The Chamber's Journal
FINANCIAL SERVICES SECTOR : PART-II (Insurance And Pensions)
January - 2015 Vol. III | No. 4

A Monthly Journal of
The Chamber of Tax Consultants
Estd 1926

Price ₹ 100/- per copy

The Chamber's Journal

YOUR MONTHLY COMPANION ON TAX & ALLIED SUBJECTS

January - 2015 Vol . III | No. 4

FINANCIAL SERVICES SECTOR : PART-II

(Insurance And Pensions)

Direct Taxes

Other Laws

International Taxation

Other Contents

Indirect Taxes

The Chamber News

Best of the Rest

Corporate Laws

Economy & Finance

Log on to the Chamber's revamped website

www.ctconline.org

Online Payment for Programmes can be done through Website.

Transforming Information into Knowledge

THE CAPITALIZING CHALLENGES

ALLIED LAWS COMMITTEE & CORPORATE MEMBERS COMMITTEE

1st Residential Refresher Course on The Companies Act, 2013 with the Flavours of Limited Liability Partnership Act, 2008 held on 12th December, 2014 to 14th December, 2014 at Ras Resort, Silvassa.

1st RRC on Companies Act, 2013 – Dignitaries during the inauguration and lighting the lamp. Seen from L to R : CA Parimal Parikh, Past President, CA Avinash Lalwani, Vice President, CA Priti K. Savla, Vice Chairperson, Allied Laws Committee, Shri S. C. Poojary, Member, Allied Laws Committee, Shri Kishor Vanjara, Past President, CA Vijay Bhatt, Chairman, Allied Laws Committee, CA Vipul Choksi, Chairman, Corporate Members Committee, CA Nilesh Vikamsey, Faculty, CA Dilip Sanghvi, Vice Chairman, Study Circle & Study Group Committee, CA Anand Bathiya, Faculty, CA Hasmukh Dedhia, Vice Chairman, Corporate Members Committee, CA Ashok D. Mehta, Convenor, Allied Laws Committee.

CA Paras K. Savla, President welcoming the delegates.

CA Vijay Bhatt, Chairman, Allied Laws Committee addressing the delegates.

CA Vipul Choksi, Chairman, Corporate Members Committee addressing the delegates.

Faculties

CA Nilesh Vikamsey

CA Himanshu Kishnadwala

CA Anup P. Shah

CA Anand Bathiya

Brains' Trust Session – Seen from L to R : CA Vipul Choksi, Chairman, Corporate Members Committee, Dr. V. R. Narsimhan, Brain Trustee, CA Paras K. Savla, President, and CA Jayant Thakur, Brain Trustee, CA Hasmukh Dedhia, Vice Chairman, Corporate Members Committee.

Delegates at 1st RRC on Companies Act, 2013 at Silvassa

CONTENTS

Vol. III No. 4
January – 2015

Following topics of SPECIAL STORY : Financial Services Sector : Part-I (Banks and Mutual Funds) printed in December 2014 issue of The Chamber's Journal

The Chamber of Tax Consultants
3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai – 400 020
Phone : 2200 1787 / 2209 0423 • Fax : 2200 2455
E-Mail: office@ctconline.org • Website : http://www.ctconline.org.

The Chamber's Journal

MEMBERSHIP FEES & JOURNAL SUBSCRIPTION (REVISED FEES AND SUBSCRIPTION FROM 2014-15)

Sr. No.	Membership Type		Fees	Service Tax 12.36%	Total
1.	Life Membership Additional Optional subscription charges for Annual Journal	`	11000 900	1359 0	12359 900 ` 13259
2.	Ordinary Members Entrance Fees Annual Membership Fee, including subscription for Journal	`	200 1900	24 235	224 2135 ` 2359
3.	Associate Membership Entrance Fees Membership Fees including Subscription for Journal	`	1000 5000	124 618	1124 5618 ` 6742
4.	Student Membership Entrance Fees Journal Subscription	`	250 700	31 0	281 700 ` 981
5.	Non-members Journal Subscription	`	1800	0	1800 ` 1800

Editorial

Wish you all a very Happy, Prosperous and Peaceful 2015. 2014 had been an eventful year for India, with a much larger percentage of people participating in the democratic process of elections which reflects the surging aspirations of people across the country, beyond the narrow and destructive fragmentation of the society on the basis of class, creed, race and religion. However, while parting, 2014 has left a deep scar on our modern civilisation – the barbaric act of massacre of 132 school children, in their school premises in the name of religion and revenge is a reflection of the lowering of human values and fall from civility in which an eye for an eye is looked upon as a solution.

2015 is a critical year for India and the new government as time has arrived for it to give a policy direction to governance amidst a worldwide environment of violence and terror. The Union Cabinet has passed a resolution to constitute National Institute for Transforming India – NITI Aayog, dated 1st January, 2015 which replaces the Planning Commission that was set up in 1950 when the main task before the Nation was survival. The new commission is set up to cater to the demands of the 'Aspirational India' and give them a policy push. The changed mindset in the ruling class views India's demography as an asset and not as a liability that needs only to be tapped and given direction to. The approach of giving the rightful status of a partner to the states in the process of policy making has to be worked upon in letter and spirit to achieve the measure of federalism that has been envisaged in our constitution and unfortunately been tinkered upon in several ways in the last six decades. Successive governments in India had resorted to verbosity and high platitudes as a cloak over red tape and corruption. I hope this negativity is ridden over by definitive action by the brand new NITI Aayog.

The Special Story of this issue of Chamber's Journal is Financial Services Sector: Part – II (Insurance and Pension). Eminent professionals have contributed to the Special Story. I thank them for the same. I am grateful to all the authors who have contributed to this issue. Once again, I wish you a very Happy New Year.

K. Gopal
Editor

From the President

2015 !

New is the year;
New are the hopes;
New is the Resolution;
New are the Spirits;
And new are my warm wishes to start new habits;
Have a promising and fulfilling 2015!

At this juncture I would quote Ellen Goodman "We spend January 1 walking through our lives, room by room, drawing up a list of work to be done, cracks to be patched. Maybe this year, to balance the list, we ought to walk through the rooms of our lives... not looking for flaws, but for potential".

At the two-day bankers' meet in Pune, Gyan Sangam, Prime Minister Narendra Modi and Finance Minister Arun Jaitley have chorused for grant of autonomy to the State-run Banks. Prime Minister said that Bankers would not receive call from his office, whereas Arun Jaitley reiterated the need for greater autonomy. He also said that a commercial mindset is required to deal with commercial issues. He also wanted to understand the problems plaguing the sector from the bankers and external experts as "they know the best where the shoe pinches". In past, on the sidelines of accepting the recommendations of the Narasimham Committee on the banking sector reforms, during 2000-01, then Finance Minister in his budget speech said that it is proposed to bring about necessary changes in the legislative provisions to accord necessary flexibility and autonomy to the Boards of the banks. During UPA-II regime then Finance Minister P Chidambaram at one of the seminars in June 2005 also said that we are willing to give banks more autonomy. As in past, recent P J Nayak Committee, set up to improve governance in banks echoed the recommendation to reduce governments controlling stake below 51%. Considering the obstructionist role by few quarters, recently Government has issued series of ordinances. Issue of ordinances portrays Government's clear and decisive steps to implement long pending economic reforms. This would also create encouraging environment for investments paving path for economic growth. Considering the government's recent action let's be sanguine about autonomy of the PSU banks. Experts believe that grant of autonomy is mirage unless government reduces its controlling stake.

Prices of the crude oil have been witnessing free fall over last 6-8 months. It has reduced to around $50/barrel from around $115/barrel during the month of June, 2014. Reduction in the price can be attributed to various reasons viz. weak economic activities, individual oil producing countries preferred not to sacrifice their share to maintain market price, countries like US becoming one of the largest producers, etc.

Decline in oil prices would benefit the countries that are net importer of oil and affect the countries that is exporter of oil. In India decline in oil prices has helped Government by a reduction in subsidy bill and has also provided window to raise indirect taxes on petroleum products, deregulate diesel prices. This in turn would help them to keep check on fiscal deficit to some extent. Reduction in prices would also surge consumption and which in turn will have positive impact on GDP. However profit of the oil companies has been affected negatively.

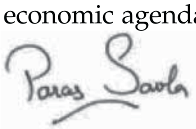
The RRC on Companies Act, 2013 held by Allied Laws and Corporate Members Committees during December, 2014 was very well appreciated and this event had delegates from various parts of the country viz. Bhubaneshwar, Delhi, Ahmedabad, Hyderabad etc. Workshop on Foreign Remittance organised by the International Taxation Committee was also well received. The Chamber Jointly with the "Jalgaon Branch of WIRC of ICAI" and Jalgaon District Tax Practitioners Association had organised Seminar on Income Tax Scrutiny Assessment at Jalgaon. This event was widely covered by the newspapers extensively circulated in Jalgaon.

During the month of the December, 2014, I along with my other colleagues had opportunity to present pre-budget memorandum on direct and indirect taxes before the forthcoming budget making team. The Chamber has represented on the various issues faced by the corporate and non-corporate tax payers. We also represented on the various direct taxes issues arising due to certain provisions of Companies Act, 2013 e.g. deductibility of CSR expenses, tax implication on sole share holder of OPC etc. The budget making team was quite receptive and appreciated various points put forth by the Chamber.

Use of right software increases your efficiency but at the same time cost of licensing of the software is increasing day by day and at times cost is unaffordable. Use of Open Source Software can provide solution to a greater extent. To understand this, Information Technology Committee has organised unique programme on Open Doors to Open Source.

Indoor Sports Event has been organised, where participation is also allowed for the family members and students of the members. The Students Committee has organised 'The Dastur Essay Competition 2015'. The Students Committee has also organised educational visit to India's largest bourse, National Stock Exchange. All the members are requested to create awareness amongst the students and encourage them to participate. The Direct Taxation Committee has organised Study Course on Interpretation of Taxing Statutes. Delhi Branch of the Chamber has also organised programme on Companies Act, 2013 at the Capital city. The Chamber jointly with BCAS has organised programme on Charitable Trust. Another joint programme 'Anger-the enemy within' has been organised under the auspices of Amita Memorial Trust. The International Taxation Committee has also organised 6th International Tax Conference during the month of February, 2015. Indirect Taxation Committee has organised 3rd RRC on Service Tax at Alibaug. The enrolment for this RRC has been closed. Residential Refresher Course & Public Relations Committee has organised 38th RRC at Puri during the month of February, 2015.

This month India would be celebrating 66th Republic Day. The chief guest at the Republic Day celebration is U.S. President Barack Obama. It is interesting to note that he is first U.S. President to visit the country twice while in office. I would like to end the new year's first communication by extending warm greetings for Republic Day, where ideology of justice and equality would be further flourishing. I hope that during this year decorum and dignity of the India Parliament, repository of the sovereign will of the people, is maintained and keen interest is taken by the Opposition too for pushing required economic agenda.



Paras Savla
President

Chairman's Communication

Dear Esteemed Readers,

Each new-year begins with renewed hope and expectation, so also we begin this year with much hope, expectation and optimism. There is a lot of action taking place on world economic front – fall in oil prices, strengthening of US Dollar, questions on continuation of Greece in European Union, so on and so forth. In India the debate that is raging relates to the interest rates cut especially in light of weakening oil prices and control of inflation rate. These definitely foretell some exciting times ahead with the presentation of Union Budget just two months away which many expect to be a landmark budget especially from long term economic policy point of view. With Neeti-Ayog taking place of Yojana-Ayog, it would not be unfair to expect that the planned economic regime will make way for something very new.

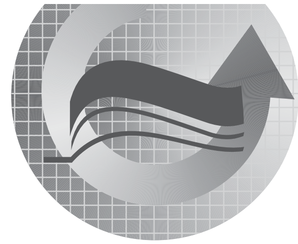
As mentioned in my last communication, one of the pillars for a strong economy is the health of the financial sector and there are expectations of various structural changes taking place in this sector as an enabler for the future growth. With this in view we have selected Financial Sector as a topic of our special story for this and the preceding issues. In the last issue the authors dealt with the issues relating to banking and mutual fund industry and in this issue we take a look into some of the major issues relating to Insurance sector.

The authors have dealt with the overview of the Insurance sector, future outlook of the industry, key issues in regulation of the sector and also pension fund sector, and the specific taxation issues. I would like to place on record appreciation for CA. Anish Thacker for his efforts in designing the structure of the special story. I am also thankful to Shri Hemant Contractor, CA. Ashvin Parekh, CA. Prakash Shah, CA. S. S. Gupta, CA. Nidhi Mapuskar, CA. Dolphy D'Souza, CA. Vishal Bansal, CA. Mukul Shrivastava and CA. Vikram Babbar for penning the articles for the special story and sharing their valuable knowledge with us. I am sure we shall be greatly enriched in our understanding of these sectors through the articles contributed by all the learned authors.

In the Hotspot section, we have article on "Transfer Pricing on Issue of Shares – An Assessment" by veteran professional CA. Dinesh Kanabar. The recent judgments in Vodafone and Shell India's cases have laid down certain important principles on issue of taxation arising out of transfer pricing adjustments. The CBDT has chosen not to file any further appeal in the matter. I am sure the analysis made by the learned author shall be of immense help to the readers in understanding the issues involved and shall be enriched by his exposition.

In the end I wish all the readers a very happy Republic Day in advance.

CA. Sanjeev Lalan
Chairman – Journal Committee



CA. Ashvin Parekh

Overview of Insurance Sector and future outlook

Overview of the sector

India was ranked 10th among 147 countries in the life insurance business, with a share of 2.03 per cent, in F.Y. 2013. The country was ranked 19th among 147 countries in the non-life premium income, with a share of 0.66 per cent, in the same fiscal. The insurance industry of India consists of 52 insurance companies of which 24 are in life insurance business and 28 are non-life insurers. Other stakeholders in Indian Insurance market include Agents (Individual and Corporate), Brokers, Surveyors and Third Party Administrators servicing Health Insurance claims.

Since the opening of the sector in 2001, Indian life insurance industry has gone through two cycles – the first one being characterised by a period of high growth (CAGR of approx. 31 per cent in new business premium between 2001-10) and a flat period (CAGR of around 2 per cent in new business premium between 2010-12).

The life insurance premium market grew at a compound annual growth rate (CAGR) of 16.5 per cent, from US$ 11.5 billion in F.Y. 2003 to US $ 52.9 billion in F.Y. 13, whereas the non-life insurance premium market rose at a CAGR of 14.9 per cent, from US $ 2.9 billion in F.Y. 03 to US $ 11.6 billion in F.Y. 13. Motor insurance forms the largest non-life segment at 47.1 per cent share in F.Y. 13. Per capita premium underwritten i.e. insurance density in India during F.Y. 2012-13 is US $ 53.2.

The Insurance Regulatory Development Authority (IRDA) believes that the country's insurance sector needs capital infusion of ` 50,000 crore (US $ 8.08 billion) to expand reach, maintain a healthy capital base and enhance solvency standards. Now with the upcoming reforms and changes in the market, the insurance industry is expected to experience significant growth. This bright outlook for the sector is primarily due to the Government of India's efforts to strengthen the industry. For instance, the Union Cabinet in July 2014 approved a proposal to relax foreign direct investment (FDI) limit in the domestic insurance sector to 49 per cent from the previous 26 per cent, signalling the Centre's intent to bring capital and investment into the sector.

The Insurance Laws (Amendment) Bill, 2008 (‘the bill’), could not be taken up for discussion in the winter session of the Parliament this year despite being approved by the Select Committee of the Rajya Sabha because of the uproar over the conversion controversy and other issues. However, the Government may consider ordinance at the earliest to push the reforms in this sector.

Insurance penetration

Insurance penetration is a parameter that is widely used to measure the potential and performance of the insurance industry. Insurance penetration is defined as the ratio of insurance premium to national gross domestic product. India has an abysmally low level of insurance penetration for its size and potential. Low penetration results in high levels of premium because of increased adverse selection and distribution of fixed expenses to a lower base. High levels of premium leads to low penetration. Thus forming a vicious circle. A survey initiated by IRDA shows that a high proportion of households connect insurance with loss of life. This could be inferred as not many are aware about other types of insurance covers in the non-life insurance space. The life insurance sector has penetrated at a higher level than non-life sector.

During the first decade of insurance sector liberalisation, the sector has reported consistent increase in insurance penetration from 2.71 per cent in 2001 to 5.20 per cent in 2009. However, since then, the level of penetration has been declining and reached 3.96 per cent in 2012.

