VOLUME 59 | No. 10 | APRIL 2011 | ₹ 100

SET UP BY AN ACT OF PARLIAMENT

THE CHARTERED ACCOUNTANT JOURNAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

"I rise to present the Union Budget for 2011-12. We are reaching the end of a remarkable fiscal year. In a globalised world with its share of uncertainties and rapid changes, this year brought us some opportunities and many challenges as we moved ahead with steady steps on the chosen path of fiscal consolidation and high economic growth."

Union Budget Speech by Finance Minister of India, Shri Pranab Mukherjee on February 28, 2011.

"I rise to present the first Budget of a free and independent India. This occasion may well be considered an historic one and I count it a rare privilege that it has fallen to me to be the Finance Minister to present this Budget. While I am conscious of the honour that is implied in this position, I am even more conscious of the responsibilities that face the custodian of the finances of India at this critical juncture. I have no doubt that in the discharge of my responsibilities I may count on the sympathetic and wholehearted co-operation of every Hon'ble Member in this House."

First Union Budget Speech by first Finance Minister of India Shri R. K. Shanmukham Chetty on November 26, 1947.

UNION BUDGET 2011-2012

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THE CHARTERED ACCOUNTANT

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Budget 2011-12 to Aid Resurgent India

The Union Budget 2011-2012 has been presented at a time when the Indian economy is heading towards a high growth trajectory despite some formidable challenges. In this scenario, the Finance Minister Mr. Pranab Mukherjee has done a good balancing act, particularly when he was facing the daunting task of stimulating the economy, keeping the inflationary expectations under check and at the same time boosting public finances. Overall, the Budget appears to be quite neutral, without many surprises. The Budget is of course positive but thinly spread. The good news has been: no big changes in headline rates of taxation. The bad news: no big changes on outstanding reforms except for just commitment for the same.

Although the continued thrust on infrastructure along with agriculture and education sectors is expected to provide significant impetus to economic growth in the medium-term, measures to control inflation in the immediate future were missing in the budget announcements. There is nothing negative in terms of certain apprehensions many economic observers had, as the Budget left the central excise duty untouched; aimed at moderate growth in government expenditure; allowing foreign money through the MF route; increase in long term infrastructure bonds limit for the FIIs which should boost infrastructure investment and also improve the composition of flows financing the current account deficit; besides reducing corporate surcharge in an attempt to further move towards the DTC framework.

The Finance Minister has proposed to contain the deficit at 4.6 per cent of the GDP from 5.1 per cent and have a growth of 9 per cent for the next year. This fiscal deficit target is quite aggressive and would be a big challenge for the Government, specially because it has not tried to achieve it through mobilisation of taxes but by revenue buoyancy — with both direct and indirect taxes revenues rising by 17.9 per cent to ₹6.64 trillion, reduction in subsidies by 12.5 per cent to ₹1.43 trillion and reining in other non-planned expenditure related to social services and capital nature besides disinvestments and moderate growth in planned expenditure by 11.8 per cent to ₹4.41 trillion. As it sets a lower deficit, the Budget is not expansionary, and does not conflict with the Reserve Bank of India's measures to tame inflation, at least in intent. Continuing its focus on the fiscal consolidation, the Budget has set the rolling targets at 4.1 per cent and 3.5 per cent for FY13 and FY14 respectively. Moreover, the decision to introduce an amendment to the FRBM Act, laying down the fiscal road map for the next five years during the course of the year reiterates Government's commitment towards fiscal prudence in the years to come.

There have been announcements of various new policies to be implemented throughout the year, namely, DTC, GST, Insurance bill, Banking license clarity, Cash subsidies for kerosene and fertilisers, etc. This shows that the whole budget exercise is to primarily look at the macro figures and then await the implementation of the various policies throughout the year.

The underperformance of agri-culture has left the country vulnerable to frequent bouts of food inflation. And, as the key trigger to the recent spike in inflation was food items, initiating agricultural reforms was critical. The Budget takes some baby steps in this direction. However, more could have been done on the agriculture front by raising allocations and initiating decisive marketing reforms to curb retail margins. Interest grants on agriculture loans increased by one percentage point. Cold storage projects and investment in new fertiliser projects in effort to enhance crop productivity and realising supply bottlenecks in agriculture will be aided alongside Nabard's increase in capital base.

The 2011 Union Budget shows positive potential for the banking sector with increasing opportunities for banks and financial services and focus on fiscal growth and consolidation.

A major concern had been the rising current account deficit, which climbed to 4.1 per cent of GDP in the second quarter of this fiscal, mainly because of sharp decline in foreign direct investment and the volatility of short-term flows for financing it. The volatility of inflows, when combined with a high current account deficit, makes India vulnerable to currency fluctuations in any event of capital flight. As such, the Budget has made a very positive move by raising the limit on foreign participation in the corporate bond market by US $ 20 billion. Attracting long-term foreign funds to the bond market will go a long way in improving the composition of foreign inflows besides attracting money into the infrastructure sector. However, Government could have helped in further improving the investment climate, had it announced additional steps to remove procedural bottlenecks and uncertainties, which delay investment decisions.

On the inclusiveness front, the Government has rightly inflation-indexed its flagship MGNREGA scheme so as to ensure stability in real wages. But, the utility of the scheme could have been multiplied had it included activities that create durable infrastructure and raise productivity in agriculture.

From the accountancy profession's perspective, general debate about the Budget is almost over. And now it is time for the accountants to sit up and take stock of the consequent new changes and challenges pertaining to their area of activity in detail and move on with professional panache for which they are known for.

Overall, the Budget 2011-2012 has aimed at giving a sustainable shape to a resurgent India. However, despite the strong performance of the economy in 2010-2011, the outlook for 2011-2012 is clouded by stubborn and persistently high inflation, and rising external risks. It is hoped that Budget 2011-2012 will help unleash the potential of the country to shift to double digit growth trajectory.

Editorial Board
ICAI - Partner in Nation Building

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UNION BUDGET 2011-2012

Dear friends,

When the first Finance Minister of India, Shri R. K. Shanmukham Chetty, presented the first budget of the country soon after our independence, on 26th November, 1947, he was *conscious of the responsibilities that face*(d) *the custodian of the finances of India at this* (that) *critical juncture.* He, therefore, was *fully conscious of the fact that any policy of stabilisation must aim not merely at the increase of production of both consumer and producer goods but also at the pegging of money incomes at an agreed and accepted level so that the increased volume of trading resulting from the increase of production may neutralise the inflationary effects of the large volume of uncovered money income.* For him, if a policy was *to be carried out successfully, it would require an appreciation of the situation by labour and its wholehearted co-operation.*

Now when the present Finance Minister of India Shri Pranab Mukherjee presented the Budget 2011-2012, amidst *uncertainties and rapid changes* added with *some opportunities and many challenges* and economy *back to its pre-crisis growth trajectory,* he talked about his three still-relevant priorities of sustaining high growth trajectory, making development more inclusive, and improving our institutions, public delivery and governance practices. He visualised this Budget as a transition towards a more transparent and result-oriented economic management system in India. In fact, he informs about the endeavours of bringing *administrative procedures concerning taxation, trade and tariffs and social transfers on electronic interface* towards making the procedures *free of discretion and bureaucratic delays* and setting a tone for a *vibrant and more efficient economy.*

Project *Parivartan* is making similar endeavours of bringing a hassle-free, efficient and comparatively paperless administrative system in the Institute. In fact, improving the IT-enabled processes scores high on my agenda. We have to walk with the time. Is there an option? Of late, especially since last couple of years, both the government and the corporate sectors have acknowledged our significant contribution in nation-building and have wished we would continue further in the direction. We would do everything possible to consolidate this image of our profession further, and I would personally ensure that our fraternity lives up to its image of independence and integrity to the fullest.

In line with our adherence to autonomy and integrity in principle, let us observe some of the recent significant developments that have brought us further closer to the mission *vis-à-vis* our profession:

Meetings with Regulators/Government Officials

Meeting with Union HRD Minister: Consequent to our last meeting with Union HRD Minister Shri Kapil Sibal in January 2011, we were recently invited by Ms. Vibha Puri Das, Secretary of Department of Secondary & Higher Education in the Ministry of HRD, for a discussion on implementation of accounting standards in educational institutions. Meeting was attended by myself along with the ICAI Vice-President CA. Jaydeep Narendra Shah and past-President CA. Amarjit Chopra among others from ICAI and senior officials from the Ministry, which included PS to HRD Minister Shri V. Uma Shankar, Financial Advisor and Additional Secretary Shri S. K. Ray, and Joint Secretary Shri Amarjit Singh. We made a brief presentation titled *Role of Professionals: Paving way for Excellence in Higher Education* on our role and measures we would take to enhance transparency and accountability. We informed the Ministry how we plan to increase the role of CA professionals by involving them in teaching subjects like IFRS, taxation, auditing, etc. The Ministry has expressed its keen interest in implementing all relevant accounting standards in the context of all central as well as state universities. It further expressed its wish for a workshop of Vice-Chancellors of universities to be conducted for spreading awareness on latest professional areas of concerns. It was proposed to form a working group where there would be four nominations from the Ministry, two each from higher education and schools respectively. I would like to specifically thank Shri Shankar for this praiseworthy effort.

Meeting with Secretary, Department of Financial Services: It was matter of satisfaction for us that I along with past-President CA. Amarjit Chopra recently met Shri Shashi Kant Sharma, Secretary, Department of Financial Services at the Ministry of Finance. The meeting was quite cordial, where Shri Sharma expressed his keen interest in understanding the procedure being followed at present in the appointment of statutory auditors in public-sector banks. He was quite impressed by our organisational structure and our impeccable record in rendering services to society and showed his willingness to meet the members

of our Council. Among others, appointment of single tax auditor for the whole bank and guidelines on managing risks and code of conduct in outsourcing of financial services covering outsourcing of internal audit were also discussed.

I am also pleased to inform here that the State Bank of India has decided not to implement its proposal of appointment of single-tax auditor for the whole bank and has instead agreed to revert to the system which was in vogue last year.

Submission of Report on Convergence to MCA: We have submitted a preliminary report to the Ministry of Corporate Affairs, which was prepared by a study group formed in the Institute in response to a request made by the Ministry to us to carry out an in-depth study to locate issues involved in convergence between Companies Bill, IFRS, GST and DTC, and to prepare a background material clearly indicating the purpose and deliverables for all the regulators and stakeholders.

Discussion on Issues related with e-Filing at CPC: Our Central Council colleague and Chairman of Direct Tax Committee of the Institute, CA. Sanjay K. Agarwal, recently visited Centralised Processing Centre (CPC) in Bengaluru and had an interaction with the Commissioner of Income Tax, CPC, Shri Sanjay Verma. During the discussion, CA. Agarwal pointed out the problems associated with e-filing and processing of returns. He also presented a proposal to set up groups to study the specific problems related to e-filing and possible solutions to such problems. This interactive session was followed by a special address of Shri Verma in the Bengaluru Branch of SIRC of the Institute.

Meeting with CBDT Chair: This is to inform our stakeholders that I along with the ICAI Vice-President CA. Jaydeep N. Shah, our Central Council colleague CA. Sanjay K. Agarwal and the ICAI Secretary Shri T. Karthikeyan met the Chairman of Central Board of Direct Taxes, Shri Sudhir Chandra, recently. We offered to the CBDT to assist them in framing rules of Direct Taxes Code Bill, 2010.

International Initiatives

Meetings of IFAC Board and Edinburgh Group: It is important to let you know that I had the opportunity to attend the Edinburgh Group of IFAC and IFAC Board meetings recently in New York along with the ICAI past-President CA. Ved Jain. Among others, status of the IFAC, whether a standard-setting body or an independent body, was discussed, and if various standard-setting Boards of the IFAC are part of the IFAC, which is important with regard to management and control of the IFAC; our ICAI can have similar debate in future. Reconstitution of the Planning and Finance Committee was also discussed in the meeting. At the meeting of the Edinburgh Group, an informal group of IFAC to represent the issues of small and medium practitioners, we took note of the decision of the Planning and Finance Committee to revisit membership dues formula. We also discussed on the preparation of a three-year budget instead of one-year budget.

Joint Programme of ICAEW-ICAI: Our Institute came together with ICAEW with whom we have a qualification recognition arrangement in form of an MoU signed in 2008. In order that more and more of our members could take benefit of the existing arrangement, we along with the ICAEW organised a joint programme in Chennai recently, which aimed at discussing the benefits of the MoU, roadmap to membership and

opportunities for further collaboration between the two institutions. More than 100 participants attended the programme.

Meeting with Australia's Minister-Counsellor: I also happened to meet the Australia's Minister-Counsellor Mr. Matt Crooke recently and, during the meeting, we agreed to work towards a joint exercise on the implementation of IFRS, Australia's delegation to India and the Commonwealth Accounting Forum.

Joint Programme with ISAR-UNCTAD in May: I am pleased to announce that we would be holding a joint programme with ISAR-UNCTAD in May 2011 as part of a country-level roundtable to discuss the measurement methodology for capacity in relation to high-quality corporate reporting in India. We would be keen to provide all-possible support for the said-programme in India.

MCA Secretary Addresses ICAI Council

It is our privilege that Ministry of Corporate Affairs Secretary Shri D. K. Mittal recently came to the Institute and addressed its Central Council Meeting. While praising the endeavours and steps that the profession has taken so far, he expressed his appreciations over the positive role of the profession. He hoped that the Institute will continue to contribute in the national growth and economy. During the meeting, I on behalf of the Council requested Shri Mittal that the revised Scheduled VI should be made applicable to all companies whose financial year commences on or after 1st April, 2011, to which he readily agreed. This reflects on not only his grasp over the issue concerning corporates and professionals alike, but also on his decision-making prowess and proactive attitude. He advised us to explore the opportunities available to the Indian CAs in the African countries and also to enter into MoU with accounting bodies in that part of the world. I am sure, Shri Mittal and his Ministry will continue to support the vision and mission of our profession and its cause in future too. During the meeting, the Goverment nominees Shri Anil Agarwal and Shri Siddharth Birla also praised the noteworthy contributions made by the Institute for the Indian economy and for accounting profession in India.

Interactive Meeting Focusing Services of the Institute

All stakeholders of the Institute will be happy to know that, very recently in my interactive meeting with all Secretaries to the Committees and Heads of the Departments of the ICAI, I happened to discuss my Action Plan 2011-2012 and the possible methodologies on how to implement that in the Institute. The thrust of the meeting was also to increase the services offered to our members and students using the IT-enabled systems. It was decided to make the CPE programmes more useful, create infrastructure for the Institute's Branches, increase students' registration, expedite our disciplinary mechanism further, strengthen examination systems, and to chiefly focus on the implementation of IFRS, DTC and GST. I further suggested them that they should play a proactive and key role in bringing issues before their respective Committees.

The meeting was also addressed by the Chairman of the Singapore Indian Chamber of Commerce and Industry, CA. R. Narayanamohan, who informed the participants about the industry functions and economic environment in Singapore. He also commented on the professional opportunities available in Singapore and the skill-set required to avail the same.

Infrastructural Initiatives

Another Hardayal Library Renovated in Delhi: I am happy to inform that the Institute, as a part of its social responsibility and to provide library facilities to CA students, has undertaken to manage and maintain Hardayal Library at six locations in Delhi/New Delhi in collaboration with the Municipal Corporation of Delhi. The first library was inaugurated at the Chandni Chowk. Now, the second library has also been inaugurated by Hon'ble Mayor of Delhi, Shri Prithvi Raj Sawhney, in the presence of Shri O. P. Kohli, former Member of Parliament (Rajya Sabha), Dr. Harsh Vardhan, former Minister of Health & Education, Government of Delhi, Shri Devender Kumar, Municipal Councillor, and Shri Yashpal Arya, Secretary, Hardayal Municipal Library. From ICAI, I had the privilege to witness this inauguration along with my Central Council colleague CA. Vinod Jain and the NIRC Chairman CA. Rajesh Sharma among others. The facilities made available at the library include an air-conditioned hall with well-equipped library and spacious reading area.

Bhoomi Poojan at Amritsar Branch: It is a matter of satisfaction that *bhoomi poojan* of the land purchased by the Amritsar Branch was recently performed, which I along with the ICAI Vice President CA. Jaydeep N. Shah and my Central Council colleagues CA. Pankaj

Tyagee, CA. Charanjot Singh Nanda and CA. Naveen N. D. Gupta attended. Shri Navjot Singh Sidhu, the Lok Sabha member from Amritsar, was the chief guest.

Purchase of Land for Ernakulam Branch: I along with the ICAI Vice President CA. Jaydeep N. Shah visited the Ernakulam Branch of SIRC with regard to the execution of the agreement for the purchase of land for the Branch. We also addressed the members at the Branch and attended the Seminar on Direct Tax Code organised by the Branch.

Initiatives for Members

It has been my prime agenda to empower our members and strengthen their bonds with corporate sector. Learning opportunities will have to be increased and consolidated. In context of challenging economic scenario ahead, it becomes all the more necessary that our members play a proactive role in various capacities including advisors, consultants, auditors, etc., and help their organisations in attaining growth. I strongly feel that our members must have strong bonds with trade and industry associations.

Special Examinations for Members of Foreign Accounting Bodies: Towards our professional recognition internationally, we had entered into MRAs/ MoUs with ICAEW, ICA Australia, CPA Australia, CPA Ireland and CICA in the past. With all necessary policies ready under the MRAs/MoUs, we are, therefore, ready to carry out registration and conduct special examinations with effect from July 2011 for the members of the above-said five accounting bodies who want to become members of the ICAI. Study materials have already been released in this regard. Details regarding the examinations are printed elsewhere in the Journal.

ICAI-ARF as Research Centre: Accounting Research Foundation (ARF), established by the ICAI in 1999 as a core research body with facilities to undertake research in the area of accounting, auditing, capital markets, fiscal policies, monetary policies, etc., is ready to enroll research scholars to conduct research in the above-said fields related to accounting. We are also amidst the process of entering into agreements with top universities to facilitate and award research scholars PhD degree for their research under the ARF.

Workshop on Indirect Tax Proposals: I am happy to acknowledge that we recently organised a workshop on Indirect Proposals of the Union Budget 2011-2012 at our head office, which was addressed by the CBEC Chairman Shri S. Dutt Majumder. Among others, Shri Y.G. Parande, Member, Shri V. K. Garg, Joint Secretary (TRU), and Shri Roopam Kapoor, Officer on Special Duty participated from the CBEC. Participants interacted with the members and experts from the field of indirect taxes. My Central Council colleague CA. Bhavna Doshi gave a presentation on core issues arising out of Union Budget 2011-2012.

Certificate Courses: With a goal to facilitate our members with contemporary, advanced and professional knowledge, we started many certificate courses for post-qualification skill development of our members. I wish to inform you that new batches of Certificate Course on International Taxation, Enterprise Risk Management and Arbitration are scheduled to commence in various cities across the country very soon. The details about the same are published elsewhere in the Journal. I urge all the members to take benefit of all the Certificate Courses and all other courses conducted by the Institute. I am also pleased to inform that new Certificate Courses on 'Indirect Taxes' and 'Concurrent Audit' were approved and would be launched very soon.

New Edition of Guidance Note on Audit of Banks: To help our members in carrying out quality bank audits, we have recently released the 2011 edition of the Guidance Note on Audit of Banks to give effect to the important regulatory changes brought out by the RBI since 2009 on critical aspects of banking operations, generally, and the financial statements of banks, in particular. Change in auditing standards has also been incorporated in the Guidance.

Initiatives for Students

Changed Eligibility Criteria for CA Course: It is a matter of delight to inform that the Ministry of Corporate Affairs has conveyed its approval to the Resolution passed by our Council under Regulation 205 to mitigate the difficulties faced by those students who have completed diploma or vocational courses and are pursuing graduation course. Now, students who have not passed 12th but have completed two years of higher education shall be able to pursue the CA Course. I would like to place on record my appreciations to Dr. T. V. Somanathan, Joint Secretary, Ministry of Corporate Affairs, for expediting the approval in the minimum-possible time. I am

sure Dr. Somanathan will continue to support our endeavours towards taking the profession to greater heights.

Campus Placement Programme for Newly-Qualified CAs: Under campus placement organised in 2011-2012, so far 5,375 candidates have participated across the country. Orientation Programmes were organised at 17 centres across India. Prominent organisations including public limited companies, public sector undertakings, banks, etc., participated seeking more than 500 candidates and selected the candidates offering lucrative compensations. Job offers were made to 535 candidates at the placement programmes held in the first phase of campus interviews at smaller centres, and the highest salary offered was ₹9.05 lakh per annum by the ICICI Bank. In its second phase, similar programmes were organised at six bigger centres, i.e. Bangalore, Chennai, Hyderabad, Kolkata, Mumbai and New Delhi. 143 recruiting entities participated and job offers were made to 926 candidates. Highest salary under international posting was made by Olam International, i.e. US $ 120,000 to US $ 150,000 per annum and, under domestic posting, it was offered by ITC (Metro), i.e. ₹13.92 lakh per annum.

Towards MoU with University of Madras: To provide our students and members with a great learning opportunity, I along with the ICAI Vice-President CA. Jaydeep N. Shah met the University of Madras Vice-Chancellor Col. (Dr.) G. Thiruvasagam recently. We discussed about entering into an MoU to provide opportunity to our members and students to pursue courses like PhD and Masters and Bachelors in Commerce and Management to be awarded by University of Madras.

Online Examination Portal: Online examination portal has emerged as one of our important success stories with as many as 1,01,546 out of a total of about 2,50,000 students opting for online exam forms for May 2011 and with 66,764 out of about 78,000 students appearing at the final exams.

I would like to unconditionally express my sincere concerns over humanity coming under crisis in Japan due to tsunami devastations and nuclear mishaps. Some of us appear to be worried that this might lead to an economic crisis—but what this present crisis in Japan may lead to in future must be a matter of secondary concern for all of us. Let us first concentrate our efforts on what we can do to reach and help out the people of Japan at present. Let us sincerely hope that the crippled reactor complex in Fukushima would not aggravate further. Later, we should also contemplate over the way we are approaching development. Violence of development using unjust and unethical methods can be fatal, let us understand. Our desire for such an unjust and unethical development will bring in more of such crises to us. We need to be more responsible in defining our vision. Saint-poet Thiruvalluvar, in his *Thirukkural* (Sacred Couplets), offers his wisdom on the sanctity of means of achieving growth: *The wealth acquired with knowledge of the proper means and without foul practices will yield virtue and happiness.* And further on justification of resources, he offers: *(we) should rather avoid than seek the accumulation of wealth which does not flow in with mercy and love.* We can not turn away from our social responsibility. Amount of credit from socialisation on the profit & loss account of our life is too astronomical to be paid back and to turn away. We have to give back. We should do this at least to justify our existence.

Let us as representatives of accountancy profession demonstrate our responsible conduct to the world and our conviction to stick to ethics and integrity. Let us be more responsible in everything we do. Our members must be busy in scheduling and planning their audit work starting from 1st April, which marks the beginning of the audit season. It is business time, folks! Audit season has started and it's time when assessees will rush to their auditors to get their audit done in time and their auditors would work hard and responsibly to meet the deadlines of their clients while rearing to avert any unreasonable delay from their side. It is clearly a challenge all the more for auditors, especially when international crises and upheavals result in instability of financial markets across the world. I am sure our members (auditors) will continue to act responsibly and follow the tradition of integrity and the code of ethics while helping their clients with clarity in disclosures and reporting. Amen!

Best wishes

CA G. Ramaswamy
President, ICAI
March 24, 2011

Journal Content and Presentation Praiseworthy

I am the father of a CA daughter and a regular reader of The Chartered Accountant journal. The contents and their presentation, including the Cover, have improved considerably, particularly over the year. As an avid reader of the journal, I highly appreciate the interesting and informative articles published in the journal.

-Kannan, Chennai

ICAI's prestigious journal The Chartered Accountant is really packed with a wealth of information; besides, the quality of printing as well as the paper is also very good. To compile such vast information is an uphill task, but the Editorial Board has been very ably doing this for years. This is really commendable. However, I feel that more space can be created by doing away with white/blank spaces across the journal and this new space can be utilised for encouraging creative writing by the members, including blogs for CAs, poems or other similar light reading interactive material. A couple of centimeter blank space is found empty on the top as well as bottom of most of the pages of the journal. It is suggested that the same be used to print some good quotations, which will enable our CA fraternity to enrich their language as well as speech.

-CA. Hemant P. Shah

March 2011 Issue was Useful and Informative

The March 2011 issue of the journal was yet another informative and well-presented issue packed with valuable information. It was satisfying to read through the profiles of the new President and Vice-President of the ICAI and the Action Plan for the year 2011-2012. It was equally satisfying to read the report of 61st Annual Function of the ICAI, which updated us on the remarkable achievements of the ICAI in the year gone by. The Editorial was well-written and it effectively summarised the challenges of Indian economy and expectations from the Budget 2011-2012. However, I would like to suggest to print more articles on various aspects Auditing and Corporate Laws, which are not being given adequate coverage in the journal in the past some time.

-CA. S. Jain

I found the article titled 'Performing IT General Control Review' in March 2011 issue quite informative and useful. The author is right when she says that auditors find ERP systems difficult to audit because of absence of visible audit trail and complex interaction and flow of information in application systems. Consequently auditors have to adjust the audit processes and procedures when auditing in such environments. This article helped us to better understand the concept and complications involved in performing IT General Control Review. More articles on similar line should be published in the journal.

-CA. Dipak Trehan

ICAI Needs to be Commended for Convergence

I salute ICAI for choosing the path of Convergence with IFRS rather than adopting the same. By the method of Convergence, we have the room for incorporating our national concerns. The concern of India was raised in the Draft circulation of Accounting Standard 38 related with Agriculture and I appreciate the firm stand taken by the ICAI in this regard. I am sure that with the guidance and support of the ICAI, the accountancy profession in India will ensure full success of the convergence of Indian accounting standards with IFRS and prove to be instrumental in the development of Indian economy in near future.

-CA. Rajay Kumar Aggarwal

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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 those of the respective authors only, and not of the ICAI. The ICAI bears no responsibility of any sort whatsoever in case of any 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, A-29, Sector 62, Noida (UP) - 201309

Meeting with CBDT Chairman

ICAI President CA. G. Ramaswamy, Vice President CA. Jaydeep N. Shah, Council member Sanjay Kumar Agarwal and Secretary Mr. T. Karthikeyan with CBDT Chairman Mr. Sudhir Chandra during a meeting in New Delhi. (March 17, 2011)

CBEC Chairman Visits ICAI

CBEC Chairman Mr. S. Dutt Majumder launches the background material for the New Certificate Course of Indirect Taxes of ICAI in the presence of ICAI President CA. G. Ramaswamy, Vice President CA. Jaydeep N. Shah, Past President CA. Amarjit Chopra, Council members CA. Bhavna Doshi, CA. Ravindra Holani, CA. P Rajendra Kumar, CA. Madhukar N. Hiregange and other dignitaries in the ICAI premises in New Delhi. (March 17, 2011)

Meeting with Australia's Designate Minister-Councelor

ICAI President CA. G. Ramaswamy presents a memento to Designate Minister-Counselor (Economic), Australian High Commission Mr. Matt Crooke during a meeting at ICAI Headquarters in New Delhi. (March 1, 2011)

Meeting with the ICAEW Vice President

ICAI President CA. G. Ramaswamy with ICAEW Vice President Mr. Mark Spofforth and ICAEW Head of New Business Opportunities Mr. Justin West during a meeting at ICAI Headquarters in New Delhi. Additional Secretary, ICAI Mr. Rakesh Sehgal was also present on the occasion. (March 24, 2011)

Foundation Laying of Amritsar Branch Building

ICAI President CA. G. Ramaswamy and ICAI Vice President CA. Jaydeep N. Shah lay the foundation stone of the Amritsar Branch building of ICAI in the presence of the Member of Parliament from Amritsar Mr. Navjot Singh Sidhu after performing 'Bhoomi Pujan'. Council Member CA. Pankaj Tyagee, Amritsar Branch Chairman CA. S. Gupta and other dignitaries were also present on the occasions. (February 23, 2011).

Orientation Programme

ICAI President CA. G. Ramaswamy addresses the Orientation Programme of newly qualified Chartered Accountants in the presence of Council members CA. Vinod Jain, CA. K. Raghu, CA. Pankaj Tyagee and other dignitaries in New Delhi. (March 10, 2011)

Meeting with Secretary MCA

ICAI President CA. G Ramaswamy greets Secretary, Ministry of Corporate Affairs Mr. D.K Mittal as ICAI Vice President CA. Jaydeep N. Shah and ICAI Secretary Mr. T. Karthikeyan look on during a meeting in New Delhi. (March 17, 2011)

Secretary MCA Addresses ICAI Council

Secretary, Ministry of Corporate Affairs Mr. D.K. Mittal addresses the Council of the ICAI as ICAI President CA. G. Ramaswamy and ICAI Vice President CA. Jaydeep N. Shah look on. (March 23, 2011)

Meeting with ICAI Officials

Chairman, Singapore Indian Chamber of Commerce and Industry Mr. R. Narayanamohan addresses the ICAI's Secretaries to Committees and Heads of Departments in the presence of ICAI President CA. G. Ramaswamy. (February 26, 2011)

Branch Coordination Meet, Mumbai

ICAI President CA. G. Ramaswamy accepts a memento from WIRC Chairman CA. Shriniwas Y. Joshi as ICAI Vice President CA. Jaydeep N. Shah and WIRC Treasurer CA. Julfesh M. Shah applaud during the Branch Coordination Meet in Mumbai (March 15, 2011)

Seminar in Hyderabad

ICAI President CA. G. Ramaswamy inaugurates a seminar on Bank Branch Audit in Hyderabad in the presence of ICAI Vice President CA. Jaydeep N. Shah, Council Members M. Devaraja Reddy, CA. Atul C. Bheda and other dignitaries. (March 16, 2011)

Purchase of Land for Ernakulam Branch

ICAI President CA. G. Ramaswamy and ICAI Vice President CA. Jaydeep N. Shah along with other dignitaries on the occasion of execution of agreement for purchase of land for Ernakulam branch of ICAI. A Member Coordination Meet and seminar on Direct Tax Code was also organised coinciding with the occasion. (February 25, 2011)

Significant Amendments made in the Finance Bill, 2011 passed by the Lok Sabha

Income Tax

- Section 40A (9) is proposed to be amended to exclude the proposed Section 36(1)(iva) relating to employers contribution to the pension account of employee from the applicability of disallowance under Section 40A(9).
- The scope of benefit of concessional rate of tax under Section 115BBD is proposed to be extended to dividends received by an Indian Company from a foreign company in which it holds 26 per cent or more in nominal value of equity share capital.
- Clauses (iv), (v) and (vi) of Explanation 1 Section 115JB(2) relating to reduction of profits eligible for deduction under Sections 80HHC, 80HHE and 80HHF have been omitted with retrospective effect from Assessment year 2005-2006 being the year in which the above deductions were completely phased out.

Service Tax

- The new levy on health services withdrawn in entirety both in respect of services provided by hospitals as well as by way of diagnostic tests.
- Point of taxation Rules which were to come into force from 1st April, 2011 deferred till 30th June, 2011. The said Rules will shift the basis for payment of service tax from cash to accrual.

Central Excise Duty

Relief for branded readymade garment manufacturers

- Abatement on retail sale price of branded readymade garments and made-ups of textiles increased from 40 per cent to 55 per cent.
- Deeming provision being introduced to enable manufacturers to pay duty on the wholesale price at which they make sale to the brand owner. The brand owner to pay the additional duty, if any, as and when he affixes the RSP on the garment or made-up.
- Returned goods not exceeding 10 per cent of the value of clearances of the unit in the preceding financial year to be exempted from excise duty with no necessity of physical verification of stock of such returned goods by Central Excise Officers.

1 per cent excise duty levy on 130 items

- RSP based assessment with an abatement of 35 per cent has been extended to many of the items covered under 1 per cent excise duty levy. Any waste, scrap or parings arising in the course of manufacture of these items exempted from duty.
- Procedural relaxations being made to provide a simplified regime for taxpayers exclusively manufacturing these items:
  - (i) Physical verification of premises would not be necessary for new registrants;
  - (ii) Visits to such units by Central Excise officers would be permitted only with due authorisation as in the case of SSI units;
  - (iii) Return filing only on quarterly basis; and
  - (iv) Return format would be simplified.
- Unconditional 1 per cent excise duty (and CVD) levied on mobile handsets including cellular phones in addition to 1 per cent NCCD already leviable.

Customs Duty

- New provision to be inserted in the Customs Tariff Act to enable the Central Government to extend anti-dumping duty imposed on an article in cases of circumvention.
- Certain types of coking coal imported for the manufacture of iron or steel exempt from customs duty.
- Basic customs duty on CKD kits containing a pre-assembled engine, gear box or transmission assembly imported for the manufacture of vehicles to be reduced from 60 per cent to 30 per cent.■

Did You Know?

The First Budget (Year 1947-1948) of free and independent India was presented by Hon'ble Shri R.K. Shanmukham Chetty, Minister for Finance on 26th November, 1947. He had budgeted Revenue receipts of ₹ 171.15 crore (Tax revenue ₹ 80.00 crore+ Non tax revenue ₹ 91.15 crore) for a period of 7.5 months starting from 15th August, 1947 whereas proposed Revenue receipts for 2011-2012 as presented by Hon'ble Shri Pranab Mukherjee, Minister for Finance, are ₹ 789892.00 crore (Tax revenue ₹ 664457.00 crore + Non tax revenue ₹125435.00 crore). Total budgeted Expenditure for the year 1947-1948 was ₹197.39 crore (Defence Expenditure ₹ 92.74 crore + Civil Expenditure ₹ 104.65 crore) in comparison to ₹ 1257729.00 crore expenditure (Non-Plan Expenditure ₹ 816182.00 crore + Plan Expenditure ₹ 441547.00 crore) budgeted for the year 2011-2012.

The revenue deficit for the year 1947-48 was ₹ 26.24 crore whereas for the year 2011-2012 it is ₹ 307270.00 crore.

Shri R. K. Shanmukham Chetty (1892–1953) was the first Union Finance Minister of India. A graduate from the Madras Christian College, he has been a member of the Central Legislative Assembly during 1923-1931. He later held the positions of its Deputy President and President during 1931-1933 and 1933-1934 respectively. In 1952, Shri Chetty became a member of the Madras Legislative Council. He was the Diwan of Cochin State during 1931-1945, which was marked by an all-round administrative progress. Born in Coimbatore, he also was the founder-President of The Indian Chamber of Commerce & Industry, Coimbatore. ■

Know Your Ethics*

Ethical Issues in Question-Answer Form

Q. What is 'professional or other misconduct'?

A. 'Professional or other misconduct' refers to an action or omission listed out in the two schedules of the CA Act, 1949. However, this does not purport to be a comprehensive definition as the scope of this term is expanding in view of the power conferred under the Act on the Director (Discipline) to enquire into the conduct of members under any other circumstances.

Q. What is the distinction between the two Schedules?

A. The two Schedules are distinguished on the basis of gravity of misconduct described therein. The misconduct listed in the Second Schedule is understood to be grave and serious prescribing higher punishment.

Q. Can a Member in practice render 'Management Consultancy and other Services'?

A. Yes, the areas permitted under the 'Management Consultancy and other Services' have been specified by the Council (appearing at pages 103-104 of the Code of Ethics, 2009) pursuant to Section 2 (2)(iv) of the CA Act, 1949.

Q. Can a chartered accountant undertake practice after getting the CA final pass certificate?

A. No, a chartered Accountant requires the Certificate of Practice (CoP) issued by the Institute after getting the final pass certificate to practice as a chartered accountant.

Q. Whether a member in practice permitted to undertake the management of NRI funds?

A. No, a member in practice is not permitted to undertake such services as it is not covered under 'Management Consultancy and other Services' specified by the Council.

Q. Can a chartered accountant in practice provide 'Portfolio Management Services' (PMS)?

A. No, as the 'Management Consultancy and other Services' expressly bars the activities of broking, underwriting and portfolio management.

Q. Can a chartered accountant in practice work as a 'collection agent'?

A. No, a chartered accountant in practice cannot work as a 'collection agent' as, the Management Consultancy and other Services' specified by the Council, do not permit such engagement.

Q. Whether the auditor of a Subsidiary Company can be a Director of its Holding Company.

A. The auditor of a Subsidiary Company can't be a Director of its Holding Company, as it will affect the independence of an auditor.

Q. Whether a member can take up AMFI (Association of Mutual Funds in India) Course and become a Member of the Association.

A. Members from Industry as well as from Practice can pursue the AMFI (Association of Mutual Funds in India) Course. However, as to the question whether a member can be registered with it so as to take the role of Financial Intermediary, it has been decided that members in Industry/ otherwise not in practice can obtain the membership by registering them with a mutual fund /Association whereas members in practice cannot do so whether holding full time COP or Part time COP.

Q. Whether the permission of Council is necessary for a chartered accountant in practice to engage in share trading.

A. Engagement by a member in practice in the business of buying and selling shares amounts to be 'any business' within the meaning of Clause(11) of Part-I of the First Schedule to the CA Act and hence the prior permission of the Council is required.

Q. Whether a member while doing Internal Audit of a client can also do tally entry along with manual audit to the same client.

A. It is prohibitive to undertake the assignments of Internal Audit of a client and Tally entry of the Accounts, simultaneously being violative of the provisions of the 'Guidance Note on Independence of Auditors'.

Q. Whether concurrent auditor of a bank can also undertake quarterly review of the same bank.

A. Concurrent audit and the assignment of Quarterly review of the same entity cannot be taken simultaneously as the concurrent audit being a kind of internal audit and the quarterly review being a kind of Statutory audit undertaken simultaneously are prohibited under the provisions of 'Guidance Note on Independence of Auditors'.

Q. Whether a chartered accountant can undertake the assignment of obtaining Digital Identification Number and Digital Signature Certificate on behalf of his clients.

A. A practising member can obtain Digital Signature Certificate (DSC) on behalf of his clients and may obtain Digital Identification Number (DIN) for his clients.

Q. Whether a firm of Chartered Accountants can print special words 'celebrating 75 years in the profession' on the letter heads and envelopes.

A. Publishing a book by a firm containing its history for the purpose of distributing to clients, associates, friends and well wishers and printing of the words 'Celebrating 75 years in the profession' on special letterheads and envelopes will lead to solicitation of professional work, hence not permissible as per the provisions of Clauses (6) and (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

Q. Whether a chartered accountant can undertake the assignment of system audit of a bank when he has taken Loan from the Bank.

A. Chartered accountants firm cannot accept branch audit of the bank if one of the partners had taken the loan from any branch of that bank. The members should not place themselves in positions, which would either compromise or jeopardise their independence.

Q. Whether a CA Director of a Company should participate in a Board Meeting when the item relating to his client(s) is considered by the Board?

A. Based on the ethical point of view, the CA Director of a company should not participate in board meeting and therefore withdraw himself when the item relating to his client(s) is considered by the Board. ■

* Contributed by the Ethical Standards Board of the ICAI

Accountancy Profession Needs to Play a Unified Leadership Role to Prevent Another Crisis: Ian Ball

International Federation of Accountants (IFAC) CEO, Ian Ball, has been a driving force behind IFAC's ever-evolving role and presence on the world stage. In an exclusive interview with *The Chartered Accountant*, Mr. Ball shares his vision on a range of topics including his role as IFAC CEO, current IFAC initiatives, New Zealand government reform, the relationship between India, ICAI, and IFAC, and the increasing role the accounting profession must play in global economic recovery.

Q 1. How do you describe your role as the Chief Executive Officer of IFAC after a successful stint as Chairman of the International Public Sector Accounting Standards Board (previously the Public Sector Committee)?

Ans. My tenure as Chairman of the Public Sector Committee was an excellent training ground for my current role as CEO, as it gave me a good knowledge of the organisation and its role within our profession. My time as a member of the Nominating Committee gave me a somewhat different, though equally valuable, insight into the organisation.

During my time as CEO, since March of 2002, we have gone through many changes, both in how we operate internally as well as how we interact with our external stakeholders. We have grown substantially, because we have faced greatly increased demand for our services. The recent financial crisis and economic downturn was a time of both challenge and opportunity for IFAC. In my role as CEO, during this time, what has been vital was that I collaborated with accountancy bodies worldwide, with regulators, with standard setters, and with governments to help strengthen and restore the international financial system. During the crisis it has been important for us as the voice of the global profession, to take positions we believe to be in the global public interest – such as the need for greatly enhanced transparency in the public sector.

Q 2. Since your taking over as Chief Executive, IFAC has undergone restructuring. What has been your experience in managing the transition, particularly in evolving consensus amongst the member-bodies and the regulators worldwide?

Ans. During my tenure as CEO, I have participated in the design of the IFAC Reforms and, then, overseen their implementation. The reforms were a series of initiatives designed to strengthen the international auditing and assurance, ethics, and accounting education standard-setting processes, and to ensure they operated in the public interest.

These reforms included the launch of the Member Body Compliance Programme, which requires members and associates to promote, incorporate, and assist in implementing international standards issued by the standard-setting boards IFAC supports, and by the International Accounting Standards Board, and to meet requirements for quality assurance, and investigation and discipline activities.

We have also expanded our support for developing nations, for small- and medium-sized practices and enterprises, for the International Public Sector Accounting Standards Board, and for professional accountants in business.

Managing transitions and consensus among the member bodies always involves open communication and an even exchange of ideas. IFAC's

It is more vital post-crisis than ever before that our profession maintain a unified, leadership role in preventing another crisis by engaging policy makers, G-20 leaders, and others, and by supporting corporate governance principles that encourage transparency and protect all stakeholders.

accomplishments, including its extended reach, have been the best ROI for our members.

Q 3. What are the lessons learned and main strategies that emerged from the recent World Congress of Accountants?

Ans. The theme of this year's Congress — Accountants: Sustaining Value Creation — reflected on how more accountants are taking on strategic and leadership roles, are adding value to the performance of their organisations, and are increasingly being held accountable for business performance. The Congress also reflected on sustainability and integrated reporting, two areas that are of particular interest to our profession.

183 speakers from around the globe addressed issues including ethics, convergence, the role and challenges of small and medium practices, and Islamic finance. Questions that arose included the value of the audit, and the profession's contribution to financial and non-financial reporting in a more sustainable world. Certainly the focus in the Congress on sustainability is something that will have, and is having, a significant impact on what we as an organisation do in the coming years.

Q 4. What is the role that the accounting fraternity can play in the revival and growth of the world economy, particularly post-crisis?

Ans. During the global financial crisis and the aftermath, IFAC has remained focused on the quality of practice and the capacity of our profession by maintaining our commitment to the adoption of high-quality standards, tools, and resources to assist professional accountants across all sectors. Our staff and our standard-setting boards made significant strides, delivering resources to support adoption and implementation of international standards.

It is more vital post-crisis than ever before that our profession maintain a unified, leadership role in preventing another crisis by engaging policy makers, G-20 leaders, and others, and by supporting corporate governance principles that encourage transparency and protect all stakeholders.

Q 5. What is the agenda for further strengthening IFAC to meet the ever-growing expectations of member-bodies, and regulators?

Ans. Our plan for the next four years will focus on governance and sustainability, the development, adoption and implementation of international standards, regulation and public policy, and public sector financial reporting. We will continue our support for small and medium-sized practices. There is an increasing role for IFAC on the world stage and an immediate need for our services. The support of our members and associates is more vital than ever before to make this happen – one global voice for the improvement of global economic well-being.

Q 6. How do you perceive the role of India in IFAC? Why has there been lesser than expected representation of India in IFAC?

Ans. India has always been well represented in IFAC's boards and committees, and will continue to be. It has for many years had a seat on the IFAC Board. At the same time, the demand for seats on our boards and committees is very competitive, so no member body achieves all the positions it would like. As one of the BRIC countries, India has a critical and ongoing role in the shift in global economic development, and IFAC recognises and supports this shift. IFAC has worked closely with ICAI in contributing to the development of accounting standards for small and medium enterprises, which is relevant to both IFAC and India.

Q 7. You were extensively involved in reforms in government accounting in New Zealand. Apart from the accounting aspects, what do you feel are the critical factors in initiating reforms and managing the transformation process?

Ans. In New Zealand, the factors underlying our reforms really apply to any government. They represented

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good management practices — what one would expect to see in any well-managed organisation, public or private. The key to governmental reform in general, is recognising that fundamental change in the performance of government requires changing the incentives facing people within government.

Building the system around an incentive structure that rewards desirable behaviour by managers, and delegates authority according to performance expectations, is critical. The New Zealand system was also designed to create mutually reinforcing incentives. For example, the capital charge encouraged the efficient and effective use of assets and is reinforced by an appropriation process that includes the cost of capital. In New Zealand, as in many other countries, the size of the public sector means that if it is not efficient, it is a drain on overall economic performance.

Critical factors that should encourage any government to move to accrual accounting include:

- Improved financial transparency and reporting
- Improved economic growth
- Increased international investment in developing nations
- Fostering confidence in capital markets
- Consistent and comparable reporting

Reformers need to ensure that the system is driven by understandable, available and high quality information — making transparency, rather than secrecy, the norm. Transparency, in conjunction with clearly specified performance measures, leads to high quality, frequent, and timely financial reporting.

In New Zealand the chief executives and ministers understood their respective roles in the system, and there was a clear framework for resolving detailed implementation problems as they arose. This kept participants in the reform process from being side-tracked by inconsistent decisions or policy resolutions.

"India has always been well represented in IFAC's boards and committees, and will continue to be. It has for many years had a seat on the IFAC Board. At the same time, the demand for seats on our boards and committees is very competitive, so no member body achieves all the positions it would like. IFAC has worked closely with ICAI in contributing to the development of accounting standards for small and medium enterprises, which is relevant to both IFAC and India."

Q 8. What prompted the Government of New Zealand to shift to accrual basis of accounting?

Ans. The move was made as part of a set of changes to enhance the performance of the public sector in New Zealand, which was in turn part of a radical set of reforms to enhance the overall performance of the New Zealand economy. Given the size of the public sector in New Zealand, overall economic performance would be constrained if the public sector did not become more flexible, efficient and effective. It should be emphasised that performance was the objective, and it was recognised that without good information, good management, and good performance were not possible.

Q 9. Was the then system of Government accounting amenable to adoption of accrual basis of accounting? If not, what were the preliminary steps taken by the New Zealand Government for successful implementation of accrual basis of accounting?

Ans. Prior to the change the New Zealand government accounting system was a centralised cash based system, like all others, and was designed to enable programme budgeting and accounting. It was no more amenable to the development of accrual accounting than any other. While there was obviously careful planning for the change at both departmental and whole of government level, a key element of the successful change was the simultaneous (for departments) change to accrual based budgeting and appropriations. Also, critical were the changes to the public sector management system that gave chief executives of departments the necessary authority to implement the changes rapidly.

Q 10. A major concern in the implementation of accrual accounting is to ensure that the opening balance sheet is as complete and accurate as possible. What were the problems faced by the NZ Government in preparation of the opening balance sheet?

Ans. The problems faced by the NZ Government were the same as would be faced by most or all others – a lack of reliable, comprehensive information on the assets and liabilities held by the government. For example, there were different and conflicting records of land ownership by the government. Obviously, there were also valuation issues for assets such as forests, roads, etc. These were solved in a variety of different

ways, including the use of valuation specialists. In some areas, e.g. accounting for assets and liabilities associated with the taxation system, there was a need to significantly upgrade the system of accounting.

Q11. Have you faced any difficulties after implementing accrual accounting in Government? If yes, what kinds of difficulties were faced and what measures were taken to address them?

Ans. Accrual based budgeting; appropriations and accounting were introduced in New Zealand about two decades ago. These changes were part of wider public management reforms, and in some ways the accrual accounting was the easy part. Establishing clear specifications of outputs, and systems for attributing costs to outputs, were more difficult, yet were also critical elements of the overall system.

Q 12. Since New Zealand is one of the few countries that have successfully implemented accrual basis of accounting in government, what would you like to advise to other countries that are in the process of transition to accrual basis of accounting so that they could benefit from your experience?

Ans. Actually, there are many countries that have successfully migrated to accrual based accounting, including Australia, Austria, Canada, Switzerland, the UK, and the United States. Many more are in the process.

The most important advice I would give is that not only should reporting be on an accrual basis but also the budget and appropriations systems. This ensures that a single consistent view of performance drives the system.

I would advise countries that are in the transitional process that the implementation of accrual accounting is a major reform that requires strong political support that has to be sustained over a period of years. It involves a significant investment of human and financial resources. It is important that governments are aware of these variables and plan accordingly. ■

“I would advise countries that are in the transitional process that the implementation of accrual accounting is a major reform that requires strong political support that has to be sustained over a period of years. It involves a significant investment of human and financial resources. It is important that governments are aware of these variables and plan accordingly.”

Plagiarism: A Matter of Growing Concern

[Our journal, The Chartered Accountant, is a means to enhance our members' knowledge and update them on contemporary developments in the area of accountancy and other allied professions and topics of professional interest. We cater this service to all our members, e.g. more than 1,60,000 in number. Our Journal is read by more than 2 lakh readers across India and abroad.]

We receive articles from our authors either on their own or in response to our invitation when we bring out special issues. In the recent past, we have come across the practice of *plagiarism* in some of the submissions by our authors. Contents of some articles have been found to be lifted from resources including books, websites, etc., and presented to us as authors' original work, which is nothing but plagiarism, an infringement of others' intellectual property rights and, therefore, a punishable offence. It is an intellectual crime.

Authors who submit plagiarised work for publication will be strictly proceeded against as per policy and rules of Institute of Chartered Accountants of India and the law of the land. We will also represent such cases to authorities of the organisations where these authors work.

We appeal, therefore, to all our prospective authors not to send a plagiarised work to us for publication and not try to take credit for a work which is not theirs. Any reference of other sources/authors/ content should be duly given within quotes with the name of the source in the body of the submitted articles' text itself. By following this practice, we will essentially show respect towards the creative community which all of us value immensely.

- Editor

LEGAL DECISIONS[1]

DIRECT TAXES

Article 245 of the Constitution of India read with Section 9 of the Income-tax Act, 1961– Extent of Laws made by Parliament and by the Legislature of States

Parliament is constitutionally restricted from enacting legislation with respect to extra-territorial aspects or causes that do not have, nor expected to have any, direct or indirect, tangible or intangible impact(s) on or effect(s) in or consequences for: (a) territory of India, or any part of India; or (b) interests of, welfare of, well-being of, or security of inhabitants of India, and Indian

GVK Industries Ltd. v. Income-tax Officer, March 1, 2011 (SC)(FB)

The Parliament is constitutionally restricted from enacting legislation with respect to extra-territorial aspects or causes that do not have, nor expected to have any, direct or indirect, tangible or intangible impact(s) on or effect(s) in or consequences for: (a) the territory of India, or any part of India; or (b) the interests of, welfare of, well-being of, or security of inhabitants of India, and Indians.

However, the Parliament may exercise its legislative powers with respect to extra-territorial aspects or causes, events, things, phenomena (howsoever commonplace they may be), resources, actions or transactions, and the like, that occur, arise or exist or may be expected to do so, naturally or on account of some human agency, in the social, political, economic, cultural, biological, environmental or physical spheres outside the territory of India, and seek to control, modulate, mitigate or transform the effects of such extra-territorial aspects or causes, or in appropriate cases, eliminate or engender such extra-territorial aspects or causes, only when such extra-territorial aspects or causes have, or are expected to have, some impact on, or effect in, or consequences for: (a) the territory of India, or any part of India; or (b) the interests of, welfare of, well-being of, or security of inhabitants of India, and Indians.

It is important to state and hold that the powers of legislation of the Parliament with regard to all aspects or causes that are within the purview of its competence, including with respect to extra-territorial aspects or causes as delineated above, and as specified by the Constitution, or implied by its essential role in the constitutional scheme, ought not to be subjected to some a-priori quantitative tests, such as "sufficiency" or "significance" or in any other manner requiring a pre-determined degree of strength. All that would be required would be that the connection to India be real or expected to be real, and not illusory or fanciful. Whether a particular law enacted by Parliament does show such a real connection, or expected real connection, between the extra-territorial aspect or cause and something in India or related to India and Indians, in terms of impact, effect or consequence, would be a mixed matter of facts and of law. Obviously, where the Parliament itself posits a degree of such relationship, beyond the constitutional requirement that it be real and not fanciful, then the courts would have to enforce such a requirement in the operation of the law as a matter of that law itself, and not of the Constitution.

It is obvious that Parliament is empowered to make laws with respect to aspects or causes that occur, arise or exist, or may be expected to do so, within the territory of India, and also with respect to extra-territorial aspects or causes that have an impact on or nexus with India. Such laws would fall within the meaning, purport and ambit of the grant of powers to Parliament to make laws "for the whole or any part of the territory of India", and they may not be invalidated on the ground that they may require extra-territorial operation. Any laws enacted by Parliament with respect to extra-territorial aspects or causes that have no impact on or nexus with India would be ultra vires and would be laws made "for" a foreign territory.

Section 10(23C) of the Income-tax Act, 1961 – Exemption – Religious Trust/ Institution

Exemption cannot be denied solely on foundation that there has been some surplus profit [Assessment Year 2009-10]

St. Lawrence Educational Society (Regd.) and Others v. CIT, February 4, 2011 (DEL)

In Aditanars Educational Institution v. Additional CIT (1997) 224 ITR 310 the Apex Court has held that after meeting the expenditure, if any surplus results incidentally from the activity lawfully carried on by the educational institution, it will not cease to be one existing solely for educational purposes, since the object is not one to make profit. The decisive or acid test is whether, on an overall view of the matter, the object is to make profit. In evaluating or appraising the above, one should also bear in mind the distinction/difference between the corpus, the objects and the powers of the concerned entity.

The opinion that the educational institutions seeking exemption should not generate any quantitative surplus is, legally untenable and incorrect. It will be incorrect in assuming that for exemption there should not be any surplus, otherwise the institution/society would be held to be existing for profit and not charity which includes education. Therefore, the competent authority for providing approval of granting exemption under section 10(23C)(vi), should not inscribe reasoning solely on the foundation that there has been some surplus profit.

