

Digital Signatures For e-filing in MCA21*

Central to the growth of e-commerce and e-governance is the issue of trust in the electronic environment. The future of e-commerce and e-governance depends on the trust that transacting parties place in the security of transmission and the content of communication.

Can an electronic document be relied upon as an authentic document, much like an original paper document? A sheet of paper carries information and data about the transaction and the originator along with measures to verify the authenticity of the document through written signatures. In the electronic world, a copy is indistinguishable from the original and it can be deleted/ modified without leaving a trace. Furthermore, how can one be sure that the electronic signature on the document belongs to the person claiming to have signed it? Indeed, has the person actually signed the document to demonstrate his/ her will to sign and certify the contents of the document and close them so that any unauthorized alteration may be detected?

Digital Signatures and Certifying Authorities

Creating trust in an electronic environment involves assuring the transacting parties about the integrity and confidentiality of the content of documents along with authentication of the sending and receiving parties in a manner that ensures that both the parties cannot repudiate the transaction. This requires that the paper based concepts of identification, declaration and proof should be available suitably in the electronic environment. All these are subsumed in what is referred to as electronic authentication. Electronic authentication can be performed by a variety of technologies and processes. The concept of electronic authentication has to be provided legal sanctity through appropriate legislation.

The Information Technology Act, 2000 is based on the UNCITRAL model law for e-commerce covering major concerns: legal recognition of data messages, writing, original signatures, admissibility and evidential weight of data messages, retention of data messages, formulation and validity of

contracts, recognition of parties by data messages, attribution of data messages, acknowledgement of receipt, time and dispatch and receipt of data messages. The Act has created a legal framework that provides legal sanctity to e-documents as well as digital signatures.

The most well-known and almost universally accepted method of electronic authentication is the one based on *asymmetric cryptosystems*. This is also known as public key cryptography, and is the basis for creating digital signatures. Digital signature, a form of electronic signature, is created and verified using public key cryptography that is based on the concept of a key-pair (public and private), generated by a mathematical algorithm. The private key, which is used to digitally sign a document, is securely held by the owner. On the other hand, the public key is made known to everyone for verifying the digital signature. By knowing about the public key, one cannot compute the private key belonging to its owner.

Electronic authentication using digital signatures requires Certifying Authorities (CAs), who act as trusted third parties or electronic notaries in cyberspace, to issue Digital Signature Certificates (DSCs) or Public Key Certificates (PKCs) to individuals to establish their identity by binding a public key with attributes such as name, address, telephone number, passport number, etc. CAs and the regime governing their operations are together known as Public Key Infrastructure (PKI). PKI is thus the foundation for secure transactions in cyberspace.

The key pairs fulfill all the requirements of electronic authentication. Two unknown parties entering into a business transaction can conclude the same ensuring confidentiality, integrity, authentication and non-repudiation of the transaction. For a transaction between A and B, these are realised as follows:

- A signs message with his own private key.
- A then encodes the resulting message with B's public key.
- B decodes the message with his own private key.

*(The author K Venkataramana is the Joint Secretary, Information Technology in ICAI. He can be reached at venkataramana@icai.org)

- B applies A's public key on the digital signature.

The significance of the above signing and decoding process is given below:

- When A uses his own private key, it demonstrates that:
 - He wants to sign the document.
 - He wants to reveal his identity.
 - He shows his will to conclude that agreement.

(The encoded message travels on the net, but nobody else but B can read it).

- B needs to know that A and only A has sent the message. To do that:
 - B uses A's public key on the signature.
 - Only A's public key can decode the mail.
 - A cannot repudiate his signature.

(Digital signature cannot be reproduced from the message. No one can alter a ciphered message without changing the result of the decoding operation).

PKI and CAs

A CA is a trusted third party that issues digital signature certificates – the DSC that binds keys to its owner. The digital signature created using a private key gets verified by the corresponding public key in such a DSC. The DSC contains critical information that is certified by the CA. The *distinguished name* is a set of values that identify the entity being certified. This includes country, organization, organization unit, name, etc. Additionally other attributes describing the entity being certified such as address, telephone number, passport number, driving license number, etc., can also be included in the DSC.

