

Matter for 'Know Your Ethics' – April, 2014 issue of the CA Journal

Q. Is there any ceiling on the number of tax audit assignments that can be taken up by a member in practice?

A. Yes, in exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 the Council of the Institute has issued Council General Guidelines, 2008, Chapter VI of which specifies that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he accepts, in a financial year, more than the specified number of tax audit assignments under Section 44AB of the Income Tax Act, 1961. The number specified for tax audits is 60 (w.e.f. financial year 2014-15).

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 no. of tax audit assignments?

A. No. Please refer the Code of Ethics, 2009 (Chapter VI of the Council General Guidelines, 2008).

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

A. Yes, the 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 Rs 10,000.

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. Is there any ceiling on the fees to be accepted from one company?

- A.** To ensure that the professional independence of a member in full-time or part-time practice does not appear to be jeopardized he should, as far as possible, take care to see that the professional fees for audit and other services received by the firm in which he is a partner, by him and his partners individually and by firm or firms in which he or his partner are partners from one or more clients or companies under the same management does not exceed 40% of the gross annual fees of the firm, firms and partners referred to above. 'Companies under the same management' here would refer to the definition of this expression as provided in section 370(1-B) of the Companies Act, 1956.

Provided that no such ceiling on the gross annual professional fees of a member would be applicable where such fees do not exceed two lakhs of rupees in respect of a member or firm including fees received by the member or firm for other services rendered through the medium of a different firm or firms in which such member or firm may be a partner or proprietor.

Provided further that no such ceiling on the gross annual professional fees of a member would be applicable in the case of audit of government companies, public undertakings, nationalized banks, public financial institutions or where appointments of auditors are made by the Government.

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 Council General Guidelines, 2008 specifies that a member of the Institute in practice shall be deemed to be guilty of 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.

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, 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 Chartered Accountants 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 do attest functions w.e.f. 1.4.2005.

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

A. Yes, there is no bar for a member to be a promoter/signatory to the Memorandum and Articles of Association of any company. There is also no bar for such a promoter/signatory to be a 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. Therefore members are not required to obtain specific permission of the Council in such cases. There is also no bar on holding any number/percentage of shares in the company.

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 Chartered Accountants Regulations, 1988.

Q. Can a member who is in part-time/full time employment apply for Certificate of Practice and do attest functions?

A. Yes, he can apply for Certificate of Practice but cannot do attest function. Please refer Regulation 190A of the Chartered Accountants Regulations, 1988.

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.
