online bookstore (www.ifac.org/store).

<http://www.ifac.org/>

» IPSASB Moves Closer to Global Convergence of Financial Reporting Standards with New ED on Agriculture

The International Public Sector Accounting Standards Board (IPSASB) of the International Federation of Accountants (IFAC) has published an exposure draft (ED), ED 36, *Agriculture* that is part of the IPSASB's global convergence program, scheduled for completion by December 31, 2009. It proposes an IPSAS that converges with the International Accounting Standards Board's International Accounting Standard 41, *Agriculture*, with limited changes to ensure consistency with other IPSASs. These changes include an acknowledgement that, in some jurisdictions, biological assets may be sold or transferred for nominal amounts. This exposure draft proposes clear financial reporting requirements for agricultural activity in the public sector in order to ensure that the private and public sectors report similar activities in a consistent fashion.

<http://www.ifac.org/>

» IAESB Exposure Draft Focuses on Clarifying Accounting Education Standards

The International Accounting Education Standards Board (IAESB) of the International Federation of Accountants (IFAC) has approved a new exposure draft (ED) that includes recommendations to help improve the clarity of International Education Standards. The *Explanatory Memorandum on IAESB Drafting Conventions* reaffirms the IAESB's belief that the use of clear, concise, consistent, and definitive imperatives are essential to the consistent application of international standards.

http://www.ifac.org

» IASB Addresses the US GAAP Guidance

The FASB has agreed to publish guidance in the form of FASB Staff Positions (FSPs) on fair value measurement and on impairments of debt securities. The IASB, which has worked closely with the FASB on convergence issues since 2001, understands the strong desire, voiced by many, for consistency between IFRSs and US GAAP on areas related to the financial crisis.

<http://www.iasb.org/>

» IASB Seeks Comments on a Proposed New Standard on Income Tax Accounting

The International Accounting Standards Board (IASB) has published for public comment an exposure draft of a proposed new standard on the accounting for income tax. If adopted, the standard would replace the existing requirements in IAS 12 Income Taxes. The proposed standard retains the basic approach to accounting for income tax, known as the temporary difference approach. The objective of that approach is to recognise now the future tax consequences of past events and transactions, rather than waiting until the tax is payable. Although the proposed standard retains the same principle, the IASB proposes to remove most of the exceptions in IAS 12, to simplify the accounting and strengthen the principle in the standard. In addition, the IASB proposes a changed structure for the standard that will make it easier to use.

<http://www.iasb.org/>

» IASB Proposes Improvements to Derecognition Requirements

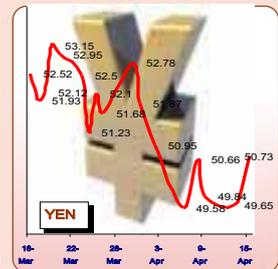
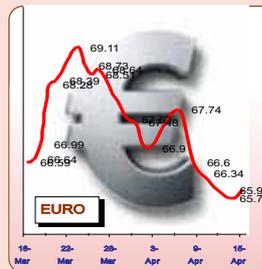
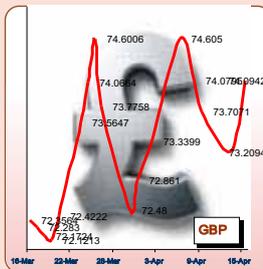
IASB has published for public comment an exposure draft of proposals to improve the derecognition requirements for financial instruments. Derecognition is when an entity removes a financial instrument from its financial statements. This occurs if the entity no longer controls a financial asset or no longer has an obligation to settle a financial liability. The IASB is also proposing to enhance disclosure requirements, especially in situations where an entity continues to have an ongoing involvement in a financial asset that would be derecognised under the proposals. The additional disclosures would allow users to make a better assessment of the risks associated with such an asset.

<http://www.iasb.org/>

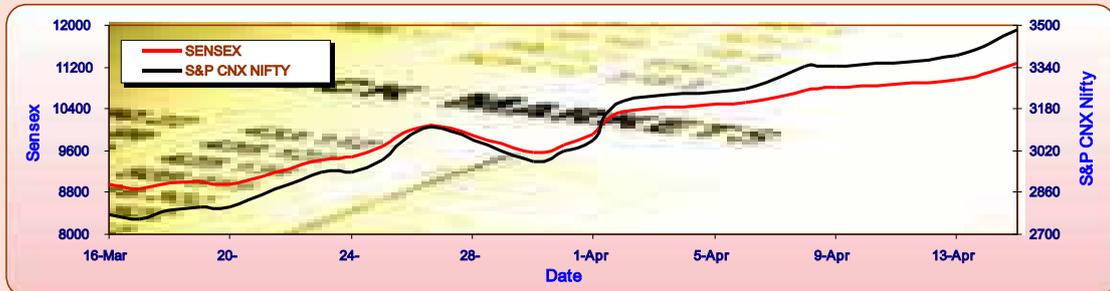
Economic Indicators



Indian Rupee vs. Major Foreign Currencies



Stock Markets



Selected Indicators

Item	Unit/Base	2008		2009				
		Mar. 28	Feb. 20	Feb. 27	Mar. 6	Mar. 13	Mar. 20	Mar. 27
Cash Reserve Ratio	per cent	7.50	5.00	5.00	5.00	5.00	5.00	5.00
Bank Rate	Per cent per annum	6.00	6.00	6.00	6.00	6.00	6.00	6.00
Prime Lending Rate	Per cent per annum	12.25 - 12.75	11.50 - 12.50	11.50 - 12.50	11.50 - 12.50	11.50 - 12.50	11.50 - 12.50	11.50 - 12.50
Deposit Rate	Per cent per annum	8.25 - 9.00	7.75 - 9.00	7.75 - 9.00	7.75 - 9.00	7.75 - 8.75	7.75 - 8.75	7.75 - 8.75
Call Money Rate (Low/High)	Per cent per annum	4.00/9.00	2.20/5.05	2.00/4.50	2.00/4.15	2.00/4.50	2.00/5.05	2.25/5.00

Note: Readers are Invited to contribute write-ups or any relevant and interesting piece of information for this feature at eboard@icai.org.

ACCOUNTANT'S BROWSER

"PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE"

Index of some useful articles taken from Periodicals/Newspapers received during March – April 2009 for the reference of Faculty/Students & Members of the Institute

1. ACCOUNTING

Accounting for Financial Instruments & Derivatives by Raghu Iyer. *BCAJ*, March 2009, pp. 757-759 +769.

Accounting For People: Because IFRS Can Affect the Human Side of an Organization, It's Vital to Include HR in the Implementation Stage by Steve Ralph. *CA Magazine*, April 2009, pp. 36-38.

Convergence Update: IFRS Converges to U. S. GAAP on Segment Reporting by B. J. Epstein & E. Jermakowicz. *Journal of Accountancy* April 2009, pp.50.

Effects of Voluntary Disclosure & Dividend Propensity on Prices Leading Earnings by Khaled Hussainey & Martin Walker. *Accounting & Business Research*, Vol.39/1, 2009, pp. 37-55.

IFRS: A Preparer's Point of View by Lewis Dulitz. *Journal of Accountancy* April 2009, pp. 46-49.

2. AUDITING

Audit Opinion & Disclosure of Audit Fees by Kam-Wah-Lai. *Journal of Accounting, Auditing & Finance*, Winter 2009, pp. 91-114.

Changing Responsibilities of External Auditors in Corporate Governance by Emmanuel Ikazoboh. *The Nigerian Accountant*, January-March 2009, pp. 54-56.

Compliance with International Financial Reporting Standards & Auditor Choice: New Evidence on Importance of Statutory Audit by Christopher Hodgdon etc. *The International Journal of Accounting*, Vol.44, 2009, pp. 33-55.

Do Auditors Price Audit Committee's Expertise? The Case of Accounting versus Non-accounting Financial Experts by Gopal Krishnan & G. Visvanathan. *Journal of Accounting, Auditing & Finance*, Winter 2009, pp. 115-144.

Earning Restatements, the Sarbanes-Oxley Act, & the Disciplining of Chief Financial Officers by Denton Collins etc. *Journal of Accounting, Auditing & Finance*, Winter 2009, pp. 1-34.

Satyam Fraud– A Systemic Failure by

A. V. Ramana Rao. *The Management Accountant*, March 2009. pp. 180-181.

SOX Compliance & Audit on SAP Environment by Tapas Bhattacharya. *The Management Accountant*, March 2009. pp. 196-198.

Using Computer-Assisted Audit Tools (CAATs) for IT Audits by Deepjee Singhal & Manish Pipalia. *BCAJ*, March 2009, pp. 845-848.

3. ECONOMICS

Glimpse into the Future: Despite the Current Economic Turmoil, There is Still a Need to Consider the Future & What the Profession will be Like in 2020 by Melissa Wilkinson. *Charter*, March 2009, pp. 32-36.

Impact of the Global Financial Crisis on India Collateral Damage & Response by D. Subbarao. *RBI Bulletin*, March 2009, pp. 385-391.

Strategies for Medium & Small Enterprises in Dealing with Financial Sector Reforms by S. S. Tarapore. *ASCI Journal of Management*, Vol. 38/1, 2009, pp.14-20.

4. INVESTMENT

Mergers & Acquisitions of CPA Firms by Joel Sinkin & Terrence Putney. *Journal of Accountancy*, March 2009, pp. 58-60.

Non-linear Equity Valuation by Ali Atallah etc. *Accounting & Business Research*, Vol. 39/1, 2009, pp. 57-73.

Value Relevance of Disclosure: Evidence From the Emerging Capital Market of Egypt by Omaima A. G. Hassan. *The International Journal of Accounting*, Vol. 44, 2009, pp. 79-102.

5. LAW

Can a Body Corporate Appoint Two or More Representatives to Attend a General Meeting Under Section 197 of the Companies Act 1956? by K. R. Chandratre. *Company Law Journal*, Vol.1, 2009, pp. 121-123.

Need for Rationalization of Stamp Duty Rates in India by Rahul Jain. *SEBI &*

Corporate Law, March, 9-15, 2009, pp. 96-106.

6. MANAGEMENT

Cash Management Techniques & Application for Corporate Organization by S.F. Akinbuli. *The Nigerian Accountant*, Jan.-March, 2009, pp. 27-33.

Corporate Governance: Independent Director – Really a Corporate Caretaker? by Bimal R. Bhatt. *SEBI & Corporate Law*, March, 23-29, 2009, pp. 182-186.

Corporate Governance – Looking Beyond Corporate Frauds by L. V. V. Iyer. *CAPJ*, March (1st) 2009, pp. 48-51.

Corporate Governance Reforms – An Outlook by G. Vijay Bharathi, P. M. Reddy & P. H. Reddy. *Banking Finance*, March 2009. pp. 13-15.

Step-Down Indian Subsidiaries of Multinational Corporations- Are These Public Companies? by Dhaval Vussonji. *BCAJ*, March 2009, pp. 761-763.

Value-for-Money Strategies for Recessionary Times by P. J. Williamson & Ming Zeng. *Harvard Business Review*, March 2009, pp. 52-53.

7. TAXATION & FINANCE

Australia's Future Tax System. In *The Black*, March 2009, pp. 48-49.

Capital Gains – Hanging Between Full Value of Consideration & Fair Market value by Minu Agarwal. *CTR*, March 5th, 2009, pp. 1-5.

Principles of Jurisprudence in International Taxation by Rashmin C. Sanghvi. *CAPJ*, March (1st) 2009, pp. 449-457.

Tax Treatment of Cross-Border Pensions under the OECD Model & EU Law by Luc De Broe & Robert Neyt. *Bulletin for International Taxation*, March 2009, pp. 86-93.

Transfer Pricing Management Fees – Are you Following the Best Practices? by Maulik Doshi & Gaurav Shah. *BCAJ*, March 2009, pp. 765-768.

Whether Service Tax is Applicable to the Sale of Computer Software? by Anilkumar Shah. *BCAJ*, March 2009, pp. 771-780.

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 011-2337 0154 or by e-mail at library@icai.org

Accountancy Profession: Profile and Competencies

(Synopsis of the Survey: Perspective Planning Committee)



The advent of globalization and its consequent ramifications are making a subtle transformation in delivery mechanism of the professional services. World over and more importantly in the emerging economies, one sees an innate desire to march toward being bigger. This becomes crucial in context of professions like accountants, which traditionally have been sole-practitioners, or as small firms with limited number of partners. The issue of new trade order and increasing competition from the overseas firms is also a factor, which is receiving the attention of the developing economies world over. The importance of the members being equipped with relevant dexterity and augment and strengthening the financial and infra-structural capabilities are being seen as the key drivers for the growth of profession.

The role of an accountant is changing from perspective of the industry. It goes to the credence

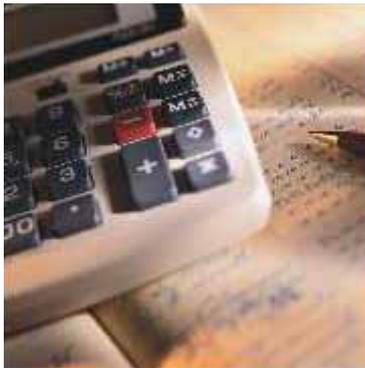
of the Chartered accountancy profession that its product i.e Chartered Accountant members have been able to make their mark felt in the professional dome. The world today is of specific competencies and mapping of such competencies, which are ultimately required by the users of members in industry, is something which is core to possibly creating a re-alignment of CA profession module. One also sees a steady growth of the members moving to industry and may be returning to licensed practice; this being typically true for the new professional. This could also reflect on the competencies required for members *vis-à-vis* those in practice and those in industry.

The ongoing structural ramifications in accounting profession taking place world wide would influence the profession and possibly need a sustained response on on-going basis; such issues being of nature which warrant due positioning to be undertaken for the benefit of the

membership at large. The Institute in order to have an insight into the structural dynamics of the profession came out with a survey to have the members' perspective. Institute invited comments/responses from its members on the two questionnaires for drawing an insight into the competency mapping of the professional traits, and changing profile of profession in the current scenario.

Both the questionnaires were responded by around 10,000 members in total and some of the highlights of the survey findings:

1. **Urgent need to understand the degree in IFRS implementations:** From the overall responses suggest that with less than 600 days left before India converges to IFRS it becomes mandatory that companies start following a planned strategy as early as possible, to make the transition smooth and flawless.
2. **Effect of Global financial turmoil on the gross receipts:** Since the beginning of 2008 due to global financial turmoil and unfavourable factors like inflation, fluctuation in oil prices, decline in rupees in comparison to dollar and slowdown in all sectors of the Indian economy have somehow affected the CA firms also.
3. **Statutory audit: Specialization area of the firms:** The survey depicted that statutory audit is the main specialization area followed by Direct Taxation while manufacturing sector forming major part of revenue generation client contributed 48% of the clients & 42% of gross receipts.
4. **Capital shortage: A major factor affecting firms growth:** The survey highlights that the capital shortage is mainly faced by the proprietary firms. High costs in metros make it all the more difficult for firms to grow and to develop.
5. **In spite of his vast and specialized competencies, it is not always easy for CAs**



to quote suitable fees for their services:

The small and mid-sized firms which mostly have individuals and SMEs as their clients face tough competition within the profession as well as from other professionals/non-professionals providing similar services (non-qualified accountants providing accounting services and lawyers providing taxation services) for lower charges, they have a challenging time convincing their clients of the immense value attached to taking services from a CA.

6. **Industry more attractive than self practice:** 54% of the respondents felt that movement of fresh CA towards industry will not affect the profession in practice in long run, but 46% felt that it would affect the profession. Majority of the respondents below age 35 believe that the movement of newly qualified members towards industry will affect the profession in long run, but majority of the elder members feel it would make no big difference.
7. **Small size of firm is a constraint to the professional development:** 61% of the respondents feel that the small firm size has constrained their professional development. However, 75% of the executives at CA firms felt that their small firm size is not a constraining factor to their professional development.
8. **Lack of proper understanding and guidance is the major factor that discourages CAs for moving ahead with networking, mergers/consolidations etc.:** Conflict of interest and lack of resources were the main difficulties that discouraged the respondents from moving ahead with networking, mergers etc. The survey shows that, for small firms the main difficulty that discourages them from networking/mergers were lack of resources and lack of guidance whereas for larger companies the main difficulty were lack of resources and less control over operations of the firm.

9. Mechanism adopted for growing firm in size and quality: The survey shows that the respondents in Metro cities have tried for networking than the ones from Non-Metro cities and towns. More executives (than Partner & Sole Proprietor) were of the opinion that networking will help their profession. Respondents with experience less than 5 years felt that networking will benefit their profession than the ones who have experience more than 5 years. 97% of the executives felt that networking with other professionals will help them in serving their clients better.

10. Merger/Networking and LLP: Facilitator for professional growth: Majority of the respondents agree that the various mechanism for growing the size of the firms i.e Merger/networking and LLP would be positive start for expansion provided there is proper understanding and guidance.

11. Formation of Multi-disciplinary firms: On taking view on the multi-disciplinary firms, joining hands with Company Secretaries would be the most beneficial. It was followed by IT professionals, Advocates etc. International accountants would also help professional accountants in their area of work.

12. Need for separate accounting standards for SMEs: 74% of the respondents feel that there should be separate accounting standards for SMEs and the rest 26% had the opinion that it need not be different. More percentage of Partners and Sole proprietors has responded that there should be separate accounting standards for SMEs than the executives at CA firms. The firms with smaller number of employees (small firms) were more supportive of the proposal that there should be separate accounting standards for SMEs.



13. Contribution of ICAI in regulating the profession in India: 39% of the respondents are of the opinion that ICAI contribution in

regulating the profession in India is very good and 23% feel it excellent and 30% has ranked the contribution as good.

14. Adequate Advertising guidelines of ICAI: Over half of the respondents are satisfied with the current advertising guidelines and do not feel the need for further liberalization in these rules.