Section 37(1) read with Sections 36(1)(iii) and 57 of the Income-tax Act, 1961 – Business Expenditure – Allowable as

Having regard to relationship between different concerns, where a transaction which is patently impru-

[1] *Readers are invited to send their comments on the selection of cases and their utility at eboard@icai.org.*

dent, takes place, taxing authority should examine question of business expediency and exercise of jurisdiction cannot be stretched to hold a roving enquiry or deep probe [Assessment Year 1986-87]

CIT v. Rockman Cycle Industries Private Limited, February 1, 2011 (P&H)(FB)

The assessee borrowed money from its sister concern carrying interest @ 18% per annum and purchased preference shares of another company carrying dividend @ 4%. The issue before the Assessing Officer was as to whether there was any justification to borrow funds @ 18% per annum for making investment in shares carrying dividend of only 4%. The Assessing Officer disallowed the interest as expense to the extent beyond 4%.

The Punjab and Haryana High Court held that it cannot be said that the expenditure would disqualify for deduction only if no income results from such expenditure in a particular assessment year and if there is some income, howsoever small or meagre, the expenditure would be eligible for deduction. Such a course would indeed give rise to a strange and highly anomalous result. It is difficult to believe that the legislature could have ever intended to produce such illogical result. Moreover, it must be remembered that when a profit and loss account is cast in respect of any source of income, what is allowed by the statute as proper expenditure would be debited as an outgoing and income would be credited as a receipt and the resulting income or loss would be determined. It would make no difference to this process whether the expenditure is X or Y or nil; whatever is the proper expenditure allowed by the statute would be debited. Equally, it would make no difference whether there is any income and if so, what, since whatever it be, X or Y or nil, would be credited. Thus, the ultimate income or loss would be found. An expenditure which is otherwise a proper expenditure cannot cease to be such merely because there is no receipt of income. Whatever is a proper outgoing by way of expenditure must be debited irrespective of whether there is receipt of income or not. That is the plain requirement of proper accounting and the interpretation of section 57(iii) cannot be different. The deduction of the expenditure cannot, in the circumstances, be held to be conditional upon the making or earning of the income.

It is true that the language of section 37(1) is a little wider than that of section 57(iii), but that cannot make any difference in the true interpretation of section 57(iii). The language of section 57(iii) is clear and unambiguous and it has to be construed according to its plain natural meaning and merely because a slightly wider phraseology is employed in another section which may take in something more, it does not mean that section 57 (iii) should be given a narrow and constricted meaning not warranted by the language of the section and, in fact, contrary to such language.

Though it is not unfair to borrow money or take loan from one concern and invest the same in another concern for the purpose of profit or income, but in the process the assessee must act bonafide. The words "wholly and exclusively for the purpose of making or earning such income" have to be given its true meaning. In case, the dominant purpose for making such investment was not to earn income, the deduction under section 57 may not be available. To ascertain the purpose, the courts may lift the veil. Even the Assessing Officer has the jurisdiction to find out the dominant purpose with regard to investment of borrowed money in the sister concern.

The Assessing Officer or the appellate authorities and even the courts can determine the true legal relation resulting from a transaction. If some device has been used by the assessee to conceal true nature of the transaction, it is the duty of the taxing authority to unravel the device and determine its true character. However, the legal effect of the transaction cannot be displaced by probing into the "substance of the transaction". The taxing authority must not look at the matter from their own view point but that of a prudent businessman. Each case will depend on its own facts. The exercise of jurisdiction cannot be stretched to hold a roving enquiry or deep probe.

Section 68 of the Income-tax Act, 1961 – Cash Credits

To discharge initial burden in case of allegation of unexplained share application money, assessee is required to prove (a) identity of shareholder, (b) genuineness of transaction, and (c) creditworthiness of shareholders; once assessee does so, Assessing Officer may make further prove reopening case of investors but no addition can be made in hands of assessee

CIT v. Oasis Hospitalities (P.) Ltd, January 31, 2011 (DEL)

When the companies incorporated under the Companies Act raise their capital through shares, various persons would apply for shares and thus give share application money. These amounts received from such shareholders would, naturally, be the sums credited in the books of account of the assessee. If the AO doubts the genuineness of the investors, who had purportedly subscribed to the share capital, the AO may ask the assessee-company to explain the nature and source of those sums received by the assessee-company on account of share capital. It is in this scenario, the question arises about the genuineness of transactions.

The initial burden is upon the assessee-company to explain the nature and source of the share application money received by the assessee-company. In order to discharge this burden, the assessee is required to prove (a) identity of shareholder, (b) genuineness of transaction; and (c) creditworthiness of shareholders.

Identity of shareholders: In case the investor/shareholder is an individual, some documents will have to be filed or the said shareholder will have to be produced before the AO to prove his identity. If the creditor/subscriber is a company, then the details in the form of registered address or PAN identity, etc. can be furnished.

Genuineness of transactions: Genuineness of the transaction is to be demonstrated by showing that the assessee had, in fact, received money from the said shareholder and it came from the coffers from that very shareholder. The Division Bench held that when the money is received by cheque and is transmitted through banking or other indisputable channels, genuineness of transaction would be proved. Other documents showing the genuineness of transaction could be the copies of the shareholders register, share application forms, share transfer register, etc.

Creditworthiness of shareholders: As far as creditworthiness or financial strength of the credit/subscriber is concerned, that can be proved by producing the bank statement of the creditors/subscribers showing that it had sufficient balance in its accounts to enable it to subscribe to the share capital. Once these documents are produced, the assessee would have satisfactorily discharge the onus cast upon him. Thereafter, it is for the AO to scrutinise the same and in case he nurtures any doubt about the veracity of these documents to probe the matter further. However, to discredit the documents produced by the assessee on the aforesaid aspects, there has to be some cogent reasons and materials for the AO and he cannot go into the realm of suspicion.

The Bombay High Court in the case of *CIT vs. M/s Creative World Telefilms Ltd.* (in ITA No.2182 of 2009 decided on 12.10.2009) clearly held that once documents like PAN Card, bank account details or details from the bankers were given by the assessee, onus shifts upon the Assessing Officer and it is on him to reach the shareholders and the Assessing Officer cannot burden the assessee merely on the ground that summons issues to the investors were returned back with the endorsement 'not traceable'.

Section 80-IB of the Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertakings other than infrastructure developments

Clause (d) inserted to Section 80IB(10) with effect from 1-4-2005 is prospective and not retrospective and hence cannot be applied to the period prior to 1-4-2005

CIT v. Brahma Associates, February 22, 2011 (BOM)

The assessee had undertaken a construction project which consisted of fifteen residential buildings and two commercial buildings. The local authority had approved the said project as *"residential plus commercial".* The percentage of the commercial area to the total area of the plot was 20.83%. The construction was started in 2000 and completed in 2005. The assessee claimed deduction under section 80-IB(10) on the profits derived from the sale of the residential units. The Assessing Officer opined that since project of the assessee was approved by the local authority as *"residential plus commercial",* it was not a housing project entitled to the deduction under section 80-IB(10).

The Bombay High Court held that so long as the Development Control Rules (DC Rules) permit convenient shopping as also other commercial user in a housing project, it would not be open to the income tax authorities to contend that the projects with convenient shopping alone could be considered as housing projects. In the instant case, the project was approved for residential and commercial buildings as per the local DC Rules. The fact that the residential buildings under the DC Rules can have commercial user up to 50% of the built-up area of the plot cannot be a ground to hold that the project is not a housing project. It is for the legislature to impose restrictions on commercial user in a project for the purposes of availing section 80-IB(10) deduction and that has been done by inserting clause (d) to section 80IB(10) with effect from 1/4/2005. Therefore, a project with residential and commercial user to the extent permitted under DC Rules would be a housing project and hence eligible for deduction under section 80-IB(10) up to 31/3/2005. It is not open to hold that the projects approved by the local authorities having residential buildings with commercial user up to 10% of the plot area would alone be entitled to deduction under section 80IB(10).

Further, section 80-IB(10) allows deduction to the entire project approved by the local authority and not to a part of the project. If the conditions set out in section 80-IB(10) are satisfied, then deduction is allowable on the entire project approved by the local authority and there is no question of allowing deduction to a part of the project. In the instant case, the commercial user was allowed in accordance with the DC Rules and, hence, the assessee was entitled to

section 80IB(10) deduction on the entire project approved by the local authority.

Clause (d) seeks to deny section 80IB(10) deduction to projects having commercial user beyond the limit prescribed under clause (d), even though such commercial user is approved by the local authority. Therefore, the restriction imposed under the Act for the first time with effect from 1/4/2005 cannot be applied restrospectively. Thus, clause (d) inserted to Section 80IB(10) with effect from 1/4/2005 is prospective and not retrospective and hence cannot be applied to the period prior to 1/4/2005. In the result, it was to be held that –

a) Up to 31/3/2005, deduction under Section 80IB(10) is allowable to housing projects approved by the local authority having residential units with commercial user to the extent permitted under the DC Rules / Regulations framed by the respective local authority.
b) In such a case, where the commercial user permitted by the local authority is within the limits prescribed under the DC Rules/Regulation, the deduction under Section 80IB(10) up to 31/3/2005 would be allowable irrespective of the fact that the project is approved as 'housing project' or 'residential plus commercial'.
c) It cannot be held that up to 31/3/2005 deduction under Section 80IB(10) would be allowable to the projects approved by the local authority having residential building with commercial user up to 10% of the total built-up area of the plot.
d) Since deductions under Section 80IB(10) is on the profits derived from the housing projects approved by the local authority as a whole, section 80-IB(10) deduction cannot be restricted only to a part of the project.
e) Clause (d) inserted to Section 80IB(10) with effect from 1/4/2005 is prospective and not retrospective and, hence, cannot be applied for the period prior to 1/4/2005.

Section 144C read with Sections 92C and 92CA of the Income-tax Act, 1961 - Reference to Dispute Resolution Panel

On a perusal of section 144C, it may be found that Dispute Resolution Panel on receipt of objection has power to issue such directions as it thinks fit for guidance of Assessing Officer to enable him to complete assessment; the said provisions cannot be treated as totally redundant or absolutely inefficacious remedy to the assessee [Assessment Year 2007-08]

Ericsson AB v. Addl. Director of Income-tax, February 4, 2011 (DEL)

On a perusal of section 144C, it may be found that the Dispute Resolution Panel on receipt of the objection has

power to issue such directions as it thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment. Sub-sections (6) and (7) provide the guidelines and the manner in which the Dispute Resolution Panel shall carry the proceedings before it under the said provision. The said provisions cannot be treated as totally redundant or absolutely inefficacious remedy to the assessee. When a statute has provided a remedy as an intermediate stage, the assessee is under obligation to take recourse to the same.

Section 147 read with Section 148 of the Income-tax Act, 1961 - Income escaping assessment

Where Assessing Officer could have found the truth but he did not, does not preclude Assessing Officer from exercising power of re- assessment to bring to tax the escaped income [Assessment Year 2000-01]

Honda Siel Power Products Ltd. v. Dy. CIT, February 14, 2011 (DEL)

The term 'failure' on the part of the assessee is not restricted only to the income-tax return and the columns of the income-tax return or the tax audit report. This is the first stage. The expression 'failure to fully and truly disclose material facts' also relate to the stage of the assessment proceedings, the second stage. There can be omission and failure on the part of the assessee to disclose fully and truly material facts during the course of the assessment proceedings. This can happen when the assessee does not disclose or furnish to the Assessing Officer complete and correct information and details it is required and under an obligation to disclose. Burden is on the assessee to make full and true disclosure.

The law postulates a duty on every assessee to disclose fully and truly all material facts for its assessment. The disclosure must be full and true. Material facts are those facts which if taken into accounts, would have an adverse affect on assessee by the higher assessment of income than the one actually made. They should be proximate and not have any remote bearing on the assessment. Omission to disclose may be deliberate or inadvertent. This is not relevant, provided there is omission or failure on the part of assessee. The latter confers jurisdiction to reopen assessment.

Whether or not there was a failure or omission to disclose fully and truly material facts, is essentially a question of fact.

Merely because material lies imbedded in material or evidence, which the Assessing Officer could have uncovered but did not uncover is not a good ground to deny or strike down a notice for reassessment. Where the Assessing Officer could have found the truth but he did not, does not preclude the Assessing Officer from exercising the power of re- assessment to bring to tax the escaped income.

Section 147 read with section 154 of the Income-tax Act, 1961- Income escaping assessment

Pre-requisites of provision of section 147 are not controlled, curbed and regulated with requirement of 'mistake which is apparent from record' as is required under section 154

Honda Siel Power Products Ltd. v. Dy. CIT, February 14, 2011 (DEL)

Scope and ambit of sections 154 and 147/148 are different. Under Section 154, the Assessing Officer can only rectify mistakes and errors. Section 154 is not a substitute for section 147/148. In a given case, resort to provisions of section 154 may be an appropriate remedy but in other cases resort to section 147/148 may be required.

Rectification of a mistake apparent from the record cannot be equated with the power of reopening under Sections 147 and 148, which is conferred on the Assessing officer to reopen cases under assessment when conditions mentioned in the said section are satisfied. The object and purpose of the two provisions are separate and the preconditions and requirements are different. The words 'reasons to believe' when income chargeable to tax has escaped assessment, has a different connotation and requirements and cannot be equated with the power under Section 154 to rectify mistakes apparent from the record. In some cases albeit not in all cases, both sections 154 and 147 may be applicable. Per se and ex facie the language of section 147 shows that the pre-requisites of this section are not controlled, curbed and regulated with the requirement of mistake which is apparent from the record as is required under section 154.

Section 158BC/158BD of the Income-tax Act, 1961 - Block assessment in search cases

Protective assessment can be framed in the proceedings under Section 158BC/158BD [Assessment Year 2000-01]

CIT v. Mahindra Finlease (P.) Ltd, January 31, 2011 (DEL)

Even if there is no specific provision in the Income Tax Act for protective assessment, power lies with the Assessing Officer to make such an assessment on protective basis under certain circumstances. There is such a power to make the protective assessment while carrying out the normal assessment proceedings even in the absence of specific provision. Therefore, the absence of provision should not be a ground to preclude the Assessing Officer for making protective assessment in block assessment proceedings under sections 158BC and 158BD. Principle of law laid down by the Supreme Court holding that the Assessing Officer has power to make protective assessment even when there is no specific provision under the Act, would equally apply to the block assessment also.

Section 263 of the Income-tax Act, 1961 – Revision – Of orders prejudicial to revenue

Where a fundamental aspect of a transaction is found as having permeated through different assessment years and, this fundamental aspect has stood uncontested, then, the revenue cannot be allowed to change its view taken in earlier assessment years unless it is able to demonstrate a change in circumstances in the subsequent assessment year [Assessment Year 1992-93]

CIT v. Escorts Ltd, February 1, 2011 (DEL)

It is now trite law that for invoking the provisions of section 263, the Commissioner's enquiry should have led him to a conclusion that the order he seeks to revise is both erroneous and prejudicial to the interest of the revenue. It has to be borne in mind that every loss to the revenue is not necessarily prejudicial to revenue.

The assessee filed its return of income for the assessment year 1992-93 on 31-12-1992. An assessment order was passed on 24-3-1995. The Commissioner while scrutinising the records pertaining to the assessee for the relevant assessment year, noticed that the assessee had evidently claimed that it had incurred a huge capital loss in connection with purchase and sale of the UTI units. At that stage, it appeared to the Commissioner that the Assessing Officer had permitted the carry forward of the aforementioned capital loss to the assessee without due verification and enquiry. Later on, the Commissioner issued a show cause notice dated 18-2-1997 to cancel the assessment order on ground that the transactions were speculative in nature.

The High Court of Delhi held that the assessee was engaged in the activity of buying and selling the units of UTI for several years, prior to the relevant year. This very issue was raised before the Commissioner (Appeals) in the assessment year 1986-87. The Commissioner (Appeals), in the said assessment year, decided the issue against the department. The department had not challenged this position in the grounds of appeal raised now.

The stand taken by the assessee that the units had actually been physically delivered along with executed transfer deed was not found to be false. Without such a finding the allegation that the transactions were speculative, could not be sustained. But more importantly, the fundamental nature of the transactions which was examined year after year remained the same. Therefore, the department could not have changed its view as regards the nature of the transactions in issue in the relevant assessment year by dubbing it as erroneous. If the fundamental nature of transactions had to be questioned it necessarily had to be carried to its logical conclusion in the assessment year 1986-87.

The courts have increasingly veered to the view that where a fundamental aspect of a transaction is found as having permeated through different assessment years and, this fundamental aspect has stood uncontested then, the revenue cannot be allowed to change its view taken in earlier assessment years unless it is able to demonstrate a change in circumstances in the subsequent assessment year. The department in the instant case had not been able to bring any such changed circumstances.

Given the fact that the assessee had been engaged in similar transactions in the preceding assessment years, Commissioner could have had no occasion to take recourse to revisional powers under section 263 on the fundamental aspects of the transactions in issue on which a view had been taken and, not shown as having been challenged.

INDIRECT TAXES

Central Excise

Section 35B of the Central Excise Act, 1994 – Appeals to the Appellate Tribunal

Setting up of mechanism of 'Committee of Disputes', since outlived its utility, is to be quashed

Electronics Corporation of India Ltd. v. Union of India, February 17, 2011 (SC)(FB)

The idea behind setting up of the Committee, initially called a 'High-Powered Committee' (HPC), later on called as 'Committee of Secretaries' (CoS) and finally termed as 'Committee on Disputes' (CoD) was to ensure that resources of the State are not frittered away in inter se litigations between entities of the State, which could be best resolved, by an empowered CoD. The machinery contemplated was only to ensure that no litigation comes to Court without the parties having had an opportunity of conciliation before an in-house committee. Whilst the principle and the object behind the aforestated Orders is unexceptionable and laudatory, experience has shown that despite best efforts of the CoD, the mechanism has not achieved the results for which it was constituted and has in fact led to delays in litigation. Even on same set of facts, clearance is given in one case and refused in the other.

This has led a PSU to institute a SLP in the Supreme Court on the ground of discrimination. The mechanism has led to delay in filing of civil appeals causing loss of revenue. In many cases of exemptions, the Industry Department gives exemption, while the same is denied by the Revenue Department. Similarly, with the enactment of regulatory laws in several cases, there could be overlapping of jurisdictions between, e.g., SEBI and insurance regulators. Civil appeals lie to the Supreme Court. Stakes in such cases are huge. One cannot possibly expect timely clearance by CoD. In such cases, grant of clearance to one and not to the other may result in generation of more and more litigation. The mechanism has outlived its utility. In the changed scenario, time has come to recall the directions of the Supreme Court in its various earlier Orders setting up the said mechanism.■

CIRCULARS/NOTIFICATIONS

DIRECT TAXES

I. Notifications

1. Notification No. 12/2011 dated 25.02.11

Clause(d) of proviso to section 43(5) provides that an eligible transaction in respect of trading in derivatives referred to in section 2(ac) of the Securities Contracts (Regulation) Act,1956 carried out in a recognised stock exchange, notified by the Central Government for this purpose, shall not be deemed to be a speculative transaction.

Accordingly, in exercise of power conferred by clause (d) of the proviso to section 43(5) read with Rule 6DDB, the Central Government has notified the United Stock Exchange of India Limited as a recognised stock exchange for the purpose of the said clause. The notification also lays down certain conditions to be fulfilled by the stock exchange.

2. Notification No. 14/2011 dated 9-3-2011

In exercise of the powers conferred by section 295 of the Income-tax Act, 1961, the Central Board of Direct Taxes has through this notification, notified Income-tax (First Amendment) Rules, 2011 which shall come into force on the 1st day of April, 2011.

Clause (d) of proviso to section 43(5) provides that an eligible transaction in respect of trading in derivatives referred to in section 2(ac) of the Securities Contracts (Regulation) Act,1956 carried out in a recognised stock exchange shall not be deemed to be a speculative transaction. Further, Rule 6DDA provides conditions that a stock exchange is required to fulfil to be notified as a stock exchange for the purpose of above mentioned clause. Rule 6DDB provides for notification of recognised stock exchange for the purposes of said clause. The Central Board of Direct Taxes has through, this notification amended Rule 6DDA by substituting clause (iv) with the following:

"(iv) the stock exchange shall ensure that transactions (in respect of cash and derivative market) once registered in the system are not erased;

(v) the stock exchange shall ensure that the transactions (in respect of cash and derivative market) once registered in the system are modified only in cases of genuine error and maintain data regarding all transactions (in respect of cash and derivative market) registered in the system which have been modified and submit a monthly statement in Form No. 3BB to the Director General of Income-tax (Intelligence), New Delhi within fifteen days from the last day of each month to which such statement relates."

Corresponding amendment has been made in Rule 6DDB requiring that the application for notification of a recognised stock exchange should be accompanied by inter alia, confirmation regarding fulfilling the conditions referred to in clauses (ii) to (v) of Rule 6DDA.

Furthermore, in Appendix-II of the Income-tax Rules,1962, Form No. 3BB has been inserted which gives the format in which monthly statement is to be furnished under Rule 6DDA by a stock exchange in respect of transactions in which client codes have been modified after registering in the system for the respective month.

II. Press Release

Press release No.402/92/2006-MC (07 of 2011) dated 14th March, 2011

Scrutiny of income tax returns has evoked some concern from small taxpayers and senior citizens about prolonged enquiries. Concerns have also been raised about selection of the same cases in scrutiny year after year. In order to redress the grievance, the CBDT has now decided that during the financial year 2011-12, cases of senior citizens and small taxpayers, filing income-tax returns in ITR-1 and ITR-2 will be subjected to scrutiny only where the Income-tax department is in possession of credible information.

Senior citizens for this purpose would be individual taxpayers who are 60 years of age or more. Small taxpayers would be individual and HUF taxpayers whose gross total income, before availing deductions under Chapter VIA, does not exceed rupees ten lakh.

The CBDT has through this press release laid down a streamlining procedure for scrutiny of income-tax returns.

The complete text of the above notifications/press release can be downloaded from the website of the Income-tax Department, www.incometaxindia.gov.in

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

INDIRECT TAXES

A. SERVICE TAX

Changes effective from March 01, 2011

1. **Simplification measures**

Simplified scheme introduced for units in SEZs to enable them to obtain tax-free receipt of services wholly consumed within the zone and to get refunds in a much easier manner.
[Notification No. 17/2011-ST dated 01.03.2011]

2. **Exemptions**

- Business exhibition services provided by an organiser of business exhibition for holding a business exhibition outside India have been exempted from service tax.
  [Notification No. 05/2011-ST dated 01.03.2011]
- Works contract service rendered for the construction of residential complexes or completion and finishing services of a new complex under Jawaharlal Nehru Urban Renewable Mission (JNURM) and "Rajiv Awaas Yojana" has been exempted from service tax.
  [Notification No. 06/2011-ST dated 01.03.2011]
- General insurance service provided under "Rashtriya Swashya Bima Yojna" has been exempted from service tax.
  [Notification No. 07/2011-ST dated 01.03.2011]
- Exemption from service tax has been provided to services provided within a port/other port/airport under the 'works contract service' for specified purposes.
  [Notification No. 10/2011 & 11/2011-ST dated 01.03.2011]

- An abatement of 25% of the gross amount charged has been provided from the taxable value of service of transport of goods through coastal and inland shipping for the purpose of levy of service tax.
  [Notification No. 16/2011-ST dated 01.03.2011]

3. Others

- Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 have been amended to provide that the CENVAT credit of tax paid on the following taxable services shall be available only to the extent of 40% of the service tax paid when such tax has been paid on the full value of the service after availing CENVAT credit on inputs:-
  1. erection, commissioning & installation;
  2. commercial or industrial construction and
  3. construction of residential complex.

  [Notification No. 01/2011-ST dated 01.03.2011]
- In case of telecommunication service provided by way of recharge coupons or prepaid cards or the like, the value shall be the gross amount charged from the subscriber or the ultimate user of the service and not the amount paid by the distributor or any such intermediary to the telegraph authority.
  [Notification No. 02/2011-ST dated 01.03.2011]

Changes to be effective from April 01, 2011

1. Exemptions

- Services of transportation of goods by air/road/rail provided to a person located in India have been exempted when the goods are transported from a place outside India to a destination outside India.
  [Notification No. 08/2011-ST dated 01.03.2011]
- The transport of goods by air service has been exempted to the extent air freight is included in the customs value of goods.
  [Notification No. 09/2011-ST dated 01.03.2011]
- The rate of service tax on travel by air has been revised as follows:-

Domestic Travel	Economy Class	From ₹100 to ₹150
International Travel	Economy Class	From ₹500 to ₹750
Domestic Travel	Other than Economy Class	10% (Standard rate)

[Notification No. 04/2011-ST dated 01.03.2011]

2. Others

- The Point of Taxation Rules, 2011 would be effective from 01.04.2011 whereby the point of taxation for service tax has been shifted from receipt basis to accrual basis. The move is a precursor to the proposed GST. Consequently, a number of changes would be effective with effect from 01.04.2011 in the Service Tax Rules, 1994 to align the provisions consequent to the introduction of the Point of Taxation Rules, 2011.
  Significant changes are as follows:-
  1. The applicable rate of service tax shall be the rate prevailing at the time when the services are deemed to have been provided.
  2. The composition rate in relation to purchase or sale of foreign currency, including money changing shall be reduced from 0.25% to 0.10%. Further, option of paying service tax on billed charges will not be available.

  [Notification No. 03/2011 & 18/2011-ST dated 01.03.2011]
- In the Export of Service Rules, 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, some of the services which were on performance basis have been shifted to recipient basis while few have been added in the performance based criterion.
  [Notification No. 12/2011 & 13/2010-ST dated 01.03.2011]
- The rate of interest payable on delayed payment of service tax and on amount collected in excess of the service tax has been increased to 18% per annum.
  [Notification No. 14/2011 & 15/2011-ST dated 01.03.2011]
- The Service Tax (Determination of Value) Rules, 2006 have been amended to prescribe the value of service rendered in relation to money changing.
  [Notification No. 02/2011-ST dated 01.03.2011]

B. EXCISE

Changes effective from March 01, 2011

- In case the owners of the branded garments get the garments manufactured on job-work basis, rule 4 of the Central Excise Rules, 2002 has been amended to provide that the liability to pay duty and comply with central excise procedure shall be on the person on whose behalf the goods are manufactured by job-workers.
  [Notification No. 04/2011 –CE (NT) dated 01.03.2011]
- Amendments in the CENVAT Credit Rules, 2004
  - Definition of exempted goods shall include the excisable goods which are covered by the notification relating to concessional duty with the condition that no credit of input and input service shall be availed.
  - New sub-rule (6A) has been added to rule 6 to allow provision of services without payment of service tax to a unit in SEZ or to a developer in SEZ for their authorised operations, without requirement of reversal of any CENVAT credit on this account.

  [Notification No. 03/2011 –CE (NT) dated 01.03.2011]
- A nominal duty of 1% ad valorem has been imposed on 130 exempted items with the condition that no credit of the duty paid on input and input services is taken. Further, in respect of the items in whose case the statutory/tariff rate is not Nil, a general effective rate of 5% is being prescribed (without any condition) to enable those manufacturers who wish to avail of Cenvat credit to pay a concessional duty of 5%.
  [Notification No. 01/2011& 02/2011 –CE dated 01.03.2011]

Changes to be effective from April 01, 2011

- The rate of interest payable on delayed payment of excise duty under section 11AA and 11AB has been increased to 18% per annum.
  [Notification No. 05/2011 & 06/2011 –CE (NT) dated 01.03.2011]

Amendments in the CENVAT Credit Rules, 2004

- The provisions of the CENVAT Credit Rules, 2004 have been amended with the intent of broadening the tax base and to simplify definitions for reducing the disputes and to achieve a more realistic attribution when common inputs or input services are used for the manufacture of both dutiable and exempt goods in the following manner:-
  - The definition of inputs has been substituted with a new definition in order to reduce the disputes in its interpretation by providing specific exclusions and inclusions.
  - The definition of input service has been modified to align it with the definition of input such that the goods that do not constitute "input" do not qualify as "input service". Further, expression "activities relating to business" has been deleted.
  - It has now been clarified that exempted services will include trading services.
  - Rule 6(5) that allows full credit in respect of 17 specified services has been deleted
  - A practical scheme has been provided for the segregation of CENVAT credits used in respect of final products and output services where they are partially exempted with condition that no such credits shall be taken.

  [Notification No. 03/2011 –CE (NT) dated 01.03.2011]

C. CUSTOMS

Changes to be effective from April 01, 2011

- The rate of interest payable on delayed payment of customs duty under section 28AA and 28AB has been increased to 18% per annum.
  [Notification No. 17/2011-Customs (NT) dated 01.03.2011]

D. CENVAT CREDIT RULES, 2004

- The Board has clarified that interest would be recoverable under Rule 14 of the CENVAT Credit Rules, 2004 when credit has been wrongly "taken", even if it has not been utilised.
  [Circular No. 942/03/2011 CX dated 14.03.2011]

The complete text of the above notifications and circulars are available at www.cbec.gov.in

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

CORPORATE LAWS

1. Revised Schedule VI to the Companies Act, 1956

www.mca.gov.in

The Ministry of Corporate Affairs ("MCA") has released the Revised Schedule VI to the Companies Act, 1956. This revised Schedule VI has been framed as per the existing non-converged Indian Accounting Standards notified under the Companies (Accounting Standards), Rules, 2006 and has nothing to do with the converged Indian Accounting Standards. This will apply to all the companies uniformly for the financial statements to be prepared for the financial year 2010-11 and onwards. One may refer to the above citation for further details and the revised Schedule VI format.

2. Payment of MCA Fees – Electronic Mode

www.mca.gov.in

The MCA has issued General Circular No. HQ/9/2002-Computerisation dated 9.03.2011 in relation to payment of MCA fees by electronic mode. The MCA has stated that it has reviewed the processes involved in delivery of important services to stakeholders, with a view to identify and improve the components causing delay in disposal of applications. The MCA observed that payment confirmation is found to be a major bottleneck in delivery of services in respect of offline payment made by physical challans and it was also found that often there was a delay in confirmation of payments by physical challans, as banks have been given a reporting time of T+3 days, as per payment procedure approved by the C&AG/T being the transaction date. This led to delay in creation of work item for disposal of an application/e-form, leading to inconvenience of stakeholders. It was also found that wherever fees were paid online in the system, the work item was created faster and the approvals were speedier as banks follow T+1 for reporting online payments. Hence, in the interest of stakeholders, with a view to improving service delivery time, the MCA has decided to accept payments of value upto ₹50,000, for MCA 21 services only in electronic

mode w.e.f. 27th March, 2011. For the payments of value above ₹50,000, stakeholders would have the option to either make the payment in electronic mode, or under a paper challan. However, such payments would also be required to be made in electronic mode w.e.f. 1st October, 2011. One may refer to the above website for further details.

3. Classification of loans against gold jewellery to NBFCs

www.rbi.gov.in

The RBI has issued Circular No. BC. 51/04.09.01/2010-11 dated 02.02.2011 and referring to the RBI's Master Circular issued on lending to priority sector dated July 1, 2010, it is clarified that loans sanctioned to NBFCs for on-lending to individuals or other entities against gold jewellery, are not eligible for classification under agriculture sector. It is also clarified that similarly investments made by banks in securitised assets originated by NBFCs, where the underlying assets are loans against gold jewellery, and purchase/assignment of gold loan portfolio from NBFCs are also not eligible for classification under agriculture sector. One may refer to the above website for further details.

4. Process of incorporation of companies (form-1) and establishment of principal place of business in India by foreign companies

www.mca.gov.in

The MCA has issued General Circular No. 6/2011 dated 08.03.2011 stating that the MCA has received various representations regarding time taken by the Registrar of Companies for registration of form-1 and form-44 which the MCA has got the same examined by the Business Process Re-engineering Group under MCA-21 and in order to speed up and simplify the process of incorporation of companies and establishment of principal place of business in India by foreign companies for reduction in time taken by the Registrar of Companies, the following procedure is recommended:

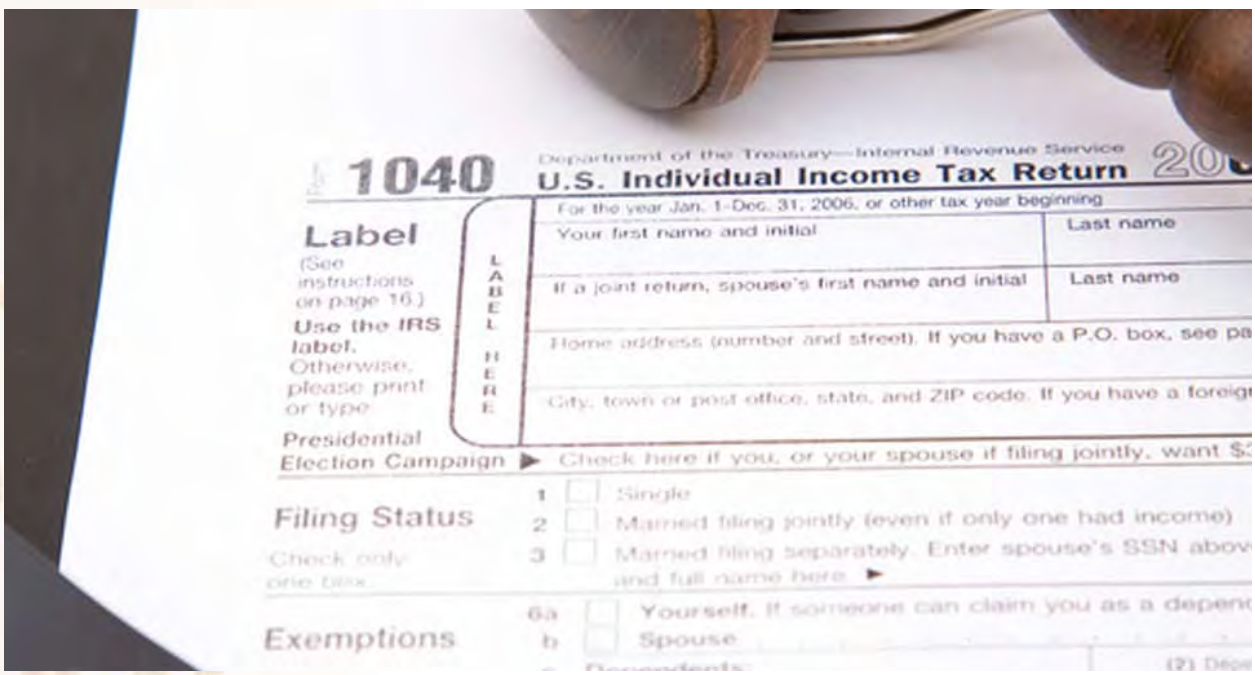
- only Form-1 shall be approved by the RoC Office. Form 18 and 32 shall be processed by the system online
- there shall be one more category, i.e., incorporation forms (Form 1A, Form 37, 39, 44 and 68) which will have the highest priority for approval
- average time taken for incorporation of a company should be reduced to one (1) day only.

Simultaneously, the MCA has made minor changes in e-forms 18 and 32 to enable them to be taken on record through the STP mode for the above procedure and a notification will be issued separately to amend these forms. One may refer to the above website for further details.

5. Payment of commission to non-whole time directors ("non-WTDs")

www.mca.gov.in

The MCA has issued General Circular No. 4/2011 dated 04.03.2011 in relation to payment of commission to non-WTDs. The MCA has stated that companies are making applications to the Central Government for payment of remuneration in the form of commission to their non-WTDs even when the total commission to be paid to all the non-WTDs taken together falls within the limit of 1% of net profit of the company under section 198 of the Companies Act, 1956 [when the company has a WTD or a Managing Director(s)] or within the limit of 3% net profit of the company under section 198 of the Act [when the company does not have a Managing Director or a non-WTDs], in addition to the sitting fee. This was based on an earlier decision of the MCA as per File No. 6(a) CL-I/66 issued several decades back. The MCA has now been decided that a company shall not require approval of the Central Government for making payment of remuneration by way of commission to its



non-WTDs, in addition to the sitting fee, if the total commission to be paid to all those non-WTDs does not exceed 1% of the net profit of the company if it has a WTD or 3% of the net profit of the company if it does not have a Managing Director or a WTD. One may refer to the above website for further details.

6. DIN process – simplified

www.mca.gov.in

The MCA has issued General Circular No. 5/2011 dated 04.03.2011 and has re-examined the process of allotment of Director's Identification Number ("DIN") to be obtained under section 266B of the Companies Act, 1956. It has stated that the present process is cumbersome and time consuming and based on representations received that the documents required to be submitted should be simple to prove the existence/residence of a person who intends to become a director of a company. Pursuant to the recommendations of the Group constituted to examine this, and in order to speed up and simplify the process to obtain a DIN, the following procedure is recommended:

- Application for DIN will be made on e-Form and that no physical submission of documents shall be accepted and for this purpose Scanned documents along with verification by the applicant will be attached with the e-Form. Only online fee payment will be allowed i.e. no challan payment.
- The application can also be submitted online by the applicant himself using his DSC.
- DIN 1 e-Form can be digitally signed by the professional who shall also confirm that he has verified the particulars of the Applicant given in the application.
- Where the DIN 1 is verified by the professional, the DIN will be approved by the system immediately online.
- In other cases the DIN cell will examine the application and same shall be disposed of within one or two days.

It is clarified that penal action will be taken as per provisions of section 628 of the Act against the applicant and the professional certifying the DIN application in case of false information/ certification in addition to action for professional misconduct and revocation of DIN allotted on false information. In this manner, allotment of DIN will take place on the same day. This procedure will also apply to filing of DIN 4 for intimating changes in particulars of Directors. The above procedure will be applicable from the date of issue of a notification for the purpose which is being separately issued. One may refer to the above website for further details.

7. Prudential norms on investment in zero coupon bonds

www.rbi.gov.in

The RBI has issued Circular No. UCB (PCB) BPD Cir. No. 36/16.20.000/2010-11 dated 18.02.2011 in relation to investments in Non-SLR securities by Primary (Urban) Co-operative Banks. The RBI has observed that banks are investing in long term zero coupon bonds (ZCBs) issued by corporates including those issued by Non-Banking

Financial Companies (NBFCs). As the issuers of ZCBs are not required to pay any interest or installments till the maturity of bonds, credit risk in such investments would go unrecognised till the maturity of bonds and this risk could especially be significant in the case of long term ZCBs. Such issuances and investments if done on a large scale could pose systemic problems. Hence, the RBI has decided that banks should not henceforth invest in ZCBs unless the issuer builds up a sinking fund for all accrued interest and keeps it invested in liquid investments/securities (government bonds). One may refer to the above website for further details.

8. RBI advisory on overseas forex trading through electronic / internet trading portals

www.rbi.gov.in

The RBI has issued Press Release No. 2010-2011/1196 dated 21.02.2011 clarifying that remittance in any form towards overseas foreign exchange trading through electronic/internet trading portals is not permitted under the Foreign Exchange Management Act (FEMA), 1999. The RBI has also clarified that the existing regulations under FEMA, 1999 do not permit residents to trade in foreign exchange in domestic/overseas markets. Residents are, however, permitted to trade in currency futures and options contracts, traded on the stock exchanges recognised by the Securities and Exchange Board of India in India, subject to the conditions specified by the Reserve Bank from time to time. This clarification is issued as the RBI had noticed advertisements issued by electronic/internet portals offering trading or investing in foreign exchange with guaranteed high returns. Also, the RBI stated that many companies even engaged agents who personally contact gullible people to undertake forex trading/investment schemes and entice them with promises of disproportionate/exorbitant returns. With this clarification, the RBI has cautioned that one should not remit or deposit money for such unauthorised transactions as many residents were prey to such tempting offers and lost money heavily in the recent past. One may refer to the above website for further details.

(Matter on Corporate Laws has been contributed by CA. Jayesh Thakur)

■

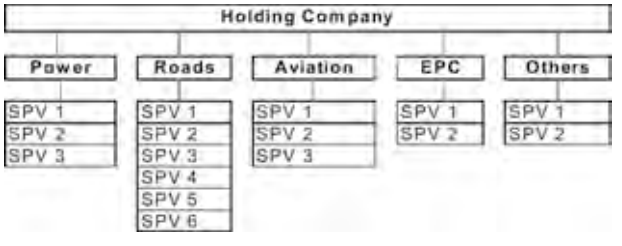
Disclosure of income tax expense/assets, interest expense and borrowings, etc. in the segment report prepared under consolidated financial statements.

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 is engaged, through its subsidiaries, joint ventures and associates, in generation of power, development of expressways, airport infrastructure facilities and special economic zones. As per the concession agreements with grantors, the company is required to carry out each of its infrastructure projects through a separately designated Special Purpose Vehicle (SPV) which is either a subsidiary, associate or a joint venture. These SPVs exclusively undertake the project for which these are respectively incorporated and they are not permitted to undertake any other activity. The company is a public company and is listed on the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE). The consolidated gross annual turnover of the company for the year ended 31st March, 2009 was ₹4,476 crore and the networth was ₹6,471 crore.

2. As stated above, the company is engaged in the infrastructure business and its present activities are spread across various verticals, such as, Power, Roads, Airports, Engineering, Procurement & Construction (EPC) and other infrastructure projects. The querist has provided the following pictorial representation that depicts the company's structure:



SPVs incorporated for each project are classified/grouped under distinct business sectors and each of these sectors is headed by a Business Chairman assisted by a Chief Executive Officer (CEO) and Chief Financial Officer (CFO). These businesses are reviewed and monitored by the respective business chairmen who are on the boards of the respective SPVs and also on the board of the company (holding company).

3. At present, the company has about 100 subsidiaries/ associates/JVs. It prepares its standalone financial statements and also consolidated financial statements. The consolidated financial statements (CFS) include the accounts of the company (standalone) and its subsidiaries, associates and joint ventures. According to the querist, the CFS are prepared in accordance with historical cost convention and comply in all material respects with the applicable accounting principles in India, the accounting standards notified under Section 211(3C) of the Companies Act, 1956 (hereinafter referred to as 'the Act') and other relevant provisions of the Act.

4. The querist has stated that under CFS, segment report of the company and its subsidiaries, associates and joint ventures is prepared considering business segment as the primary segment and geographic segment as the secondary segment. The company has identified the business segments as Power, Roads, Airport, Engineering, Procurement & Construction (EPC) and others. Others include the operations, like, real estate development, investment companies which do not qualify for separate disclosure as segments as per the threshold limits prescribed under Accounting Standard (AS) 17, 'Segment Reporting'. As explained above, each sector has many SPVs which are independently incorporated companies. The company merely holds all these companies by virtue of the equity holding/ ownership control. However, each of these SPVs under respective sectors are separate and distinct legal entities.

5. The querist has further stated that each of the SPVs prepares its stand alone annual accounts and has specifically identifiable timing differences for the computation of deferred taxes and specific allowances and disallowances for the computation of current tax. Also, each of the SPVs is individually discharging its tax liability and the books of account of each of these entities also carries the tax assets/provisions (net) distinctly. Hence, for the preparation of consolidated financial statements, the company is of the view that the tax assets/expenses are part of the respective segments

only, as the same are distinctly identifiable and directly attributable to those respective sectors/segments. The company has prepared the consolidated segment report accordingly by classifying the tax assets/expenses under each of the respective segments. However, the same is not acceptable to the auditors, who are of the view that the same should be disclosed as an unallocated item in the segment report included in the consolidated accounts.

6. Extending the above arguments, auditors are also of the opinion that interest expense relating to loans borrowed by the SPVs for their projects, overdrafts and other operating liabilities including loans identified with a particular segment should not be included in the segment expense of the consolidated financial statements since the operations of the company are primarily not of a financial nature.

Viewpoint of the Querist

7. The querist has stated that AS 17, as notified under the Companies (Accounting Standards) Rules, 2006 states the objective of the Standard as follows:

> "The objective of this Standard is to establish principles for reporting financial information, about the different types of products and services an enterprise produces and the different geographical areas in which it operates. Such information helps users of financial statements:
>
> (a) better understand the performance of the enterprise;
>
> (b) better assess the risks and returns of the enterprise; and
>
> (c) make more informed judgements about the enterprise as a whole."

The querist has further reproduced paragraphs 11 and 13 of AS 17 as follows:

> "11. Determining the composition of a business or geographical segment involves a certain amount of judgement. In making that judgement, enterprise management takes into account the *objective of reporting financial information by segment* as set forth in this Standard and the qualitative characteristics of financial statements as identified in the Framework for the Preparation and Presentation of Financial Statements issued by the Institute of Chartered Accountants of India. The qualitative characteristics include the *relevance, reliability, and comparability* over time of financial information that is reported about the different groups of products and services of an enterprise and about its operations in particular geographical areas, and the usefulness of that information for assessing the risks and returns of the enterprise as a whole."
>
> "13. The definitions of segment revenue, segment expense, segment assets and segment liabilities include amounts of *such items that are directly attributable to a segment and amounts of such items that can be allocated to a segment on a reasonable basis.* An enterprise looks to its internal financial reporting system as the starting point for identifying those items that can be directly attributed, or reasonably allocated, to segments. *There is thus a presumption that amounts that have been identified with segments for internal financial reporting purposes are directly attributable or reasonably allocable to segments for the purpose of measuring the segment revenue, segment expense, segment assets, and segment liabilities of reportable segment."*
> (Emphasis supplied by the querist.)

8. The querist further states that paragraph 5.6 of AS 17 defines that segment expense does not include, among others, 'income tax expense', 'interest expense', etc. Paragraph 5.8 of the Standard specifies that ***"segment assets do not include income tax assets".*** Paragraph 5.8 also states that ***"If the segment result of a segment includes interest or dividend income, its segment assets include the related receivables, loans, investments, or other interest or dividend generating assets"***. However, the definition of the term "segment expense" also states as follows:

> ***"5.6 Segment expense is the aggregate of***
>
> ***(i) the expense resulting from the operating activities of a segment that is directly attributable to the segment, and***
>
> ***(ii) the relevant portion of enterprise expense that can be allocated on a reasonable basis to the segment, including expense relating to transactions with other segments of the enterprise."***

9. The querist has analysed the company's case as follows:

> (i) As mentioned in the foregoing paragraphs, the underlying business of each segment is carried through several SPVs which are separate legal entities.
>
> (ii) The performance of each of these segments and the performance of the companies comprised in the segment are internally monitored distinctly by a separate Business Chairman, CEO and CFO who are responsible to the respective Boards of

the companies. In accordance with paragraph 13 of AS 17, segment reporting of the company is based on the internal reporting and monitoring framework.

(iii) Each of these companies underlying the segments enjoy different and distinct tax benefits applicable and specific to each such sector/company. Further, interest cost of each segment is directly attributable to the borrowings or operating liabilities of the SPVs falling under the specific sectors/segments. In CFS, the performance evaluation of a segment (which is a sum total of the performance of individual project SPVs) and analysis of segment risks and rewards would be incomplete without considering the tax expense/benefit, interest cost incurred distinct to such segment.

(iv) The tax exposure of each segment is significantly different and unique to the respective segment.

(v) Paragraph 13 of AS 17 states that segment expense/assets/liabilities include "such items that are directly attributable to a segment and amounts of such items that can be allocated to a segment on a reasonable basis". As per the querist, the structure of the company is such that the SPVs under each sector are independently assessed as a legal entity under law and these SPVs carry on one single activity leaving no uncertainty in identifying the segment expenses/assets/liabilities. Accordingly, in the case of the company's consolidated financials, the tax expense/interest cost/asset/liability, can be directly linked/allocated to a segment and the exclusions stipulated under paragraph 5 of AS 17 are not relevant.

(vi) As these are separate legal entities, the tax expenses are clearly distinguishable to each company/sectors and do not have/involve any presumptions or do not require any allocation/appropriation.

(vii) The essence of disclosing interest cost and tax expense under unallocated segment stems from the rationale that such expenses are common for various segments of a standalone company and cannot be attributable to individual segments at actuals and hence, the same may not be shown as part of any segment. However, this is not the case of a consolidated entity. In the case of a consolidated entity, these expenses are specific to individual SPVs and in the case of the company, such individual SPVs carry on one specified activity only and thus, such expenses are required to be shown under the specific segment to enable the user of the financial statements to assess the performance of the segment.

(viii) Reliance is to be placed on the objective of the Standard and its disclosure requirements for reporting purposes.

(ix) The company also considers the characteristics of relevance, reliability and comparability in presenting the segment report. Tax assets/expenses and interest cost being more directly attributable, are more relevant if the same are disclosed as part of the respective sectors. The same will also be consistent and comparable with the practice followed by the company in the past and makes the financial data more reliable to assess the risks and rewards of each business segment.

(x) Therefore, in order to present more realistic results of the respective segments, it is appropriate to include the interest and tax expense of each of the SPVs under their respective segments itself in case of consolidated accounts.

(xi) The related loans or borrowings corresponding to the interest expenses disclosed under respective segments, as argued by the company, should also be disclosed under the respective segments and the same will be in compliance with the requirements of paragraph 5.8 of AS 17.

In view of the above, the company is of the view that the tax assets/expenses and interest cost & related borrowings thereon should be considered under respective segments for the purposes of disclosure for consolidation purposes.

B. Query

10. The querist has sought the opinion of the Expert Advisory Committee as to:
    (i) Whether the tax assets/expenses need to be disclosed under respective segments or to be disclosed as 'unallocated' in the segment report of consolidated financial statements.
    (ii) Whether interest expense incurred by SPVs coming under individual sectors (which are treated as segments under CFS) needs to be disclosed under respective segments itself or to be disclosed under unallocated/corporate column.
    (iii) What would be the position of borrowings/loans taken in each segment while preparing CFS.

C. Points considered by the Committee

11. The Committee, while expressing its opinion, has considered only the issues raised in paragraph 10 above and has not examined any other issue that may arise from the Facts of the Case.

12. The Committee notes paragraph 4 and definitions of the terms 'segment expense', 'segment result', 'segment assets' and 'segment liabilities' as stated in paragraph 5 of AS 17, notified under the Companies (Accounting Standards) Rules, 2006, as follows:

"4. If a single financial report contains both consolidated financial statements and the separate financial statements of the parent, segment information need be presented only on the basis of the consolidated financial statements. In the context of reporting of segment information in consolidated financial statements, the references in this Standard to any financial statement items should construed to be the relevant item as appearing in the consolidated financial statements."

"5.6 Segment expense is the aggregate of

(i) the expense resulting from the operating activities of a segment that is directly attributable to the segment, and

(ii) the relevant portion of enterprise expense that can be allocated on a reasonable basis to the segment, including expense relating to transactions with other segments of the enterprise.

Segment expense does not include:

(a) extraordinary items as defined in AS 5, Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies;

(b) interest expense, including interest incurred on advances or loans from other segments, unless the operations of the segment are primarily of a financial nature;

Explanation:

The interest expense relating to overdrafts and other operating liabilities identified to a particular segment are not included as a part of the segment expense unless the operations of the segment are primarily of a financial nature or unless the interest is included as a part of the cost of inventories. In case interest is included as a part of the cost of inventories where it is so required as per AS 16, Borrowing Costs, read with AS 2, Valuation of Inventories, and those inventories are part of segment assets of a particular segment, such interest is considered as a segment expense. In this case, the amount of such interest and the fact that the segment result has been arrived at after considering such interest is disclosed by way of a note to the segment result.

(c) losses on sales of investments or losses on extinguishment of debt unless the operations of the segment are primarily of a financial nature;

(d) income tax expense; and

(e) general administrative expenses, head-office expenses, and other expenses that arise at the enterprise level and relate to the enterprise as a whole. However, costs are sometimes incurred at the enterprise level on behalf of a segment. Such costs are part of segment expense if they relate to the operating activities of the segment and if they can be directly attributed or allocated to the segment on a reasonable basis."

"5.7 Segment result is segment revenue less segment expense."

"5.8 Segment assets are those operating assets that are employed by a segment in its operating activities and that either are directly attributable to the segment or can be allocated to the segment on a reasonable basis.

If the segment result of a segment includes interest or dividend income, its segment assets include the related receivables, loans, investments, or other interest or dividend generating assets.

Segment assets do not include income tax assets."

"5.9 Segment liabilities are those operating liabilities that result from the operating activities of a segment and that either are directly attributable to the segment or can be allocated to the segment on a reasonable basis.

If the segment result of a segment includes interest expense, its segment liabilities include the related interest-bearing liabilities.

Segment liabilities do not include income tax liabilities."

The Committee notes from the above that interest and income tax expense are explicitly excluded from the definition of 'segment expense'. In view of the definition of 'segment result', interest and income tax expense are also excluded from the segment result. Similarly, the Standard specifically excludes income tax assets/liabilities from the segment assets/liabilities. Accordingly, the Committee is of the view that interest and income tax expense in the present

case, though being specifically identifiable and related to particular segments cannot be included in the segment expense and accordingly, in the calculation of segment result. Similarly, income tax asset/liability also cannot be included in the segment assets/liabilities in the segment report of the consolidated financial statements.

13. As far as the reporting of borrowings/loans specifically related to a segment in the consolidated segment report is concerned, the Committee notes from the definition of the term 'segment liabilities', as reproduced in paragraph 12 above, that if the segment result of a segment includes interest expense, its segment liabilities would include the related interest-bearing liabilities. Conversely, the Committee is of the view that if the interest expense is not included in the segment result, segment liabilities would also not include the related interest-bearing liabilities. Accordingly, the Committee is of the view that borrowings/loans, even though, specifically raised by each segment, cannot be included in the calculation of segment liabilities.

14. The Committee further notes paragraphs 41 and 42 of AS 17 which provide as follows:

"41. Paragraph 40(b) requires an enterprise to report segment result. If an enterprise can compute segment net profit or loss or some other measure of segment profitability other than segment result, without arbitrary allocations, reporting of such amount(s) in addition to segment result is encouraged. If that measure is prepared on a basis other than the accounting policies adopted for the financial statements of the enterprise, the enterprise will include in its financial statements a clear description of the basis of measurement."

