

Know Your Ethics*

Ethical Issues in Question-Answer Form

Q. Whether the audits conducted under section 44AD, 44AE and 44AF of the Income Tax Act, 1961 shall be taken into account for the purpose of reckoning the specified number of tax audit assignments?

A. In exercise of the powers conferred by Clause (1) of Part-II of the Second Schedule to the CA Act, the Council of the Institute of Chartered Accountants of India has issued General Guidelines, 2008. As per Chapter-VI of these Guidelines (appearing at p. 316 of Code of Ethics, 2009), the audits conducted under Section 44AD, 44AE and 44AF of the Income-tax Act, 1961 shall not be taken into account for the purpose of reckoning the specified number of tax audit assignments.

Q. Whether a Chartered Accountant is permitted to accept appointment as an auditor of a concern while he is indebted to the concern or has given any guarantee or provided any security in connection with the indebtedness of any third person to the concern?

A. Chapter-X of the Council General Guidelines, 2008 specifies that a member of the Institute shall be deemed to be guilty of professional misconduct if he accepts appointment as auditor of a concern while he is indebted to the concern or has given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding ₹10,000 (it may, however, be noted that in terms of the provisions of Section 226 of the Companies Act, 1956, a person who is indebted to a company for an amount exceeding one thousand rupees or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding ₹1000 shall not be qualified for appointment as auditor of that company).

Q. Whether the statutory auditors consisting of ten or more members can conduct the branch audits of the same company?

A. The Council has prescribed certain self-regulatory

measures in order to ensure a healthy growth of the profession and an equitable flow of professional work among the members. One of the recommendations of this nature is that the branch audits of a company should not be conducted by its statutory auditors consisting of ten or more members, but should be conducted by the local firms of auditors consisting of less than ten members. This should not be understood to mean any restriction on the right of the statutory auditors to have access over branch accounts conferred under the Companies Act, 1956. This restriction may not apply in the following cases:

- (i) Where the accounting records of the branches are maintained at the head office of the respective companies; and
- (ii) Where significant operations of an undertaking or a company are carried out at its branch office.

Q. Whether a member of the Institute in practice is liable for professional misconduct, if he does not follow the direction given by the Council or an appropriate Committee or on behalf of any of them, to the incoming auditors not to accept the appointment as auditors, in the case of unjustified removal of the earlier auditors?

A. Yes, the Chapter-XI of the Council General Guidelines, 2008 specifies that a member of the Institute in practice shall follow the direction given by the Council or an appropriate Committee or on behalf of any of them, to him being the incoming auditor(s) not to accept the appointment as auditor(s), in the case of unjustified removal of the earlier auditor(s).

Q. Can the auditor revise his Audit Report?

A. Yes, the Council has issued a "Guidance Note on Revision of the Audit Report" in booklet form. The auditor can revise his audit report only in the situations and circumstances mentioned therein.

Q. Whether a member of the Institute shall be deemed to be guilty of professional misconduct, if he includes in any statement, return or form to be submitted to the Council or any of its committees,

* Contributed by the Ethical Standards Board of the ICAI

Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing to be false?

A. Yes, as per Clause (3) of part II of the second schedule to the CA Act, 1949, a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct if he includes in any statement, return or form to be submitted to the above authorities any particulars knowing them to be false.

Q. What is the status of a Chartered Accountant who is a salaried employee of a Chartered Accountant in practice or a firm of such Chartered Accountants?

A. An associate or a fellow of the Institute who is a salaried employee of a Chartered Accountant in practice or a firm of such Chartered Accountants shall, notwithstanding such employment, be deemed to be in practice for the limited purpose of the training of articled assistants. **He may hold Certificate of practice, but he is not entitled to perform attest functions.**

Q. Can a member in practice be Promoter/Promoter Director of a Company?

A. Yes, there is no bar to a member in practice becoming a promoter/signatory to the memorandum and Articles of Association of any company. For becoming such promoter/signatory, members are not required to obtain specific permission of the Council.

Q. Can such a Promoter/Promoter Director of a Company may be Director Simplicitor of that Company?

A. Yes, there is also no bar for such a promoter/signatory becoming Director simplicitor of that Company irrespective of whether the objects of the Company include areas which fall within the scope of the profession of Chartered Accountants. In this case also, specific permission of the Council is not required.

Q. Can a member in practice be a sleeping partner in family business concern?

A. Yes, a member in practice can be a sleeping partner

in a family business concern provided he takes specific permission from the Council in terms of Regulation 190A of CA Regulations.

Q. What should be the size of signboard for the office?

A. With regard to the size of the signboard for his office that a member can put up, it is a matter in which the members should exercise their own discretion and good taste. The size of the signboard should be reasonable. Use of glow signs or lights on large-sized boards as is used by traders or shopkeepers would not be proper. A member can have a name board at the place of his residence with the designation of a Chartered Accountant, provided it is a name plate or name board of an individual member and not of the firm.

Q. Can a member share profits with the widow of his deceased partner?

A. Yes, when there are two or more partners and one of them dies, the widow of the deceased partner can continue to receive a share of the profit of the firm. A legal representative, say widow of a deceased partner, would be entitled to share the profits only where the partnership agreement contains a provision that on the death of the partner his widow or legal representative would be entitled to such payment by way of sharing of fees or otherwise for the specified period.

Q. Can there be any sharing of fees between the widow or the legal representative of the proprietor of a single member firm and the purchaser of the goodwill of the firm on the death of the sole proprietor of the firm?

A. No, there could not be any sharing of fees between the widow or the legal representative of the proprietor of a single member firm and the purchaser of the goodwill of the firm on the death of the sole proprietor of the firm. Payment of goodwill to the widow is permissible in such cases only for the goodwill of the firm and to enable such payments to be made in installments provided the agreement of the sale of goodwill contains such a provision. These payments even, if they are spread over the specified period, should not be linked up with participation in the earnings of the firm ■