15. Desire to work in foreign environment: Around 41% of the respondents are eager to work in the foreign environment once the opportunities are given to them. The survey findings indicate that executives working in CA firms were more confident than partners and sole proprietors that they are equipped to work in countries outside India and those companies which are mainly specialized in Statutory Audit, Direct Taxation, Internal Audit & Accounting are equipped for rendering consultancy work in countries outside India.

16. Involvement of Social Laws like Consumer Protection Act in accountancy profession: About 62% of the respondent feels that the services of Chartered Accountant should be under the preview of the Social Laws like Consumer Protection Act. However, many others feel that ICAI is the sole regulatory body and its stringent rules and re-regulations are enough to protect the consumer and some feel that involvement of these acts will tarnish the image of CA by long and tedious litigations.

17. Existence of Professional Gap: The survey indicates that there is a significant gap between members who have passed recently and the earlier members. The professional gap is mainly in respect of Information Technology and Professional Opportunities.

18. Demand for profession continues to grow: Most of the respondents felt that the demand for the profession is increasing. However, some feel that demand for CAs in service

sector is increasing, but not for personal practice and that supply is increasing faster than demand due to introduction of new scheme of education.

19. Upgradation of ICAI Course curriculum: It has been identified through the survey that the subject mix in the current curriculum needs more emphasis on the information technology and taxation instead of focusing only on accounting and auditing.

20. Inclusion of new areas to harmonize with the changing economic scenario: Majority of the respondents stressed on the need to introduce new areas in the ICAI curriculum which includes investment banking, capital markets and IPO process, Public finance management, Risk management and alike.



21. Post Qualification courses: A step towards specialization: More than three-fourths of respondents had identified post-qualification courses of the ICAI as specialized programmes which has benefited them in delivering professional services to its stakeholders in a better manner.

22. Increasing focus on Soft-skills: The survey finding revealed that there is a huge demand of professional accountants with good interpersonal communication. Leadership and managerial skills have been asked for additional weightage priority while designing the overall Chartered accountancy programme.

23. High mobility of the professional in the early years of their career: With regard to the loyalty to the current employer, 45% of the respondents notify the fact the average retention period by a newly chartered accountant with the current employer can be 1-3 years only. However, the survey findings also indicate that it takes more than 3 years to reach the middle managements while 10 years for the top management.

24. Professional development and employers involvement: Around 50% of the respondents were of the opinion that the employer's involvement is very important in their professional development.

25. Professionalism: Main agenda of the prospective employer: Around 85% of the respondent feel that professionalism and ethical values are the core desired professional trait of any employee by the prospective employer.

26. Goodwill of the profession – One of the motivational factors of joining the profession: Most of the respondents feel that job satisfaction, high demand for CAs, consistent income & challenging job, good pay package, better job opportunities, less expensive and brand image are the major factors motivating them to join the profession.

27. Advanced knowledge and high professional standards – key to success for any professional accountant: Many of the respondents say that a CA profession enrich them with advanced knowledge in varied areas, maintain high professional standards and provide adaptability to a range of opportunities in the emerging scenario.

28. Convergence with IFRS: An emerging experience: 81% of the respondents feel that they are not fully conversant with IFRS and limited knowledge and lack of guidance are the hindering factors to convergence with IFRS.

The above survey findings are not necessarily expressed views of ICAI.

Members desirous of knowing the detailed findings of the survey are requested to visit "Announcements" page dated 6th February, 2009 on ICAI website.

Chairman,
Perspective Planning Committee

Empanelment of Faculty for Master in Business Finance Certificate Course and Preparation of Study Material

Committee on Management Accounting (CMA), The Institute of Chartered Accountants of India

The Council of the Institute of Chartered Accountants of India has, while appreciating the emerging diversities and complexities in Business Finance decided to launch Master in Business Finance Certificate Course for its members.

The objective of this course is to provide knowledge to its members in the new financial arena. The emphasis shall be on Capital market, investment banking, private equity, venture capital, mutual funds, structured products, derivatives, international exchanges, offshore Banking, cross border transactions, lines of credits, etc.



The course targets senior and experienced Finance pro-fessionals, so that they can update themselves about the latest happenings in Financial World. This course is also very suitable to fresh or less experienced members so that they can find new avenues in the Financial Arena.

Apart from the comprehensive theoretical aspects, the knowledge shall be imparted through lectures/case studies from professionals having practical/academic expertise in that area.

The Course will be presently conducted at New Delhi, Mumbai, Kolkata, Chennai and at other mega cities in due course of time.

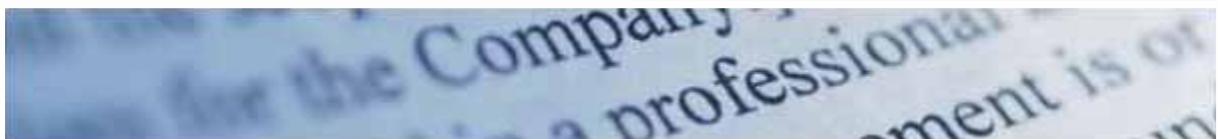
The prospectus of the course containing detailed syllabus and the course contents has been hosted at http://www.icai.org/post.html?post_id=4092. The Committee on Management Accounting (CMA) is in the process of preparing a panel of faculty/experts/resource persons who can assist

the Committee in teaching/Tutorial/Group discussion/case study formulation and evaluation/preparation of study material for the Course. Considering the experience and expertise, the faculties would be designated as visiting professors/visiting associate professors/visiting lecturers. Chartered Accountants, Bankers, treasury Managers, investment Bankers, fund managers, CFOs and other professionals, MBAs



from IIMs and other leading management institutes and other professional bodies having relevant experience for more than 15, 10, 5 years may apply for the above and are requested to send their detailed profile along with details of existing materials developed by them and the details of published papers / synopsis of module selected by them for offering. Persons interested in the development of background material may also submit a broad outline of proposed background material which they wish to develop for the course at the following address within 10 days.

Chairman,
Committee on Management Accounting,
The Institute of Chartered Accountants of India,
ICAI Bhawan, A- 94/4, Sector-58,
Noida- 201301, Uttar Pradesh
Contact Nos. 0120 – 3045910, 3045914
Email: cma@icai.in, zaidi@icai.in



Master in Business Finance Certificate Course (MBFCC)

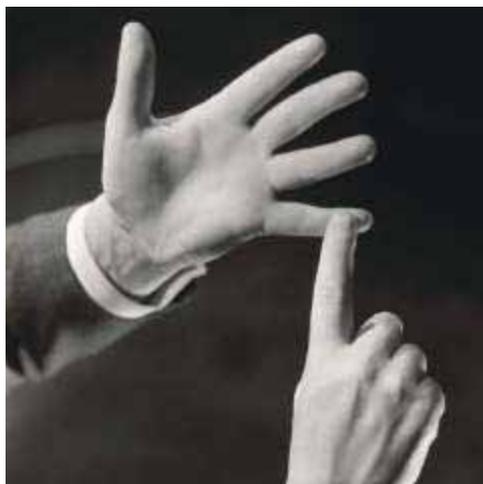
With a view to sharpen the skills of Financial Management and Management Accounting tools and techniques, the Institute of Chartered Accountants of India has launched Master in Business Finance Certificate Course. The details have been hosted on the website www.icaai.org. The main features of the course are as follows:

Who can Join the Course?

The course is open for the members of the Institute and for the students who have cleared their final examination.

Registration

The registration for first batch is presently going on for the session commencing on April 1, 2009 to March 31, 2010. The last date for receipt of applications is May 7, 2009. The Registration will be done on first come first served basis. Presently, the course is proposed to be conducted at New Delhi, Mumbai, Kolkata and Chennai.



Dates: Classes are expected to commence in June, 2009 and onwards on alternative Saturdays/Sundays.

Duration of the Course is as follows:

- Self Study – 300 hours
- Class room teaching – 150 -200 hours
- Case Study in Groups – 200 hours

Contact Details

For enquiries you may contact:

S. No.	Name	E. mail
1.	CA. Vinod Jain, National Course Director	Mobile No. 9811040004
2.	Dr. S. Z. H. Zaidi, National Course Co-ordinator	zaidi@icai.in ; cma@icai.in Mobile No. 9350799927

Overall Scheme

Participants registered for the course have to pursue the classes. They are required to devote time for the self-study and case study given to them. Candidates, who successfully completes the classes will be eligible to appear at the evaluation test. The participants must complete the Self-study hours and case study for appearing at the Evaluation Test which will be conducted every six months in May and November.

Course Fee

Rs. 20,000/- (Rupees Twenty Thousands only) in lump sum or Rs. 5,500/- per quarter. The first instalment is payable at the time of Registration and the remaining instalments on 1st July, 1st October, 1st January. The fee is inclusive of first evaluation fee payable at the time of Registration. Course fee once paid is non-refundable under any circumstances and it is on no frill basis. The course fee may be paid on-line or through the demand draft favouring The Secretary, ICAI, payable at New Delhi

Certificate on completion of the Course

On successful completion of the Course, a certificate will be awarded to the participants.

No. of Seats:

For every session at each centre – 100 on first come first served basis.

Invitation for Research Proposals

Research Committee invites applications for Research Projects from members and others for carrying out research in the field of accounting and other affiliated fields for example accounting for chain departmental stores, accounting in health care industry, accounting for electricity generation and distribution companies, accounting in aviation industry, accounting for shipping companies, management control systems, approaches to social cost-benefit analysis in the Indian context, etc. The Committee would provide financial support for the approved Research Projects.



The Eligibility Criteria

- (a) The applicant must be a member of the Institute of Chartered Accountants of India with a research aptitude having at least 10 years of post-qualification experience either in the practice of the profession or as an employee with a reputed manufacturing/service organisation; or
- (b) The applicant must be holding a post-graduate degree from a recognised University or an institute of national repute and must have at least 10 years research and/or teaching experience.

Applications from persons having an experience less than as stated above may also be considered on the basis of merit.

The Evaluation Criteria

Only those research proposals will be accepted that result in formulation of guidance material in the form of Technical Guide, Studies, Monographs for the members of the Institute in accounting and allied areas, such as the following:

- the issues on which no accountings standards are available or
- the issues that may arise in the implementation of accounting standards and other pronouncements in the industry-specific situations.

Duration

The duration of research project should not exceed 3 months from the date of the approval of the research proposal unless a longer period is otherwise justified.

Documents to be Submitted with the Research Proposal

The proposal should be accompanied by a

- Complete bio-data including experience in the relevant field of interest.
- Synopsis of the project explicitly specifying the objective, scope and issues that would be addressed in the final proposed document. It should also contain a justification for the proposal and the detailed chapter plan.

The proposal should also indicate the estimated expenditure and expected honorarium for this purpose. The amounts in this regard would be remitted on the final acceptance of the draft by the Research Committee.

Research proposals complete in all respects should be sent to the Secretary, Research Committee, at the following address:

The Institute of Chartered Accountants of India,
ICAI Bhawan, Post Box No. 7100,
Indraprastha Marg,
New Delhi
E-mail: research@icai.org

Journal on Management Accounting and Business Finance - Invitation for Articles



The Committee on Management Accounting (CMA) of ICAI invites research articles, case studies, write-ups and other similar materials in the areas of Management Accounting and Financial Management for publishing in its journal. The Institute proposes to publish a monthly Journal 'Management Accounting and Business Finance' with an object of spreading the advanced knowledge on Management Accounting and allied areas which are relevant for the members of the profession and others concerned. The Journal is to focus on practical articles for advanced and research oriented knowledge.

The articles submitted for consideration of publication should be of 4000-6000 words typed double spaced on A4 size paper with 1 inch margin all around. In order to facilitate the blind review process, the author should not mention his/her name on the body of the manuscript. Three hard copies of manuscript along with a soft copy (MS WORD) may be sent at the following address:



Dr. S. Z. H. Zaidi,
Secretary,
Committee on Management Accounting (CMA),
A-94/4, Sector- 58,
Noida- 201 301 (U.P.)
Phone: 0120- 3045910
Fax No.: 0120- 3045940
E-mail: cma@icai.in; zaidi@icai.org

Authors may note that in appreciation of their contribution to the MABF journal an honorarium of Rs. 5,000/- per article would be paid to them.

Detailed Guidelines for writing the articles are available on the website of Committee at www.icai.org

The Editorial Board hopes that professionals and other experts will come forward to share their expertise and practical experience with our readers by preparing the papers in view of the specific requirements of the accounting profession.

Chairman,
Committee on Management Accounting (CMA)
ICAI, New Delhi

Committee on Public Finance



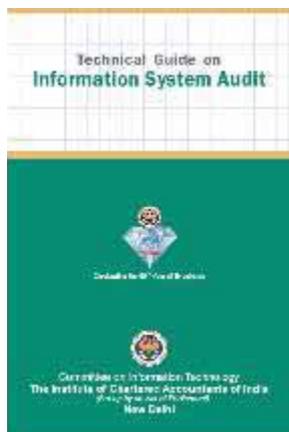
The Committee on Public Finance constituted by The Institute of Chartered Accountants of India desires to have associates on full-time, part-time or honorary basis to work in the field of Public Finance, Tax Policy, Public Expenditure & Control, Public Debt Management, Inter-Governmental Fiscal Relations and Financial Planning etc. The Committee invites authors, researchers and faculty having interest to contribute articles in different areas of Public Finance. Published articles will be suitably rewarded.

Those desirous may please contact at the following address:

The Chairman
Committee on Public
Finance
The Institute of
Chartered
Accountants of India
ICAI BHAWAN
Indraprastha Marg
New Delhi-110002
Mobile No.
09830022848
Email:
pfc@icai.in



New Publications from the Committee on Information Technology



1. Technical Guide on Information System Audit

The Committee on Information Technology has issued Technical Guide on Information Systems Audit

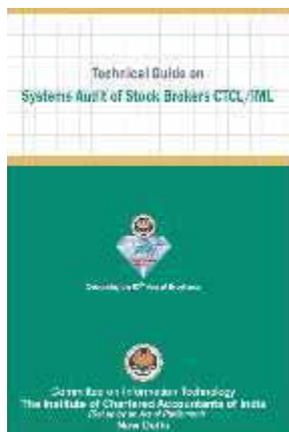
Salient Features:

- Introduction to IS Audits (Need for IS Audit, IS Audit standards, Guidelines)
- Audit Preparation and Planning (Audit planning, Risk based approach)
- Conducting the Audit (Audit Methodology, Pre Audit Activities, IS Audit Process)
- IT General Controls Audit (Network Security Audit, Data Migration Audit, Business Continuity Management Audit)

This publication can be obtained from the Sales Counters of the Institute at Regional Offices/ Head Office. It can also be obtained through post by sending a DD for the publication cost plus courier charges as indicated below in favour of "The Secretary, ICAI" payable at New Delhi to "The Postal Sales Department, The Institute of Chartered Accountants of India, A-94/4, Sector 58, Noida – 201 301. Uttar Pradesh".

This technical guide also contains a Companion CD containing e-book of guide & checklists in the word format.

Price: Rs. 200/-, **Courier Charges** within Delhi & NCR Rs.10/- and Rest of India Rs. 20/-.



2. Technical Guide on Systems Audit of Stock Brokers

The Committee on Information Technology has issued Technical Guide on Systems Audit of Stock Brokers recently.

Salient Features:

- Introduction (Recent developments, System Audit Requirements of Stock Broking Industry)
- Trading Patterns (Capital Market Segment, Futures & Option Segment)
- IS Architecture (Total information Systems, NSE Trading Network, Stock Broking Activities)
- CTCL Trading Facility
- IS Environment in CTCL
- CTCL Audit Preparation
- Audit Procedure
- Systems Audit Report
- NSE/BSE Circulars

This publication can be obtained from the Sales Counters of the Institute at Regional Offices/ Head Office. It can also be obtained through post by sending a DD for the publication cost plus courier charges as indicated below in favour of "The Secretary, ICAI" payable at New Delhi to "The Postal Sales Department, The Institute of Chartered Accountants of India, A-94/4, Sector 58, Noida – 201 301. Uttar Pradesh".

This technical guide also contains a Companion CD containing e-book of guide, checklists & NSE/ BSE circulars in the word format.

Price: Rs. 200/-, **Courier Charges** within Delhi & NCR Rs.10/- and Rest of India Rs. 20/-.

Important Council Decisions - Transfer of Articles

The following decisions taken by the Council of the Institute are brought into force immediately for compliance by the Students/Members concerned. It is advised that required compliance be made by the concerned students/members. It may please be noted that non-compliance will be viewed seriously and proceeded against accordingly.