The public key belonging to the entity being certified is of course a part of this DSC. The CA, as a trusted third party, performs the function of identity verification of the applicant before issuing a DSC to him/her. The CA's digital signature on the certificate provides it with security and trust. A valid digital signature on a certificate is a guarantee of its integrity. Since the CA has signed the certificate with its private key, anyone verifying the CA's signature on the certificate is guaranteed that only the CA could have created and signed the user's certificate. Finally, the CA with strict security criteria for securing its private key cannot deny having signed the certificate. This is non-repudiation.

One of the main functions of a CA is to make available all the certificates issued by it online, in the form of a directory to its subscribers and relying parties. The relying parties wishing to enter into a contract with a subscriber of a CA can confirm the validity of the certificate from the CA's directory, and through it the identity of the subscriber and other credentials that may be part of the certificate.

In the event of compromise of a subscriber's private key, he/she may request the revocation of his/her certificate. The CA is obliged to issue a Certificate Revocation List (CRL) as and when such a request is received. There may be other circumstances that can warrant the revocation of a DSC. The CA is also expected to perform some other functions that include time-stamping service, make available reliable cryptographic software to subscribers for generating key-pairs, etc.

The CA is expected to inspire confidence among its subscribers on the security of its own infrastructure and the practices it follows in its operations and the liability that it is willing to take in respect of the PKCs issued by it. This is done by the CA through its *Certification Practice Statement (CPS)* that is declared by it on its own website as the sum total of the practices followed by it. It deals with practices with regard to certificate issuance and user registration, certificate lifetime and revocation, identity verification procedure, class of certificates, certification publishing practices and liability issues.

A PKI manages the generation and distribution of key-pairs, and publishes the public keys as part of the PKCs and CRLs in open repositories such as X.500 directories. The subscribers and relying parties can access these directories to verify the credentials of a person before completing a transaction in cyberspace. The trust chain from a subscriber of a CA to a subscriber of another CA can be formed through *cross-certification* arrangement between the two CAs. When two CAs enter into such an arrangement, each vouches for the certificates issued by the other.

In India, CAs are licensed by the CCA under the Information Technology Act (2000). The rigorous process of audit of the infrastructure of CAs at the pre-licensing stage and also audit on a regular basis conducted by an auditor from

the CCA panel of auditors, ensures that CAs conform to international technology and practice standards, as also to the rules and regulations laid down under the Information Technology Act. Thus, the business and corporate world and other individuals can safely place trust in certificates issued by CAs.

This lends credibility to the business transactions based on digital signatures, since identity of the parties is authenticated. So is the integrity of transactions. Confidentiality of transactions and their non-repudiability are also ensured. The public key infrastructure realized in the form of licensed CAs and other provisions, as part of the legal and administrative framework, of the Information Technology Act helps promote the growth of e-commerce and e-governance applications in the cyberspace.

DIGITAL CERTIFICATE SERVICES

Digital Certificates serve as your identity in the digital world. Just as a passport or a driver's license is used to uniquely identify individuals in the physical world, digital certificates are used to identify entities in digital transactions. Based on Public Key Cryptography, these Digital Certificates associate every entity with a unique pair of credentials – the public key and the private key. Only the owner of a Digital Certificate has access to the private key and can use it to digitally sign and encrypt any digital information such as emails, forms, files etc.

Personal Digital Certificates

These are issued to individuals, companies and government organizations. They can be used both for personal and commercial purposes. They are typically used for electronic commerce applications such as e-procurement, electronic banking, electronic data interchange (EDI), and membership-based on-line services, where security is a major concern.