"42. An example of a measure of segment performance above segment result in the statement of profit and loss is gross margin on sales. Examples of measures of segment performance below segment result in the statement of profit and loss are profit or loss from ordinary activities (either before or after income taxes) and net profit or loss."

From the above, the Committee is of the view that the Standard itself encourages, in addition to disclosure of the segment result as discussed above, disclosure of other items relating to the performance of each segment. However, that disclosure should not affect the calculation of segment result. Thus, while the company in the extant case is required to disclose segment expense and segment result without including the interest and income tax expense as stated above, the company, if it so desires, may disclose the performance of each segment after interest and income tax expense. On the same analogy, the Committee is of the view that income tax asset/liability and loans/borrowings related to the afore-mentioned interest specifically related to a segment, may be provided as additional information apart from segment assets and segment liabilities as per the provisions of AS 17 by way of separate disclosure.

D. Opinion

15. On the basis of the above, the Committee is of the following opinion on the issues raised in paragraph 10 above:

(i) The tax assets/expense cannot be included in the segment assets and segment expenses, respectively. However, if the company so desires, it may disclose the performance of each segment after income tax expense and income tax asset as additional information relating to these segments separately, as discussed in paragraph 14 above.

(ii) The interest expense incurred by SPVs coming under individual sectors (which are treated as segments under CFS) cannot be included in the segment expense. However, if the company so desires, it may disclose the performance of each segment after interest expense relating to these segments separately, as discussed in paragraph 14 above, without affecting the 'segment result'.

(iii) The borrowings/loans, even though, specifically raised by each segment, cannot be included in the calculation of segment liabilities, as discussed in paragraph 13 above. However, these may be shown by way of additional information separate from segment liabilities as discussed in paragraph 14 above.

1	The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute.
2	The Opinion is based on the facts supplied and in the specific circumstances of the querist.
3	The Compendium of Opinions containing the Opinions of Expert Advisory Committee has been published in twenty eight volumes. A CD of Compendium of Opinions containing twenty eight volumes has also been released by the Committee. These are available for sale at the Institute's office at New Delhi and its regional council offices at Mumbai, Chennai, Kolkata and Kanpur.
4	Recent opinions of the Committee are available on the website of the Institute under the head 'Resources'.
5	Opinions can be obtained from EAC as per its Advisory Service Rules which are available on the website of the ICAI, under the head 'Resources'. For further information, write to **eac@icai.org** .

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Salient Features of the Finance Bill, 2011: Direct Taxes

As against the budget for the year 2010-2011, when there were doubts about the growth of Indian economy due to global economic crisis, this year our Finance Minister Mr. Pranab Mukherjee has had an easy task as the Indian economy has shown considerable resilience and during the year 2010-2011 was back to its pre-global melt-down growth trajectory. The Gross Domestic Product is estimated to grow by 8.6 per cent in the year 2010-2011 with impressive growth in agriculture by 5.4 per cent. Despite the growth in the economy there were challenges before the Finance Minister in the form of inflation management, implementation gaps, drift in governance, gap in public accountability and corruption. The continued high food prices have also been a cause of concern. The 2011-2012 budget gives many positive indications so far as fiscal consolidation is concerned. The Finance Minister in this Budget has proposed 34 clauses in the Finance Bill, 2011 to amend the various provisions of the Income-tax Act, 1961 and the Wealth Tax Act, 1957. The various amendments proposed in the Finance Bill, 2011 are analysed below. Unless otherwise stated, all these amendments are proposed to be effective from 1st April, 2012 i.e. assessment year 2012-2013 relevant to the income earned in the financial year 2011-2012.

CA. Ved Jain
(The author is Past President of the ICAI. He can be reached at eboard@icai.org)

Introduction

The 2011-2012 budget gives many positive indications so far as fiscal consolidation is concerned. The fiscal deficit of 5.1 per cent of GDP for the year 2010-2011 as against 5.5 per cent projected in the last budget and the projection of 4.6 per cent for the next year 2011-2012 is a very positive sign. Similarly, the projection of Central Government debt as a proportion of GDP at 44.2 per cent for the year 2011-2012 as against 52.5 per cent recommended by the 13th Finance Commission shows a strong commitment of the government to adhere to fiscal discipline and that too without much increase in tax rates.

The growth in tax revenue in the year 2010-2011 has been impressive. The total tax collections for the year 2010-2011 are expected to be at ₹7,86,888 crore as against ₹7,46,651 crore projected in the budget mainly because of higher collection of income tax from individuals and of customs duty. The estimates for the year 2011-2012 of a total tax collection at ₹9,32,440 crore projecting a growth of over 24 per cent over the last year's budget estimates seems to be optimistic.

Estimates for the year 2011-2012 from direct taxes at ₹5,32,651 crore as against revised estimates of ₹4,46,000 crore for the year 2010-2011 constitute about 57 per cent of total tax collections i.e. an increase of 21 per cent. The

estimates of corporate income tax at ₹3,59,990 crore for the year 2011-2012 as against revised estimates of ₹2,96,377 for the year 2010-2011 are 67.5 per cent of the total direct taxes whereas estimates of personal income tax of ₹1,72,661 for the year 2011-2012 as against revised estimates of ₹1,49,623 crore are 32.5 per cent of the total direct taxes. A noticeable feature of the tax collection for year 2010-2011 is that personal income tax collections have improved from ₹1,28,669 crore projected in the budget estimates of the year 2010-2011 to ₹1,49,624 crore as per revised estimates despite drastic restructuring of personal tax rate slabs last year whereby the slab rate of 10 per cent applicable up to income of ₹3,00,000 was increased up to ₹5,00,000 and the slab rate of 20 per cent applicable on income between ₹3,00,000 to ₹5,00,000 was increased from ₹5,00,000 to ₹8,00,000. This confirms the belief that moderate tax rates help in improving tax compliance and lowering of tax rates does not lead to fall in tax collection.

Another noticeable feature of the income tax collection from corporates is that 55.75 per cent of the same is contributed by just 216 companies and another 17.80 per cent is contributed by 692 companies only, meaning thereby that 908 companies contribute around 74 per cent of income tax collection from corporates. Out of the total 4,27,811 companies filing tax returns, 1,77,834 companies do not pay any income tax and 2,23,888 companies pay only 3 per cent of the income tax of corporates.

"The threshold limit for every individual, HUF, Association of Persons, Body of Individuals and Artificial Juridical Persons is being increased from ₹1,60,000 to ₹1,80,000. No surcharge shall be applicable. However, educational cess and higher education cess at the rate of 2 per cent and 1 per cent respectively shall be applicable. The threshold limit for a woman resident in India will continue to be ₹1,90,000. The threshold age limit of 65 years for being eligible as a senior citizen is being reduced from 65 years to 60 years."

As is usual, the Finance Minister in this Budget has proposed 34 clauses in the Finance Bill, 2011 to amend the various provisions of the Income-tax Act, 1961and the Wealth Tax Act, 1957. The various amendments proposed in the Finance Bill, 2011 have been analysed below. Unless otherwise stated, all these amendments are proposed to be effective from 1st April 2012 i.e. assessment year 2012-2013 relevant to the income earned in the financial year 2011-2012.

A. Tax Rates

1. Increase in the Threshold Limit

The threshold limit for every individual, HUF, Association of Persons, Body of Individuals and Artificial Juridical Persons is being increased from ₹1,60,000 to ₹1,80,000.

The new tax rates proposed are as under:

Income	Tax Rates
Up to ₹1,80,000	NIL
₹1,80,001 – 5,00,000	10%
₹ 5,00,001 – 8,00,000	20%
Above ₹ 8,00,000	30%

No surcharge shall be applicable. However, educational cess and higher education cess at the rate of 2 per cent and 1 per cent respectively shall be applicable. The threshold limit for a woman resident in India will continue to be ₹1,90,000. Accordingly, the benefit of increase in threshold limit by ₹20,000 shall be available to male assessees only. The threshold age limit of 65 years for being eligible as a senior citizen is being reduced from 65 years to 60 years. Senior resident citizens above 60 years of age need not pay any tax on income up to ₹ 2,50,000, an increase of ₹10,000 only on the existing threshold limit of ₹2,40,000 as against the general increase of ₹20,000. A new category of very senior citizens above 80 years is being created. Such resident very senior citizens i.e. above 80 years of age need not pay tax on income up to ₹5,00,000.

"The Finance Bill, 2011 proposes to insert a new Section 115BBD to provide that in the case of an Indian company where its income includes any income by way of dividends from a foreign subsidiary company, such dividend shall be taxable at the rate of 15 per cent with applicable surcharge and cess on the gross amount of dividends without any deduction of any expenditure. A subsidiary foreign company has been defined to mean a foreign company in which an Indian company holds more than half the nominal value of the equity share capital of the company."

2. Surcharge on corporates being reduced from 7.5 per cent to 5 per cent

The surcharge applicable to a domestic company having income above ₹1 crore is being reduced from 7.5 per cent to 5 per cent. No surcharge is applicable on a domestic company having income up to ₹1 crore. In the case of foreign companies the surcharge is being reduced from 2.5 per cent to 2 per cent. The Finance Minister is gradually reducing the surcharge. One can expect that on the introduction of Direct Taxes Code next year, the surcharge applicable to companies will be fully withdrawn.

Similarly, the reduction in corporate tax rate from 30 per cent to 25 per cent may be spread over the years in the coming budgets.

3. Minimum Alternate Tax being increased to 18.5 per cent

To offset the loss arising from the reduction of surcharge from 7.5 per cent to 5 per cent in the case of companies, the Finance Bill proposes to enhance the Minimum Alternate Tax (MAT) rate from 18 per cent to 18.5 per cent. In recent years there has been a steep increase in rate of MAT. Starting from 7.5 per cent, the MAT rate was increased to 10 per cent with effect from 1-4-2007, (Assessment year 2007-2008), increased to 15 per cent with effect from 1-4-2010 (Assessment year 2010-2011), and further increased to 18 per cent with effect from 1-4-2011 (Assessment year 2011-2012); and it is now being increased still further to 18.5 per cent from 1-4-2012 (Assessment year 2012-2013).

This MAT affects all companies claiming deduction in respect of income from infrastructure facilities, telecom, power generation, etc. under Section 80-IA; companies claiming deduction in respect of income from multiplex theatre, convention centre, housing projects, hospitals, etc., under Section 80-IB; companies claiming exemption in respect of undertakings in the State of Himachal Pradesh and Uttaranchal under Section 80-IC; and companies claiming exemption in respect of undertakings in North Eastern States under Section 80-IE of the Act. The only consolation for these companies is that in the subsequent years they will be eligible to take credit of the MAT paid in earlier years. Thus in a way MAT is not an additional tax in the real sense but an advance tax paid for subsequent years

An interesting feature of liability under MAT is in respect of long-term capital gain on non-Securities Transactions Tax (STT) paid equity shares. Such long-term capital gain without any indexation benefit will be liable for MAT at the rate of 18.5 per cent as against the rate of 20 per cent applicable after indexation in respect of non-STT paid Long Term Capital Gain. Thus, the MAT liability can be more than the normal tax liability in case such a company does not have the possibility of claiming credit of the MAT in future. The net effect of this is not only double taxation by way of STT and MAT but the 2MAT rate goes beyond the normal tax rate. Similar will be the case in respect of Short-Term Capital Gain arising on STT paid equity shares where normal tax rate applicable is 15 per cent under Section 111A of the Act. Thus, this the MAT makes the provision of Section 10(38) exempting Long-Term Capital Gain in respect of STT-paid shares, Section 48 allowing indexed cost of acquisition consequent to cost inflation index, Section 111A taxing Short-Term Capital on STT paid shares @ 15 per cent and Section 112 taxing Long-Term Capital Gain after indexation @ 20 per cent virtually redundant in the case of a company which does not have other income chargeable to tax.

"At present the liaison offices of foreign companies, firms, association of individuals are not required to file their return of income with regard to their liaison offices since these liaison offices do not carry out any business activity in India. In order to bring them within the network information the Finance Bill, 2011, proposes to insert Section 285 making it obligatory for every non-resident having a liaison office in India to file an annual information return providing such information as may be prescribed."

To avoid this anomaly, it will be more appropriate to change the present mode of levying MAT on the basis of Book Profit as per Companies Act, 1956 by making adjustment in the taxable income by way of addition of exempted income as is proposed for Limited Liability Partnership.

4. Minimum Alternate Tax to be applicable to Units in Special Economic Zones (SEZ)

Units in Special Economic Zones (SEZ) will now also be liable for MAT. The exemption from MAT and dividend distribution tax available to income arising from any business carried on or services rendered by an entrepreneur or a Developer in a unit or Special Economic Zones are being withdrawn from assessment year 2012-2013. Profit and gains derived from such units located in SEZ will not be deducted while computing book profit for the purposes of levy of Minimum Alternate Tax.

Similarly, the exemption available from Dividend Distribution Tax under Section 115-O. in respect of income of SEZ shall not be available in respect of the dividend declared, distributed or paid on or after 1st June, 2011. The implication of this amendment to Section 115-O is that not only the profit earned subsequent to 1st June, 2011 but also the profit earned in earlier years but not distributed so far, will also be liable for Dividend Distribution Tax. Accordingly, all such SEZ units will be well advised to distribute the accumulated profit available for distribution before 1st June, 2011 to avoid levy of Dividend Distribution Tax in respect of accumulated profit of earlier years.

5. Scope of Minimum Alternate Tax being widened

Minimum Alternate Tax, renamed

as Alternate Minimum Tax, shall be applicable on Limited Liability Partnerships (LLP). For this new Sections 115 JC to 115 JF are being introduced. The mode for levy of this Alternate Minimum Tax is different from that applicable on companies. In the case of LLP, it is not the book profit but the taxable income computed as per provisions of the Act which will be the basis. To this exempt income under Chapter VI-A i.e. mainly exemption under Section 80-1A, 80-1AB, 80-1B and 80-1C, 80-IC, 80-1D, 80-1E and exemption available under Section 10 AA in respect of Special Economic Zones (SEZ) will be added. The applicable tax rate will be 18.5 per cent on such income. This has been done to discourage companies getting converted to LLP to avoid MAT. Credit of tax so paid shall be allowed to be set off over a period of next ten years in respect of tax payable over and above the Alternate Minimum Tax for that year. As in the case of a company, every such LLP shall be required to obtain a report from a Chartered Accountant and furnish the same before the due date of filing the return.

6. Tax rate applicable on Distribution of Income by Mutual Fund to corporates being increased

The rate of tax under Section 115R(2) in respect of income distributed by the money market mutual fund or liquid fund is being increased from 25 per cent to 30 per cent in respect of any person i.e. corporates other than an individual or HUF. However, in respect of an individual or an HUF, the rate of tax on income distributed by a money market mutual fund or a liquid fund shall continue to be 25 per cent. Similarly, the rate of tax on income distributed to any person i.e. corporates other than an individual or an HUF by a fund other than a money market fund or a liquid fund is being increased from 20 per cent to 30 per cent. This will cover all debt funds on which tax rate applicable at present is 20 per cent. The tax rate on debt fund in respect of an individual or an HUF shall continue to be 12.5 per cent. This amendment shall be applicable on income distributed on or after 1st June, 2011. Accordingly, it will be advisable for such mutual funds to distribute their income of debt fund before 1st June, 2011 so as to avail themselves of the benefit of a lower rate of tax.

"The Finance Bill, 2011 proposes to amend Section 92C of the Income-tax Act, 1961 whereby a safe harbour of 5 per cent between the actual price of the transaction and the arm's length price is allowed and no adjustment is made to the actual price if the variation is within 5 per cent. Now the 5 per cent variation will not be allowed across all segments of the business activity."

B. International Taxation

1. Dividend received from foreign subsidiary to be taxed at concessional rate of 15 per cent

The Finance Bill, 2011 proposes to insert a new Section 115BBD to provide that in the case of an Indian company where its income includes any income by way of dividends from a foreign subsidiary company, such dividend shall be taxable at the rate of 15 per cent with applicable surcharge and cess on the gross amount of dividends without any deduction of any expenditure. A subsidiary foreign company has been defined to mean a foreign company in which an Indian company holds more than half the nominal value of the equity share capital of the company.

The Finance Minister in his budget speech has stated that this provision is being introduced to encourage Indian companies to repatriate more dividends so as to bring more funds in India rather than continue to remain invested abroad. However, this benefit has been limited only for the dividends received by an Indian company from its foreign subsidiary company. There may be many foreign companies where Indian companies had made investment but the holding in these companies may not be more than 50 per cent. The proposed amendment does not take into consideration that in many joint ventures an Indian company may not be holding more than 50 per cent equity of the foreign company, may be because of local laws (on the line Indian Foreign Direct Investment {FDI} Regulations), restricting investment beyond a fixed percentage. It also ignores the fact that there may be more than two partners in the joint venture and each of the partners may not be holding more than 50 per cent equity. Further, even the Indian entity may have made investment through group companies and each of these companies may not be holding more than 50 per cent equity of the foreign company though as a group the holding may be more than 50 per cent. Moreover, the proposal in the present form makes a discrimination about the same nature of income i.e. dividend from a foreign company. In one case where holding is more than 50 per cent such dividend income shall be taxable at the rate of 15 per cent and in the other case where holding is less than 50 per cent the same dividend income shall be taxable at the rate of 30 per cent. Looking to the objective explained by the Finance Minister in the budget speech, it would be more appropriate had the concessional rate of tax of 15 per cent been made applicable in respect of dividends received from any foreign company without condition of being a subsidiary company. This will also bring parity with taxation of

dividend income received from Indian company where dividend distribution tax at the rate of 15 per cent is applicable. This is also justified considering the fact that taxing dividend income is tantamount to double taxation. This provision still is very attractive as the dividend received even from companies established in tax haven countries will be subject to the concessional rate of tax of 15 per cent only. The only requirement to be eligible for the concessional rate of 15 per cent is that the income should be by way of dividend from a foreign subsidiary company.

2. Income from Infrastructure Bonds to be taxed at concessional rate of 5 per cent

The Finance Bill, 2011 proposes to create special vehicles in the form of infrastructure debt funds to attract foreign funds for financing the infrastructure needs of the country. The interesting feature of these funds is that the tax rate applicable on interest payment from such bonds will only be 5 per cent as against rate of 20 per cent otherwise applicable on interest income in the hands of non-residents. Further such a tax of 5 per cent will be deducted at source under Section 194 LB of the Act, with the result that no return of income needs to be filed if there is no other income in view of exemption from filing return of income under Section 115 A(5) of the Act.

The bonds for borrowings by these funds will be issued for non-residents and foreign companies. Residents will not be eligible for this exemption. This will give opportunity to many non-residents to invest in these bonds and avail themselves of the concessional rate of tax of 5 per cent.

The proposal is, however, silent about the rate of interest payable on such infrastructure debt funds. Probably these bonds will be issued from time to time providing a rate of interest that takes market conditions in consideration

The proposed amendment does not address the applicability of Section 206 AA whereby tax at the rate of 20 per cent is to be deducted in the absence of Permanent Account Number. Many of the non-residents and foreign companies may not have any other activity and as such may not be having and will also not be willing to obtain PAN, more so when there is no need to file tax return in view of Section 115A (5). It will be advisable that the position on this point is clarified in the Act itself to avoid confusion and litigation.

3. Liaison Offices of foreign entities to submit Annual Information Return

At present the liaison offices of foreign companies, firms, association of individuals are not required to file their return of income with regard to their liaison offices since these liaison offices do not carry out any business activity in India.

In order to bring them within the network information the Finance Bill, 2011, proposes to insert Section 285 making it obligatory for every non-resident having a liaison office in India to file an annual information return providing such information as may be prescribed. This requirement is different from filing a return of income. This information is to be filed within a period of 60 days from the end of such financial year. This amendment is being made effective from 1st June, 2011. Since the period of 60 days shall stand expired as on 1st June, 2011 this amendment shall be applicable in respect of financial year 2011-2012 and all liaison offices accordingly will be required to file the information by 30th May from next year onward.

"The Finance Bill, 2011 proposes to further address the hardship caused by the amendments made by the Finance Act, 2008 in the definition of 'charitable purpose' under Section 2(15) of the Act whereby an absolute restriction was placed in respect of receipts by a charitable trust or institution if it involved carrying on of any act in the nature of trade/commerce or business or any act of rendering any service for a cess or a fee or any other consideration."

4. Transactions with persons in tax haven countries to attract special provisions

The Finance Bill, 2011 proposes many amendments to provide tool box to counter tax evasion in respect of foreign transactions in tax haven countries.

(i) A new Section 94A is being introduced to provide tool box to discourage transaction by a resident assessee with persons located in any country or jurisdiction which does not effectively exchange information with India. As per this provision where an assessee enters into such a transaction, such a transaction shall be deemed to be an international transaction with associated enterprises and transfer pricing regulation shall be applicable to such a transaction.

(ii) No deduction in respect of any payment made to any financial institution shall be allowed unless the assessee authorises the tax authorities to seek relevant information about it from such financial institutions.

(iii) No deduction in respect of any expenditure arising from the transaction with a person located in such jurisdictional area shall be allowed unless the assessee maintains the prescribed document and the information in respect thereof.

(iv) Further, if any money is received from such a person located in such area then it will be the onus of the assessee to explain the source of such money in the hands of the person and in case of his failure to do so the amount so received shall be deemed to be the income of the assessee.

(v) Any payment made to a person, on which tax is deductible at source, located in such jurisdictional area, the deduction of tax at source shall be made at the rate prescribed under the Act or at the rate of 30 per cent whichever is higher.

In view of the above provisions, if the assessee incurs expenditure on or receives income from transactions in these countries, he will be required to establish that the expenditure incurred is as per the prevalent market rate; similarly, the income received in respect of sales or revenues is at the prevalent market rate. The assessee will also be required to allow verification of its transactions entered into with any financial institution. Failure to do so will lead to disallowance of the expenditure. Further, where any such capital, loan or advance etc is received by the assessee from a person located in such country, the onus to prove source on the lines of Section 68 will be that of the assessee. Failure to do so may lead to the addition of such capital, loan, etc. as income of the assessee. Moreover, tax at source on payment to a person located in such country has to be at a higher rate of thirty per cent. However, this higher rate will be applicable only when such payment is liable for tax deduction i.e. such payment is chargeable to tax.

The above provisions shall be applicable from 1st June, 2011 and this will empower the Central Government to notify a country or territory outside India in relation to which the above provision shall be applicable. Accordingly, the transaction with tax haven countries will get covered under this provision and the onus to prove the genuineness of such transaction shall vest lie on the assessee in all such cases.

C. Transfer Pricing

1. Safe harbour of 5 per cent to be revisited and notified by the Central Government

The Finance Bill, 2011 proposes to amend Section 92C of the Income-tax Act, 1961 whereby a safe harbour of 5 per cent between the actual price of the transaction and the arm's length price is allowed and no adjustment is made to the actual price if the variation is within 5 per cent. Now the 5 per cent variation will not be allowed across all segments of the business activity. The variation instead shall be such as may be notified by the Central government in this behalf. This may lead to more complexity in transfer pricing regime which is otherwise too complex as the Central Government may notify different variations for different segments of business activity at different points of time.

> **The Finance Bill, 2011 proposes to introduce sub-section (46) in Section 10 of the Act to exempt income of Authority, Board or Trust or Commission which has been set up or constituted under an Act by the Central Government or State Government with the object of regulating or administering any activity for the benefit of the general public and it is not engaged in any commercial activity. This exemption shall be available to such Authority, Board, Trust or Commission as may be notified and in respect of such incomes as may be specified in the notification issued by the Central Government.**

2. Transfer Pricing Officer to have power to survey

The provision of Section 92CA(7) is being widened to empower the Transfer Pricing Officer to carry out a survey under Section 133A of the Act for an on-the-spot enquiry and verification in addition to the existing power of calling for information under Section 133(6) or issuing summon under Section 131(1). Carrying out such a survey leads to the invasion of privacy and should be restricted to the rarest of rare cases and should not be allowed as a matter of routine. Even otherwise the determination of the arm's length price by the Transfer Pricing Officer is an exercise of determination of the arm's length price and he is requested to carry out a comparative analysis and for this to evaluate the data available in the public domain. Carrying out the survey at the premises of the person for whom the arm's length price is being determined will lead to more complexity. Further, the scope of the survey provided under Section 133A is limited.

3. The Transfer Pricing Officer to have power beyond the reference made by the Assessing Officer

The scope of Section 92CA is being widened to empower the Transfer Pricing Officer not only to determine the arm's length price in respect of the international transactions referred to him by the assessing officer but also such other international transactions which are noticed by him subsequently in the course of the proceedings before him. Thus, the Transfer Pricing Officer shall not only be determining the arm's length price of the international transactions referred to him but can find out other international transactions requiring determination of the arm's length prices. This provision assumes that determination of the arm's length prices by the

"The Finance Bill, 2011 proposes to widen the scope of investment-linked deduction available under Section 35AD of the Act to include two new businesses, that of developing and building a housing project under a scheme for affordable housing framed by the Central or State Government and notified by CBDT and also of the production of fertiliser in India. The benefit of this shall be available for a new plant or for a newly installed capacity in an existing plant on or after 1st April, 2011."

Transfer Pricing Officer for each international transaction is mandatory ignoring the fact that Transfer Pricing Officer is to assist the assessing officer in respect of such international transactions as the Assessing Officer may deem fit. There may be instances where the Assessing Officer may be satisfied about the arm's length price in respect of other transactions declared by the assessee and may not require the assistance of the Transfer Pricing Officer.

4. Due date of filing return for corporate assessees having international transaction to be 30th November

The Finance Bill, 2011 in view of the extra time required by the assessee for carrying out the transfer pricing study and determination of the arm's length price proposes to extend the due date for filing of return of income from 30th September to 30th November each year. This new due date shall be applicable to Corporate assessees only who have international transactions and are required to file Transfer Pricing Audit Report. This provision shall be effective from 1st April, 2011. Accordingly, the return for the assessment year 2011-2012 in such cases can be filed up to 30th November, 2011. It may be noted that this extended period upto 30th November is only for companies; and for an assessee other than a company the due date shall continue to be 30th September despite such assessees having international transactions. Logically this extension should have been made applicable to both corporate as well as non-corporate assessees.

D. Charitable Trusts/ Institutions

1. Receipt of commercial nature up to ₹25 lakh not to affect 'Charitable Status' of the Trust or Institution.

The Finance Bill, 2011 proposes to further address the hardship caused by the amendments made by the Finance Act, 2008 in the definition of 'charitable purpose' under Section 2(15) of the Act whereby an absolute restriction was placed in respect of receipts by a charitable trust or institution if it involved carrying on of any act in the nature of trade/commerce or business or any act of rendering any service for a cess or a fee or any other consideration. This has caused a lot of hardship to all Trusts and Institutions which have been providing valuable service to the society. The Finance Act, 2010 provided that such an organisation will still be charitable if the total receipts of such nature do not exceed ₹10 lakh in a year. The Finance Bill, 2011 proposes to further increase this amount to ₹25 lakh.

One has to be cautious about this provision and the ceiling of ₹25 lakh. It is not that receipts up to ₹25 lakh of such nature shall be exempt. A trust or institution will be charitable so long the total receipts of such nature do not exceed ₹25 lakh. The moment the receipts of such nature exceed ₹25 lakh, the trust/institution will lose its status of charitable trust or institution and the whole of its income will become chargeable to tax. Accordingly, the Trust/Institution needs constantly to monitor such receipts and may have to stop accepting such receipts, when they are going to exceed ₹25 lakh so as to avail itself of the benefit of the status of 'charitable purpose'.

E. Exemptions

1. Income of Central Government/State Government Authority, Board, Trust, Commission to be exempt.

The Finance Bill, 2011 proposes to introduce sub-section (46) in Section 10 of the Act to exempt income of Authority, Board or Trust or Commission which has been set up or constituted under an Act by the Central Government or State Government with the object of regulating or administering any activity for the benefit of the general public and it is not engaged in any commercial activity. This exemption shall be available to such Authority, Board, Trust or Commission as may be notified and in respect of such incomes as may be specified in the notification issued by the Central Government. However, such Authority, Board, etc. shall be required to file a return of income. This amendment is being made to address the issue, which has arisen consequent to the withdrawal of exemption available under Section 10 (20) and 10 (20A) to such Authority or Board, etc. Many of such Authorities, Boards, etc. were engaged in administering public utility and were now being subjected to tax.

Under the new provision each of such authorities shall be required to make an application to the Central Government for seeking exemption and justify that it has been constituted with the object of regulating or administering activity for the benefit of the general public and that it is not engaged in any commercial activity.

"The condition of additional tax for filing the application for settlement of tax disputes in the case of search is being relaxed. The Finance Act, 2010 has allowed an application to be made before the Settlement Commission if the proceedings have been initiated against the applicant under Section 153A or under Section 153C as a result of search under Section 132 or requisition of books of accounts under section 132A of the Act with a condition that the additional amount of income tax payable by each applicant on the income disclosed in the application should exceed ₹50 lakh."

An interesting feature of this amendment is that it is going to be effective from 1st June, 2011 and as such does not specify the assessment years from which this amendment shall be applicable. Accordingly, the Authority or Board or the Trust as the case may be on being notified by the Central government shall be eligible to claim exemption for the assessment years as may be stated in the notification. Since this amendment does not restrict the power of the Central government to notify the exemption for earlier assessment years, an eligible Authority, Board or Trust etc. should be in a position to seek exemption for earlier assessment years.

2. Deduction under Section 80CCD for contribution to New Pension Scheme to exclude Employer's Contribution

Presently, under Section 80CCD contribution to pension scheme is allowed as deduction in respect of an employee's contribution while computing the income of the employee. Further, under Section 80CCE there is an overall ceiling of ₹1 lakh in respect of exemption under Section 80C i.e. on account of life insurance premium, provident fund, etc. under Section 80CC i.e. on account of any annuity plan of Life Insurance Corporation or any other insurance and under Section 80CCD on account of contribution to pension scheme. Section 80 CCD refers to both the employee's as well as the employer's contribution. To remove confusion in respect of the contribution of the employer to the new pension scheme, the Finance Bill, 2011 proposes to amend the provision of Section 80CCE clarifying that this limit of ₹1 lakh shall be exclusive of contribution made by the employer to the new pension scheme. This amendment is being made effective from the assessment year 2012-2013 with the result that disputes in respect of contribution of the employer for earlier assessment year shall continue though the intention was never to include the employer's contribution to the new pension scheme for the purpose of the limit of ₹1 lakh.

3. Benefit of exemption for setting up power generation, transmissions or distribution undertakings being extended by another year

The Finance Bill, 2011 proposes to extend terminal date by one year for claiming exemption under Section 80-IA(iv) in respect of undertakings for the generation and distribution of power; or which start transmission or distribution; or which undertake substantial renovation and modernisation of existing network of transmissions or distribution up to 31st March, 2012. This exemption earlier was available up to 31st March, 2011. It is to be noted that the exemption under Section 80-IB is undertaking specific and not assessee specific. The exemption is applicable unit wise and not assessee wise. An assessee would be eligible to obtain the benefit of exemption in respect of units commissioned up till 31st March 2012 only. No benefit would be available for units commencing production after 31st March 2012. So, in case one plans for 10,000 MW, but is able to commission a unit of 100 MW only by 31st March, 2012, it will be eligible to take the benefit of exemption for 100 MW unit only and not for the other units. However, once the unit becomes eligible it will be eligible to claim exemption for ten consecutive assessment years out of 15 assessment years.

4. No extension for exemption under Section 10A, 10B & 80IB-(10)

Exemption in respect of the following shall come to an end on 31st March, 2011 and hence the income shall be taxable from 1st April, 2011:-

- Undertakings in Free Trade Zone under Section 10A
- Export-oriented units under Section 10B
- Housing Projects under Section 80- IB(10)

5. No tax holiday for undertakings engaged in commercial production of mineral oil licensed after 31st March, 2011

The scope of Section 80IB(9) is being limited by inserting a sunset clause whereby tax holidays for undertakings engaged in commercial production of mineral oil will not be available for blocks licensed under a contract awarded after 31st March, 2011 under the new exploration licensing policy. By this amendment the existing undertakings which have obtained a license before 31st March, 2011 will continue to avail themselves of the benefit for a period of seven years as provided under Section 80IB(A) and no new undertakings after 31st March, 2011 shall be eligible.

F. Business Income

1. Scope of investment-linked deduction under Section 35AD being widened

The Finance Bill, 2011 proposes to widen the scope of investment-linked deduction available under Section 35AD of the Act to include two new businesses, that of developing and building a housing project under a scheme for affordable housing framed by the Central or State Government and notified by CBDT and also of the production of fertiliser in India. The benefit of this shall be available for a new plant or for a newly installed capacity in an existing plant on or after 1st April, 2011. As per the provision of Section 35AD, the entire expenditure of a capital nature incurred for the purpose of a specified business other than expenditure on land, goodwill or financial instrument is allowed as deduction during the year in which such expenditure is incurred. However, it has been provided that such business shall not be eligible for claiming deduction under Chapter VIA nor shall the expenditure incurred be allowed deduction under any other provision of Income Tax Act. The loss of specified business shall also not be eligible for being set-off against any other income and the same will be carried forward for being set-off against income from any specified business only in the following assessment year. The net result of Section 35AD is that one can claim capital expenditure and carry forward the same which otherwise it could have claimed by way of depreciation. It may be further noted that this provision does not give any additional benefit. All it allows is accelerated depreciation by allowing 100 per cent of the capital expenditure in the year in which it is incurred. In some of the cases it may prove to be counter-productive with the restriction to carry forward the losses only upto eight years.

2. Loss of new hospital/ hotel can be set off against income of existing hospital or hotel[The first part of the sub-heading doesn't read well.]

Further, a clarificatory amendment is being made to delete the word 'new' in respect of hotel and hospital so as to allow the benefit of loss of a specified business against the profit of another specified business whether or not such profit is eligible for deduction under Section 35AD. Hotels and hospitals were included in the Finance Act, 2010 in the list of eligible specified business. With this amendment an assessee who currently operates a hospital or a hotel would be able to set off the profit of such business against the losses if any of a new hospital or a new hotel which begins to operate after 1st April, 2010 and is eligible for deduction under Section 35AD.

3. Higher deduction for contribution to scientific research

The Finance Bill, 2011 in line with the last Finance Act, 2010 has further enhanced the weighted deduction from 175 per cent to 200 per cent under Section 35 (2AA) while computing business income in respect of contribution to a National Laboratory or to a University or Indian Institute of Technology to be used for an approved scientific research programme. The Finance Act, 2010 had increased the weighted deduction in respect of such contribution from 125 per cent to 175 per cent. Accordingly, any assessee who pays any sum, with a direction to use the amount for scientific research undertaken under a programme approved by the authority shall be eligible to claim double the amount of such sum as deduction while computing its income. With the tax rate of 30 per cent, this virtually means that 60 per cent of the cost of research is being borne by the government and 40 per cent is the cost to the assessee.

4. Contribution towards new pension scheme to be allowed as deduction

Section 36 is being amended by inserting clause (iva) to provide for deduction of amount paid by an assessee as the employer by way of contribution towards a pension scheme on account of the employee to the extent that such a contribution does not exceed 10 per cent of the salary of the employee in the previous year, while computing its business income. Accordingly, contributions up to 10 per cent of salary will be eligible for deduction and beyond that will be disallowed.

G. Settlement Commission

1. Additional tax for Settlement application need not be ₹50 lakh for each applicant:

The condition of additional tax for filing the application for settlement of tax disputes in the case of search is being relaxed. The Finance Act, 2010 has allowed an application to be made before the Settlement Commission if the proceedings have been initiated

"The Finance Bill, 2011 proposes to include provisions for collecting information on behalf of tax authorities outside India. For this the scope of Section 131 is being widened by inserting a new sub-clause (2) authorising income tax authorities not below the rank of an Assistant Commissioner of Income Tax as may be notified by the Board in this behalf to exercise the power of issuing summons under Section 131(1) (i) notwithstanding that no proceeding with respect to such person or class of persons are pending before any income tax authorities."

against the applicant under Section 153A or under Section 153C as a result of search under Section 132 or requisition of books of accounts under Section 132A of the Act with a condition that the additional amount of income tax payable by each applicant on the income disclosed in the application should exceed ₹50 lakh. This has created a practical problem whereby each of the applicant covered in the search was required to disclose a minimum such income which creates additional tax liability of ₹50 lakh.

The Finance Bill, 2011 proposes to relax this condition whereby only one applicant in such cases needs to declare income with an additional tax liability exceeding ₹50 lakh and other person related to such person can file application for settlement declaring income with an additional tax liability exceeding ₹10 lakh only instead of ₹50 lakh at present. This provision shall be effective from 1st June, 2011. With this amendment after 1st June, 2011 only one person will be required to pay additional tax exceeding ₹50 lakh and other related person will be eligible to file the application by paying an additional tax of ₹10 lakh only. The definition of the related person is quite exhaustive and by and large covers all connected cases which may get covered either under Section 153A or Section 153C. This will include company, firm, HUF, directors, partners, persons having more than 20 per cent interest in such entities and relatives of such person.

This is a positive move for the settlement of the tax disputes which normally arise post-search in view of the complexities involved. It would have been more appropriate if an alternative option had also been provided whereby the entire group covered in a search could file an application and the condition of additional tax payable was fixed with reference to the entire group covered in the search rather than for each of the individual since in a group search there may be certain entities which may not be having additional income with tax liability of more than ₹10 lakh but for settlement of dispute, inclusion of such entities may be relevant. In cases where proceedings under Section 153A or 153C presently are on, the assessee can wait till 1st June, 2011, to file application for settlement thereafter to avail himself of the benefit of the amended provision.

The Finance Bill, 2011 proposes to empower Central Government to exempt persons from the requirement of furnishing return of income having regard to such conditions as may be specified. The Finance Minister in his budget speech has proposed to exempt persons having salary income only.

2. Settlement Commission to have power of rectification

The Finance Bill, 2011 proposes to make an amendment whereby Settlement Commission shall have the power to rectify a mistake apparent from the record to amend its order within a period of six months from the date of its order. This amendment shall be effective from 1st June, 2011. A consequential amendment is also being made under the Wealth Tax Act, 1957. This amendment is being proposed in view of the judgment of the Supreme Court in the case of *Brij Lal & ORs. Vs. Commissioner of Income Tax (2010) 235 CTR (SC) 417: (2010) 46 DTR 153* whereby it has been held that the Settlement Commission does not have the power to rectify its order.

The interesting feature of the proposed amendment is that the time limitation to rectify its mistake has been restricted to only six months from the date of its order as against four years available to income tax authorities under Section 154 and to Income Tax Appellate Tribunal under Section 254(2) of the Act.

3. The Settlement Commission to have more Benches

The Finance Minister in his budget speech has proposed three more Benches of the Income Tax Settlement Commission to expedite the settlement of tax disputes. This is a welcome move. However, to make the Settlement Commission a more effective body, it will be better if the selection of members of the Settlement Commission is not restricted to retiring Revenue Officers only but is made more broad-based by including professionals with proven integrity and expertise as well.

H. Miscellaneous

1. Time taken for obtaining information from tax authorities outside India to be excluded for the purpose of limitation to complete assessment/ reassessment

At present under Section 153 and 153B, a time limit has been prescribed for completion of assessment and reassessment. The assessment has to be completed within a period of 21 months from the end of the assessment year and re-assessment is to be completed within a period of 9 months from the end of the year in which the notice for reassessment is served. Similarly, under Section 153B of the Act an assessment or reassessment in the case of a search is to be completed within a period of 21 months from the end of the financial year in which the last of authorisation for search was executed. In order to provide additional time in cases where the information from countries outside India is sought by the assessing officer during assessment or reassessment, it is proposed to exclude the time so taken for computing the period of limitation. The period to be excluded shall be the period commencing from

the date on which a reference for exchange of information is made by an authority competent under the tax treaty and ending on the date on which the information so requested is received by the Commissioner or a period of six months whichever is lesser. Thus the outer limit for exclusion is limited to six months only. This amendment shall be effective from 1st June, 2011 and accordingly will be applicable to all assessments pending on 1st June, 2011.

2. Indian tax authorities to collect information for tax authorities outside India

The Finance Bill, 2011 proposes to include provisions for collecting information on behalf of tax authorities outside India. For this the scope of Section 131 is being widened by inserting a new sub-clause (2) authorising income tax authorities not below the rank of an Assistant Commissioner of Income Tax as may be notified by the Board in this behalf to exercise the power of issuing summons under Section 131(1)(i) notwithstanding that no proceeding with respect to such person or class of persons are pending before any income tax authorities. Such authority shall also have the power to impound and retain any books of accounts and other documents produced before it.

Such authority shall also have the power for calling for information under Section 133 of the Act. This power shall be limited to those countries with whom India has entered into tax treaty under Section 90 or 90A of the Act. This provision shall be applicable from 1st June, 2011. With the introduction of this provision, on receipt of a request for investigation from any country with whom India has entered into a tax treaty, the tax authorities will be in a position to call for information or summon such person so as to provide information to tax authorities of such other countries.

3. Salaried Employees may be exempted from filing returns of income

The Finance Bill, 2011 proposes to empower Central Government to exempt persons from the requirement of furnishing return of income having regard to such conditions as may be specified. The Finance Minister in his budget speech has proposed to exempt persons having salary income only. This is a welcome move as tax on salary income gets deducted at source and gets reported in the TDS return. However, in order to make this provision really effective the exemption should be given to salary income and also income from other sources such as interest, rental income, etc. if the same is reported by the employee to the employer. For this a form can be notified on the line of return of income which every employee will need to submit to the employer with verification of true and full disclosure of the income. Based on this declaration, the employer can deduct tax at source by including such income with the salary income and report the same in the TDS return. As a matter of experiment, in the first stage, army personnel are likely to be notified for such exemption from filing return of income.

4. New 'Sugam' Income Tax Return Form for Small Business

The Finance Minister in his budget speech has proposed to introduce a new simplified return form 'Sugam' for the tax payers who are subject to presumptive taxation. As per Section 44 AD of Income-tax Act, 1961, resident individual, HUF and partnership firms having a total turnover or gross receipts of less than sixty lakh rupees are covered under presumptive taxation whereby 8 per cent of the total turnover or the gross receipts is deemed to be income from such business. Similarly, under Section 44 AE transporters not having not more than 10 goods carriages are covered by presumptive taxation. For these tax payers instead of asking too much information only the information about the total turnover or gross receipts etc. may be asked for in this new 'Sugam' form.

5. No appeal by Tax Authorities for low tax effect

The Finance Minister in his budget speech has focused on measures to reduce litigation. In this direction instructions No. 3/2011 dated 9th February, 2011 have already been issued by the Central Board of Direct Taxes whereby Income Tax department will henceforth not file appeal where the tax effect is below the amount specified as under:

Appeal to Income Tax Appellate Tribunal	₹3,00,000
Appeal to High Court	₹10,00,000
Appeal to Supreme Court	₹25,00,000

For this purpose, "tax effect" means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which an appeal is intended to be filed. Further, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

6. Document Identification Number being deleted

The Finance (No.2) Act, 2009 had

made it mandatory to allot document identification number to every document, letter, correspondence, notice issued or received by the department or on after 1st October, 2010. To make this effective, it was further provided that any notice, letter, correspondence issued by the income tax authorities or received by the income tax authorities, which does not bear the document identification number shall be treated as invalid and shall be deemed to have never been issued or received. The Finance Act, 2010 has extended this date to 1st July, 2011. In view of the practical impossibility of introducing such a mechanism, the Finance Bill, 2011 proposes to delete this provision in Section 282B of the Act. This would have helped avoiding controversies about the genuineness of the notice, letters issued or received and the timings of the same. The provision of Document Identification Number was a good move to bring fairness and transparency and ideally it would have been better to postpone the same rather than deleting a provision for it altogether.

7. Income of Infrastructure Funds to be exempt

The Finance Bill, 2011 further proposes to insert a new sub-section (47) in Section 10 exempting income of such infrastructure debt fund notified by the government to augment long term low cost funds from abroad for the infrastructure sector.

8. Allowance or perquisites of union public service commission chairman and members to be tax free

The Finance Bill, 2011 proposes to make an amendment by inserting sub-section 45 in Section 10 of the Act empowering the Central Government to notify allowances or perquisites of the Chairman and Members of the Union Public Service Commission to be tax free. This amendment is being proposed retrospectively from 1st April, 2008 i.e. assessment year 2008-09.

9. Central Processing of Returns date being extended

Consequent to the delay in setting up of the Central Processing Center by the Board, the period prescribed under Section 143(1B) is being extended from 31st March, 2011 to 31st March, 2012.

10. Need to allow adjustment of excess tax paid by the taxpayer on self- assessment basis

The Finance Minister in his budget speech placing greater relevance on self- compliance and has talked about a scheme to introduce self-assessment in customs, etc. and also about the robust IT Infrastructure and its deployment for enhanced tax-payer services. In this regard he has appreciated the measures taken by the Central Board of Direct Taxes towards on-line preparation and e-filing of income tax returns, e-payment of taxes, electronic clearing of refund, electronic processing of returns, etc.

One area which needs immediate attention and which has been left out is to allow the tax payer to adjust excess tax paid in any year against its tax obligations whether it is advance tax or self-assessment tax for subsequent years. As on date even if there is excess tax paid for any earlier year for which income tax return has been filed, a tax payer cannot make suo motto adjustment and is required to pay advance tax of subsequent years and in case of default liable to pay interest and penalty though the net result may be that he is not required to pay. This results in unnecessary blocking of working capital and also interest burden on the tax department in respect of such excess tax paid.

With computerisation and on-line filing of returns, a tax payer be allowed to adjust excess tax paid for any year as per the return submitted against its tax obligations of subsequent years on self-assessment basis.

This will also ensure a level playing field both for the tax officer and the taxpayer since as on date the tax officer only has the right to make adjustment of excess tax paid in any year against the demand for any other year and not the taxpayer.

11. Need to increase transparency — Data regarding refund claims to be part of Receipts Budget

The Receipts Budget every year provides additional information about the Revenue (Taxes) Foregone consequent to various exemptions provided under the Act such as free trade zone, export oriented units, etc., so as to put in public domain the cost of each of such exemptions. This document also provides additional information about the tax arrears/outstandings. To enhance transparency it would be proper to provide information about the total amount of refund claimed, refund paid and refund outstanding. Further, the information about the expenditure incurred consequent to interest paid to taxpayers on excess tax paid/ delayed refund can also be part of this document.

12. Proposal to amend Indian Stamp Act, 1899

The Finance Minister in his budget speech has also indicated the need to review the long overdue Indian Stamps Act, 1899 and to introduce a Bill to amend the Act shortly. This is a welcome move. With the development of the economy and new technology and online transactions there is an urgent need to revisit the provisions of the Indian Stamps Act, 1899.■

Section 94A - An Introduction

Section 94A is proposed to be inserted by Finance Bill, 2011. Section 94A outlines measures in respect of transactions with persons located in notified jurisdictional area. Notified jurisdictional area would be any country or territory which does not effectively exchange information with India, and is so notified. The Finance Minister in his budget speech stated *"In order to strengthen our system of collection of information from foreign tax jurisdictions, I propose to provide a toolbox of counter measures to discourage transactions with entities located in non-cooperative jurisdictions as may be notified by the Government"*. In recent times India has entered into agreements, dealing not with the rules for taxing different streams of income but only outlining how information would be shared and exchanged. Such countries would also be outside the ambit of Section 94A. It is only non-cooperative jurisdictions from out of the balance countries that are likely to be notified for Section 94A purposes. Read on to know more.

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Section 90 empowers the Central Government to enter an agreement with the Government of any country or specified territory outside India among others, for exchange of information for the prevention of evasion or avoidance of income tax (90(1)(c). Countries or territories with whom agreements have been entered into under Section 90, generally agree to exchange informa-tion under a specific article incorporated in the treaty. Such countries or territories cannot be termed as non-cooperative in so far as exchange of information is concerned. One also notices that in recent times India has entered into agreements, dealing not with the rules for taxing different streams of income but only outlining how information would be shared and exchanged. Such countries would also be outside the ambit of Section 94A. It is only non-cooperative jurisdictions from out of the balance countries that are likely to be notified for Section 94A purposes.

Sub-section (1) of Section 94A empowers the Central Government, to notify any country or territory as a notified jurisdictional area, having regard to the lack of effective exchange of information with those countries or territory in relation to transactions entered into by an assessee.

As per sub-section (2) of Section 94A, where one of the parties to the transaction is a person located in notified jurisdictional area, then all the parties to the transaction would be deemed to be associated enterprises. In such a case, transfer pricing regulations contained in Sections 92 to 92F would apply.

As per sub-section (3) of Section 94A, deduction in respect of any payments made to any financial institutions located in notified jurisdictional area shall not be allowed

unless the assessee authorises the Central Board of Direct Taxes or any income tax authority to seek the relevant information from the financial institution on behalf of the assessee. Further, deduction will not be allowed in respect of any other expenditure or allowance including depreciation, arising from the transaction witha person located in the notified jurisdictional area, unless the assessee maintains the relevant documents and furnishes the information as prescribed.

As per sub-section (4) of Section 94A, where any sum is received from a person located in the notified jurisdictional area, the onus is on the assessee to satisfactorily explain the source of such amount in the hands of such persons or in the hands of the beneficial owner. If he fails to do so, the amount shall be deemed to be the income of the assessee.

As per Section 68, where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

Under Section 68, the assessee is required to satisfactorily explain the source of any sum found credited in the books. At page 1271 of volume 1 of ninth edition of Kanga & Palkhivala, the learned authors observe *"where the assessee shows that entries regarding cash credits in a third party's account are genuine and the sums were in fact received from the third party as loan or deposits, he has discharged the onus. In that case it is for the third party to explain the source of the moneys, and they cannot be charged as the assessee's income in the absence of any material to indicate that they belong to the assessee.*

Section 68 does not envisage any responsibility on the assessee to explain the source of source. Under Section 94A (4), it is now being proposed that the onus would be on the assessee to satisfactorily explain the source of source. If the assessee fails to satisfactorily explain the source of source, the sum received may be charged to income-tax as the income of the assessee of that previous year.

Sub-sections (2), (3) and (4) of Section 94A begin with words "Notwithstanding anything to the contrary contained in this Act". As a result, these sub-sections override all the provisions of the Act which are contrary to these sub-sections. For instance under Section 40A (2) (a) the Assessing Officer may disallow expenditure that is excessive or unreasonable, having regard to the fair market value of the goods or services. An assessee may for example enter into a transaction with person in a notified jurisdictional area. The expenditure incurred may be excessive or unreasonable having regard to the fair market value of the goods or services. The assessee cannot claim that, since all the relevant documents are maintained, as mandated under Section 94A (3), deduction for the same is to be allowed. Sub-section (3) of Section 94A only overrides provisions which are contrary to it. Section 40A (2) (a) is not contrary to sub-section (3) of Section 94A. Therefore sub-section (3) of Section 94A will not override Section 40A (2) (a). Same consequence could be envisaged in an interplay between Sections 94A (3) and 40(a) (l).

As per sub-section (5) of Section 94A, the tax deductible in respect of any payment made to a person located in the notified jurisdictional area will be the higher of the following rates –

(1) Rates specified in the Act
(2) Rates in force
(3) 30 per cent.

Sub-section (5) of Section 94A begins with words "Notwithstanding anything contained in any other provisions of this Act". The usage of these words makes this sub-section override all the provisions of the Act whether contrary or not to this sub-section.

A non-obstante clause is noticeable in Section 206AA also *viz* the words *'notwithstanding anything contained in any other provision of this Act'*. Section 206AA is applicable where a person who is entitled to receive any sum, on which tax is deductible, fails to furnish his Permanent Account Number to the person responsible for deducting such tax. If full effect is given to these words, then Section 206AA would override Section 94A (5). Under such circumstances, tax deductible in respect of any payment made to a person located in the notified jurisdictional area will be the higher of the following rates –

(1) Rates specified in the Act
(2) Rates in force
(3) 20 per cent.

The general principle of interpretation is that, in case of conflict between two or more provisions, they have to be interpreted in a manner that both the provisions achieve their purpose and neither of the provisions is rendered otiose. This has to be done by restricting the operation of the two provisions to their exclusive field assigned by the Parliament to them. The Supreme Court in *State of Bihar and others v. Bihar Rajya M.S.E.S.K.K. Mahasangh and Ors., (2005) 9 SCC 129*, observed:

"The two non-obstante clauses with slightly different wordings have thus to be harmoniously construed so as to fulfill the object of each one of them……This is how the two non-obstante clauses have to be harmoniously construed and applied as giving overriding effect to each and

restrict their operation within exclusive field assigned to each."

The exclusive field, which is assigned to a provision, is to be determined based on the objects, scope and purpose of each provision. The Supreme Court in *Shri Sarwan Singh and another v. Shri Kasturi Lal, AIR 1977 SC 265*, observed:

"When two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration."

The Supreme Court in *Maruti Udyog Ltd. v. Ram Lal and Ors., AIR 2005 SC 851* has made the following observations quoting its decision in *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. and Ors., (2001) 3 SCC 71*.

"The said Act contains a non-obstante clause. It is well-settled that when both statutes containing non-obstante clauses are special statutes, an endeavour should be made to give effect to both of them. In case of conflict, the latter shall prevail. (emphasis supplied)

In a spate of recent decisions involving interpretation of conflicting non-obstante provisions, the Supreme Court has held that the latter provision would override the earlier provision. The decisions in *Allahabad Bank v. Canara Bank & Another, 2000 (3) SCALE 169; Jay Engineering Works Ltd. v. Industry Facilitation Council and Another., AIR 2006 SC 3252* and *Morgan Securities and Credit Pvt. Ltd. v. Modi Rubber Ltd., AIR 2007 SC 683* can be referred on the point.

On the basis of all the above sub-section 5 of Section 94A would override Section 206AA.