- a) The coaching classes shall not continue after 9.30 a.m. or start before 5.30 p.m. so as to enable the articled/audit assistants to concentrate wholly on practical training.
- b) Members of the Institute who are engaged in coaching be advised not to undertake coaching between 9.30 a.m. and 5.30 p.m.
- c) An articled assistant should undergo practical training in accordance with the guidelines of the Institute between 10.30 a.m. and 5.30 p.m. During the period an articled assistant shall not be permitted to attend colleges/other institutions for graduation or any other course.
- d) Every articled/audit assistant shall submit once in a year a specific declaration duly countersigned by the Principal to the effect that he is regularly attending training and his college hours do not clash with his articles timings and that no coaching is under-taken by him between 9.30 a.m. and 5.30 p.m. on any working day. In the event of breach of this guidelines and not taking permission as required, the articles already undergone shall be derecognised for such period as the Institute may decide.
- e) Every articled/audit assistant shall be required to maintain mandatorily the Work Diary in the form to be prescribed by the Board of Studies.
- f) The Institute to call for at random training report along with attendance record and stipend details and also Work Diary maintained by articled/audit assistant from any member/firm in respect of any articled assistant at any point of time during the period of practical training for verification.
- g) In case an articled assistant is found not undergoing articles in the manner prescribed he shall be debarred from appearing in the exam up to 3 consecutive exams besides cancellation of such period of articles. The concerned member who allowed such an articled assistant be subject to punitive action besides withdrawing either partly or fully his eligibility to train articled assistant. In Peer Review the Reviewer be required to verify whether training is imparted

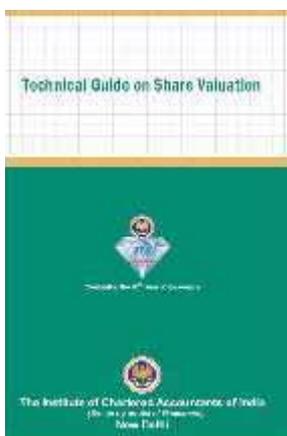


- to the articled assistant in the manner prescribed.
- h) No request for termination of articles is entertained from any articled assistant in general and more particularly during the first six months and also during the last twelve months of articles except as provided in the Regulations. In the event of termination, his articles shall not be registered in the same city.
 - i) No request of an articled assistant for termination (transfer) of articleship shall be considered unless his/her working parent(s) is/are transferred from the city/place where the articled assistant is receiving training to another city and a copy of transfer order/proof is submitted to the principal in proof thereof. On such termination the articled assistant concerned shall join articles training in and around the place of posting of his/her parent(s) and shall not re-register articles in the same city or within 50 Kms radius of the city where he/she has undergone articles prior to such termination.
 - j) If the articled assistant is not able to serve the Articleship for specified genuine medical reasons thereby opting to discontinue the CA course for a period of at least three months, the termination of articles be permitted, provided that the medical grounds are such that warrant termination of Articleship.
 - k) In the event of misconduct involving moral turpitude, gross negligence or unsatisfactory performance of the articled assistant, his articles shall be liable to be terminated by his principal besides being cancelled or extended for such period as may be decided by the Institute. Board of Studies to decide and enumerate the acts constituting misconduct.
 - l) Termination of articles be permitted on such other justified circumstances as may be deemed genuine by the Council.
 - m) While forwarding the Form No. 109 the principal shall state specifically the clause (the relevant clause mentioned above) under which the articles have been terminated.

27th March, 2009

Secretary, ICAI

Recent Publications – Research Committee

1. Technical Guide on Share Valuation:

The Research Committee has revised its existing publication titled 'Study on Share Valuation' (Second Edition 1994) in view of developments subsequent to the last edition. The revised publication is titled as 'Technical Guide on Share Valuation'.

This 'Technical Guide on Share Valuation' aims to provide guidance on

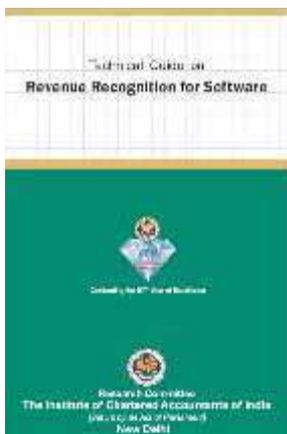
contemporary issues involved in share valuation. It deals with approaches, rules and principles in share valuation as laid down by law, the statutory guidelines, and the decisions of courts as well as established valuation practices. The Guide concentrates on the practical aspects used by experts for valuing shares.

Price
Postal
Charges

Rs. 80/-
Rs. 19/- (plus Rs. 17/-,
if required
by registered parcel)

Available
at

Sale counters of the Institute of Chartered Accountants of India at New Delhi, Chennai, Mumbai, Kolkata and Kanpur. Copies can also be obtained by post. To order by post, send your request along with a demand draft for the amount of the price of the publication plus the postal charges in favour of "The Secretary, The Institute of Chartered Accountants of India", payable at New Delhi, to the Postal Sales Department, The Institute of Chartered Accountants of India, ICAI Bhawan, A-94/4, Sector 58, Noida-201 301, Dist. Gautam Buddh Nagar (U.P.)

**2. Technical Guide on Revenue Recognition for Software:**

Many of today's revenue generating contracts being entered into the software industry are complex and involve considerable uncertainty. Implementation of revenue recognition principles is no longer considered a routine

matter. A variety of revenue recognition principles are being followed in the Software Industry. The area requires considerable judgment.

Recognising the need for establishing uniform and sound accounting practices for revenue recognition of various types of contracts entered into the Software Industry, Research Committee of Institute of Chartered Accountants of India has brought out this 'Technical Guide on Revenue Recognition for Software'. The publication primarily provides guidance to deal with industry-

specific accounting issues relating to revenue recognition of software with a view to bring about establishment of sound accounting practices.

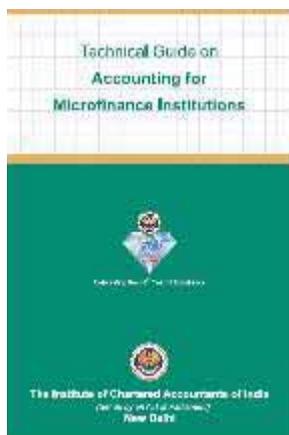
Price
Postal Charges

Rs. 100/-
Rs. 19/- (plus Rs. 17/-, if required
by registered parcel)

Available at

Sales counters of the Institute of Chartered Accountants of India at New Delhi, Chennai, Mumbai, Kolkata and Kanpur. Copies can also be obtained by post. To order by post, send your request along with a demand draft for the amount of the price of the publication plus the postal charges in favour of "The Secretary, The Institute of Chartered Accountants of India", payable at New Delhi, to the Postal Sales Department, The Institute of Chartered Accountants of India, ICAI Bhawan, A-94/4, Sector 58, Noida-20 1301, Dist. Gautam Buddh Nagar (U.P.)

3. Technical Guide on Accounting for Microfinance Institutions:



Microfinance institutions (MFIs) provide vital financial services to the economically deprived members of the society. Microfinance sector is a growing industry with many MFIs operating in the country. Large amount of grants and funds entering the microfinance sector and involvement with the poor and their money,

warrant a high level of transparency of operations of MFIs by way of sound accounting and financial reporting by MFIs. Therefore, to address this need, the Research Committee of the Institute of Chartered Accountants of India has issued a new publication 'Technical Guide on Accounting for Microfinance Institutions'. The publication primarily provides an accounting and financial reporting framework for the presentation of true and fair view of the state of affairs and the operating results of the activities of MFIs in their financial statements.

In this publication, guidance has been provided regarding the application of the Accounting Standards formulated by the Institute of

Chartered Accountants of India. It has also recommended the formats of financial statements for MFIs and the disclosures of relevant non-financial information by MFIs.

The preparers and the auditors of financial statements of MFIs would find this publication useful for addressing the accounting issues involved in the microfinance sector.

Price: 150/-

Postal Charges: Rs. 19/- (plus Rs. 17/-, if required by registered parcel)

Available at: Sales counters of the Institute of Chartered Accountants of India at New Delhi, Chennai, Mumbai, Kolkata and Kanpur. Copies can also be obtained by post. To order by post, send your request along with a demand draft for the amount of the price of the publication plus the postal charges in favour of "The Secretary, The Institute of Chartered Accountants of India", payable at New Delhi, to the Postal Sales Department, The Institute of Chartered Accountants of India, ICAI Bhawan, A-94/4, Sector 58, Noida- 201 301, Dist. Gautam Buddh Nagar (U.P.)

Invitation of Questions for D.I.S.A (ICAI) Question Bank

The Committee on Information Technology invites questions for the D.I.S.A (ICAI) Question Bank with the twin objective of enhancing the Question Bank for ISA Course and providing an opportunity for ISA Members to enhance their level of understanding in the field of IS Audit/ Systems and Process Assurance. Further details of this initiative are available in the Question Development Guide

available on the CIT Portal at the following link

http://www.icai.org/resource_file/15858InvitationDISAQuestions.pdf

Secretary

Committee on Information Technology
cit@icai.in Phone: +91 (11) 30210619/ 621



New Publication - Technical Guide on Internal Audit of Stock Brokers

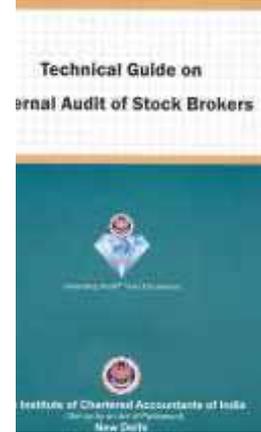
Pages: 273+10 initial pages+4 cover pages | Price: Rs. 250/- (including CD)

With a view to enhance market transparency, prevention of unfair trade practices, strengthening controls and also reducing risks under volatile market conditions, the Securities and Exchange Board of India (SEBI) being the regulator of capital markets in the country, has mandated half-yearly internal audit of the stock brokers and clearing members. In order to assist the members to better understand the intricacies of the stock broking entity and discharge their onerous responsibilities with utmost efficiency, the Internal Audit Standards Board has issued *Technical Guide on Internal Audit of Stock Brokers*.

Significant Features of the Technical Guide:

- In-depth understanding of the activities undertaken by the stock broker and the regulatory and legal framework in which they operate.
- Brief overview on various aspects like, client registration, settlement of funds and securities, margins, trading terminals, money laundering, advertisement, brokerage, revenue leakage, sub-brokers, etc.
- Explains internal audit process and contains reference to Standards on Internal Audit (SIA) issued by the Institute.
- Deals with internal control evaluation and risk assessment.
- Detailed checklist on internal audit for easy understanding and practical implementation.

- Includes Illustrative Engagement Letter and also text of the circulars on internal audit of stock brokers/trading members/clearing members recently issued by the NSE and BSE.



Ordering Information

The publication can be obtained from the sales counter at the Regional Offices or at the Head Office of the Institute. Copies can also be obtained by post. To order by post, send a demand draft for the amount of price of the publication (add the charges indicated below for the desired mode of delivery) in favour of "The Secretary, The Institute of Chartered Accountants of India" payable at New Delhi, to the Postal Sales Department, The Institute of Chartered Accountants of India, ICAI Bhawan, A-94/4, Sector-58, Noida - 201301(U.P)

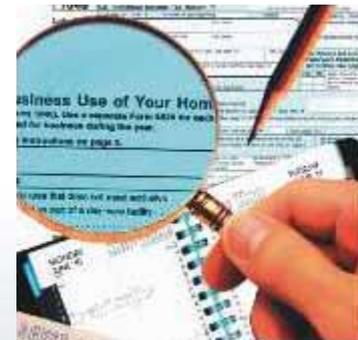
Postal Charges:

By Courier	Within Delhi	Rs. 20/-
	Rest of India	Rs. 25/-
By Registered Parcel	Within India	Rs. 33/-
	By Unregistered Parcel	Within India

Corrigendum

Attention of readers are invited to footnote No. 5 to Standard on Auditing (SA) 500 (Revised), "Audit Evidence", published in April, 2009 issue of the Journal at page No. 1818. The abovementioned footnote should be read as follows:

"Presently, SA 200 (AAS 1), "Basic Principles Governing an Audit" and SA 200A (AAS 2), "Objective and Scope of an Audit of Financial Statements" correspond to International Standard on Auditing (ISA) 200 (Revised and Redrafted). Both the SAs are currently being revised in the light of the ISA 200 (Revised and Redrafted)."



Certificate Course on Enterprise Risk Management (ERM) At Delhi, Mumbai, Chennai, Kolkata and Hyderabad

(Batch will commence at Delhi from May 30, 2009)

The Internal Audit Standards Board of the ICAI is pleased to offer certificate course on "Enterprise Risk Management" to enable members to develop competencies in this emerging field and offer value added services. This course would help the members to understand the various issues relating to the enterprise risk management and in developing the necessary skills to provide value added services in this area.

Course Objectives

The Overall Objectives of the Course are:

- To enhance the role of Chartered Accountants in the area of ERM.
- To build ERM as one of their core competencies.

The main thrust of the course is to educate the participants on:

- Theory and concepts of ERM.
- Manner in which ERM is designed and implemented in practice.
- Current thinking on risk management and its impact on contemporary business enterprises.

Course Duration

The total duration of the course is 200 hours spread over a 5 week/6 class room, divided as follows:

Self study	:	100 hours
Class room teaching	:	50 hours
E-learning	:	20 hours
Case study preparation and presentation	:	30 hours

Course Fees

Rs. 25,000/- per delegate only, payable online or by DD/ Pay-Order drawn in the favour of "The Secretary, ICAI" payable at Delhi.

Further Details and registration form links:

http://www.icai.org/post.html?post_id=4287

Course Registration is on First-Come-First Served basis on receipt of duly filled-in and signed application along with course fee.



Last date of Application Receipt: May 25, 2009.

Locations

- Delhi** : May 30, 2009
(Venue will be hosted on the website shortly)
- Mumbai** : The date and venue will be announced and hosted on the website shortly
- Chennai** : The date and venue will be announced and hosted on the website shortly
- Kolkata** : The date and venue will be announced and hosted on the website shortly
- Hyderabad:** Residential Course at Centre of Excellence, Financial District, Gachchibowli.
Programme details residential course fee (including boarding and lodging expenses) and dates will be announced and hosted on the website shortly.

Further Details and Assistance

Course Chairman:

CA. Shanti Lal Daga, FCA
Chairman, Internal Audit Standards Board

Course Co-ordinator:

CA. Jyoti Singh
Secretary,
Internal Audit Standards Board
Tel.: 0120-3054845/3054846
Email: cia@icai.org; auditing@icai.org

Course Director:

Shri Harish Dua
Mob: 9871181181
E mail: h.dua@sigma-v.in

For the Attention of Members Membership and Certificate of Practice Fee for the year 2009-2010

Annual Membership and Certificate of Practice fee for the year 2009-2010 was payable on 1st April 2009. The schedule of fee is as under:

For Members below age of 65 years		For Members above age of 65 years (As on 1 st April 2009)	
Associate Membership Fee	600/-	Associate Membership Fee	450/-
Fellow Membership Fee	1800/-	Fellow Membership Fee	1300/-
Certificate of Practice Fee	1600/-	Certificate of Practice Fee	1200/-

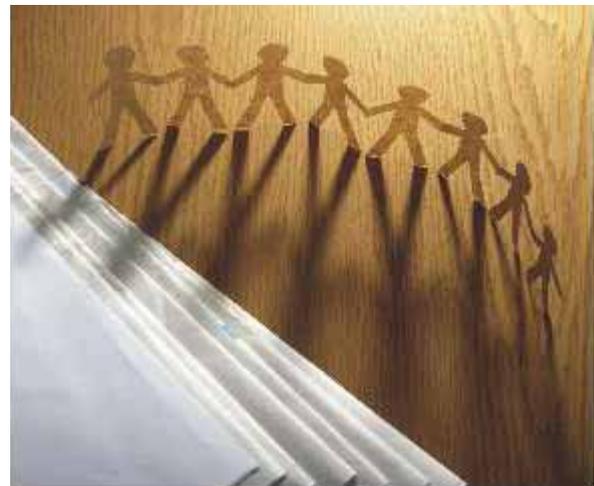
Individual circulars have already been dispatched to members giving details of scales of fee and also the manner of remittance of the fee. The fee can, therefore, be remitted to the concerned Decentralized Office.

It may be noted that remittance of fee has to be made by cheque or demand draft in favour of "Secretary, The Institute of Chartered Accountants of India" payable at a place where the concerned decentralized office is located.

Members can also pay fee in advance in accordance with the details given in the fee circular sent to members.

In case, members have not received the fee circular and entry on Record they are advised to contact the concerned Decentralized Office. Members are further requested to return the Entry on Record duly verified by them.

Members might be aware that the Chartered Accountants Benevolent Fund has been set up with the object, inter alia, of providing financial assistance to Institute's members and/or their families in distress. Chartered Accountants can become member of the Chartered Accountants Benevolent Fund either by paying ordinary membership fee of Rs. 500/- annually or become life member thereof by paying one time amount of Rs. 2500/-*. The fund has



been providing financial assistance to the members and/or the families of the deceased member depending on the number of request received and the fund position. In order to provide assistance to more members and in a substantial manner, augmentation of the Chartered Accountants' Benevolent Fund is necessary. Towards this direction, members are earnestly requested to contribute their mite while remitting their membership/certificate of practice fee for the year 2009-10. It is hoped that the members of the Institute would respond positively to this noble cause.

For more details visit our website www.icai.org



* The Council at its 287th meeting held in April, 2009 decided to raise annual membership subscription to Rs. 500/- from Rs. 100/- and life membership to Rs. 2500/- from Rs. 1000/-.

Announcement Regarding Working Hours of the Articled Assistants

[Repeat of the Announcement hosted on website on 29-03-2008]

The Council has considered the issue regarding the working hours of the articled assistants. The Council is of the view that the article training is an important part of the CA curriculum and the same needs to be carried out in accordance with the scheme framed by the ICAI in this behalf. Accordingly, to clarify the doubts being raised by various quarters about the working hours of the articled assistants and for pursuing graduation/other course, the Council decided to issue the following directions:—

1. The articled assistants should undergo practical training in accordance with the Chartered Accountants Regulations, 1988 as explained hereinafter.
 - i. The working hours for the articled assistants shall be 35 hours in a week excluding the lunch break.
 - ii. The office hours of the Principal for providing article training to the articled assistants shall not be generally before 9.00 a. m. or after 7.00 p.m.
 - iii. The normal working hours for the articled assistants shall not start after 11.00 a.m. or end before 5.00 p. m.
 - iv. The working hours for the articled assistants should not exceed 35 hours in a week excluding the lunch break and normally an articled assistant be required to work during the normal working hours fixed for articled assistants.
 - v. In case of the exigencies of work with the Principal, an articled assistant may be required to work beyond his/her normal working hours. However, under such circumstances, the aggregate number of working hours shall not exceed 45 hours per week. The requirement to work beyond 35 hours in a week should not be a practice but only in exceptional circumstances. Further, where the articled assistant is required to work beyond normal working hours, and aggregate of such hours exceed 35 hours per week, he/she shall be entitled to compensatory leave calculated with reference to number of completed working hours, over and above, 35 hours per week.
 - vi. The facility of allowing flexible office hours stands withdrawn.
2. During the working hours, the articled assistant is not permitted to attend college/ other institutions for pursuing any course including graduation. Accordingly, college timings of such course should not be such (after taking into account the time required to commute) which clashes with the normal working hours of the article training.
3. To ensure that the working hours do not clash with the graduation or any other course, if any pursued by the article assistant, each articled assistant registered on or after 1st April, 2008 shall now be required to obtain specific permission from the ICAI for pursuing graduation or other course as permitted under the Chartered Accountants Regulations by submitting Form No. 112, within one month from the date of joining the college or course to the ICAI.
4. The articled assistant presently registered and undergoing graduation or any other course and who have not obtained specific permission shall be required to obtain the specific permission from the ICAI by submitting Form No. 112 within six months of issue of these guidelines i.e. by 30th September, 2008. However those students who have already obtained the specific permission by submitting Form No. 112, need not obtain it again and the permission so granted shall continue to be valid.