The level of trust created by the Digital Certificate is based on the authentication procedures used by the CA to verify the identity of the subscriber and the service guarantees offered by the CA to back up that authentication. CA issues three classes of certificates based on the authentication procedures used:

- Class-1
- Class-2
- Class-3

CA uses various procedures to obtain evidence of a subscriber's identity before issuing legally recognized digital certificates. During verification, you will also need to be physically present before a Registration Authority (RA), qualified by CA due to their neutrality and reliability. These validation procedures provide strong assurance of an applicant's identity.

Digital Signatures created using Class-3 and Class-2 digital certificates issued by CA are legally valid under the Indian IT Act 2000.

E-GOVERNANCE

E-Governance is perhaps the most happening thing in Government. More and more departments are shifting to e-Governance in the recent times. E-Governance envisages e-filing of forms/ returns to enable the department to move to a paper-less era where information is available in digital form for further analysis and follow-ups on a timely basis. It also saves the users from the hustles of standing in queues and they can know their status online through the Internet/ WWW.

The IT Act 2000 notified in the official Gazette of the Government of India (Available at URL http://www.mit.gov.in/itbillonline/it_framef.asp) issued on June 9, 2000 under section 5 provides for **Legal recognition of digital signatures** as follows – *“Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person (hen, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government.”*

Digital Certificates are the enabling force for e-governance. For filing of forms/ returns under the e-Governance, we need to have a digital certificate.

Mandatory e-Filing of Forms

After launch of the above e-Governance initiatives, e-Filing of returns/ forms to be submitted to the Income Tax, Excise, ROC (under MCA21 Project) authorities would become mandatory in due course. MCA envisages that paper forms and

documents will no more be accepted by ROC offices once e-Filing is launched. MCA 21 was launched by The Prime Minister at Delhi on 18th March, 2006 and is expected to be rolled out to all parts of the country from April, 2006.

Considering the above, we all need to access –
Are we suitably equipped and prepared to practice in the digital era? Do you have a Digital Certificate? Have you started using it?

Digital Certificate Registration Center

Digital Certificates issued by ICAI

To facilitate members in practising in the E-era, the Institute has proactively taken initiative and has taken the onus of a Sub-Certifying Authority to issue Digital Certificates effectively at a nominal cost of Rs.750/- per annum. Digital certificates in the market may cost many times more. Further details of Digital Certificates issued by the Institute are available on the official website of the Institute at www.icai.org.

In addition to the above, an amount of Rs. 750/- will have to be paid by the members towards enrollment kit (including USB token). This amount will not be applicable on subsequent certificate renewals.

Last Date of Registration for Post Qualification Course in International Trade Laws & WTO for November 2006 Part I Examinations

Attention of the members is drawn to the Post Qualification Course in 'International Trade Laws and World Trade Organisation' of ICAI intended to equip the members with the specialised skills necessary for developing the dedicated practice in the area of services related to International Trade Laws & WTO.

Registration for the Course is open throughout the year. Candidates shall be eligible to appear for Part I Examination to the Course only after six months of registration and specified minimum attendance at PCPs. **Therefore, for appearing in the November, 2006 Examinations for Part I of the Course, the last date for taking registration in the Course is APRIL 30, 2006.**

For obtaining registration, the Prospectus for the Post Qualification Course in 'International Trade Laws and World Trade Organisation', priced at Rs. 150/- (Rs. One Hundred Fifty only), can

be obtained from the Institute's sale counters at New Delhi and the Regional Offices at Mumbai, Chennai, Kolkata & Kanpur and the Branches of the Institute. Copy of Prospectus can also be obtained by post from the Joint Secretary, Postal Sales Department of the Institute at C-1, Sector I, NOIDA – 201 301 (U.P.) by sending a Demand Draft of Rs. 150/- plus postal charges (Rs. 9 within New Delhi & Rs. 20 for Rest of India, if required by Courier; or Rs. 40/-, if required by registered post) favouring 'The Secretary, The Institute of Chartered Accountants of India' payable at New Delhi.

For any further information regarding the Course, please visit the website of the Institute <http://www.icai.org>.