As per sub-section 6 of Section 94A "person located in a notified jurisdictional area" shall include,—

(a) a person who is resident of the notified jurisdictional area;
(b) a person, not being an individual, which is established in the notified jurisdictional area; or
(c) a permanent establishment of a person not falling in sub-clause (a) or sub-clause (b), in the notified jurisdictional area;

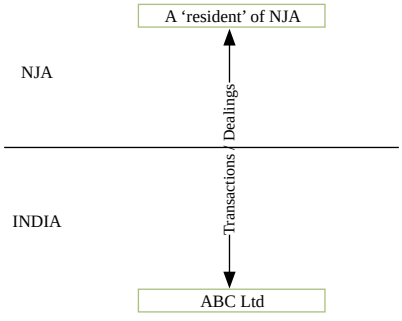
The impact of the above could be better understood with certain illustrations in a sketch form as attempted hereinafter.

Abbreviations Used

ABC Limited - a company-assessee incorporated under the Companies Act, 1956

NJA – Notified Jurisdictional Area under Section 94A(1)

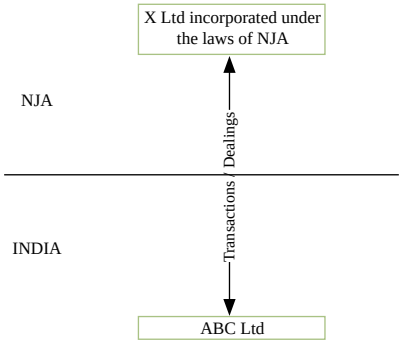
Illustration for Clause (a) of sub-section (6) of Section 94A



Comment: The above transaction would be covered under Section 94A.

Implications in case of a body corporate

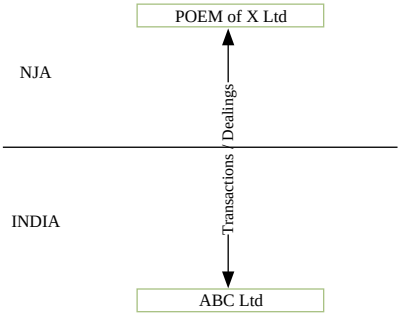
Situation I: If a company is regarded as resident on the basis of place of incorporation in NJA



Comments:

(1) The above transaction would be covered under Section 94A.

Situation II: If a company is regarded as resident on the basis of place of effective management (POEM)

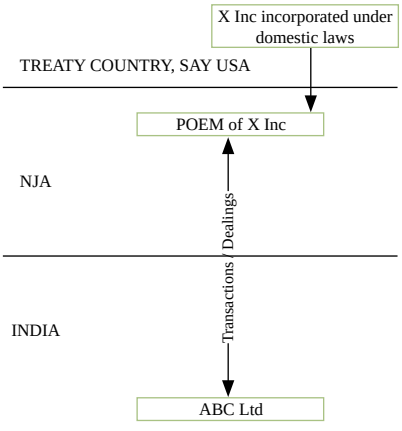


Comments:

(1) The above transaction would be covered under Section 94A.

Situation III: Dual Residency

Case A: X Inc treated as 'resident' under NJA laws on the basis of POEM

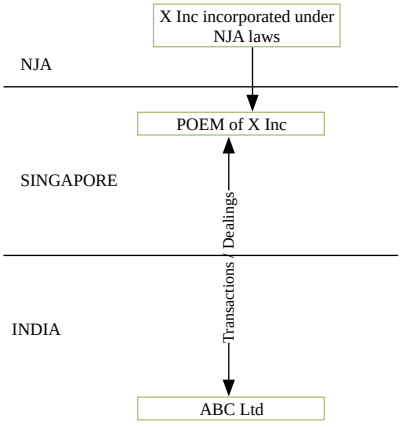


Comments:

(1) X Inc is a resident under the laws of NJA based on POEM condition.
(2) Transaction between ABC Ltd and X Inc would be covered under Section 94A.
(3) The above is regardless of the fact that X Inc is treated as a resident of USA on the basis of Treaty, if any, between USA and NJA. X

Inc would not become a "non-resident" of NJA merely because of its yielding the "residence" status in favour of USA under the tie breaker rule of the treaty. The relevance of the tie breaker test is limited to the applicability of the distributive rules regarding taxation of various streams of income under the Treaty. For other purposes, especially that domestic law of NJA, X Inc should continue to be regarded as "resident".

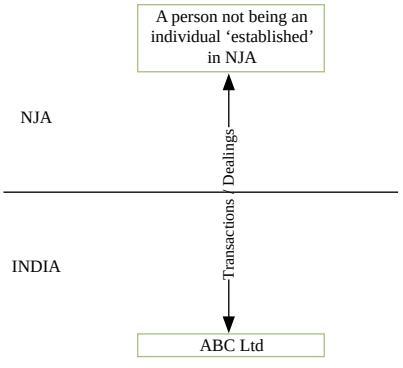
Case B:



Comments:

Since X Inc is established in the NJA, the transaction would fall within the ambit of 94A. The tiebreaker test between NJA and Singapore and the decision thereunder would not be of relevance in the applicability of Section 94A.

Clause (b) of sub-section (6) of Section 94A: COMPANY "ESTABLISHED" IN NJA



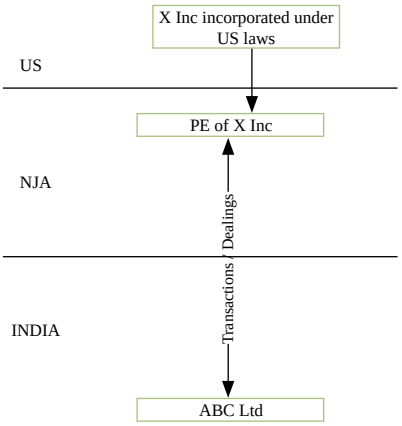
Comments:

(1) The above transaction would be covered under Section 94A.

(2) Meaning of the term 'established': Section 94A does not contain any definition of the term 'established'. The Shorter Oxford Dictionary defines the term 'establish' as *setup on a permanent or secure basis*. The Word Web defines it as *settled securely and unconditionally*. The Supreme Court in *CIT v. Ramaraju Surgicals Cotton Mills Ltd 63 ITR 478* equated the term 'established' with the term 'set-up'. The Supreme Court in *Travancore-Cochin Chemicals (P) Ltd v. CWT 65 ITR 651* held that there is a clear distinction between the word 'registered' or 'incorporated' and the word 'established'. The Supreme Court thereafter referred to the decision of *Thomas J. Davidson v. W. I. Lanier [1867] 4 Wall 447* and quoted with the approval the following passage: *"What is meant by putting in operation or establishing a banking company? We think that this language has a much wider import than mere commencement of business. To establish a company for any business means complete and permanent provision for carrying on that business and putting a company in operation may well include its continued as well as it first original operation."* The term 'established' in context of an organisation thus refers to a stage subsequent to the stage of incorporation or registration. It is a stage where the wherewithal of an organisation for carrying out its activities is in place.

Clause (c) of sub-section (6) of Section 94A

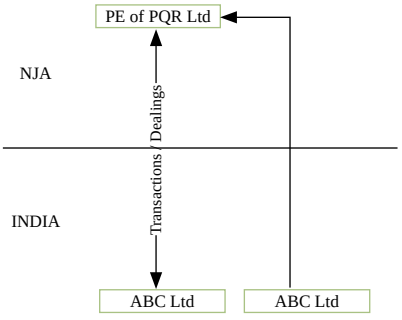
Case A: Transaction of an Indian company with a PE of an US based company in NJA.



Comments:

(1) The above transaction would be covered under Section 94A.

Case B: Transaction with a PE of another Indian Company (PQR Ltd)

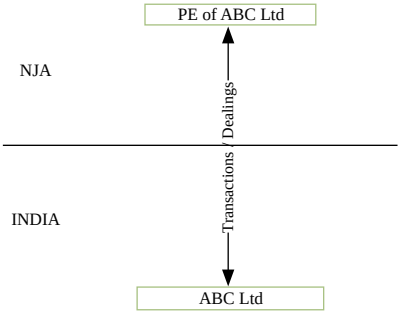


Comments:

(1) A PE of another Indian company would also be covered as "person located in NJA". There is no mandate in 94A that the person with whom the transaction is carried out should be a non-resident.

(2) The above transaction would thus be covered under Section 94A.

Case C: Transaction with own PE in NJA.



Comments:

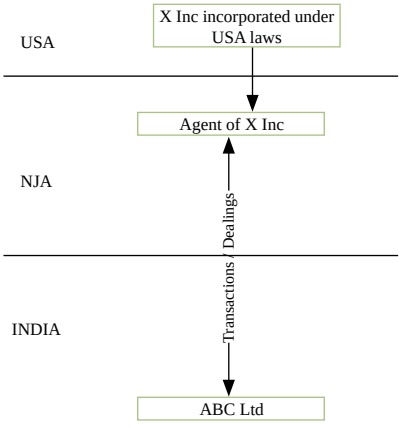
(1) Technically the above transaction would be covered under Section 94A by virtue of Section 94A(6)(iii). However, Section 94A has been introduced as a tool box of counter measures to deal with non-cooperative jurisdictions. The affairs of the Indian company including that of its PE will be amenable to the enquiry and investigation by the income tax authorities. Thus, the basic premise on which Section 94A is founded would not be attracted.

(2) The controversial question whether the relationship with one's own PE gives rise to a transaction and the aspect of tax withholding from such payments (94A(5)) would however remain. Refer (i) Circular No 740 dated 17-4-1996 (ii) Decision of the special bench of ITAT in *ABN Amro Bank NV v. ADIT 97 ITD 89*

Note: *Thereafter Calcutta High Court has held that the special bench's decision in ABN Amro Bank's case does not state the law correctly.*

Transaction with an agent

Case A



Comments:

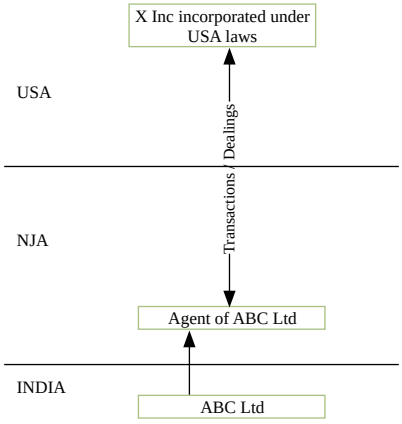
(1) Under the eyes of law, a transaction with an agent is as good as a transaction with its principal.

(2) Even otherwise, under Section 94A(2), if there are more than one parties to a transaction and any one of them is located in NJA, all the parties would be treated as "Associated Enterprises" and the provisions of "transfer pricing" under Chapter X spanning Sections 92 to 92F would become applicable.

(3) Under the above circumstances, transaction with an agent of a company incorporated under the US laws, if located in NJA, would be covered under Section 94A.

As per Section 68, where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

Case B

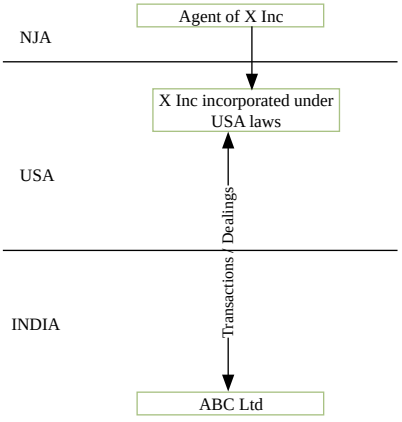


Comments:

(1) There is no transaction between ABC Ltd and a person located in NJA. This is on the premise that the act of the agent in NJA is the act of the principal itself who is India.

(2) In the above scenario, the transaction would thus not be covered under Section 94A.

Case C



Comments:

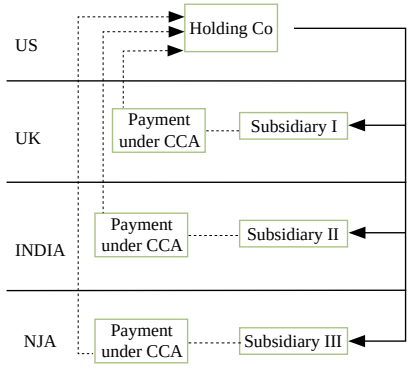
(1) There are no transactions with any person in NJA.

(2) However, for the reasons already detailed, if any party to a transaction is located in a NJA, all the parties to a transaction will be regarded as Associated Enterprises. If the agent in NJA is a participant in the arrangement, the transaction with X Inc in USA would fall within Section 94A.

Note: *The answers to cases A, B & C above on agency illustrations could be different, if the 'agent' is only a description, and he/it have to act independently.*

A non-obstante clause is noticeable in section 206AA also viz the words 'notwithstanding anything contained in any other provision of this Act'. Section 206AA is applicable where a person who is entitled to receive any sum, on which tax is deductible, fails to furnish his Permanent Account Number to the person responsible for deducting such tax. If full effect is given to these words, then Section 206AA would override Section 94A (5).

Cost contribution arrangement (CCA):



Section 94A does not contain any definition of the term 'established'. The Shorter Oxford Dictionary defines the term 'establish' as setup on a permanent or secure basis. The Word Web defines it as *settled securely and unconditionally.* The Supreme Court in *CIT v. Ramaraju Surgicals Cotton Mills Ltd 63 ITR 478* equated the term 'established' with the term 'set-up'. The Supreme Court in *Travancore-Cochin Chemicals (P) Ltd v. CWT 65 ITR 651* held that there is a clear distinction between the word 'registered' or 'incorporated' and the word 'established'.

Comments:

(1) There is no transaction between the Indian subsidiary and a person located in NJA.

(2) Section 94A covers a transaction between two or more persons although neither of them is located in NJA for the reason that one of the parties to the cost contribution arrangement is located in NJA (Refer 94A (2)).

(3) All the parties in the above arrangement would become associated enterprise. However, the impact of Section 94A would be limited to that transaction which has a bearing on the income, profits, losses or assets of the Indian entity [Section 94A(2)]

(4) Although Section 94A (2) is broadly similar to Section 92B, it is to be noted that it is limited in its applicability and reach, as indicated above.

(5) Payment by Indian subsidiary under CCA to its holding company located in USA would thus be covered under Section 94A. ■

Alternate Minimum Tax on LLP: Budget 2011-12 Proposal

LLP Act, 2008 came into effect in 2009. The Income-tax Act, 1961 provides tax neutrality subject to fulfilment of certain conditions to conversion of private-limited company/unlisted public company into an LLP. An LLP is subject neither to MAT nor to Dividend Distribution Tax (DDT) or surcharge. To save revenue on account of such companies converting to LLPs to take benefits of tax exemptions and to rationalise their taxation with that of companies, the Union Budget 2011-2012 has proposed to insert a new Chapter XII-BA in the Income-tax Act, 1961. According to that, a levy of Alternate Minimum Tax (AMT), i.e. of 18.5 per cent, will be applicable on the adjusted total income of the LLPs. The effective rate of AMT after taking into account education cess will be 19.05 per cent. The author in this article has discussed the proposed amendments and the issues related to the AMT in the context of LLPs. Read on...

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A. Introduction

1. The LLP Act of 2008 (No. 6 of 2009) received the assent of the President on 01-01-2001. The objective of LLP Act is stated to make provisions for the formation and regulations on LLP and for matters connected therewith or incidental thereto. The LLP Rules were notified vide Notification No. GST/229(E) dated 01-04-2009, which came into force on the same date.
2. Finance Act No. 2 of 2009 carried out necessary amendments in the Income-tax Act, 1961 (IT Act) to provide taxation of LLP on the same lines as firm. Corresponding amendments were made to Section 2 (23), Section 44AD and Section 140 of the IT Act. By amending Section 2 (23), the definition of the "firm" was amended to include an LLP as defined in the LLP Act 2008, "Partnership" as including such LLP and "Partner" as including a Partner of an LLP. Section 44AD which provided for presumptive taxation was substituted with effect from 01-04-2011 and in the substituted section, an LLP was not considered as an eligible assessee for the purpose of Section 44AD. The new clause (cd) was inserted in Section 140 provided for the authorised signatory for the return of an LLP. The new Section 167C was introduced and this provided for joint and several liabilities in respect of tax of an LLP on its partners.

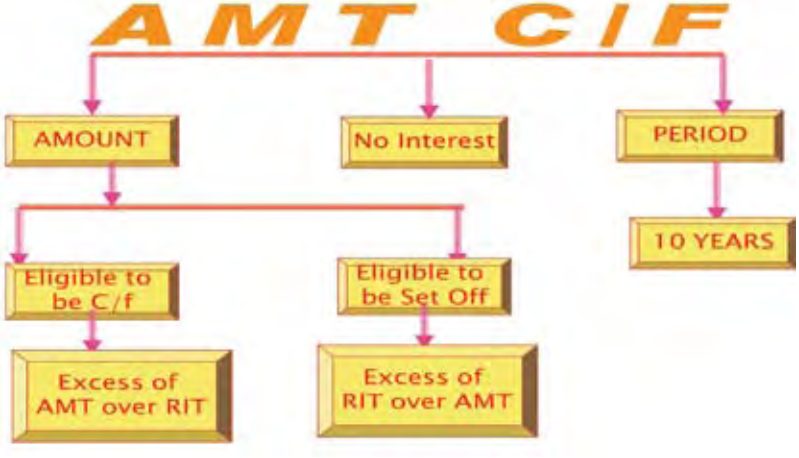
3. Finance Act of 2010 effected some more amendments to the IT Act to further integrate an LLP into the IT Act. The conversion of private limited company or unlisted public limited company into an LLP was facilitated by introducing Section 47(xiii) (b), by adding Section 47A (4), by adding 35DDA (4A), by inserting Explanation 2C under Section 43 (6), by inserting Section 49 (2AAA), by inserting Section 72A (6A), by inserting Section 115JAA (7) and by carrying out certain consequential amendments.
4. Apart from its inherent advantages on limited liability, perpetual succession and flexibility in operation, an LLP enjoyed immunity from corporate surcharge, dividend distribution tax and minimum alternate tax (MAT). Positive effect of the aforesaid amendments was beginning to be felt and businessmen were beginning to feel that an LLP would be a viable option considering tax advantages associated with an LLP.
5. Proposed amendment by the Finance Bill, 2011 has disturbed the applecart. The amendment proposes to remove one important advantage, i.e., No MAT, from an LLP.

B. Amendments Proposed

a. The new Chapter – XII-BA consisting of four sections 115JC, 115JD, 115JE and 115JF is proposed to be inserted. The Chapter titled "Special Provisions Relating to Certain LLP" is proposed to be inserted with effect from 01-04-2012 so as to be applicable for the assessment year 2012-2013 onwards.

b. Section 115JC (1) provides for comparison between regular income tax (RIT) and alternate minimum tax (AMT) and provides that if AMT is more than RIT, adjusted total income (ATI) shall be deemed to be the total income which shall suffer tax at 18.5 per cent. Section 115JC (2) provides for computation of ATI by adding back Chapter – VIA-C deductions (Section 80HH to Section 80TT) and deduction claimed under Section 10AA to the total income of an LLP. Section 115JC(3) provides for obtaining an accountant's report certifying the correctness of the computation of ATI and AMT and filing the same with the department.

c. Section 115JD provides carry forward and set off of AMT paid in one year against RIT in another year. However, as per Section 115JD(2) the eligible credit is restricted to excess AMT over RIT (AMT – RIT). Further as per Section 115JD(5), the carried forward amount can be set off against excess of RIT over AMT (RIT – AMT). Section 115JD(4) provides for such carry forward for ten following assessment years. No interest is allowed on AMT credit as provided in Section 115JD(3). Section 115JD(6) provides for variation of tax credit consequent to reduction or increase of RIT or AMT as a result of any order passed under the IT Act. The scheme of carry forward may be depicted in the following diagram:



d. Section 115JE provides for application of all other provisions of the IT Act to LLP liable to pay AMT.

e. Section 115JF defines various terms like accountant, AMT, LLP and RIT.

C. Is levy of AMT Justified?

a. The memorandum explaining Clauses justifies levy of AMT so as to preserve tax base vis-à-vis profit linked deductions. The memorandum identifies three distinct advantages of LLP on being treated as a firm, i.e. being non-liable to MAT, DDT and surcharge.

b. The proposed amendment with the objective of preserving on tax base vis-à-vis profit-linked deductions will make an LLP no more a firm simpliciter. LLP is now placed between a firm and a company. Out of three distinct advantages associated with an LLP, only two will remain. Introduction of AMT will discourage the LLP format for those enterprises who are eligible for the Chapter VI-A-C deductions as well as those in SEZ business, whether as developers or as entrepreneurs. Such enterprises may prefer to remain as conventional partnership firms. Thus, a significant segment of business may stay out of LLP option of business format.

D. AMT in DTC Regime

a. Presently the DTC provides for levy of MAT in the Chapter V. Sections 104 –107 provide for levy of tax on book profits. However, the said provisions apply only to a company. An LLP is not a company as per Section 314(54) of the DTC. It is considered as a firm as per Section 314(103) of the DTC. Therefore, in its present setting, DTC does not provide for levy of AMT on LLP. In order that LLP continues to be subject to AMT post-01.04.2012, it is necessary that the DTC is suitably amended.

b. With the advent of Direct Tax Code (DTC) from 01-04-2012, the proposal to levy AMT continues to have its impact. The deductions similar to Chapter VIA – C deductions and Section 10AA are not found in DTC. However, as provided in Section 318(2) (q) & (r), an offshore unit/IFSC and entrepreneur in SEZ commencing operations on or before 31-03-2014 will continue to get the benefit under Section 80LA and Section 10AA despite DTC coming into being. In addition, in terms of Section 318 (2) (o) and (p) of the DTC, deductions under Sections 80IA, 80IB, 80IC, 80ID, 80IE, 80JJA, 80JJAA and 80IAB shall continue even under DTC in respect of balance period of tax holiday provided under the respective sections. LLP's eligibility for such deductions even during DTC regime will be impacted by the levy of AMT.

E. Some Important Aspects of Budget Proposal.

a. *Applicability of AMT to various LLPs*

i. For purpose of the Chapter XII-BA, Section 115JF(c) defines an LLP as having the meaning assigned to it as per Section 2(1)(n) of the LLP Act, 2008. As per Section 2(1)(n) of the Act, "LLP" means partnership formed and registered under the Act. As a foreign LLP firm is not registered under the LLP Act, the same cannot be regarded as an LLP for the purpose of Chapter-XII-BA.

ii. However, if such foreign LLP is a body corporate formed outside India, it may become a company under Section 2(17), which defines "company" as including any body corporate incorporated by or under the laws of a country outside India. Therefore, such a foreign LLP may become a company under Section 2(17) and may become a foreign company under Section 2(23A). If such an LLP is having permanent establishment in India, although it may not be liable to AMT, it may be liable to pay MAT under Section 115JB. In this connection a reference may be made to decisions in the following cases:

- *Timken Company, In re [2010] 326 ITR 193 (AAR)*
- *Travel Agents Association of India v. ACIT, Circle 5 (8), Mumbai [2009] 118 ITD 285,*
- *Dresdner Bank AG v. ACIT, Special Range 32, Mumbai [2006] 105 TTJ 149.*
- *XYZ 234 ITR 335 ARR*

b. *Conversion of Private Limited Company (PLC)/Unlisted Public Limited Company (UPLC) into LLP and vice versa – Is MAT/AMT allowed to be carried forward?*

i. Section 115JAA(7) provides that MAT credit is not allowed to the successor LLP formed by conversion of PLC or UPLC. Even in the absence of this specific provision, the successor LLP would not have got the benefit of carry forward and set off of MAT credit by predecessor company, as the successor LLP could not have paid normal tax in excess of MAT in terms of Section 115JAA(5).

ii. As LLP is now liable to pay AMT, the need may be felt for facilitating the successor LLP to carry forward MAT credit of the predecessor company. For this purpose, it is necessary that the express prohibition of Section 115JAA(7) is not only removed, but necessary amendment is also carried in Section 115JAA(5).

iii. Similarly, when an LLP is reconverted into a company, although there is no express prohibition on similar lines as Section 115JAA (7) in Chapter-XII-BA, successor company may not be eligible to use AMT credit of predecessor LLP. The setting of Section 115JD(5) does not permit such set off. Therefore, it is necessary to make appropriate amendment to Section 115JD(5) so as to enable successor company to set off AMT credit available with the predecessor LLP.

"An LLP is not a company as per Section 314(54) of the DTC. It is considered as a firm as per Section 314(103) of the DTC. Therefore, in its present setting, DTC does not provide for levy of AMT on LLP. In order that LLP continues to be subject to AMT post-01-04-2012, it is necessary that the DTC is suitably amended."

c. *Advance Tax Liability on LLP coming under AMT*

i. Section 115JE provides that all other provisions of the IT Act shall apply to an LLP coming

under the Chapter XII-BA. This provision is similar to Section 115JB(5).

ii. Therefore, a doubt may arise as to whether an LLP is liable to estimate its advance tax liability even in a case where it has to pay AMT.

iii. This issue has been finally resolved by the Large Bench decision of Supreme Court in the case of *JCIT vs. M/s. Rolta India Ltd.* 2011-TIOL-02-SC-IT-LB against the assessee. Therefore, it is incumbent upon the LLP to estimate its current income by factoring the AMT liability and pay the advance tax.

Section 115JC(1) does not refer to "Assessment Year" (AY) at all, but only to "Previous Year" (PY). Section 115JC(1) refers to RIT payable for a PY, to compare the same with AMT payable for such PY and if AMT exceeds RIT, ATI shall be deemed to be a total income of an LLP for such a PY.

d. *Other Aspects*

- Section 115JC(1) does not refer to "Assessment Year" (AY) at all, but only to "Previous Year" (PY). Section 115JC(1) refers to RIT payable for a PY, to compare the same with AMT payable for such PY and if AMT exceeds RIT, ATI shall be deemed to be a total income of an LLP for such a PY. In contrast, Section 115JB(1) makes reference to any PY relevant to AY. Therefore, while Section 115JB(1) synchronises well with Section 4 which provides for charging of tax for any AY, Section 115JC(1) stands out without such synchronisation. Therefore, it is desirable that Section 115JC(1) is suitably amended to make a reference to AY so as to avoid said section as having to exist independent of Section 4.
- In computing AMT as per Section 115JC(2), the deduction under Section Chapter VIA-C and Section 10AA are added back. Various other exemptions and deductions of the Chapter-III need not be added back, for e.g. dividend covered under Section 10(34) and long-term capital gain covered under Section 10(37). As deduction under Section 10A and 10B is not continued for the AY 2012-2013, non-reference to the said Sections under Section 115JC(2) is of no consequence.
- Section 115JC(3) provides for Accountant Report to be obtained certifying correctness of the computation of ATI and AMT. The said sub-section provided for furnishing of Accountant Report on or before due date for filing of RIT under Section 139(1). As per various IT return forms read with the applicable instructions thereunder as prescribed under Rule 12, it is not necessary to furnish audit report or certificate or any annexure along with the return of income. The only exception is transfer pricing report to be filed under Section 92E. In this context, it is desirable that the board issues necessary clarification to the effect that the Accountant's Report under Section 115JC(3) need not be filed along with the return. In any case, no penalty is provided for non furnishing of Accountant Report under Section 115JC(3) on the same lines as Section 115JB(4).
- Section 115JD(6) provides for variation of tax credit, if RIT or AMT is reduced or increased as a result of any order passed under the IT Act. However, no time limit is prescribed for such variation. Therefore, it may be necessary to amend Section 155 to provide for appropriate time frame for effecting such variation.

F. Conclusion

Levy of AMT on LLP takes away one of the important benefits associated with an LLP format of business. Considering that the LLP format of business organisation should be popularised to facilitate carrying on of business in a more efficient but in a much simpler manner, levy of AMT at this stage may not be appropriate.■

Broad-Basing Initiatives under Central Excise Levy – Finance Bill 2011

The Finance Minister, as a move towards possible implementation of GST by 2012, took a step in partially removing the exemption regime by levying duty on 130 headings/sub headings out of 370 where VAT is charged by the States. The headings covered are mainly consumer goods. The balance 240 items would be roped in along with the implementation of GST in 2012. Branded products under Chapter 61, 62 and 63 hitherto exempted with a few exceptions were also bought into the mainstream. In this article, the author examines the proposal for broad-basing the taxation.

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New Headings Covered Under 1 per cent

The manufacturers of such excisable goods, which were enjoying exemptions from the levy or leviable to "nil" rate of duty, are required to comply with the provisions of the Central Excise law as the government has withdrawn exemptions/imposed a levy of 1 per cent in the tariff.

The withdrawal of the exemption/levy of 1 per cent leads to a situation wherein the manufacturers may not be in position to further dispatch the goods without violating the law in many cases (unless exemption under the SSI Exemption is available) as the levy is applicable from 1st March, 2011 itself.

Duty Rates

The standard rate of central excise is maintained at 10 per cent. However, the rate of Central Excise was increased for 4 per cent rated products to 5 per cent across all goods on the reasoning that many states are now using the rate of 5 per cent for specified goods. The changes would be effective from 1st March, 2011. Notification no.1/2011 provides the following options:

a. A nominal duty of 1 per cent ad valorem is being imposed on 130 headings with a condition that the benefit of cenvat credit paid on inputs and input services is not availed. For list of products readers may refer: www. cbec.gov.in

b. An optional rate of 5 per cent ad valorem is being imposed on 76 headings among the 130 where the benefit of credit of duty paid on inputs and service tax paid on input services would be available. For the headings covered under notification 02/2011, readers may refer: www.cbec.gov.in

The implications of the above amendment are discussed below in question/answer format for ease in understanding:

1. **Which are the goods covered under the tax net?**
   The goods with the tariff heading numbers under 1 per cent along with those having the option for payment of duty at 5 per cent, where the manufacturer wishes to avail the benefit of excise duty paid on inputs and service tax paid on services.
2. **From which date the duty is liable to be paid?**
   For all the clearances, the effective date as discussed above is 1st day of March 2011. In addition to this nominal rate, a cess of 2 per cent as education cess and 1 per cent of secondary and higher education cess is also to be paid. Thus

The definition of 'exempted goods' has been amended to include goods in respect of which the benefit of 01/2011 – CE is availed. This would imply that the credit attributable to such goods would have to be reversed when common inputs and input services are used for both these goods and dutiable goods.

effectively, the rate of duty would be 1.03 per cent or 5.15 per cent as the case may be.

3. **Whether duty is payable even on Exports?**
   No, the goods exported would continue to be free from duty in terms of Central Excise Rules, 2002. The procedures that are set out in the rules have to be followed depending on the export route to be taken.
4. **Would the goods manufactured and lying as stock on 1st March be also liable?**
   Yes. As the duty liability is fastened by amending the exemption notification even those goods which were manufactured before 1st March but cleared after the date are also liable to the duty. This concept of liability on clearance though goods manufactured earlier was confirmed by the decision of the supreme court in *Wallace Flour Mills 1989(44) ELT (598)*.
5. **What would be status of the goods, when duty rate followed is 1 per cent?**
   The definition of 'exempted goods' has been amended to include goods in respect of which the benefit of 01/2011 – CE is availed. This would imply that the credit attributable to such goods would have to be reversed when common inputs and input services are used for both these goods and dutiable goods.
6. **Whether the benefit of duty paid at 1 per cent is available as cenvat credit for receiver?**
   Credit of duty paid on input or input services would not be available to a manufacturer, when opted to pay the duty at 1 per cent. Credit of the duty paid on items that are being subjected to the levy of 1 per cent would not be available to a manufacturer or service provider who buys them.
7. **What would be the implications for non-compliance of the any of the provisions of CE act?**
   As the goods after a long time are being subjected to the levy of excise, fresh registration are required to be obtained and in this regard, the board vide DOF no 334/3/2011 – TRU has clarified that that necessary facilitation and guidance in securing registration and complying with central excise formalities. Further coercive measures are not to be used in the immediate aftermath of the budget for the implementation of the levy.
8. **Whether the benefit of exemption notification popularly called as SSI exemption is available to the manufacturer?**
   The manufacturers who are eligible for the exemption under Notification 8/2003 as amended popularly called the SSI exemption would have a little breathing time. However, the following aspects are to be considered to confirm that the exemption is available:
   a. The goods must be specified in the annexure to the notification.
   b. The products should not be a branded product bearing the brand name of another. [Own branded goods are eligible] This rule is not applicable for supplies to Original Equipment Manufacturing Units who clear the goods to manufacturers who discharge the duty of excise. Further, if the manufacturer is located in a rural area then also the brand name restriction does not apply.
   c. The value of clearances as distinguished from turnover in the previous year of manufactured products (whether exempted or not) should not have exceeded ₹400 lakhs.*1*
   d. The value of clearances of dutiable goods from 1st April, 2010 (other than those effected by Budget 2011) and new ones from 1st March, 2011 onwards should not exceed ₹150 lakhs.*2*

Note: *It maybe noted that where goods are received for job work and the job worker engages in manufacture the levy would be on him [as a manufacturer} and the value of goods would be reckoned based on the selling price of the buyer if sold or if captively consumed then on Cost of Production + 10 per cent. The job worker would*

The goods covered under the tax net are the goods with the tariff heading numbers under 1 per cent along with those having the option for payment of duty at 5 per cent, where the manufacturer wishes to avail the benefit of excise duty paid on inputs and service tax paid on services. For all the clearances, the effective date from which the duty is liable to be paid is 1st day of March 2011. In addition to this nominal rate, a cess of 2 per cent as education cess and 1 per cent of secondary & higher education cess is also to be paid. Thus effectively, the rate of duty would be 1.03 per cent or 5.15 per cent as the case may be.

not be liable where the buyer works under Notification 214/86 or 83/84/ 94.

**1: Following clearances shall not be taken into account for ₹ 400 lakhs:*

a) Clearances of excisable goods without payment of duty –
   (i) To a unit in a free trade zone; or
   (ii) To a unit in a special economic zone; or
   (iii) To a 100 per cent export-oriented undertaking; or
   (iv) To a unit in an Electronic Hardware Technology Park or Software Technology Park; or
   (v) Supplied to the United Nations or an international organisation for their official use or supplied to projects funded by them, on which exemption of duty is available under Notification No. 108/95-Central Excise, dtd. 28th August, 1995.
b) Clearances bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption,
c) Clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of the specified goods;
d) Clearances of strips of plastics used within the factory of production for weaving of fabrics or for manufacture of sacks or bags made of polymers of ethylene or propylene.
e) Clearances, which are exempt from the whole of the excise duty leviable thereon under notifications No. 214/86-Central Excise, dated the 25th March, 1986 or No. 83/94-Central Excise, dated the 11th April, 1994 or No. 84/94-Central Excise, dated the 11th April, 1994."
f) Clearances meant for exports

**2: Following clearances shall not be taken into account for ₹ 150 lakhs:*

a) Clearances, which are exempt from the whole of the Excise duty leviable thereon (other than an exemption based on quantity or value of clearances) under any other notification or on which no Excise duty is payable for any other reason;
b) Clearances bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption;
c) Clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of the specified goods. Here, specified goods are those goods that are eligible for SSI exemption;
d) Clearances of strips of plastics used within the factory of production for weaving of fabrics or for manufacture of sacks or bags made of polymers of ethylene or propylene.
e) Clearances meant for exports

9. What are the other compliances required under Central Excise law?

The manufacturer has to comply with the following:

a. Registration under Central Excise as manufacturer;
b. Preparation of invoice containing all requirements under rule 11 of Central Excise Rules;
c. Maintenance of records for recording production of goods, movement of goods from stores to production area, movement of goods for job work
d. Monthly submission of returns in form ER 1
e. Submission of returns in form ER 4, ER 5, ER 6.

10. What would be the implications on the manufactured goods in the following scenarios?

a. Factory: Manufacturer has to pay duty of 1 per cent/5 per cent as applicable to him for removals on or after 1st March, 2011. Duty is charged at the rates prevailing on the date of removal from manufacturer's premises.
b. Goods sent on approval basis/ testing basis: In such case for removals on or after 1st March, 2011, the new rate of 1 per cent/5 per cent is applicable.
c. Goods transported to Depot & lying in stock: There is no need for the manufacturer to pay the duty as goods already removed.
d. Goods sold prior to 1st March, 2011 but invoice raised on or after 1st March, 2011 inadvertently: There is no requirement to pay the duty.
e. Dealer having stock of goods (charged @ nil): There is no need for the manufacturer to pay theduty.
f. Invoice is raised on 28th February, 2011 & goods are cleared on 1st March, 2011: New invoices are to be raised, charging duty.

"This article has been prepared to provide some of the important aspects consequent to changes brought in Budget 2011. It does not propose to deal with all possible issues. For detailed understanding and other procedural aspects, the relevant notifications, tariff entries and rules have to be studied and examined."

This article has been prepared to provide some of the important aspects consequent to changes brought in Budget 2011. It does not propose to deal with all possible issues. For detailed understanding and other procedural aspects, the relevant notifications, tariff entries and rules have to be studied and examined. ■

Amendments to Cenvat Credit Rules, 2004

Many amendments have been carried through in the provisions of the Cenvat Credit Rules (CCR), 2004 in the Union Budget 2011-2012 to simplify their definitions, to reduce conflict and to achieve a more realistic attribution when common inputs or input services are used for the manufacture of both dutiable and exempt goods. The author in this article presents rule-wise comments on amendments made in the Cenvat Credit Rules and discusses specifically with regard to the Rules 2, 3, 4 and 6, where the changes have been made.

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Cenvat Credit Rules, 2004 were notified vide Notification No.23/2004-CE (NT) dated 10-09-2004. Since their introduction these rules have been amended from time to time and more so to align with the budget changes. The Budget 2011 is no exception. Notification No. 3/2011–CE (NT) dated 1st March, 2011 contains the amendments carried out to Cenvat Credit Rules, 2004 and, unless specifically mentioned in the Rules, these changes become effective from 1st April, 2011.

Following are the summarised forms of the changes made to the rules:

Rule 2

This rule contains definitions for the terms used in the rules. The following are the amendments carried out to this rule:

Capital goods used outside the factory of manufacturer of final products for generation of electricity for captive use within the factory are now "eligible" capital goods paving the way for availing the credit of duty on the same.

Excisable goods which are charged to duty at the rate of 1 per cent shall be treated as "exempted goods".

Taxable services on which service tax is paid after availing abatement on the condition that no credit of inputs and input services is claimed will be treated as "exempted services".

For the removal of doubts, it is also clarified that exempted service shall include "trading".

Goods including accessories cleared with the final product whose value is included in the value of final product, goods used for providing free warranty for final products, goods used for generation of electricity or steam for captive use now specifically find mentioned in the definition of the term "input".

Goods used for the construction of a building or civil structure or part thereof, goods used for laying of foundation or making of structures for

support of capital goods excluded from the definition of input. However, if such goods are used in providing taxable service, viz. port services, other port services, airport services, commercial or industrial construction, construction of complex, works contract the same will be eligible goods under the category "input".

Capital goods except when they are used as parts or components in the manufacture of final product shall not be treated as "input".

Motor vehicles shall be treated only as capital goods and not as inputs as the definition of "input" specifically excludes motor vehicles.

Goods such as food items, goods used in a guest house, residential colony, club, recreation facility and clinical establishment, which are used primarily for personal use or consumption of any employee is outside the term "input".

Goods which have no relationship whatsoever with the manufacture of the final product is excluded from the term "input".

The term "input service" does not include setting up of a factory.

Service tax paid on setting up of a factory shall no longer be available as credit since the term "setting up" has been excluded from the definition of "Input service". The term "Legal services" finds a place in the extended definition of "input service".

The following taxable services used in construction of a building or a civil structure or a part thereof or making of structures for support of capital goods shall not be treated as input services:

- Architect
- Port services
- Other port
- Airport authority
- Commercial or industrial construction
- Construction of complex
- Works contract

The taxable services, viz. general insurance, rent a cab, authorised service station and supply of tangible goods, in-so-far as they relate to motor vehicle shall not be treated as input service except when they are used for providing taxable services for which the credit on motor vehicle is available as capital goods. Taxable services for which motor vehicle is eligible as capital goods are courier agency, tour operator, rent a cab, cargo handling agency, transportation of goods by road, outdoor caterer and *pandal* or *shamiana* contract.

Outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of club, health and fitness centre, life insurance, health insurance, and travel benefits to employees on vacation shall not be treated as input service when such services are used primarily for personal use or consumption of any employee.

Due to the reintroduction of excise duty on branded readymade garments and also articles of jewellery the provisions of cenvat credit have been extended to job workers of the articles of jewellery and branded readymade garments.

"The taxable services, viz. general insurance, rent a cab, authorised service station and supply of tangible goods, in-so-far as they relate to motor vehicle shall not be treated as input service except when they are used for providing taxable services for which the credit on motor vehicle is available as capital goods."

Rule 3

This rule contains the duties and such other levies which are eligible for credit.

Amendments to this rule aims at prescribing the levies which will be availability/non-availability of credit.

Goods which are chargeable to duty at the rate of 1 per cent will not be eligible goods for the purpose of availing and utilising the credit. This is logical given the fact that these goods will be treated as "exempted goods" as per the amended definition.

Cenvat credit is restricted to 85 per cent of the additional duty of customs paid on ships, boats and other floating structures for breaking up falling under tariff item 890080000 of the First Schedule to the Customs Tariff Act.

The excise duty paid on inputs on which credit has been availed need not be reversed/ paid back, if the same are removed outside the factory for providing free warranty for final products.

Currently the proviso to sub-Rule 5 requires that inputs or capital goods before being put to use and on which cenvat credit has been taken is written off fully or where any provision for write off fully has been made then the manufacturer or service provider, as the case may be, shall pay an amount equal to the cenvat credit taken in respect of the said input or capital goods. The proviso has been amended to include partial write off or partial provision for write off also.

Rule 4

This rule contains the conditions for allowing cenvat credit. The amendments made to this rule are summarised as:

As capital goods used outside the factory of manufacturer of final products for generation of electricity for captive use within the factory are included within the term "capital goods" availing and utilising cenvat credit on these goods is allowed by a specific amendment to this rule.

If any payment or part thereof is made towards an input service which is returned the manufacturer or the service provider who has taken credit on such input service shall pay an amount proportionate to the cenvat

Cenvat credit is also denied on the duty or tax paid on goods and services that are not inputs or input services meaning that only those goods or services which are defined as the term "input", or "input services" shall be treated as input or input services. This amendment will add to the already long list of pending litigations.

credit in respect of the amount so returned. This reversal shall be made by debiting the cenvat credit or otherwise on or before the fifth day of the following month or quarter as the case may be except for the month or quarter of March when payment shall be made on or before 31st March. Failure to pay such amount will attract recovery provisions contained in Rule 14.

Rule 6

The marginal heading "obligation of manufacturer of dutiable and exempted goods and provider of taxable and output services" has been amended as "Obligation of manufacturer or producer of final products and a provider of taxable service" to align with the amendments made to this rule.

Cenvat credit shall not be allowed on inputs used in or in relation to the manufacture of exempted goods or for provision of exempted services or input services used in or in relation to manufacture of exempted goods and cleared up to the place of removal or for providing exempted services.

If the manufacturer or the provider of output service does not opt to maintain separate accounts then he shall follow any one of the following options:

a) Pay an amount equal to 5 per cent of the value of exempted goods and exempted services, or
b) Pay an amount as calculated under sub-Rule (3A), or
c) Maintain separate accounts for inputs and take cenvat credit only on inputs used in or in relation to manufacture of dutiable goods excluding exempted goods and service tax for the provision of output services excluding exempted services.

It has also been provided that if any duty of excise is paid on the exempted goods then the same shall be reduced from the amount payable as calculated in the above-mentioned "a)".

A clarification has been introduced as an explanation that credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance up to the place of removal or for provision of exempted services.

Cenvat credit is also denied on the duty or tax paid on goods and services that are not inputs or input services meaning that only those goods or services which are defined as the term "input", or "input services" shall be treated as input or input services. This amendment will add to the already long list of pending litigations.

Sub-Rules 3b, 3C and 3D have been inserted which have the following implications:

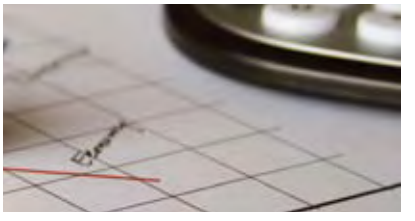
1) Credit is restricted to 50 per cent of the input and input services availed by a banking company and a financial institution including a NBFC and 80 per cent in the case of life insurance and ULIP investment management services.
2) The benefit of full credit on 16 specified input services which were allowed even though partly used in provision of exempted services or manufacture of exempted goods stands withdrawn.
3) Payment of the amount as prescribed in this rule shall be deemed to be treated as cenvat credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no credit of inputs and input services shall be taken.
4) In case of trading, the amount as prescribed shall be payable on the difference between the sale price and the purchase price of the said goods as "exempted service" includes "trading".

Rule 6A has been inserted and the said rule makes it clear that the provisions of Rule 6 shall not be applicable in case the taxable services are provided without payment of service tax to a unit in a special economic zone or to a developer of a special economic zone for their authorised operations. This rule is effective from 1st March, 2011.

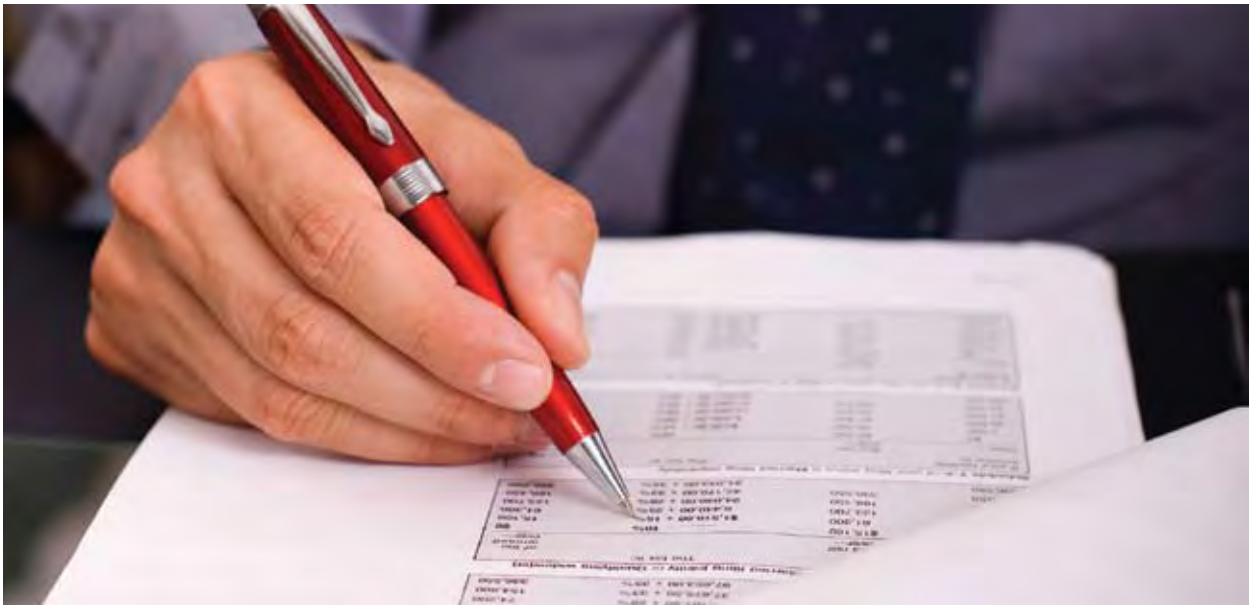
With effect from 1st March, 2011, time limit to file cenvat return in case of SSI units has been reduced from 20 days to 10 days more so to align with the due date of filing of excise returns.

Conclusion

In our context, the subject of credit is different from the developed tax economies, where duties and taxes paid are allowed setoff without any nexus required to be established when they are used for commercial transactions. Capital goods, inputs and input services have been specifically defined in the Cenvat Rules and the Rules allowing the benefit of setoff is also rigid. For a detailed analysis, the reader should go through the Notification No. 3/2011–CE (NT) dated 1st March, 2011 containing the amendments. ■



Finance Bill, 2011: Service Tax Levy



Regarding the services coming from practicing CAs, cost accountants and company secretaries, service tax is charged even when service is provided by an individual or to an individual, which appears to be a discrimination in the methodology of levy of service tax on the services of CAs, cost accountants and company secretaries vis-à-vis legal consultancy services. Finance Bill, 2009, however, proposes to levy service tax on legal consultancy services with a condition if it is provided to business entity by any other business entity in relation to advice, consultancy or assistance in any branch of law in any manner. It further provides that services provided by way of appearance before any Court, Tribunal or any authority shall not amount to taxable services. The author, here, presents a detailed account on service tax levy as proposed in the Finance Bill, 2009 and discusses the issues involved.

CA. Ravi Holani
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In the Budget 2011-2012, besides the expansion of scope of existing taxable services, the new services such as services by air-conditioned restaurants having license to serve liquor and short-term accommodation in hotels, inns, clubs, guesthouses, etc.

New Services:-

(a) Service provided by a restaurant:-

Section 65(105)(zzzzv) of the Finance Act, 1994:-

Taxable service means any service provided or to be provided,- xxxx

(zzzzv) to any person, by a restaurant, by whatever name called, having the facility of air-condition in any part of the establishment, at any time during the financial year, which has license to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises;

xxxx

[refer Clause 71(A)(5)(f) of the Finance Bill, 2011]

For taxability, first condition is that the facility of air-conditioning available at any time and second is having the license to serve alcoholic beverages, i.e. liquor. It means mere sale of food at any eating house is not sufficient.

"...commercial training or coaching centre" means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes.

(b) Short-term accommodation:-

Section 65(105)(zzzzw) of the Finance Act, 1994:-

Taxable service means any service provided or to be provided,-

xxxx

(zzzzw) to any person by a hotel, inn, guest house, club or campsite, by whatever name called, for providing of accommodation for a continuous period of less than three months;"

xxxx

[refer Clause 71(A)(5)(f) of the Finance Bill, 2011]

Short-term accommodation for a continuous period of less than three months provided by hotels, inns, guest house, clubs or campsite [by whatever name called] shall be taxable under this title.

 # Expansion of Existing Service:-

1. **Authorised Service Stations Services - Section 65(105)(zo):-** By Clause 71(A)(5)(a) of the Finance Bill, 2011, the definitions shall be amended as follows:-

   Taxable service means any service provided or to be provided,-

   xxxx

   (zo) to any person, by any other person, in relation to any service for repair, reconditioning, restoration or decoration or any other similar services, of any motor vehicle other than three wheeler scooter auto rickshaw and motor vehicle other than three wheeler scooter auto rickshaw and motor vehicle meant for goods carriage;"

   Now the scope shall be as follows:-

   a) Services provided by any person i.e. whether authorised service station or otherwise;
   b) All motor vehicles, other than vehicles used for goods transport and three-wheeler auto-rickshaws; and
   c) Repair, re-conditioning or restoration - which are already taxable – and services of decoration and any other related services.

2. **Life Insurance Business - Section 65(105)(zx):-** By Clause 71(A)(5)(b) of the Finance Bill, 2011, the definitions shall be substituted as follows:-

   Taxable service means any service provided or to be provided,-

   xxxx

   (zx) to a policy holder or any person, by an insurer, including re – insurer carrying on life insurance business;

   xxxx

   Now the taxability shall not be limited up to the extent of entire premium for risk cover.

3. **Commercial Training or Coaching Service - Section 65(27):-** By Clause 71(A)(3), The amended definition shall be as follows:-

   commercial training or coaching centre" means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes.

   Now, even pre-school coaching and training as well as training or coaching relating to educational qualification that are recognised by law shall also be covered under the levy. In terms of Section 65 providing the exemption by a notification under Section 93 is a separate issue.

4. **Club or Association - Section 65(105)(zzze):-** By Clause 71(A)(5)(c) of the Finance Bill, 2011, Section 65(105)(zzze) shall be amended as follows:-

   Taxable service means any service provided or to be provided,-

   xxxx

   to its members, or any other person by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount;

   By Clause 71(A)(2), Section 65(25aa) has been proposed to be amended as follows:-

   "club or association" means any person or body of persons providing services, facilities or advantages, primarily to its members for a subscription or any other amount, to its members, but does not include—

   (i) anybody established or constituted by or under any law for the time being in force; or
   (ii) any person or body of persons engaged in the activities of trade unions, promotion of agriculture, horticulture or animal husbandry; or
   (iii) any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature or
   (iv) any person or body of persons associated with press or media;

   Now the scope shall be extended by including services provided to non members also.

5. **Business Support Service – Section 65(105)(104C):-** By Clause 71(A)(5)(c) of the Finance Bill, 2011, the definition has been proposed to amended as follows:-

   support services of business or commerce" means services

provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational or administrative assistance in any manner, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Now any kind of operational or administrative assistance shall be taxed accordingly in term of the context employed.

6. **Service by Legal Professionals – Section 65(105)(zzzzm) :-** By Clause 71(A)(5)(d) of the Finance Bill, 2011, the definition has been proposed to amended as follows:-

Taxable service means any service provided or to be provided,-

xxxx

(i) to any person, by a business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner;

(ii) to any business entity, by any person, in relation to representational services before any court, tribunal or authority;

(iii) to any business entity, by an arbitral tribunal, in respect of arbitration.

Explanation – For the purposes of this item, the expressions "arbitration" and "arbitral tribunal" shall have the meanings respectively assigned to them in the Arbitration and Conciliation Act, 1996.

xxxx

Now the scope shall be extended by including-

(i) Services of advice, consultancy or assistance provided by a business entity to individuals as well;

(ii) Representational services provided by any person to a business entity; and

(iii) Services provided by arbitrators to business entities.

Services provided by individuals to other individual will remain outside the levy.

"Taxable service means any service provided or to be provided…to any person…by a clinical establishment; or by a doctor, not being an employee of a clinical establishment, who provides services from such premises for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine."