5. The Certificate in Form No. 112 indicating college timings etc. shall be counter signed by the concerned Principal of the college with the seal and stamp of the College and also indicating the telephone number/s and full address of the College.
6. In case a student does not comply with the above requirements or violates any of the above guidelines, his/her articleship period shall not be recognised.
7. In this connection, attention is invited to the Regulations 65 and 66 read with Regulation 60 of the Chartered Accountants Regulations, 1988 which provide as under:-



Regulation 60: Working hours of an Articled Clerk

“Subject to such directions as may be issued by the Council, the working hours of an articled clerk shall be 35 hours per week to be regulated by the Principal from time to time”.

Regulation 65: Articled clerk not to engage in any other occupation

“Without the previous permission of the Council, obtained on application made in the *approved form, no articled clerk shall, during the period of his service as an articled clerk, take any other course of study or training, whether academic or professional, or engage in any business or occupation.”

Regulation 66: Enquiries against articled clerk

“(1)Where a complaint or information of any misconduct or breach of Regulation 65 or breach of any of the covenants contained in the articles is received against an articled clerk from his principal or any other person, the President or the Vice-President as the Executive Committee may decide from time to time, may cause an investigation to be made.

(2)The Executive Committee may, on a consideration of the report of the investigation and after giving the articled clerk an opportunity of being heard, make any of the following orders, namely;-

- i. direct that the papers be filed and the complaint be dismissed, if the Executive Committee finds that the articled clerk is not guilty of any misconduct of breach of Regulation 65 or breach of any of the covenants contained in the articles; or
- ii. if the articled clerk is found guilty, reprimand the articled clerk or cancel the registration of articles or direct that any period already served under such articles shall not be reckoned as service for the purpose of the period of practical training specified in Regulation 50.

(3)The articled clerk, the registration of whose articles has been cancelled under this regulation, shall not, except with the permission of the Executive Committee be retained or taken as an articled clerk or audit clerk by any member”.

Announcement - Members



The Ministry of Commerce & Industry, Government of India has in the year 2007 established the Services Export Promotion Council (SEPC) for promotion of services exports – the apex body being the Federation of Indian Export Organisations (FIEO). The services covered under the SEPC include Accounting, Auditing and Book-keeping Services. Members/CA firms intending to join SEPC in order to avail of the benefits as any other export organization is entitled, may kindly contact Director General, Services Export Promotion Council, Department of Commerce, Government of India, # 1206, Chiranjiv Tower, 43, Nehru Place, New Delhi – 110 019. Tel: +91 11 23062863, 26453668, Fax: +91 11 26453667, Email: puri.kiran@nic.in; services.epc@gmail.com

Peer Review of Audit Firms of Listed Companies

The Council of ICAI accepted the recommendation of SEBI that for appointment as an auditor of listed companies for accounting periods commencing on or after April 1, 2009 the auditor Firms/Practice Units must have a certificate from the Peer Review Board of the Institute. Further, the Council also accepted the recommendation of SEBI that the financial statement of an unlisted company coming out with an initial public offer (IPO) should also be certified by the Audit Firms/Practice Units who have been issued a Certificate from the Peer Review Board. The Firms who have already been selected for Peer Review and their review is in progress at



different stages may gear up their Peer Review Process and ensure that their Final report is submitted by the Reviewer to the Board at the earliest. In order to complete the Peer Review Exercise timely and smoothly all the Practice Units & Reviewers are hereby requested to expedite their Peer Review Process. Firms who are interested in getting themselves Peer Reviewed may contact the Peer Review Board by emailing their request at peerreviewboard@icai.org. The mail should also indicate whether the firm is undertaking audit of listed companies as of now. For, any further queries you may contact CA. K Raghu, Chairman, Peer Re-view Board at kraghu9999@gmail.com.

EVENTS

AUDITORS TRAINING PROGRAMME ON FINACLE CBS

*Organised by Committee on Information Technology, ICAI.
Hosted by Bangalore Branch of SIRC of ICAI*

Time: June 1-5, 2009

Venue: Infosys Campus, Bangalore from June 1-5, 2009

The Committee on Information Technology is going to organize a **NON Residential** training programme on "Auditors Training Programme on Finacle CBS" in association with M/s. Infosys Technologies. This course aims to provide hands-on training on the basic use of Finacle CBS (Version 7) and an introduction to the use of its Audit & Control features. Delegates have to make their own lodging and boarding arrangements. Registration is on *First-Cum-First-Serve* basis for 25 delegates on receipt of application with Fee of Rs. 20,000/- per delegate payable by DD/ Pay-Order drawn in favour of "The Secretary, ICAI" payable at Delhi and has to be sent to "The Secretary, Committee on Information Technology, The Institute of Chartered Accountants of India, ICAI Bhawan, Plot No. 52-54, Vishwas Nagar, Shahdara, Delhi – 110 032.

20 CPE Hours.

Further details, pre-requisites and course schedule are available at www.icai.org.

Please contact: cit@icai.in / Ph. 011-30210619/621 for further details and clarifications.



Course Coordinators

CA. K. Raghu
Chairman, IT Committee,
kraghu9999@gmail.com, M-09341219091

CA. Srinivas C. S.
Chairman, Bangalore Branch
cothas@yukthiconsulting.com, M-9845063387

Formation of Study Circles for Members in Industry

ICAI has achieved recognition as a premier accounting body not only in the country but also globally, for its contribution in the fields of education, professional development, maintenance of high accounting, auditing and ethical standards.

It is always the endeavour of ICAI to update its members about the changes taking place in various statutes, share the knowledge on various new techniques and sharpen their skills on various professional matters. So, the ICAI in 2008 made Continuing Professional Education mandatory to Members in Industry to earn minimum number of CPE Credit Hours by attending the programmes of academic/professional interest organized by ICAI and its organs.

There was an urgent prerequisite to have the platform exclusively for the members of ICAI who are in industry. Committee for Members in Industry (CMII) understood this necessity and took a step forward in this direction by setting up Study Circles exclusively for Members in Industry. At the platform of these Study Circles members in Industry would be able to update their knowledge base on the topics most relevant to them, leading to competency maintenance and development of members in service.

ICAI has developed the norms for CPE Study Circles which caters exclusively for the members in service. These CPE Study Circles are being contemplated to help Members to achieve the objectives of maintaining their core competencies and exchange professional knowledge amongst the members apart from fostering and developing fellowship.

Thanks to President and Vice President ICAI, the Committee for Members in Industry has been empowered to approve, guide and supervise the CPE Study Circles for Members in Industry which will conduct Continuing Professional

Education Programmes for the Members in Industry. The norms provide for the minimum number of members required and the application procedure, rules for functioning, administration and accounts of these CPE Study Circles.

NORMS FOR CPE STUDY CIRCLES FOR MEMBERS OTHERWISE THAN IN PRACTICE

SPECIFIC NORMS FOR MEMBERS NOT HOLDING COP ON THE FORMATION AND FUNCTIONING OF CPE STUDY CIRCLES WITHIN INDIA

1.0 Context

1.1 These Guidelines are issued for the formation of Study Circles, which will carry out functions as specified in this document in order to further the objectives of the Statement on Continuing Professional Education 2003, which is amended by the Council of the Institute of Chartered Accountants of India (ICAI) from time to time.

1.2 In view of the mandatory CPE credit hours requirements for members of the Institute who are otherwise than in practice, as laid down by the Council of the Institute of Chartered Accountants of India, it has been thought prudent to create another level of Programme Organising Units (POUs) to facilitate the members who are otherwise than in practice in complying with the said requirements.

2.0 Definition of a CPE Study Circle

2.1 A Study Circle is a forum of members of the Institute of Chartered Accountants of India who reside/serve in a particular geographical locality and who constitute themselves as such for the purpose of carrying out the objectives which are given hereinafter.

2.2 The constitution, formation and functioning of a CPE Study Circle are subject to the rules as given in these Norms.

3.0 Objectives of a CPE Study Circle

3.1 To help members to achieve the objectives envisaged in the Statement on Continuing Professional Education.

3.2 To provide CPE learning activities to the members of the Institute for Members who are otherwise than in practice.

3.3 To foster and develop professional fellowship, and exchange professional knowledge amongst the members of the Institute of Chartered Accountants of India residing/serving in a particular locality.

4.0 Rules governing Constitution and Formation

4.1 Committee for Members in Industry (CMII) of the ICAI is empowered to approve, supervise, support and regulate the functioning of these CPE Study Circles.

4.2 Subject to the provisos under Para 2.0 above, CPE Study Circles for members engaged otherwise than in practice may be formed by minimum 25 and maximum 150 members engaged otherwise than in practice.

4.3 CMII is empowered to reduce the minimum number of members required to form these study circles.

4.4 Application for the formation of CPE Study Circles for members engaged otherwise than in practice is to be made to the Committee for Members in Industry of ICAI following the rules given below:

(i) In prescribed format as laid down in the Annexure 'A' to these Norms through the concerned Regional Office of the ICAI within whose geographical jurisdiction the proposed CPE Study Circle falls.

(ii) If CMII wishes to reject the application, may deny permission for the formation of a CPE Study Circle for members engaged otherwise than in practice such refusal of application will have to be recorded within 30 days of the receipt of the application and intimated to the applicants

(iii) The Continuing Professional Education Committee would provide the user login ID and Password for logging in on the CPE Portal of ICAI. The approval for the programme and the grant of the CPE hours would be through CPE portal only.

5.0 Rules for naming the CPE Study Circles

(i) The Study Circle so formed shall be called _____ (name of the locality/industry etc.) CPE Study Circle for Members in Industry of The Institute of Chartered Accountants of India (as the case may be)

(ii) The name of a CPE Study Circle should not be the same or similar to that of an existing CPE Study Circle. Name of a CPE Study Circle proposed should reflect its location/Industry only. Committee for Members in Industry has the right to accept or to reject any name that has been proposed by the applicants of a CPE Study Circle.

(iii) The name of the Study Circle so formed should not be on the name of any Company/ Organization and also should not reflect the names of the same.

6.0 Registration of CPE Study Circles in the CPEC Database

6.1 The CMII on approving the formation of the proposed CPE Study Circle, would send the intimation to the CPEC to update its records and register the newly formed CPE Study Circle on the CPE Portal.

6.2 Once the CPE Study Circle is registered on the CPE Portal, the study circle may seek approval for its programmes through the CPE portal. The approval of the programmes of the CPE Study Circles would be given on the CPE Portal by CPE Committee and a copy of the said approval would also be forwarded to CMII.

7.0 Rules for Functioning of CPE Study Circles

7.1 The CPE Study Circles shall not have their own rules and bye-laws and should not be registered under any other Act.

7.2 The CPE Study Circles shall not acquire any capital assets except one computer, one printer and related accessories.

7.3 Study Circles shall work under the guidance, supervision and control of

the CMII or any other organ of the Institute which it may develop for this purpose.

7.4 Study Circles are allowed to hold a maximum of 12 CPE hours of programmes during a month. Within this limitation, they may conduct their learning activities subject to a maximum of 6 CPE credit hours per day.

7.5 CPE Study Circles should only invite academicians and subject experts as dignitaries for the inauguration / valedictory functions, if any for their CPE programmes.

7.6 The date, topic, venue and faculty for CPE Study Circle programmes have to be routinely informed to the CMII.

7.7 The Study Circles will also have to inform the CMII about the participation fees charged by them to participants who are not members of the Study Circles.

7.8 CPE Study Circles shall not use the logo of the Institute on their letterhead or on any of their official stationery. Furthermore the official stationery of the CPE Study Circles should only contain the name of the Convenor/Dy. Convenor along with their postal address & other contact details like e-mail id, phone nos. etc. for correspondence without mentioning the names of organisations in which they serve. The names of the Past Convenors and other office bearers should not be mentioned on the official stationery of the CPE Study Circles. The design/style of the letterhead/envelopes should be as per Annexure 'B' to this Norms.

7.9 CPE Study Circles are not permitted to publish any newsletters of their own.

7.10 Administration

7.10.1 CPE Study Circles are recommended to elect every year a Convenor and a Deputy Convenor to look after the day-to-day affairs/activities of the CPE Study Circles as well as, maintaining proper accounts of the CPE Study Circle. The Convenor and Deputy Convenor of the CPE Study Circle for members engaged otherwise than in practice must be a member engaged other-

wise than in practice. A person can serve as Convenor/ Dy. Convenor of a CPE Study Circle for a maximum of three terms of one year each.

7.10.2 Convenors and Deputy Convenors are not permitted to get their visiting cards printed, which contain the details of their association with their CPE Study Circle.

7.10.3 One member can become the Convenor or Deputy Convenor of only one CPE Study Circle at a time.

7.10.4 The Convenors are responsible for conducting at least one programme per month for the members of the CPE Study Circles to discuss various matters of topical interest, at such predetermined place as may be convenient to members.

7.10.5 It is suggested that the convenors send copies of the notices convening the programmes and report of such CPE learning programmes including the membership number and names of the members who had attended such programmes to the CMII within ten days of organizing such programmes. The Convenor is also required to upload the programme details before organizing any programme and thereafter uploading the attendance thereof on the CPE Portal within 10 days of organizing a programme.

7.11 Accounts

7.11.1 CPE Study Circles are authorized to open Bank Accounts in the names of the respective Study Circles and Convenors and Deputy Convenors are authorized to operate the accounts jointly.

7.11.2 It is suggested that every CPE Study Circle submit an annual statement of receipts and payments, income and expenditure and Balance Sheet to the CMII. The annual statement is to be furnished within one month from the end of the fiscal year.

- 7.11.3 Convenors of CPE Study Circles are authorized to collect a reasonable amount per member as annual membership fee to defray the cost of holding learning activities and other incidental charges.
- 7.11.4 The cost of learning activities would include rent for the venue for organizing CPE programmes, refreshments/lunch/ dinner for the participants, traveling cost of faculties, memento to the faculties, printing and postage for circulating the invitation for the programme to the members and printing of the background material only.
- 7.11.5 The responsibility for ensuring financial propriety in the financial management of the Study Circle, for production of proper audited accounts, whenever required by the CMII or any other authorized organ of the Institute shall be that of the Convenor and Deputy Convenor.
- 7.11.6 The CPE study Circles are not entitle for any grant or financial assistance from the Institute of Chartered Accountants of India.
- 7.11.7 It should be the endeavour of the convenors to conduct the CPE Programmes on cost competitive and self-financing basis.
- 7.11.8 Surplus funds of CPE Study Circles at the end of every financial year should be immediately committed for subsidizing future programmes to be conducted by CPE Study Circle. The surplus funds at the end of each financial year must be utilized within one year from the end of that financial year for the benefit of the members. A report and the plan by the CPE Study Circle should be submitted to the CMII in case the amount remains unspent, the same shall be transferred to the Chartered Accountant Benevolent Fund of the ICAI through CMII

7.12 Joint Programmes

CPE Credits shall not be granted for programmes organized jointly by CPE Study Circles with any non-Programme Organising Unit. However, two or more Study Circles may jointly organize a programme or a Study Circle may organize a joint programme with other Programme Organising Units.

7.13 Monitoring of Programmes conducted by CPE Study Circles

CMII or any other organ designated/developed by the CMII for this purpose has the power of monitoring the programmes conducted by CPE Study Circles. Such monitoring is to be done in terms of the Advisory issued by the CMII from time to time in these regards.

7.14 Incidental and Related Matters

7.14.1 There should be no restriction whatsoever placed by the Study Circles on any member of the Institute intending to become a member of a particular Study Circle.

7.14.2 CMII has the responsibility of publicizing the programmes intended to be conducted by the Study Circles.

7.14.3 For the purpose of information to the general membership, the Continuing Professional Education Committee will maintain a Billboard in the CPE Portal of the Institute where Study Circles may host such information, which they deem to be of general and professional interest. The Continuing Professional Education Committee shall monitor the content of the billboard.

7.14.4 Enrolment to the programmes, organized by a particular Study Circle where CPE credit is desired should be open to the members of that Study Circles as well as other members of the Institute including those who are not members of that study circle. Reasonable fees for such enrolment may be charged for enrolling such non-Study Circle members for such a programme.

8.0 Dissolution of CPE Study Circles

8.1 The CMII has the powers to derecognise a CPE Study Circle in the following cases:

- 8.1.1 If the CPE Study Circle is not functioning in accordance with the norms and other decision(s) of the CMII Committee or the Central Council of the Institute.
- 8.1.2 If the CPE Study Circle is found to be working against the interest/policies of the Institute.

9.0 Residual Matters

9.1 In the event of lack of clarity in any matter in the formation of Study Circles or their administration, application should be made to the CMII, which is entrusted with the responsibility for providing such clarification.

9.2 The Chairman of CMII acting in consultation with the President of the Institute shall have absolute discretion to decide and intervene in matters concerning Programmes organized by a Study Circle, whether conducted by itself or jointly with any other body as permitted under these Guidelines, and also to

9.2.1 Prescribe such additional conditions in regard to the conduct, monitoring, content, faculty etc. for any such programme and to grant CPE credit hours to such program conditional upon compliance with any such conditions as may be prescribed, and

9.2.2 Refuse CPE Credit Hours to any such programme if in their view the grant of such CPE Credit hours is not in the overall interest of the Institute, its Programme Organizing Units, the members or for some other reason not in consonance with the policy or objectives of the CPE Committee as laid down from time to time.