Secretary
Committee on Trade Laws & WTO

The Very Essence of Leadership is that You Have to Have a Vision

Empanelment as a Peer Reviewer

As members are aware, Peer Review Mechanism put in place by the Institute, as per the Statement on Peer Review, has commenced and gaining momentum. The reviews are to be carried out by Reviewers empanelled with the Peer Review Board. The criteria for empanelment as a Reviewer is that a person should -

1. be a member;
2. possess at least ten years' experience of audit; and
3. be currently active in the practice of accounting and auditing

Applications were invited from members fulfilling the above criteria for empanelment with the Board. More than 2400 members have been empanelled as Reviewers. Applications received in the recent past are under process.

To ensure that the reviews are carried out in time and as many PUs are reviewed as possible,

including those located in mofusil areas, the Board wishes to enlarge the resource pool of Reviewers. Members fulfilling the criteria mentioned above are invited to empanel themselves as Reviewers by applying in the prescribed format (available on Institute's Website www.icaai.org under the link 'PEER REVIEW BOARD' or can be obtained from the Institute's Office at New Delhi) and send to Shri K. Tulsiani, Secretary, Peer Review Board, The Institute of Chartered Accountants of India, P.O. Box 7100, I.P. Marg, New Delhi 110 002.

We hope, in order to achieve the objective of Peer Review viz., enhancement in the quality of attestation services performed by the members of the Institute, cooperation would be forthcoming from the members by empanelling as a Reviewer.

Secretary,
Peer Review Board

XVII World Congress of Accountants – Nov 13-16, 2006-Turkey



The International Federation of Accountants (IFAC) besides other activities also sponsors the World Congress of Accountants (WCOA) every five years since 1977 and now every four years since 2002. The Congress is the Olympics of the Accountants throughout the World.

The XVII World Congress of Accountants is being organised on 13 – 16 November 2006 at Istanbul, Turkey on the Theme “Accountants: Generating Economic Growth and Stability Worldwide” and would address issues arising out of the wave of technological innovation and globalisation which has presented new opportunities and challenges to professional accountants, business and the public that they serve. It is estimated that more than 5000 delegates will attend the WCOA 2006 Congress from all around the world.

The wave of technological innovation and globalization has been affecting the world,

presenting new opportunities and challenges to professional accountants, business and the public that they serve. And also, certain unfortunate cases in accountancy have dramatically taken place. In following years, the impacts of those cases are very significant for accountancy world. Particularly, it will be extremely important to protect investors by improving the accuracy and reliability of corporate disclosures. Therefore, the Congress of 2006 will be very important for the public interest.

The XVI World Congress of Accountants on the theme “Knowledge-based Economy and the Accountants” was held in Hong Kong in November 2002 which was organised by the Hong Kong Society of Accountants and was inaugurated by the Premier of the State Council of China Mr. Zhu Rongji. The Congress attracted almost 5000 accountants from across 92 countries and more than 70 expert speakers addressed the delegates.