7. **Service Provided by Clinical Establishment - Section 65(105)(zzzzo):-** By Clause 71(A)(5)(e), Section 65(105)(zzzzo) has been proposed to be amended as follows:-

Taxable service means any service provided or to be provided,-

xxxx

(zzzzo) to any person -

(i) by a clinical establishment; or

(ii) by a doctor, not being an employee of a clinical establishment, who provides services from such premises for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine.

xxxx

Clause 71(A)(2) has proposed the definition of **"clinical establishment"** which is as follows:-

Section 65(25a) - "clinical establishment" means-

(i) a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution, by whatever name called, owned, established, administered or managed by any person or body of persons, whether incorporated or not, having in its establishment the facility of central air – conditioning either in whole or in part of its premises and having more than twenty – five – beds for in patient treatment at any time during the financial year, offering services for diagnosis, treatment or care for illness, disease, injury, deformity,

abnormality or pregnancy in any system of medicine; or

(ii) an entity owned, established, administered or managed by any person or body of persons, whether incorporated or not, either as an independent entity or as a part of any clinical establishment referred to in sub-Clause (i), which carries out diagnosis of diseases through pathological, bacteriological, genetic, radiological, chemical, biological investigations or other diagnostic or investigative services with the aid of laboratory or other medical equipment,

The existing levy on health services is proposed to be replaced as follows:

(i) Any service provided by a clinical establishment having the facility of central air conditioning in any part of the establishment and more than 25 beds for in-patient treatment at any time of the year;

(ii) Diagnostic services provided by a clinical establishment with the aid of laboratory or medical equipment; and

(iii) Health-related services provided by doctors, not being employees, providing Health - related services from the premises of a clinical establishment.

The title will not cover an establishment under the ownership or control of Government or a local authority including Primary Health Centre and ESIC hospital. Autonomous medical institute's set-up by the Government by a Special Act of Parliament is also outside the levy.

Only such doctors will be covered who provides services from the specified premises of a clinical establishment in a capacity other than as employee of such establishment.

 # Scope Valuation Rules:-

In case of taxable services specified under Section 65(105)(zm)&(zzk), Rule (2B) has been introduced in the Service tax (Determination of Value) Rules, 2006 prescribing the value of the service in terms of Section 67 of the Act. The value shall be determined as follows:

(i) The difference between the buying rate and the selling rate, as the case may be, and the RBI reference rate for that currency for that day multiplied by units of currency exchanged;

(ii) If RBI reference rate is not available the value shall be one per cent of the value of money exchanged in Indian rupees;

(iii) When both the currencies are not Indian rupees, one per cent of the lesser of the amounts receivable if the two currencies are converted at RBI reference rate.

The rate of composition under Rule 6(7B) has been lowered from 0.25 per cent to 0.1 per cent of the gross amount of money exchanged. However, the proviso relating to paying tax on billed charges has been deleted. Thus now the assessee will have the option to pay tax @ 0.1 per cent of gross amount exchanged or else at standard rated on the value of service in terms of Rule 2B, as mentioned above.

 # Machinery Provisions:

Section 73: Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded. –

(1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person

"In case of taxable services specified under Section 65(105)(zm)&(zzk), Rule (2B) has been introduced in the Service tax (Determination of Value) Rules, 2006 prescribing the value of the service in terms of Section 67 of the Act."

to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

Provider that where any service tax not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of –

(a) fraud; or

(b) collusion ;or

(c) wilful mis-statement; of

(d) suppression of facts; of

(e) contravention of any of the provisions of the Chapter or of the rules made thereunder with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "one year", the words "five years" had been substituted.

Explanation – Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of one year or five years, as the case may be.

(2) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from, or erroneously refunded to, such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(3) Where any service tax has not been levied or paid or had been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Office before service of notice on him under sub-section (1) in respect of such service tax, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid :

Explanation – For the removal of doubts, it is hereby declared that the interest under Section 75 shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of service tax or erroneously refunded services tax, if any as may be determined by the of Central Excise, but Officer this sub-section.

"Explanation 2.—For the removal of doubts, it is hereby declared that no penalty under any of the provisions of this Act or the rules made thereunder shall be imposed in respect of payment of service-tax under this sub-section and interest thereon.";

"The Central Excise Officer shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from, or erroneously refunded to, such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(4) Nothing contained in sub-section (3) shall apply to a case where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of -

a. fraud; or
b. collusion; or
c. willful misstatement; or
d. suppression of facts; or
e. contravention of any the any provisions of the Chapter or the rules made there under with intent to evade payment to service tax.

(4A) *Notwithstanding* anything contained in sub-section (3) and (4), where during the course of any audit, investigation or verification, it is found that any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, but the true and complete details of transactions are available in the specified records, the person chargeable to service tax or to whom erroneous refund has been made, may pay the service tax in full or in part , as he may accept to be the amount of tax chargeable or erroneously refunded along with interest payable thereon under Section 75 and penalty equal to one per cent of such tax, for each month, for the period during which the default continues, up to maximum 25 per cent. Of the tax amount, before service of notice on him and informed the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the amount so paid and proceeding in respect of the said amount of service tax shall be deemed to have been concluded:

Provided that the Central Excise Officer may determine the amount of service tax, if any, due from such person, which in his opinion remains to be paid by such person and shall proceed to recover such in the manner specified in sub-section (1).

Explanation – For the purposeof this sub-section and Section 78, "Specified Records" means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of Account shall be considered as the specified record.

(5) The provisions of sub-section (3) shall not apply to any case where the service tax had become payable or ought to have been paid before the 14th day of May, 2003.

(6) For the purposes of this sections, "relevant date" means,-

(i) in case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid-

(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee the date on which such return is so filed;

(b) where no periodical return as aforesaid filed, the last date on which such return is to be filed under the said rules;

(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made there under;

(ii) in case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;

(iii) in case where any sum, relating to service tax, has erroneously been refunded, the date of such refund; [Clause 71(D) of the Bill, 2011].

The result is the benefit of reduced penalty shall not be available in case of suppression, fraud, misstatement, collusion, etc., in the ordinary course except where the true and complete account of transactions is otherwise available in the specified records and the assessee during the course of audit, verification or investigation pays the tax dues, together with interest and the reduced penalty. It is clarified that the assessee can also avail this benefit on his own also. The extent of penalty is being further reduced to one per cent per month of the tax amount for the duration of default, with an upper ceiling of 25 per cent of the tax amount.

Section 70: Furnishing of Return

Clause 71(C), the late fee shall be extended to ₹20,000/- from ₹2,000/- the existing rate of fine is being retained under 7C of the Service Tax Rules, 1994.

Section 73B: Interest on amount collected in excess

In Section 73B, after the first proviso, the following proviso has been proposed by Clause 71(E):-

"Provided further that in case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial year covered by the notice issued under sub-section (3) of Section 73(A) or during the last Preceding financial year, as the case may be, such rate of interest shall be reduced by 3 per cent per annum".

"…any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, but the true and complete details of transactions are available in the specified records, the person chargeable to service tax or to whom erroneous refund has been made, may pay the service tax in full or in part , as he may accept to be the amount of tax chargeable or erroneously refunded along with interest payable thereon under Section 75 and penalty equal to one per cent of such tax, for each month, for the period during which the default continues, up to maximum 25 per cent."

Section 75: Interest on delayed payment of service tax

By Clause 71(F), the following proviso has been proposed to be inserted.

Provided that in case of a service provider, whose value of taxable services provided in a financial year does not exceed ₹60 lakh during any of the financial year covered by the notice or during the last preceding financial year, as the case may be, such rate of interest, shall be reduced by 3 per cent per annum.

The result is interest rate for delayed payment of service tax is being increased to 18 per cent per annum, effective 01-04-2011 (Notification 15/2011-ST), with concession of three per cent for tax-payers having turnover during any of the years covered in the notice or the preceding financial year below ₹60 lakh.

Section 76: Penalty for failure to pay service tax

The penalty per day shall not be less than ₹100 per day or at the rate of 1 per cent of such tax per month whichever is higher, starting from the first day after due date till the actual payment of outstanding tax but such penalty shall not exceed 50 per cent of the service tax payable.

Illustration

X, an assessee, fails to pay service tax of ten lakh rupees payable by the 5th March. X pays the amount on the 15th March. The default has continued for ten days. The penalty payable by X is computed as follows:-

1% of the amount of default for 10 days

1/100 x 10,00,000 x 10/31 = ₹ 3225.80

Penalty calculated @ ₹100 per day for 10 days = ₹1000

Penalty liable to be paid is ₹3226.00

[Clause 71(G) of the Finance Bill, 2011]

Section 77: The maximum penalty under Section 77 for contravention of various provisions is proposed to be increased from ₹5000/- to ₹10000/-. However, the daily rate of penalty, wherever applicable, is being retained.

Section 78: The penalty under Section 78 shall be equivalent to tax not levied, not paid, or short levied, short paid or erroneously refunded. However, in case of true and complete disclosure of the transactions in the specified records, the penalty shall be reduced to the extent of 50 per cent which shall be further reduced to the extent of 25 per cent of such tax not levied, not paid, short lived, short paid or erroneously refunded if the payment of such tax along with interest and reduced penalty shall be paid with 30 days [and ninety days for the assessee having total turnover up to ₹60 lakh during any of the Financial year under consideration.

Section 80: In terms of Clause 71(J), now the benefit under Section 80 shall

be limited to the cases covered under proviso first to Section 78(1) plus 77 and 76 only.

The revised position relating to penalties and their mitigation or waiver is summed up in the following table:-

Situation	Penalty & Position in records	Provision	Mitigation	Complete Waiver
No fraud, suppression, etc.	Captured	1 per cent of tax or ₹100 per day up to 50 per cent of tax amount: Section 76	Totally mitigated if tax and interest paid before issue of notice: Section 73(3)	On showing reasonable cause under Section 80
Cases of fraud, suppression, etc.	Captured true & complete position in records	50 per cent of tax amount: Proviso to Section 78	(a) 1 per cent per month; max of 25 per cent if all dues paid before notice: Section 73(4A); (b) 25 per cent of tax if all dues paid within 30 days (90 days for small assesses): Provisos to Section 78	-do-
	Not so captured	Equal amount: Section 78	No mitigation at all	Not possible

Section 82: By Clause 71(K) of the Finance Bill, 2011, power to issue search warrant under Section 82 is proposed at the level of Joint Commissioner and the execution of search warrant at the level of Superintendent.

Section 83: In Clause 71(L), the following provisions of the Central Excise Act, 1944 shall also be applicable foe Service Tax levy.

Section 9A: Certain offences to be non-cognizable.

Section 9AA: Offences by companies.

Section 34A: Confiscation or penalty not to interfere with other punishments.

Section 35R: Appeal not to be filed in certain cases.

Section 88: Liability under Act to be first charge

Notwithstanding anything to the contrary contained in any Central Act, or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this chapter, shall, save as otherwise provided in Section 529A of the Companies Act, 1956 and the Recovery of debts to banks and the Financial institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the enforcement of Security Interest Act, 2002, be the first charges on the property of the assessee or the person as the case may be. *[Clause 71(M) of the Finance Bill 2011]*

Section 89: Offences and Penalties

(1) Whoever commits any of the followings offences, namely,-

(a) provides any taxable service chargeable to service tax under sub-section (1) of Section 68 or receives any taxable service chargeable to tax under sub-section (2) of said section, without an invoice issued in accordance with the provisions of this chapter or the rules made there under; or

(b) avails and utilises credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this chapter ; or

(c) maintains false books of account or fails to supply any information which he is required to supply under this chapter or the rules made there under or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information ; or

(d) collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due,

Provided that in case of a service provider, whose value of taxable services provided in a financial year does not exceed R60 lakh during any of the financial year covered by the notice or during the last preceding financial year, as the case may be, such rate of interest, shall be reduced by 3 per cent per annum.

shall be punishable

(i) in the case of an offence where the amount exceed ₹50 lakh, with imprisonment for a term which may extend to three years:
Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months;

(ii) in any other case, with imprisonment for a term, which may extend to one year.

(2) If any person convicted of an offence under this section is again convicted of an offence under this section, then he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend three years;
Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term less than six months;

"Notwithstanding anything to the contrary contained in any Central Act, or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this chapter, shall, save as otherwise provided in Section 529A of the Companies Act, 1956 and the Recovery of debts to banks and the Financial institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the enforcement of Security interest Act, 2002, be the first charges on the property of the assessee or the person as the case may be."

(3) For the purpose of sub-sections (1) and (2), the following shall not be considered as special and abequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:-

(i) the fact that the accused has been convicted for the first time for an offence under this chapter;

(ii) the facts that in any proceeding under this Act, other than prosecution, the accused has been ordered to pay a penalty or any other action has been taken against him for the same act which constitutes the offence;

(iii) the facts that the accused was not the principal offender and was acting merely as a secondary party in the commission of offence;

(iv) the age of the accused.

(4) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Chief Commissioner of Central Excise.

[refer Clause 71(M) of the Finance Bill, 2011]

Analysis:

Sub-section (1)(a) refers to the punishment unconditionally without employing the reference of "intention to evade service tax, fraud, collusion, suppression…" It means even in those cases where the demand is time barred due to bona fide dispute about taxability, without deciding the taxability, such harsh provisions could be employed.

Sub-section (2)(b) refers the CENVAT Credit for service sector only, why not for manufacturer also besides the fact that on even bona fide breach of any procedural condition, such type of extreme harsh provisions could be invoked.

So far as false supply of information is concerned, it is also very ambiguous word in itself specifically when the Department wants to assess or measure tax but without deciding taxability as desired by the assessee. Refer sub-section (1)(c).

Sub-section (1)(d) is also creates absurd situation. In cases where the consideration is composite one because of specific provision that whatever liability on account of any tax shall be on account of the service provider and no extra amount on such account shall be given by service receiver to him. Now, such types of conditions have been interpreted as collection of service tax and this is the equipment to collect the tax even if there is no tax liability at all.

Very harsh provisions, besides the expansion of cost of education, medical, etc., high degree of corruption and nuisance-oriented clause, e.g. Clause 71(M) of the Finance Bill, 2011 - proposed Section 89 under Chapter V of the Finance Act, 1994;

On unorganised sector, all issues around interpretation of the law shall be subject to such blind nuisance just like penalty under Section 78 in each and every case and than repeated appeal even after relief given by appellate authority. Really we are going into the time of earlier Mughal period;

Law makers should understand the nuisance at the stage of the implementation of such types of harsh provisions while the small category of tax payers should not be paralleled with organised industrial sector whereas such types of harsh provisions are not available under the Central Excise Law;

The majority part of the affected persons is not too literate and their size of business is not in organised manner, they are not in a position to maintain law department;

To complete target not only artificial demand but also imprisonment and during investigation there shall be misrepresentation about assessee's business.

Service Tax Rules, 1994:

By Notification No. 3/2011 ST dt. 1/3/2011, w.e.f. 1st April, 2011:-

Rule 5B has been introduced to provide that the applicable rate of tax shall be the rate prevailing at the time when the services are deemed to have been provided.

Rule 6

It has also been provided that when an invoice has been issued or a payment received for a service which is not subsequently provided, the assessee may take the credit of the service tax earlier paid when the amount has been refunded by him to the recipient or by the issue of credit note, as the case may be. If an amount of service tax has been self-assessed but not paid, the same shall be recoverable along with interest under Section 87 of the Act. Now there shall be no need to resort to the requirements of Section 73. The amount stated in Rule 6(4B)(iii) for adjustment of excess amount paid by an assessee has been enhanced to ₹2 lakh.

The Point of Taxation Rules, 2011:-

By Notification No. 18/2011 S T. dt. 1/3/2011, w.e.f. 1st April, 2011, the point of taxation Rules, 2011 shall come in to existence.

These rules determine the point in time when the services shall be deemed to be provided the earliest of the following dates:

i. Date on which service is provided or to be provided
ii. Date of invoice
iii. Date of payment

and accordingly the adjustment of tax when service is not finally provided shall also be available.

The basic feature in service sector at small unorganised sector is that after rendering services, their bills has been paid by the recipient of service after very long back after several deductions. Another feature is in case of tenders given the figure is composite one i.e. including service tax. For example, civil contracts, loading, unloading contracts, job work operations, etc. Even in case of professional consultancy, the organised/unorganised sector has reduced the bills after taking service of professionals. Now it creates quite ambiguous situation. Except few situations, in ordinary course of business or profession, the payment of service tax should be based on receipt of consideration though determination of tax may be in accordance with these Rules.

"Sub-section (1) (d) is also creates absurd situation. In cases where the consideration is composite one because of specific provision that whatever liability on account of any tax shall be on account of the service provider and no extra amount on such account shall be given by service receiver to him. Now, such types of conditions have been interpreted as collection of service tax and this is the equipment to collect the tax even if there is no tax liability at all."

Export and Import of Services:-

By Notification No. 12/2011 ST dt. 1/3/2011, under the Export of Service Rules, 2005, certain services have been rearranged as follows:

(i) Service provided by builders [Section 65(105)(zzzzu)] is being added to sub-Rule 1(i) and will thus be considered as exported, subject to compliance with other conditions, if the immovable property is situated outside India.

(ii) Rail travel agent [Section 65(105)(zz)] and health check-up or preventive care [Section 65(105)(zzzzo)] are being added to sub-Rule 1(ii) and will thus be considered as exported, subject to compliance with other conditions, when they are performed outside India; and

(iii) Services of credit rating agency [Section 65(105)(x)], market research agency [Section 65(105)(y)], technical testing and analysis [Section 65(105)(zzh)], transport of goods by air [Section 65(105)(zzn)], goods transport agency [Section 65(105)(zzp)], opinion poll [Section 65(105)(zzs)] and transport of goods by rail [Section 65(105)(zzzp)] are being deleted from sub-Rule 1(ii) and thus the additional condition of performance outside India will stand removed. Thus they will be considered as exported, subject to compliance with the relevant conditions, if the recipient is located abroad.

And corresponding charges has been made in the Taxation of Services (provided from outside India and received in India) Rules 2006, by Notification No. 13/ 2011 ST dt. 1/3/2011, which makes certain services taxable if the recipient of the service, is located in India even when the service is performed outside India.

However, exemption has been granted vide Notification 8/2011-ST to services of transportation of goods by air or road or rail provided to a person located in India when the goods are transported from a place outside India to a destination outside India. Exemption has also been given vide Notification 9/2011-ST to the transportation of goods by air service to the extent air freight is included in the customs value of goods in order to avoid taxing this service twice.

Works Contract:-

A new sub-Rule (2A) has been inserted in Rule 3 in the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 vide Notification 1/2011-ST so as to restrict the Cenvat Credit to 40 per cent of the tax paid on services relating to erection, commissioning & installation; commercial or industrial construction and construction of residential complex, in case tax has been paid on full value of the service after availing Cenvat credit on inputs, i.e. without availing exemption notification 1/2006-ST dated 01-03-2006.

And at the end, the essence is, the law is more complicated in the democratic civilised law based country, social–economic conditions of the country, the level of knowledge and education to interpret the law and the pattern adopted by the Revenue to interpret the language while imposing the levy or imposing penal consequences for not following the specific direction given by them also creates quite complex and absurd situation. Reality of the land to be considered rather than to play complex indexing system. ■

In-Depth Analysis of Proposed Amendments in Taxable Services by Finance Bill, 2011

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Introduction

In the present article, an attempt has been made to present a comprehensive analysis of not only the new services which have been proposed to be introduced within the ambit of the service tax but also the amendments which have been made in the existing categories of taxable services by the Finance Bill, 2011.

The article has been divided into three parts namely:

I. New Services
II. Expansion in scope of existing taxable services
III. Grant/Withdrawal of Exemptions and changes in manner of discharge of service tax liability in case of Specified Services.

In order to understand the changes in a clear perspective, comparative tables have been made which show the existing provisions along with new provisions.

I. New Services

Following are the two new services which have been **proposed to be inserted** by the Finance Bill, 2011 in the existing gamut of Service Tax Law:

A. Services Provided by Restaurant-Section 65(105)(zzzzv)

Relevant Sub-Heading	Relevant Details
Definition of Taxable Service Clause under Section 65(105)(zzzzv)	Taxable service means **any service** *provided or to be provided* to any person, by a **restaurant** by whatever name called, **having the facility of air conditioning** in any part of the establishment, at any time during the financial year and which has the **license to serve alcoholic beverages**, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises.
Quantum of Abatement	70 per cent of the gross amount charged from the client, Notification awaited.
Departmental Clarification given vide TRU letter bearing *F.NO. 334/3/2011-TRU dated 28-02-2011*	Restaurants provide a number of services normally in combination with the meal and/or beverage **for a consolidated charge**. These services relate to the use of restaurant space and furniture, air-conditioning, well-trained waiters, linen, cutlery and crockery, music, live or otherwise, or a dance floor. The customer also has the **benefit of personalised service** by indicating his preference for certain ingredients e.g. salt, chilies, onion, garlic or oil. The extent and quality of services available in a restaurant is directly reflected in the margin charged over the direct costs. It is thus not uncommon to notice even packaged products being sold at prices far in excess of the MRP. In certain restaurants the **owners get into revenue-sharing arrangements with another person**, who takes the responsibility of preparation of food, with his own materials and ingredients, while the owner takes responsibility for making the space available, its decoration, furniture, cutlery, crockery and music etc. The total bill, which is composite, is shared between the two parties in terms of the contract. Here the **consideration for services provided by the restaurants is more clearly demarcated**. Another arrangement is whereby the restaurant separates a certain portion of the bill as service charge. This amount is meant to be **shared amongst the staffs** who attend the customers. Though this amount is exclusively for the services it does not represent the full value of all services rendered by the restaurants. The **new levy is directed at services provided by high-end restaurants that are air-conditioned and have license to serve liquor**. Such restaurants provide conditions and ambience in a manner that service provided may assume predominance over the food in many situations. It should not be confused with mere sale of food at any eating house, where such services are materially absent or so minimal that it will be difficult to establish that any service in any meaningful way is being provided. It is **not necessary that the facility of air-conditioning is available round the year**. If the facility is available at any time during the financial year the conditions for the levy shall be met. The levy is intended to be confined to the value of services contained in the composite contract and shall not cover either the meal portion in the composite contract or mere sale of food by way of pick-up or home delivery, as also goods sold at MRP. Finance Minister has announced in his budget speech **70 per cent abatement** on this service, which is, inter-alia, meant to separate such portion of the bill as relates to the deemed sale of meals and beverages. The relevant notification will be issued when the levy is operationalised after the enactment of the Finance Bill.

A perusal of the aforesaid provisions shows that the aforesaid category seeks to levy tax on services element provided by the restaurant. This levy will result in double taxation as all the State Governments are charging VAT on the sale value of meal and beverages in a restaurant. The VAT rate on food in most of the States is 12.5 per cent and on alcoholic beverages is 20 per cent. Now, on the same amount, service tax at 3 per cent (i.e abated rate) is levied. Article 366(29A) of the Constitution of India which defines the term levy of "tax on sale or purchase of goods" by virtue of clause (f) creates a deeming fiction which authorises the State Governments to levy tax on supply of goods being food or any other article for human consumption or any drink by way of or as part of any service. Thus, it cannot be disputed that supply of food in restaurants has service element also. It is this service element which is being proposed to be taxed. Whether the service element is merely incidental to the activity of sale or not is a question which may be judicially decided in time to come.

B. Short-Term Accommodation Services- Section 65(105)(zzzzw)

Relevant Sub-Heading	Details
Definition of Taxable Service Clause given under section 65(105)(zzzzw)	Taxable service means **any service** *provided or to be provided* to **any person**, by a **hotel, inn, guest house, club or camp site**, by whatever name called for **providing of accommodation** for a continuous period of **less than three months**.
Quantum of Abatement	50 per cent of the value of these services, Notification awaited.
Departmental Clarification given vide TRU letter bearing *F.NO. 334/3/2011-TRU dated 28-02-2011*	Short term accommodation is provided by hotels, inns, guest houses, clubs and others and at camp-sites. This service is proposed to be taxed where the continuous period of stay is less than 3 months. **Actual levy will be restricted** to accommodation with declared tariff of ₹1,000 per day or higher by an exemption notification. Once this requirement is met, tax will be chargeable irrespective of the fact that actually the amount charged from a particular customer is less than ₹1,000. The tax will also be charged on the gross amount paid or payable for the value of the service. Finance Minister has announced 50 per cent abatement from the value of service. Details of the exemption will be announced at the time when the levy is operationalised after the enactment of the Finance Bill

The category of rental of immovable property service introduced with effect from 1st June, 2007 specifically excluded the building used for the purpose of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities, but interestingly the proposed category is intending to tax the said exclusion provided under renting of immovable property service. Further, the TRU letter DOF 334/3/2011 – TRU has failed to provide the service element contained in the contract but instead only states the intention to tax.

Short accommodation services are also a taxable category which will attract the levy both under the local laws and the central laws. The room tariffs are already subject to levy of luxury tax. With this proposed levy, the short term accommodation will also be subject to service tax. It is quite apparent that this category of taxable service will be a subject matter of challenge before different High Courts.

However, the Courts are taking a view that if there are more than two aspects in a transaction, levy cannot be declared unconstitutional, subject to the Parliament/State Legislature having the legislative competence to levy tax. Further, it may be noted that there are situations wherein the Companies take hotel accommodation for a period of more than three months. Such long-term accommodations which are for a period of more than three months have been specifically excluded from the tax net.

II. Expansion in Scope of Existing Taxable Services

1. Health Related Services – Section 65(105) (zzzzo)

The proposed amendment in the taxable category of health services is a bold move by the Finance Ministry. Till date, health services are outside the purview of the value added tax regime in many of the developed countries. However, in-so-far as India is concerned, the Finance Bill, 2011 has changed the scenario. The amendments proposed in this category of taxable service would bring within the purview of service tax all health services provided by a clinical establishment having the facility of central air-conditioning in any part of the establishment and has more than 25 beds for in-patient treatment at any time of the year including health services provided by doctors from such clinical establishment who are not the employees of the clinical establishment. All kind of diagnostic services have been brought within the tax net. In order to truly appreciate the sweeping expansion of the scope of this service, following comparative table has been prepared:

S. No.	Point of Distinction	Existing Relevant Provisions	Proposed Substituted Provisions
A.	Status of Service Recipient	(i)**An employee of any business entity**, in relation to **health check-up or preventive care** and the **payment** for such check-up or preventive care **is made by such business entity directly** to such hospital, nursing home or multi-specialty clinic; or (ii)**A person covered by health insurance scheme, for any health check-up or treatment**, where the **payment** for such health check-up or treatment was made by the **insurance company directly** to such hospital, nursing home or multi-specialty clinic were taxable.	Any person. In other words, it will no longer be necessary that the service recipient should be either an employee of any business entity or should be covered of health insurance scheme.
B.	Status of Service Provider	Any hospital, nursing home or multi-specialty clinic	i)**A clinical establishment** having the facility of **central air-conditioning** in any part of the establishment and **more than 25 beds** for in-patient treatment at any time of the year (ii) Doctors, who are not employees of clinical establishment and provide Health Related services from the premises of a clinical establishment
C.	Nature & Scope of Taxable Services	(i)**Health check-up or preventive care** when these services are provided to an employee of any business entity (ii) **Any health check-up or treatment** when these services are provided to a person covered by health insurance scheme	(i)**Any service provided by a clinical establishment**; (ii)Diagnostic or Investigative services provided by a clinical establishment **with the aid of laboratory or other medical equipment** (iii) Health Related Services provided by doctors, who are not employees, from the premises of a clinical establishment.
D.	Availability of Abatement	No.	50 per cent from the value i.e. Gross Amount received of these services

- Definition of "**clinical establishment**" – Section 65(25a)

S. No.	Relevant Sub-Heading	Details
A.	Any Medical Institution having **central air-conditioning** facility & **more than 25 beds for in-patient treatment** and providing health related services	A hospital, maternity home, nursing home, dispensary, clinic, **sanatorium or an institution**, by whatever name called, owned, established, administered or managed by any person or body of persons, **whether incorporated or not**, having in its establishment the **facility of central air-conditioning** either in whole or in parts of its premises and **having more than twenty-five beds for in-patient treatment** at any time during the financial year, **offering services for diagnosis, treatment or care** for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine
B.	Any entity providing diagnostic or investigative services	An entity owned, established, administered or managed by any person or body of persons, **whether incorporated or not**, either as **an independent entity or as a part of any clinical establishment** referred to in sub-clause (i), which **carries out diagnosis of diseases** through pathological, bacteriological, genetic, radiological, chemical, biological investigations or other diagnostic or investigative services with the aid of laboratory or other medical equipment,
C.	**Specific Exemption/ Exclusion**	An establishment, owned or controlled by- (a) the Government; or (b) a local authority including Primary Health Centre and ESIC Hospital, Autonomous Medical Institutes set-up by the government by a special act of Parliament.

2. Legal Consultancy Services –Section 65(105)(zzzzm)

S.No.	Nature of Service	Status of Service Provider	Status of Service Recipient	Existing Provisions	Proposed Provisions
A.	Advice, consultancy or assistance in any branch of law in any manner	Business Entity	Individual	Non-Taxable	Taxable
		Business Entity	Business Entity	Taxable	Taxable
		Individual	Individual	Non-Taxable	Non-Taxable
		Individual	Business Entity	Non-Taxable	Non-Taxable

B.	Representational Services viz. services provided by way of appearance before any Court, Tribunal or authority	Business Entity	Individual	Non-Taxable	Non-Taxable
		Business Entity	Business Entity	Non-Taxable	Taxable
		Individual	Individual	Non-Taxable	Non-Taxable
		Individual	Business Entity	Non-Taxable	Taxable
C.	Arbitration	Arbitrators	Individual	Non-Taxable	Non-Taxable
		Arbitrators	Business Entity	Non-Taxable	Taxable

3. Commercial Training or Coaching Services- Section 65(105)(zzc)

S. No.	Point of Distinction	Existing Provisions	Proposed New Provisions
A.	Services of Commercial Training or Coaching in respect of **Unrecognised Education**	Not Taxable if these services are provided by **an institute or establishment which issues** any certificate or diploma or degree or any educational qualification **recognised by law** for the time being in force. The reason for aforementioned exclusion is that the said institute or establishment does not fall within the ambit of the term "Commercial training or coaching centre" as defined by Section 65(26).	Taxable when services are provided by **an institute or establishment which issues** any certificate or diploma or degree or any educational qualification **recognised by law** for the time being in force in respect of unrecognised education. The statutory definition of "Commercial Training or Coaching Centre" as given in Section 65(26) is proposed to be amended accordingly.
B.	Preschool Coaching	Not Taxable because the institute or establishment which provides preschool coaching does not fall within the scope of "Commercial Training or Coaching Centre" as given in Section 65(26).	The specific exclusion from the definition has been removed. Therefore, it has been proposed that suitable exemption will be provided in respect of Preschool Coaching after the enactment of the Finance Bill.

4. Authorised Service Station's Services- Section 65(105)(zo)

S. No.	Point of Distinction	Existing Provisions	Proposed New Provisions
A.	Relevant Definition of Taxable Service	Any Service provided or to be provided to any person, **by any authorised service station**, in relation to any service, repair, reconditioning or restoration of motor cars, light motor vehicles or two wheeled motor vehicles, in any manner.	Any service provided or to be provided to any person **by any other person**, in relation to any service for repair, reconditioning, restoration or **decoration or any other similar services**, of any motor vehicles **other than three wheeler scooter auto-rickshaw and motor vehicle meant for goods carriage**.
B.	Status of Service Provider	These services become taxable only when provided by any authorised service station. According to Section 65(19) "authorised service station" means any service station or centre, authorised by any motor vehicle manufacturer, to carry out any service, repair, reconditioning or restoration of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer.	These services will become taxable regardless of the status of service provider. In other words, any service provider [whether authorised by any motor vehicle manufacturer or not] will become liable to pay service tax in relation to these services.
C.	Nature (Scope) of Taxable Services	Any service, repair, reconditioning or restoration	Any service of repair, reconditioning, restoration or **decoration or any other similar services**
D.	Kinds of Vehicles covered	Motor cars, light motor vehicles or two wheeled motor vehicles.	Any motor vehicles **other than three wheeler scooter auto-rickshaw and motor vehicle meant for goods carriage**.

5. Club or Association Services- Section 65(105)(zzzc)

S. No.	Point of Distinction	Existing Provisions	Proposed New Provisions
A.	Relevant Definition of Taxable Service	Any Service provided or to be provided **to its members**, by any club or association, in relation to provision of services, facilities or advantages for a subscription or any other amount.	Any Service provided or to be provided **to its members, or any other person**, by any club or association, in relation to provision of services, facilities or advantages for a subscription or any other amount.
B.	Taxability Status when these services are provided or to be provided to **non-members**	(A)**Taxable** when if the **concerned member avails these services for his concerned guest (s)**. In this situation the charges for these services are paid by the concerned member and not by the relevant guest(s). Consequently, members will fall within the ambit of taxable service clause. (B) **Not Taxable** if the non-members avail these services **in their own independent capacity**. The reason is that in this situation the charges for these services are paid by the non-members who will not be covered by the above taxable service clause.	Taxable because non-members will fall within the scope of the term "**any other person**".
C.	Taxability position when these services are provided or to be provided to **members of other affiliated clubs**	Not Taxable because the taxable service clause is attracted only to members of the club or association receiving these services.	Taxable because members of other affiliated clubs will fall within the scope of the term "**any other person**".

6. Business Support Services- Section 65(105)(zzzq)

S. No.	Point of Distinction	Existing Provisions	Proposed New Provisions
1.	Definition of the term "Support Services of Business or Commerce"	According to Section 65(104c) "Support Services of Business or Commerce" means services provided in relation to business or commerce and **includes** evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationships management services, accounting and processing of transactions, **operational assistance for marketing**, formulation of customer service and pricing policies, infrastructural support services and other transaction processing	According to proposed Section 65(104c) means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationships management services, accounting and processing of transactions, **operational or administrative assistance in any manner**, formulation of customer service and pricing policies, infrastructural support services and other transaction processing

2.	Scope of operational assistance*	Only operational assistance for marketing is covered.	Operational assistance in any field/manner is proposed to be covered.
3.	Coverage of administrative assistance *	"Administrative Assistance" as such is not covered.	"Administrative Assistance" as such is proposed to be covered.

**It has also been clarified in TRU Clarification letter bearing number F. No. 334/3/2011 dated 28-02-2011 that the term "operational or administrative assistance" has wide connotation & can include certain services already taxed under any other head of more specific description. The precise classification of taxable services in the said situation will be determined by applying the principles enunciated in Section 65A.*

7. Life Insurance Business Services- Section 65(105)(zx)

S. No.	Point of Distinction	Existing Provisions	Proposed New Provisions
A.	Relevant Definition of Taxable Service	According to section 65(105)(zx) "Taxable Service" means any service provided or to be provided to a policyholder or any person by an insurer, including re-insurer carrying on life insurance business, **in relation to the risk cover in life insurance business**.	Proposed new section 65(105)(zx) provides that "Taxable Service" means any service provided or to be provided to a policyholder or any person by an insurer, including re-insurer carrying on life insurance business.
B.	Scope of Taxable Services	Relatively narrow. Only services in relation to the risk cover fall within the scope of taxable service clause.	Comparatively wide. Services in relation to the risk cover as well as Services in relation to Managing Investment for the Policyholders are proposed to be included within the purview of taxable service clause.
C.	Optional alternative Rate of Service Tax in case of Composite Policies under Rule 6(7A) of the Service Tax Rule, 1994	1 per cent of the gross amount of premium charged by such insurer.	1.5 per cent of the gross amount of premium charged by such insurer.

III. Grant/Withdrawal of Exemptions and Changes in Manner of Discharge of Service Tax Liability in Case of Specified Services

This part of the article has been further divided into two sub-heads:

A. Changes effective from 01-03-2011
B. Changes effective from 01-04-2011
C. Retrospective changes which will be effective after the enactment of the Finance Bill

A. Changes Effective from 01-03-2011

1. Amendment in Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007- Notification No. 1/2011-ST dated 01.03.2011

Sub-rule (2A) has been inserted in Rule 3 of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 vide abovementioned Notification w.e.f. 1-3-2011. In case a person opts to pay tax under Works Contract Composition scheme then as per the new sub-rule, the CENVAT Credit in respect of the service tax paid in respect of any of the following three taxable services is to be restricted to an extent of 40 per cent, if the said input service provider charges service tax on full value of the service after availing CENVAT credit on inputs:

S. No.	Name of Relevant Taxable Services	Relevant Sub-clause of Section 65(105)
(a)	Erection, Commissioning or Installation Services	(zzd)
(b)	Commercial or Industrial Construction Services	(zzq)
(c)	Complex Construction Services	(zzzh)

In other words, the aforesaid restriction of 40 per cent will be applicable only where service tax has been paid on full value of the service **after availing CENVAT credit on inputs**. This amendment has been made to ensure that the credit on inputs is not taken indirectly while availing the benefit of the Composition Scheme.

Composition scheme puts bar on claiming the CENVAT Credit of duty paid on Inputs only [and not on availing the CENVAT Credit of Service Tax paid on Input Services]. There can be a situation where the Input service provider providing any of abovementioned services has paid service tax at full rate after availing the credit on inputs. In such a case input service receiver indirectly claims the CENVAT Credit of duty paid on Inputs. Thus, in order to ensure that the credit on inputs is not availed indirectly, CENVAT Credit is restricted to 40 per cent of the tax paid on foregoing services.

2. Exemption to "Business Exhibition Services" when Business Exhibitions are held outside India - Notification No. 5/2011-ST dated 01-03-2011

A specific exemption has been provided [vide above mentioned notification which is effective from. 01-03-2011] to services which are taxable under section 65(105)(zzo) of Finance Act, 1994under the heading "Business Exhibition Services" when provided by an organiser of business exhibitions in relation to business exhibitions held outside India. By virtue of this exemption, when aforementioned services are provided out of India, Export of Services Rules, 2005 become inconsequential.

3. Exemption to "Services in the Execution of Works Contract" when provided under Specified Schemes viz 'Jawaharlal Nehru National Urban Renewal Mission' and 'Rajeev Awaas Yojana' -Notification No. 6/2011-ST dated 01-03-2011

Specific Exemption has been provided w.e.f. 01-03-2011[vide above Notification] to Works contract services defined in Section 65(105)(zzzza) provided for carrying out either of the following two purposes:-

S. No.	Relevant Purpose
(a)	Construction of new residential complex or part thereof
(b)	Completion and finishing services of new residential complex or part thereof

However, the aforementioned exemption is available only for the foregoing taxable services provided under the following schemes:

S. No.	Name of Relevant Scheme
(a)	Jawaharlal Nehru National Urban Renewal Mission[JNNURM]
(b)	Rajiv Awaas Yojana [RAY]

4. Exemption to 'General Insurance Services' when provided under 'Rashtriya Swasthya Bima Yojana'- Notification No. 7/2011-ST dated 01-03-2011.

An exemption has been provided to 'General Insurance Business Services' provided by an insurer carrying on General Insurance Business to any person for providing insurance under the Rashtriya Swasthya Bima Yojana.

5. Exemption provided to 'Works Contract' services provided within an airport or a port or other port - Notification Nos. 10/2011-ST & 11/2011-ST both dated 01-03-2011

S. No.	Notification No.	Date of Notification	Scope of Exemption	Specific purpose of providing Works Contract Services, if any
(a)	10/2011	1-03-2011	Exemption to Services provided in relation to the execution of works contract **when provided wholly within** an airport and **classified** under the category of Airport Services.	--
(b)	11/2011	1-03-2011	Exemption to services provided in relation to the execution of works contract when provided **wholly within the port or other port**	Construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways

6. Conditional Abatement of 25 per cent [under Notification No. 1/2006 dated 01-03-2006] to Services Provided or to be provided in relation to Transport of Coastal Goods etc.–Notification No.16/2011-ST dated 01-03-2011

Services taxable under section 65(105)(zzzzl) viz. Services provided or to be provided to any person, by any other person, in relation to **Transport of Goods** in any of the following manner have also been brought within the scope of abatement vide Notification No. 1/2006 dated 01-03-2006.

S. No.	Mode of Transport
(a)	Coastal Goods
(b)	Goods through National Waterway
(c)	Goods through Inland Water

Resultantly, conditional abatement of 25 per cent of the Gross Amount charged by relevant service provider in respect of above services shall be provided w.e.f. 01-03-2011 vide above Notification dated 1-3-2011.

7. Determination of Value of Telecommunications Services [Section 65(105)(zzzx)]-Notification No. 2/2011-ST dated 01-03-2011

An explanation, after rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, has been inserted. The said explanation clarifies that for the purpose of Telecommunication Services [which are taxable under section 65(105)(zzzx)] the value shall be the gross amount paid by the person to whom the telecom service is provided by the telegraph authority.

Further, it been clarified in the TRU letter bearing **D.O.F. No. 334/3/2011-TRU dated 28-2-2011** that in case of service provided by way of **recharge coupons or prepaid cards** or the like, the value shall be the **gross amount charged from the subscriber or the ultimate user** of the service and not the amount paid by the distributer or any such intermediary to the telegraph authority. For instance, a recharge coupon of ₹100/- is given by Reliance Telecommunication Ltd. to its distributor @ ₹95/-. The said distributor charges ₹100/- from the ultimate user. Thus, value of telecommunication service in the case of said recharge coupon shall be ₹100/- and not ₹95/-.

B. Changes Effective from 01-04-2011

1. Amendment Regarding Categorisation of Certain Services under Export of Services Rules, 2005 and Taxation of Services [Provided from Outside India & Received in India] Rules, 2006 - Notification No.12/2010 and Notification 13/2011 both dated 01-03-2011

Name of Relevant Taxable Services	Classification upto 31-03-2011.	Classification with effect from 01-04-2011.
Special services provided by Builders etc. **[Section 65 (105) (zzzzu)]**	**Recipient based Services** [Rule 3(1)(iii) of export rules and Rule 3(iii) of import rules]	**Immovable property based services** [Rule 3(1)(i) of export rules and Rule 3(i) of import rules]
Health Related services. **[Section65 (105) (zzzzo)]**	**Recipient based Services** [Rule 3(1)(iii) of export rules and Rule 3(iii) of import rules]	**Performance based Services** [Rule 3(1)(ii) of export rules and Rule 3(ii) of import rules]
Rail Travel Agent's services **[Section 65 (105)(zz)]**	**Recipient based Services** [Rule 3(1)(iii) of export rules and Rule 3(iii) of import rules]	**Performance based Services** [Rule 3(1)(ii) of export rules and Rule 3(ii) of import rules]

a) Services of Credit Rating Agency **[Section 65(105)(x)]** b) Market Research Agency **[Section 65 (105)(y)]** c) Technical Testing and Analysis **[Section 65(105)(zzh)]** d) Transport of Goods by Air **[Section 65(105) (zzn)]** e) Goods Transport Agency **[Section 65(105) (zzp)]** f) Opinion Poll **[Section 65(105)(zzs)]** g) Transport of Goods by Rail **Section [65(105) (zzzp)]**	**Performance based Services** [Rule 3(1)(ii) of export rules and Rule 3(ii) of import rules]	**Recipient based Services** [Rule 3(1)(iii) of export rules and Rule 3(iii) of import rules]

2. Money Changing Services [Section 65(105)(zm) and (zzk)]-Notification No. 2/2011-ST dated 01-03-2011

(a)Insertion of Rule 2B under the caption "Determination of Value of Service in relation to Money Changing in Service tax (Determination of Value) Rules, 2006 [hereinafter abbreviated as 'Valuation Rules, 2006]

According to foregoing Rule 2B subject to the provisions of Section 67, the value of taxable service provided for services taxable under the heading "Banking & Other Financial Services" and "Foreign Exchange Broker's Services" **so far as it pertains to purchase or sale of foreign currency [including money changing]** shall be determined in the following manner:

Situation	Determination of Value as per Rule 2B	Examples
If RBI Reference Rate is available for a currency, when exchanged from or to Indian Rupees(INR)	[Buying Rate/Selling Rate] –[RBI Reference Rate for that Currency for that Date]X Units of Currency Exchanged	***Example:*** No. of US dollars sold by a Customer = 1000 Selling Rate = Rupees 45 per US$. RBI reference rate for US$ for that day = Rupees 45.50 Taxable value under Rule (2B) = [₹45.50-₹45] X US$ 1000 which works out to be **Rupees 500**.
If RBI reference rate is not available	1 per cent of the value of money exchanged in Indian rupees	Example: US $1000 are sold by a customer at the rate of Rupees 45 per US$. The taxable value = Rupees 1 per cent of ₹45000/- i.e. ₹450/-.
When both the currencies are not Indian rupees	1 per cent of the lesser of the amounts receivable if the two currencies are converted at RBI reference rate.	***Example:*** US $1000 are changed to Great Britain Pound 650. RBI reference rate for that day for US$ is ₹45 and for GBP is ₹72. The taxable value shall be lower of following two amounts: (i) ₹450/- (i.e.1 per cent of US $1000*45) (ii) ₹468/-(i.e. 1 per cent of GBP650*72). Thus, taxable value = ₹450/-.

(b) Change in the Composition Rate of payment of Service Tax for purchase & sale of foreign currency etc.

The composition rate in sub-rule 7B of Rule 6 of Service Tax Rules, 1994 applicable to purchase or sale of foreign currency, including money changing, has been reduced **from 0.25 per cent to 0.1 per cent**. However, the Proviso relating to paying tax on billed charges has been deleted. Thus, in the case of these services, option of paying service

tax on billed charges will not be available.

Thus, **in conclusion**, now the assessee will have the option to pay service tax @0.1 per cent of gross amount exchanged or else at standard rate on the value of service in terms of Rule 2B as mentioned above.

3. Revision in Upper Limit of Service Tax in R/O Transport of Passengers by Air Services for Economy Class Travellers– Section 65(105) (zzzo) – Notification No.4/2011-ST dated 1-3-2011

The following table succinctly exhibits the comparative position of service tax:

Nature of Journey	Class of Journey	Upper Limit of Service Tax specified Under Notification No. 26/2010 dated 22-06-2010 w.e.f. 01-07-2010 to 31-03-2011	Upper Limit of Service Tax specified Under Notification No. 4/2011 dated 01-03-2011 w.e.f. 01-04-2011
Domestic Journey	Business Class	Lower of the following two amounts **Per Journey** (A)10 per cent of the Gross Value of the Ticket (B) ₹100/-	10 per cent of the Gross Value of the Ticket
Domestic Journey	Economy Class	Lower of the following two amounts **Per Journey** (A)10 per cent of the Gross Value of the Ticket (B) ₹100/-	Lower of the following two amounts **Per Journey**: (A)10 per cent of the Gross Value of the Ticket (B) ₹150/-
International Journey	Business Class	10 per cent of the Gross Value of the Ticket	10 per cent of the Gross Value of the Ticket
International Journey	Economy Class	Lower of the following two amounts **Per Journey** (A)10 per cent of the Gross Value of the Ticket (B) ₹500/-	Lower of the following two amounts **Per Journey**: (A)10 per cent of the Gross Value of the Ticket (B) ₹750/-

4. Transport of Goods by Air Service - Section 65(105) (zzn) - Notification No. 9/2011-ST dated 01-03-2011

No Service tax on Value of air freight included in the assessable value of goods for charging custom duties. Exemption has been provided to the value of the taxable service under the category of 'Transport of Goods by Air service' which is equal to the amount of air freight included in the value determined under section 14 of the Customs Act, 1962 (52 of 1962) or the rules made thereunder for the purpose of charging customs duties vide **Notification No. 9/2011-ST dated 01-03-2011**.

Thus, value of air freight which is included in the assessable value of goods for charging custom duties is to be excluded while determining the taxable value for the purpose of levy of service tax under the category of 'Transport of goods by air service'. In other words, **if custom duty has been paid on the amount of air freight, in such a case service tax shall not be levied on such amount under the category of Transport of goods by air**. Thus, the purpose of providing this exemption is to avoid double taxation on the same amount.

5. No Service Tax on Services Related to Transportation of Goods by Road, Rail or Air When Both the Origin and Destination are Located Outside India - Notification No. 8/2011-ST dated 01-03-2011.

Exemption has been provided to

(i) Transport of Goods by air – section 65(105)(zzn)

(ii) Transport of Goods by road – section 65(105)(zzp)

(iii) Transport of goods by rail – section 65(105)(zzzp)

any person located in India when the goods are transported from a place located outside India to a final destination which is also outside India **Notification No. 8/2011-ST dated 01-03-2011**. It is worth highlighting that exemption is available only when the aforesaid **services are provided to a person located in India. For instance**, exemption will be available to a person in India who wishes to avail services of transport of goods by air from one foreign destination to another foreign destination.

C. Retrospective Changes which also will be Effective after the Enactment of the Finance Bill

1. Retrospective Exemption to Membership fee collected by an association or chamber representing commerce or industry for the period from 16-06-2005 to 31-03-2008 - Section 96J

S.No.	Relevant Sub-Heading	Details
1.	Retrospective Exemption for the period beginning with 16.06.2005 and ending with 31.03.2008	To Membership Fee collected by an association or chamber representing commerce or industry
2.	Refund to be claimed if Service Tax already paid for the above period	If any such club or Association has already paid Service Tax for the aforestated period i.e. from 16-06-2005 to 31-03-2008, then it can claim from the Department. However, Refund Application is required to be made within six months from the date of enactment of the Finance Bill, 2011

2. Retrospective Exemption provided to services provided by a Tour Operator in select cases for the period from 01-04-2000 to 06-07-2009- Notification No. 20/20109-ST dated 07-07-2009

S. No.	Relevant Sub-Heading	Details	Relevant Notification No. & Date
1.	Retrospective Exemption for the period beginning with 01-04-2000 and ending with 06-07-2009	To services provided by a Tour Operator having a contract carriage permit for inter-state or intrastate transportation of passengers excluding Tourism, Conducted Tour, Charter or Hire-Service	20/2009-S.T. dated 07-07-2009
2.	Refund to be claimed if Service Tax already paid for the above period	If any Tour Operator has already paid Service Tax for the aforestated period i.e. from 01-04-2000 to 06-07-2009, then it can claim from the Department in r/o such Service Tax. However, Refund Application is required to be made within six months from the date of enactment of the Finance Bill, 2011	20/2009-S.T. dated 07-07-2009

Conclusion

'The more we study, the more we come to know about our ignorance' is a famous quote and aptly applies to the venerated & highly-competitive profession of Chartered Accountancy. Gone are the days to take pride in the outdated pool of knowledge. The need of the hour is to always remain observant and updated about the relevant professional developments. ■

Point of Taxation Rules, 2011 – Unlocked

Notification No. 18/2011-ST dated 01-03-2011 has introduced Point of Taxation Rules, 2011 which been notified to come into force from 01-04-2011. According to TRU Circular D.O.F.No.334/3/2011-TRU dated 28-02-2011, these rules determine the point in time when a particular service is deemed to have been provided. The attempt of this article to is to give the reader an overview of these rules as also to highlight certain issues which are likely to be faced during their implementation.

Definitions

(1) **Associated Enterprises** – has the meaning assigned to in section 92A of the Income Tax Act, 1994 and, accordingly, two enterprises shall be deemed to be associated enterprises if, at any time during the previous year:—

a. one enterprise holds, directly or indirectly, shares carrying not less than 26 per cent. of the voting power in the other enterprise; or

b. any person or enterprise holds, directly or indirectly, shares carrying not less than 26 per cent of the voting power in each of such enterprises; or

c. a loan advanced by one enterprise to the other enterprise constitutes not less than 51 per cent of the book value of the total assets of the other enterprise; or

d. one enterprise guarantees not less than 10 per cent of the total borrowings of the other enterprise; or

e. more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise; or

f. more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons; or

g. the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or

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Normally a provision of service (POS) shall be treated as having taken place at the time when service is provided or to be provided. In case, the service provider issues an invoice or receives a payment before POS, the service shall, to the extent covered by the invoice or the payment made thereof, be deemed to have been provided at the earlier of the- Date of issue of the invoice (DOI); or Date of receipt of payment (DOP).

h. 90 per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or

i. the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise; or

j. where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or

k. where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative; or

l. where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals; or

m. there exists between the two enterprises, any relationship of mutual interest, as may be prescribed by the Central Board of Direct Taxes (CBDT).

(2) Continuous supply of service – any service which is provided (or to be provided) continuously:-

a. under a contract for period exceeding three months; or

b. where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition.

(3) Invoice –invoice referred to in rule 4A of the Service Tax Rules, 1994 and includes any document referred to in that rule.

(4) Point of Taxation (POT)- the point in time when a service shall be deemed to have been provided.

(5) Taxable Service - service which is subjected to service tax, whether or not the same is fully exempt by the Central Government under Section 93 of the Act.

Determination of Point of Taxation – Normal Situations – Rule 3

a. Normally a provision of service (POS) shall be treated as having taken place at the time when service is provided or to be provided.

b. In case, the service provider issues an invoice or receives a payment before POS, the service shall, to the extent covered by the invoice or the payment made thereof, be deemed to have been provided at the earlier of the following:-

i. Date of issue of the invoice (DOI); or

ii. Date of receipt of payment (DOP).

Hence, readers may note that there is a paradigm shift in the POT from the existing to the accrual basis from the existing system where it is on the basis of the receipt of payment.

The following Table would illustrate the position

Case	Services provided	Date of issue of Invoice	Date of Receipt of payment	Point of Taxation
1	31-05-2011	30-06-2011	31-07-2011	31-05-2011.
2	30-06-2011	31-07-2011	31-05-2011	31-05-2011.
3	30-06-2011	30-05-2011	31-07-2011	31-05-2011.

In case, several advance payments are received, then the point of taxation shall be the date of receipt of each such advance.

In case of services which are taxable under Section 66A of the Act, the point of taxation under clause (b) shall be earlier of the following:-

i. Date on which the invoice is received; or

ii. Date on which the payment is made.

Issues

1. Service provided or to be provided

In many cases, it may not be possible to determine as to when a service is provided or to be provided. The rules do not use the words 'completion of service'. Hence, there would be litigations regarding the liability during the intervening period.