Life insurance penetration had consistently gone up from 2.15 per cent in 2001 to 4.60 in 2009, before slipping to 4.40 per cent in 2010, 3.40 per cent 2011 and further slipping to 3.17 per cent in 2012. New regulations enforced by the insurance regulator from 2010 curbing the scope of the Unit Linked Insurance Plans (ULIPs) are partly responsible for the development. However, with the optimism and positive developments in capital markets, ULIPs are expected to pick up and perform well.

The insurance penetration of the non-life insurance sector in the country has remained near constant in the range of 0.55-0.71 per cent over the last 11 years, however the penetration rose to 0.78 in 2012.

Apart from macro-economic, social, and demographic growth drivers, the evolving regulatory landscape had a significant impact on the growth and profitability trends in the industry. The most notable of them was the price detariffication in 2007 which significantly impacted the premium rates and growth for commercial lines and health insurance.

With Motor Vehicle Amendment Bill, 2014 being passed in the Lok Sabha, relief is expected in this sector. If the bill as it is proposed is approved by the Parliament, then it would set up the stage for capping the liability arising out of third party and also reduce judiciary intervention and incidental add-ons which are a substantial burden to the general insurance industry. Non-life insurers are seeking a mandatory natural catastrophe cover that can be taken to cover perils in calamity-prone areas. The General Insurance Council has also suggested having a public liability cover mandatorily for public places. These measures could boost penetration.

Affordability and limited product range could be pointed as a couple of reasons for low penetration levels. Affordability which can be addressed with the right pricing is not seen in the industry. Dearth of actuarial science graduates and skill development is one of the setbacks due to which right pricing is not happening. Credibility gap is another hindrance for deepening of penetration levels. People have to be convinced that if they pay the insurance premium they will be paid their claims at the time of need. This credibility is lacking due to inefficient grievance redressal and customer service. Another very important reason for low penetration is near absence of insurance offices in rural and semi-urban regions. This can be attributed to high cost of distribution in such areas.

Health insurance is an emerging area within the insurance domain with five private sector insurers underwriting policies exclusively in health, personal accident and travel insurance segments. General insurance and health insurance companies are beginning to cover pre-hospitalisation expenses apart from the standard hospitalisation costs. Also, these companies are starting to provide several other features such as worldwide emergency cover, disease-specific covers, and health maintenance benefits, among others. Non-life insurers have sought tax incentives for health insurance under Section 80D from the Government and such incentives may lead to increased penetration.

Financial inclusion and government initiatives benefiting the Insurance Sector

Rural India and making the rural population financially included has become a top priority for the Government. Many initiatives have been launched to enable this national agenda. The benefit of accidental insurance cover of ` 100,000 (US $ 1631.97) has been made available to all those who opened accounts under the Pradhan Mantri Jan Dhan Yojana (PMJDY) launched on August 28, 2014 by Prime Minister Mr. Narendra Modi. The Indian government plans to launch a new insurance scheme for farmers in order to protect their incomes against price and production risks, as per Mr. Radha Mohan Singh, Agriculture Minister. Insurance products are also covered under the exempt, exempt, exempt (EEE) method of taxation, which translates to an effective tax benefit of approximately 30 per cent on select investments. The Government of India has extended Rashtriya Swasthya Bima Yojana (RSBY) to cover unorganised sector workers in hazardous mining and associated industries.

Technology

Internet penetration and usage have a positive correlation with the performance and activities of insurance companies. Technology brings lower customer acquisition costs, improved access to information, product innovation that cater to the needs of the customers and enhanced convenience. India has only 150 million internet users as of February 2013 with a penetration of 12 per cent making it one of the least penetrated of BRIC nations.

Future outlook

The total market size of the insurance sector in India is projected to touch US $ 350-400 billion by 2020. India's life insurance sector is the biggest in the world with about 36 crore policies and is expected to increase at a compound annual growth rate (CAGR) of 12-15 per cent over the next five years.

The country has growing awareness, favourable demographic, investment friendly government which is constantly working towards framing policies that can attract investment, customer-centric products, and practices that give businesses the best possible environment to grow.

Considering the current scenario the major event that can provide the biggest thrust to the growth of the Indian insurance sector is, passing of the Insurance Laws (Amendment) Bill, 2008. The country urgently requires to witness few reforms to accelerate the real pace of economic developments, insurance reforms top the list. One must be affirmative about the implementation of the Bill through the ordinance route adopted by the Government and ensure its passage in the next Parliamentary session that is budget session. The sector going forward is likely to see following key developments primarily driven by legislative and regulatory reforms:

Huge foreign capital inflow

The insurance industry is going to witness huge amount of foreign capital inflow as the Bill will allow to raise the composite foreign investment limit in domestic insurance companies from the current 26% to 49%. The first thing that we may see is the inflow of foreign capital in the existing arrangements wherein foreign players are already holding 26% in Indian insurance companies. New joint venture arrangements may also be seen by players with no foreign partners.

The inflow of overseas investments will address the capital requirements of the fund starved sector to a large extent. The growth of the sector, which was opened to private players in year 2000, has been curtailed primarily due to dearth of funds.

Listing of insurance companies

Further, capital would be raised through public issuance by the insurers meeting the capital market regulator’s guidelines for public listing, specifically the profitability. However in short run only a handful of life insurers are eligible for equity issuances.

Most probably it would be life insurers as other segments would require little more time to become eligible on profitability guidelines. While almost all the regulations for listing of the Indian insurance companies are in place, few profitable companies with prescribed regulatory capital may attempt to go to the primary market within 24 months (i.e. by the end of 2016) from now.

Most of the funds raised through public issuance will most probably be utilised to build the infrastructures and capabilities to reach out to the geographies and population segments with enormous potential.

The guidelines of being operational for the last 10 years and profitable in the last 5 years will keep the non-life insurers away from the primary market.

A market for re-insurance business

The sector will witness entrance of some very reputed and specialized overseas players providing insurance and insurance allied services. India currently has only one re-insurer and foreign re-insurers are writing Indian business from outside. The bill will open the doors for the foreign re-insurers to establish themselves through branch office. Since writing re-insurance business requires specialised techniques and knowledge to assess the underlying risk, presence of the overseas re-insurers will make the environment conducive for the local underwriters to enter into re-insurance space. In fact, few existing domestic insurers may be entering into re-insurance market going forward. Passage of the bill, framing of the regulations and other compliances may soon facilitate the entry of a huge market Lloyds into India. Lloyds is a huge market of insurers and reinsurers writing risks globally.

Allied insurance services area will also see significant activity. The space would be occupied by many insurance brokers including some world's top brokers.

Bancassurance – Transition of Banks from Agent Model to Broker Model

Only 3% of Indians are covered through insurance. Bancassurance model can play a great role in transforming the Indian insurance sector. The roadmap envisaged for broker model for bank will be converting into a reality. As financial inclusion is top agenda for the Government and regulators, banks may be opting for broker model in the medium term. It will also help enhance the product portfolio of the insurers. The model will not only be helpful in penetrating deeper but also be providing greater choice to the customers.

New regime for customized insurance products and marketing

We may see an era of more customised and specific products to cater to the disadvantaged and economically weaker sections of the country. This would be triggered by the incentives provided by the Government and flexibility provided by the concerned regulators to accelerate the financial inclusion agenda.

ULIPs (Unit linked Insurance Plans) have already been standardised by the insurance regulator and positive outlook on Indian stock market will encourage the insurance companies to design and launch new ULIPs with greater features, to attract the customers.

Transparency, orientation towards protection, focus around customers and rationalisation of the cost would be key environments for the approval of new products.

Standardisation of health insurance products will enhance the scope of services. Permission given to the stand alone health insurers to sell life insurance products of other insurance companies will add to the penetration level.

Mobile based insurance market is expected to emerge. As mobile users are already KYC11 compliant, and with 'Aadhaar'-enabled bank accounts, piggy-backing on the mobile wallet, mobile banking platform to offer insurance solutions is a cost-effective method to tap a large market. We can expect many insurers to use this platform.

Rapid growth of health insurance segment

Health Insurance must be seen as a separate and independent sub-sector all together as the segment has registered a remarkable growth in last decade and is expected to be one of the fastest growing segments of insurance, for the decade from now. There could be significant increase in the number of players in the health insurance segment especially Stand-alone Health Insurance (SAHI) companies. Also existing general insurance players may attempt to carve out their health insurance arm and add to the number. Thus, the dominance is expected to shift from public sector entities to private sector entities. More and more insurers are offering to cover a complete gamut of charges and not just hospitalisation charges. Indian health insurers are slowly moving towards managed care like other developed markets.

The rising healthcare cost and increasing awareness about the benefits of taking health cover will create more demand for the health insurance products.

With increased service providers entering into health insurance, some rationalisation and standardisation of costs is expected and misuse or abuse of insurance is expected to decline.

Reforms such as allowing FDI of medical device market will also influence the growth of the segment on the positive side. Financial inclusion drive by the regulators and the Government will also make the rural market conducive for the penetration.

Consolidation

Foreign partners of life insurers have been mulling exits as growth has slowed. Few multinational insurance companies, have either sold or will be planning to sell their stakes in the Indian joint ventures.

The industry may see some consolidation as promoters who are opportunistic and have been non-core financial services players may look at realigning their assets. Thus, decision to increase the FDI limit from 26% to 49% will offer exit opportunities for such promoters.

IPO could be a very good exit route and many institutional investors are or will be interested in equity investment in insurance industry which is reviving with the economy.

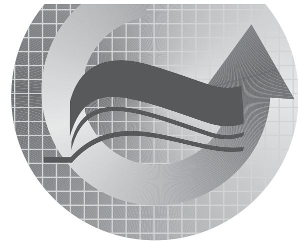
With many players operating in the Indian and entry of many more foreign players, insurance sector is expected to envisage some consolidation through mergers and acquisitions.

Conclusion

Overall the Indian insurance sector will see significant activity in the next decade. Initially most of the activities would be around inflow of capital including the capital by way of automatic route. This would lead to a swift expansion by the existing domestic players in JV with foreign partner.

The growth of sector for the first 5 years will largely be driven by the activities around arranging and utilising the capital for expansion and building capabilities, designing of the new and customised products to tap various population segments and equity issuances for further expansion. We may see beginning of the consolidation through secondary market in the long run.

However, considering the fact that the proposed cap is composite in nature and the kind of push that sector needs to expand as well as deepen the coverage, the foreign limit of 49% will be exhausted soon and there would be need to raise the bar to probably 74% in order to provide fresh capital for the next round of growth. The Indian insurance sector is expected to mature by going through many phases and all phases will have to be triggered by significant reforms by legislative, statutory and regulatory bodies. For supporting the economic growth of the country and more significantly for the development of infrastructure, fiscal measures to encourage long term domestic savings, it is essential that the new government should take more proactive policy changes to reward the savers. Also, life and general insurance sectors will require more flexibility and financial instruments for risk hedging and optimising returns.



CA. Prakash Shah

Insurance – Key Direct Tax Issues

Introduction

Presently, only domestic companies are allowed to carry on the business of insurance in India. Foreign insurance companies can, however, set up a liaison office in India, subject to the approval of Insurance Regulatory and Development Authority (IRDA), for gathering financial, economic and commercial information, acting as a channel of communication and carrying on similar developmental and promotional activities. The recent Insurance Laws (Amendment) Ordinance, 2014 which seeks to increase the FDI from 26% to 49% in insurance companies has introduced another mode of presence in the form of branch which may be permitted to be set up by foreign reinsurers.

Insurance companies as subject to a special mode of taxation having regard to the nature of business. The tax treatment applicable to life insurance companies differs from that applicable to a non-life insurance companies.

Taxation of Life Insurance Company

Basic framework

Due to the special nature of insurance business and the difficulty associated with computing its true taxable income, section 44 of the Income-tax Act, 1961 ('Act') provides a deeming mechanism for computing profits earned from insurance business. Section 44 of the Act provides that profits and gains of any business of insurance shall be computed in accordance with the rules contained in the First Schedule of the Act.

Rule 2 of the said Schedule provides that profits and gains of life insurance business should be computed by taking the annual average of the surplus/(deficit) disclosed by the actuarial valuation made in accordance with the Insurance Act, 1938, after excluding from such surplus/(deficit), any surplus or (deficit) included therein which was made in an earlier inter-valuation period.

Thus, in computing the business of life insurance, the regular methodology of computation of business income as per sections 28 to 43B is not applicable. Thus, disallowance provisions such as section 40(a)/ section 43B etc. have no relevance in case of life insurance business.

Section 10(23AAB) of the Act provides that the income received from a pension scheme approved by the IRDA is exempt from tax under section 10(23AAB) of the Act.

The income arrived as above is taxed at the rate of 12.50% (plus applicable surcharge[1] and education cess[2]) in the hands of insurance company. Life Insurance companies have been exempted from the provisions of Minimum Alternate Tax under section 115JB of the Act.

Set up of business

It is a settled position that 'set up' of business is different from 'commencement of business'. Set up of business means a stage where the assessee is 'ready to commence' though the actual commencement may not have happened. This distinction is relevant as all expenses incurred prior to the set up of business are disallowed in computing the taxable income. In other words, all expenses incurred after the set up of business but before the commencement of business are deductible.

The question as to when is a life insurance company regarded as having set up its business came up for consideration in the case of *Kotak Mahindra Old Mutual Life Insurance Company*[3]. In this case while the assessee had obtained the relevant regulatory approvals and put the key infrastructure in place, the Mumbai Income Tax Appellate Tribunal (ITAT) held that the business is not set up until the first insurance policy was written by the assessee. In arriving at this conclusion, the ITAT, inter alia, observed that section 44 and First Schedule applies to a taxpayer who carries on the business of life insurance. Further, it referred to section 2(11) of the Insurance Act, 1938 which defines 'life insurance business' as follows:

"life insurance business means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of a contract or….."

The ITAT held that since the assessee had not effected even a single contract of insurance, it had not been set up. With utmost respect, the above conclusion of the ITAT requires re-consideration. In a similar fact pattern, where a contract of insurance has not been effected, in a worst case scenario, it may be concluded that the business has not been commenced but it would be incorrect to say that the business has not been set up and would also inconsistent with the well settled principles laid down by the Courts.

Manner of computation of taxable surplus

Section 11 of the Insurance Act, 1938 prescribes that every life insurance company is required to prepare its financial statements in prescribed formats. Further, section 13 of the Insurance Act, 1938 prescribes that every life insurance company is required to obtain as of each financial year ending, a report by an actuary providing an actuarial valuation results in Form I.

With the enactment of the IRDA Act, 1999 and opening up of the sector to the private players, the above reporting formats were modified.

A revised Form I was notified by the IRDA (Actuarial Valuation Report and Abstract) Regulations, 2000. Further, pursuant to IRDA (Preparation of Financial Statements and Auditors Report of Insurance Companies, Regulations, 2002, the revised formats of preparation of financial statements were prescribed viz., Form A-RA ('Revenue Account' or 'Technical Account'), Form A-PL ('Profit & Loss Account' or Non-Technical Account) and Form A-BS (Balance Sheet).

The revised Form I requires disclosure of policyholders' surplus only as against consolidated surplus (for the share holders as well as policyholders) disclosed under the

1 Surcharge at the rate 5% if income earned during the preceding year exceeds ` 1 crore; 10% if the income exceeds ` 10 crore.

2 Education cess and Secondary education cess at the rate 2% and 1% respectively.

3 (2007) 15 SOT 722 (Mum.)

old Form I. The revised format of the financial statements requires that the income of the share holders and policyholders are to be reported separately.

Historically, (i.e, prior to the opening up of the sector to the private players), Form I formed the basis of computation surplus as per actuarial valuation as required by Rule 2 of the First Schedule read with Section 44 of the Act, and no adjustments could be made to the said surplus except those specifically provided in the First Schedule. This position was affirmed by the Supreme Court in the case of *Life Insurance Corporation of India*[4]. The ratio of the said decision was followed in a number of other decisions subsequently.

In light of the above, the question that required consideration was whether after the revision of the Form I pursuant to IRDA Act, 1999, whether the surplus as per revised Form I (which provides only policyholders' surplus) would form the basis of taxation as per Rule 2 of First Schedule. Such a position would lead to unintended results as despite there being no amendment to the Act, a different basis of taxation would arise, merely because Form I was revised. In other words, Form I was amended without any amendment to the First Schedule.