9.2.3 The study circle to organize any programme if

9.3 The CMII, through its administrative arm, is authorized by the Council of the Institute to intervene in any matter so as to either remove hardship or to ensure compliance with the above norms.

Annexure A

Format of Application for seeking approval of the CMII for forming a Study Circle by Members of ICAI who are otherwise than in practice

Date _____

CHAIRMAN
Committee for Members in Industry
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

[Set up by an Act of Parliament]
 'ICAI Bhawan', PO Box No. 7100, Indraprastha Marg, New Delhi 110 002.

Through the Head of the Decentralised office of the ICAI under which the location of the proposed Study Circle falls

Dear Sir/Madam,

Sub: Formation of Study Circle for Members otherwise than in practice

We, on behalf of the members of the Institute of Chartered Accountants of India from _____ (name of the locality), whose details are given below, desire to form a Study Circle for Members otherwise than in practice under the name.....

We have read the Norms framed in this respect by the Institute and we shall abide by the same.

Mr..... and Mr..... have expressed their consent to be the first convener and first deputy convener of the Study Circle .

We shall be pleased if the approval is granted at the earliest.

Thanking you,

Yours Faithfully,

SIGNATURES * WITH NAME AND MEMBERSHIP NUMBERS
 Not less than twenty five members of the proposed Study Circle

*** Signatures with name and membership No. of the members to be verified by the concerned Regional office of the ICAI**

Annexure B

Suggested format of Letterhead of the CPE Study Circle for Members otherwise than in Practice.

-----CPE Study Circle for
 Members in Industry of the ICAI

the name of the Convenor
 Dy. Convenor

Approval reference no. of CMII of ICAI

postal address
 e-mail id,
 phone nos.
 Fax nos

ADVISORY FOR MULTIPURPOSE EMPANELMENT FORM (MEF) FOR THE YEAR 2009-10

1. Last date for submission of applications on the website www.meficai.org is 15th June, 2009. This date shall not be extended under any circumstances.
 2. Members are advised to fill MEF well in advance to avoid last minute rush and technical problems, if any.
 3. The information filled in by the applicant in MEF can be edited/modified any number of times before submission of MEF.
 4. All correspondence, acknowledgement, discrepancy letters, etc. will preferably be through e-mail only. Please fill up e-mail id correctly and ensure that it is active.
 5. Unique Code Number (UCN) is allotted by the Institute. UCN is very important number because it facilitates in compiling the applicants' experience in conducting bank audit. Therefore, an applicant must ensure that correct UCN appears in the MEF.
 6. Old applicants practising in individual name should continue to use the same UCN in case he forms a sole proprietary concern.
 7. Members may note that experience in capacity, as article/audit assistant/clerk or paid employee/assistant should not be added in experience to be mentioned in Question no.5 of MEF.
 8. As per RBI Guidelines, in case the applicant was appointed as Central/Branch Statutory Auditors of a Public Sector Bank in the previous financial year, the following may be noted to avoid conflict of interest:-
 - a. Don't Associate with the same Bank (of which the applicant is appointed as statutory auditor) or any of its subsidiaries/associates, as concurrent/internal income and expenditure or revenue auditor/stock auditor/auditor of borrowers accounts.
 - b. Don't take a loan (including outstanding on credit card) from/give a guarantee to a loan from the same Bank (of which the applicant is appointed as statutory auditor) or any of its subsidiaries/associates.
 - c. Don't accept the position of a Director on the Board of the same Bank (of which the applicant is appointed as statutory auditor) or any of its subsidiaries / associates.
 9. If a firm has done audit of two or more than two entities or Statutory Central and/or as branch audit of a Bank for the same year, then it should be counted as one year's experience only, while filling-up various entries in the form.
 10. The Institute also reserves the right to call for any further information or evidence or other relevant documents like financial statements, Income tax returns of the concern and partners/proprietor/member practicing in individual name, partnership deed etc.
 11. While every care is taken in preparing the panel, in the event of any inadvertent mistake or omission, the Institute will not be responsible in any way. The Institute does not undertake any responsibility with regard to the allotment of audit.
 12. **Procedure for logging into MEF:**
 - (i) MEF is designed differently each in case of sole proprietary concern, partnership concern and members practising in individual name and thus, the applicant should select his option carefully.
 - (ii) Visit www.meficai.org and select your option for empanelment as a sole proprietor/partnership concern/individual.
 - (iii) **Remember the PASSWORD for future reference, as you would be able to log into your form using this password ONLY.**
 13. All the information being sourced from Institute's database is static (not editable) and the same will be appearing with green background. Applicants, who do not agree with the details appearing in these fields, should fill in the Memorandum of Changes.
 14. **Complaint filing Mechanism**
 - i In case, an applicant faces any problem in accessing, operating or submission of MEF, complaint may be lodged by accessing complaint-box link available on www.meficai.org.
 - ii Applicants can lodge their complaint by using either MEF No./M. No/FRN.
 - iii On successful lodging of complaint, complaint number would be informed through e-mail/SMS.
 - iv All the complaints lodged by the applicant would be looked into by PD Directorate.
 - v Any changes in the status of the complaint would be communicated through SMS and applicant would be able to view the status of their complaints by using MEF No./Complaint No./MRN/FRN.
 - vi In case, the complaint is not resolved or replied within a week, members may call upon at 011-30110444, 30110547 and 30110480.
 15. Fill in the 'Declaration Form'. In the signature field, provide the initials of the respective Partner/ Proprietor/ Applicant for filling up MEF (e.g. 'RKG' in case of 'Ram Kumar Gupta' etc).
- SUBMISSION OF DOCUMENTS**
16. **A hard copy of the Declaration** duly signed by all partners/ proprietor/ member practising in individual name accompanied by a print of the e-mail acknowledging submission of MEF must be sent to ICAI by courier/speed post/hand delivery at the following address in an envelope superscribed with the words **"DECLARATION FOR MEF 2009-10"** so as to reach on or before 30th June, 2009.

The Director
PD Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, Indraprastha Marg
New Delhi – 110 002
 17. Receipt of hard copy of the Declaration will not be individually acknowledged. The same will be displayed on the website mentioning MEF number within 15 days of receipt of the Declaration. Declarations will then be verified for completeness and correctness and discrepancy, if any, will be intimated to applicant by email. *Members are advised not to correspond directly with the authorities on matters related to empanelment.*

SAMPLE MULTIPURPOSE EMPANELMENT FORM 2009-10 for partnership firms
Form has been designed separately for sole proprietorship concerns and
members practising in individual name on similar pattern

WEBPAGE 1**1. Personal Details**

Highlighted (Green) fields are read only fields

* Fields are mandatory

Firm Registration No	<input type="text"/>	Year of Establishment	<input type="text"/>
Concern's Name	<input type="text"/>	Unique Code No.	<input type="text"/>
Status as on 01.01.2009	PARTNERSHIP		

Address of Head Office

Address	<input type="text"/>	District *	SELECT
	<input type="text"/>	STD Code *	<input type="text"/>
State/Union Territory	<input type="text"/>	Telephone No. #	<input type="text"/>

Please provide name of the person to be contacted for any clarifications/ information

Name of contact person *	Phone (O) *	Mobile *	E-mail *
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Memorandum of changes

In case, applicant does not agree with any of the static information provided above (flowing from Institute's database), please provide the information which should appear instead of the one appearing here.

<input type="text"/>	1000 characters left
----------------------	----------------------

Please ensure that the changes informed here have already been incorporated in the Institute's database. The information provided here will be incorporated in the MEF Database only after due verification with the Institute's database.

WEBPAGE 2**2. Particulars of partners as on 01.01.2009**

	Exclusively associated with the firm #	Others	Total
(a) Number of FCAs	<input type="text"/>	<input type="text"/>	<input type="text"/>
(b) Number of ACAs	<input type="text"/>	<input type="text"/>	<input type="text"/>
(c) Total [(a) + (b)]	<input type="text"/>	<input type="text"/>	<input type="text"/>

A member is not treated as exclusively associated with the firm if he is a partner in any other firm or is a sole proprietor of his proprietary firm or is paid employee elsewhere.

Details of partners of the Concern

S.No.	Name	Membership No.	Whether main occupation is practice	Whether DISA qualified?	Whether partner/ proprietor of any other concern	Whether paid employee of any other concern	Name of the other concern in which member is partner/ proprietor/ paid employee	FRN of such concern	CPE hours obtained in calendar year 2008 (extended up to 31st, March, 2009)
			(Y/N)	(Y/N)	(Y/N)	(Y/N)			
1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
2	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

3. Number of paid Chartered Accountant employees in the Concern as on 01.01.2009

Full Time	<input type="text"/>
Part Time	<input type="text"/>

Details of Paid Chartered Accountant Employees

Name	Membership No.	Whether DISA qualified	Whether partner/ proprietor of any other Concern	Whether paid employee of any other Concern	Name of the other Concern in which he is partner/ proprietor/ paid employee	FRN of such Concern
		(Y/N)	(Y/N)	(Y/N)		
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

4. Professional Staff

Number of professional staff ** as on 01.01.2009 (including at branches)

Article/Audit Assistants	<input type="text"/>
Other professional staff	<input type="text"/>
Total	<input type="text"/>

** Other professional staff excludes typists, stenographers, computer operators, secretary(ies) and sub-ordinates but includes audit staff (other than Article / Audit Assistants) having knowledge of book-keeping and accountancy and engaged in onsite audit. This includes non-CA staff only. CA staff should be included in earlier question 3 itself.

Memorandum of changes

In case, applicant does not agree with any of the static information provided above (flowing from Institute's database), please provide the information which should appear instead of the one appearing here.

1000 characters left

Please ensure that the changes informed here have already been incorporated in the Institute's database. The information provided here will be incorporated in the MEF Database only after due verification with the Institute's database.

WEBPAGE 3

5. Bank, PSU Audit Experience

Experience of bank audit as Statutory Auditor of a branch of a nationalized bank or of a private sector bank with deposit of not less than Rs. 500 crores of the bank as a whole (and not that of a branch)

Note : The experience of Statutory Central Audit of J & K Bank will also be reckoned as public sector bank audit experience.

(a)	Does the Concern has previous experience of audit referred to above? (Y/N)	<input type="text" value="Y"/>
	If yes, please fill in the No. of years of experience	<input type="text" value="8"/>
(b)	Do the partners of the Concern have experience of audit referred to above (a partner will be considered to have such experience only if he signed the audit report/conducted the audit)? (Y/N)	<input type="text" value="Y"/>
	If yes, indicate in the appropriate box, how many partners/proprietor have this experience: (e.g. If 3 Partners have experience of more than 8 years, indicate '3' in the first box)	
	8 years or more	<input type="text" value="1"/>
	5 to 7 years	<input type="text" value="1"/>
	3 to 4 years	<input type="text" value="0"/>
	Less than 3 years	<input type="text" value="0"/>

Experience of statutory audit of PSUs		
(a)	Does the Concern has experience of statutory audit of PSUs? (Y/N)	<input type="text" value="N"/>
	If yes, please fill in the No. of years of experience:	<input type="text" value="0"/>
(b)	Do the partners of the concern have experience of statutory audit of PSUs (A partner will be considered to have such experience only if he signed the audit report/conducted the audit) (Y/N)?	<input type="text" value="N"/>
	If yes, indicate in the appropriate box, how many partners have this experience: (e.g. If 3 Partners have experience of more than 8 years, indicate '3' in the first box)	
	8 years or more	<input type="text" value="0"/>
	5 to 7 years	<input type="text" value="0"/>
	3 to 4 years	<input type="text" value="0"/>
	Less than 3 years	<input type="text" value="0"/>

Whether any disciplinary action is pending in the records of the Institute against any of the partners of the firm? (Y/N)

WEBPAGE 4

6. Whether the applicant or any of its partners has been associated with any of the public sector banks/regional rural banks/co-operative bank since 01.04.2008 up to the date of submission of application? For example as Concurrent Auditor / Revenue Auditor/ Income & Expenditure/ Inspection/Monitoring of borrowing sick units /etc. **excluding statutory audit** (Y/N)

(If yes, please fill up)

Details of association with public sector banks/regional rural banks/co-operative banks from 01.04.2008 up to the date of submission of application.

Name of the Bank	Concurrent Audit (Y/N)	Internal/Stock / system Audit (Y/N)	Income & Expenditure/ Revenue Audit (Y/N)	Inspection (Y/N)	Monitoring of borrowing sick units # (Y/N)	Any other Assignment (Y/N)
<input type="text" value="SELECT BANK"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Both appointments made by the bank and/or concerned borrower

7. Whether the applicant or any of its partners was during the past calendar year indebted (including outstandings in respect of credit cards) or has given guarantee in respect of any loan etc., (for amounts exceeding Rs. 1000/-) to any public sector bank/regional rural banks/ co-operative banks from 01.01.2009 up to the date of submission of application? (Y/N)

Y

(If yes, please fill up)

Details of indebtedness to public sector bank/ regional rural banks/ co-operative banks or guarantee given in respect of any loan including outstanding of credit cards (For amounts exceeding Rs. 1,000) from 01.01.2009 to date of this application

Name of the Partner/Firm (Indebted/ Guarantor)	Membership No. (where applicable)	Name of the Bank
<input type="checkbox"/> <input type="text"/>	<input type="text"/>	<input type="text"/> <input type="text"/>

8. Whether any of its partners was during the past calendar year director in any public sector bank/ regional rural banks/ co-operative banks from 01.01.2009 up to the date of submission of application? (Y/N)

N

(If yes, please fill up)

Details of Directorship in public sector bank/ regional rural banks/ co-operative banks from 1/1/2009 to date of this application:

Name of the Bank	Name of the member	Membership No.
<input type="text"/>	<input type="text"/>	<input type="text"/>

WEBPAGE 5

Declaration

Application No	<input type="text"/>
FRN	<input type="text"/>
Unique Code No., if any allotted	<input type="text"/>

We, the undersigned, as Partners of M/s do hereby declare that the particulars as given above are complete and correct in all respects to the best of our knowledge and belief. We hereby declare that no separate application for any of our branches has been made. We undertake that we have gone through the Advisory hosted on www.meficai.org website and affirm that application is made in accordance therewith.

We recognise that if any of the instructions are not adhered to or any of the statements made in the application form or information furnished in the application form is not correct and/or incomplete, the application is liable to be rejected and/or We would be liable for disciplinary action under the Chartered Accountants Act, 1949, and Regulations framed thereunder.

We hereby declare that audit/other assignment allotted on the basis of information furnished in the application form will not be accepted and carried out if the firm in whose name the application is made is not in existence at the time of audit.

We declare that the constitution of the firm as on 01.01.2009 shown in the application is the same as that in the constitution Certificate issued by ICAI.

Further, we would like to inform that CA _____ (MRN _____) has resigned from the firm after January 1, 2009.

Name of Partners	Membership No.	Mobile Number	E-mail ID	Signature #
<input type="text"/>				
<input type="text"/>				

Date	<input type="text"/>
Place	<input type="text"/>

*1. The declaration should be signed by all continuing partners (from out of the partners as on 01.01.2009) as on the date of the application in case of a partnership firm. The credit will be given only for those continuing partners who have signed the declaration. The credit for the partners who have joined subsequent to 01.01.2009 will not be given.

2. The signatures should correspond to those in the Institute's records.

CPE 12 Hours

DIAMOND JUBILEE NATIONAL IT CONFERENCE

Organised by Committee on Information Technology, ICAI, Hosted by Pimpri Chinchwad Branch of WIRC of ICAI

Date & Time	June 20-21, 2009 (Saturday & Sunday) at Pune
Venue	"VITS - Luxury Business Hotel", Adjacent to Chhatrapati Shivaji Sports Complex, Pune - Bangalore Highway, Balewadi, Pune-411045, Tel: +91 (20) 66177400 / 60017555
Day 1	Theme
	Inaugural Address by CA. Uttam Prakash Agarwal, President, ICAI
1.	Technology Shaping the Audit Profession
2.	ERP- Implementation Opportunities for CAs.
3.	IS Audit - Using ISACA Standards, Guidelines and Procedures
4.	Forensic Accounting & Fraud Detection
Day 2	Theme
5.	KPO - Setting up, Operation for Payroll, Accounting & Tax Returns
6.	XBRL - Extensible Business Reporting Language – ICAI Roadmap for XBRL jurisdiction
7.	Audit Tools and Software for Practicing CAs
8.	New Professional Opportunities in IT Arena - Success Stories
9.	Valedictory Session followed by Networking

Registration is on First-Cum-First-Serve basis on receipt of application with **Fee of Rs.2000/- for members, Rs 2500/- for non-members and Rs 1500/- for students by 10th June, 2009** per delegate by DD/ Pay-Order/ Cheque drawn in favour of "Pimpri Chinchwad Branch of WIRC of ICAI" payable at Pune and to be sent to "Pimpri Chinchwad Branch of WIRC of ICAI, Office No 2, Prime12 -Apartments, Sector 26, Pradhikaran, Nigdi, Pune 411044. Accommodation may be made available on request.

For further/ updated details and clarifications see www.icaai.org or contact: pimpri.chinchwad@icaai.org Ph. 020-32334597/ 27643210, Secretary, IT Committee Ph. 011-30210619/621, E-mail: cit@icaai.in.