Illustration 1

Let us consider a situation when a Chartered Accountant has commenced the statutory audit on say 01-06-2011 and the financial statements were signed on say 31-07-2011, there would be confusions regarding the POT inasmuch as some parts of the audit were conducted during both June and July 2011. The Department would definitely put their best to tax the same during June 2011, irrespective of the completion of such services. *Hence, a clarification in this regard is imperative, lest the trade and the revenue lock horns over avoidable litigations.*

Illustration 2

Let us consider a situation when a Chartered Accountant has signed the tax audit report 30-06-2011 and has also filed the Income tax Return for that client on say 15-09-2011. The client has taken time to make the payment of tax and, hence, this delay in the filing of Income-tax Return. The practice of the Chartered Accountant is to raise his invoice for that client upon the filing of the Income-tax Return (in this case, the DOI is 15-09-2011). In such situations, there would also be confusions regarding the POT, since the tax audit report was completed and dated 30-06-2011 whereas the DOI is 15-09-2011. The Department would definitely put their best to tax the same during June 2011, irrespective of the date of raising invoice for such services. *Hence, a clarification in this regard is imperative to avoid litigations.*

2. *DOI or DOP*

The above rules mandate the POT to be earlier of DOI or DOP i.e. irrespective of the receipt of payment.

Illustration

Let us consider a scenario of a Chartered Accountant where the service has been completed during June 2011 for which the DOI is 30-06-2011 for an amount of ₹1,00,000/- plus 10.3 per cent service tax aggregating to ₹1,10,300. The relevant payments are received as under:-

₹30,000/- on 31-12-2011; and

₹ 25,150/- on 31-03-2012

The balance ₹55,150/- has not been paid and the client has also made it clear to the Chartered Accountant on 31-3-2012 that the payment on 31-3-2012 is the full and final payment to that Chartered Accountant.

In this case the Chartered Accountant would have paid tax of ₹10,300/- (10.3 per cent on ₹1,00,000) during the month in which the same was invoiced i.e. 30-06-2011 for which 50 per cent of the amount alone would have been received. In short, there is a payment of tax on the entire value without the possibility of recovery of such entire value. Hence, there is an excess payment of tax to the tune of ₹5,150 1,00,000x10.3%x50%) vis-à-vis the corresponding collections on such invoice.

The next issue that arises for consideration is whether such excess payment of ₹5,150 can be claimed as credit by the Chartered Accountant in terms of proposed substituted rule 6(3) of the Service Tax Rules, 1994 (STR). In this connection, the proposed rule 6(3) of the STR is reproduced as under:-

> **"In case of continuous supply of service, the whole or part of which is determined or payable periodically or from time to time, shall be treated as separately provided at the date on which the payment is liable to be made by the service receiver, if such date is specified in the contract."**

Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason, the assessee may take the credit of such excess service tax paid by him, if the assessee.-

(a) has refunded the payment or part thereof, so received along with the service tax payable thereon for the service to be provided by him to the person from whom it was received; or

(b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued.

It is clear from the above, that the credit in terms of the proposed rule 6(3) of the STR is available only if services are not provided (either wholly or partially), whereas in the instant case, the Chartered Accountant has actually provided the service in fully, but the value of taxable service alone has been reduced by his client. Hence, the Chartered Accountant has to undergo the inevitable ordeal of filing a claim for refund of ₹5,150. *Hence, a clarification in this regard is imperative, lest small time professionals undergo the hardship of paying tax over values which may eventually not be realised.*

3. *Chartered Accountant – Advance payments*

The paragraphs mentioned under issue no. 2 would make way for the payment of tax for a Chartered Accountant, irrespective of the DOP i.e. irrespective of the receipts for such invoices.

Illustration

Let us consider a scenario of a Chartered Accountant who, in order to avoid the ordeals of payment of tax without the corresponding recovery, proceeds to obtain advance receipts for all services rendered for all services (including the audit of accounts of his client). In such a situation, as per Section 226(3)(d) of the Companies Act, 1956, an auditor is disqualified if he is indebted to the company for an amount exceeding ₹1,000. Hence, the rules mandate a Chartered Accountant to pay tax, irrespective of the receipts for such services and, in case the Chartered Accountant opts to receive advance payments for the audit, he is disqualified from being appointed as an auditor in certain situations. It is advisable that the Institute takes this issue with the Board for an appropriate resolution.

Determination of Point of Taxation – Change of Rate – Rule 4

Notwithstanding anything contained in rule 3, in the case of change in the rate of a taxable service, the POT shall be determined in the following manner:-

A. *Taxable service has been provided before the change in the rate*

a. If the invoice for the service provided has been issued and the payment received after the change of rate, the POT shall be the earlier of DOP or DOI.

b. If the invoice has also been issued prior to the change in tax rate, but the payment is received after the change of rate, the POT shall be DOI.

c. If the payment is also received before the change of rate, but the invoice for the same has been issued after the change of rate, the POT shall be DOP.

The following Table would illustrate the position

Case	Services provided	Date & Particulars of Change in Rate	Date of issue of Invoice	Date of Receipt of payment	Applicable Rate of Taxation
1	31-05-2011	15-06-2011 when the rate was changed from 10.3 per cent to 12.36 per cent	30-06-2011	31-07-2011	12.36 per cent - being the rate applicable on 30-06-2011
2	31-05-2011	15-06-2011 when the rate was changed from 10.3 per cent to 12.36 per cent	10-06-2011	31-07-2011.	10.3 per cent - being the rate applicable on 10-06-2011
3	31-05-2011	15-06-2011 when the rate was changed from 10.3 per cent to 12.36 per cent	30-06-2011	10-06-2011	10.3 per cent - being the rate applicable on 10-06-2011

In case, several advance payments are received, then POT shall be the date of receipt of each such advance.

B. *Taxable service has been provided after the change in the rate*

a. If the payment for the invoice is also made after the change in tax rate but the invoice has been issued prior to the change of tax rate, POT shall be the DOP.

b. If the invoice has been issued and the payment for the invoice received before the change of tax rate, POT shall be the earlier of DOP or DOI.

c. If the the invoice has also been raised after the change of rate but the payment has been received before the change of rate, POT shall be DOI.

The following Table would illustrate the position

Case	Services provided	Date & Particulars of Change in Rate	Date of issue of Invoice	Date of Receipt of payment	Applicable Rate of Taxation
1	31-05-2011	15-05-2011 when the rate was changed from 10.3 per cent to 12.36 per cent	31-05-2011	31-07-2011	12.36 per cent - being the rate applicable on 31-07-2011 (*)
2	31-05-2011	15-05-2011 when the rate was changed from 10.3 per cent to 12.36 per cent	31-05-2011	10-05-2011.	10.3 per cent - being the rate applicable on 03-05-2011
3	31-05-2011	15-05-2011 when the rate was changed from 10.3 per cent to 12.36 per cent	30-06-2011	10-05-2011	10.3 per cent - being the rate applicable on 30-06-2011 (*)

(*) Refer paragraph 1 and 2 of issues hereunder:-

Issues

1. ***Belated receipt of payment after the raising of invoice – taxed at the change rate.***

Let us consider the situation in case 1 of the above Table. An advance invoice is raised on 03-05-2011 at the rate of 10.3 per cent for which the payment is received on 31-07-2011 (after the date of enhancement of rate to 12.36 per cent) and, hence, such receipts would be subject to service tax at the enhanced rate. In this case, the following consequences are worth highlighting:-

a. If the assessee has paid the said tax on 05-06-2011(on the basis of the advance invoices raised) and the enhancement in rate takes place at a later stage, then the recourse available to that assessee has not been properly spelt out in the rules.

b. Taxing that item again only for the sole purposes of increasing its rate may also lead to a situation where in the assessee is completed to issue a supplementary invoice for the recovery of the balance tax, the recovery of which is almost miraculous. In case the service receiver happens to be a government/government authority, the question that will naturally crop up is whether

"The point of taxation in respect of copyright, copyrights, trademarks, designs or patents, etc. where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, shall be the earlier of DOP or DOI."

such government/government authority will entertain the supplementary invoice for the enhancement in the service tax rate. The chances seem to be quite remote.

2. ***Belated raising of invoice after the advance receipt of payment– taxed at the change rate.***

Let us consider the situation in case 3 of the above Table. An advance payment is received on 03-05-2011 at the rate of 10.3 per cent for which the invoice is raised on 30-06-2011 (after the date of enhancement of rate to 12.36 per cent) and, hence, such invoices would be subject to service tax at the enhanced rate. In this case, the following consequences are worth highlighting:-

a. If the assessee has paid the said tax on 05-06-2011(on the basis of the advance payments received) and the enhancement in rate takes place at a later stage, then again the recourse available to that assessee has not been properly spelt out in the rules.

b. Although an invoice dated 30-06-2011 may be issued at the enhanced rate, the service providers will, normally, not entertain the claim of tax at the enhanced rate, when the entire payments have been made in advance. In case the service receiver happens to be a government/government authority, the question that will naturally crop up is whether such government/government authority will entertain the enhanced rate in the invoice when the entire payments have been made at the earlier rate. The chances seem to be quite remote.

Hence, clarifications on the above two issues seem inevitable so as to mitigate the hassles of an average service provider.

Determination of Point of Taxation – New Services – Rule 5

a. No tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable

b. No tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within the period referred to in rule 4A of the Service Tax Rules, 1994.

Determination of Point of Taxation – Continuous Supply of Services – Rule 6

a. In case of continuous supply of service, the whole or part of which is determined or payable periodically or from time to time, shall be treated as separately provided at the date on which the payment is liable to be made by the service receiver, if such date is specified in the contract.

b. If, before the time specified in (a) above, the person providing the service issues an invoice or receives a payment, the service shall, to the extent covered by the invoice or the payment made thereof, be deemed to have been provided at the earlier of DOP or DOI.

c. In case, several advance payments are received, then the point of taxation shall be the date of receipt of each such advance.

d. In case of services which are taxable under section 66A of the Act, the point of taxation under clause (b) shall be earlier of the following:-

   i. Date on which the invoice is received; or

   ii. Date on which the payment is made.

Determination of Point of Taxation – Associated Enterprises – Rule 7

The POT in respect of associated enterprises shall be the earlier of the following:-

i. DOP; or

ii. DOI; or

iii. Date of debit or credit in books of accounts of the person liable to pay service tax.

Determination of Point of Taxation – Copyrights, etc – Rule 8

The point of taxation in respect of copyright, copyrights, trademarks, designs or patents, etc. where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, shall be the earlier of DOP or DOI.

Saving Clause – Rule 9

These rules do not apply to invoices issued prior to the date of effect of these rules. ■

Social Responsibility of Business vis-a-vis Corporate Governance

Corporate Social Responsibility (CSR) refers to the obligations of business to pursue those policies to make those decisions or to follow those lines or actions, which are desirable in terms of the objectives and values of our society. The Corporate responsibility is the continuing commitment by business to behave ethically and a positive continuity towards social and economic development at large. Corporate Governance on the other hand is the system by which the corporate entities are directed and controlled. It encompasses the entire mechanics of the functioning of a company and attempts to put in place a system of checks and balances between the shareholders, directors, auditors and the management. This article discusses social responsibility of the businesses vis-à-vis corporate governance.

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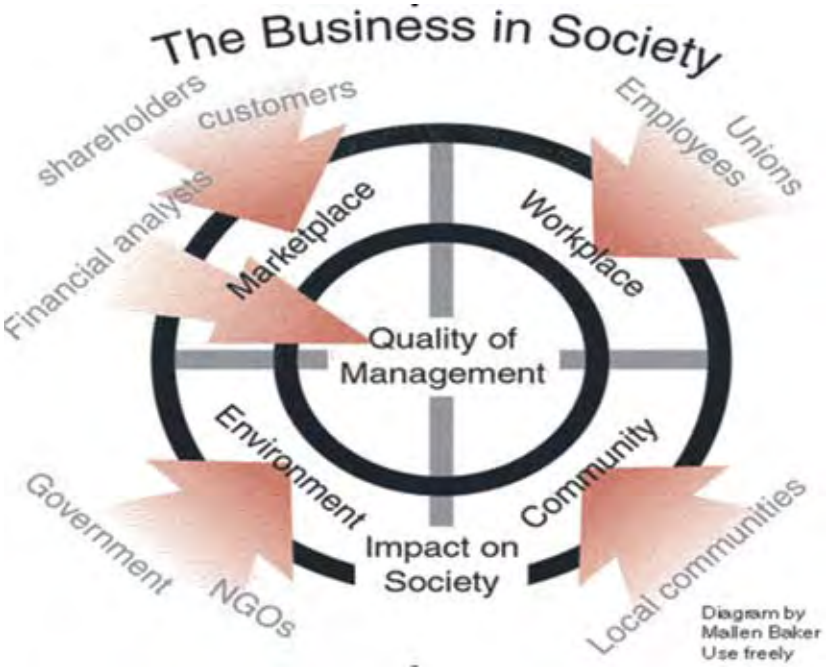
In general sense, Corporate Social Responsibility (CSR) means 'giving back to society' or to invest in the well-being of the society. The concept of CSR is gradually but firmly taking roots in Indian corporate. However, there is much distance to be covered by Indian corporate when compared to their counterparts in developed countries. According to Mallen Baker, the European model is much more focused on operating the core business in a socially responsible way, complemented by investment in communities for solid business case reasons. He rightly believes that this model is more sustainable because:

(1) Social responsibility becomes an integral part of the wealth creation process - which if managed properly should enhance the competitiveness of business and maximise the value of wealth creation to society.

(2) When times get hard, there is the incentive to practice CSR more

and better - if it is a philanthropic exercise which is peripheral to the main business, it will always be the first thing to go when push comes to shove. Social Responsibility is: "Operating a business in a manner that meets or exceeds the ethical, legal, commercial and public expectations that society has of business.



Early Practices

Barring a few ideal and benevolent business houses, the legal compulsion was the main propelling force to make the corporate responsible towards their creditors, shareholders, employees, customers and Government. The Companies Act, 1956, The Workmen's Compensation Act, 1923, The Payment of Wages Act, 1936, The Industrial Disputes Act, 1947, The Factories Act, 1948, The ESI Act, 1948, The Contract Act, 1872, The F.E.R.A, 1972 and the Income-tax Act, 1961 were amongst the vital pieces of legislations compelled the Corporate to listen to and Protect the interest of the concerned in India.

Changing competitive environment: Prior to 1980 many organisations in India and Western countries operated in a protected competitive environment. Barriers of communication and geographical distance and sometime protected markets, limited ability of overseas companies to compete in the domestic markets. By establishing almost a network for acquiring raw materials, labours, technicians and build management cadres and distributing goods overseas, competitors were able to gain access to domestic markets throughout the world. To be successful, companies now have to compete not only against domestic competitors, but also against the best companies in the world. Now the companies have to undertake the policy of adopting social activities over and above any legal enforcement in order to improve its social face. Such social activities could in helping the government in augmenting the eradication of illiteracy, reinforcing social forestry, lessening drug abuses, etc.

The emphasis should be on means rather than ends i.e., a company should incorporate in its mission the means by which social concern will be given due consideration.

Expectation of Various Interest Groups

Making profit from the business is a matter of right provided the business can fulfill at least partially the exp-expectations of various interest groups e.g.-

Equity holders require dividend and enhancing values of their investment. Bond holders, requires regular repayment of interest and principal. Customer expects quality goods or services in competitive prices and their rights are protected.

Employees expect fair wages, job security and career growth/ promotion. Government demands for taxes, cesses and duties in conformity with the regulations. Creditors aspire higher creditor's velocity. Competitors expect healthy competition. Community hopes from it a number of offerings like employment, development of local area, donations for the have not's, etc.

Social Responsibility under Legal Compulsion

Indian judiciary at present are so stringent with respect to pollution and injury to the environment that non-conforming, factories/enterprises may be asked to even close down. The laws further provide that where State Pollution Control Board does not

"When times get hard, there is the incentive to practice CSR more and better - if it is a philanthropic exercise which is peripheral to the main business, it will always be the first thing to go when push comes to shove. Social Responsibility is: "Operating a business in a manner that meets or exceeds the ethical, legal, commercial and public expectations that society has of business."

Kumar Mangalam Committee emphasised on socially responsible behaviour among the Corporate. Reddy Committee recommends the corporate social responsibility with Triple Bottom Line Accounting and reporting. Narayan Murthy Committee highlights the importance of ethical conduct of business and makes the Board responsible to all stake holders.

act in a particular case, the Central Board shall take suitable action on that matter. Public Liability Insurance Act, 1991 provides for mandatory Public liability insurance to be taken by Companies for installation handling any hazardous substance notified under the Environment Protection Act. Public discontentment has been noticed for lesser punishment after such long years of the Bhopal Gas Tragedy in 1984. After the 42nd Constitutional amendment, establishment of standard of weights and measure is the responsibility of Centre and State.

Consumer Protection (Amendment) Act, 2002 enforced some basic right of the consumer with respect to safety, information, assurance about variety and competitive price, to be heard, to seek redressal of grievances, against unscrupulous exploitations, deception to consumer education.

Competition Act, 2002 prohibits anti competitive agreement, abuse of dominant position and harmful combinations.

Benevolent Measures by Indian Corporate

Mahindra & Mahindra

The K. C. Mahindra Education Trust was established in 1953 by late Mr. K. C. Mahindra with an objective to promote education. Its vision is to transform the lives of people in India through education, financial assistance and recognition to them, across age groups and across income strata. The K. C. Mahindra Education Trust undertakes a number of education initiatives, which make a difference to the lives of deserving students. The Trust has provided more than ₹7.5 crore in the form of grants, scholarships and loans. It promotes education mainly by the way of scholarships. The Nanhi Kali project has over 3,300 children under it. They aim to increase the number of Nanhi Kalis (children) to 10,000 in the next two years, by reaching out to the underprivileged children especially in rural areas.

ITC Limited

ITC partnered the Indian farmer for close to a century. ITC is now engaged in elevating this partnership to a new paradigm by leveraging information technology through its trailblazing 'e-Choupal' initiative. ITC is significantly widening its farmer partnerships to embrace a host of value-adding activities: creating livelihoods by helping poor tribal make their wastelands productive; investing in rainwater harvesting to bring much-needed irrigation to parched dry lands; empowering rural women by helping them evolve into entrepreneurs; and providing infrastructural support to make schools exciting for village children. Through these rural partnerships, ITC touches the lives of nearly three million villagers across India

Infosys Technologies Limited

Infosys is actively involved in various community development programmes. Infosys promoted, in 1996, the Infosys Foundation as a not-for-profit trust to which it contributes up to 1 per cent PAT every year. Additionally, the Education and Research Department (E&R) at Infosys also works with employee volunteers on community development projects. Infosys leadership has set examples in the area of corporate citizenship and has involved itself actively in key national bodies. They have taken initiatives to work in the areas of Research and Education, Community Service, Rural Reach Programme, Employment, Welfare activities undertaken by the Infosys Foundation, Healthcare for the poor, Education and Arts & Culture.

Organistic Approach Towards Good Governance

An organistic management is socially responsive practice, the way for good corporate governance, it is multifaceted and multi-disciplinary phenomena. Good Corporate Governance makes the Board accountable to the employees, shareholders, creditors, consumers, government and public at large.

Dimensions of Governance

Some authorities had given certain dimension of Corporate Governance. The World Bank has identified four major components of governance:

(1) Legal framework for development.

(2) Transparency and information.

Indian judiciary at present are so stringent with respect to pollution and injury to the environment that non-conforming, factories/ enterprises may be asked to even close down. The laws further provide that where State Pollution Control Board does not act in a particular case, the Central Board shall take suitable action on that matter. Public Liability Insurance Act, 1991 provides for mandatory Public liability insurance to be taken by Companies for installation handling any hazardous substance notified under the Environment Protection Act.

Corporate Governance extends beyond Corporate law, its fundamental principle is not only fulfilling the requirement of law. The social responsibility evokes from the good governance which maximises the ethical values. Corporate governance enhances the social relevancy of a business; it is needed to create a corporate culture, openness and socially responsive corporate entity.

(3) Public Sector Management.
(4) Accounting ability.

In the course of the study of Corporate Governance following aspects are revealed: Moral values, powers, dedication, self-management, sagacity, self-conduct, synergy, simplicity and honesty.

Norms for Better Corporate Governance

Different study groups formed time to time, to suggest the norms for better Corporate governance: Kumar Mangalam Committee emphasised on socially responsible behaviour among the Corporate. Reddy Committee recommends the corporate social responsibility with Triple Bottom Line Accounting and reporting. Narayan Murthy Committee highlights the importance of ethical conduct of business and makes the Board responsible to all stake holders.

Conclusion

Corporate Governance extends beyond Corporate law, its fundamental principle is not only fulfilling the requirement of law. The social responsibility evokes from the good governance which maximises the ethical values. Corporate governance enhances the social relevancy of a business; it is needed to create a corporate culture, openness and socially responsive corporate entity.■

Income Tax Recovers ₹25,000 Crore Undisclosed Income in Last two Years

Finance Minister Pranab Mukherjee has said the Income Tax department has recovered undisclosed income of ₹25,000 crore in the last two years during its search and seizure operations. "...in Income-tax Act there is regular provision for search and seizure. And this year search and seizure when we intensified, we have got undisclosed income of ₹25,000 crore in last 24 months and out of that ₹7,000 crore additional taxes have been realised," Mukherjee said while replying to the discussion on the General Budget 2011-2012 in Lok Sabha. Besides, the revenue department has detected about ₹33,784 crore through the transfer pricing mechanism. Transfer pricing is a technique where parent companies sell goods and services to subsidiary entities at an inflated price to deliberately reduce profits and tax liability. The law requires that goods and services should be sold to subsidiary companies at arm's length price -- the price at which goods are traded between unconnected companies. Speaking on the black money issue, Mukherjee said, the government has decided to appoint a group to quantify the black money. "As soon as the report is available, I will share with you," he added. To deal with the black money menace, India has completed Double Taxation Avoidance Agreement (DTAA) renegotiations with 23 countries, including Switzerland. "Out of 65 countries, we have been able to complete the DTAA with 23 countries, including Switzerland," he said. However, he said, information from Switzerland can be exchanged after completion of ratification process. "... the agreement which I have signed with my counterpart in the Swiss government in August, they are still taking time for ratification and when it will be ratified from 1st April, this year we will get the information," Mukherjee said. He said, dealing with black money is a serious issue and India will have to proceed according to the laws. "The point is how to deal with the black money, this is a serious issue. We live in a society which is governed by rule of law and we shall have to proceed as per the laws," Mukherjee said.

(Source: http://economictimes.indiatimes.com/)

IFRS Rollout Likely to be Next Year Post DTC: Govt. Sources

International Financial Reporting Standards will be rolled out only after the direct tax code comes into effect, reports quoting government sources said. According to Ministry of Corporate Affairs (MCA) sources, since the DTC is likely to come into effect on 1st April next year, implementation of IFRS will be deferred till the end of next year. Hence, there is a possibility that IFRS will be made optional for this year.The finance minister has not formed any opinion of IFRS tax treatment so far, added sources. Moreover, Ministry of Corporate Affairs is yet to amend Companies Act for IFRS convergence.

(Source: http://beta.profit.ndtv.com/news)

₹1 Lakh Crore Taxman, Taxpayer Face-off

The government has said over ₹1.60 lakh crore has been locked up in disputes between the income tax department and taxpayers as on January, 2011. "Out of the total arrears, the amount locked up in disputes between the income tax department and taxpayers as on January, 2011 is ₹1,60,499 crore," Minister of State for Finance S. S. Palanimanickam said in a written reply to Rajya Sabha. He further said various steps have been taken by the government to reduce unnecessary litigation. These include increasing the monetary limit for filing of appeals by the income tax department before the Income Tax Appellate Tribunal (ITAT), High Court and Supreme Court. With effect from February 9, 2011, the limits to file appeals before the ITAT, HC and SC have been increased to ₹3 lakh, ₹10 lakh and ₹25 lakh from ₹2 lakh, ₹4 lakh and ₹10 lakh, respectively. Besides, the Central Board of Direct Taxes along with the Directorate of Income Tax (Recovery) is monitoring the outstanding arrears of above ₹10 crore, he said. The CBDT fixes target for recovery of pending dues for every financial years. The target for recovery of arrears demand for the current fiscal is ₹13,906 crore, Palanimanickam added. The quantum of money locked up in income tax disputes decreased in 2010 as compared to the previous year despite increase in number of cases, Parliament was informed. The amount stuck in I-T cases actually declined to ₹2,42,377 crore as on 31st December, 2010 as compared to ₹2,88,336 crore at the end of 2009, the minister said.

(Source: http://timesofindia.indiatimes.com/)

Excise Duty to Hit Companies with Weak Brand Recall

The Budget proposal to impose excise duty on branded garments may put more pressure on retail companies, given the sector is already grappling with high raw material prices. The excise duty can hurt the entire chain from the garment manufacturer, such as Arvind mills, to independent brands, such as Provogue, to retail companies such as Shoppers Stop, Trent and Pantaloon Retail. Those with low bargaining ability and weak brand recall among consumers will feel the pinch harder. The proposal has accentuated the concerns of retail companies at a time when they are battling rising cotton prices, which constitute an important component of the input costs for retail textile companies.

The cost of raw materials, including cotton and intermediates, accounts for 40 per cent to 60 per cent of sales. In the past six months, cotton prices have doubled to 168 per kg (Shankar 6 variety). These are expected to increase further since industry trackers feel that demand

this year may outstrip supply. Most retail companies have already announced a 15 per cent to 20 per cent increase in their products to tackle the pressure of rising costs. It is likely that they will pass on the excise duty of 10.3 per cent which will be levied on 60 per cent of Maximum Retail Price (MRP) of products, to consumers. If that happens, garments would be dearer by around 27 per cent. A branded garment with an MRP of 1,000 would cost over 1,270 assuming a price hike of 20 per cent and an excise duty of 10.3 per cent on 60 per cent of the MRP. Experts feel this could impact volumes thereby reducing 1 per cent to 2 per cent in net profit of retail companies. The companies with a higher raw material cost to sales ratio would be the worst hit. For instance, at 65 per cent, Provogue India's input cost proportion is way higher than the 35 per cent to 36 per cent for Zodiac and Kewal Kiran.

(Source: http://www.hindustantimes.com)

Confusion Prevails Over Sharing Burden of Excise Duty on Fertiliser

There is a growing fear in the government over the fallout of a politically sensitive move in the Budget to impose 1% excise duty on urea for the first time ever. According to a recent exchange of communication between two senior government officials, fertiliser supply to farmers may be cut off with companies beginning to hold back stocks. The government controls urea prices and compensates fertiliser companies by paying the difference between the cost of production and the sale price as subsidy. The price of urea has been fixed at ₹5,310 per tonne this year. The 1 per cent excise duty will increase the price by another ₹53 per tonne. The confusion now is over who will bear the extra burden. While finance ministry is of the view that the excise burden should be borne by manufacturers, fertiliser companies are unwilling to pay up and want the burden to be passed on to farmers. "The ministry has not spelt this out in any way," said an industry source. But given the political implications, the department of fertiliser has taken up the matter with the agriculture department. In a communication, the former has suggested that necessary amendments should be issued at the earliest as "dispatches of urea have been stopped by all urea manufacturing units. The levy of excise duty shall increase the price of urea by ₹2.57 per bag which shall be an additional burden on the farmer, said a senior official of the department of fertiliser. The government's pays a total subsidy of ₹50,000 crore to fertiliser companies.

(Source: http://beta.profit.ndtv.com/news)

DoT Plans to Relax Merger and Acquisition Guidelines

Kapil Sibal-led Department of Telecom is planning to relax merger and acquisition norms for the Indian telecom sector so significantly that it will leave only around six operators in any service area. At a recent conference organised by Goldman Sachs, the minister was heard saying each operator would have at least 10 MHz of spectrum, or radio airwaves, at its disposal, according to several industry participants who didn't want to be named. The DoT will release these proposals as part of the first phase of the New Telecom Policy 2011 consultation in April. A DoT official said, the Department was on schedule to release a progress report on the agenda Sibal had set out by the end of this month. However, some members of the telecom industry are sceptical about how much of merger and acquisition norms' relaxation the government will be able to deliver. At the conference, Sibal also said that the DoT was working on a structure to ensure investments made by a company would be protected in case of an acquisition.

(Source: http://www.thehindubusinessline.com/)

MAT Leaves SEZs with Fewer Benefits than Outside Areas

The imposition of minimum alternate tax (MAT) on special economic zones could make them unattractive for exporters as incentives available outside will outweigh the tax benefits offered by an SEZ, according to experts. The Budget for 2011-2012 has proposed to levy 18.5 per cent MAT on the book profits of units operating in SEZs. Exporters in the domestic tariff area, or places outside the SEZs, are offered several incentives under the foreign trade policy, such as the freedom to set up the unit anywhere and no obligation to be net foreign exchange earners. SEZ units have been enjoying the advantage of zero-tax liability for five straight years and were thus prepared to give up benefits of export promotion schemes, which vary between 3 per cent and 5 per cent of the export value. Once the tax-free status goes, equations change completely. For instance, if there is a unit that earns 10 per cent profit, then it would earn ₹10 on a turnover of ₹100. If the unit is outside an SEZ, it would have to pay a tax of 33.5 per cent on profit, which would amount to ₹3.5. But it would also get a minimum 3 per cent incentive that would amount to ₹3. The same unit in an SEZ will have to pay ₹1.85 as tax under the new MAT dispensation and will not gain any export incentive. Although exporters can take credit for minimum alternate tax, SEZ units exporting 100 per cent of their production cannot adjust it in the first five years of operation as they would have no tax liability to set it off against. Under the SEZ Act, units get 100 per cent tax exemption on profits earned for the first five years, a 50 per cent exemption for the next five years and another 50 per cent exemption on re-invested profits in the following five years. With India signing free-trade agreements with several countries allowing imports on concessional duties, there is an additional disadvantage for SEZ units.

(Source: http://www.hindustantimes.com/business-news/)

Key Business Leaders from Around the World Recommend Fundamental Changes to Business Reporting in IFAC Report

According to key business leaders from around the world interviewed by the International Federation of Accountants (IFAC), elemental changes to the current format of financial reporting need to be made to increase its relevance and stakeholder value and stem the increasing complexity that has plagued financial reporting in recent years. Developing a new form of reporting that integrates an organisation's social and environmental performance with its economic performance, in a simplified manner, would benefit all stakeholders, according to interviewees. These and other recommendations are summarised in the report, *Integrating the Business Reporting Supply Chain*, released recently by IFAC. The report is based on IFAC's interviews with 25 prominent business leaders, representing preparers, directors, auditors, standard setters, regulators, and investors, on what should be done to effectively improve governance, the financial reporting process, the audit, and the usefulness of business reports in the aftermath of the financial crisis. The report provides a summary of interviewees' recommendations in each area and highlights some of IFAC's related initiatives.

Source: *http://press.ifac.org/news/*

US' Influence will Wane without IFRS, Warns European Commission

The US' international influence will wane if it fails to sign up to international financial reporting standards (IFRS), the European Commission has warned. The EC said it was costly to convert accounts between IFRS and the US, and European companies would find it difficult to justify unless the US was committed to IFRS. It suggested that the non-IFRS countries might be blocked from overseeing the IASB. The comments were in response to a review of the IASB by its oversight body the IFRS Foundation.

Source: *http://www.accountancyage.com/aa/news/*

IFAC Global Survey: Transitioning to ISAs, Sustainability, Ethics, and SMPs are Key Issues for Global Accountancy Leaders

Profession urges International Federation of Accountants to increase role in some key areas of focus such as credibility of the profession, standard setting, and adoption and implementation are for leaders in the accountancy profession, according to results of the *2010 IFAC Global Leadership Survey of the Accounting Profession,* released recently by the International Federation of Accountants (IFAC). "In our fourth annual survey, there was extremely strong confirmation among survey participants that IFAC should continue in its pivotal role as an international standard setter," said Ian Ball, chief executive officer of IFAC. "In addition, respondents asked us to continue to work toward convergence and the adoption of international standards, and proactively support and restore public confidence in the accountancy profession." The 2010 IFAC Global Leadership Survey on the Accountancy Profession asked officers (generally presidents and chief executive officers) from IFAC's member bodies, associates, affiliates, and regional accountancy organisations and groupings a variety of questions regarding the accountancy profession.

Source: *http://press.ifac.org/news/*

United Nations Global Compact Launches 'Differentiation Programme' on Sustainability Performance and Reporting

The United Nations (UN) Global Compact has officially launched the 'Differentiation Programme', a practical framework to help business participants improve sustainability performance and disclosure practices. The UN Global Compact is a voluntary corporate responsibility initiative which currently involves over 8700 corporate participants and other stakeholders from over 130 countries. It seeks to ensure participating businesses commit to aligning their operations and strategies with 'ten universally accepted principles' in the areas of human rights, labour, environment and anti-corruption. The eighth principle involves undertaking initiatives to promote greater environmental responsibility and includes consideration of communication and reporting tools such as corporate environmental reporting and sustainability reporting. Participants in the Global Compact submit an annual Communication on Progress (COP) describing their levels of implementation of the ten Global Compact principles and related areas. The Differentiation Programme framework, partially developed in collaboration with the Global Reporting Initiative (GRI), allows companies to differentiate themselves based on the extent to which their COP describes their implementation. Upon submitting their next COPs, companies will be categorised as "GC Active" or can self-declare themselves "GC Advanced" based on their disclosure on progress made in implementing the ten principles and contributing to broader UN goals. In an effort to demonstrate the synergies between the Global Compact and the GRI, the two initiatives are working together to imbed the GRI Sustainability Reporting Guidelines ("GRI Guidelines") at both levels of the differentiation programme.

Source: *http://www.iasplus.com/index.htm*

IFAC Survey Highlights Need for Further International Alignment of Risk Management and Internal Control Guidelines

Risk management and internal control frameworks, standards, and/or guidance should be aligned internationally, according to the results of the Risk Management and Internal Control Survey released by the IFAC Professional Accountants in Business (PAIB) Committee. With over 600 responses from around the globe and from all types of organisations, the survey results also highlighted that risk management and internal control systems should be better integrated into the governance, strategy, and operations of organisations; and should be combined into a set of integrated guidelines, as both elements are integral parts of an effective governance framework. As many organisations have international activities, further international alignment of risk management and internal control guidelines would benefit their operations and compliance processes, reducing costs and allowing for the comparison of these systems across borders and, thus, increasing investor confidence. Respondents recommend that national and international standard-setting bodies and professional associations, as well as the relevant regulators, collaborate to (a) determine the major similarities and differences between the various guidelines, (b) compile leading risk management and internal control practices, and (c) consider the benefits of further integration and international alignment of regulations and guidelines in the area of governance, risk management, and internal control. Respondents would like

to see these discussions lead to the establishment of an international, integrated framework. To further international alignment, existing national guidelines could be expanded or modified—with allowances made for specific national circumstances—to meet the principles of an international framework.The survey analysis, Global Survey on Risk Management and Internal Control—Results, Analysis, and Proposed Next Steps, is available at www.ifac.org/PAIB/risk-management-and-control.php.

Source: *http://press.ifac.org/news/*

Accounting Standards Board of Japan Updates its Work Plan

The Accounting Standards Board of Japan (ASBJ) has released its latest summary of standards development and its project plan. The project plan discusses items related to the remaining differences between existing Japanese GAAP and IFRSs, projects being addressed in the Memorandum of Understanding (MoU) between the IASB and FASB and other projects. A number of controversial global developments are discussed, including the proposals in the IASB's post-employment benefits project regarding remeasurement, which the plan states "may become a difficult obstacle for convergence in Japan". The need for convergence between the IASB and FASB in relation to financial instruments is also cited as "an area of the greatest need for their convergence". The project plan notes, "2011 is the year for significant change in the IASB's leadership. Accordingly, the IASB's Work Plan does not show the timetable for 2012 and beyond. In Japan, market participants expect that within this year the uncertainty about the use of IFRSs would be eliminated. The Business Council of Financial Services Agency will also resume its deliberation. The convergence efforts by the ASBJ including the MoU projects need to be carried on taking account of the direction of the discussions at the Council. Consideration is needed about the pace and the expected effective dates for the development of standards and we need to extensively listen to views.

Source: *http://www.iasplus.com/index.htm*

Study Highlights Differences in Bank Reporting under IFRS and BASEL II

A study by EDHEC Business School for the International Centre for Financial Regulation (ICFR), has highlighted differences in bank reporting under IFRS and under the Basel II regulations which lead to "significant variations" relating to capital adequacy and balance sheet leverage. It recommends that "banks enhance the scope and nature of the reconciliation of IFRS to BIS-based capital ratios to improve the efficiency of markets in reducing information asymmetry about these variations".

Source: *http://www.iasplus.com/index.htm*

New Zealand Moves towards Two Sets of Accounting Standards

The New Zealand Accounting Standards Review Board (ASRB) has outlined a new accounting framework for New Zealand consisting of two sets of accounting standards for entities required to prepare general purpose financial reports. One set of accounting standards would be applied by entities with a for-profit objective, and the other would be applied by 'public benefit entities' (PBEs). The ASRB is expected to release a Position Paper and Consultation Papers explaining the framework and the accounting standards to be applied by each category of entities by the end of April. In relation to for-profit entities, New Zealand currently has a set of standards that are equivalent to IFRSs and a number of domestic standards and additional requirements. In the first phase of a convergence project between New Zealand and Australia, convergence of financial reporting requirements for these entities is currently being worked towards by the boards of both countries (expected to be completed by 30th June, 2011). New Zealand has being considering the possible adoption of International Public Sector Accounting Standards (IPSASs) for some time. It is possible that the ASRB may propose standards based on IPSASs for 'public benefit entities' under the new arrangements.

Source: *http://www.iasplus.com/index.htm*

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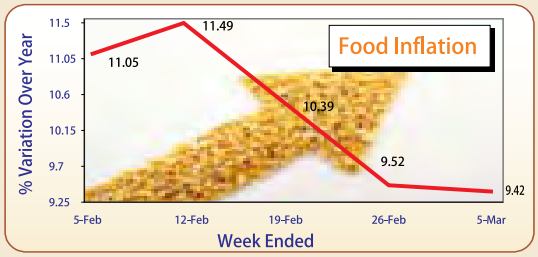
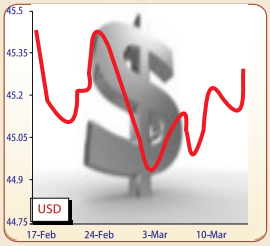
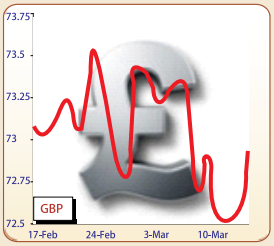
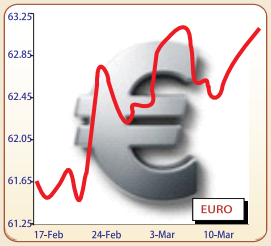
Economic Indicators

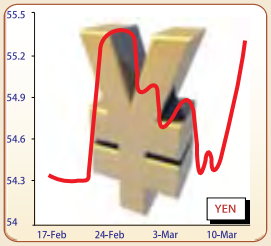


Indian Rupee vs. Major Foreign Currencies (February 17, 2011 to March 15, 2011)

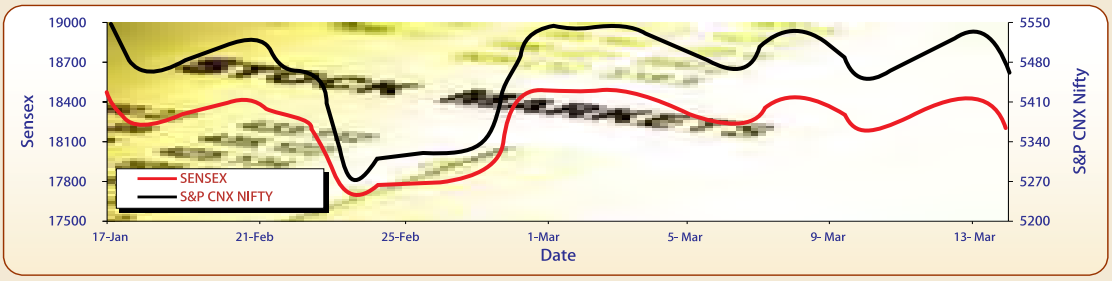








Stock Markets



Selected Indicators

(per cent per annum)

Item	2010	2011				
	Feb- 26	Jan- 21	Jan- 28	Feb- 04	Feb -11	Feb- 18	Feb- 25
Cash Reserve Ratio[1]	5.50	6.00	6.00	6.00	6.00	6.00	6.00
Bank Rate	6.00	6.00	6.00	6.00	6.00	6.00	6.00
Base Rate[2]	11.00-12.00	8.00-9.00	8.00-9.00	8.00-9.50	8.00-9.50	8.25-9.50	8.25-9.50
Deposit Rate[3]	6.00-7.50	7.00-8.75	7.00-8.75	8.25-9.50	8.25-9.50	8.25-9.50	8.25-9.50
Call Money Rate (Weighted Average)[4]	3.24	6.66	6.65	6.74	6.61	6.81	6.77

Notes: (1) Cash Reserve Ratio relates to Scheduled Commercial Banks (excluding Regional Rural Banks).
(2) Base Rate relates to five major banks since 1st July, 2010. Earlier figures relate to Benchmark Prime Lending Rate (BPLR).
(3) Deposit Rate relates to major banks for term deposits of more than one year maturity.
(4) Data cover 90-95 per cent of total transactions reported by participants. Call Money Rate (Weighted Average) is volume–weighted average of daily call money rate for the week (Saturday to Friday).

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 February-March 2011 for the reference of Faculty/Students & Members of the Institute.

1. ACCOUNTING

Assessing the Financial Reporting Consequences of Conversion to IFRS: The Case of Equity-Based Compensation by Mary Lea Mcanally etc. *Accounting Horizons*, Vol.24/4, 2010, pp.589-621.

Comment on the IASB Discussion Paper 'Preliminary Views on Revenue Recognition in Contracts with Customers' by Jan Marton etc. *Accounting in Europe*, Vol.7, 2010, pp.3-13.

The European Union Endorsement Process for International Financial Reporting Standards: A Telos-Based Analysis by David Alexander & Eva Eberhartinger. *Accounting in Europe*, Vol.7, 2010, pp.37-62.

Feeling the Pain: The Effects of the Recession on the UK's Top 60 Accountancy Firms Can be Clearly Seen by Liz Fisher. *Accountancy*, January 2011, pp.26-31.

Global Accounting Convergence & the Potential Adoption of IFRS by the U.S. (Part II): Political Dactors & Future Scenarios for U.S Accounting Standards by Luzi Hail etc. *Accounting Horizons*, Vol.24/4, 2010, pp.567- 588.

The Influence of Tax on IFRS Consolidated Statements: The Convergence of Germany & the UK by Maria Gee etc. *Accounting in Europe*, Vol.7, 2010, pp.97-122.

A New Look Code of Ethics: The Professional Standards Board (PSB) has recently issued an exposure draft on a revised code of ethics & is seeking comment on the proposed new code. *Chartered Accountants Journal*, February 2011, pp.10-11.

Potential Changes to Lease Accounting: Bean-Counting No More by Grace Chua. *CPA Singapore*, February 2011, pp.38-41.

Standards Overseer to Consider Proposal for Private Company Financial Reporting by Alexandra Defelice. *Journal of Accountancy*, February 2011, pp.34-36.

What are the Essential Features of a Liability? by Dennis Murray. *Accounting Horizons*, vol.24/4, 2010, pp.623-633.

Who Says UK GAAP is Dead? by Isobel Sharp. *Accountancy*, February 2011, pp.68-70.

2. AUDITING

Audit Report Lags After Voluntary & Involuntary Auditor Changes by Paul Tanyi. *Accounting Horizons*, Vol.24/4, 2010, pp.671-688.

Nuances in Internal Audit of Luxury Hospitality Operations by Kallol Kundu. *BCAJ*, February 2011, pp.9-10.

Policy & Research Implications of Evolving Independence Rules for Public Company Auditors by Audrey A. Gramling etc. *Accounting Horizons*, Vol.24/4, 2010, pp. 547-566.

3. ECONOMICS

Prospects for Economic Growth & the Policy Operatives for India by K. C. Chakrabarty. *RBI Bulletin*, January 2011, pp.11-18.

4. INVESTMENT

Anomalies in Consolidation of Holdings: Regulation 11 of the Takeover Code by A. Mishra & Sheema Nabi Qasba. *Company Law Journal*, Vol.1, 2011, pp.58-65.

The Big Idea: Creating Shared Value by Michael E. Porter & Mark R. Kramer. *Harvard Business Review*, January to February 2011, pp.62-87.

Business Valuation: So Many Questions by Stephen Cole. *CA Magazine*, March 2011, pp. 37-39.

Controlling Shareholders' Tunneling & Executive Compensation: Evidence from China by Kun Wang & Xing Xiao. *Journal of Accounting & Public Policy*, vol.30, 2011, pp.89-100.

5. MANAGEMENT

Are You a Good Boss – or a Great One ? Linda A. Hill & Kent Lineback. *Harvard Business Review*, January to February 2011, pp.125-131.

Disclosure & Secrecy in Employee Monitoring by Mitchell A. Farlee. *Journal of Management Accounting Research*, Vol.22, 2010, pp.187-208.

Five Practical Approaches to Reduce Your Labour Costs by Tim Mccormick. *Accountancy Ireland*, February 2011, pp.38-40.

How to Make the Most of Your Company's Strategy by Stephen Bungay. *Harvard Business Review*, January to February 2011, pp.132-140.

How are you Managing? by Deena Waisberg. *CA Magazine*, March 2011, pp.18-24.

The Role of Performance Measure Noise in Mediating the Relation Between Task Complexity & Outsourcing by Ge Bai etc. *Journal of Management Accounting Research*, Vol.22, 2010, pp. 75-102.

6. TAXATION & FINANCE

Customs Administration in India in 2011 & Beyond – Some Issues by Sandeep Raj Jain. *Excise Law Times*, 14th February 2011, pp.24-27.

The Effect of Board of Director Composition on Corporate Tax Aggressiveness by Roman Lanis & Grant Richardson. *Journal of Accounting & Public Policy*, vol.30, 2011, pp.50-70.

International Tax Planning with Tax Havens- Objectives & Strategies in a Multinational Group of Affiliated Corporations by Rainer Zielke. *Bulletin for International Taxation*, February 2011, pp.80-87.

Negotiating the US Tax System by Daniel Cassidy. *International Accountant*, January to February 2011, pp.5-7.

Speech of Shri Pranab Mukherjee Minister of Finance on 28th February, 2011. *Taxman*, 5th to 11th March, 2011, pp.9-122.

The Taxation of Income from Services under Tax Treaties: Cleaning up the Mess by Briant J. Arnold. *Bulletin for International Taxation*, February 2011, pp.59-68.

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 011-23370154 or by e-mail at library@icai.org

Chartered Accountancy Examinations, May, 2011 - Rescheduling of PCE/IPCE Exams scheduled on 3rd May, 2011 and 7th May, 2011 at Kolkatta and Asansol

14th March, 2011

In view of the Election to the West Bengal State Legislative Assembly, Paper-1, `Advanced Accounting' of Professional Competence Examination and Paper-1, `Accounting' of Integrated Professional Competence Examination scheduled to be held on Tuesday, the 3rd May, 2011 at **Kolkata Zone-I, Zone-II and Zone-III** centres stand postponed and the examination in the said papers shall now be held at Kolkata Zone I, Zone-II and Zone-III centres on Wednesday, 18th May, 2011 at the same venues and at the same timings i.e. 2.00 PM to 5.00 PM.

Similarly owing to the aforesaid Elections, Paper-4, `Cost Accounting and Financial Management' of Professional Competence Examination and Paper-3, `Cost Accounting and Financial Management' of Integrated Professional Competence Examination scheduled to be held on Saturday, the 7th May, 2011 at Asansol centre stand postponed and the examination in the said papers shall now be held at Asansol centre on Wednesday, 18th May, 2011 at the same venue and at the same timings i.e. 2.00 PM to 5.00 PM.

(Dr. T. Paramasivan)
Senior Deputy Director (Exams.)

Commencement of Registration for the Certificate Course on International Taxation - Chennai and Hyderabad

Dear Members,

We are pleased to announce that the Committee on International Taxation of ICAI has decided to commence the next Batches of Certificate Course on International Taxation in Chennai and Hyderabad respectively in the month of April, 2011.

Relevant details are given on the website: www.icai.org

Eminent, Expert and Learned Speakers drawn from all over India will give value addition to this Certificate Course. It may be noted that due to limitation of seats, the registration will be on 'first come first serve' basis.

Interested members are requested to kindly contact following for registration at earliest:

National Course Coordinator,
Certificate Course on International Taxation,
1st Floor, A-29, Sector 62,
Ph. No. 0120-3045923
Mobile No. 09310532063
Noida - 201301
E-Mail: citax@icai.org

Certificate Course on Arbitration of the ICAI

The Committee on Economic, Commercial Laws & WTO is planning to organise further Batches* of the Certificate Course on Arbitration at various Cities/ Towns in the Regions/Branches during the period April - June 2011.

The objective of this Course is to familiarise the members with the relevant laws which impact the arbitration process and the practical procedural aspects and to build the competency level of the members of the Institute to position them as multidisciplinary consultants in the global service market. The course is targeted at members who are desirous of building their expertise and skills in the area. Apart from the comprehensive theoretical aspects, this course, will also cover practical and procedural aspects of the arbitration process with case studies and mock arbitration proceedings.

The members who are desirous of attending the said Course may convey their interest and also send the **Form (http://icai.org/new_post.html?post_id=7053&c_id=219)** duly filled at the earliest to the Secretary, CECL & WTO, ICAI Bhawan, Indraprastha Marg, New Delhi-110002 or mail the details at cecl@icai.in; ctlwto@icai.in . For more details please visit www.icai.org.

*Note:*The holding of batches are subject to the minimum number of participants as prescribed by the Committee.*

Last Date of Registration for Post Qualification Course in International Trade Laws & WTO for November 2011 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 currently this examination is held only for November attempt. **Therefore, for appearing in the November, 2011 Examinations for Part I of the Course, the last date for taking registration in the Course is 30th APRIL, 2011.**

For obtaining registration, the Prospectus for the Post Qualification Course in 'International Trade Laws and World Trade Organisation', priced at ₹150/- (₹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 Postal Sales Department of the Institute at ICAI Bhawan, A-29, Sector 62, Noida - 201301 (U.P.) India by sending a Demand Draft of ₹150/- plus postal charges (₹9 within New Delhi & ₹20 for Rest of India, if required by Courier; or ₹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, CECL & WTO

ICAI -Microsoft Offer

The Institute recently has worked out a model with Microsoft to provide Key Licensed Software at much discounted prices. The key objectives of this activity are to facilitate the members/students and to ensure that members are benefitted by a discounted price for the Genuine Microsoft Software including both the latest version of the Operating System and the Microsoft Office Professional Edition Software.

Under this program Microsoft will provide an Upgrade to the latest Microsoft technologies including

1. **Windows 7 Enterprise upgrade**
2. **Office 2010 Professional Plus**
3. **Core CALs (Windows Server, Exchange Standard, SharePoint Std SCCM CALs)**

The ICAI has negotiated with Microsoft Authorised Reseller on behalf of the Student and Member Community (currently undergoing Training & CPE Programmes) at large; facilitate discounted prices for genuine Microsoft licenses for Office 2010, Windows 7 Upgrade, and Core CALs at a Price of ₹799 only.

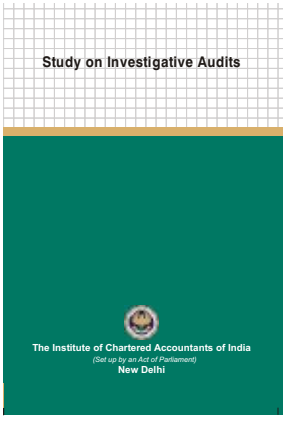
The details of the offer can be found at the following link on the ICAI Website http://www.icai.org/parivartan/offer/.

The detailed FAQ's of the Program, the Process and Offer details are available at the following link http://220.227.161.86/22003ms_license_icai_faq.pdf

(Next window to open on April 8, 2011)

NEW PUBLICATIONS FROM THE INTERNAL AUDIT STANDARDS BOARD

Study on Investigative Audits
(Pages: 156 + 12 Initial pages+ 2 Cover pages)
Price: ₹175/- *(including CD)*

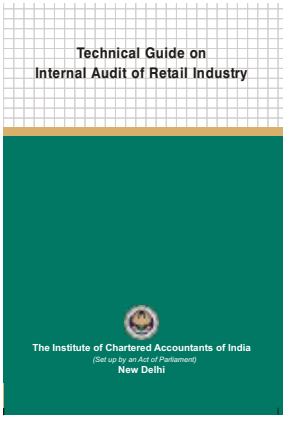


Global challenges of growing menace in the form of frauds and white-collar crime in all types of trades and business practices intensifies the need for a system in place for their prevention and detection. Formulating appropriate strategies for the prevention and detection of fraud, planning and execution of fraud investigations requires both academic and professional expertise. Considering, the importance of providing the readers with an understanding of various facets of an investigative process at a basic level the Internal Audit Standards Board of the Institute of Chartered Accountants of India has taken a step in this direction by issuing this '***Study on Investigative Audits***' that deals comprehensively with investigative audits and the related concepts and practices in detail.

Significant features of the Study are:

- Provides the reader with an understanding of various facets of an investigative process at a basic level.
- Provides extensive knowledge about the various topics, such as, types of fraudulent act, accountability of fraud detection, corporate fraud control plan, investigative tools and techniques, diagnosing fraud behaviour, external/ in-house investigations, pre-requisite of good investigation, managing investigative assignments, interview process, investigation report, legal action, investigative audit and allied services, market scenario for investigative work, and way forward.
- Practical approach to the subject matter through case studies.
- The Study comes with a CD of the entire Study to ensure ease of reference and reusability.