The above question came up for consideration for the first time before the Mumbai ITAT in the case of ICICI Prudential[5]. The assessee had offered the taxable income from life insurance business by combining the surplus in Form A-PL (Shareholders' account) and Form A-RA (Policyholders account) without taking into consideration the transfers from the Share holders' account to Policyholders account. The Assessing officer, took the surplus as per Form I (which surplus was arrived at after the transfer from share holders' account) as income from life insurance business taxable under section 44 and treated the income from share holders account as 'Income from other sources'. In arriving at the total income, the AO made various disallowances/addition such as disallowance under section 14A, denial of exemption etc., [While on a consolidated basis, there was a deficit, the AO had by taking revised Form I sought to tax the profit disclosed therein]

After a detailed analysis of the old and new formats of the Form I, the ITAT made following observations:

- Reference to the wordings 'the actuarial valuation done in accordance with the Insurance Act, 1938' in Rule 2 of the First Schedule would mean that the actuarial valuation would have to be done in accordance with the said Act, having regard to the principle of 'legislation by incorporation'. In other words the same would not mean actuarial valuation as per revised Form I being total surplus for the purpose of distribution of bonus to policyholder [as per Regulation 8 of the IRDA (Actuarial Valuation Report and Abstract) Regulations, 2000].

  A separate actuarial valuation would have to be done in accordance with the Insurance Act, 1938 for the purpose of Rule 2 of the First Schedule to the Act.
- The AO, instead of examining the accounts submitted by the assessee which are in accordance with the Insurance Act, 1938, taxed the surplus as per Form I (Regulation 8), which is after taking into account transfer of assets by way of fresh capital from the share holders account.
- Based on the reconciliation of income submitted by the assessee of the revised Form I with old Form I and of the old Form I with the return of income (which was prepared based on the consolidation of Form A-RA and Form A-PL), the ITAT held that the computation made by the assessee was in accordance with Rule 2.

4 [1964] 51 ITR 773 (SC)

5 [2013] ITA Nos.6854 , 7765 and others of 2010 (Mum.)

The ratio of above decision of the ITAT has been followed by subsequently in the case of HDFC[6], SBI Life[7] and LIC[8].

In light of the above, it would be advisable to retain reconciliations of surplus as per revised Form I with old Form I and with the return of income.

There are other peculiar items/ nuances associated with computation of income of a life insurance company which have not been discussed given that the scope of this paper.

Exemption under section 10(23AAB)

As discussed above, section 10(23AAB) of the Act provides for exemption in respect of pension schemes which have been approved by the IRDA. Accordingly, income from such segment is excluded in computing the taxable surplus. A question that arises is whether the loss incurred in such business would also be ignored and cannot be adjusted against the taxable surplus. The Bombay High Court has in the case of Life Insurance Corporation[9] held that the actuary was justified in setting off the loss incurred by the actuary in pension fund (Jeevan Suraksha Fund) against the taxable income for determining the surplus as per section 44 of the Act. The Court held that the object of section 10(23AAB) of the Act was not to treat the such funds out of the purview of section 44 of the Act but to promote the same by exempting income from such funds so that attractive terms could be offered to the contributors. Thus, if the loss has been taken into consideration for determining the actual surplus – such amount cannot be disallowedadjusted.

Taxation of Non-Life Insurance Company

Basic framework

Rule 5 of the First Schedule to the Act prescribes the manner in which profits and gains of any business of general insurance companies are to be computed. The Rule provides that the profits of a general insurer shall be taken to be the profits disclosed by its annual accounts, prepared in accordance with the Insurance Act, 1938, subject to the following adjustments:

a) Addition of any expenditure/allowance/ provision for tax, dividend or reserve, inadmissible under the provisions of sections 30 to 43B of the Act;

b) Addition/deduction of gains or loss which has not been added to profit and loss account will have to be added back. Further, provision for diminution in the value of investment debited to profit and loss account shall be added back.

c) Deduction in respect of the amount carried over to a reserve for unexpired risk not exceeding the limits prescribed in Rule 6E of the Income-tax Rules, 1962 ('IT Rules').

Rule 6E of the IT Rules prescribes that the deduction in respect of the amount carried over to a reserve for unexpired risk of 100% of the premium income (net of reinsurance paid) where the insurance business relates to (a) marine insurance (b) fire insurance or engineering insurance which provides insurance for terrorism risks; and 50% in other cases.

Tax rate

The income arrived as above is taxed at the rate of 30% (plus applicable surcharge and education cess) in the hands of insurance company.

It may be noted that insurance companies are not required to prepare its financial statements in accordance with Schedule VI of the Companies Act, 1956 (Co. Act) and accordingly insurance companies were not subject to Minimum Alternate Tax (MAT) provisions under section 115JB of the Act. However, w.e.f. 1-4-2012 companies which are exempt from preparing

6 [2013] ITA No. 2203 and others of 2012 (Mum.)

7 [2013] ITA No. 6366 and others of 2011 (Mum.)

8 [2013] ITA No. 6221 and others of 2012 (Mum.)

9 [2011] ITA No. 3691 and others of 2010 (Bom.)

financial statement[10] as per Schedule VI of Co. Act (such as banking and insurance companies) are required to prepare such financial statements for the purpose of section 115JB of the Act. Further, Explanation 3 to section 115JB (2) of the Act provides an option to such companies in respect of period prior to 1-4-2012 to prepare financial statements either as per the Schedule VI or Act governing their business (i.e., Insurance Act, 1938/IRDA Act, 1999 for insurance companies).

Unlike life insurance companies, non-life insurance companies have not been exempted under section 115JB of the Act and are subject MAT @ 18.5% (plus applicable surcharge and cess). Further, in view of the above legislative amendment, non-life companies/ banking companies should not be subject to MAT for the period prior to 1-4-2012. This principle has been upheld by the ITAT in the case of ICICI Lombard General Insurance Co Ltd.[11] and State Bank of Hyderabad[12].

Adjustments not contemplated by Rule 5

It may be noted that Rule 5 provides that profits as per the annual accounts shall be the starting point of computation for a non-life insurance company. To this, inter alia, additions would be made in respect of items of expenditure/ allowances which are disallowable under sections 30 to 43B of the Act. There is no provision for claiming a deduction in respect of an item of expenditure allowable under sections 30 to 43B of the Act. Thus, in case an amount which is otherwise allowable as per regular provisions of the Act but which has been recorded in the Balance Sheet (deferred revenue) instead of recording in the profit & loss account, there may be a technical challenge in claiming the same having regard to the language of Rule 5. This issue was examined by the Mumbai ITAT in the case of *New India Assurance Co Ltd vs. ACIT*[13], which held that no adjustments other than those allowed under Rule 5 should be permitted.

It my view, the taxability of non-life insurance companies is closely akin to the regular computation (with some added peculiarities such as deductibility of URR etc.). Thus, if an expenditure is allowable under sections 30 to 43B of the Act (for example, allowance under sections 40(a) in the year of payment) should be deducted. Any other interpretation may lead to permanent disallowance of some of the expenditure.

The nature of adjustments should really determine whether the amount is allowable as per Rule 5 of the First Schedule and any interpretation, which results in permanent denial of expenditure.

Common issue applicable to life as well as non-life companies

Given that section 44 of the Act read with the First Schedule is a Code by itself, a question arises as to whether the exemptions available under section 10 of the Act in respect of [dividend income section 10(34), interest income section 10(15) etc.] would be available to an insurance company. It has been held that only certain provisions[14] are excluded from the provision of section 44 of the Act and the other provisions which deal with the allowable deductions/exemptions will continue to apply. If the intent was to deny to exemptions under section 10, even exemption in respect of pension business which is specific to life insurance industry would also not be available to such companies and such a position would be absurd and unintended.

Interestingly, on the question of whether section 14A is applicable to insurance companies, the

10 Schedule III of the Companies Act, 2013 corresponds to schedule VI of the Companies Act, 1956.

11 [2012] ITA No. 2398 of 2009 (Mum.)

12 [2012] ITA 570 of 2010 (Hyd.)

13 142 TTJ 312 (Mum.)

14 CIT vs. New India Assurance Co. Ltd. (1969) 71 ITR 761 (Bom.), Life Insurance Corporation vs. CIT (1978) 115 ITR 45 (Bom.) and General Insurance Corporation [2012] 342 ITR 27 (Bom.)

Courts/Tribunals have consistently held that the same is not applicable as insurance companies are governed by a special code under section 44 of the Act[15].

The above position has very recently been upheld by the Bombay High Court in the case of *Kotak Mahindra Old Mutual Life Insurance Company*[16] where the court censured the Income Tax department for raising repetitive appeal on settled matters where the Courts have ruled the matter in favour of the assessee.

Similarly, a question arises as to whether transfer pricing provisions of Chapter X dealing with Transfer Pricing would be applicable to insurance companies. Considering that the basis of taxation is the amount of surplus/ profits reported as per the actuarial reports/ financial statements that are governed by the Insurance Act, 1938, transfer pricing provisions ought not to apply to insurance companies. Given that transfer pricing provisions merely supplement the provisions dealing with regular computation provisions (30 to 43D) which are overridden by section 44/ First Schedule (being a computation code by itself) to the Act, it may be fairly arguable, at least for life insurance companies, that transfer pricing provisions are not applicable in computing the taxable surplus.

Withholding tax

Proceeds of life insurance

The Finance Act, 2014, inserted section 194DA, with effect from October 1, 2014. It provides that any person responsible for paying to a resident any sum under a life insurance policy (aggregating to more than ` 1 lakh), other than the amounts exempt under section 10(10D) shall, deduct tax @ 2% and deposit the same with the Government.

Life insurance companies offer a wide range of life insurance policies. In each case, it would have to be evaluated by the insurance companies whether the tax is deductible having regard to the terms and the features of the product and the threshold limit for non-deduction of tax.

Reinsurance payments

There is no specific provision in the Act which subjects reinsurance premium to withholding tax. Thus, premiums paid to domestic reinsurers (GIC) are not subject to withholding tax.

Re-insurance premium payable to foreign reinsurers by an Indian insurance company, in the absence of a Permanent Establishment in India of the foreign company, should not be taxable in India. While the nature of activities carried on in India would determine as to whether the foreign reinsurer has a PE in India, it may be noteworthy that the activities/ presence in the India of the foreign reinsurer are closely supervised by the IRDA and currently the threshold of activities permitted by the IRDA is low (i.e. preparatory and auxiliary).

In case foreign reinsurers are required/ permitted to set up a branch in India pursuant to Insurance Laws (Amendment) Ordinance, 2014 (in case where the Ordinance transitions into Act), income of such reinsures would be taxed at 40% (plus applicable surcharge[17] and education cess[18]) on net income basis, on the profits attributable to Indian branch.

Direct Taxes Code 2010 (DTC)

DTC contained a number of proposal in relation to taxation of insurance companies and foreign reinsurers. The fate of DTC will be decided only in future and by the priorities of the current government.

15 ICICI Prudential's case (supra), JCIT vs. Reliance General Insurance Company [ITA No. 3085/ Mum/2008]

16 [2104] ITA No 422 of 2012 (Bom.)

17 Surcharge at the rate 2% if income earned during the preceding year exceeds ` 1 crore; 5% if the income exceeds ` 10 crore.

18 Education cess and Secondary education cess at the rate 2% and 1% respectively.

CA. S.S. Gupta & CA. Nidhi Mapuskar

Insurance – Key Indirect Tax Issues

The insurance sector is divided into two parts namely 'Life' and 'General'. The Government of India had introduced Service Tax on 'General Insurance' w.e.f. 1-7-1994 and on 'Life Insurance' w.e.f. 10-9-2004. The business model of Life Insurance is complicated and peculiar in nature. This article mainly focuses on issues arising from levy of service tax on 'life insurance business'.

2. Typically every insurance company has following types of policies:

a) Unit Linked Insurance Policy (ULIP)

The investment and insurance component is coupled under this policy. The policy holder is required to specify the nature of fund under which the amount shall be invested by the company. The amount of premium attributable to risk cover i.e. mortality charge and amount of charges recovered towards management of fund /administration of policy is reduced from the amount of premium. The balance of premium is invested by the company. The bifurcation of charges and amount of investment is disclosed to the policy holder in statement provided to policyholders. This statement shows the details of investments made and charges deducted to maintain the investment, number of units, value of each unit.

b) Pure Term policy

This policy only has risk component. There is no investment component. Hence the benefit is paid on happening of contingency event like death, accident of the individual. In absence of same there is no payout under this policy.

c) Traditional Policy

This policy also combines the investment and insurance component. The salient feature of this policy is that the bifurcation of the premium for risk and investment component is not informed to the policy holder. The insurance company does not disclose the details of investments made for these policies.

d) Annuity/pension products

Under this policy, the policy holder pays a lump-sum amount as a single premium. The Insurance Company pays to the policy holder a fixed amount on periodic basis for the entire life of the policy holder. The risk cover is generally optional for pension products.

3. Levy of service tax on Life Insurance Services

(a) Life Insurance Services

The service tax is levied under Chapter V of Finance Act, 1994 as amended from time to time. The definition of 'taxable service' for life insurance service was defined under sub-clause (zx) of clause 105 of Section 65. As per the definition till 30-4-2011, only risk cover in life insurance was leviable to Service Tax. The said definition is reproduced below for ready reference:

"(zx) to a policy holder or any person, by an insurer, including re-insurer carrying on life insurance business in relation to the risk cover in life insurance."

The definition of life insurance service was amended w.e.f. 1-5-2011. By virtue of this amendment, the entire provision of service of Life Insurance Company to policy holder was bought under the definition of 'taxable service'. The amended definition is reproduced below:

"(zx) service provided or agreed to be provided to a policy holder or any person, by an insurer, including re-insurer carrying on life insurance business."

Hence charges for any service which were agreed to be provided to policy holder by an insurer were leviable to service tax.

b. Management of Investment under ULIP service

The management of investment under ULIP was considered as separate provision of service by life insurance company to policy holder and taxed under the category of Management of Investment under ULIP services. The Service Tax was introduced w.e.f. 16-5-2008 under this category of service. As per definition of taxable service given in Section 65(105)(zzzzf) the amount of premium has reduced by the amount of investment and mortality charges were leviable to tax. The said definition is reproduced below:

(zzzzf) to a policy holder, by an insurer carrying on life insurance business, in relation to management of investment, under unit linked insurance business, commonly known as Unit Linked Insurance Plan (ULIP) scheme.

Explanation — For the purposes of this sub-clause,—

i. Management of segregated fund of unit linked insurance business by the insurer shall be deemed to be the service provided by the insurer to the policy holder in relation to management of investment under unit linked insurance business; and

ii. the gross amount charged by the insurer from the policy holder for the said services provided or to be provided shall be equivalent to the difference between, —

a. premium paid by the policy holder for the Unit Linked Insurance Plan policy; and

b. the sum of premium paid for or attributable to risk cover, whether for life, health or other specified purposes, and the amount segregated for actual investment.

Illustration

Total premium paid for the Unit Linked Insurance Plan policy = ` 100

Risk premium = ` 10

Amount actually invested = ` 85

Gross amount charged for the service provided = ` 5 [100-(10+85)].

iii. in addition to the amount referred to in clause (ii), the gross amount charged shall include any amount charged subsequently, whether or not periodically, by the insurer from the policy holder in relation to management of investment under unit linked insurance business;

Therefore, all the charges were considered as related to management of segregated funds and leviable to tax. Thus charges like premium allocation, fund management charge recovered by company was leviable to service tax. Moreover, any amount collected in addition to premium like switching charges were also leviable to service tax. However the definition was amended w.e.f. 1-7-2010 to provide that only fund management charge will be leviable to Service Tax. The amended definition is reproduced below:

(zzzzf) to a policy holder, by an insurer carrying on life insurance business, in relation to management of investment, under unit linked insurance business, commonly known as Unit Linked Insurance Plan (ULIP) scheme.

Explanation — For the purposes of this sub-clause, —

i. Management of segregated fund of unit linked insurance business by the insurer shall be deemed to be the service provided by the insurer to the policy holder in relation to management of investment under unit linked insurance business; and

ii. The gross amount charged by the insurer from the policy holder for the said service provided or to be provided shall be equal to the maximum amount fixed by the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act 1999 as fund management charges for unit linked insurance plan or the actual amount charged for the said purpose by the insurer from the policy holder, whichever is higher.'