Conference Chairman: CA. K. Raghu, Chairman, IT Committee, kraghu9999@gmail.com, M-09341219091

Conference Director: CA. Jaydeep N. Shah, Vice Chairman, IT Committee, jaydeepnshah@gmail.com, M-09822202575

Conference Coordinators: CA. Krishanlal J. Bansal, Member, Editorial Board, ICAI. klbansal@gmail.com, M-09371010904, 09923810904

CA. P. Pamnani, Chairman, Pimpri Chinchwad Branch of WIRC, pamnani_ps@vsnl.net, M: 098220 24807

June 20-21, 2009 (Saturday & Sunday)

CPE 6 Hours

RESIDENTIAL WORKSHOP ON DIRECT TAXES & IFRS: GURUVAYOOR

Organised by Direct Taxes Committee, Hosted by Trichur Branch of SIRC of the ICAI

Date & Time	May 17 th 2009: 3.00 p.m. to 7.00 p.m. May 18 th 2009: 9.30 a.m. to 1.30 p.m.
Venue	Lulu International Convention Centre (India's Second Largest Convention Centre: with helipad and parking space for 1800cars) Distance to the venue: From Kochin Airport – 45km From Trichur Railway Station – 3km
Topics to be Discussed	Special Address: CA. Uttam Prakash Agarwal, President, ICAI
	Introduction to IFRS CA. N. P. Sarda, Past President of ICAI
	AS - 15 and Latest Accounting Standards CA. N. P. Sarda, Past President of ICAI
	Taxation on Non-resident Income with Specific Reference to Recent Amendments CA. Manoj C. Shah, Mumbai
	TDS/TCS - Analysis & Issues Dr. Vinod K. Singhanian, Delhi
Fees	Residential: Members Rs.2,250/- Non Members Rs.3,000/-(Twin share) Non Residential: Rs.1,000/-, Check in – 2 p.m. (17 th May) and Check out- 3 p.m. (18 th May)
Programme Specialities/Attraction	Guruvayoor Temple visit-Darshan at 5 a.m. on 18 th May. Pleasure trip to Athirippilly WaterFall – 3p.m. on 18 th May Cultural & Entertainment Programme -17 th May evening

Contact Persons & Details

Workshop Chairman: CA. Ved Jain, Chairman, Direct Taxes Committee, 09312502333, jainved@gmail.com

Workshop Director: CA. V. C. James, 09847034528, vcjames@airtelmail.in, vcjames@icaai.org

Workshop Convenor: CA. Shaji P. J, Chairman, Trichur Branch of SIRC of ICAI, 09895059820, trichur@icaai.org

Workshop Co-ordinator: CA. T. A. Thomaphen, Secretary, Trichur Branch of SIRC of ICAI, 09447042894

For Registration & further details, please contact

Trichur Branch of SIRC of ICAI, trichur@icaai.org, 0487 2442328

17th & 18th May 2009 (Sunday, Monday)

ALL INDIA CONFERENCE ON PROFESSIONAL DEVELOPMENT AND ENRICHMENT

Organised by Professional Development Committee and Hosted by Coimbatore Branch of SIRC of the ICAI

Date and Time	Friday and Saturday, May 29-30, 2009, 09.30 a.m. to 06.00 p.m.		
Venue	S. N. R. College, Coimbatore		
Inaugural Session	Guest of Honour, CA. Amarjit Chopra, Vice President, ICAI		
Topic	Speaker	Topic	Speaker
IFRS – A way Forward	Special address by Vice President CA. Amarjit Chopra	Product Innovations in the Profession including LLPs	CA. Shailesh Haribhakti
Recent Accounting Standards – Significant issues	CA. N. P. Sarda	Issues Relating to VAT & Recent Circulars	CA. V. B. Sampathkumar
Internal Audit Standards – Emerging Professional Opportunities	CA. Abhijit Bandyopadhyay	Key Aspects of the Managing Practices – Consultancy and Other Related Areas	CA. Bhavna Doshi
Recent Auditing Standards – Significant Issues	Shri Vijay Kapur	Landmark Judgements and Services Tax	CA. A. R. Krishnan
International Taxation	CA. Mahesh Sarda	Direct Taxes – Specific Issues	Dr. Girish Ahuja
Fees	Rs. 1200/- Cheque should be drawn in favour of “Coimbatore Branch of SIRC of ICAI”, payable at Coimbatore and sent to ICAI Bhawan, M. S. S. Memorial Building, No. 08, D. B. Road, R. S. Puram, Coimbatore - 641 002. Ph. No. 0422 – 2552872, E-mail Id: coimbatore@icai.org, Website: www.coimbatoreicai.org		
Contact Persons & details thereof	<ul style="list-style-type: none"> CA. Anuj Goyal, Chairman, PDC, Mob: 09810041371, Email: anujgoyal@icai.org CA. G. Ramaswamy, Council Member, Mob: 09843015000, E-mail: gr@vsnl.com CA. Shanmukha Sundaram K., Regional Council Member E-mail: shan@vsnl.com CA. L. Kamesh, Chairman, Coimbatore Branch of SIRC, Mob: 09443041338, E-mail: kamesh75@airtelmail.in 		

Friday/Saturday May 29-30, 2009

BOARD OF STUDIES - FACULTY DEVELOPMENT PROGRAMME

The Board of Studies proposes to organise Faculty Development Programmes for the faculty members who are / would be associated with the coaching classes organised by the Regional Offices and Branches of ICAI. Accordingly, residential programmes are being planned to impart training to the faculty members, Experts in various subjects like Communication Skills, Presentation Skills and Personality Development would be involved in this programme.

The first such residential course is proposed to be organised at **Lake Palace, Alleppey, Kerala**. It would be 3 days residential training programme and would commence at 2.30 p. m. on June 5, 2009 and would conclude on June 7, 2009 afternoon.

Shri Jitesh Khosla, Joint Secretary, Ministry of Corporate Affairs, Government of India has kindly consented to inaugurate the programme.

Faculty members and other members who are really interested to associate with the coaching classes and intending to participate in the residential faculty development programme are requested to immediately contact the undermentioned. Note that the number of seats are limited to 50.



CA. Jaydeep Narendra Shah

Chairman
Board of Studies

Mobile: 09371014819
jnshah@icai.org
jaydeepnshah@gmail.com
shahjn47@hotmail.com

CA. V. C. James

Vice Chairman
Board of Studies

Mobile: 09847034528
vcjames_2005@yahoo.com
vcjames@airtelmail.in

CA. R. Devarajan

Director
Board of Studies

Phone: 0120 3045902
devarajan@icai.org

CA. N. Prasanna Kumar

Chairman
Allepey branch of SIRC
of ICAI,

Mobile: 94474 73328
prasannakumar68@indiatimes.com

CPE 6 Hours

NATIONAL WORKSHOPS FOR STATUTORY AUDITORS OF PUBLIC SECTOR UNDERTAKINGS (PSUs)

Organised by Professional Development Committee

Time	From 09.00 a. m. to 06.00 p. m.					
Discussion Session	<ul style="list-style-type: none"> • Expectation from Auditors – CAG Perspective (with special reference to supplementary audit, Directions from C&AG) • Preparing PSUs for adoption of IFRSs from 2011: Issues and Challenges due to differences between ASs and IFRSs • Specific Issues: Audit Planning – Coordination with Management and Reporting • Recent Developments in Accounting Standards including AS 11 • Recent Developments in Auditing Standards – An Overview • PSU Auditors: Implementing Standard on Quality Control 					
Fees	Rs. 1500/-					
Programme Chairman	CA. Anuj Goyal, Chairman, PDC, 098100 41371, 09312258364, anujgoyal@icai.org; anujgoel28@sify.com					
Dates	14 th May 2009	21 st May 2009	28 th May 2009	4 th June 2009	11 th June 2009	25 th June 2009
Hosted by	NIRC of ICAI	Ernakulam Branch of SIRC of ICAI	WIRC of ICAI	EIRC of ICAI	Lucknow Branch of CIRC of ICAI	Jaipur Branch of CIRC of ICAI
Programme Director(s)	CA. Vijay Kumar Gupta, Member PDC, caguptavijay@gmail.com CA. Charanjot Singh Nanda, Member PDC csnanda@gmail.com	CA. V.C James Vice Chairman PDC, vcjames@airtelmail.in	CA. Jaydeep Shah, Member PDC jaydeepnshah@gmail.com	CA. Abhijit Bandyopadhyay Member PDC banabhijit@hotmail.com babhijit@deloitte.com CA. K. P. Khandelwal Member PDC ca.kpkhandelwal@gmail.com CA. Subodh Kumar Agrawal Member central Council, ICAI subodhka@yahoo.com	CA. Raj Kapoor Member, CIRC of ICAI kapoorca@yahoo.com	CA. Vijay Kumar Garg Member PDC vijaymgarg@yahoo.com
Programme Coordinator	CA. Bhagwan Das Gupta, Chairman NIRC of ICAI, bdguptaca@hotmail.com, bdguptaca@gmail.com	CA.P.G. Sajeev Chairman Ernakulam Branch of SIRC of ICAI sajeevpg@gmail.com	CA. B. C. Jain Chairman WIRC bhalawat@vsnl.com	CA. Suvendu Chunder Chairman EIRC of ICAI schunder@hotmail.com	CA. Pawan Kumar Dhawan, Chairman Lucknow Branch of CIRC of ICAI dhawan.mad-an@gmail.com	CA. R. P. Vijay Chairman Jaipur Branch of CIRC of ICAI rpvijay2000@rediffmail.com

HEALTH TIPS



Soul Food:

"The best index to a person's character is how a person treats people who can't do them any good or can't fight back"

Contributed by CA. R. S. Agrawal, Mumbai



Bitter gourd: Juice of bitter gourd if taken empty stomach is beneficial in cases of jaundice, diabetes and piles. There is fear of losing hairs on regular intake of this juice.



Cucumber is very good in arthritis conditions but take with seeds, it also helpful in losing weight and good for diabetic patients. However, cough prakurti patients should not take after 1 pm.



Beet: Juice of beet cleans the stomach; improve the quality of blood and increases weight. Bitter gourd juice may be mixed with carrot juice.



Coconut water is beneficial in urinary problems, also helps in removing **water** kidney stones and may be taken in cholera conditions. Coconut water has nutritional value also.



Carrot: Carrot juice is beneficial in cases of cancer, ulcer, all skin problems, allergies, gout and weak eye sights. Carrot juice removes uric acid from blood.



Amla is very good for uric acid troubles, semen weakness, eye weakness and blood impurities. It should be taken empty stomach in the morning. It is rich source of vitamin-C. The amla juice may be added with other juice.

Guavas are beneficial in cases of lack of vitamins and semen production. Guavas are also antacid for ulcer.



Figs are beneficial in constipation problem, intestine problems and cases of diabetes.



Grapes are beneficial in heart troubles and cancer. Grapes are general tonic and therefore strengthen the nerve weakness.

Jamuns are beneficial in problems of spleen, lever, diabetes, diarrhoea, having burning sensation in kidney. Blackberries are never taken empty stomach.

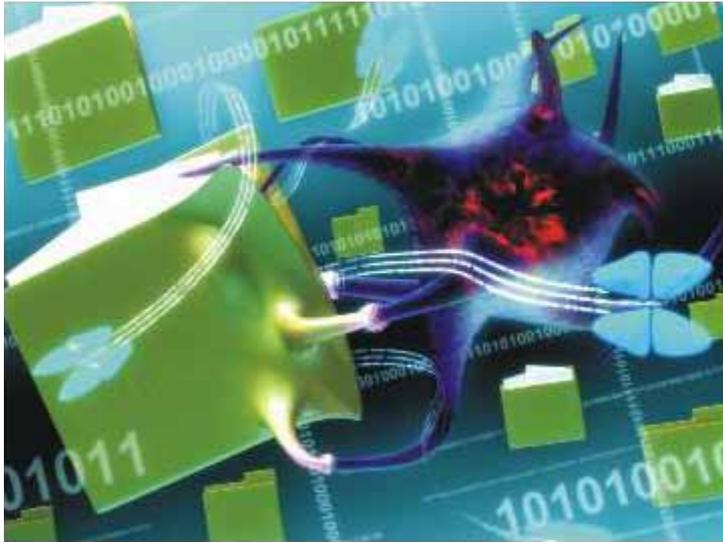


Lemons have antiseptic properties as rich in potassium. They are good for heart and also good for kidney and bladder disorders.

Oranges being acidic in nature give alkaline properties. They are good for constipation, in fever they are good nutrient, they clean intestine and increases digestive power, in cases of loss of appetite and they are good for memory.



Range of Threats to Computer



Computer threats have evolved faster over the last few years and it is becoming harder to detect them with every passing day. Each decade has brought with it innovations in computer threats as well as ways to detect and remove them. Today, a range of computer viruses are on the prowl which has made it necessary for computer users to know about them as well as the ways to protect computers from them. This article provides an overview of threats to computer and ways to protect computers.



Nikhil Sharma

The author can be reached at
eboard@icai.org

Reid Goldsborough, author of the book *Straight Talk about the Information Superhighway* has observed that “viruses have an ominous and mysterious aura”. Similarly, Charles Ritstein has written that computer viruses have developed a reputation for destruction and mayhem that has prompted computer centres to take steps to protect themselves.

As early as in 1949 John von Neumann in his paper titled “Theory and Organization of Complicated Automata” postulated that a computer programme could reproduce. At that time it was not known by the name virus. Len Alderman first used the term “virus” for self replicating software. The “Brain” virus and bouncing ball of the “Ping-pong” virus marked the victory of virus over the boot sector.

Early virus was pieces of code attached to a common programme like a popular game or a popular word processor, says Marshall Brain, a computer science expert.

Classification of Threats

Charles Ritstein has remarked over the history of the modern computer viruses that there has actually been a bit of controversy over the actual number of viruses that exist and the number of infections they really cause. Virus, Worm, Spyware, Adware, Grayware, Malware and Trojan horse are main categories of threats which pose danger to computer software. These all are covered under the expression “Malicious Code” according to National Institute of Standards and Technology, U. S. Department of Commerce.

There are three main kinds of anti-virus programmes — know-virus scanners, behaviour blockers, and integrity checkers. The first of these three kinds is the one which is the most commonly used nowadays — but it is not proactive. The other two are proactive but they are not widely used. The reason why they are not is that, unlike the first kind, they do not provide simple and easy-to-understand reports to the user.

Trojan Horses

A legend goes that the Greeks won the Trojan War by hiding in a huge, hollow wooden horse to sneak into the fortified city to Troy. Similarly, now Trojan horse conveys malicious, security-breaking programme that is disguised as something benign. They may be games or some other software that the victim will be tempted to try. They may be remote-access, data-sending, proxy or FTP Trojans.

Worm

It is that threat in which there is no host to hide and that replicates itself over a computer network or through e-mail and sometimes performs malicious actions such as using up the computer and network resources and possibly destroying data. It runs independently and travels across network connections.

(a) Host computer worms also known as rabbits are entirely contained in the computer they run on and use network connections only to copy themselves to other computers.

(b) Network worms also known as octopuses, consist of multiple parts each running on different machines and possibly performing different actions and using the network for several communication purposes.

E-mail Bombs

When someone subscribes target user's e-mail address to a large number of mailing lists, it is termed as e-mail bombing. Being unknowingly subscribed to hundreds of mailing lists leads to incoming e-mail traffic.

Virus

It is self-contained and does not need to be part of another programme to propagate itself. It usually exploits some sort of security hole in a piece of software or the operating system.

Virus that can infect computer software can further be classified according to area of computer on which it acts or damages:

(a) *Boot sector Virus*

Boot sector is that area of the computer which is accessed while the computer is turned on and a boot sector virus infects this area of computer. Once the boot sector is infected, the virus gets loaded into memory when the computer is turned on.

(b) *TSR (Terminate and Stay Resident) Virus*

A TSRS virus is a virus that stays active in memory after the application (or bootstrapping, or disk mounting) has terminated. TSR virus can be boot sector infectors or executable infectors. The Brain virus is a TSR virus.



Virus, Worm, Spyware, Adware, Grayware, Malware and Trojan horse are main categories of threats which pose danger to computer software. These all are covered under the expression "Malicious Code" according to National Institute of Standards and Technology, U.S. Department of Commerce.

(c) *Parasitic Virus*

It is activated when the executable file containing the virus is executed and acts upon executing codes like system files. It is also known as Programme/File infector virus.

(d) *Multipartite Virus*

A Multipartite virus is a virus that can infect either boot sectors or executables. Such a virus typically has two parts, one for each type. These are hybrids. When it infects an executable, it acts as an executable infector. When it infects a boot sector, it works as a boot sector infector.

(e) *Macro Computer Virus*

It needs macro language to function. Microsoft Word Documents, Excel spreadsheets, Power point presentations, and Access Databases are mostly affected by this type of virus.

(f) *Polymorphic Virus*

It is written in such a manner that it changes its code whenever it passes to another machine so that it is difficult for an anti-virus scanner to locate it. Flaws in the programme code make it easy to track down these viruses. It is usually the encryption of the code that changes every time. Chameleon and Tequila are few examples.

(g) *Stealth Virus*

It tries to hide itself from the operating system and anti-virus products. It uses techniques to avoid detection by redirecting the disk head to read another sector or alter the file size shown in the Directory listing.

(h) *Script Viruses*

It is a subset of file virus, written in a variety of script languages like JavaScript, VBS, BAT, PHP etc. It is also able to infect other file formats such as HTML.

Dialer

It is a programme that uses the computer's modem to dial telephone numbers, often without the user's knowledge and consent. It is capable of connecting to a toll number that adds long distance charges to the telephone bill without the user's knowledge or permission.

Adware

It is the programme that displays ads that the users don't want. It generates advertisements such as pop-up windows or hotlinks on Web pages that are not part of a page's code.

Spyware

It is the program that sniffs out the user's surfing habits like sending information about user's work done on Internet to somebody else.

Malware

It is software that damages your system, causes instability, or exhibits antisocial behavior. It is usually poorly-programmed and can cause computer to become unbearably slow. It works to remain unnoticed, either by actively hiding or by simply not making its presence on a system known to the user.

Scareware (Rogue)

It is software that appears to be beneficial from a security perspective but provides limited or no security. It generates misleading alerts and false detections in order to convince users to purchase illegitimate security software.

Phishing

It is mainly an online con game and phishers are like tech-savvy con artists and identity thieves who use malicious Web sites, email messages and instant messages to instruct people to update personal information such as bank and credit card information or access to personal accounts.