Technical Guide on Internal Audit of Retail Industry
(Pages: 156 + 12 Initial pages+ 2 Cover pages)
Price: ₹175/- *(including CD)*



Retail industry is one of the fastest growing industries in India, especially over the last few years. A large number of players are operating in this sector. The growth of industry is boosted by various factors such as, availability of professional practice, media proliferation, various brands which are gaining value thereby enhancing industry growth, availability of various funding options, sea change in demographics of country and international exposure. In view of this, it has become necessary to include robust systems/ processes that would not only address problems relating to internal control but would also effectively serve the interests of the management, consumers, government and the society in general. Keeping this in view, the Internal Audit Standards Board of ICAI has issued '***Technical Guide on Internal Audit of Retail Industry***', which is aimed to equip the internal auditors with deeper understanding of this unique and complex industry.

Significant Features of the Technical Guide are:

- Covers evaluation, history and special feature of the Retail Industry.
- Explains legal framework applicable to Retail Industry in detail.
- Provide guidance on the statutory laws applicable to the Industry.
- Covers the methodology of the internal audit for retail industry as well as internal audit in an information technology environment. Also describes the procedures to overview the compliance of laws and regulations.
- Explain detailed procedures to be undertaken by the internal auditor in respect of invoicing, payroll, operating costs, fixed assets, related party transactions, data security and risk faced by the Industry.

- Includes flow charts regarding various processes undertaken in the Retail Industry.
- Includes glossary of the terms and abbreviations used in the Retail Industry.
- The Guide comes with a CD of the entire Guide to ensure to ensure ease of reference.

Ordering Information:
The publication(s) 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 '***The Secretary, The Institute of Chartered Accountants of India, New Delhi***', payable at New Delhi, to the Postal Sales Department, the Institute of Chartered Accountants of India, A-29, Sector-62, Noida - 201309 (U.P.).

Postal Charges:

Particulars		Technical Guide on Internal Audit of Retail Industry	Study on Investigative Audits
By Courier:	Within Delhi:	₹20 /-	₹20 /-
	Rest of India:	₹25 /-	₹25 /-
By Registered Parcel:	Within India:	₹36 /-	₹36 /-

Committee On Public Finance and Government Accounting
Invitation to Contribute Articles for E-Newsletter

The Committee on Public Finance & Government Accounting of The Institute of Chartered Accountants of India is regularly coming up with its E-Newsletter -'Prudence' featuring various articles on economic issues and measures on bi-monthly basis. The December-January (2010-2011) issue of the E-Newsletter is available at the URL http://220.227.161.86/21657announ12308.pdf.

The Committee invites experts, researchers and writers to contribute articles in different areas of Public Finance and Government Accounting for publication in the April-May 2011 issue of its E-newsletter. If the article is published, a token honorarium of ₹2000/- per article shall be paid. Discretion of the Committee regarding publication /non-publication of the article shall be final and abiding therewith under copyright of the Committee. Material in this E-Newsletter may not be reproduced, whether in part or in whole, without the consent of Editorial Board of Committee. Authors may only submit original work that has not been appeared elsewhere in any publication.

The articles may be sent to us in the form of soft copy through mail/CD or in printed format through post giving details of the subject matter.

Those desirous may please contact at the following address:

The Secretary
Committee on Public Finance and Government Accounting
The Institute of Chartered Accountants of India
'ICAI Bhawan', A-29, Sector-62,
Noida- 201 309
Phone: 0120-3045950(O)
Email: cpf_ga@icai.org

Corrigendum

Readers attention is invited to the fact that the article titled 'Requirement to furnish Permanent Account Number under Section 206AA of Income-tax Act, 1961' published on page 1382 of March 2011 issue of the journal has been found to be having certain anomalies and factual inaccuracies with respect to latest and correct position on the issue. As such, the readers may refer to circular no. 8/2010 dated 13/12/2010 for the latest position on the issue. The omission is deeply regretted. The circular may be accessed at the link: http://law.incometaxindia.gov.in/DIT/Circulars.aspx

-Editor

Certificate Course on Enterprise Risk Management at Delhi, Mumbai, Chennai, Kolkata and Hyderabad
(Batch will commence at Kolkata from 23rd April, 2011)

The Internal Audit Standards Board of the ICAI is pleased to offer this certificate course on "Enterprise Risk Management" to enable members to develop competences 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*:**

₹25000/- per delegate only, payable online or by DD/ Pay-Order drawn in the favour of "***The Secretary, The Institute of Chartered Accountants of India***" 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 Receipt of Application for Kolkata Batch : April 16, 2011

Locations

Kolkata : 23rd April , 2011 *(Venue will be hosted on the website shortly.)*

Delhi :
Mumbai :
Chennai :
The date and venue will be announced and hosted on the website shortly.

Hyderabad : Residential Course at Centre of Excellence, The Institute of Chartered Accountants of India, "ICAI Bhawan", Plot No 10 & 11, Nanakramguda, Financial District, Gachibowli, HYDERABAD - 500 019, residential course fee *(including boarding and lodging expenses)* and dates will be announced and hosted on the website shortly

***Further Details and Assistance*:**

Chairman, Internal Audit Standards Board
Tel.: 0120-3045949
Email: cia@icai.org;

Secretary, Internal Audit Standards Board
Tel.: 0120-3045949
Email: auditing@icai.org

ANNOUNCEMENT

The Institute of Chartered Accountants of India (ICAI) intends to utilise the services of Members of ICAI and others in the field of ICAI Ethics as Faculty. The interested persons may please send their willingness along with the Bio-Data by E-mail esb@icai.org to the following :

The Secretary
Ethical Standards Board (ESB)
The Institute of Chartered Accountants of India
Indraprastha Marg
New Delhi – 110002

Important Announcement - Attention of Members

Kind attention of Members is invited to the revised schedule of Membership and related fee ***effective from 1st April, 2011*** *as given below: -*

Particulars of Fees	Revised Fee ₹
Membership Fee	
Entrance Fee	1200
Fellow Admission Fee	1800
Annual membership Fee	
Associate Fee	800
Fellow Fee	2200
Certificate of Practice Fee	2000
Restoration Fee	1200

Members who are senior citizens i.e. have attained the age of 65 years as on 1st April of the relevant year will be required to pay the fees at lower rates which is as under: -

Particulars of Fees	Revised Fee ₹
Annual membership Fee	
Associate Fee	600
Fellow Fee	1600
Certificate of Practice Fee	1500

Members are requested to remit fee for membership/ Certificate of Practice/Fellow membership at the prescribed amount as applicable to them.

Sd/-
(T. Karthikeyan)
Secretary

Members can pay their fee on line by clicking online payments link on the homepage of www.icai.org

Special Examinations for candidates under Mutual Recognition Agreements [MRAs]/Memorandum of Understanding [MoUs] with Foreign Accounting Bodies

1. Background

The Institute of Chartered Accountants (ICAI), as a international professional development endeavour, has entered into Mutual Recognition Agreements (MRAs)/Memorandum of Understanding (MoUs) with the following Foreign Accounting Bodies:

(a) The Institute of Chartered Accountants of England & Wales (ICAEW)
(b) The Institute of Chartered Accountants of Australia (ICA Australia)
(c) The Institute of Certified Public Accountants in Australia (CPA Australia)
(d) The Institute of Certified Public Accountants in Ireland (CPA Ireland)
(e) Canadian Institute of Chartered Accountants (CICA)

2. Special Examinations

While the International Affairs Secretariat looks after the overall administration of these MRAs/MoUs, Northern Regional Office of ICAI takes care of the Registration part for the candidates (i.e. members of the aforesaid bodies willing to become members of the ICAI). Board of Studies of ICAI provides specially developed Study Material for the subjects (Papers) in which the candidates have to appear and clear the examinations. Examination Department will be conducting special examinations on the subjects (papers) relevant for each MRAs/MoUs.

(a) ICAEW Members are required to pass the following subjects:

(i) Auditing and Assurance
(ii) Law, Ethics and Communication
(iii) Information Technology and Strategic Management
(iv) Taxation

(b) ICA Australia Members are required to pass the following papers:

(i) Indian Law, Taxation and Ethics

(c) Members of CPA Australia are required to pass the following subjects:

(i) Corporate & Allied Laws
(ii) Taxation
(iii) Advanced Auditing and Professional Ethics[1]
(iv) Financial Reporting[2]

(d) CPA Ireland members are required to pass the following subjects:

Compulsory Papers:

(i) Corporate and Allied Laws,
(ii) Direct and Indirect Taxes, and

Optional papers

(i) Strategic Financial Management
(ii) Advanced Auditing & Professional Ethics

(e) CICA members are required to pass the following papers:

(i) Corporate and Allied Laws
(ii) Taxation

3. Details of the Special Examinations

(i) Frequency of Examinations

- The First two Examinations would be conducted in July, 2011 and January, 2012. (immaterial about the number of these international candidates) for which separate notification(s) will be issued in due course
- In future these special exams will be conducted subject to the availability of minimum 10 international candidates or 3 candidates from any one Institute with whom ICAI has entered into MRA/MOU and depending upon the number of candidates, the frequency would be kept as two testing windows a year. The fixed attempt would be June of every year.

(ii) Examination fees

Examination fee charged would be on quid pro quo basis with respect to the members of relevant accounting bodies for whom the special examinations will be conducted.

(iii) Examination Centres

All special examinations will be conducted only at New Delhi, India. Details with regard to venues would be intimated to the candidates (who have been admitted in the special examinations) in due course

(v) Refund of Fees

The examination fee paid by a candidate who has been admitted to an examination, shall not be refunded under any circumstances.

(vi) Candidates to be supplied with admission tickets

An admission ticket stating the place, dates and times at which the candidate may present himself/herself for the Special Examination shall be sent to each candidate to the address given by him/her in his/her application form not less than twenty one days before the commencement of the examination.

(vii) Passing requirements

A candidate for the Special Examination shall ordinarily be declared to have passed the examination if he/she obtains at one sitting minimum 40 per cent marks in each paper and a minimum of 50 percent of the total of all the papers. Where there is only one subject in any MRA/MOU, the candidate should secure a minimum of 50 per cent marks.

(viii) Validation and Declaration of Result

The result could be declared by the Examination Committee as per the procedure being adopted for the C.A. examinations.

(a) A list of candidates declared successful at the Special Examination shall be published.
(b) The names of candidates obtaining distinction in the examination shall be indicated in the list.
(c) Every candidate shall be individually informed of his/her result. He/she shall be furnished free with a statement of marks obtained by him/her in the Examination which he/she has appeared.
(d) The Examination Committee may, in its discretion, revise the marks obtained by all candidates or a section of candidates in any particular paper or papers or in aggregate in such manner as may be considered necessary, for maintaining the standards of pass percentage.
(e) A candidate who possesses at one sitting of the Special examination with seventy per cent of the total marks for all the papers shall be considered to have passed the

1 Not applicable if they had studied Assurance Services & Auditing in CPA Program
2 Not applicable if they had studied Financial Reporting & Disclosure in CPA Program

examination with distinction.

(f) Information as to whether a candidate's answers in any particular paper or papers of the Special Examination have been examined and marked shall be supplied to the candidate on his submitting within a month of the declaration of the result of the said examination, an application, accompanied by a fee as may be fixed by the Examination Committee which shall not exceed rupees fifty US$ in any case.

(g) A candidate passing the Special Examination shall be granted a certificate to that effect in the Form approved by the Examination Committee.

Helpline for Special Examinations
Dr. T Paramasivan, Sr. Deputy Director (Exams)
0120-3054822 from 9.45 am – 5.30 pm (IST)
Email: tparamasivan@icai.org

ICAI CARES FOR YOU

CABF Group Term Insurance Scheme for Chartered Accountants and Spouse

CABF OF ICAI has tied up with the Life Insurance Corporation of India for a special scheme for insuring the Life of its members and their spouse. The scheme is effective w.e.f. 1-1-2007 and open for all the members of the Institute who are not having the same scheme operated by WIRC of ICAI.

The salient highlights of the scheme are as under :

- CABF is already operating Group Insurance Scheme with BSLI for members and in order to make it competitive and better insurance coverage has launched group insurance scheme with LIC.
- Offering a High Insurance Cover of ₹10 lakh per member.
- A provision for spouse for insurance cover of ₹5 lakh.
- A unique SINGLE PREMIUM approach to the scheme.
- No EVIDENCE OF HEALTH OR MEDICAL UNDERWRITING REQUIREMENTS – For member as well as for Spouse
- Highly Competitive Premium Rates specially for ICAI members.
- 24 Hours. Comprehensive, Global Death Risk cover without any Pre conditions. The amount of cover can be increased up to double in case of death due to Accident.
- FULL PREMIUM RETURN OFFER in case of Normal Death within Lien Period
- Easy administration of insurance premium payment and claim settlement through CABF.

Details of the scheme are as under :

S.No	Particulars	Terms	
1)	Age at entry	18-60 years	
2)	Validity Period of Life Cover	Three years	
3)	Type of Cover	24 hour Comprehensive Global risk cover for the period of insurance from date of commencement which also includes death due to accident	
4)	Sum Assured	₹10 lakh	
5)	Mode of Premium	Single Premium payable for Three Years	
6)	Single premium to be paid in case of Members for the sum assured of ₹10 lakh for a term of three years	Age [Completed Years]	Total Amount ₹
		18-30	4390
		31-35	4700
		36-40	6240
		41-45	7890
		46-50	11810
		51-55	19880
		56-60	29160
7)	Single premium to be paid in case of spouse for the sum assured of ₹5 lakh for a term of three years	18-30	2195
		31-35	2350
		36-40	3120
		41-45	3945
		46-50	5905
		51-55	9940
		56-60	14580

(*CABF proposes to launch LIC Scheme with

accident benefits. Accidental death cover, is in addition to the life cover. This cover will, in case a member dies through an accident, provide additional cover to the extent of ₹10,00,000/- and in case of spouse of ₹5,00,000/-).

Special Conditions :

- Lien : The assurances granted under the scheme are subject to a lien clause. No claim is admissible for deaths during the first 45 days from the entry date, except for cases of death due to accident. **However, in case of a Normal Death, taking place during the Lien Period, PREMIUMS charged on the life of the deceased Member shall be refunded in full.**

Special Benefits :

- **Insurance cover for** Member's Spouse : Will be considered to the Member's Spouse extent of **50** per cent i.e. upto ₹5,00,000/- Premium for Spouse to be charged as per **Spouse's age**
- **Evidence of Health** : **No** medical examination **nor** any self-declaration of health is required.

1. The Scheme has been established and shall be administered with the P&GS Delhi Division I Office of LIC at New Delhi.
2. All matters relating to the Scheme including settlement of claim etc shall be looked after by the said office in New Delhi
3. The period of three years & the lien period of 45 days will reckon from the date of entry in the scheme.
4. CABF will forward premium received from members to LIC. The date for the lien period & three years insurance scheme will start from the date of receiving premium by LIC subject to realisation of cheque.
5. The updation of members' list will be done on quarterly basis. For renewal of scheme members are required to forward the due premium to CABF in one month advance.
6. The members may apply for the life insurance by giving the following details along with the premium in duplicate :
   *a) Name b) Address, Contact details such as Phone No, Email & Fax no. etc c) Membership no. of ICAI d) Date of Birth e) Age f) Name of Nominee g) Name of spouse h) Date of Birth of spouse i) Age of spouse j) Name of Nominee (in case of spouse)

	Basic sum assured	Premium
Self		:
Spouse	Yes/No	

(* a sample format is given on icai website at www.icai.org alongwith disablement)

Example : A member aged 36 years with a spouse of 32 years decides to opt for insurance along with double accidental coverage for both. The total premium would be calculated as under :

Self	- Premium	- ₹6240/-
Spouse	- Premium	- ₹2350/-

7. **Local cheques/Demand Draft needs to be drawn in favour of "CABF – Insurance Scheme" and forwarded to The Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi – 100 002.**

8. **Any clarification with regard to the scheme may be had from LIC:**

   Mr.Sunil Kumar
   Sr.Branch Manager
   LIC of India
   P&GS Department,Delhi Divisional Office- I"
   6th Floor,Jeevan Prakash"
   25 K.G.Marg,New Delhi,Pin Code-110001
   E-Mail : kumarsunil@licindia.com

Members are urged to avail of this unique offer specially brought for the members of the Institute and their spouse.

Application of AS 30, *Financial Instruments: Recognition and Measurement*, for the accounting periods ending on or before 31st March 2011.

1 AS 30 was issued by the Institute of Chartered Accountants of India (ICAI) in 2007 but has not yet been notified by the Government under Section 211(3C) of the Companies Act, 1956. As per this standard;

> *"Accounting Standard (AS) 30, Financial Instruments: Recognition and Measurement, issued by the Council of the Institute of Chartered Accountants of India, comes into effect in respect of accounting periods commencing on or after 1-4-2009 and will be recommendatory in nature for an initial period of two years. This Accounting Standard will become mandatory in respect of accounting periods commencing on or after 1-4-2011 for all commercial, industrial and business entities except to a Small and Medium-sized Entity…."*

2 AS 30 further states;

"*From the date this Accounting Standard becomes recommendatory in nature, the following Guidance Notes issued by the Institute of Chartered Accountants of India, stand withdrawn:*

(i) Guidance Note on Guarantees & Counter Guarantees Given by the Companies.

(ii) Guidance Note on Accounting for Investments in the Financial Statements of Mutual Funds.

(iii) Guidance Note on Accounting for Securitisation.

(iv) Guidance Note on Accounting for Equity Index and Equity Stock Futures and Options."

3 Subsequent to the issuance of AS 30, the world witnessed financial crisis which raised issues with regard to accounting treatment of financial instruments. Accordingly, various accounting standards setting bodies including the ICAI examined these aspects. Insofar as International Accounting Standards Board is concerned certain modifications have been made in the corresponding International Accounting Standard, viz., IAS 39, *Financial Instruments: Recognition and Measurement.* The International Accounting Standards Board has also issued IFRS 9, *Financial Instruments,* which replaces certain requirements contained in IAS 39 and it is expected that ultimately the entire IAS 39 on which AS 30 is based is not expected to be replaced before 30th June 30, 2011 as presently committed by IASB. Accordingly, AS 30 is not expected to continue in its present form including for those entities for which converged Indian Accounting Standards will come into force from 1st April, 2011. In this changed scenario, the Council has reconsidered the matter regarding the status of the existing AS-30 and has decided to issue the following clarification for the guidance of the Members and others concerned.

4 It is clarified that in respect of the financial statements or other financial information for the accounting periods commencing on or after 1st April 2009 and ending on or before 31st March 2011, the status of AS 30 would be as below:

(i) To the extent of accounting treatments covered by any of the existing notified accounting standards (for eg. AS 11, AS 13 etc,) the existing accounting standards would continue to prevail over AS 30.

(ii) In cases where a relevant regulatory authority has prescribed specific regulatory requirements (eg. Loan impairment, investment classification or accounting for securitisations by the RBI, etc), the prescribed regulatory requirements would continue to prevail over AS 30.

(iii The preparers of the financial statements are encouraged to follow the principles enunciated in the accounting treatments contained in AS 30. The aforesaid is, however, subject to (i) and (ii) above.

5. From 1st April 2011 onwards,

(i) the entities to which converged Indian accounting standards will be applied as per the roadmap issued by MCA, the Indian Accounting Standard (Ind AS) 39, *Financial Instruments; Recognition and Measurement*, will apply.

(ii) for entities other than those covered under paragraph 5(i) above, the status of AS 30 will continue as clarified in paragraph 4 above.

6. The abovementioned clarifications would also be relevant to the existing AS 31, *Financial Instruments: Presentation* and AS 32, *Financial Instruments: Disclosures* as well as for Ind AS 32, *Financial Instruments: Presentation* and Ind AS 107, *Financial Instruments: Disclosures*, after 1st April, 2011 onwards.

Insurance against Professional Indemnity

An Insurance Protection for Members in practice & CA Firms of ICAI...

An Initiative of the Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI...

The **Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP)** of ICAI has arranged insurance protection for members in practice/firms in the form of specially designed professional indemnity insurance at a reasonable premium. The scheme is already in effect for the Members in practice/ Firms of the ICAI.

Highlights

This policy is meant for professionals to cover liability falling on them as a result of errors and omissions committed by them whilst rendering professional service. Legal cost and expenses incurred in defence of the case, with the prior consent of the insurance company, are also payable, subject to the overall limit of indemnity selected.

Only civil liability claims are covered. Any liability arising out of any criminal act or act committed in violation of any law or ordinance is not covered.

Eligibility:

Chartered Accountants, individual/jointly or Proprietorship Concern or a Partnership Firm/ Partnership.

The applicants/firms should not have been subjected to disciplinary action by the Institute.

Premium Rates:

For Individual Members in Practice:

For SI of 10 lakh, the premium proposed is ₹1000/-(1:1),₹803/-(1:2),₹705/-(1:3) and ₹600/-(1:4).

Ratios indicate relationship between AOA and AOY

Additional: Per Capita for named professional employee-₹100

Excess:1/2 per cent of Any One Year Limit subject to minimum ₹5,000/-and maximum of ₹1 lakh.(as per Market Agreement) For higher limits.

For Chartered Account Firm:

The premium of 0.10 per cent shall be as per rates for Individual Chartered Accountants and shall be applied on the AOY limit chosen. All named professionals shall be charged ₹100/-extra over and above the basic premium.

For Example: If the CA firm chooses a Sum Insured of ₹2 crore the Premium rate of 0.10 per cent is to be applied on the AOY limit and each professional (including partners) have to be charged ₹100/- each. For example a CA firm with 20 professionals including 9 partners will pay ₹20, 000/- plus 20X ₹100 totalling to ₹22, 000/- .This would be on 1:1 ratio. If the ratio is 1:2,the Premium rate would be .08 per cent if the ratio is 1:3,the Premium rate would be .07 per cent and if the ratio is 1:4,the ROL would be .06 per cent on the indemnity limit chosen.

* Jurisdiction: India only

*Above Premium rates are subject to Service Tax @10.3 per cent.

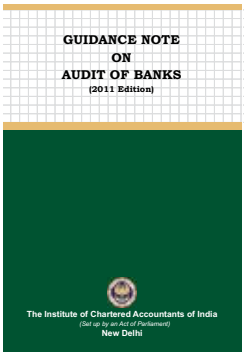
Members and CA firms desirous to avail the benefits under this scheme may please contact directly to New India Assurance Co. Ltd. or Committee Secretariat at the following address:

Assistant Manager (Development) New India Assurance Co.Ltd. Divisional Office No.141600,Jeevan Seva Bldg., 2 floor,S.V. Road,Santacruz(W),Mumbai-400054 Email-ashok.lal@newindia.co.in Phone No.-022-26633289	Secretary Committee for Capacity Building of CA Firms and Small & Medium Practitioners ICAI Bhawan, Indraprastha Marg New Delhi-110002 E-mail: ccbcaf@icai.org Phone: 011-30110430

New Publication from the Auditing and Assurance Standards Board

GUIDANCE NOTE ON AUDIT OF BANKS, 2011 EDITION

Significant features of the Guidance Note are:



- Thoroughly updated to give effect to the changes brought about by the RBI till 10th March, 2011 through its various Master and General Circulars, importantly, those on income recognition, asset classification and provisioning, investments norms, exposure norms, capital adequacy norms, disclosures in financial statements, etc.
- It takes into consideration the effect of revised auditing standards issued by the ICAI since its last edition in 2009.
- Contains Illustrative Audit Checklist on Basel II.
- The Appendices to the Guidance Note contain the formats of Engagement Letter, Auditor's Report, Management Representation Letter, Audit Programme etc.
- Accompanied by a CD containing the complete text of important Master and General Circulars of the RBI.
- The Guidance Note runs into 900 pages approx.

Price: ₹750/- (including CD)

Ordering Information

The publication can be purchased directly from the Sales Counters at the ICAI's Regional Offices/Branches or at the Head Office. To order by post, please send a demand draft for the price of the publication (plus postage charges as per the desired mode of delivery) in favour of "The Secretary, The Institute of Chartered Accountants of India, New Delhi", payable at New Delhi to the *Postal Sales Department, The Institute of Chartered Accountants of India, ICAI Bhawan, A-29, Sector-62, NOIDA – 201 309, Uttar Pradesh.*

Postal Charges:

Courier (within Delhi)	₹15/-
Courier (rest of India):	₹57/-
Registered Post (all over India):	₹68/-
Unregistered Post (all over India):	₹49/-

ICAI International Study Tour to Karachi, Pakistan 25th to 28th July, 2011 (3 nights and 4 days)

The Institute of Chartered Accountants of Pakistan (ICAP) is celebrating year 2011 as the Golden Jubilee Year of their Institute. To commemorate the occasion, they are organising an **International Conference on 26th July to 27th July 2011** at DAC&GC Karachi, Pakistan. The Conference is expected to include eminent local and international professionals and dignitaries and will provide an exciting prospect for accounting professionals to network.

In order to promote member to member and firm to firm contact so as to under stand the economic and regulatory environment and better understanding of the economic opportunities and to be part of their Golden Jubilee Celebrations; the International Affairs Committee of ICAI will be undertaking a study tour to Karachi **during 25th to 28th July, 2011** for members, on self financing basis. Since, the delegation size would be limited to 50, registration for the study tour would be on first-come-first-serve basis. The detailed itinerary and the registration fees for the study tour are being finalised and shall be intimated in due course.

Interested members may kindly send their consent along with photo copies of first two and last two pages of passport at the below mentioned address **latest by 30th April 2011.**

Secretariat of the International Affairs Committee, The Institute of Chartered Accountants of India, ICAI Bhawan, PB No. 7100, Indraprastha Marg, New Delhi – 110 002, India. Ph +91 11 30110487, 39893989 (Extn. 487), fax +91 11 30110591, e-mail: safa@icai.in ; ia@icai.in.

For further details please visit www.icai.org

Contribution to the Question Bank of CPT

The Common Proficiency Test (CPT) is an entry level test meant for 10+2 students to the Chartered Accountancy Profession having multiple choice objective questions. The level of knowledge expected is basic knowledge with the objective to develop conceptual understanding of the subject concerned.

With a view to augment the Question Bank in the Subjects of Accounting/Mercantile Laws/General Economics/Quantitative Aptitude of Common Proficiency Test, it has been decided to invite questions from Chartered Accountants/Subject experts working in various Colleges/Universities/Public/Students pursuing Chartered Accountancy Course etc.

The contributor can contribute as many questions as he/she can, but in a lot of minimum of 20 questions in the subjects of Accounting/Mercantile Laws/ General Economics/Quantitative Aptitude in the following manner:-

- The questions should be of objective with four probable answers for each question. The correct answer for each question is also required to be given.
- Fill in the blanks having four alternative answers.
- Small paragraph containing two to three lines followed by a question having four alternative answers.
- Numerical having four alternative answers (in Fundamentals of Accounting, Mathematics and Statistics).
- Simply worded Case studies involving multiple concepts be also prepared. The case study could be something like a practical situation described in 3-4 lines in simple language with application of single/multiple concepts and requiring students to choose one answer from amongst four answers whereby the analytical/logical ability and intelligence of the students is tested.

Since the CPT is an entry level Test meant for 10+2 students, the level of knowledge expected is basic knowledge and the questions should be

aimed at testing the conceptual understanding and fundamentals of the subject than merely testing the memory of candidates. The difficulty level of the questions should be of 10+2 level and capable of being answered/solved in less than one minute.

While framing the questions, the questions be framed in such a manner that each one of the four answers given for a particular question, per se, appear to be the right answer thereby requiring the candidate to use his analytical ability to find the correct answer.

- The language of the questions to be sent should be English only and is clear, correct, unambiguous and free from any doubt. The language conveys the same meaning as was intended by you.
- The copyrights of the questions so submitted shall vest with the Council of the Institute. The contributor of the questions shall ensure that the questions so submitted to the Institute are not parted with by him/her to any other Body/Person and shall be meant only for the exclusive use by the Council of the Institute.
- **It may please be noted that the questions framed by you should be original and not already published in some books or journals or study material of the Institute or reference/ text books available in the market or also from question papers of any other examinations or material distributed by any coaching institution. The requirement is the questions that are original and framed with the meticulous care and genuinely.**
- For each question framed and forwarded and accepted by the Council of the Institute for augmentation of the Question Bank of CPT, ₹250/- per question selected/accepted will be paid as honorarium. In addition to honorarium payable towards questions selected, ₹100/- (fixed) will be paid for other services also. The questions may be sent in a sealed envelope superscribed "Question Bank – CPT" to Shri G. Somasekhar, Additional Secretary (Exams),The Institute of Chartered Accountants of India, Indraprastha Marg, New Delhi – 110002 by name or by e-mail to srdd_exam@icai.in While sending the questions by post/mail, please mention your name and complete postal address alongwith contact details including mobile number. All correspondence on the subject should be treated as secret.

Interested persons may kindly contribute to the Question Bank of CPT.

(G. SOMASEKHAR)
ADDITIONAL SECRETARY (EXAMS.)

Norms for CPE Study Circles for Members in Industry

Committe for Members in Industry has formed CPE Study Circle for Members in Industry to provide CPE learning activities for the compliance of CPE requirements of Members in Industry. The complete details regarding Norms for CPE Study Circles for Members in Industry is given http://220.227.161.86/18012normstudycircles9654.pdf .

Members in Industry are requested to form CPE Study Circle for completion of their CPE credit requirements and to upgrade their technical knowledge. A list of CPE Study Circle for Members In Industry of ICAI is given below: http://www.cmii.icai.org/imgs/CPE%20STUDY%20CIRCLE20FORMED.doc

Classifieds

Standard on Assurance Engagements (SAE) 3402 Assurance Reports on Controls At a Service Organisation

Standard on Assurance Engagements (SAE) 3402, "Assurance Reports on Controls at a Service Organization," should be read in the context of the "Preface to the Standards on Quality Control, Auditing, Review, Other Assurance and Related Services."[1]

Introduction

Scope of this SAE

1. This Standard on Assurance Engagements (SAE) deals with assurance engagements undertaken by a professional accountant in public practice[2] to provide a report for use by user entities and their auditors on the controls at a service organisation that provides a service to user entities that is likely to be relevant to user entities' internal control as it relates to financial reporting. It complements SA 402,[3] in that reports prepared in accordance with this SAE are capable of providing appropriate evidence under SA 402. (Ref: Para. A1)

2. The "Framework for Assurance Engagements" states that an assurance engagement may be a "reasonable assurance" engagement or a "limited assurance" engagement; that an assurance engagement may be either an "assertion-based" engagement or a "direct reporting" engagement; and, that the assurance conclusion for an assertion-based engagement can be worded either in terms of the responsible party's assertion or directly in terms of the subject matter and the criteria[4]. This SAE only deals with assertion-based engagements that convey reasonable assurance, with the assurance conclusion worded directly in terms of the subject matter and the criteria[5].

3. This SAE applies only when the service organisation is responsible for, or otherwise able to make an assertion about, the suitable design of controls. This SAE does not deal with assurance engagements:

(a) To report only on whether controls at a service organisation operated as described, or

(b) To report only on controls at a service organisation other than those related to a service that is likely to be relevant to user entities' internal control as it relates to financial reporting (for example, controls that affect user entities' production or quality control). (Ref: Para. A2).

4. In addition to issuing an assurance report on controls, a service auditor may also be engaged to provide reports such as the following, which are not dealt with in this SAE:

(a) A report on a user entity's transactions or balances maintained by a service organisation; or

(b) An agreed-upon procedures report on controls at a service organisation.

Relationship with Other Professional Pronouncements

5. Framework for Assurance Engagements provides requirements in relation to such topics as engagement acceptance, planning, evidence, and documentation that apply to all assurance engagements, including engagements in accordance with this SAE. This SAE expands on how such requirements are to be applied in a reasonable assurance engagement to report on controls at a service organisation. The Framework for Assurance Engagements, which also defines and describes the elements and objectives of an assurance engagement, provides the context for understanding this SAE.

6. Compliance with Framework for Assurance Engagements requires, among other things, that the service auditor comply with the Code of Ethics of the Institute of Chartered Accountants of India, and implement quality control procedures that are applicable to the individual engagement[6].

Effective Date

7. This SAE is effective for service auditors' assurance reports covering periods ending on or after April 1, 2011.

Objectives

8. The objectives of the service auditor are:

(a) To obtain reasonable assurance about whether, in all material respects, based on suitable criteria:

(i) The service organisation's description of its system fairly presents the system as designed and implemented throughout the specified period (or in the case of a type 1 report, as at a specified date);

(ii) The controls related to the control objectives stated in the service organisation's description of its system were suitably designed throughout the specified period (or in the case of a type 1 report, as at a specified date);

(iii) Where included in the scope of the engagement, the controls operated effectively to provide reasonable assurance that the control objectives stated in the service organisation's description of its system were achieved throughout the specified period.

(b) To report on the matters in (a) above in accordance with the service auditor's findings.

Definitions

9. For purposes of this SAE, the following terms have the meanings attributed below:

(a) Carve-out method

Method of dealing with the services provided by a subservice organisation, whereby the service organisation's description of its system includes the nature of the services provided by a subservice organisation, but that subservice organisation's relevant control objectives and related controls are excluded from the service organisation's description of its system and from the scope of the service auditor's engagement. The service organisation's description of its system and the scope of the service auditor's engagement include controls at the service organisation to monitor the effectiveness of controls at the subservice organisation, which may include the service organisation's review of an assurance report on controls at the subservice organisation.

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[1] Published in the July, 2007 issue of the Journal.

[2] As per the Framework for Assurance Engagements, issued by the Institute of Chartered Accountants of India, the term "professional accountant in public practice (practitioner)" refers to the member of the Institute of Chartered Accountants of India who is in practice in terms of section 2 of the Chartered Accountants Act, 1949. The term is also used to refer to a firm of chartered accountants in public practice.

[3] SA 402 (Revised), "Audit Considerations Relating to an Entity Using a Service Organisation".

[4] Framework for Assurance Engagements, paragraphs 9, 10 and 56.

[5] Paragraphs 13 and 53(k) of this SAE.

[6] Framework for Assurance Engagements, paragraph 4. Members attention is also drawn to ISAE 3000, paragraphs 4 and 6.

(b) Complementary user entity controls
Controls that the service organisation assumes, in the design of its service, will be implemented by user entities, and which, if necessary to achieve control objectives stated in the service organisation's description of its system, are identified in that description.

(c) Control objective
The aim or purpose of a particular aspect of controls. Control objectives relate to risks that controls seek to mitigate.

(d) Controls at the service organisation
Controls over the achievement of a control objective that is covered by the service auditor's assurance report. (Ref: Para. A3)

(e) Controls at a subservice organisation
Controls at a subservice organisation to provide reasonable assurance about the achievement of a control objective.

(f) Criteria
Benchmarks used to evaluate or measure a subject matter including, where relevant, benchmarks for presentation and disclosure.

(g) Inclusive method
Method of dealing with the services provided by a subservice organisation, whereby the service organisation's description of its system includes the nature of the services provided by a subservice organisation, and that subservice organisation's relevant control objectives and related controls are included in the service organisation's description of its system and in the scope of the service auditor's engagement. (Ref: Para. A4)

(h) Internal audit function
An appraisal activity established or provided as a service to the service organisation. Its functions include, amongst other things, examining, evaluating and monitoring the adequacy and effectiveness of internal control.

(i) Internal auditors
Those individuals who perform the activities of the internal audit function. Internal auditors may belong to an internal audit department or equivalent function.

(j) Report on the description and design of controls at a service organisation (referred to in this SAE as a "type 1 report") – A report that comprises:
(i) The service organisation's description of its system;
(ii) A written assertion by the service organisation that, in all material respects, and based on suitable criteria:
a. The description fairly presents the service organisation's system as designed and implemented as at the specified date;
b. The controls related to the control objectives stated in the service organisation's description of its system were suitably designed as at the specified date; and
(iii) A service auditor's assurance report that conveys reasonable assurance about the matters in (ii) a.-b. above.

(k) Report on the description, design and operating effectiveness of controls at a service organisation (referred to in this SAE as a "type 2 report") – A report that comprises:
(i) The service organisation's description of its system;
(ii) A written assertion by the service organisation that, in all material respects, and based on suitable criteria:
a. The description fairly presents the service organisation's system as designed and implemented throughout the specified period;
b. The controls related to the control objectives stated in the service organisation's description of its system were suitably designed throughout the specified period; and
c. The controls related to the control objectives stated in the service organisation's description of its system operated effectively throughout the specified period; and
(iii) A service auditor's assurance report that:
a. Conveys reasonable assurance about the matters in (ii)a.-c. above; and
b. Includes a description of the tests of controls and the results thereof.

(l) Service auditor
A professional accountant in public practice who, at the request of the service organisation, provides an assurance report on controls at a service organisation.

(m) Service organisation
A third-party organisation (or segment of a third-party organisation) that provides services to user entities that are likely to be relevant to user entities' internal control as it relates to financial reporting.

(n) Service organisation's system (or the system)
The policies and procedures designed and implemented by the service organisation to provide user entities with the services covered by the service auditor's assurance report. The service organisation's description of its system includes identification of: the services covered; the period, or in the case of a type 1 report, the date, to which the description relates; control objectives; and related control.

(o) Service organisation's assertion
The written assertion about the matters referred to in paragraph 9(k)(ii) (or paragraph 9(j)(ii) in the case of a type 1 report).

(p) Subservice organisation
A service organisation used by another service organisation to perform some of the services provided to user entities that are likely to be relevant to user entities' internal control as it relates to financial reporting.

(q) Test of controls
A procedure designed to evaluate the operating effectiveness of controls in achieving the control objectives stated in the service organisation's description of its system.

(r) User auditor
An auditor who audits and reports on the financial statements of a user entity[7].

(s) User entity
An entity that uses a service organisation.

Requirements

Framework for Assurance Engagements
10. The service auditor shall not represent compliance with this SAE unless the service auditor has complied with the requirements of this SAE and the requirements of the Framework for Assurance Engagements.

Ethical Requirements
11. The service auditor shall comply with relevant ethical requirements, including those pertaining to independence, relating to assurance engagements. (Ref: Para. A5)

Management and Those Charged with Governance
12. Where this SAE requires the service auditor to inquire of, request representations from, communicate with, or otherwise interact with the service organisation, the service auditor shall determine the appropriate person(s) within the service organisation's management or governance structure with whom to interact. This shall include consideration of which person(s) have the appropriate responsibilities for and knowledge of the matters concerned. (Ref: Para. A6)

Acceptance and Continuance
13. Before agreeing to accept, or continue, an engagement the service auditor shall:
(a) Determine whether:

[7] In the case of a subservice organisation, the service auditor of a service organisation that uses the services of the subservice organisation is also a user auditor.

(i) The service auditor has the capabilities and competence to perform the engagement; (Ref: Para. A7)
(ii) The criteria to be applied by the service organisation to prepare the description of its system will be suitable and available to user entities and their auditors; and
(iii) The scope of the engagement and the service organisation's description of its system will not be so limited that they are unlikely to be useful to user entities and their auditors.

(b) Obtain the agreement of the service organisation that it acknowledges and understands its responsibility:
(i) For the preparation of the description of its system, and accompanying service organisation's assertion, including the completeness, accuracy and method of presentation of that description and assertion; (Ref: Para. A8)
(ii) To have a reasonable basis for the service organisation's assertion accompanying the description of its system; (Ref: Para. A9)
(iii) For stating in the service organisation's assertion the criteria it used to prepare the description of its system;
(iv) For stating in the description of its system:
a. The control objectives; and,
b. Where they are specified by law or regulation, or another party (for example, a user group or a professional body), the party who specified them;
(v) For identifying the risks that threaten achievement of the control objectives stated in the description of its system, and designing and implementing controls to provide reasonable assurance that those risks will not prevent achievement of the control objectives stated in the description of its system, and therefore that the stated control objectives will be achieved; and (Ref: Para. A10)
(vi) To provide the service auditor with:
a. Access to all information, such as records, documentation and other matters, including service level agreements, of which the service organisation is aware that is relevant to the description of the service organisation's system and the accompanying service organisation's assertion;
b. Additional information that the service auditor may request from the service organisation for the purpose of the assurance engagement; and
c. Unrestricted access to persons within the service organisation from whom the service auditor determines it necessary to obtain evidence.

Acceptance of a Change in the Terms of the Engagement

14. If the service organisation requests a change in the scope of the engagement before the completion of the engagement, the service auditor shall be satisfied that there is a reasonable justification for the change. (Ref: Para. A11-A12)

Assessing the Suitability of the Criteria

15. As required by Framework for Assurance Engagements, the service auditor shall assess whether the service organisation has used suitable criteria in preparing the description of its system, in evaluating whether controls are suitably designed, and, in the case of a type 2 report, in evaluating whether controls are operating effectively.[8]

16. In assessing the suitability of the criteria to evaluate the service organisation's description of its system, the service auditor shall determine if the criteria encompass, at a minimum:

(a) Whether the description presents how the service organisation's system was designed and implemented, including, as appropriate:
(i) The types of services provided, including, as appropriate, classes of transactions processed;
(ii) The procedures, within both information technology and manual systems, by which services are provided, including, as appropriate, procedures by which transactions are initiated, recorded, processed, corrected as necessary, and transferred to the reports and other information prepared for user entities;
(iii) The related records and supporting information, including, as appropriate, accounting records, supporting information and specific accounts that are used to initiate, record, process and report transactions; this includes the correction of incorrect information and how information is transferred to the reports and other information prepared for user entities;
(iv) How the service organisation's system deals with significant events and conditions, other than transactions;
(v) The process used to prepare reports and other information for user entities;
(vi) The specified control objectives and controls designed to achieve those objectives;
(vii) Complementary user entity controls contemplated in the design of the controls; and
(viii) Other aspects of the service organisation's control environment, risk assessment process, information system (including the related business processes) and communication, control activities and monitoring controls that are relevant to the services provided.
(b) In the case of a type 2 report, whether the description includes relevant details of changes to the service organisation's system during the period covered by the description.
(c) Whether the description omits or distorts information relevant to the scope of the service organisation's system being described, while acknowledging that the description is prepared to meet the common needs of a broad range of user entities and their auditors and may not, therefore, include every aspect of the service organisation's system that each individual user entity and its auditor may consider important in its particular environment.

17. In assessing the suitability of the criteria to evaluate the design of controls, the service auditor shall determine if the criteria encompass, at a minimum, whether:
(a) The service organisation has identified the risks that threaten achievement of the control objectives stated in the description of its system; and
(b) The controls identified in that description would, if operated as described, provide reasonable assurance that those risks do not prevent the stated control objectives from being achieved.

18. In assessing the suitability of the criteria to evaluate the operating effectiveness of controls in providing reasonable assurance that the stated control objectives identified in the description will be achieved, the service auditor shall determine if the criteria encompass, at a minimum, whether the controls were consistently applied as designed throughout the specified period. This includes whether manual controls were applied by individuals who have the appropriate competence and authority. (Ref: Para. A13-A15)

[8] Framework for Assurance Engagements, paragraphs 33-36.

Materiality

19. When planning and performing the engagement, the service auditor shall consider materiality with respect to the fair presentation of the description, the suitability of the design of controls and, in the case of a type 2 report, the operating effectiveness of controls. (Ref: Para. A16-A18)

Obtaining an Understanding of the Service Organisation's System

20. The service auditor shall obtain an understanding of the service organisation's system, including controls that are included in the scope of the engagement. (Ref: Para. A19-A20)

Obtaining Evidence Regarding the Description

21. The service auditor shall obtain and read the service organisation's description of its system, and shall evaluate whether those aspects of the description included in the scope of the engagement are fairly presented, including whether: (Ref: Para. A21-A22)

(a) Control objectives stated in the service organisation's description of its system are reasonable in the circumstances; (Ref: Para. A23)
(b) Controls identified in that description were implemented;
(c) Complementary user entity controls, if any, are adequately described; and
(d) Services performed by a subservice organisation, if any, are adequately described, including whether the inclusive method or the carve-out method has been used in relation to them.

22. The service auditor shall determine, through other procedures in combination with inquiries, whether the service organisation's system has been implemented. Those other procedures shall include observation, and inspection of records and other documentation, of the manner in which the service organisation's system operates and controls are applied. (Ref: Para. A24)

Obtaining Evidence Regarding Design of Controls

23. The service auditor shall determine which of the controls at the service organisation are necessary to achieve the control objectives stated in the service organisation's description of its system, and shall assess whether those controls were suitably designed. This determination shall include: (Ref: Para. A25-A27)

(a) Identifying the risks that threaten the achievement of the control objectives stated in the service organisation's description of its system; and
(b) Evaluating the linkage of controls identified in the service organisation's description of its system with those risks.

Obtaining Evidence Regarding Operating Effectiveness of Controls

24. When providing a type 2 report, the service auditor shall test those controls that the service auditor has determined are necessary to achieve the control objectives stated in the service organisation's description of its system, and assess their operating effectiveness throughout the period. Evidence obtained in prior engagements about the satisfactory operation of controls in prior periods does not provide a basis for a reduction in testing, even if it is supplemented with evidence obtained during the current period. (Ref: Para. A28-A32)

25. When designing and performing tests of controls, the service auditor shall:

(a) Perform other procedures in combination with inquiry to obtain evidence about:
    (i) How the control was applied;
    (ii) The consistency with which the control was applied; and
    (iii) By whom or by what means the control was applied;
(b) Determine whether controls to be tested depend upon other controls (indirect controls) and, if so, whether it is necessary to obtain evidence supporting the operating effectiveness of those indirect controls; and (Ref: Para. A33-A34)
(c) Determine means of selecting items for testing that are effective in meeting the objectives of the procedure. (Ref: Para. A35-A36)

26. When determining the extent of tests of controls, the service auditor shall consider matters including the characteristics of the population to be tested, which includes the nature of controls, the frequency of their application (for example, monthly, daily, a number of times per day), and the expected rate of deviation.

Sampling

27. When the service auditor uses sampling, the service auditor shall: (Ref: Para. A35-A36)

(a) Consider the purpose of the procedure and the characteristics of the population from which the sample will be drawn when designing the sample;
(b) Determine a sample size sufficient to reduce sampling risk to an appropriately low level;
(c) Select items for the sample in such a way that each sampling unit in the population has a chance of selection;
(d) If a designed procedure is not applicable to a selected item, perform the procedure on a replacement item; and
(e) If unable to apply the designed procedures, or suitable alternative procedures, to a selected item, treat that item as a deviation.

Nature and Cause of Deviations

28. The service auditor shall investigate the nature and cause of any deviations identified and shall determine whether:

(a) Identified deviations are within the expected rate of deviation and are acceptable; therefore, the testing that has been performed provides an appropriate basis for concluding that the control is operating effectively throughout the specified period;
(b) Additional testing of the control or of other controls is necessary to reach a conclusion on whether the controls relative to a particular control objective are operating effectively throughout the specified period; or (Ref: Para. A25)
(c) The testing that has been performed provides an appropriate basis for concluding that the control did not operate effectively throughout the specified period.

29. In the extremely rare circumstances when the service auditor considers a deviation discovered in a sample to be an anomaly and no other controls have been identified that allow the service auditor to conclude that the relevant control objective is operating effectively throughout the specified period, the service auditor shall obtain a high degree of certainty that such deviation is not representative of the population. The service auditor shall obtain this degree of certainty by performing additional procedures to obtain sufficient appropriate evidence that the deviation does not affect the remainder of the population.

The Work of an Internal Audit Function[9]

Obtaining an Understanding of the Internal Audit Function

30. If the service organisation has an internal audit function, the service auditor shall obtain an understanding of the nature of the responsibilities of the internal audit function and of the activities performed in order to determine whether the internal audit function is likely to be relevant to the engagement. (Ref: Para. A37)

Determining Whether and to What Extent to Use the Work of the Internal Auditors

31. The service auditor shall determine:

(a) Whether the work of the internal auditors is likely to be adequate for purposes of the engagement; and
(b) If so, the planned effect of the work

[9] This SAE does not deal with instances when individual internal auditors provide direct assistance to the service auditor in carrying out audit procedures.

of the internal auditors on the nature, timing or extent of the service auditor's procedures.

32. In determining whether the work of the internal auditors is likely to be adequate for purposes of the engagement, the service auditor shall evaluate:

(a) The objectivity of the internal audit function;
(b) The technical competence of the internal auditors;
(c) Whether the work of the internal auditors is likely to be carried out with due professional care; and
(d) Whether there is likely to be effective communication between the internal auditors and the service auditor.

33. In determining the planned effect of the work of the internal auditors on the nature, timing or extent of the service auditor's procedures, the service auditor shall consider: (Ref: Para. A38)

(a) The nature and scope of specific work performed, or to be performed, by the internal auditors;
(b) The significance of that work to the service auditor's conclusions; and
(c) The degree of subjectivity involved in the evaluation of the evidence gathered in support of those conclusion

Using the Work of the Internal Audit Function

34. In order for the service auditor to use specific work of the internal auditors, the service auditor shall evaluate and perform procedures on that work to determine its adequacy for the service auditor's purposes. (Ref: Para. A39)

35. To determine the adequacy of specific work performed by the internal auditors for the service auditor's purposes, the service auditor shall evaluate whether:

(a) The work was performed by internal auditors having adequate technical training and proficiency;
(b) The work was properly supervised, reviewed and documented;
(c) Adequate evidence has been obtained to enable the internal auditors to draw reasonable conclusions;
(d) Conclusions reached are appropriate in the circumstances and any reports prepared by the internal auditors are consistent with the results of the work performed; and
(e) Exceptions relevant to the engagement or unusual matters disclosed by the internal auditors are properly resolved.

Effect on the Service Auditor's Assurance Report

36. If the work of the internal audit function has been used, the service auditor shall make no reference to that work in the section of the service auditor's assurance report that contains the service auditor's opinion. (Ref: Para. A40)

37. In the case of a type 2 report, if the work of the internal audit function has been used in performing tests of controls, that part of the service auditor's assurance report that describes the service auditor's tests of controls and the results thereof shall include a description of the internal auditor's work and of the service auditor's procedures with respect to that work. (Ref: Para. A41)

Written Representations

38. The service auditor shall request the service organisation to provide written representations: (Ref: Para. A42)

(a) That reaffirm the assertion accompanying the description of the system;
(b) That it has provided the service auditor with all relevant information and access agreed to;[10] and
(c) That it has disclosed to the service auditor any of the following of which it is aware:
    (i) Non-compliance with laws and regulations, fraud, or uncorrected deviations attributable to the service organisation that may affect one or more user entities;
    (ii) Design deficiencies in controls;
    (iii) Instances where controls have not operated as described; and
    (iv) Any events subsequent to the period covered by the service organisation's description of its system up to the date of the service auditor's assurance report that could have a significant effect on the service auditor's assurance report.

39. The written representations shall be in the form of a representation letter addressed to the service auditor. The date of the written representations shall be as near as practicable to, but not after, the date of the service auditor's assurance report.

40. If, having discussed the matter with the service auditor, the service organisation does not provide one or more of the written representations requested in accordance with paragraph 38(a) and (b) of this SAE, the service auditor shall disclaim an opinion. (Ref: Para. A43)

Other Information

41. The service auditor shall read the other information, if any, included in a document containing the service organisation's description of its system and the service auditor's assurance report, to identify material inconsistencies, if any, with that description. While reading the other information for the purpose of identifying material inconsistencies, the service auditor may become aware of an apparent misstatement of fact in that other information.

42. If the service auditor becomes aware of a material inconsistency or an apparent misstatement of fact in the other information, the service auditor shall discuss the matter with the service organisation. If the service auditor concludes that there is a material inconsistency or a misstatement of fact in the other information that the service organisation refuses to correct, the service auditor shall take further appropriate action. (Ref: Para. A44-A45)

Subsequent Events

43. The service auditor shall inquire whether the service organisation is aware of any events subsequent to the period covered by the service organisation's description of its system up to the date of the service auditor's assurance report that could have a significant effect on the service auditor's assurance report. If the service auditor is aware of such an event, and information about that event is not disclosed by the service organisation, the service auditor shall disclose it in the service auditor's assurance report.

44. The service auditor has no obligation to perform any procedures regarding the description of the service organisation's system, or the suitability of design or operating effectiveness of controls, after the date of the service auditor's assurance report.

Documentation

45. The service auditor shall prepare documentation that is sufficient to enable an experienced service auditor, having no previous connection with the engagement, to understand:

(a) The nature, timing, and extent of the procedures performed to comply with this SAE and applicable legal and regulatory requirements;
(b) The results of the procedures performed, and the evidence obtained; and
(c) Significant matters arising during the engagement, and the conclusions reached thereon and significant professional judgments made in reaching those conclusions.

46. In documenting the nature, timing and extent of procedures performed, the service auditor shall record:

(a) The identifying characteristics of the specific items or matters being tested;
(b) Who performed the work and the date such work was completed; and

[10] Paragraph 13(b)(vi) of this SAE.

(c) Who reviewed the work performed and the date and extent of such review.

47. If the service auditor uses specific work of the internal auditors, the service auditor shall document the conclusions reached regarding the evaluation of the adequacy of the work of the internal auditors, and the procedures performed by the service auditor on that work.

48. The service auditor shall document discussions of significant matters with the service organisation and others including the nature of the significant matters discussed and when and with whom the discussions took place.

49. If the service auditor has identified information that is inconsistent with the service auditor's final conclusion regarding a significant matter, the service auditor shall document how the service auditor addressed the inconsistency.

50. The service auditor shall assemble the documentation in an engagement file and complete the administrative process of assembling the final engagement file on a timely basis after the date of the service auditor's assurance report.[11]

51. After the assembly of the final engagement file has been completed, the service auditor shall not delete or discard documentation before the end of its retention period. (Ref: Para. A46)

52. If the service auditor finds it necessary to modify existing engagement documentation or add new documentation after the assembly of the final engagement file has been completed and that documentation does not affect the service auditor's report, the service auditor shall, regardless of the nature of the modifications or additions, document:

(a) The specific reasons for making them; and

(b) When and by whom they were made and reviewed.

Preparing the Service Auditor's Assurance Report

Content of the Service Auditor's Assurance Report

53. service auditor's assurance report shall include the following basic elements: (Ref: Para. A47)

(a) A title that clearly indicates the report is an independent service auditor's assurance report.

(b) An addressee.

(c) Identification of:

(i) The service organisation's description of its system, and the service organisation's assertion, which includes the matters described in paragraph 9(k)(ii) for a type 2 report, or paragraph 9(j)(ii) for a type 1 report.