Hence w.e.f. 1-7-2010 only mortality and fund management charge were leviable to service tax under abovementioned category of service.

4. Taxability from 1-7-2012

W.e.f. 1-7-2012, the above definitions has been deleted and Service Tax is leviable on each and every services provided by Insurance Company. Hence the leviability of tax on Life Insurance Company can be summarised as follows:

5. Composition scheme for payment of service tax

The Rule 6(7A) of Service Tax Rules, 1994 provides alternative method for computing service tax amount as against tax under section 66 or 66B. The said rule since inspection is reproduced below:

(i) W.e.f. 10-9-2004 to 30-4-2011

"(7A) An insurer carrying on life insurance business liable for paying the service tax in relation to the risk cover in life insurance provided to a policy holder shall have the option to pay an amount calculated at the rate of one per cent of the gross amount of premium charged by such insurer towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Chapter V of the Act :

Provided that such option shall not be available in cases where –

(a) The entire premium paid by the policy holder is only towards risk cover in life insurance; or

(b) The part of the premium payable towards risk cover in life insurance is shown separately in any of the documents issued by the insurer to the policy holder."

(ii) W.e.f. 1-5-2011 to 31-3-2012

"(7A) An insurer carrying on life insurance business shall have the option to pay tax :

(i) On the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service;

(ii) 1.5 per cent of the gross amount of premium charged from a policy holder in all other cases;

towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Chapter V of the said Act :

Provided that such option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance.".

(iii) The said rule w.e.f. 1-4-2012 is as follows:

"(7A) An insurer carrying on life insurance business shall have the option to pay tax :

(i) On the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service;

(ii) in all other, 3 per cent of the premium charged from policy holder in the first year and 1.5 per cent of the premium charged from policy holder in the subsequent years;

towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66B of Chapter V of the said Act:

Provided that such option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance."

Hence in view of above rule the insurance company was liable to pay 3% of gross premium of first year and 1.5% of gross premium for renewal premium for traditional/annuity/pension policy. However the service tax was leviable at prevailing rate i.e. 12.36% on charges recovered from the policy holder under ULIP and pure term policy.

6. With this background the key issues in life insurance business are as follows:

A. Dispute on determination of the point of taxation of first premium received by policy holder:

As per Insurance Act, 1938 and Insurance Regulatory and Development Authority (Protection of Policy holders' Interests) Regulations, 2002, once a prospective policy holder opts for a particular insurance plan, he is asked to fill up a proposal form which asks him the details regarding personal, health and financial information. The form is then duly signed by the prospective policy holder. Along with this proposal form, the proposed policy holder is also required to give an amount called "proposal deposit". Once the proposal form along with the proposal deposit has been received, the insurer carries out the underwriting so as to determine the risk undertaken by company on issuance of the policy. Based on the underwriting advice, either the policy is issued or further financial/medical examinations etc. are carried out through third party examiners. If any extra risk is indicated by the underwriting team, additional amount is demanded towards revised premium. In various cases the proposal is rejected and the policy is not issued to the prospective policy holder. In such case the full amount of deposit is refunded to the prospective policy holder. Hence until the evaluation process is not completed the company is not aware whether it will provide the insurance service. The policy is issued to the prospective policy holder only after this process which usually takes around 15 days and in some cases it may take few more days depending upon the days taken by prospective policy holder to submit the additional required information.

The issue in such case what is the point of taxation of first premium received by the insurance company. The point of taxation is the date on which the insurance company receives the amount of proposal deposit or the date on which the policy is issued and amount of proposal deposit is appropriated as premium.

The Section 66B of the Finance Act levies service tax on services provided or agreed to be provided by a service provider. The agreement to provide the services can be in the form of either issuance of policy or by any other means by which it can be established that the company has agreed to undertake the risk. The contract of insurance is made in the form of policy. The application form duly filled in along with the cheque issued by the prospective customer is only the proposal made by the prospective customer for entering into contract of insurance. This form is a proposal of the prospective policy holder to the company. The company does not provide insurance service to each of the prospective policy holder. It evaluates the proposal and based on the evaluation agrees/ disagree to provide the service. Therefore the agreement of provide the service does not happen at the proposal stage.

This above view has been upheld by Hon'ble Supreme Court in the case of *Life Insurance Corporation of India vs. Raja Vashireddy and Others reported in (1984) 071 AIR 1014 (SC).* The following Hon'ble High Courts have also upheld the above view:

(i) *Bombay High Court – Life Insurance Corporation of India vs. Smt. Brazinha D'Souza AIR 1995 Bom 223*

(ii) *Kerala High Court – Life Insurance Corporation of India vs. Mrs Prasanna Devaraj AIR 1995 Ker 88*

(iii) *Calcutta High Court – Hindustan Co-operative vs. Shyam Sunder and Ors. AIR 1952 Cal 691*

Therefore the commencement of service happens only on issuance of policy. There is no agreement of service prior to this event.

Further as per Rule 3 of the Point of Taxation Rules, 2011 whenever any advance is received towards provision of taxable service the point of taxation shall be the date of receipt of each such advance. Hence the advance shall be received towards provision of a service to arrive at point of taxation under rule 3. The amount of proposal deposit is not appropriated towards service under till evaluation process is not completed and the decision to issue to the policy has not been arrived at. The company may accept or reject the proposal of prospective policy holder. Hence at the point of receipt of proposal deposit it cannot be said that amount has been received for providing service. Thus the point of taxation is date of issuance of policy.

B. The levy of Service Tax on surrender/ foreclosure charges covered from policy holder for surrendering of policy

The policy holder is required to pay premium on periodic basis for a specified period under insurance policy. The non-payment of premium leads to lapse of policy. Under this state, the risk cover is forfeited. The Insurance Company merely manages the fund and levy charges to manage the fund. These charges are deducted from the fund value itself. The fund value is required to be more than the total of one full year's premium paid by the policy holder to the company. As per IRDA guideline the policy stands foreclosed in case the fund value reduces to less than the amount of premium. In such case the company levies a foreclosure charges and pay back the remaining fund value to the policy holder.

Alternatively the policy holder may also make a request to surrender the policy prior to completion of the term of the policy and receive the balance amount of fund value. In such case the insurance company levies a surrender charge.

The nature of foreclosure and surrender charge is same. The charge is levied as a penalty for the act of the policy holder of non-payment of premium. The issue is that whether service tax can be levied on surrender charge on premise that it is in relation to fund management and covered under clause (iii) of explanation to the definition of management under 'ULIP services'.

The nature of surrender charge can be explained with the following reference:

a) As explained in IRDA Regulations

(i) The IRDA has issued Circular No. 32/ IRDA/ACTL/Dec-2005 dated 21-12-2005 to provide a guideline for 'Unit Linked Life Insurance Products'.

The expression 'surrender' has been explained in Annexure – I: Terminology to the guidelines. The said explanation is reproduced below:

"**Surrender:** Surrender means terminating the contract once for all. On surrender a surrender value is payable which is usually expressed as fund value less the surrender charge (the surrender charge could be zero at the later part of the contract)."

The para 5 of the Annexure to the guidelines provides for option available on discontinuance of premium. The paragraph 5.4 of the Annexure of the guidelines provides that the Insurance contract shall be terminated, if the 'fund value' reaches an amount equivalent to one full year's premium as it is explained above. The said paragraph is reproduced below:

"5 Options available on discontinuance of premiums:

5. (i) Discontinuance of due premiums after paying at least three consecutive years premium:

5.1 to 5.3 …………….

5.4 When the fund value reaches an amount equivalent to one full year's premium, the contract shall be terminated by paying the fund value. It is clarified that the intention is to ensure payment of a minimum of one full year's premium to the policy holder."

(ii) The Insurance Regulatory and Development Authority (Treatment of Discontinued Linked Insurance Policies) Regulations, 2010:

This regulation makes provision with regard to treatment of discontinued linked insurance policies. The reasons why charges shall be levied have been specified in regulation 7. The same is reproduced below:

"Obligations of an insurer upon discontinuance of a policy.

7. The obligations of the insurer in this regard shall be as follows:-

i) To impose discontinuance charges only to recoup expenses incurred towards procurement, administration of the policy and incidental thereto;

ii) To design the discontinuance charges to encourage the policy holder to continue with the contract for the full term;

iii) To ensure that the discontinuance charges reflect the actual expenses incurred;"

b) Definition of surrender charge as per various online dictionaries

(i) Source: http://financialdictionary.thefreedictionary.com/Surrender+Charge

1. A fee one must pay when cancelling a life insurance policy. A surrender charge is levied to encourage a policy holder to remain with the same insurer

2. A penalty charge one owes if one makes a premature withdrawal from an annuity, insurance contract, or some other investment vehicles.

(ii) Source: http://dictionary.cambridge.org/dictionary/business-english/surrender-penalty

"a charge made by an insurance company for ending an insurance policy early, before its original end date:…"

(iii) Source: http://www.investopedia.com/terms/s/surrendercharge.asp

A fee levied on a life insurance policy holder upon cancellation of his or her life insurance policy. The fee is used to cover the costs of keeping the insurance policy on the insurance provider's books.

(iv) The Dictionary of Insurance by S.R. Singh (Page 207):

Fee charged to a policy holder when a life insurance policy or annuity is surrendered for its cash value. The fee reflects expenses the insurance company incurs by placing the policy on its books and subsequent administrative expenses.

It will be evident from above that surrender charge is in the nature of penalty levied on the policy holder for violation of contract in the form of non-payment of premium. The intention of the insurance company is that every policy holder should complete the term of the policy. Hence these charges are levied as a penalty to discourage the policy holder from surrendering the policy. This charge has no connection to management of funds of the policy holder. The same is not in relation to management of fund and hence not leviable to service tax.

C. The reversal of CENVAT credit on premise that insurance company is engaged in trading of securities

The insurance companies are required to made investments primarily to service the claims and maintain the solvency ratio. The IRDA has issued Insurance Regulatory and Development Authority (Investment) Regulation, 2000. As per this guideline every Insurance Company is required to invest a certain portion of premium earned from investment operations.

The Rule 6 of the CENVAT Credit Rules, 2004 provides for the manner of availment of CENVAT Credit for a service provider who provides taxable as well as exempted services. The explanation to this rule provides the meaning of the term 'value' for the purpose of Rule 6. The Clause (d) of the said explanation provides for the determination of 'value' for trading in securities. The said clause is reproduced below:

> "*Explanation I* – "Value" for the purpose of sub-rules (3) and (3A), –
>
> (a) to (c) ....
>
> (d) In case of trading of securities, shall be the difference between the sale price and the purchase price of the securities traded or one per cent of the purchase price of the securities traded, whichever is more."

The negative list regime was introduced w.e.f. 1-7-2012. The term goods has been defined under section 65B(25). As per the definition 'goods' includes 'securities'. The service tax is levied under section 66B of Finance Act,1994 as amended. As per this section, the service tax is levied on all services other than those specified in negative list. The negative list of services is provided in section 66D. The Clause (e) of the said Section specifies 'trading of goods' as negative list. The Rule 2(e) of the CENVAT Credit Rules, 2004 has defined exempted service to mean services on which no service tax is leviable under section 66B of the Finance Act, 1994.

The issue in this case is that whether in can be contended that activity of investment undertaken by the insurance company is covered under the clause 66D(e) of Finance Act. Therefore it is an exempted service and CENVAT credit is required to be reversed on the same.

However the word 'trading' has not been defined in the Act. As per Black Laws Dictionary, 6th Edition the word 'trade' means as follows:

> "The act or the business of buying and selling for money; traffic; barter. *May vs. Sloan, 101 U.S. 231, 25 L.Ed. 797.* Purchase of sale of goods and services between business, states or nations. Trade is not a technical word and is ordinarily used in three senses: (1) in that of exchanging goods or commodities by barter or by buying and selling for money; (2) in that of a business occupation generally; (3) in that of a mechanical employment, in contradiction to the learned professions, agriculture or the liberal arts."

The term trading as been defined as 'engaging in trade'.

Hence it will be evident from above that the word 'trading' means buying and selling of goods. Therefore buying of securities with intention to sell would be considered as trading in securities. The term investment is defined in the Black Laws Dictionary 6th Edition as follows:

"An expenditure to acquire property or other assets in order to produce revenue; the asset so acquired. The placing of capital or laying out of money in a way intended to secure income or profit from its employment. *Securities & Exchange Commission vs. Wickham, D.C. Minn., 12 F. Supp.245, 247.* To purchase securities or more or less permanent nature, or to place money or property in business ventures or real estate, or otherwise lay it out, so that it may produce revenue or gain (or both) in the future."

Hence the amount invested with an intention to earn revenue is termed as investment. The appreciation or depreciation in value of assets is known as gain/loss. The revenue here refers to income from investment like bonus, dividend, interest etc.

In the case of *Commissioner of Income Tax Bombay vs. H. Holck Larsen 1986-(160)-ITR-0067-SC* the apex court had discussed the distinction between trading and investment of securities. The Apex Court had referred to book Investments – An Introduction to Analysis and Management, 5th Edition which stated that the investment can be defined as a purchase by a person that produces some returns provisional to the risk over future period. The principle guiding investment was diversion for the purpose of deduction of risk of loss of capital or income. Hence investment in securities is different transaction from trading in securities. The distinction between trading and investment in securities has been laid down in various other case laws under Income-tax Act also. The Central Board of Direct Taxes (CBDT) had issued Circular No. 4/2007 dated 15-6-2007 to lay down the test for distinction between shares held at stock-in-trade and investments. This distinction was necessary because the income from 'trading in securities' was part of the business income and the investment of shares was part of capital gains/ other income. The tax rate under both the head of income was different. The extract of the Circular is reproduced below:

"The Authority for Advance Rulings (AAR) (288 ITR 641), referring to the decisions of the Supreme Court in several cases, has culled out the following principles:

(i) Where a company purchases and sells shares, it must be shown that they were held as stock-in-trade and that existence of the power to purchase and sell shares in the memorandum of association is not decisive of the nature of transactions;

(ii) The substantial nature of transactions, the manner of maintaining books of account, the magnitude of purchases and sales and the ratio between purchases and sales and the holding would furnish a good guide to determine the nature of transactions;

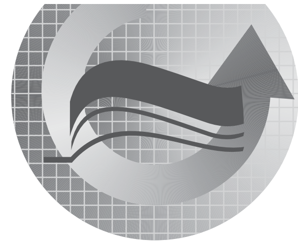
(iii) Ordinarily the purchase and sale of shares with the motive of earning a profit, would result in the transaction being in the nature of trade/adventure in the nature of trade; but where the object of the investment in shares of a company is to derive income by way of dividend etc. then the profits accruing by change in such investment (by sale of shares) will yield capital gain and not revenue receipt."

The insurance company receives premium to insure the various risks. It is imperative for them to invest the amount of premium in various securities. The actuary appointed by the company certifies the future liabilities of the insurance company. As per section 64VA of the Insurance Act, 1938 provides that the company is required to invest the premium in excess of value of its liability certified by the actuary. The IRDA has issued guidelines i.e. Insurance Regulatory and Development Authority (Investment) Regulation, 2000 to specify the manner of investment by the insurance company. This regulation specifies the approved securities in which the company can invest along with the maximum amount that can be invested in each such security. Hence the company has the intention to invest the amount of premium to earn capital appreciation and income from such investments. The period of holding of the securities of the companies is relatively long and insurance company invests in various funds to diversify its risk.

Hence it is evident from above that all the criteria have been fulfilled in instant case. Therefore such investment activity undertaken by insurance company cannot be considered as trading in securities.

Conclusion

The levy of service tax on life Insurance and General Insurance appeared to be very simple. But different interpretation by authorities has led to substantial amount of litigation. This is not good sign as this sector has been opened up for private entrepreneur recently.



Hemant Contractor, Chairman, Pension Fund and Regulatory Authority of India

National Pension System – Old age security for millions – Prospects and challenges

"You can be young without money but you can't be old without it."

— *Tennessee Williams*

The UNFPA report, released recently, has once again pointed to the increasing graying population in India. The report projected a 326% increase in number of people aged between 60 and 80 by the year 2050 from 2000; a 700% increase in the number of people older than 80 and a 55% increase in the country's older population. The demographics of today also indicate an increasing longevity with a more active lifestyle post retirement owing to betterment in medical facilities. With the shift to nuclear families, intergenerational support cannot be the sole source of old age security. Statistics indicate that only about 12% of the total population is covered by organised old age social security schemes in India and workforce in the unorganised sector has limited access to formal channels of old age economic support. Hence creation of a viable old age security system has become an imperative to counter the fast dwindling demographic dividend.