Few Ways to Remove Viruses

S.No	Virus Category	Way to remove
1.	Boot sector virus	Bootting the computer using a clean boot disk
2.	Program/File infector virus	Deleting infected files
3.	Macro Computer Virus	Updating anti-virus scanner

How Virus Infects

Connection to network (Internet) is the easiest way to invite viruses. But if precautions are taken, even a computer having Internet connection can easily be protected from web of viruses and worms. Another thing that is capable of infecting is use of infected CDs, floppy or pen-drive etc. In case any of them is already having a threat, the system is likely to be infected on their operation into the system. Spam or junk folder mostly indicates towards presence of some sort of virus.

Precautions Required on Behalf of User

There are three main kinds of anti-virus programmes — *know-virus scanners*, *behaviour blockers*, and *integrity checkers*. The first of these three kinds is the one which is the most commonly used nowadays - but it is not proactive. The other two are proactive but they are not widely used. The reason

why they are not is that, unlike the first kind, they do not provide simple and easy-to-understand reports to the user. Instead of "Found and removed the XYZ virus" (the kind of reports that the known-virus scanners produce), they produced reports like "Attempt to write to file FOO.EXE, allow or deny?" or "File BAR.EXE has changed since the last check" (integrity checkers). Both viruses and legitimate actions (file copying or installation of new software) can cause such reports.

New Developments in the Field of Threats

"I Love You" virus, which was designed in 2000, infected millions of computers virtually overnight. It sends passwords and usernames stored on infected computers back to the virus author. Another development took place in 2001 when "Anna Kournikova" virus was designed and which promised digital pictures of the young tennis star and mailed itself to every person listed in the victim's Microsoft Outlook address book. In the same year "Nimda" virus infected hundreds of thousands of computers around the world. It is considered one of the most sophisticated, with up to five methods of infecting systems and replicating itself.

The "Klez work", a bug that sends copies of itself to all of the e-mail addresses in the victim's Microsoft Outlook directory was discovered in 2002. It overwrote files and created hidden copies of the originals. The "Slammer worm" infected hundreds of thousands of computers in less than three hours in 2003. It holds the ranking as the fastest-spreading computer worm ever. In 2004 the "My Doom worm" became the fastest spreading e-mail worm. It used low-tech psychological tricks to persuade people to open the e-mail attachment that contains the virus. It claimed to be a notification that an e-mail message sent earlier has failed, and prompted the user to open the attachment to see what the message text originally said.

Conclusion

Vesselin Bontchev (anti-virus Researcher FRISK Software International) has suggested that a critical element of a complete education for the graduating professional computer scientists must include knowledge about viruses, their nature, and their destruction.

Computer threats have evolved and it has become harder to detect them with every passing day. Each decade has brought with it innovations in computer threats as well as ways to detect and remove them. So, we can hope that better ways of avoiding and being safe from such threats are introduced otherwise only our vigilance remains the remedy. ■

Chartered Accountancy And Bharathanatyam



CA. Subhashni Giridhar

The author is a member of the Institute

She can be reached at

subhashni.giridhar@icai.org

The topic of the article may appear to be strange, as the author herself accepts gracefully that outwardly there is no apparent relationship between chartered accountancy and Bharathanatyam dance. But as the article grows we begin to understand the author's message that at philosophical level both forms converge. There are various meeting points between them. It could be said to be a soul-stirring introspection of a passionate chartered accountant who equally feels for her art.

Apparently, there seems to be no relationship at all between chartered accountancy and Bharathanatyam dance. However, here it has been attempted to draw parallels at various levels between them which I have realized being a practitioner of both chartered accountancy and Bharathanatyam dance. Bharathanatyam is **bhava** (expression), **raga** (music), **thala** (rhythm) and **natyam** (dance). To begin with, interestingly there is *dance* in chartered accountancy and there is CA in dance. There is quite an interesting overlapping between the two formats. These are:

Commitment / Dedication

Becoming and being a chartered accountant requires lot of commitment and dedication. If people aspire to become a CA, they have to pass the *CPT*, join the *articleship*, pass all *examinations* and become a member of our Institute. Similarly, to learn Bharathanatyam and to become proficient in it also requires same amount of commitment and dedication from artistes. It becomes easier for the chartered accountants in becoming Bharathanatyam artistes, as the qualities required are already present in them.

High Quality Performance

Chartered accountancy is meant only for the industrious and intelligent, as it is one of the toughest courses to qualify. ICAI standards are set to ensure quality. Only those who have those standards can qualify to become a member of this profession. Similarly Bharathanatyam is one of the toughest dance forms that require same qualities including concentration and harmonization/synchronization for becoming an exponent in this form.

1. **Concentration:** Chartered accountants are artistes who need to concentrate on their audit to perform their duties to utmost accuracy. For this they should have both mind and body agile. CAs have to remember many steps, calculations in steps and different moves. They should understand the pulse of the people they meet during the course of their audit while simultaneously concentrating on meeting deadlines and achieving the targets. This develops both mental skills and mental alertness. The same mechanics is true of the Bharathanatyam dance, since people have to remember various steps and move during a performance.
2. **Harmonization/Synchronization:** In audit, CAs are required to see if the income and expenditure/assets and liabilities are properly reported in the profit and loss account and balance sheet. Similarly, a proper and sequential presentation of various *adavus* (steps) and *abhinaya* (gestures) makes the Bharathanatyam dance complete. Dance is simply bringing together various steps. Being a CA helps in this regard since they know how to compile and bring various steps together to make it pleasant for viewing. In audit, CAs have to work in synchronization with their professional colleagues to ensure timely submission of reports. Similarly, the basic principle in Bharathanatyam is to bring total synchronization between dancers' steps/footwork with rhythmic sound play of *nattuvangam* (cymbals) and beats of the *mridangam*, a percussion instrument like drum.



Chartered accountants are artistes who need to concentrate on their audit to perform their duties to utmost accuracy. For this they should have both mind and body agile. CAs have to remember many steps, calculations in steps and different moves.

Alertness

As the saying goes '*a healthy mind in a healthy body*', CAs are supposed to be always alert, adaptable to change, physically fit and flexible having coordination with precision and balanced mind. Since dance too requires these qualities, being a CA definitely helps in giving a good performance.

1. **Training & Course:** In CA programme, students have to undergo 3 ½ years of articleship and pass the examinations conducted by the Institute. Only then they qualify as a CA and are recognized as auditors. Similarly, in dance after students complete stipulated 6 years of training and give an *arangetram* (first public performance under the guidance of their guru), they are eligible to give individual public performances.

Resilience

CAs have to apply provisions of various Acts like FEMA, income tax and sales tax applicable appropriately and conduct audit but within the ambit of law. They advise corporate clients on various aspects incorporation, investment/disinvestment, merger, amalgamation, formation of partnership and so on. They are able to make variations in presentation but cannot violate any provisions of the Acts. These traits help dancers to perform on stage while knowing their limit and displaying creativity and flexibility within that limit.

Trustworthiness / Reliable / Steadfastness

Auditors have to be perfect in their reporting since their stakeholders rely on them and crucial decisions are taken based on these reports.

1. **Calculations:** Audit basically consists of basic calculations including addition and subtraction.

Bharathanatyam also fundamentally is full of calculations. It consists of lot of footwork like *tillana*, *varnam*, *jathiswaram* and so on. For



When an audit starts, CAs check firstly whether the trial balance tallies i.e. both the assets and liabilities are equal. In dance, similarly every movement is symmetrical whether it is a straight line, diagonal, sideways, upwards, bending or a semicircle/circular motion. Hand gestures and footwork are also always even /equal in the sense that the number of steps done in the left side, is repeated in the right side.

example, footsteps (*jathis*) require calculations to fit exactly in the selected taal of the song. This is also applicable to the movement of head, neck, eyes and hands. These gestures involve calculations in terms of rhythm and tempo of the song.

2. **Tallying:** Just as CAs ensure tallying of various accounts in audit, matching of footwork to respective *taal* is essential in dance. For example, if it is *aadhi taal*, it has 8 beats in a song; but if there are *swaras* numbering 128, then *aadhi taal* is repeated 16 times. The *jathis* which one puts by tapping the feet should also be 128 only. Matching of the footwork with *taal* of the song is the most vital in enhancing the beauty of a dance.
3. **Balancing:** In audit, balancing of trial balance and balance sheet is of utmost importance. Likewise in dance, dancers have to balance for doing each and every step of jumping, circling, bending and standing on one leg for postures of *Lord Nataraja* and other Gods and Goddesses.
4. **Symmetrical:** When an audit starts, CAs check firstly whether the trial balance tallies i.e. both the assets and liabilities are equal. In dance, similarly every movement is symmetrical whether it is a straight line, diagonal, sideways, upwards, bending or a semicircle/circular motion. Hand gestures and footwork are also always even /equal in the sense that the number of steps done in the left side, is repeated in the right side. Even head, neck and eye movements have to be symmetrical.

Ethics

In any field whether it is academics or art, professionals have to abide by the code of ethics laid down by their respective Institutions. They should perform within the framework of the set regulations. Since CAs are aware that they should not violate the code of ethics of their profession while performing their duties, they as artistes would

always remember rules and regulations, and that they are not supposed to violate the virtual boundary that exists on stage while performing dance.

Resolve And Determination

In order to qualify as chartered accountants, students have to be determined to put in their sincere efforts. After being qualified, CAs get determined to pursue their profession with a constant desire to serve their clients. It is this determination which makes it very easy for CAs to learn and pursue an art form and its course, and to become a performer.

Endurance

Chartered accountants understand the value of practice. So they keep themselves constantly updated on amendments to the provisions of the Act and accounting standards etc. In both accountancy and Bharathanatyam, for continued success-



ful existence, people need to perform well, to constantly practice in the selected field and to have stamina.

Discipline And Devotion

In order to learn and progress in the chosen profession, one should have discipline and devotion. Chartered accountants follow the regulations of their profession. They get disciplined from the day they join the programme of chartered accountancy as student and till the time they become successful by becoming a member of



the Institute. This discipline ensures progress to them in their profession. They go on to become a role icon. Being a chartered accountant, it is very easy to learn dance, since it also requires discipline and devotion.

Rasas In Bharathanatyam And Chartered Accountancy

There are nine main or primary emotions, *rasas* (moods) in Bharathanatyam. Auditors use some of these *rasas* in their day-to-day audit work. They use *shringara* (love) by displaying their love towards their Institute and profession. They also use *hasya* (happiness/smile) by displaying smile and happiness that enhance their face value. In fact being a Chartered Accountant itself is the reason for using *hasya rasa*. *Veera rasa* (heroism) inspires auditors in becoming an achiever. *Karuna rasa* (compassion) tells auditors to have compassion for their Articled assistants while helping

them in their studies by guiding them appropriately. They have a special regard, i.e. compassion, for their clients. Auditors are also supposed to have a composed and calm personality, i.e. *shanta* (tranquillity), that helps them in performing well in auditing. However, they should avoid *adbhuta* (wonder), *roudra* (anger), *bhayanaka* (terror) and *beebhatsa* (disgust) *rasas*.

Health Benefits

Bharathanatyam dance helps in performing audits, as it provides us with a lot of ease, enthusiasm and zeal. Major benefits which accrue to people who practice chartered accountancy and Bharathanatyam are healthy heart and skin, improved concentration, memory, mental alertness, vision, balance, flexibility, strength of the bones and stamina. These practices also increase aerobic fitness and endurance. These also protect from ailments like Alzheimer's disease, diabetes, high blood pressure and heart-related ailments. These are helpful in controlling weight, mental stress and indigestion. Apart from these benefits, dancing is an excellent way to add extra energy and cheer to our life. This makes our days more fulfilling. Being healthy, we can discharge our duty as auditors in the best possible way. Life is full of emotions and an exercise plan coupled with rhythmic movements such as dance is a great way to lift your emotions and bring more joy and fulfilment to your life. Bharathanatyam is a unifying aspect of the physical, psychological and metaphysical, taking one closer to realization of the Absolute.

Conclusion

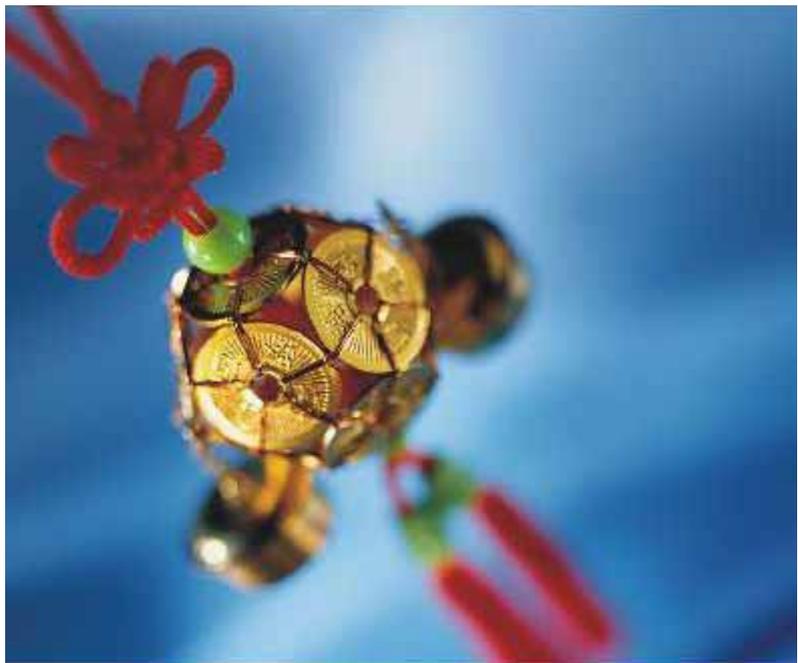
This is the way I correlate and interpret my experiences in Bharathanatyam and in my profession of chartered accountancy. I find them both complementary and supplementary. They are complementary because they complement each other at various levels. They are also supplementary as they jointly complete the requirements of my body and soul. They make me complete.

Auditors use some of these *rasas* in their day-to-day audit work. They use *shringara* (love) by displaying their love towards their Institute and profession. They also use *hasya* (happiness/smile) by displaying smile and happiness that enhance their face value. In fact being a Chartered Accountant itself is the reason for using *hasya rasa*. *Veera rasa* (heroism) inspires auditors in becoming an achiever.



Feng Shui, which literally means wind-water, is an ancient Chinese system of aesthetics that is believed to utilize the laws of both astronomy and geography to help in improving life. In the following article, the author suggests some tips on how to keep one's bathroom, cooking oven and gates of houses, and on how to deal with bad energy. He also comments on sitting directions. It is interesting to see the preferences, according to feng shui recommendations, of pictures to be mounted in a house.

Prosperity Through Feng Shui



CA. C. S. Sarda

The author is a member of the Institute.
He can be reached at
cssarda@icai.org



Feng Shui is a sort of energy which consists of wind and water affecting us in our day-to-day life in spiritual, emotional, and financial aspects of our lives. When we have right feng shui, we prosper with health, wealth and happiness. Other factors that affect our life are *karma*, positive attitude, industriousness, intelligence, and so on. With good *feng shui* we get maximum benefits with little efforts. Life gets easier but with bad *feng shui*, we need to work harder to get the same benefits.

Directions

Feng Shui divides directions into eight which along with their features of energy coming from each side. North controls the highest prosperity energy that strengthens material wealth money, business, career, conjugal life and physical health, in short prosperity, success and good health. East controls the highest spiritual energy that increases spirituality, love, joy, happiness, health and material wealth. North-East is very stimulating, energizing and activating. North-West controls success & abundance through adaptability. South-East controls



austerity, simple and moderate life style, spirituality and high principles. West decreases and breaks down everything in general but more slowly. It tends to produce mediocre or average outcome in terms of finance, material gains and career. South decreases and disperses material wealth, business, career, conjugal life and physical wealth. It tends to create financial and health problem after some time. South-West is the worst direction that rapidly tends to produce financial bankruptcy, health problems and bad relationships.

Thus favourable directions preference wise are north, east, north-east, north-west and south-east. South-west is the worst direction and south and west are bad.

Main Gate

Feng shui gives more stress on the location of main door. Seventy per cent of the feng shui depends on its location of the main door. Main gate should be neat and clean, and in a good condition. Its surrounding area of approximately 2 metres must be clean. There should not be any beam, ceiling or other obstruction in front of the main gate. If the main door opens in the wrong direction, we should adopt following corrective measures:



- (i) Put convex mirror inside the flat 5 to 6 metre away from the main gate so that bad energy comes through the main gate goes back facing the mirror. Bad effect of the wrong direction of the main gate is eliminated. It is to be done when the main gate is located in the south-west, in the west or in the south.
- (ii) To put the convex mirror outside the main gate on the wall at the top of the gate when the energy flow is too high. This is to stop excess energy. This is done usually on road facing flats.
- (iii) To create artificial north or east by putting on consecrated soft pink bulb and violet bulb respectively outside the main gate on the wall at the top of the main gate.

Sitting Directions

While sitting on chair, we must invariably face north for success, abundance and prosperity. Other favourable directions are east, north-west and north-east.



Unfavourable directions are south-west, south and south-east which bring difficulty in various amounts to us.

North is good for business decisions. Sales and marketing people looking for results or crossing their target must sit facing north. Other important employees including highly placed managers and directors must sit facing north. East is good for study, planning, meditation and spirituality. Chartered accountants must face east as their profession is based on principles and studies. Creative people including researchers should also sit facing east.

Cooking Oven

Cooking oven is the centre of prosperity in the house. We must be kind and respectful towards it. We must not have water or any sharp objects one metre of area around it. Sharp objects should not point towards it. Liquid food including milk and water should be removed from the oven after cooking. While cooking one must be sitting or standing facing north or east.



Bathroom

There should not be any toilet beside or on top of the main gate. Toilet should be neat and clean and should not be placed on top of a kitchen or a dining room. Cash box, filing cabinet, cheque book, and safe-deposit papers should not be placed beside it.