(ii) Those parts of the service organisation's description of its system, if any, that are not covered by the service auditor's opinion.

(iii) If the description refers to the need for complementary user entity controls, a statement that the service auditor has not evaluated the suitability of design or operating effectiveness of complementary user entity controls, and that the control objectives stated in the service organisation's description of its system can be achieved only if complementary user entity controls are suitably designed or operating effectively, along with the controls at the service organisation.

(iv) If services are performed by a subservice organisation, the nature of activities performed by the subservice organisation as described in the service organisation's description of its system and whether the inclusive method or the carve-out method has been used in relation to them. Where the carve-out method has been used, a statement that the service organisation's description of its system excludes the control objectives and related controls at relevant subservice organisations, and that the service auditor's procedures do not extend to controls at the subservice organisation. Where the inclusive method has been used, a statement that the service organisation's description of its system includes control objectives and related controls at the subservice organisation, and that the service auditor's procedures extended to controls at the subservice organisation.

(d) Identification of the criteria, and the party specifying the control objectives.

(e) A statement that the report and, in the case of a type 2 report, the description of tests of controls are intended only for user entities and their auditors, who have a sufficient understanding to consider it, along with other information including information about controls operated by user entities themselves, when assessing the risks of material misstatements of user entities' financial statements. (Ref: Para. A48)

(f) A statement that the service organisation is responsible for:

(i) Preparing the description of its system, and the accompanying assertion, including the completeness, accuracy and method of presentation of that description and that assertion;

(ii) Providing the services covered by the service organisation's description of its system;

(iii) Stating the control objectives (where not identified by law or regulation, or another party, for example, a user group or a professional body); and

(iv) Designing and implementing controls to achieve the control objectives stated in the service organisation's description of its system.

(g) A statement that the service auditor's responsibility is to express an opinion on the service organisation's description, on the design of controls related to the control objectives stated in that description and, in the case of a type 2 report, on the operating effectiveness of those controls, based on the service auditor's procedures.

(h) A statement that the engagement was performed in accordance with SAE 3402, "Assurance Reports on Controls at a Service Organisation," which requires that the service auditor comply with ethical requirements and plan and perform procedures to obtain reasonable assurance about whether, in all material respects, the service organisation's description of its system is fairly presented and the controls are suitably designed and, in the case of a type 2 report, are operating effectively.

(i) A summary of the service auditor's procedures to obtain reasonable assurance and a statement of the service auditor's belief that the evidence obtained is sufficient and appropriate to provide a basis for the service auditor's opinion, and, in the case of a type 1 report, a statement that the service auditor has not performed any procedures regarding the operating effectiveness of controls and therefore no opinion is expressed thereon.

(j) A statement of the limitations of controls and, in the case of a type 2 report, of the risk of projecting to future periods any evaluation of the operating effectiveness of controls.

(k) The service auditor's opinion, expressed in the positive form, on whether, in all material respects, based on suitable criteria:

(i) In the case of a type 2 report:

a. The description fairly presents the service organisation's system that had been designed and implemented throughout the specified period;

[11] Standard on Quality Control (SQC) 1, paragraphs 74-76, provide further guidance.

b. The controls related to the control objectives stated in the service organisation's description of its system were suitably designed throughout the specified period; and
c. The controls tested, which were those necessary to provide reasonable assurance that the control objectives stated in the description were achieved, operated effectively throughout the specified period.

(ii) In the case of a type 1 report:
a. The description fairly presents the service organisation's system that had been designed and implemented as at the specified date; and
b. The controls related to the control objectives stated in the service organisation's description of its system were suitably designed as at the specified date.

(l) The date of the service auditor's assurance report, which shall be no earlier than the date on which the service auditor has obtained sufficient appropriate evidence on which to base the opinion.

(m) Practitioner's Signature - The report should be signed by the practitioner in his personal name. Where the firm is appointed, the report should be signed in the personal name of the engagement partner and in the name of the firm. The partner/proprietor signing the assurance report also needs to mention the membership number assigned by the Institute of Chartered Accountants of India (the Institute). If Partnership/proprietorship firm is appointed, the registration number of the firm, as may be allotted by the Institute, also needs to be mentioned in the assurance reports signed by them.

(n) **The place of signature** - the report should name specific location, which is ordinarily the city where the report is signed.

54. In the case of a type 2 report, the service auditor's assurance report shall include a separate section after the opinion, or an attachment, that describes the tests of controls that were performed and the results of those tests. In describing the tests of controls, the service auditor shall clearly state which controls were tested, identify whether the items tested represent all or a selection of the items in the population, and indicate the nature of the tests in sufficient detail to enable user auditors to determine the effect of such tests on their risk assessments. If deviations have been identified, the service auditor shall include the extent of testing performed that led to identification of the deviations (including the sample size where sampling has been used), and the number and nature of the deviations noted. The service auditor shall report deviations even if, on the basis of tests performed, the service auditor has concluded that the related control objective was achieved. (Ref: Para. A18 and A49)

Modified Opinions

55. If the service auditor concludes that: (Ref: Para. A50-A52)

(a) The service organisation's description does not fairly present, in all material respects, the system as designed and implemented;
(b) The controls related to the control objectives stated in the description were not suitably designed, in all material respects;
(c) In the case of a type 2 report, the controls tested, which were those necessary to provide reasonable assurance that the control objectives stated in the service organisation's description of its system were achieved, did not operate effectively, in all material respects; or
(d) The service auditor is unable to obtain sufficient appropriate evidence, the service auditor's opinion shall be modified, and the service auditor's assurance report shall contain a clear description of all the reasons for the modification.

Other Communication Responsibilities

56. If the service auditor becomes aware of non-compliance with laws and regulations, fraud, or uncorrected errors attributable to the service organisation that are not clearly trivial and may affect one or more user entities, the service auditor shall determine whether the matter has been communicated appropriately to affected user entities. If the matter has not been so communicated and the service organisation is unwilling to do so, the service auditor shall take appropriate action. (Ref: Para. A53)

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Application and Other Explanatory Material

Scope of this SAE (Ref: Para. 1 and 3)

A1. Internal control is a process designed to provide reasonable assurance regarding the achievement of objectives related to the reliability of financial reporting, effectiveness and efficiency of operations and compliance with applicable laws and regulations. Controls related to a service organisation's operations and compliance objectives may be relevant to a user entity's internal control as it relates to financial reporting. Such controls may pertain to assertions about presentation and disclosure relating to account balances, classes of transactions or disclosures, or may pertain to evidence that the user auditor evaluates or uses in applying auditing procedures. For example, a payroll processing service organisation's controls related to the timely remittance of payroll deductions to government authorities may be relevant to a user entity as late remittances could incur interest and penalties that would result in a liability for the user entity. Similarly, a service organisation's controls over the acceptability of investment transactions from a regulatory perspective may be considered relevant to a user entity's presentation and disclosure of transactions and account balances in its financial statements. The determination of whether controls at a service organisation related to operations and compliance are likely to be relevant to user entities' internal control as it relates to financial reporting is a matter of professional judgment, having regard to the control objectives set by the service organisation and the suitability of the criteria.

A2. The service organisation may not be able to assert that the system is suitably designed when, for example, the service organisation is operating a system that has been designed by a user entity or is stipulated in a contract between a user entity and the service organisation. Because of the inextricable link between the suitable design of controls and their operating effectiveness, the absence of an assertion with respect to the suitability of design will likely preclude the service auditor from concluding that the controls provide reasonable assurance that the control objectives have been met and thus from opining on the operating effectiveness of controls. As an alternative, the practitioner may choose to accept an agreed-upon procedures engagement to perform tests of controls, or an assurance engagement to conclude on whether, based on tests of controls, the controls have operated as described.

Definitions (Ref: Para. 9(d) and 9(g))

A3. The definition of "controls at the service organisation" includes aspects of user entities' information systems maintained by the service organisation, and may also include aspects of one or more of the other components of internal control at a service organisation. For example, it may include aspects of a service organisation's control environment, monitoring, and control activities when they relate to the services provided. It does not, however, include controls at a service organisation that are not related to the achievement of the control objectives stated in the service organisation's description of its system, for example, controls related to the preparation of the service organisation's own financial

statements.

A4. When the inclusive method is used, the requirements in this SAE also apply to the services provided by the subservice organisation, including obtaining agreement regarding the matters in paragraph 13(b)(i)-(v) as applied to the subservice organisation rather than the service organisation. Performing procedures at the subservice organisation entails coordination and communication between the service organisation, the subservice organisation, and the service auditor. The inclusive method generally is feasible only if the service organisation and the subservice organisation are related, or if the contract between the service organisation and the subservice organisation provides for its use.

Ethical Requirements (Ref: Para. 11)

A5. The service auditor is subject to relevant independence requirements, which ordinarily comprise Code of Ethics of the Institute In performing an engagement in accordance with this SAE, the Code of Ethics of the ICAI does not require the service auditor to be independent from each user entity.

Management and Those Charged with Governance (Ref: Para. 12)

A6. Management and governance structures vary by jurisdiction and by entity, reflecting influences such as different cultural and legal backgrounds, and size and ownership characteristics. Such diversity means that it is not possible for this SAE to specify for all engagements the person(s) with whom the service auditor is to interact regarding particular matters. For example, the service organisation may be a segment of a third-party organisation and not a separate legal entity. In such cases, identifying the appropriate management personnel or those charged with governance from whom to request written representations may require the exercise of professional judgment.

Acceptance and Continuance

Capabilities and Competence to Perform the Engagement (Ref: Para. 13(a)(i))

A7. Relevant capabilities and competence to perform the engagement include matters such as the following:

- Knowledge of the relevant industry;
- An understanding of information technology and systems;
- Experience in evaluating risks as they relate to the suitable design of controls; and
- Experience in the design and execution of tests of controls and the evaluation of the results.

Service Organisation's Assertion (Ref: Para. 13(b)(i))

A8. Refusal, by a service organisation, to provide a written assertion, subsequent to an agreement by the service auditor to accept, or continue, an engagement, represents a scope limitation that causes the service auditor to withdraw from the engagement. If law or regulation does not allow the service auditor to withdraw from the engagement, the service auditor disclaims an opinion.

Reasonable Basis for Service Organisation's Assertion (Ref: Para. 13(b)(ii))

A9. In the case of a type 2 report, the service organisation's assertion includes a statement that the controls related to the control objectives stated in the service organisation's description of its system operated effectively throughout the specified period. This assertion may be based on the service organisation's monitoring activities. Monitoring of controls is a process to assess the effectiveness of controls over time. It involves assessing the effectiveness of controls on a timely basis, identifying and reporting deficiencies to appropriate individuals within the service organisation, and taking necessary corrective actions. The service organisation accomplishes monitoring of controls through ongoing activities, separate evaluations, or a combination of both. The greater the degree and effectiveness of ongoing monitoring activities, the less need for separate evaluations. Ongoing monitoring activities are often built into the normal recurring activities of a service organisation and include regular management and supervisory activities. Internal auditors or personnel performing similar functions may contribute to the monitoring of a service organisation's activities. Monitoring activities may also include using information communicated by external parties, such as customer complaints and regulator comments, which may indicate problems or highlight areas in need of improvement. The fact that the service auditor will report on the operating effectiveness of controls is not a substitute for the service organisation's own processes to provide a reasonable basis for its assertion.

Identification of Risks (Ref: Para. 13(b)(iv))

A10. As noted in paragraph 9(c), control objectives relate to risks that controls seek to mitigate. For example, the risk that a transaction is recorded at the wrong amount or in the wrong period can be expressed as a control objective that transactions are recorded at the correct amount and in the correct period. The service organisation is responsible for identifying the risks that threaten achievement of the control objectives stated in the description of its system. The service organisation may have a formal or informal process for identifying relevant risks. A formal process may include estimating the significance of identified risks, assessing the likelihood of their occurrence, and deciding about actions to address them. However, since control objectives relate to risks that controls seek to mitigate, thoughtful identification of control objectives when designing and implementing the service organisation's system may itself comprise an informal process for identifying relevant risks.

Acceptance of a Change in the Terms of the Engagement (Ref: Para. 14)

A11. A request to change the scope of the engagement may not have a reasonable justification when, for example, the request is made to exclude certain control objectives from the scope of the engagement because of the likelihood that the service auditor's opinion would be modified; or the service organisation will not provide the service auditor with a written assertion and the request is made to perform the engagement under Framework for Assurance Engagements.

A12. A request to change the scope of the engagement may have a reasonable justification when, for example, the request is made to exclude from the engagement a subservice organisation when the service organisation cannot arrange for access by the service auditor, and the method used for dealing with the services provided by that subservice organisation is changed from the inclusive method to the carve-out method.

Assessing the Suitability of the Criteria (Ref: Para. 15-18)

A13. Criteria need to be available to the intended users to allow them to understand the basis for the service organisation's assertion about the fair presentation of its description of the system, the suitability of the design of controls and, in the case of a type 2 report, the operating effectiveness of the controls related to the control objectives.

A14. Framework for Assurance Engagements requires the service auditor, among other things, to assess the suitability of criteria, and the appropriateness of the subject matter.[12] The subject matter is the underlying condition of interest to intended users of an assurance report. The following table identifies the subject matter and minimum criteria for each of the opinions in type 2 and type 1 reports.

A15. Paragraph 16(a) identifies a number of elements that are included in the service organisation's description of its system as appropriate. These elements may not be appropriate if the system being described is not a system that processes transactions, for example, if the system relates to

[12] Framework for Assurance Engagements , paragraph 16(b). Members attention is also drawn to ISAE 3000, paragraphs 18-19.

	Subject matter	Criteria	Comment	
Opinion about the fair presentation of the description of the service organisation's system (type 1 and type 2 reports)	The service organisation's system that is likely to be relevant to user entities' internal control as it relates to financial reporting and is covered by the service auditor's assurance report.	The description is fairly presented if it: (a) presents how the service organisation's system was designed and implemented including, as appropriate, the matters identified in paragraph 16(a)(i)-(viii); (b) in the case of a type 2 report, includes relevant details of changes to the service organisation's system during the period covered by the description; and (c) does not omit or distort information relevant to the scope of the service organisation's system being described, while acknowledging that the description is prepared to meet the common needs of a broad range of user entities and may not, therefore, include every aspect of the service organisation's system that each individual user entity may consider important in its own particular environment.	The specific wording of the criteria for this opinion may need to be tailored to be consistent with criteria established by, for example, law or regulation, user groups, or a professional body. Examples of criteria for this opinion are provided in the illustrative service organisation's assertion in Appendix 1. Paragraphs A21-A24 offer further guidance on determining whether these criteria are met. (The subject matter information[13] for this opinion is the service organisation's description of its system and the service organisation's assertion that the description is fairly presented.)	
Opinion about suitability of design, and operating effectiveness (type 2 reports)	The suitability of the design and operating effectiveness of those controls that are necessary to achieve the control objectives stated in the service organisation's description of its system.	The controls are suitably designed and operating effectively if: (a) the service organisation has identified the risks that threaten achievement of the control objectives stated in the description of its system; (b) the controls identified in that description would, if operated as described, provide reasonable assurance that those risks do not prevent the stated control objectives from being achieved; and (c) the controls were consistently applied as designed throughout the specified period. This includes whether manual controls were applied by individuals who have the appropriate competence and authority.	When the criteria for this opinion are met, controls will have provided reasonable assurance that the related control objectives were achieved throughout the specified period. (The subject matter information for this opinion is the service organisation's assertion that controls are suitably designed and that they are operating effectively.)	The control objectives, which are stated in the service organisation's description of its system, are part of the criteria for these opinions. The stated control objectives will differ from engagement to engagement. If, as part of forming the opinion on the description, the service auditor concludes the stated control objectives are not fairly presented then those control objectives would not be suitable as part of the criteria for forming an opinion on either the design or operating effectiveness of controls.
Opinion about suitability of design (type 1 reports)	The suitability of the design of those controls that are necessary to achieve the control objectives stated in the service organisation's description of its system.	The controls are suitably designed if: (a) the service organisation has identified the risks that threaten achievement of the control objectives stated in the description of its system; and (b) the controls identified in that description would, if operated as described, provide reasonable assurance that those risks do not prevent the stated control objectives from being achieved.	Meeting these criteria does not, of itself, provide any assurance that the related control objectives were achieved because no assurance has been obtained about the operation of controls. (The subject matter information for this opinion is the service organisation's assertion that controls are suitably designed.)	

general controls over the hosting of an IT application but not the controls embedded in the application itself.

Materiality (Ref: Para. 19 and 54)

A16. In an engagement to report on controls at a service organisation, the concept of materiality relates to the system being reported on, not the financial statements of user entities. The service auditor plans and performs procedures to determine whether the service organisation's description of its system is fairly presented in all material respects, whether controls at the service organisation are suitably designed in all material respects and, in the case of a type 2 report, whether controls at the service organisation are operating effectively in all material respects. The concept of materiality takes into account that the service auditor's assurance report provides information about the service organisation's system to meet the common information needs of a broad range of user entities and their auditors who have an understanding of the manner in which that system has been used.

A17. Materiality with respect to the fair presentation of the service organisation's description of its system, and with respect to the design of controls, includes primarily the consideration of qualitative factors, for example: whether the description includes the significant aspects of processing significant transactions; whether the description omits or distorts relevant information; and the ability of controls, as designed, to provide reasonable assurance that control objectives would be achieved. Materiality with respect to the service auditor's opinion on the operating effectiveness of controls includes the consideration of both quantitative and qualitative factors, for example, the tolerable rate and observed rate of

[13] The "subject matter information" is the outcome of the evaluation or measurement of the subject matter.

deviation (a quantitative matter), and the nature and cause of any observed deviation (a qualitative matter).

A18. The concept of materiality is not applied when disclosing, in the description of the tests of controls, the results of those tests where deviations have been identified. This is because, in the particular circumstances of a specific user entity or user auditor, a deviation may have significance beyond whether or not, in the opinion of the service auditor, it prevents a control from operating effectively. For example, the control to which the deviation relates may be particularly significant in preventing a certain type of error that may be material in the particular circumstances of a user entity's financial statements.

Obtaining an Understanding of the Service Organisation's System (Ref: Para. 20)

A19. Obtaining an understanding of the service organisation's system, including controls, included in the scope of the engagement, assists the service auditor in:

- Identifying the boundaries of that system, and how it interfaces with other systems.
- Assessing whether the service organisation's description fairly presents the system that has been designed and implemented.
- Determining which controls are necessary to achieve the control objectives stated in the service organisation's description of its system.
- Assessing whether controls were suitably designed.
- Assessing, in the case of a Type 2 Report, whether controls were operating effectively.

A20. The service auditor's procedures to obtain this understanding may include:

- Inquiring of those within the service organisation who, in the service auditor's judgment, may have relevant information.
- Observing operations and inspecting documents, reports, printed and electronic records of transaction processing.
- Inspecting a selection of agreements between the service organisation and user entities to identify their common terms.
- Reperforming control procedures.

Obtaining Evidence Regarding the Description (Ref: Para. 21-22)

A21. Considering the following questions may assist the service auditor in determining whether those aspects of the description included in the scope of the engagement are fairly presented in all material respects:

- Does the description address the major aspects of the service provided (within the scope of the engagement) that could reasonably be expected to be relevant to the common needs of a broad range of user auditors in planning their audits of user entities' financial statements?
- Is the description prepared at a level of detail that could reasonably be expected to provide a broad range of user auditors with sufficient information to obtain an understanding of internal control in accordance with SA 315?[14] The description need not address every aspect of the service organisation's processing or the services provided to user entities, and need not be so detailed as to potentially allow a reader to compromise security or other controls at the service organisation.
- Is the description prepared in a manner that does not omit or distort information that may affect the common needs of a broad range of user auditors' decisions, for example, does the description contain any significant omissions or inaccuracies in processing of which the service auditor is aware?
- Where some of the control objectives stated in the service organisation's description of its system have been excluded from the scope of the engagement, does the description clearly identify the excluded objectives?
- Have the controls identified in the description been implemented?
- Are complementary user entity controls, if any, described adequately? In most cases, the description of control objectives is worded such that the control objectives are capable of being achieved through effective operation of controls implemented by the service organisation alone. In some cases, however, the control objectives stated in the service organisation's description of its system cannot be achieved by the service organisation alone because their achievement requires particular controls to be implemented by user entities. This may be the case where, for example, the control objectives are specified by a regulatory authority. When the description does include complementary user entity controls, the description separately identifies those controls along with the specific control objectives that cannot be achieved by the service organisation alone.
- If the inclusive method has been used, does the description separately identify controls at the service organisation and controls at the subservice organisation? If the carve-out method is used, does the description identify the functions that are performed by the subservice organisation? When the carve-out method is used, the description need not describe the detailed processing or controls at the subservice organisation.

A22. The service auditor's procedures to evaluate the fair presentation of the description may include:

- Considering the nature of user entities and how the services provided by the service organisation are likely to affect them, for example, whether user entities are from a particular industry and whether they are regulated by government agencies.
- Reading standard contracts, or standard terms of contracts, (if applicable) with user entities to gain an understanding of the service organisation's contractual obligations.
- Observing procedures performed by service organisation personnel.
- Reviewing the service organisation's policy and procedure manuals and other systems documentation, for example, flowcharts and narratives.

A23. Paragraph 21(a) requires the service auditor to evaluate whether the control objectives stated in the service organisation's description of its system are reasonable in the circumstances.

Considering the following questions may assist the service auditor in this evaluation:

- Have the stated control objectives been designated by the service organisation or by outside parties such as a regulatory authority, a user group, or a professional body that follows a transparent due process?
- Where the stated control objectives have been specified by the service organisation, do they relate to the types of assertions commonly embodied in the broad range of user entities' financial statements to which controls at the service organisation could reasonably be expected to relate? Although the service auditor ordinarily will not be able to determine how controls at a service organisation specifically relate to the assertions embodied in individual user entities' financial statements, the service auditor's understanding of the nature of the service organisation's system, including controls, and services being provided is used to identify the types of assertions to which those controls are likely to relate.
- Where the stated control objectives have been specified by the service organisation, are they complete? A complete set of control objectives can

[14] SA 315, "Identifying and Assessing the Risks of Material Misstatement Through Understanding the Entity and Its Environment."

provide a broad range of user auditors with a framework to assess the effect of controls at the service organisation on the assertions commonly embodied in user entities' financial statements.

A24. The service auditor's procedures to determine whether the service organisation's system has been implemented may be similar to, and performed in conjunction with, procedures to obtain an understanding of that system. They may also include tracing items through the service organisation's system and, in the case of a type 2 report, specific inquiries about changes in controls that were implemented during the period. Changes that are significant to user entities or their auditors are included in the description of the service organisation's system.

Obtaining Evidence Regarding Design of Controls (Ref: Para. 23 and 28(b))

A25. From the viewpoint of a user entity or a user auditor, a control is suitably designed if, individually or in combination with other controls, it would, when complied with satisfactorily, provide reasonable assurance that material misstatements are prevented, or detected and corrected. A service organisation or a service auditor, however, is not aware of the circumstances at individual user entities that would determine whether or not a misstatement resulting from a control deviation is material to those user entities. Therefore, from the viewpoint of a service auditor, a control is suitably designed if, individually or in combination with other controls, it would, when complied with satisfactorily, provide reasonable assurance that control objectives stated in the service organisation's description of its system are achieved.

A26. A service auditor may consider using flowcharts, questionnaires, or decision tables to facilitate understanding the design of the controls.

A27. Controls may consist of a number of activities directed at the achievement of a control objective. Consequently, if the service auditor evaluates certain activities as being ineffective in achieving a particular control objective, the existence of other activities may allow the service auditor to conclude that controls related to the control objective are suitably designed.

Obtaining Evidence Regarding Operating Effectiveness of Controls

Assessing Operating Effectiveness (Ref: Para. 24)

A28. From the viewpoint of a user entity or a user auditor, a control is operating effectively if, individually or in combination with other controls, it provides reasonable assurance that material misstatements, whether due to fraud or error, are prevented, or detected and corrected. A service organisation or a service auditor, however, is not aware of the circumstances at individual user entities that would determine whether a misstatement resulting from a control deviation had occurred and, if so, whether it is material. Therefore, from the viewpoint of a service auditor, a control is operating effectively if, individually or in combination with other controls, it provides reasonable assurance that control objectives stated in the service organisation's description of its system are achieved. Similarly, a service organisation or a service auditor is not in a position to determine whether any observed control deviation would result in a material misstatement from the viewpoint of an individual user entity.

A29. Obtaining an understanding of controls sufficient to opine on the suitability of their design is not sufficient evidence regarding their operating effectiveness, unless there is some automation that provides for the consistent operation of the controls as they were designed and implemented. For example, obtaining information about the implementation of a manual control at a point in time does not provide evidence about operation of the control at other times. However, because of the inherent consistency of IT processing, performing procedures to determine the design of an automated control, and whether it has been implemented, may serve as evidence of that control's operating effectiveness, depending on the service auditor's assessment and testing of other controls, such as those over program changes.

A30. To be useful to user auditors, a type 2 report ordinarily covers a minimum period of six months. If the period is less than six months, the service auditor may consider it appropriate to describe the reasons for the shorter period in the service auditor's assurance report. Circumstances that may result in a report covering a period of less than six months include when (a) the service auditor is engaged close to the date by which the report on controls is to be issued; (b) the service organisation (or a particular system or application) has been in operation for less than six months; or (c) significant changes have been made to the controls and it is not practicable either to wait six months before issuing a report or to issue a report covering the system both before and after the changes.

A31. Certain control procedures may not leave evidence of their operation that can be tested at a later date and, accordingly, the service auditor may find it necessary to test the operating effectiveness of such control procedures at various times throughout the reporting period.

A32. The service auditor provides an opinion on the operating effectiveness of controls throughout each period, therefore, sufficient appropriate evidence about the operation of controls during the current period is required for the service auditor to express that opinion. Knowledge of deviations observed in prior engagements may, however, lead the service auditor to increase the extent of testing during the current period.

Testing of Indirect Controls (Ref: Para. 25(b))

A33. In some circumstances, it may be necessary to obtain evidence supporting the effective operation of indirect controls. For example, when the service auditor decides to test the effectiveness of a review of exception reports detailing sales in excess of authorised credit limits, the review and related follow up is the control that is directly of relevance to the service auditor. Controls over the accuracy of the information in the reports (for example, the general IT controls) are described as "indirect" controls.

A34. Because of the inherent consistency of IT processing, evidence about the implementation of an automated application control, when considered in combination with evidence about the operating effectiveness of the service organisation's general controls (in particular, change controls), may also provide substantial evidence about its operating effectiveness.

Means of Selecting Items for Testing (Ref: Para. 25(c) and 27)

A35. The means of selecting items for testing available to the service auditor are:

(a) Selecting all items (100% examination). This may be appropriate for testing controls that are applied infrequently, for example, quarterly, or when evidence regarding application of the control makes 100% examination efficient;

(b) Selecting specific items. This may be appropriate where 100% examination would not be efficient and sampling would not be effective, such as testing controls that are not applied sufficiently frequently to render a large population for sampling, for example, controls that are applied monthly or weekly; and

(c) Sampling. This may be appropriate for testing controls that are applied frequently in a uniform manner and which leave documentary evidence of their application.

A36. While selective examination of specific items will often be an efficient means of obtaining evidence, it does not constitute sampling. The results of procedures applied to items selected in this way cannot be projected to the entire population;

accordingly, selective examination of specific items does not provide evidence concerning the remainder of the population. Sampling, on the other hand, is designed to enable conclusions to be drawn about an entire population on the basis of testing a sample drawn from it.

The Work of an Internal Audit Function

Obtaining an Understanding of the Internal Audit Function (Ref: Para. 30)

A37. An internal audit function may be responsible for providing analyses, evaluations, assurances, recommendations, and other information to management and those charged with governance. An internal audit function at a service organisation may perform activities related to the service organisation's own system of internal control, or activities related to the services and systems, including controls, that the service organisation is providing to user entities.

Determining Whether and to What Extent to Use the Work of the Internal Auditors (Ref: Para. 33)

A38. In determining the planned effect of the work of the internal auditors on the nature, timing or extent of the service auditor's procedures, the following factors may suggest the need for different or less extensive procedures than would otherwise be the case:

- The nature and scope of specific work performed, or to be performed, by the internal auditors is quite limited.
- The work of the internal auditors relates to controls that are less significant to the service auditor's conclusions.
- The work performed, or to be performed, by the internal auditors does not require subjective or complex judgments.

Using the Work of the Internal Audit Function (Ref: Para. 34)

A39. The nature, timing and extent of the service auditor's procedures on specific work of the internal auditors will depend on the service auditor's assessment of the significance of that work to the service auditor's conclusions (for example, the significance of the risks that the controls tested seek to mitigate), the evaluation of the internal audit function and the evaluation of the specific work of the internal auditors Such procedures may include:

- Examination of items already examined by the internal auditors;
- Examination of other similar items; and
- Observation of procedures performed by the internal auditors.

Effect on the Service Auditor's Assurance Report (Ref: Para. 36-37)

A40. Irrespective of the degree of autonomy and objectivity of the internal audit function, such function is not independent of the service organisation as is required of the service auditor when performing the engagement. The service auditor has sole responsibility for the opinion expressed in the service auditor's assurance report, and that responsibility is not reduced by the service auditor's use of the work of the internal auditors.

A41. The service auditor's description of work performed by the internal audit function may be presented in a number of ways, for example:

- By including introductory material to the description of tests of controls indicating that certain work of the internal audit function was used in performing tests of controls.
- Attribution of individual tests to internal audit.

Written Representations (Ref: Para. 38 and 40)

A42. The written representations required by paragraph 38 are separate from, and in addition to, the service organisation's assertion, as defined at paragraph 9(o).

A43. If the service organisation does not provide the written representations requested in accordance with paragraph 38(c) of this SAE, it may be appropriate for the service auditor's opinion to be modified in accordance with paragraph 55(d) of this SAE.

Other Information (Ref: Para. 42)

A44. The Code of Ethics of the ICAI requires that a service auditor not be associated with information where the service auditor believes that the information:

(a) Contains a materially false or misleading statement;
(b) Contains statements or information furnished negligently; or
(c) Omits or obscures information required to be included where such omission or obscurity would be misleading.[15]

If other information included in a document containing the service organisation's description of its system and the service auditor's assurance report contains future-oriented information such as recovery or contingency plans, or plans for modifica-tions to the system that will address deviations identified in the service auditor's assurance report, or claims of a promotional nature that cannot be reasonably substantiated, the service auditor may request that information be removed or restated.

A45. If the service organisation refuses to remove or restate the other information, further actions that may be appropriate include, for example:

- Requesting the service organisation to consult with its legal counsel as to the appropriate course of action.
- Describing the material inconsistency or material misstatement of fact in the assurance report.
- Withholding the assurance report until the matter is resolved.
- Withdrawing from the engagement.

Documentation (Ref: Para. 51)

A46. SQC 1 (or national requirements that are at least as demanding) requires firms to establish policies and procedures for the timely completion of the assembly of engagement files.[16] An appropriate time limit within which to complete the assembly of the final engagement file is ordinarily not more than 60 days after the date of the service auditor's report.[17]

Preparing the Service Auditor's Assurance Report

Content of the Service Auditor's Assurance Report (Ref: Para. 53)

A47. Illustrative examples of service auditors' assurance reports and related service organisations' assertions are contained in **Appendices 1 and 2**.

Intended Users and Purposes of the Service Auditor's Assurance Report (Ref: Para. 53(e))

A48. The criteria used for engagements to report on controls at a service organisation are relevant only for the purposes of providing information about the service organisation's system, including controls, to those who have an understanding of how the system has been used for financial reporting by user entities. Accordingly this is stated in the service auditor's assurance report. In addition, the service auditor may consider it appropriate to include wording that specifically restricts distribution of the assurance report other than to intended users, its use by others, or its use for other purposes.

Description of the Tests of Controls (Ref: Para. 54)

A49. In describing the nature of the tests of controls for a type 2 report, it assists readers of the service auditor's assurance report if the service auditor includes:

- The results of all tests where deviations have been identified, even if other controls have been identified that allow the service auditor to conclude that the relevant control objective has been achieved or the control tested has subsequently been removed from the service organisation's description of its system.

[15] Code of Ethics of the ICAI, paragraph 110.2.
[16] SQC 1, paragraph 74.
[17] SQC 1, paragraph 75.

- Information about causative factors for identified deviations, to the extent the service auditor has identified such factors.

Modified Opinions (Ref: Para. 55)

A50. Illustrative examples of elements of modified service auditor's assurance reports are contained in **Appendix 3**.

A51. Even if the service auditor has expressed an adverse opinion or disclaimed an opinion, it may be appropriate to describe in the basis for modification paragraph the reasons for any other matters of which the service auditor is aware that would have required a modification to the opinion, and the effects thereof.

A52. When expressing a disclaimer of opinion because of a scope limitation, it is not ordinarily appropriate to identify the procedures that were performed nor include statements describing the characteristics of a service auditor's engagement; to do so might overshadow the disclaimer of opinion.

Other Communication Responsibilities (Ref: Para. 56)

A53. Appropriate actions to respond to the circumstances identified in paragraph 56 may include:

- Obtaining legal advice about the consequences of different courses of action.
- Communicating with those charged with governance of the service organisation.
- Communicating with third parties (for example, a regulator) when required to do so.
- Modifying the service auditor's opinion, or adding an Other Matter paragraph.
- Withdrawing from the engagement.

Appendix 1
(Ref. Para. A47)

Example Service Organisation's Assertions

The following examples of service organisation's assertions are for guidance only and are not intended to be exhaustive or applicable to all situations.

Example 1: Type 2 Service Organisation's Assertion

Assertion by the Service Organisation

The accompanying description has been prepared for customers who have used [the type or name of] system and their auditors who have a sufficient understanding to consider the description, along with other information including information about controls operated by customers themselves, when assessing the risks of material misstatements of customers' financial statements. [Entity's name] confirms that:

(a) The accompanying description at pages [bb-cc] fairly presents [the type or name of] system for processing customers' transactions throughout the period [date] to [date]. The criteria used in making this assertion were that the accompanying description:

(i) Presents how the system was designed and implemented, including:
- The types of services provided, including, as appropriate, classes of transactions processed.
- The procedures, within both information technology and manual systems, by which those transactions were initiated, recorded, processed, corrected as necessary, and transferred to the reports prepared for customers.
- The related accounting records, supporting information and specific accounts that were used to initiate, record, process and report transactions; this includes the correction of incorrect information and how information was transferred to the reports prepared for customers.
- How the system dealt with significant events and conditions, other than transactions.
- The process used to prepare reports for customers.
- Relevant control objectives and controls designed to achieve those .
- Controls that we assumed, in the design of the system, would be implemented by user entities, and which, if necessary to achieve control objectives stated in the accompanying description, are identified in the description along with the specific control objectives that cannot be achieved by ourselves alone.
- Other aspects of our control environment, risk assessment process, information system (including the related business processes) and communication, control activities and monitoring controls that were relevant to processing and reporting customers' transactions.

(ii) Includes relevant details of changes to the service organisation's system during the period [date] to [date].

(iii) Does not omit or distort information relevant to the scope of the system being described, while acknowledging that the description is prepared to meet the common needs of a broad range of customers and their auditors and may not, therefore, include every aspect of the system that each individual customer may consider important in its own particular environment.

(b) The controls related to the control objectives stated in the accompanying description were suitably designed and operated effectively throughout the period [date] to [date]. The criteria used in making this assertion were that:

(i) The risks that threatened achievement of the control objectives stated in the description were identified;

(ii) The identified controls would, if operated as described, provide reasonable assurance that those risks did not prevent the stated control objectives from being achieved; and

(iii) The controls were consistently applied as designed, including that manual controls were applied by individuals who have the appropriate competence and authority, throughout the period [date] to [date].

Example 2: Type 1 Service Organisation's Assertion

The accompanying description has been prepared for customers who have used [the type or name of] system and their auditors who have a sufficient understanding to consider the description, along with other information including information about controls operated by customers themselves, when obtaining an understanding of customers' information systems relevant to financial reporting. [Entity's name] confirms that:

(a) The accompanying description at pages [bb-cc] fairly presents [the type or name of] system for processing customers' transactions as at [date]. The criteria used in making this assertion were that the accompanying description:

(i) Presents how the system was designed and implemented, including:
- The types of services provided, including, as appropriate, classes of transactions processed.
- The procedures, within both information technology and manual systems, by which those transactions were initiated, recorded, processed, corrected as necessary, and transferred to the reports prepared for customers.

- The related accounting records, supporting information and specific accounts that were used to initiate, record, process and report transactions; this includes the correction of incorrect information and how information is transferred to the reports prepared customers.
- How the system dealt with significant events and conditions, other than transactions.
- The process used to prepare reports for customers.
- Relevant control objectives and controls designed to achieve those objectives.
- Controls that we assumed, in the design of the system, would be implemented by user entities, and which, if necessary to achieve control objectives stated in the accompanying description, are identified in the description along with the specific control objectives that cannot be achieved by ourselves alone.
- Other aspects of our control environment, risk assessment process, information system (including the related business processes) and communication, control activities and monitoring controls that were relevant to processing and reporting customers' transactions.

(ii) Does not omit or distort information relevant to the scope of the system being described, while acknowledging that the description is prepared to meet the common needs of a broad range of customers and their auditors and may not, therefore, include every aspect of the system that each individual customer may consider important in its own particular environment.

(b) The controls related to the control objectives stated in the accompanying description were suitably designed as at [date]. The criteria used in making this assertion were that:

(i) The risks that threatened achievement of the control objectives stated in the description were identified; and

(ii) The identified controls would, if operated as described, provide reasonable assurance that those risks did not prevent the stated control objectives from being achieved.

Appendix 2

(Ref. Para. A47)

Example Service Auditor's Assurance Reports

The following examples of reports are for guidance only and are not intended to be exhaustive or applicable to all situations.

Example 1: Type 2 Service Auditor's Assurance Report

Independent Service Auditor's Assurance Report on the Description of Controls, their Design and Operating Effectiveness

To: XYZ Service Organisation

Scope

We have been engaged to report on XYZ Service Organisation's description at pages [bb-cc] of its [type or name of] system for processing customers' transactions throughout the period [date] to [date] (the description), and on the design and operation of controls related to the control objectives stated in the description.[18]

XYZ Service Organisation's Responsibilities

XYZ Service Organisation is responsible for: preparing the description and accompanying assertion at page [aa], including the completeness, accuracy and method of presentation of the description and assertion; providing the services covered by the description; stating the control objectives; and designing, implementing and effectively operating controls to achieve the stated control objectives.

Service Auditor's Responsibilities

Our responsibility is to express an opinion on XYZ Service Organisation's description and on the design and operation of controls related to the control objectives stated in that description, based on our procedures. We conducted our engagement in accordance with Standard on Assurance Engagements 3402, "Assurance Reports on Controls at a Service Organisation," issued by the Institute of Chartered Accountants of India. That standard requires that we comply with ethical requirements and plan and perform our procedures to obtain reasonable assurance about whether, in all material respects, the description is fairly presented and the controls are suitably designed and operating effectively.

An assurance engagement to report on the description, design and operating effectiveness of controls at a service organisation involves performing procedures to obtain evidence about the disclosures in the service organisation's description of its system, and the design and operating effectiveness of controls. The procedures selected depend on the service auditor's judgment, including the assessment of the risks that the description is not fairly presented, and that controls are not suitably designed or operating effectively. Our procedures included testing the operating effectiveness of those controls that we consider necessary to provide reasonable assurance that the control objectives stated in the description were achieved. An assurance engagement of this type also includes evaluating the overall presentation of the description, the suitability of the objectives stated therein, and the suitability of the criteria specified by the service organisation and described at page [aa].

We believe that the evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Limitations of Controls at a Service Organisation

XYZ Service Organisation's description is prepared to meet the common needs of a broad range of customers and their auditors and may not, therefore, include every aspect of the system that each individual customer may consider important in its own particular environment. Also, because of their nature, controls at a service organisation may not prevent or detect all errors or omissions in processing or reporting transactions. Also, the projection of any evaluation of effectiveness to future periods is subject to the risk that controls at a service organisation may become inadequate or fail.

Opinion

Our opinion has been formed on the basis of the matters outlined in this report. The criteria we used in forming our opinion are those described at page [aa]. In our opinion, in all material respects:

(a) The description fairly presents the [the type or name of] system as designed and implemented throughout the period from [date] to [date];

(b) The controls related to the control objectives stated in the description were suitably designed throughout the period from [date] to [date]; and

(c) The controls tested, which were those necessary to provide reasonable assurance that the control objectives stated in the description were achieved, operated effectively throughout the period from [date] to [date].

Description of Tests of Controls

The specific controls tested and the nature, timing and results of those tests are listed on pages [yy-zz].

Intended Users and Purpose

This report and the description of tests of controls on pages [yy-zz] are intended only for customers who have used XYZ Service Organisation's [type or name of] system, and their auditors, who have a sufficient understanding to consider it, along with

[18] If some elements of the description are not included in the scope of the engagement, this is made clear in the assurance report.

other information including information about controls operated by customers themselves, when assessing the risks of material misstatements of customers' financial statements.

For XYZ and Co.
Chartered Accountants
Firm's Registration Number

Signature
(Name of the Member Signing the Audit Report)
(Designation[19])
Membership Number

Place of Signature
Date

Example 2: Type 1 Service Auditor's Assurance Report

Independent Service Auditor's Assurance Report on the Description of Controls and their Design

To: XYZ Service Organisation

Scope

We have been engaged to report on XYZ Service Organisation's description at pages [bb-cc] of its [type or name of] system for processing customers' transactions as at [date] (the description), and on the design of controls related to the control objectives stated in the description.[20]

We did not perform any procedures regarding the operating effectiveness of controls included in the description and, accordingly, do not express an opinion thereon.

XYZ Service Organisation's Responsibilities

XYZ Service Organisation is responsible for: preparing the description and accompanying assertion at page [aa], including the completeness, accuracy and method of presentation of the description and the assertion; providing the services covered by the description; stating the control objectives; and designing, implementing and effectively operating controls to achieve the stated control objectives.

Service Auditor's Responsibilities

Our responsibility is to express an opinion on XYZ Service Organisation's description and on the design of controls related to the control objectives stated in that description, based on our procedures. We conducted our engagement in accordance with Standard on Assurance Engagements 3402, "Assurance Reports on Controls at a Service Organisation," issued by the Institute of Chartered Accountants of India. That standard requires that we comply with ethical requirements and plan and perform our procedures to obtain reasonable assurance about whether, in all material respects, the description is fairly presented and the controls are suitably designed in all material respects.

An assurance engagement to report on the description and design of controls at a service organisation involves performing procedures to obtain evidence about the disclosures in the service organisation's description of its system, and the design of controls. The procedures selected depend on the service auditor's judgment, including the assessment that the description is not fairly presented, and that controls are not suitably designed. An assurance engagement of this type also includes evaluating the overall presentation of the description, the suitability of the control objectives stated therein, and the suitability of the criteria specified by the service organisation and described at page [aa].

As noted above, we did not perform any procedures regarding the operating effectiveness of controls included in the description and, accordingly, do not express an opinion thereon.

We believe that the evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Limitations of Controls at a Service Organisation

XYZ Service Organisation's description is prepared to meet the common needs of a broad range of customers and their auditors and may not, therefore, include every aspect of the system that each individual customer may consider important in its own particular environment. Also, because of their nature, controls at a service organisation may not prevent or detect all errors or omissions in processing or reporting transactions.

Opinion

Our opinion has been formed on the basis of the matters outlined in this report. The criteria we used in forming our opinion are those described at page [aa]. In our opinion, in all material respects:

(a) The description fairly presents the [the type or name of] system as designed and implemented as at [date]; and
(b) The controls related to the control objectives stated in the description were suitably designed as at [date].

Intended Users and Purpose

This report is intended only for customers who have used XYZ Service Organisation's [type or name of] system, and their auditors, who have a sufficient understanding to consider it, along with other information including information about controls operated by customers themselves, when obtaining an understanding of customers' information systems relevant to financial reporting.

For XYZ and Co.
Chartered Accountants

[19] Partner or Proprietor, as the case may be.
[20] If some elements of the description are not included in the scope of the engagement, this is made clear in the assurance report.

Firm's Registration Number

Signature
(Name of the Member Signing the Audit Report)
(Designation[21])
Membership Number

Place of Signature
Date

Appendix 3
(Ref. Para. A50)

Example Modified Service Auditor's Assurance Reports

The following examples of modified reports are for guidance only and are not intended to be exhaustive or applicable to all situations. They are based on the examples of reports in **Appendix 2**.

Example 1: Qualified opinion – the service organisation's description of the system is not fairly presented in all material respects

...

Service Auditor's Responsibilities

...

We believe that the evidence we have obtained is sufficient and appropriate to provide a basis for our qualified opinion.

Basis for Qualified Opinion

The accompanying description states at page [mn] that XYZ Service Organisation uses operator identification numbers and passwords to prevent unauthorised access to the system. Based on our procedures, which included inquiries of staff personnel and observation of activities, we have determined that operator identification numbers and passwords are employed in Applications A and B but not in Applications C and D.

Qualified Opinion

Our opinion has been formed on the basis of the matters outlined in this report. The criteria we used in forming our opinion were those described in XYZ Service Organisation's assertion at page [aa]. In our opinion, except for the matter described in the Basis for Qualified Opinion paragraph:

(a) ...

Example 2: Qualified opinion – the controls are not suitably designed to provide reasonable assurance that the control objectives stated in the service organisation's description of its system will be achieved if the controls operate effectively

...

Service Auditor's Responsibilities

...

We believe that the evidence we have obtained is sufficient and appropriate to provide a basis for our qualified opinion.

Basis for Qualified Opinion

As discussed at page [mn] of the accompanying description, from time to time XYZ Service Organisation makes changes in application programs to correct deficiencies or to enhance capabilities. The procedures followed in determining whether to make changes, in designing the changes and in implementing them, do not include review and approval by authorised individuals who are independent from those involved in making the changes. There are also no specified requirements to test such changes or provide test results to an authorised reviewer prior to implementing the changes.

Qualified Opinion

Our opinion has been formed on the basis of the matters outlined in this report. The criteria we used in forming our opinion were those described in XYZ Service Organisation's assertion at page [aa]. In our opinion, except for the matter described in the Basis for Qualified Opinion paragraph:

(a) ...

Example 3: Qualified opinion – the controls did not operate effectively throughout the specified period (type 2 report only)

...

Service Auditor's Responsibilities

...

We believe that the evidence we have obtained is sufficient and appropriate to provide a basis for our qualified opinion.

Basis for Qualified Opinion

XYZ Service Organisation states in its description that it has automated controls in place to reconcile loan payments received with the output generated. However, as noted at page [mn] of the description, this control was not operating effectively during the period from dd/mm/yyyy to dd/mm/yyyy due to a programming error. This resulted in the non-achievement of the control objective "Controls provide reasonable assurance that loan payments received are properly recorded" during the period from dd/mm/yyyy to dd/mm/yyyy. XYZ implemented a change to the program performing the calculation as of [date], and our tests indicate that it was operating effectively during the period from dd/mm/yyyy to dd/mm/yyyy.

Qualified Opinion

Our opinion has been formed on the basis of the matters outlined in this report. The criteria we used in forming our opinion were those described in XYZ Service Organisation's assertion at page [aa]. In our opinion, except for the matter described in the Basis for Qualified Opinion paragraph:

...

Example 4: Qualified opinion – the service auditor is unable to obtain sufficient appropriate evidence

...

Service Auditor's Responsibilities

...

We believe that the evidence we have obtained is sufficient and appropriate to provide a basis for our qualified opinion.

Basis for Qualified Opinion

XYZ Service Organisation states in its description that it has automated controls in place to reconcile loan payments received with the output generated. However, electronic records of the performance of this reconciliation for the period from dd/mm/yyyy to dd/mm/yyyy were deleted as a result of a computer processing error, and we were therefore unable to test the operation of this control for that period. Consequently, we were unable to determine whether the control objective "Controls provide reasonable assurance that loan payments received are properly recorded" operated effectively during the period from dd/mm/yyyy to dd/mm/yyyy.

Qualified Opinion

Our opinion has been formed on the basis of the matters outlined in this report. The criteria we used in forming our opinion were those described in XYZ Service Organisation's assertion at page [aa]. In our opinion, except for the matter described in the Basis for Qualified Opinion paragraph:

(a) ...

Limited Revision Consequential to issuance of the Standard on Assurance Engagement (SAE) 3402, "Assurance Reports on Controls At a Service Organisation"

The amendments to the Preface to the Standards on Quality Control, Auditing, Review, Other Assurance and Related Services have been shown in track change mode.

Preface to the Standards on Quality Control, Auditing, Review, Other Assurance and Related Services

[No amendments are proposed to paragraphs 1-11.]

Other Standards

12a. Some Engagement Standards identified in paragraphs 5-7 contain: objectives, requirements, application and other explanatory material, introductory material and definitions. These terms are to be interpreted in a directly analogous way to how they are explained in the context of SAs and financial statement audits in SA 200 (Revised).

12. Other Engagement Standards identified in paragraph 3 (b) to (d) as well as Standards on Quality Control referred to in paragraph 4 contain basic principles and essential procedures...

[When the limited revisions are included in the Preface, paragraph 12a will become paragraph 12 and the Preface will be renumbered accordingly. No amendments are proposed to paragraphs 13-21.] ■

[21] Partner or Proprietor, as the case may be.

CROSS WORD 058

Based on Union Budget 2011-12

ACROSS

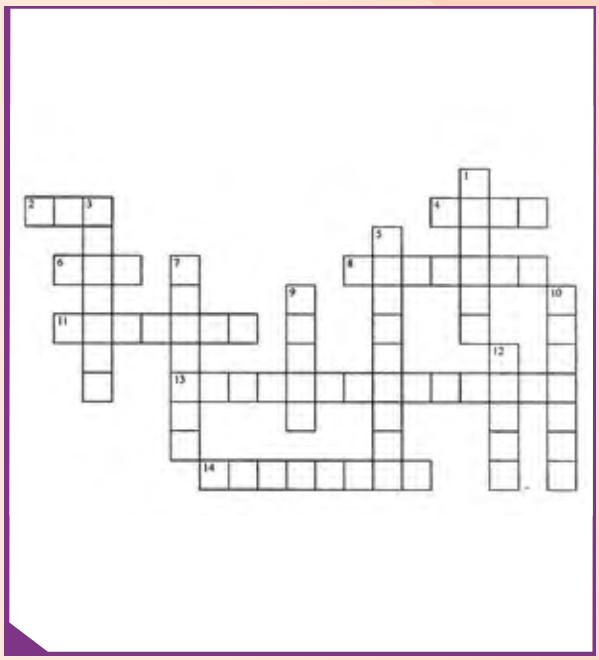
2. _____ estimated to have grown at 8.6 per cent in 2010-2011 in real terms.
4. Central Government ____ estimated at 44.2 per cent of GDP for 2011-2012 as against 52.5 per cent recommended by the 13th Finance Commission. (4)
6. _____ will be finalised during 2011-12 and proposed to be effective from 1st April, 2012.
8. Businesses developing affordable _____ are proposed to get benefit of investment linked deduction. (7)
11. _____ Central Excise Duty of 1 per cent imposed on 130 items entering in the tax net. (7)
13. Additional deduction for investment in long-term _____ bonds extended for one more year. (14)
14. _____ Deduction on payments made to National Laboratories, Universities and Institutes of Technology to be enhanced to 200 per cent. (8)

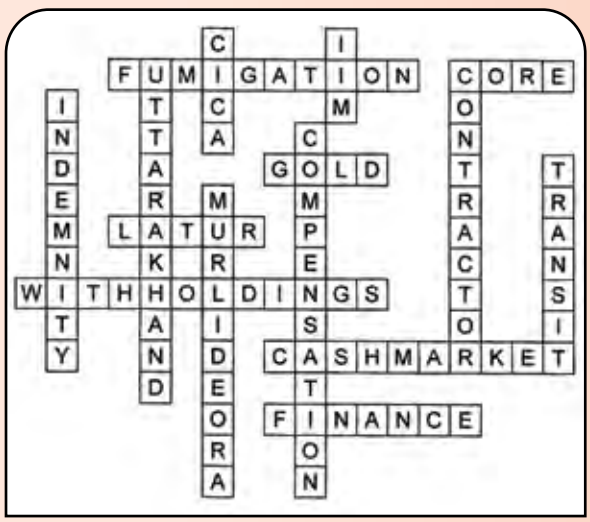
DOWN

1. Qualifying age has been reduced for _____ citizens. (6)
3. Basic Custom Duty on two critical raw materials of cement industry viz. _____ and gypsum is proposed to be reduced to 2.5 per cent. (7)
5. FII limit for investment in _____ bonds issued in Infrastructure sector being raised. (9)
7. Amendments proposed in the context of the additional _____ licenses to private sector players. (7)
9. A new simplified form _____ to be introduced to reduce the compliance burden of small tax payers falling within presumptive taxation. (5)
10. SEBI registered mutual funds permitted to accept subscription from _____ investors who meet KYC requirements for equity schemes. (7)
12. All individual and sole proprietor tax payers with a turn over upto ₹60 lakh freed from the formalities of _____. (5)

Note:

Members can claim one hour – CPE Credit – Unstructured Learning for attempting this crossword by filling the details in the self-declaration form to be submitted to your regional office annually to avail CPE hours credit for Unstructured Learning activities under the activity 'Providing Solutions to Questionnaires/puzzles available on Web/ Professional Journals'. There is no need to individually send this crossword in hard copy or email.





SOLUTION Crossword 057

1 Raman had a problem of getting up late in the morning, as a result, was never on time for work. His boss was quite annoyed at him, and threatened to fire him if he didn't do something about it. So, Raman went to his doctor, who prescribed a medicine for him, and told him to take it before he went to bed. That night, Raman slept well. In fact, he beat the morning alarm by almost two hours. After having a leisurely breakfast, he drove cheerfully to work.

"Boss", Raman said, "The medicine actually worked!"

"That's all fine" said the boss, "But where were you yesterday?"