However, the onus of funding the entire old age security cannot squarely lie with the Government which is already reeling under the pressure of ever contracting budgetary resources. In fact, the current global demographic shift toward population ageing, largely reflecting rising life expectancy and declining fertility has led many countries across the world to re-evaluate their pension systems. Typically, they switch wholly or partially from unfunded systems, e.g. pay-as-you-go (PAYG) or defined benefit system to funded systems like defined contribution system. It is this switch which is responsible for the build-up of Pension Assets in the economies in last couple of decades. This pool of assets is being increasingly looked upon as one of the potential drivers of economic growth.

The National Pension System (NPS) launched by GOI and supervised by the Pension Fund Regulatory & Development Authority (PFRDA) has evolved out of this very need to provide old age security to the vast multitude of Indian population, without unduly straining the fiscal fabric of the Govt. and simultaneously providing for the long-term investment funds for the economy.

The NPS is a highly innovative and sophisticated product and is based on the world's best practices in the pension sector involving disciplined saving, vigilant investment to build a sufficient retirement corpus and its judicious draw down in the post retirement phase. It was initially launched for government and semi-government employees on 1-1-2004 to put a cap on the Govt's liability towards Civil Servants pension, unavoidable under the pay as you go system, marking a paradigm shift from defined-benefit to defined-contribution pension system.

As a result of implementation of NPS, all employees of the Central Government and of Central Government autonomous bodies, with the exception of the armed forces, are now covered by the NPS. Besides, 27 State Governments have also joined NPS. As of now, over 3.8 million Government employees, from Central and State Governments, have already joined the NPS and the corpus of their contributions has crossed ` 66,000 crores.

Subsequently NPS has also been made available to all citizens of India on voluntary basis w.e.f. 1st May, 2009. Any citizen of India between 18-60 years of age fulfilling minimum eligibility criteria can join the NPS. Subscribers are eligible for tax benefit and they can also choose the PFM, investment option from the given asset class. Till 3-1-2015, NPS had a total of 79.49 lakh subscribers & managed around 72,844 cr.

The NPS is a well regulated and transparent scheme. It is portable across geographies and employments. It being technology driven, subscribers can view their accounts online. It has laid down prudent investing norms for the fund managers, and their performance and portfolios are regularly monitored by the NPS Trust under the overall supervision of the PFRDA. The scheme offers complete flexibility to investors in terms of choice of investment mix. The investor decides the percentage of the corpus that goes into equities, corporate bonds and government securities, with the only limitation being, there's a 50% cap on the exposure to equities.

One of the most outstanding features of the NPS is the "life cycle fund". It is meant for those who are not financially aware or inclined to manage their asset allocation themselves. It is also the default option for someone who has not indicated the desired allocation of his investments. The life cycle fund is based on the premise of decreasing risk appetite with age. The 50% allocation to equities is programmed to reduce every year by 2% after the investor turns 35 till it becomes 10%.

This is in keeping with the strategy to opt for higher-risk-higher-return portfolio mix earlier in life, when there is ample time to make up for any possible black swan event. Gradually, as the investor approaches retirement age, he moves to a more stable fixed-return-low-risk portfolio.

This automatic re-jigging of the asset allocation is a unique feature of the NPS. No other pension plan or asset allocation mutual fund offers such a facility to investors. There are a few asset allocation funds based on age but they are one-size-fits-all solutions, not customised to the individual's age.

NPS-Corporate model also provides a platform to the corporates to co-contribute for the employee's pension. It also offers flexibility in contributions (equal/unequal) by employer and employee as decided mutually by them subject to the minimum contributions as prescribed by the PFRDA. The Corporate model enables the employer to outsource the administrative, recordkeeping & fund management functions to NPS at no additional burden. Besides, both employer and employee get a tax benefit.

A unique feature of the NPS is the tax benefit it offers under Section 80 CCD (2). Under this section, if an employer contributes 10% of the salary (basic salary plus dearness allowance) in the NPS account of the employee, this amount will get tax exemption without any upper limit. This exemption is over and above the ` 1 lakh tax deduction under Section 80C. It's a win-win situation for both because the employer also gets tax benefit under Section 36 I (IV) A of the Income-tax Act for his contribution. By contributing to NPS, employer can provide an additional tax benefit to the employee by simply reorganising the salary structure without incurring any additional cost to the company (CTC).

The distribution mix of any product is generally dependent upon 4 C's – Cost, Control, Complexity and Customer outcome. As the rationale behind NPS has been achievement of universal old age income security, low cost besides outreach has always been the overriding factor in selecting the distribution channels. The NPS distribution mix at present consists of plethora of entities panning across the spectrum of public and private sector having a wide geographical spread across the country. The distribution of NPS is conducted using a host of existing financial infrastructure of public and private sector financial institutions like private and public sector banks, Regional Rural Banks, Micro-Finance Institutions, Non Banking Finance Companies, Non Government Organisations, welfare bodies etc. to drive down operational costs.

This approach has helped in the organised sector, where employers – Central Govt. State Govt. and Corporates conduited their employees to NPS. The unorganised sector, however, continues to be largely untapped. Lack of awareness and complexity of the product has also influenced customer outcome.

As NPS is still a nascent product, the optimum mix of distribution and marketing channel is still under evolution, awareness and media campaigns shall have to play an important complementary role to provide effective thrust and push to NPS to provide wholesome and universal age old security coverage to the increasingly graying Indian population at affordable price.

Pension Sector has an equally important role to play in the inclusive growth of the economy and hence industry will have to come up with innovative strategies and distribution system to tap the 'Bottom of Pyramid'. In case of India around 88% of the population is informal with large scale migrations, tenuous market links.

In October 2010 GoI launched, a historic initiative to address the old age protection need of the unorganised sector workers. "Swavalamban Yojana" is a novel endeavour by GoI to support individuals in the unorganised sector in achieving old age security and dignity. GoI will contribute ` 1,000 per annum to all eligible NPS Swavalamban accounts where the subscriber deposits a minimum of ` 1,000/- to maximum ` 12,000/- per annum. The incentive is presently available till 2016-17. As on 3-1-2015, more than 3.7 million subscribers have been enrolled under the scheme with AUM of ` 1371 crs.

When saving for a long-term goal such as retirement, the costs matter a lot. Over 35-40 years, the charges can shave off a significant amount from the corpus. The NPS charges fund management fees of 0.0102% for the Government employees and 0.01% for the private sector. This is perhaps the lowest in the world. Account opening, handling and administrative charges are also the lowest, making the cost adjusted returns of NPS quite attractive in the long run. It has been estimated that the all in cost of NPS including the fund management fees, will not exceed 0.25 % per year, making it the cheapest financial product in the country.

The NPS allows one to accumulate the corpus from the age of 18 years for forty odd years irrespective of geographies and employers in a single PRAN account. There is minimal leakage in the form of withdrawals for competing consumption expenses. This allows the investor to reap the compounding effect of tax concessions and low fees, invest the corpus as per one's risk appetite with professionally managed funds, generate optimum returns followed by a seamless transfer of retirement wealth from the accumulation phase to any of the seven IRDA regulated Annuity Service Providers (ASPs) of ones' choice on reaching 60 years of age.

Over and above this, the NPS offers the flexibility to draw up to 60% of the retirement corpus as lump sum to meet one's financial life goals like children's marriage or housing etc. or draw down the lump sum corpus in one shot anytime till one is 70 years old. The rest can be utilised to purchase annuity of ones choice out of the bouquet of annuities offered by the ASPs.

Tax Reforms in NPS

Present tax treatment for NPS is Exempt, Exempt and Tax (EET) i.e., the monthly/periodic contributions during the pension accumulation phase are excluded from income for tax purposes; the annual income accruals during the accumulation phase are also exempt from tax; however, the terminal benefits on exit or superannuation are taxable at the applicable rate in the year of receipt. On exit or superannuation, NPS subscribers have to necessarily annuitise minimum 40% of the accumulated pension wealth and withdraw the remaining maximum 60% lump sum in cash (even though the subscribers have option to annuitise up to 100% of the accumulated corpus). The amount of the accumulated pension corpus which gets annuitised for monthly pension through the Annuity Service Providers, which are usually the life insurance companies regulated by the Insurance Regulatory and Development Authority (IRDA), is subject to service tax and the remaining up to 60% lump sum payment on exit is taxable in the hands of the recipient. This drastically places him at an inequitable position vis-à-vis beneficiary of the Defined Benefit Pension Scheme, the EPF/ EPS and the approved superannuation funds (SAF) which enjoy EEE tax treatment. On the other hand a Central Government employee covered under 'Defined Benefit Pension Scheme' on superannuation can commute up to 40% of his pension into a lump sum payment which is tax free. Further, the monthly contribution, annual accrued income, drawal of advances/ withdrawals for specific purposes and final withdrawal from the General Provident Fund (GPF) on superannuation are accorded EEE tax treatment. Thus, there is clearly a need to provide a level playing field in respect of tax treatment of the NPS and the Defined Benefit Pension Scheme/ GPF.

The Superannuation fund if ported to NPS is taxable in the hands of the employee at the point of transfer. Hence, existing employees under SAF/CPF are reluctant to opt for NPS. Corporates are also reluctant to offer NPS to new employees, to avoid duplication of Superannuation structure for old employees and NPS for new employees. It is proposed to allow seamless tax free portability of funds from superannuation/contributory funds to individual NPS accounts under section 10(13) of the Income-tax Act to effectively provide a choice between NPS and other SAF/ CPF.

On attaining the age of 60 years or superannuation, a subscriber to the National Pension System has to compulsorily put at least 40% of his accumulated pension corpus in an annuity. Under rule 6(7A)(ii) of the Service Tax Rules, the premium charged (one time contribution) for provision of annuities is subject to a 3% service tax on which there is another 3% education cess, thus a total of 3.09% as per Department of Revenue notification No. 3/2012-Service Tax dated 17-3-2012. This brings down the net annuitised amount and thus the monthly pension. In the interest of the subscribers, annuities purchased from NPS and other pension schemes corpus which are approved and regulated by PFRDA to be exempted from service tax.

To organise, create awareness, market and distribute the NPS-Lite/Swavalamban to the poorer sections of society, PFRDA has registered intermediaries called Aggregators who are paid some incentives for this work from a Plan Scheme of the Department of Financial Services, Ministry of Finance through grants-in-aid. Aggregators are subject to pay service tax on their incentives received for mobilizing subscribers under the NPS-Swavalamban Scheme. Certain services provided to the Govt. of India or local authorities, services of general insurance nature such as RSBY, RKVY, individuals engaged in the business of BC, BF, mutual fund agents, sub-brokers etc. are included in a negative list issued *vide* Dept. of Revenue notification dated 17th March, 2012 and exempted from service tax. The incentive paid to Aggregators from grants-in-aid received from Govt. of India for the NPS-Swavalamban scheme should also be included in the negative list of services exempt from the levy of service tax.

All these issues have already been brought to the notice of Department of revenue and it is expected that NPS will get the requisite fiscal push from the Govt.

Conclusion

Driven by the demographics, imperatives of rising fiscal deficit and investment needs of the economy to spur economic growth and to provide for old age security to the growing millions of graying population, National Pension System (NPS) was introduced, initially for the Govt. employees in 2004 and subsequently opened to all citizens of the country in 2009 thereby leveraging the sophisticated, technology driven, innovative architecture already in place. Within a relatively short span of time, NPS has garnered a total of ` 79 lakh subscribers by Dec. 2014 & is managing around ` 73 cr of funds.

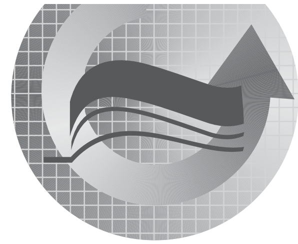
Retirement planning through NPS involves disciplined saving, prudential investment by PFMs to build a sufficient retirement corpus and its judicious draw down in the post retirement phase. The platform offers a plethora of options starting right from the point of contact viz. POP/aggregators, flexibility of frequency and contribution amount, the choice of PFMs, investment mix during investment phase, and finally choice of ASPs and a bouquet of annuities to the subscriber to optimise one's retirement wealth and replacement income as per one's economic situation in life. For the financially unaware subscriber at the other end of the spectrum, default options like life cycle fund, default PFM, default annuity service providers and default annuity have been built in the system to nudge him to save for old age with confidence in a financially sophisticated product. In that respect, NPS is probably the only Govt. backed broad spectrum, wholesome, universal, technology driven seamless retirement planning product in the country today, which in due course can achieve the objective of providing Universal pension coverage to the increasingly graying millions in India at affordable price, both in the organised and the unorganised sector.

	1999-2000	2011-12
Union Govt.	0.5% of GDP	0.6% of GDP
	INR 101 bn	INR 562 bn
State Govt.s	1.2% of GDP	1.3% of GDP
	INR 251 bn	INR 1215 bn

Indian Pension System

The present Indian pension system can be broadly classified into four segments:

NSAP (IGNOAPS)	EPFO	Pvt. Pension & Annuities	NPS
• GOI has launched this Umbrella scheme • It is poverty alleviation programme aimed at the old aged BPL people • It is pay as you go plan • Govt. pays out ` 200 every month to 22.3 million poor citizen aged 60+ • Some State Govt. also contribute	• India's largest DC and publicly managed plan • Employees in the organised sector are required to participate in PF and pension plans managed by EPFO • 88 million workers as of March 2013 are covered under this scheme. (4.50 active accounts) • 7.43 lakhs establish-ments are covered	• Various schemes administered by life insurance and mutual fund companies regulated by IRDA and SEBI • Along with traditional pension plans many life insurance companies have introduced unit linked pension plans	• Regulated by PFRDA • All govt. employees after 1-1-2004; State Govt., and PSUs employees have also enrolled under NPS • This is defined contribution pension scheme • Govt. does matching contribution for its employees



CA. Dolphy D'Souza & CA. Vishal Bansal

Impact of IFRS on the Financial Services Sector

In the Union Budget 2014-15, the Hon'ble Minister for Finance and Corporate Affairs proposed that non-financial companies will adopt IFRS converged standards (Ind-AS) voluntarily from the financial year 2015-16 and mandatorily from the year 2016-17. The Minister also stated that the respective regulators will separately notify Ind-AS adoption date for banks and insurance companies. We expect that entities in the financial services sector, i.e., banks, NBFCs and insurance companies, should also prepare to adopt Ind-AS as it is inevitable. The Reserve Bank of India (RBI) and the Insurance Regulatory and Development Authority (IRDA), being regulators for these entities, are working toward Ind-AS adoption on priority. In addition, there are many large conglomerates having subsidiaries, associates and joint venture engaged in the insurance/NBFC business. Irrespective of Ind-AS adoption for statutory financial statements, these entities will need to prepare Ind-AS financial statements to facilitate preparation of Ind-AS consolidated financial statements (CFS) by the parent entity.

Overview of key impact

Banks, NBFCs and insurance companies in India are highly regulated. Like other entities, they are required to comply with the accounting standards, to the extent applicable. In addition, RBI/IRDA prescribe mandatory accounting principles to be followed by these entities. For example, the RBI has prescribed guidelines for accounting of investments and provisioning norms for loan assets. The IRDA has prescribed norms for valuation of investments by insurance companies. Typically, accounting norms prescribed by a regulator are based on prudence. In contrast, the aim of IFRS is to present fairly the financial position, performance and cash flows of an entity. Hence, there are significant differences in accounting currently applicable and IFRS.

This article highlights key impact Ind-AS adoption will have on financial service companies. Though this article focuses on the impact on banking companies, major impact on insurance companies is also covered. Since the final version of Ind-AS to be applied by companies in the financial sector is not clear, we have discussed the impact based on IFRS.