For further details, please visit www.wcoa2006.org

Opportunity Knocks Only Once; Temptation Leans on The Door Bell

Seminar on Foreign Trade Policy at Mumbai

Committee on Trade Laws & WTO of ICAI Hosted by WIRC of ICAI	
Theme	To address the concerns and implications of the emerging domestic and international trading regime in view of the Foreign Trade Policy to the accounting profession.
Date & Time	Saturday, 29th April, 2006 (9.30 hrs. onwards)
Venue	Hotel Le Royal Meridien, Mumbai
Discussion Sessions	
<p>Highlights of Foreign Trade Policy</p> <ul style="list-style-type: none"> ● Address on Foreign Trade Policy 2004-09 by Shri S. S. Sandhu, Zonal Joint DGFT and Additional Export Commissioner, Mumbai* ● Highlights of 2006 Annual Supplement to Foreign Trade Policy by Smt. Lata Shukla, Joint DGFT, Mumbai* <p>Export Promotion Schemes and SEZs</p> <ul style="list-style-type: none"> ● Address on Export Promotion Schemes and SEZ Act/Rules by Mr. Baldev Singh, Joint Development Commissioner, SEEPZ Special Economic Zone, Mumbai* ● Address on Role of Professionals in Export Promotion Schemes by Shri G. K. Gupta, Vice-President, FIEO, Mumbai* <p>Export of Services – An Acknowledged Opportunity</p> <ul style="list-style-type: none"> ● A Case for Capacity Building with specific reference to an Accountants' Perspective by Mr. Shailesh Haribhakti, FCA* ● Knowledge Process Outsourcing and Business Process Outsourcing: Global Perspective and Emerging Opportunities <p><i>*Invited. Confirmation awaited.</i></p>	
CPE Hours: 5 (Five) Hours for Members of ICAI	Fees: Rs. 1500/- (Rupees One Thousand Five Hundred only)
Contact Persons	Contact Details
<ul style="list-style-type: none"> ● Shri Rajkumar S. Adukia, Chairman, Committee on Trade Laws & WTO of ICAI ● Shri Sunil Kumar Goyal, Chairman, Western India Regional Council of ICAI 	The Western India Regional Council of the Institute of Chartered Accountants of India, 'ICAI Bhawan', 27 Cuffe Parade, P. B. No. 6081, Colaba, Mumbai – 400 005. Phone: 91 – 22 – 39893989, 39802908, Fax: 91 – 22 – 39802953, E-mail : wro@icai.org ; ctlwto@icai.org Website: http://www.icai.org

We All Face Problems, But It Is How We Face Them That Counts

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
Committee on Corporate Governance (CCG)

Independent Directors - A Tool for Corporate Governance
Three days Training Programme on Independent Director

Theme

Corporate governance places greater responsibility on the directors. The presence of Independent Directors on the board is widely considered as a means of protecting the interest of shareholders and other stakeholders. That's why companies of all sizes are recognizing the substantial benefits of having independent directors on the board. While appreciating the role of Chartered Accountants as Independent Directors, the Committee on Corporate Governance of the Institute, with a view to sharpen the competitive edge, excellence and professionalism of the members has, since last year, been continuing to organize such programmes. The registration will be on First Come first Serve basis.

Discussion Sessions

- Accountability in Corporate Governance - An overview
- Regulatory Initiatives in India for Better Governance (Clause 49) - Listing Agreement
- Role & Responsibility of Audit Committee, CFO/CEO
- Role & Responsibilities of Independent Director in family owned corporates
- Good Attributes and how to be an effective Independent Director
- Pre appointment care & Legal Responsibilities under Tax Laws, Borrowings & Public issues.
- Accounting Standards - Responsibilities of Board of Directors and Audit Committee
- Appraisal of Internal Control Systems & Management Report
- Independent Director in Audit Committee & Interface with Management
- Code & Conduct of Board of Directors & disclosures by BODs.
- Emphasize on Corporate Governance - Historical Role of Corporate Management - Trends in India - Role & Functions of Board
- Enterprise Risk Management
- Financial Statements Review - Obligations of Stock Exchange - GAAP Reporting & Other procedures.

Programme Details CPE Hours: 17 Hours

Date	Chairman, CCG	Secretary, CCG	Programme Director	Programme Co-ordinator	Host Regional Council/ Branch (PLACE)	Registration Fees (Rs.)
22nd –24th April 2006	Shri Amarjit Chopra (93101 00299) ajc@icai.org	Shri H Ghosh (93507 99928) ghosh@icai.org	Shri G. Ramaswamy (9363125300) gr@vsnl.com	Ms. Aparna 98480 48710 aparna@caliberindia.com	Hyderabad Branch of SIRC of ICAI (HYDERABAD)	Rs. 3000 Non-Residential Rs. 9000 Residential
3rd –5th May 2006	Shri Amarjit Chopra (93101 00299) ajc@icai.org	Shri H Ghosh (93507 99928) ghosh@icai.org	Shri Abhijit Bandyopadhyay (9831059999) abhiban@cal3.vsnl.net.in	Shri Subodh Kumar Agrawal (98300 22848) agarwalsk@icai.org	EIRC of ICAI (KOLKATA)	3,000 –Non-Residential

For further information- www.icai.org; E-mail: corpgov@icai.org.