Harmful Energy

Pressure energy: This energy is generated from a beam. Do not sleep, sit or stand under an exposed beam as effect of compressed beam as effect of compressed energy is bad. Attach or hang the bamboo flute along or on beam at 3-feet distance as it will disperse the pressure. Make false ceiling or some clothing to cover the beam.



Sharp energy: It is generated from the sharp corners of walls, edge of door frames and furniture and from pointed and sharp objects like scissor, knife and needle. Sharpness of the objects should not point to us continuously as it causes low energy. Edges of walls and furniture should be rounded. Sharp objects should be put under cover and their sharpness should point to the wall.

Feng shui gives more stress on the location of main door. Seventy per cent of the feng shui depends on its location of the main door. Main gate should be neat and clean, and in a good condition. Its surrounding area of approximately two metres must be clean. There should not be any beam, ceiling or other obstruction in front of the main gate.

Pointed energy: Corners with three intersecting lines inside or outside the house will generate compressed energy leading to negativity. These pointed corners should be rounded through clay or rubber object.

Colours

Colour of the master bedroom should be white or light yellow. Red or pink should be avoided. Colour of a girl's or a boy's bedroom should be sky blue (for calmness) with light green (for flexibility). Pink should be avoided as it makes them sentimental. Colour of place of worship should be light violet. Colour of an office of a chartered accountant should be dark brown (for cautiousness) and dark blue (for conservatism). Colour of a meeting room should be yellow, brown or blue. Colour of a study room should be light blue or light yellow.



Paintings to be Mounted

Paintings and articles showing mountains scene on the back of seat or on side walls, fruits, flowers or field of flowers, trees with leaves, rice or wheat fields, forest, rowing team, flying eagle, elephant, bread, cheese and wine in dining room and other innovative posters should always be preferred. Painting of a running horse can also be mounted but in bedroom.



We must avoid in our house and office paintings showing depleted house, poor people, unstable chairs or chairs without backrest, dangerous feelings, sinking boats, war, disastrous scenes, poverty and negative emotions. Painting not properly visible and in depleted conditions should also be avoided.

Conclusion

According to the *feng shui*, if we adopt its principles and practices regarding the main gate of our houses and offices, and our sitting style, we can attain prosperity.

ICAI NEWS

ICAI Member Donates Space for Udupi Computer Centre



CA. Ananthanarayana Pai K, a member from Udupi, has donated 1189 sq ft of space for Kalsanka Premananda Pai Memorial CA Learning Centre for the benefit of members and CA students. Photograph taken on the occasion of the inauguration of the Centre at ICAI Bhawan, Udupi shows CA. Uttam Prakash Agarwal, the then Vice President of ICAI, CA. K Raghu, Central Council member, CA. Rajendra Kumar P, the Chairman SIRC, CA. Prakash Hegde N, Chairman, Udupi Branch, the donor CA. Ananthanarayana Pai K and other dignitaries.

Choice of a Land for Construction Purpose



Kashyap Nitin Pathak

The author is a Vastu expert.

He can be reached at

kash3001@rediffmail.com

In the last issue of this journal, we discussed some basic fundamentals about Vastu Shastra and the significance of directions in general. Now let's go step by step in understanding Vastu concepts right from the selection of a land till the making of your dream house through this section.



This is especially useful for builders and people who are desirous of making their own bungalow or house on a piece of land (plot). The following things need to be considered before finalizing the plot for construction

- Quality of the plot
- Shape of the plot
- Magnetic field of the plot
- Colour of the plot

Quality of the Plot

Will you ever buy lower quality food for your diet?. Usually not. The quality of the food you intake has a direct bearing on your health and well being. Similarly the quality of the plot has a direct bearing on the success of the project for which it is undertaken. In the first instance one needs to check prior to buying the plot whether the plot is auspicious for construction. There is a small preliminary test which should be done to check the quality of the land. Make a small pot hole in the land, fill it with water. If the water is absorbed by the land immediately then do not buy that land. If after 24 hours there is water still in the pot hole then it is a good sign and can be bought for construction. If no water remains and there are deep cracks on the base of the pot hole then buying that land is not advisable and construction will not be fruitful.

Shape of the Plot

We all try to keep up in good shape. Why? Because you look healthier, symmetrical, your personality improves. If you are in good shape you are noticed and you get all the compliments for your effort to be in good shape. Geometrical figure of the plot based on its boundaries will decide the shape of the plot. The result of each plot will differ based on the shape of that plot. There is a scientific and astrological reasoning behind the shape of the plot. If you are in good shape you get noticed. If your plot and structure is in the correct desirable shape as suggested by Vastu, you will notice success.

Square: A square shaped plot has equal length and breadth with 90 degrees angle from all four sides. This type of plot is very good though rare to find. A square is a balanced shape and has the ability to balance all eight directions. This type of plot is auspicious for happiness, prosperity and wealth and is generally suitable for any type of construction.

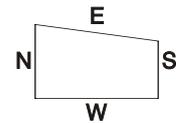


Rectangular: A plot with length and breadth in the ratio of 1:1.5 is a rectangular plot. This type of plot is also very good for construction. It is considered desirable for prosperity, better financial growth and healthy environment. This shape is common to find and if other conditions mentioned are fulfilled then the construction on this plot can create history.

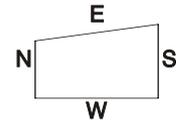


VASTU SHASTRA

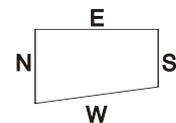
North East plot (Eshaan plot): As evident from the figure the plot of this type has a prominent corner in the North East direction which makes a lesser than 90 degrees angle in the NE corner. The NE corner is also called Eshaan corner in Vastu Shastra. This corner is ruled by the planet Jupiter and because of a bigger NE corner they attract more cosmic energy of the planet. These plots are very auspicious for residential constructions, hospitals, charitable trusts, temples, schools, colleges, and spiritual purposes. They are extremely fruitful for wealth, mental peace and progeny to carry your family ahead (Vansh).



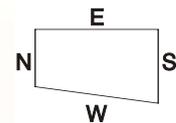
South East plot (Agni plot): As opposite to the above these type of plots have a very prominent SE corner and the angle made by the South corner to east is less than 90 degrees. The SE corner is also called the Agni corner in Vastu. It is ruled by Venus. East is ruled by the Sun and South by Mars. Though it is ruled by Venus the combination of Sun and Mars is very high in this corner which makes it to be called the Agni corner. These are not considered auspicious for construction purposes. Houses on these structures are more prone to dangers from fire, electric shocks, short circuits, and are vulnerable to natural calamities. Breakage or sudden collapse of the structure are also possible for constructions on this type of plot.



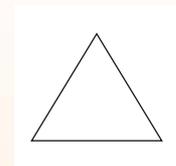
North West plot (Vayavya plot): NW direction is where the corner differentiates from all the other sides making an angle of lesser than 90 degrees from the north to the west. This direction is also called Vayavya corner in Vastu and is ruled by the planet Moon. These plots are not considered good for the construction of a residential house. The people living in houses build on these plots will face problems due to wavering mind, weak decision making, emotional instability and committing crimes due to unstable mind.



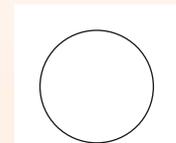
South West plot (Nairutya plot): SW corner of the plot is enhanced in shape and makes a lesser than 90 degrees angle from south to west. This direction is also called Nairutya in Vastu and is ruled by Rahu and Ketu. Not a good plot to buy because its ruler is evil planet and is hemmed between south and west the rulers of which are Mars and Saturn respectively. People living in houses made on such plots will never be happy. They will have huge expenditures and will also be prone to illness, particularly long-term illness, short temperedness and cruel thoughts to harm another person.



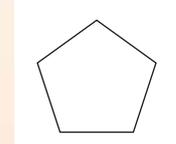
Triangular plot: This shape whether in any direction from any side is not considered good for construction. It fundamentally lacks one side or one direction and hence is an incomplete plot which is not capable to give good results in spite of Vastu considerations. In a way it typically has three arrows pointing in different directions. Thus people staying in such constructed houses will have no clarity of thoughts, confused and fickle minded. It is also believed that people will suffer from legal problems if residing in such shaped plots.



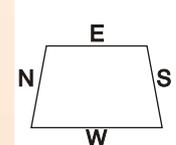
Circular (Round) plot: A round shape plot is where there are no corners, hence there are no directions either. You cannot decide what is pointing or facing in what direction? So it suggests instability. Not considered good for construction, though there are some known constructions in India with this shape.



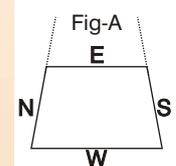
Pentagon (Five cornered): A square is the most ideal shape and a pentagonal plot is one in which the directional strength is negatively impacted. It is like we are trying to fit in one more side in the square to make it five sides. Compare it to the second class coach in a local train where six people sit in a space for four people. The result is inconvenience and unhappiness among all the six people. It is not considered auspicious and will cause troubles.



Cow faced (Gau mukhi): If you draw an imaginary line on the north and south to extend these lines then they will meet at an imaginary point in the east (Fig - A). A perfect arrow will be formed which shows strength, target, goal. It shows a broader foundation at the base which signifies stability and the power to stand against any odds. It shows the shape of the roof of a house or a temple. It's called *Gau mukhi* as it depicts the shape of a cow's face. According to our *shastra* there are all the deities present in the Cow who we also consider like a mother. Very good plot and will bring all round success, wealth, peace, modesty, good luck, happiness, great stability in any problems.



One may think that this shape has a prominent SW and NW corners which are not considered auspicious in the above cited examples, then how is this plot considered good. The answer to this is — in the above examples of Vayavya and Nairutya plots it's only one corner that is prominent and causes imbalance. Here the negative energy is channelized and absorbed by the East direction which is by far the Best direction in Vastu Shastra. It is like saying in mathematics that two negatives make one positive.



THIS MONTH FOR YOU

(based on Tarot Card reading)



Puja Mathur
 The contributor is
 Tarot Card reader.
 She can be reached at
 pujatarot@yahoo.com

Lucky colour : Red | Lucky Day : Tuesday *Magical Mantra: Seek inner guidance for your betterment.* **ARIES**
 This month is very fortunate for you. If you are planning for higher studies, the plan will be successful. After 9th May long distance travel will be possible. It's wedding time for eligible people. There can be an unwanted change in job. Also pay attention to your expenses.



TAURUS *Magical Mantra: Take the right decision and see how miracles happen.* **Lucky colour : Pale Blue | Lucky Day : Friday**
 Jupiter's position at the beginning of the month will be good. It will be a fortunate period for youngsters. Artists would gain big from sales and purchases. Unexpected marriage proposals. Minor illness to old family member.



Lucky Colour: Yellow | Lucky Day : Wednesday *Magical Mantra: Enhance your knowledge for further studies.* **GEMINI**
 Jupiter in its 9th position would prove beneficial to Gemini. A high position would remain with professionals. Prestige will increase in profession. At the end of the month all religious works will be possible. Also a successful period for senior member of family.



CANCER *Magical Mantra: Purify yourself and seek inner self.* **Lucky Colour : Sea Green, Silver | Lucky Day : Monday**
 Statistic losses will diminish. There will be a typical harassment from enemies. Give attention to health. Surgery will be possible. In the family this month will be beneficial for females and average for others.



Lucky Colour : Gold, Silver | Lucky Day : Sunday *Magical Mantra: You will overcome your obstacles and blocks.* **LEO**
 Saturn's position will prove less progressive. Favourable jobs are possible. Minor discomfort for health especially eye areas. Job transfers are possible. Do not take unnecessary decision. Seek advice for personal issue.



VIRGO *Magical Mantra: Pursue your dreams and see them fulfill.* **Lucky Colour : Navy Blue, Gray | Lucky Day : Wednesday**
 Movement of Venus in its 7th house will be excellent and beneficial. Job promotion will be possible. There will be a chance for foreign travel. At the end of the month, unsettled people have greater chances of marriage.



Lucky Colour : Blue and Lavender | Lucky Day : Friday *Magical Mantra: Work hard to achieve your highest goals.* **LIBRA**
 This month will be good for you. You will gain prestige, promotion and increment in job. Scholarship for student will be granted. After 15th MAY 2009, foreign business is possible. Rise to senior family members. Good time for property investment.



SCORPIO *Magical Mantra: Overcome with your past and focus for knowledge regarding your profession.* **Lucky Colour : Crimsons, Burgundy, Maroon**
 Exam results will be good for students. New contracts will be possible in job. Promotion is possible after 9th May. Long distance travel for family function is possible. Some minor trouble in profession or job can happen



Lucky Colour : Purple | Lucky Day : Tuesday *Magical Mantra: Be grounded for your actions.* **SAGITTARIUS**
 Excellent month for Sagittarians, but there can be delay in engagement or marriage. Purchase of property or vehicles will give happiness. Big financial gain in business. Take care of partner's health.



CAPRICORN *Magical Mantra: Pay attention towards your efforts and gratitude.* **Lucky Colour : Dark Green, Brown | Lucky Day : Saturday**
 Long distance travelling and professionally big ups and downs are possible. Loan will be granted. You will be free from any financial responsibilities. Good time for family members. Pay attention to your health.



Lucky Colour : Electric Blue | Lucky Day : Wednesday *Magical Mantra: Expect miracles and inner guidance.* **AQUARIUS**
 You will move through critical decisions and people will appreciate it. There will be professional benefits after 15th May. Job opportunities for unemployed people are possible. There will be a higher chance of property purchase. Avoid arguments with your seniors.



PISCES *Magical Mantra: Keep faith, generosity and confidence.* **Lucky Colour : Pale Green, Turquoise | Lucky Day : Friday**
 Signs of Venus and Mars movement would prove beneficial in every area of your life. Marriage or engagement with familiar people will be possible. Progressive period for higher education. Journey against your desire is possible. Please take care of your valuable things



"DISCLAIMER: The views expressed or implied in this feature are those of the author and not of the ICAI, which will not be responsible for any action taken on the basis of this feature."

CROSS

WORD 035

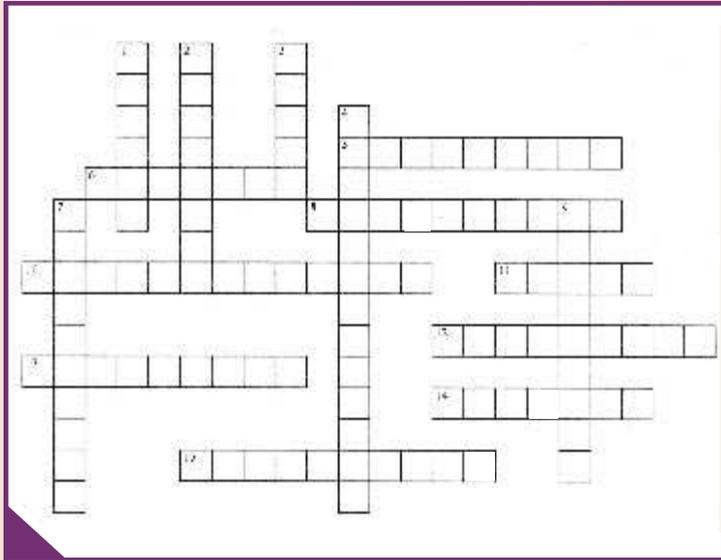
ACROSS

5. Gestures and postures are _____ communications. (9)
6. Communication is sharing of _____ between two or more individuals. (7)
8. One of the recently started features in our journal. (6,4)
10. As per SA 720, _____ is other information that contradicts information contained in the audited financial statements. (13)
11. Initiative of the Institute to provide online access to the ICAI's Knowledge Resources. (5)
12. To learn the art of _____ is as important as to learn the art of communication. (9)
13. _____ is an estimate of the market value of an asset (or liability) for which a market price cannot be determined. (4,5)
14. TQM stands for Total _____ Management. (7)
15. Name of the new e-governance initiative of the ICAI. (10)

DOWN

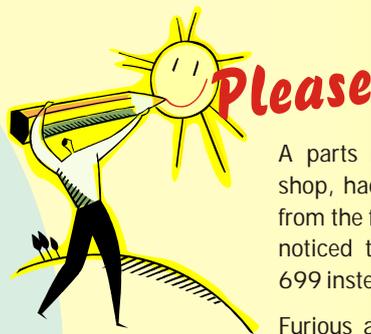
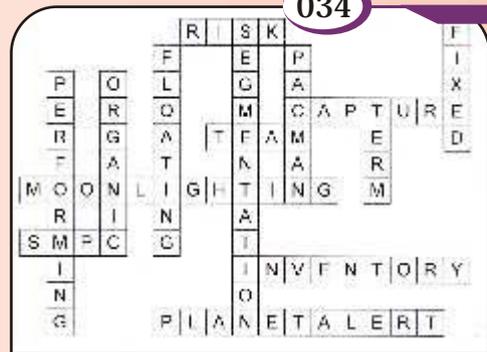
1. A _____ of Credit is a document issued by your bank that essentially acts as an irrevocable guarantee of payment to a beneficiary. (6)
2. Field of communication in which we interpret Body Language is _____. (8)
3. _____ engineering is a systematic method to improve the 'value' of goods or products and services by using an examination of function. (5)
4. Through modifications in the Employees Provident Fund Scheme, 1952, a new category of employees called _____ 'workers' has been introduced. (13)
7. As per recent circular, one of the activities that can be categorised as 'maintenance or repair activities'. (10)
9. _____ is the study of space between speaker and hearer. (9)

Note: Members can claim one hour CPE Credit - Unstructured Learning through self-declaration for attempting above Crossword



SOLUTION Crossword

034



A parts manager for a small electronics shop, had occasion to order part No. 669 from the factory. But when he received it he noticed that someone had sent part No. 699 instead.

Furious at the factory's incompetence, he promptly sent the part back along with a letter giving them a piece of his mind.

Less than a week later, he received the same part back with a letter containing just four words: "TURN THE PART OVER."