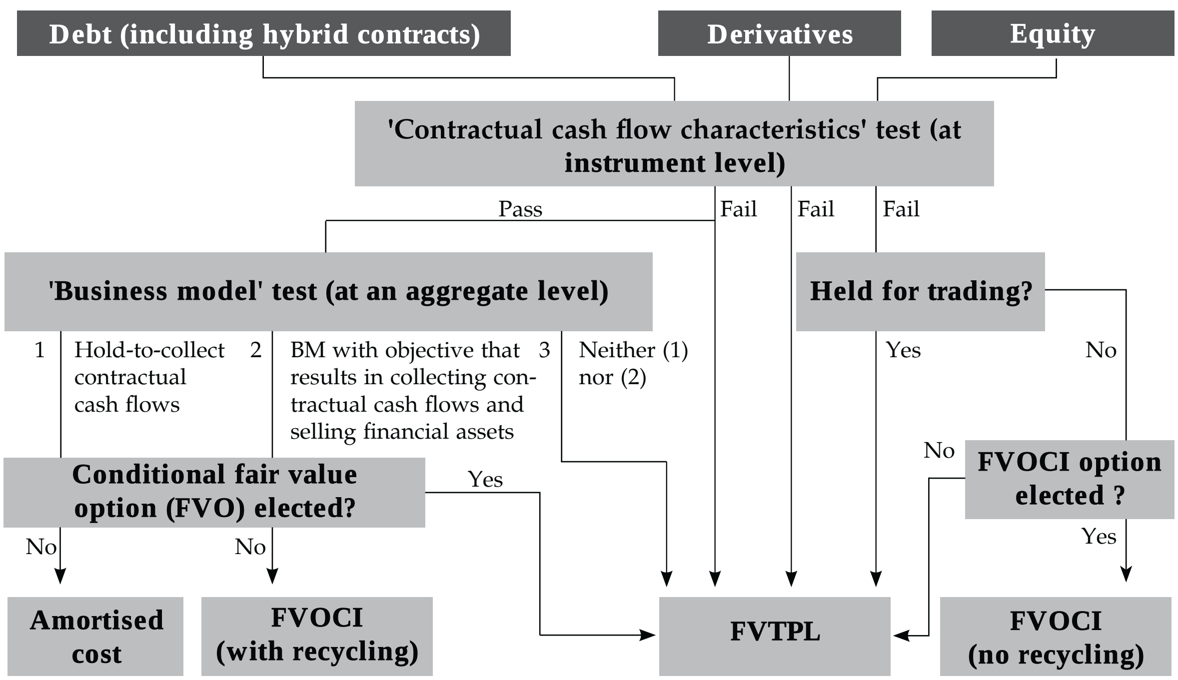
Key impact on banks

Accounting for debt and equity securities

In accordance with the existing RBI guidelines, a bank classifies its investment into three categories, viz., held-to-maturity (HTM), held-for-trading (HFT) and available-for-sale (AFS) investments. HTM investments, which may include both debt and equity securities, are accounted at cost plus accrued interest, if any. HFT and AFS securities are marked-to-market. In both cases, net depreciation, if any, is provided for; however, net appreciation, if any, is ignored.

IFRS 9 Financial Instruments introduces principles-based requirements for classification and measurement. The classification and measurement of financial assets depends on two assessments: the financial asset's contractual cash flow characteristics and the entity's business model for managing the financial asset. The diagram below explains IFRS 9 principles.

Classification and measurement diagram



The application of IFRS 9 principles implies that:

(a) Equity securities are measured at FVPL unless the entity chooses, on initial recognition, to present fair value changes in the other comprehensive income (OCI). This option is irrevocable and applies only to equity securities which are not held for trading. Gains and losses recognised in OCI are not recycled on sale and there is no impairment accounting.

(b) Derivatives, except those designated as effective hedges, are measured at FVPL.

(c) Debt instruments are measured at amortised cost/FVTOCI/FVTPL, depending on satisfaction of prescribed criteria (see table below).

Measurement of debt securities	
Measurement basis	**Criteria to be met**
Amortised cost	The asset's contractual cash flows represent "solely payments of principal and interest (SPPI)", and The asset is held within a business model whose objective is to hold the asset for collecting contractual cash flows.
FVTOCI	The asset's contractual cash flows represent SPPI, and The asset is held within a business model whose objective can be met either by holding the asset to collect contractual cash flows or by selling the asset.
FVTPL	Debt securities which do not meet criteria for amortised cost/FVTOCI measurement. In addition, an entity is permitted to measure other financial assets at FVPL if doing so would eliminate or significantly reduce a measurement or recognition inconsistency. The designation to measure financial assets at FVPL is irrevocable and only permitted at initial recognition.

The application of SPPI and business model test is likely to require significant judgment. To decide whether SPPI criterion is met, a bank will need to consider all contractual provisions of the instrument which may impact timing/amount of contractual cash flows, e.g., embedded derivative features and prepayment options. The business model test is highly judgmental. It is likely to depend on the facts and circumstances and intentions of the bank for holding each instrument. Part of the business model assessment also depends on how a bank has achieved the business model objective in the past, e.g., whether there have been significant recurring sales. To ensure timely availability of information, banks should start tracking such information on priority. It is possible that a bank holds the same type of security (say, government bond) in all three categories of business model. This may require three different measurements for similar instrument.

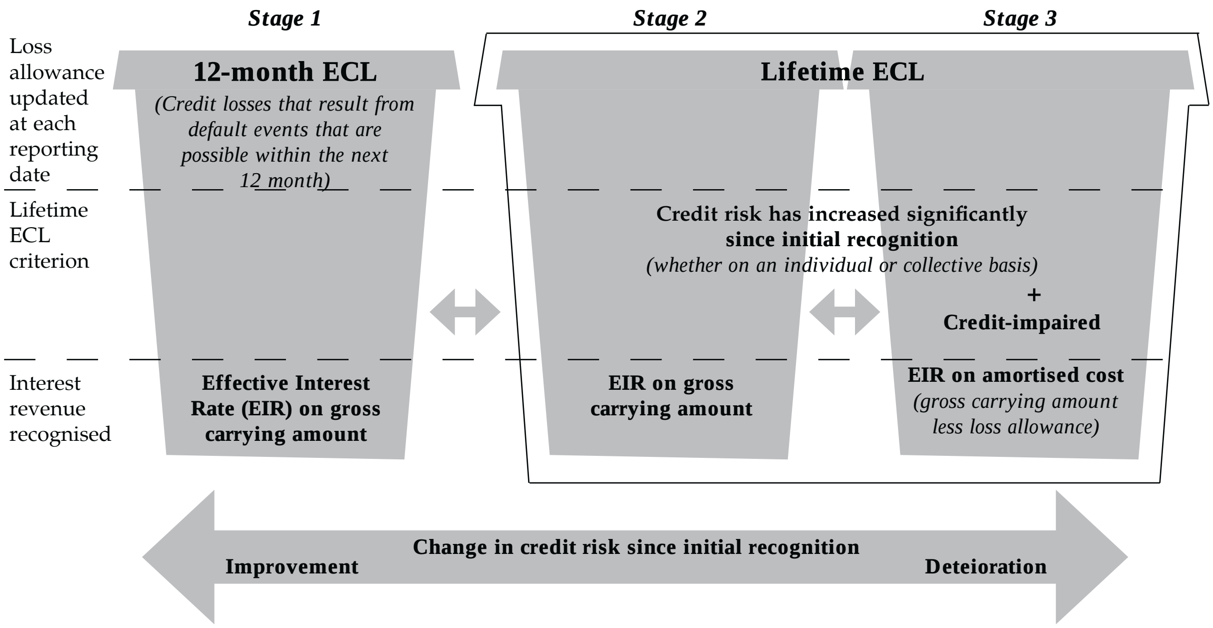
It is expected that the application of IFRS will require more instruments to be measured at fair value, with corresponding gain/loss to be recognised in the OCI/profit or loss. Banks will no longer be permitted to ignore appreciation in value of these securities. This will result in significant volatility in P&L and equity.

Loan loss provision/ impairment of financial assets

Under Indian GAAP, banks create impairment provision based on the provision matrix prescribed by the RBI. The provision rates prescribed by the RBI are minimum and a top-up provision is required, if additional losses are expected on the loan.

Under IFRS, the IASB recently issued the new impairment requirements that are based on a more forward-looking expected credit loss model. Under the new impairment model, the general approach is to recognise expected credit losses (ECL) in two stages. For credit exposures where there has not been a significant increase in credit risk since initial recognition (i.e., good exposures), entities are required to provide for credit losses that result from default events 'that are possible' within the next 12 month (a 12-month ECL – Stage 1 in the illustration below). For those credit exposures where there has been a significant increase in credit risk since initial recognition, a loss allowance is required for credit losses expected over the remaining life of the exposure irrespective of the timing of the default (a lifetime ECL – Stages 2 and 3 in the illustration below).

If the financial assets become credit-impaired (Stage 3 in the illustration below), interest revenue would be calculated by applying the effective interest rate (EIR) to the amortised cost (net of loss allowance) rather than the gross carrying amount.



To estimate expected credit losses over the life of the asset, the management may have to create models and collect significant amount of historical loss data. The need to incorporate forward-looking information means that application will also require considerable judgment as to how changes in macroeconomic factors will affect ECL. This exercise will be very complex and involve significant judgment. To help entities assess significant increases in credit risk since initial recognition, IFRS 9 provides certain operational simplifications and presumptions. However, these simplifications do not make impairment assessment a hassle free process.

It is expected that the ECL model may increase the credit loss allowances for many financial institutions. However, the increase will vary by entity and entities with shorter term and higher quality financial assets are likely to be less affected. In addition, the focus on expected losses is likely to result in higher volatility in the amounts charged to profit or loss.

Loan origination fees and costs

The current Indian GAAP does not contain any specific guidance on accounting for loan origination fees and costs. In the absence of specific guidance, many banks and NBFCs typically recognise these items as income/expense upfront in their Indian GAAP financial statements. This accounting is not acceptable under IFRS. IFRS requires that loan origination fee and costs should be recognised on an effective interest-rate basis. This spreads the interest and any associated fees, over the life of the loans.

Changes in the group structure

Under Indian GAAP, AS 21 Consolidated Financial Statements defines the term "control" based on ownership of more than one-half of the voting power, or control over composition of the board of directors.

IFRS 10 Consolidated Financial Statements contains substance based definition of control. It states, "An investor controls an investee when it is exposed, or has rights, to variable returns from its involvement with the investee and has the ability to effect those returns through its power over the investee." IFRS 10 requires an investor to consider all facts and circumstances, including purpose and design of the investee, to decide who controls investee entity. Hence, it is possible that an investor, who owns less than 50% of the voting power in an investee entity, has control over the investee entity. For example, this may happen in the case of de facto control, control through agreements, structured entities and potential voting rights.

The application of IFRS 10 is likely to have the following key impacts on banking entities:

(i) Certain banks have invested in insurance companies and own more than 50% equity share capital. Hence, these banks may have consolidated insurance companies as subsidiaries under Indian GAAP. The experience suggests that while banks own more than 50% equity capital of insurance companies, they do not have unilateral decision making powers. In many cases, the overseas investor, who is minority share holders, may have veto rights on all key operating and financial policy decisions. If this is the case, it is highly unlikely that a bank will be able to consolidate insurance company as subsidiary under IFRS. Rather, the bank may need to apply the equity method to its investment in insurance company.

(ii) Certain banks, particularly, those in the private sector, have floated venture capital funds (VCF) to pool funds from various investors and invest the same in start-up/high growth companies, for returns from capital appreciation, investment income, or both. The banks may also own minority stake in these funds and appoint one of their group companies as trustee-manager for the fund.

Under Indian GAAP, these funds do not meet criteria for full consolidation in CFS of the bank. The application of IFRS 10 principles will require banks to evaluate whether they have in substance control over the VCF. This assessment is likely to require exercise of significant judgment by the bank, after considering all facts and circumstances, including, purpose and design of VCF. If it is concluded that bank controls the VCF, then the bank will need to consolidate the VCF entity as subsidiary in its CFS.

A related point is that investment entity exception in IFRS 10 may require that VCF entity, in preparing its own IFRS financial statements, will account for all its investments at FVTPL. However, investment entity exception may not apply to banks. Hence, in preparing its CFS, the bank will not be able to use fair value based IFRS financial statements of the VCF. Rather, the bank will need to consolidate all its direct and indirect subsidiaries, i.e., including VCF subsidiary and its step down subsidiaries, using normal IFRS principles.

(iii) We have come across few structures where banks have set up special purpose entities (SPEs) to achieve specific objective, e.g., securitisation transaction. The SPE raises funds from market through issuance of notes. The SPE uses these proceeds to purchase loan portfolio or other securities from the bank. In many cases, banks continue to be exposed to significant risks associated with the transferred assets, e.g., by giving call/ put option to the SPE, subscription of subordinated securities or through guarantee arrangements. Our experience is that under Indian GAAP, SPE does not meet criteria for consolidation in the CFS of bank.

Under IFRS 10 principles, it is likely that the bank would be deemed to have the power to direct relevant activities of the SPE. It also has exposure to variable returns through call/ put option, subscription to subordinated securities or through guarantee arrangements. It is also possible that the bank may be able to use its power over the SPE to effect the amount of the bank's returns. If the three criteria are met, the nature of the bank's involvement with the SPE means that it meets all three elements of the control definition under IFRS 10. Therefore, it has control and consolidates the SPE in IFRS CFS.

Credit card reward points

A credit card arrangement involves at least three parties: the card issuer (typically, a financial institution or bank), the merchant (e.g., a retail store) and the cardholder. In a typical credit card arrangement, when a cardholder purchases goods or services from the merchant, the merchant receives an amount of cash that is slightly less than the invoiced price for the goods and services acquired by the cardholder. The difference between the invoice price and cash paid to the merchant is fee collected by the card-issuer bank (referred to as an 'interchange fee').

Many banks administer a credit card rewards programme as part of credit card arrangement. Under these programmes, cardholders receive award credits whenever they use their cards to make purchases from merchants. The terms and conditions of credit card rewards programmes and their characteristics vary significantly.

Under Indian GAAP, no accounting standard deals with accounting for reward programmes. However, the Expert Advisory Committee (EAC) of ICAI has dealt with this matter in one of its opinions (No. 28, Volume 31) on 'Accounting for reward points given to credit card holders under credit card reward point scheme'. As per the Opinion, the bank should create a provision for the liability at an amount equivalent to the cost expected to be incurred on redemption of outstanding reward points any time in future. The liability may be estimated by applying the actuarial method.

Under IFRS, the IASB has recently issued new standard, viz., IFRS 15 Revenue from Contracts with Customers. The core principle in IFRS 15 is that an entity will recognise revenue at an amount that reflects the consideration to which the entity expects to be entitled in exchange for transferring goods or services to a customer. IFRS 15 principles are applied using the following five steps:

1. Identify the contract(s) with a customer
2. Identify the performance obligations in the contract
3. Determine the transaction price
4. Allocate the transaction price to the performance obligations in the contract
5. Recognise revenue when (or as) the entity satisfies a performance obligation

IFRS 15 specifically deals with reward programmes issued by entities, such as, a retail company or an airline company, which have only one counterparty, viz., the customer. In such cases, IFRS 15 requires reward points to be treated as a separate performance obligation resulting in deferral of revenue attributable to reward points.

While developing IFRS 15, the IASB discussed requests from financial institutions for additional guidance on credit card rewards transactions. Specifically, financial institutions involved in credit card rewards programmes questioned whether the IASB intended a rewards programme to be accounted for as a separate performance obligation resulting in revenue deferral.

The IASB confirmed that financial institutions will have to consider the specific facts and circumstances of their credit card rewards programmes, given the unique and varied nature of these agreements. The IASB did not further clarify how a credit card company would identify the customer (i.e., whether the customer is the merchant or the card holder) in arrangements involving rewards programmes.

In the absence of clear guidance, each bank will need to evaluate its credit card arrangement using the specific terms and conditions. One key evaluation is whether the merchant or the card holder is customer for the bank. If it is concluded that the credit card holder is the bank's customer (since the customer pays the invoice and in substance, pays interchange fee to the bank for receiving credit card services), then the bank will treat reward points as a separate performance obligation. Under this analysis, the bank will apportion a part of interchange fee toward the reward programme. The fee apportioned to reward point will not be recognised as revenue immediately. Its recognition in the P&L or otherwise at a later date depends on evaluation of the arrangement followed by the bank for redeeming reward points. For example, if the bank is acting as an agent for redemption of reward points, then the amount which bank pays to other party for redemption will never get recognized in P&L of the bank. In such cases, the bank will create liability for a portion of the interchange fee based on relative fair value of the reward points and will extinguish this liability as the reward points are redeemed. If the bank is acting as a principal for redemption, proportionate revenue and cost will be recognised as the reward points are redeemed.