The Wise Man Does at Once What the Fool Does Finally

Maintenance of Professional Address by Members

As per Regulation 187 of Chartered Accountants Regulations, 1988 every member in practice is required to have a professional address in India in his own charge or in charge of another member. Section 27 of the Chartered Accountants Act 1949 provides that where a chartered accountant in practice or a firm of such chartered accountants has more than one office in India, each one of such offices is required to be in the separate charge of a member of the Institute. The member in charge shall be actively associated with the office situated in the said professional address.

Some instances have come to the notice of the Institute where the practicing members/firms have intimated professional address without maintaining office at such address. This is in violation of the provisions of the aforesaid and for giving a wrong or false address suitable action under the Chartered Accountants Act and Regulations is required.

Members are requested to kindly ensure that the professional address given to the Institute is the address of their office in terms of the regulatory requirements mentioned above.

NATIONAL TAX CONFERENCE

On 29th April, 2006 At PSG Institute of Medical Sciences Coimbatore 641014

ORGANIZED BY		HOSTED BY	
Fiscal laws committee of ICAI		Coimbatore Branch of SIRC of ICAI	
Shri Manoj Fadnis	Shri G. Ramaswamy	Shri Pravin Maheshwari	Shri M Kandasamy
Chairman, Fiscal Laws Committee of ICAI fng@sancharnet.in , (0)9302217716	Conference Convenor gr@vsnl.com (0)9843015000	Chairman, Coimbatore Branch of SIRC of ICAI, (0)9842245304	Chairman SIRC, of ICAI, (0)9443057990
Inauguration by Shri T.N. Manoharan President ICAI, New Delhi			
PARTICULARS		FACULTY	
Taxation of real estate transactions – Builders & Developers		Shri Manoj Fadnis, Chairman, Fiscal laws committee of ICAI	
Survey, Search & Seizure – Assessments		Shri Ved Jain, Vice Chairman, Fiscal laws committee of ICAI	
Issues in computations of Business income and Deductions		Shri Rajan Vora, Chartered Accountant, Mumbai	
Recent landmark judgements under IT Act		Shri Saurabh Soparkar, Senior Advocate, Ahmedabad	
Service Tax –Construction Industries, goods transports, Clubs and Associations		Shri A.R. Krishnan, Chartered Accountant, Mumbai	
Conference fees FCA Rs. 800/- ACA Rs.700/- Chq/DD should be payable “Coimbatore branch of SIRC of ICAI			

Habits Are First Cobwebs, Then Cables

GUIDANCE NOTE ON ACCOUNTING FOR CREDIT AVAILABLE IN RESPECT OF MINIMUM ALTERNATIVE TAX UNDER THE INCOME-TAX ACT, 1961

(The following is the text of the Guidance Note on Accounting for Credit Available in Respect of Minimum Alternative Tax Under the Income-tax Act, 1961, issued by the Council of the Institute of Chartered Accountants of India.)