Others

In addition to the above specific differences, other major differences are likely be in the area of share-based payment, debt vs. equity classification, business acquisitions, post-employment benefits, income-taxes and presentation and disclosures of financial statements, including many fair value disclosures.

Key impacts on insurance companies

Insurance contract accounting

IFRS 4 Insurance Contract defines an insurance contract as "a contract under which one party (the insurer) accepts significant insurance risk from another party (the policyholder) by agreeing to compensate the policyholder if a specified uncertain future event (the insured event) adversely affects the policyholder." This definition determines which contracts are within the scope of IFRS 4.

Since IFRS 4 allows the existing accounting practices to continue with some minimal requirements, no major changes are likely with regard to accounting for insurance contracts at this stage. However, the products/contracts which do meet the definition of an insurance contract, such as zero death benefit pension products, will need to be accounted as per other applicable IFRS, e.g., IFRS 9 Financial Instruments. If entities are currently applying insurance contract accounting to such products, application of IFRS may have significant impact on the same.

It may be noted that the IASB is working on a new standard for insurance contract accounting and the final standard is expected in 2015. The proposed standard will contain detailed guidance on insurance contract accounting and its application is likely to result in significant changes to the accounting.

Investment accounting

Under IRDA Regulations, investments are classified into the following categories:

- Debt securities

- Equity securities and derivative instruments that are traded in active markets
- Unlisted and other than actively traded equity securities and derivative instruments
- Loans

Equity securities and derivative instruments that are traded in active markets are measured at fair value with changes being recognised in equity. These gains/losses are recognised in profit or loss on sale. All other financial assets are measured at cost/amortised cost. In addition, all assets including those measured at fair value are tested for impairment at each reporting date.

The above accounting is significantly different from investment accounting prescribed under IFRS 9 and discussed under the head "key impact on banks." On the lines impact described for banks, insurance companies will also need to revisit their investment accounting when applying IFRS.

Other key differences

To prepare insurance industry for IFRS, the IRDA had prepared a report which was exposed for comments in June 2009. In accordance with the report, the following areas of difference between Indian GAAP and IFRS are expected to be significant from the insurance industry perspective:

(a) Accounting for change in accounting policy and errors

(b) Presentation of financial statements more particularly with regard to items such as going concern, sources of estimation uncertainty and presentation of comprehensive income

(c) Investment property measurement principle

(d) Classification of financial assets

(e) General reporting of financial assets at fair value.

Concluding remarks

IFRS conversion for entities in the financial services sector is not merely an accounting exercise, but has significant regulatory, business and IT implications. Considering the large of volume of data required for IFRS, it may be very difficult to capture the information manually; rather, entities will need to update their IT system.

The fair value accounting and other aspects discussed above are likely to have significant impact on financial position and performance of entities in the financial services sector. This in turn may impact also other key performance indicator for these entities. Stakeholders need to be kept aware and prepared in advance of the impact of Ind-AS/IFRS on financial statements, not only as a matter of good corporate governance but to avoid any knee jerk reactions from them.

A number of regulatory reports/ compliances are based on Indian GAAP numbers. It is possible that going forward, regulators consider IFRS (Ind-AS in India) financial statements for calculating compliances. If this is the case, change in measurement under IFRS will have a direct impact on regulatory compliances. For example, application of IFRS to banks may give significantly different numbers having consequential impacts on regulatory capital requirements. It is, therefore, important that both regulators and entities consider these aspects carefully. For instance, in UK, regulators established filters to adjust IFRS reported amounts when determining regulatory capital.

CA. Mukul Shrivastava & CA. Vikram Babbar

Fraud and Indian Financial Services

The resilience of a growing economy is determined when its banking system is put to the test. India, with its immense growth potential, has stayed relatively stable throughout a series of global recessions and has emerged reasonably unscathed. It is ironic however, that a steadfast system such as this, would contain a series of vulnerabilities which have been left unaddressed; increasingly becoming gaping black holes and tarnishing the image of the financial sector. The most evident of the issues faced by the sector, and also its primal risk factor is the resultant impact of fraud.

Fraud continues to be one of the major problems in the banking and financial services domain, and the rapid growth of fraudulent activity is a testament to how difficult fraud is to detect and prevent — a fact that criminals take advantage of. During the National Conference on Financial Fraud, Reserve Bank of India (RBI) highlighted that the amount involved in the frauds reported by the banking sector in India has more than quadrupled from ` 2,038 crore during 2009-10 to ` 8,646 crore during 2012-13. This significant increase in fraud related loss is a result of multiple tangents of the banking system being targeted through fraudulent practices.

The financial service industry has undergone tremendous changes during the past decade with a growing magnitude of accounts being handed to the evolved service delivery platforms. The transition to a new age of banking and the propositioned potential of growth made the industry endeavour to expand at an alarming pace. This journey has inevitably left the financial service organisations with numerous loopholes in process and systems, which have surfaced over time, in a rather subdued manner.

The types of fraud which are currently the bane of the Indian banking sector, and top the list in terms of the complaints received, include internet and credit card fraud. In addition, there is the ever-increasing issue of siphoning of funds through fraudulent corporate loan financing, and money laundering and its relation to terrorist financing. Individual fraudsters have now turned into hacker syndicates, who use a combination of banking knowledge, technology and insider information to execute fraudulent transactions. The constantly evolving tactics used by offenders to avoid detection are amplified through the legacy systems used by a majority of banks that work in silos.

According to RBI's classification, the reported cases of fraud could be categorised into three sub-groups, namely, KYC related (mainly in deposit accounts) technology related, and advances related. Of these, the technology and advances related frauds have had the most impact.

KYC

Taking a step back, post the 2008 global recession, the sector underwent intense regulatory scrutiny to ensure that the KYC procedures in financial institutions was prioritised and mandated as a practice. What followed was the discovery and weeding out of a section of perpetrators who had been abusing this flaw in the system. While the processes had been tightened thereafter and there has been a reduction in fraudulent accounts being reported, the system has yet to be deemed watertight. This is because offenders are constantly on the lookout for ways to penetrate the system and misused technological knowhow has provided the metaphorical 'ammunition'.

Technology

Financial Services organisations face an ever increasing range of challenges within the financial crime arena, both internal and external. Rapid changes to technology and its usage have had a corresponding effect to the fraud landscape and as a result, these challenges have become a lot more complicated.

Traditional fraud has now been replaced by 'Cyber crime' and the new age 'virtual' banking has led to the emergence of new varieties of criminal activity – many of these frauds also exploit the new age banking channels such as card skimming, phishing, spoofing, digital document forging etc.

These new age frauds have not just caused financial loss to the industry but also loss of productivity, reputation and customer dissatisfaction. It has become imperative to detect these frauds close to the occurrence.

Corporate loans and advances

The recent spate of news around loans going bad and cases related to bribery & corruption has shown immense risks in the corporate lending business. What started as a post facto review of some large corporate account NPAs around a year or two back, has more or less resulted in a domino effect.

The financial services sector has been under intense regulatory scrutiny with the rapid increase in Non-Performing Assets (NPA) in 2014. This has also given rise to larger questions around the integrity and credibility of the lending and monitoring processes. Questions have been raised around the reasons behind these mounting cases – are they business decisions which went askew; were there any *mala fide* intentions; and is the lending and monitoring business conducted with integrity? The general sentiment with bankers seems to focus on enhancing internal controls around NPA reporting and monitoring. Market reports suggest that last quarter India's leading Public Sector Banks reported Gross Non-Performing Assets (NPA) of 4.90% on a quarter-on-quarter basis and a net NPA of 2.70% year-on-year basis.

Initiative from the regulator on fraud risk management

A significant step taken by the Reserve Bank of India (RBI) in 2009 was its issuance of a circular on a fraud risk management system for banks (a revised version issued in July 2014). Financial institutions responded positively to the requirements of the regulator by undertaking significant changes in their policies and procedures, acquiring new skill sets and forming dedicated teams to prevent and detect fraud. The circular made a bank's CEO, its audit committee and special committee responsible for the fraud risk management, fraud monitoring and fraud investigation function accountable for the systemic failure of controls, the absence of key controls or severe weakness in existing controls, which led to exceptionally large-value fraud.

Going further, the RBI last report titled the "Working Group on information security, electronic banking, technology risk management and cyber fraud" included the following recommendations:

- Various fraud prevention practices need to be followed by banks. These include fraud vulnerability assessments (for business functions and also delivery channels), review of new products and processes, putting in place fraud loss limits, root cause analysis for actual fraud cases above ` 10 lakhs, reviewing cases where a unique modus operandi is involved, ensuring adequate data/information security measures, following KYC and Know your employee/vendor procedures, ensuring adequate physical security, sharing of best practices of fraud prevention and creation of fraud awareness among staff and customers.
- No new product or process should be introduced or modified in a bank without the approval of control groups like compliance, audit and fraud risk management groups. The product or process needs to be analysed for fraud vulnerabilities and fraud loss limits to be mandated wherever vulnerabilities are noticed.
- A risk-based transaction-monitoring or surveillance process needs to be put in place. Banks may consider dynamic scoring models and related processes to sound the alert on transactions that do not seem normal. This is expected to improve their preventive and detective capability. A study of customer transaction behaviour patterns and stopping irregular transactions or obtaining prior confirmation from customers about outlier transactions may be incorporated as part of the process.
- Quick fraud-detection capability should be incorporated in the operations of banks. This will enable them to reduce their losses and also serve as a deterrent to fraudsters. Various important requirements recommended in this regard include the generation of alerts and redressal mechanisms, and a dedicated e-mail id and phone number for reporting suspected fraud, mystery shopping and reviews.
- To enhance online processing security, confirmatory second channel procedures(like telephony, SMS, e-mail etc.) should be applied with regard to transactions above pre-set values, creation of new account linkages, registration of third party payee details, changing account details or revision to funds transfer limits. In devising these security features, the bank should take into account their efficacy and differing customer preferences for additional online protection.
- Banks should set up a transaction-monitoring unit within their fraud risk management groups. The transaction-monitoring team should be responsible for monitoring various types of transactions, especially monitoring of potential fraud areas by means of which early alarms can be triggered. Banks should put in place automated systems to detect fraud, based on advanced

statistical algorithms and fraud-detection techniques.

- It is widely accepted that fraud investigation is a specialised function. Thus, the fraud risk management group should undergo continuous training to enhance its skills and competencies.
- Employee awareness is crucial to fraud prevention. Training on fraud prevention practices should be provided by the fraud risk management group at various forums. A positive way to create employee awareness is to reward employees who have gone beyond the call of duty and prevented frauds. Details of employees receiving such awards may be published in the fraud newsletters.

Fraud mitigation

Traditional controls, use of manual methods and process checklists can no longer mitigate such risks and this has led to the emergence of fraud risk management as a key practice in banks. Need of the hour is monitoring transactions as they occur and analyse them for potential fraudulent behaviour. The Regulators in the Financial Services space are also pushing organisations towards more sophisticated and enhanced means of monitoring and preventing frauds.

Brief guidelines on fraud transaction-monitoring system

o **Scope of coverage:** For a transaction-monitoring system to be effective, the scope and complexity of the monitoring process should be determined on a risk-sensitive basis. This means that a bank or financial institution may need to undertake different levels of monitoring within its different business units, depending on factors such as the activities of the business unit, its customer base and the country in which it operates.

o **Know your customers:** Understanding a bank or financial institution's customers and updating their risk profiles on a risk-sensitive basis are important elements in the implementation of an effective transaction-monitoring system. The better a bank or financial institution knows its customers, the greater is its ability to detect discrepancies between a given transaction and a customer's risk profile. This provides the bank or financial institution critical information to detect unusual or suspicious activities, if any. In addition, a good understanding of a bank or financial institution's customers is a prerequisite for applying differentiated monitoring methods for customers with different fraud risks.

o **Key components of fraud transaction monitoring:** An effective monitoring system comprises the following two components:

- **Monitoring by front-line employees:** Front-line employees know the most about customers and their typical patterns of transaction activities. They are in the best position to identify unusual activities. An effective monitoring system therefore includes regular training for front-line employees to inculcate a high level of awareness in them. The training provided should cover the fraud risks associated with the operations for which these employees are responsible.
- **Monitoring past transactions:** Effective monitoring requires the production of periodic

MIS reports and/or alerts and the establishment of proper review procedures to ensure that customers' transactions are captured in the bank or financial institution's monitoring efforts on a risk-sensitive basis. Periodic transaction-monitoring reports and/or alerts should at the minimum cover cash and cheque transactions, frequent transfers from one or multiple locations, (especially in the case of newly opened accounts), a sudden surge in account activity or behaviour, loan repayment and prepayment, and the reactivation of dormant accounts followed by unusually large or frequent transactions on these accounts.

- **Identification of suspicious transactions:** To determine whether a transaction or activity is unusual or suspicious (fraudulent), an effective transaction-monitoring system needs to include procedures to not only evaluate the current transactions of customers, but also the pattern and flow of their transactions. Current transactions should be compared with the past transaction patterns and risk profiles of individual customers.

- **Management of suspicious transactions:** A monitoring system is only effective if suspicious transactions identified by the system are carefully examined and investigated; the follow-up action taken is tracked and proper audit trails are maintained for inspection by auditors and the regulator. It is therefore important that proper policies and procedures relating to transaction monitoring are developed and maintained. Specifically, the procedures should clearly set out the responsibilities of individual departments, e.g., business departments and the compliance/ fraud/ risk/audit departments involved in the process of transaction monitoring.

- **Regular review of system parameters:** Regardless of whether an automated system is used, effective monitoring requires regular reviews and updating of the parameters or criteria used to generate monitoring reports or issue alerts. Regular improvements should also be made to the bank or financial institution's transaction-monitoring system, to take into account changes in its business operations and new fraud typologies. However, any improvements made to the system should be properly documented and approved by the management.

- **Management's commitment:** Therefore, it is clear that the prerequisite for establishing and maintaining an effective transaction-monitoring system is the support and commitment of the organisation's senior management. No transaction-monitoring system can be effective if adequate resources are not provided to maintain and operate the system.

Challenges in fraud transaction monitoring

The financial services industry is facing significant challenges such as the increasing demand for real-time operations, the growing volume of online channel transactions, increasing security and fraud challenges, the rising regulatory demand for better credit and fraud risk management, the pressure on operational cost reduction and revenue generation — these need to top the list of any financial institution.

Detailed below are some of the major challenges a financial institution could face while monitoring transactions:

- **Emerging fraud trends:** Changing criminal tactics and the anonymity of e-commerce make fraud prevention a constantly moving target
- **Growing complexity:** Acquisitions, growth and increased globalisation make it harder than ever before to monitor multiple portfolios and business lines effectively
- **Technological limitations:** Current systems may not support robust analytical modelling and may slow down the process of authentication of transactions
- **Diverse data sources:** Geographically dispersed customers and businesses make it difficult to access the right information in the right format
- **Evolving compliance requirements:** Keeping up with changing regulatory requirements is a constant struggle.

Banking and financial institutions in India have begun recognising the need for fraud transaction monitoring. The RBI's circular emphasises the need for robust fraud risk management practices in banks and financial institutions in light of increasing cases of fraud. Banks are in the process of revamping their risk management frameworks and controls. As part of this, they are exploring transaction monitoring and investigation solutions. In addition, various global solution providers in the market are offering enterprise-wide financial crime management and anti-money laundering solutions worldwide. In India, major private sector banks are also evaluating similar solutions to safeguard their own and their customers' funds.

Non-Performing Assets (NPA)

One of the less talked about issues is in relation to mounting bad loans, which is how are NPAs currently being tracked, monitored and reported. RBI has been insisting on automation of the complete process of NPA identification with no manual intervention. While most banks have attempted to comply with the requirement, the reality is far different.

Recently, RBI also mandated independent audits to be conducted on certain public sector banks around the review of their NPA monitoring & reporting systems. Bad loans are a major cause of concern and what remains to be unearthed simply because of inadequacies/ inefficiencies in NPA monitoring is something worth pondering. From a practical perspective, bankers need to address some or all of these typical issues when monitoring/ reporting NPAs.

- Are the scenarios for identification/ classification of NPAs (IRAC norms) including buckets (arrears/ doubtful conditions status) configured correctly?
- Are the NPA recognition norms configured on the basis of product type?
- Is there satisfactory integration between provisioning systems and CBS system?
- Are there sufficient audit trails of revisions made to IRAC classifications for any specific accounts?
- Is the management monitoring trend of multiple changes in repayment schedule?
- Are manual entries being passed/ controls overridden, thereby impacting the NPA status of an account?