INTRODUCTION

1. The Finance Act, 1997, introduced section 115JAA in the Income-Tax Act, 1961 (hereinafter referred to as the 'Act') providing for tax credit in respect of MAT paid under section 115JA (hereinafter referred to as 'MAT credit') which could be carried forward for set-off for five succeeding years in accordance with the provisions of the Act. Section 115JA was inserted by the Finance Act, 1996, w.e.f. 1.4.1997. The said section provided for payment of Minimum Alternative Tax (hereinafter referred to as 'MAT') by certain companies, where the total income, as computed under the Income-tax Act, 1961, in respect of any previous year relevant to the assessment year commencing on or after 1st day of April, 1997, but before the 1st day of April, 2001, was less than 30% of its book profit. In such a case, the total income of the company chargeable to tax for the relevant previous year was deemed to be an amount equal to thirty per cent of its book profit.
2. The Finance Act, 2000, w.e.f. 1.4.2001, introduced section 115JB according to which a company is liable to pay MAT under the provisions of the said section in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2001. The MAT under this section is payable where the normal income-tax payable by such company in the previous year is less than 7.5 per cent (10 per cent proposed by the Finance Bill, 2006) of its book profit which is deemed to be the total income of the company. Such company is liable to pay income-tax at the rate of 7.5 per cent (10 per cent proposed by the Finance Bill, 2006) of its book profit. The Finance Act, 2005, inserted sub-section (1A) to section 115JAA, to grant tax credit in respect of MAT paid under section 115JB of the Act with effect from assessment year 2006-07.
3. The salient features of MAT credit under section 115JAA as applicable, in respect of tax paid under sections 115JA and 115JB, are as below:
 - (a) A company, which has paid MAT, would be allowed credit in respect thereof.
 - (b) The amount of MAT credit would be equal to the excess of MAT over normal income-tax for the assessment year for which MAT is paid.
 - (c) No interest is allowable on such credit.
 - (d) The MAT credit so determined can be carried forward for set-off for five succeeding assessment years from the year in which MAT credit becomes allowable. The Finance Bill, 2006, has proposed that credit in respect of MAT paid under section 115JB can be carried forward upto seven succeeding assessment years (hereinafter referred to as the 'specified period').
 - (e) The amount of MAT credit can be set-off only in the year in which the company is liable to pay tax as per the normal provisions of the Act and such tax is in excess of MAT for that year.
 - (f) The amount of set-off would be to the extent of excess of normal income-tax over the amount of MAT calculated as if section 115JB had been applied for that assessment year for which the set-off is being allowed.

ACCOUNTING TREATMENT

Whether MAT credit is a deferred tax asset

4. An issue has been raised whether the MAT credit can be considered as a deferred tax asset within the meaning of Accounting Standard (AS) 22, Accounting for Taxes on Income, issued by the Institute of Chartered Accountants of India. In this context, the following definitions given in AS 22 are noted:

“Timing differences are the differences between taxable income and accounting income for a period that originate in one period and are capable of reversal in one or more subsequent periods.”

“Accounting income (loss) is the net profit or loss for a period, as reported in the statement of profit and loss, before deducting income tax expense or adding income tax saving.”

“Taxable income (tax loss) is the amount of the income (loss) for a period, determined in accordance with the tax laws, based upon which income tax payable (recoverable) is determined.”

5. From the above, it is noted that payment of MAT, does not by itself, result in any timing difference since it does not give rise to any difference between the accounting income and the taxable income which are arrived at before adjusting the tax expense, namely, MAT. In other words, under AS 22, deferred tax asset and deferred tax liability arise on account of differences in the items of income and expenses credited or charged in the profit and loss account as compared to the items of income that are taxed or items of expense that are allowed as deduction, for the purposes of the Act. Thus, deferred tax assets and deferred tax liabilities do not arise on account of the amount of the tax expense itself. In view of this, it is not appropriate to consider MAT credit as a deferred tax asset for the purposes of AS 22.

Whether MAT credit can be considered as an ‘asset’

6. Although MAT credit is not a deferred tax asset under AS 22 as discussed above, yet it gives rise to expected future economic benefit in the form of adjustment of future in-

come tax liability arising within the specified period. A question, therefore, arises whether the MAT credit can be considered as an ‘asset’ and in case it can be considered as an asset whether it should be so recognised in the financial statements.

7. The Framework for the Preparation and Presentation of Financial Statements, issued by the Institute of Chartered Accountants of India, defines the term ‘asset’ as follows:

“An *asset* is a resource controlled by the enterprise as a result of past events from which future economic benefits are expected to flow to the enterprise.”

8. MAT paid in a year in respect of which the credit is allowed during the specified period under the Act is a resource controlled by the company as a result of past event, namely, the payment of MAT. MAT credit has expected future economic benefits in the form of its adjustment against the discharge of the normal tax liability if the same arises during the specified period. Accordingly, MAT credit is an ‘asset’.

9. According to the Framework, once an item meets the definition of the term ‘asset’, it has to meet the criteria for recognition of an asset so that it may be recognised as such in the financial statements. Paragraph 88 of the Framework provides the following criteria for recognition of an asset:

“88. An asset is recognised in the balance sheet when it is probable that the future economic benefits associated with it will flow to the enterprise and the asset has a cost or value that can be measured reliably.”

10. In order to decide when it is ‘probable’ that the future economic benefits associated with the asset will flow to the enterprise, paragraph 84 of the Framework, *inter alia*, provides as below:

“84. The concept of probability is used in the recognition criteria to refer to the degree of uncertainty that the future economic benefits associated with the item will flow to or from the enterprise. The concept is in keeping with the uncertainty that characterises the environment

in which an enterprise operates. Assessments of the degree of uncertainty attaching to the flow of future economic benefits are made on the basis of the evidence available when the financial statements are prepared.”

11. The concept of probability as contemplated in paragraph 84 of the Framework relates to both items of assets and liabilities and, therefore, the degree of uncertainty for recognition of assets and liabilities may vary keeping in view the consideration of ‘prudence’. Accordingly, while for recognition of a liability the degree of uncertainty to be considered ‘probable’ can be ‘more likely than not’ (as in paragraph 22 of Accounting Standard (AS) 29, ‘Provisions, Contingent Liabilities and Contingent Assets’) for recognition of an asset, in appropriate conditions, the degree may have to be higher than that. Thus, for the purpose of consideration of the probability of expected future economic benefits in respect of MAT credit, the fact that a company is paying MAT and not the normal income tax, provides a *prima facie* evidence that normal income tax liability may not arise within the specified period to avail MAT credit. In view of this, MAT credit should be recognised as an asset only when and to the extent there is convincing evidence that the company will pay normal income tax during the specified period. Such evidence may exist, for example, where a company has, in the current year, a deferred tax liability because its depreciation for the income-tax purposes is higher than the depreciation for accounting purposes, but from the next year onwards, the depreciation for accounting purposes would be higher than the depreciation for income-tax purposes, thereby resulting in the reversal of the deferred tax liability to an extent that the company becomes liable to pay normal income tax.
12. Where MAT credit is recognised as an asset in accordance with paragraph 11 above, the same should be reviewed at each balance sheet date. A company should write down the carrying amount of the MAT credit asset

to the extent there is no longer a convincing evidence to the effect that the company will pay normal income tax during the specified period.

Presentation of MAT credit in the financial statements

Balance Sheet

13. Where a company recognises MAT credit as an asset on the basis of the considerations specified in paragraph 11 above, the same should be presented under the head ‘Loans and Advances’ since, there being a convincing evidence of realisation of the asset, it is of the nature of a pre-paid tax which would be adjusted against the normal income tax during the specified period. The asset may be reflected as ‘MAT credit entitlement’.
14. In the year of set-off of credit, the amount of credit availed should be shown as a deduction from the ‘Provision for Taxation’ on the liabilities side of the balance sheet. The unavailed amount of MAT credit entitlement, if any, should continue to be presented under the head ‘Loans and Advances’ if it continues to meet the considerations stated in paragraph 11 above.

Profit and Loss Account

15. According to paragraph 6 of Accounting Standards Interpretation (ASI) 6, ‘Accounting for Taxes on Income in the context of Section 115JB of the Income-tax Act, 1961’, issued by the Institute of Chartered Accountants of India, MAT is the current tax. Accordingly, the tax expense arising on account of payment of MAT should be charged at the gross amount, in the normal way, to the profit and loss account in the year of payment of MAT. In the year in which the MAT credit becomes eligible to be recognised as an asset in accordance with the recommendations contained in this Guidance Note, the said asset should be created by way of a credit to the profit and loss account and presented as a separate line item therein. □