NPA – mitigating factors

The recent circular clarification provided by RBI on widening the wilful defaulter net definitely seems a welcome step for Banks/ Financial Institutions, in their move towards improving their recovery efforts for the mounting Non-Performing Loans they have been facing.

It is imperative for the Banks to strengthen in-house competencies for rigorous evaluation as per RBI's directive. IBA, in parallel, has also circulated a due diligence guidance note to Banks to address the problem. It has also suggested a panel of designated banks to be involved in loan appraisal over and above a threshold amount.

Leading practices Banks can adopt to address the problem:

i. Adequate/enhance pre-lending due diligence on borrowers/promoters and its related parties

ii. Being more transparent in disclosing the background/past history of the borrower

iii. Developing internal skill sets on credit assessment/evaluation

iv. Diligence in appointing 3rd party agency for verification/valuation

v. Conducting surprise site visit at borrower's factory and/or premises of related party (in case of majority transaction with related parties) to verify operations of the company

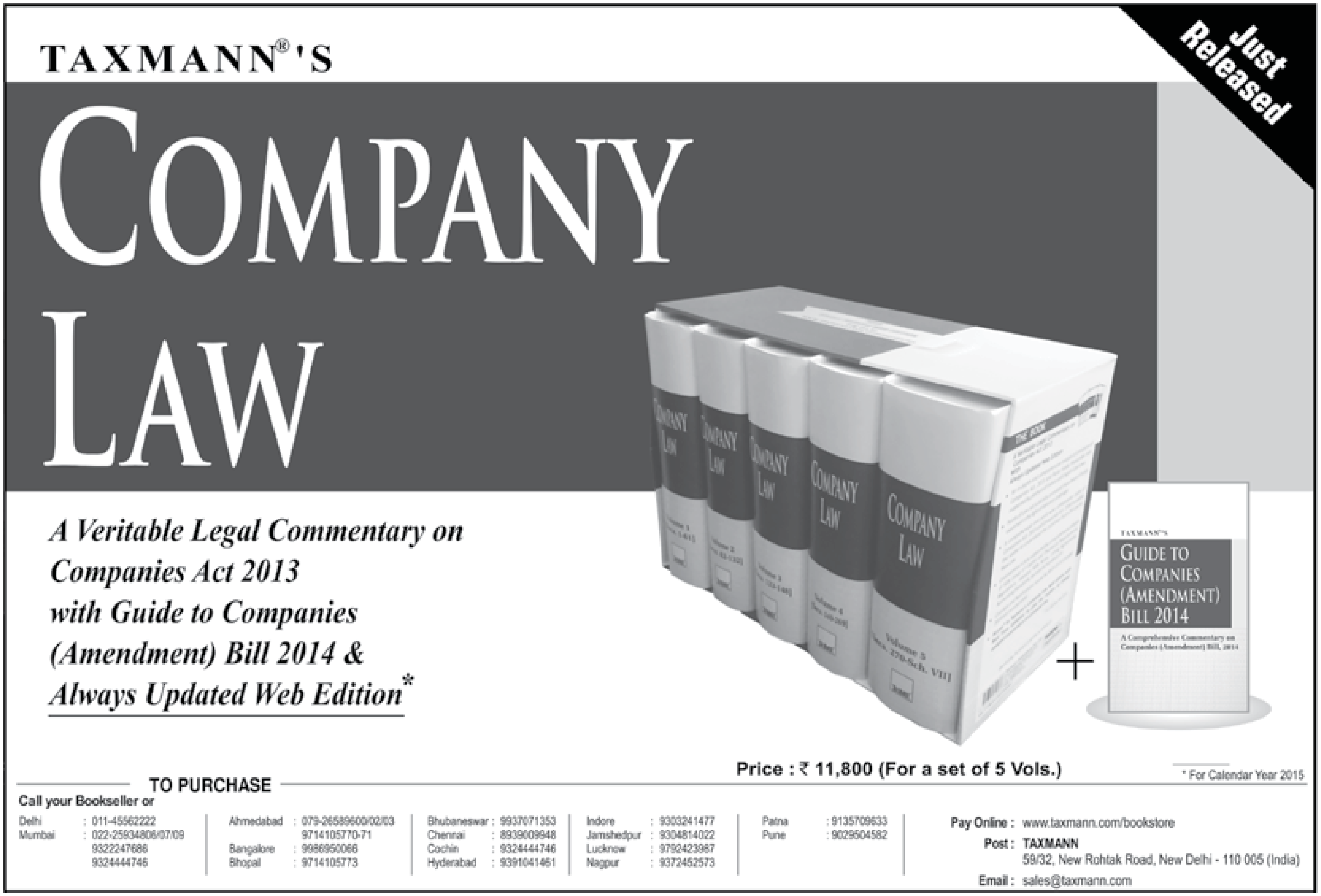
vi. Periodic post disbursement monitoring of the accounts to identify red flags or suspicious transactions

While there is a lot being suggested/initiated at the regulatory level, greater transparency and effective implementation of these measures by Banks is the key.

Conclusion

Frauds do exist in a modern-day financial environment and the potential impact of a sizeable fraud could be commercially disastrous for an organisation. Current economic uncertainty and global competition also breed the three elements of the fraud triangle — motivation, opportunity and rationalisation. It would also require systematic and continuous efforts to curb them. Historically, it has been seen that every fraud starts small, but if unnoticed, it could lead to bigger frauds over a longer period of time. Financial institutions should be particularly cognisant of extraordinary, unusual or highly complex transactions, including new business relationships and unusual financing or investing activities, all of which should be scrutinised carefully. So it is important now for organisations to comply with the Companies Act, 2013 and have robust fraud risk management systems in place. They should be particularly vigilant for indications of asset misappropriation, bribery and corruption, not only internally but also those involving external parties — particularly business partners and other entities with contractual relationships. This way, companies can boost their profits; unearth fraud risks and safeguard corporate wealth & reputation.

On the issues of NPA, considering the magnanimity of the situation, it will be prudent for banks to invest more resources in 2015 to proactively handle stressed accounts through independent borrower checks, leverage technology & data analytics to catch early warning signals, develop internal skill sets on credit assessment and evaluation etc. These will play an instrumental role in easing the banker's life.



Just Released
TAXMANN®'S
COMPANY LAW
A Veritable Legal Commentary on Companies Act 2013 with Guide to Companies (Amendment) Bill 2014 & Always Updated Web Edition*
COMPANY LAW
TAXMANN'S GUIDE TO COMPANIES (AMENDMENT) BILL 2014
Price : ₹ 11,800 (For a set of 5 Vols.)
* For Calendar Year 2015
TO PURCHASE
Call your Bookseller or
Delhi : 011-45562222
Mumbai : 022-25934806/07/09 9322247686 9324444746
Ahmedabad : 079-26589600/02/03 9714105770-71
Bangalore : 9986950066
Bhopal : 9714105773
Bhubaneswar : 9937071353
Chennai : 8939009948
Cochin : 9324444746
Hyderabad : 9391041461
Indore : 9303241477
Jamshedpur : 9304814022
Lucknow : 9792423987
Nagpur : 9372452573
Patna : 9135709633
Pune : 9029504582
Pay Online : www.taxmann.com/bookstore
Post : TAXMANN 59/32, New Rohtak Road, New Delhi - 110 005 (India)
Email : sales@taxmann.com

CA. Dinesh Kanabar

Transfer Pricing on Issue of Shares – An Assessment

The Backdrop

Transfer Pricing Provisions contained in Chapter X of the Income-tax Act, 1961 ("the Act") constitute one of the most important and far-reaching anti-abuse mechanisms under Indian tax law today. Specifically, these provisions require transactions with overseas related parties as well as specified domestic transactions to be on an arm's length basis. These regulations were introduced in 2001 and are largely based on the model that is followed globally.

However, over the last few years, controversies surrounding the applicability as well as the application of transfer pricing rules have begun taking on a life of their own. For instance, the number of Transfer Pricing audits completed during FY 2013-14 were 3,617 out of which 1,920 (around 53%) resulted in an adjustment grossing INR 596 billion. In fact, it has been reported India contributes approximately 70% of all global transfer pricing disputes by volume.

Having said this, there have been several positive developments on the transfer pricing front as well. With transfer pricing norms attaining maturity, globally accepted arrangements such as Advance Pricing Agreements and Safe Harbour rules have been introduced in India with the objective of reducing litigation and providing relief as well as certainty to taxpayers and the tax administration alike.

Notwithstanding these steps, new areas of litigation continue to be thrown up in this field. One such recent (and hopefully resolved) controversy relates to the valuation of equity shares issued by companies. Specifically, adjustments were proposed by the Transfer Pricing authorities to the value at which shares were allotted by Indian companies to their affiliates. The amount of alleged 'shortfall' in the amount received on the issue of shares was thereafter sought to be taxed in the hands of the Indian company.

Such adjustments proved particularly controversial, mindful that there is no 'income' at all in the context of transactions involving issue of shares. The tax authorities made adjustments in a number of cases on this basis, including in the cases of Vodafone India Services Pvt. Ltd. and Shell India Markets Pvt. Ltd. Both Vodafone and Shell challenged these adjustments before the Bombay High Court, which in a detailed and far reaching order struck down the transfer pricing adjustments made on this account. Further, in a pragmatic and bold move, the Central Board of Direct Taxes ("CBDT") decided to not appeal against the Bombay High Court's judgment before the Supreme Court of India, a decision that was also endorsed by the Attorney General.

As such, the dust appears to be settling on this controversy. Nonetheless, there are several aspects of the Bombay High Court's judgment that will have a far reaching impact on scope and applicability of transfer pricing provisions in general. Hence, detailed examination of this decision is desirable.

Factual matrix behind the controversy

During FY 2008-09, Vodafone India Services Pvt. Ltd., a wholly owned subsidiary of a non-resident company, Vodafone Tele-Services (India) Holdings Limited ('Holding Company'), issued 2,89,224 equity shares of face value of ` 10 each on a premium of ` 8,509 per share to the Holding Company. Vodafone India determined the value of ` 8,519 per share by applying the methodology prescribed by the Government of India under the erstwhile Capital Issues (Control) Act, 1947.

However, the transfer pricing authorities proposed to determine the Arm's Length Price ('ALP') of the said equity shares at ` 53,775 per share by adopting a Net Assets Value based valuation, which resulted in a primary adjustment of ` 13.09 billion. The tax authorities went on to re-characterise the said shortfall in receipt of share premium as a deemed loan granted to the parent company and proposed a secondary adjustment on account of notional interest of ` 0.88 billion. The facts in the case of Shell Markets India Pvt. Ltd. were broadly similar.

Key aspects of the Bombay High Court's judgment

The key aspects of the judgment, pronounced by a Division Bench of Chief Justice Mohit Shah and Justice M. S. Sanklecha can be broadly analysed under the following categories:

i. Existence of 'income' a condition precedent for the applicability of Transfer Pricing Provisions

ii. Meaning and Scope of the term 'income' in the context of Chapter X

iii. Amendments providing for inclusion of capital financing and business restructuring in Chapter X

iv. Transfer Pricing Provisions - Machinery or Substantive?

These are discussed in detail below:

i. Existence of 'income' a condition precedent for the applicability of Transfer Pricing Provisions

In what is perhaps one of the most far reaching pronouncements in the field of transfer pricing, the Bombay High Court categorically held that the existence of 'income' arising from an international transaction is a condition precedent for application of Chapter X of the Act.

This is mindful of the specific language of Section 92(1), which requires "income arising from an international transaction" to be computed having regard to the arm's length price. From this, it follows that unless there is 'income' arising from an international transaction, there is no question of applying transfer pricing provisions. It is also relevant to note that transfer pricing provisions are in the nature of machinery provisions only, whose objective is to arrive at the arm's length price of transactions between associated enterprises.

ii. Meaning and Scope of the term 'income' in the context of Chapter X

Closely linked to the issue of existence of 'income' is the question of what constitutes 'income' for the purpose of determining the applicability of transfer pricing provisions.

It was contended by the tax authorities that the term 'income' was not defined in Chapter X and as such ought to be construed in a broad manner embracing all types of receipts or incomings. It was also contended that Chapter X, being a separate code, the difference in valuation between the arm's length price and the transaction price would give rise to income. Lastly, it was argued that since the definition of 'income' under Section 2(24) was an inclusive definition, it did not prohibit taxing of capital receipts as income.

These arguments were rejected by the Court, which went on to hold that the term 'income' for the purposes of the Act had a well-understood meaning as defined in Section 2(24) of the Act. Even through the definition in Section 2(24) of the Act was an inclusive definition, it could be disputed that income will not in its normal meaning include capital receipts unless it is so specified.

The Court held that amounts received on issue of shares (including premium) were undoubtedly on the capital account. It further noted that while share premiums had been made taxable by a specific legal fiction contained in Section 56(2)(viib) as well as Section 2(24)(xvi) of the Act, it was nobody's case that the present transaction fell within the ambit of these provisions.

The Court further noted that strict rules of interpretation would have to be followed in construing taxing statutes, and that it was therefore not open to the tax authorities to rely on the supposed intent of Parliament to give a wider meaning to the term 'income'. As such, in the absence of express legislative provisions it held that no amount received, accruing or arising on the capital account could be subject to tax as income.

The Court thus concluded that if income is chargeable to tax under the normal provisions of the Act, then alone Chapter X of the Act could be invoked. The difference between a 'charge' to tax and the 'measure' of a tax was expressly highlighted. In this regard, reference was made by the Court to the decision of the Supreme Court in the case of *Bombay Tyres India Ltd. vs. UOI (1984 SCC 467)*. It accordingly concluded that the charge is on income as understood in the Act, and where income arises from an International Transaction, then the measure is to be found on application of the arm's length price so far as Chapter X of the Act is concerned. It noted that the mere determination of the transaction value on the basis of the arm's length price does not convert non-income into income and unless income existed, the issue of applying the measure of ALP to transactional value/consideration itself did not arise.

iii. Amendments providing for inclusion of capital financing and business restructuring in Chapter X

The tax authorities, in support of their contention regarding the taxability of notional income, sought to place reliance on sub-clauses (c) and (e) of Explanation (i) to Section 92B of the Act. Explanation (i) to Section 92B defines the term "international transaction". Clauses (c) and (e) of the definition deals with transaction involving capital financing and business restructuring respectively.

It was argued that if the taxpayer's contention that the ordinary meaning of the term 'income' was to be accepted, it would render the specific provisions of clauses (c) and (e) otiose. This argument was also rejected by the Court which observed that a transaction on capital account or on account of restructuring would become taxable to the extent it impacted income i.e. under reporting of interest or over reporting of interest paid etc.

This finding again assumes significance in the context of the expanded definition of 'international transaction'. By virtue of the above findings, it is now clear transfer pricing provisions can be applied only in the event of an impact on income, regardless of the fact that such transactions are specifically listed in Section 92B.

iv. Transfer Pricing Provisions – Machinery or Substantive?

Another argument forwarded by the tax authorities was that Chapter X was a separate code by itself, and as such, any difference in valuation between the arm's length price and the transaction value ought to be treated as 'income'.

In this context, the Court rejected the tax authorities attempt to give a wider meaning to the term 'income'. The Court reiterated the settled position of law that a charge to tax must be found specifically mentioned in the Act. In the absence of there being a charging Section in Chapter X of the Act, it is not possible to read a charging provision into Chapter X of the Act. The Court categorically ruled that Chapter X of the Act was in the nature of a machinery provision to arrive at the arm's length price of transactions between AEs.

Impact of the Judgment

In many ways, this decision reiterates and reinforces the conventional wisdom on the nature and applicability of transfer pricing provisions. Nonetheless, an authoritative pronouncement on these issues by a High Court, coupled with the Government's pragmatic decision to not file an appeal against the judgment before the Supreme Court will provide much needed relief to taxpayers as well as certainty to the global investing community.

Particularly, the judgment's long term significance will arise from its categorical finding limiting the scope of transfer pricing provisions to cases where 'income' (as ordinarily understood) arises under the Act. This will hopefully restrict the scope of future transfer pricing assessments and put an end to widespread litigation on this issue.

The judgment will also prove extremely relevant in cases where income is exempt or not taxable under treaties. Although the Court did not have an occasion to deal with these specific issues in this case, its conclusion regarding Chapter X being in the nature of a machinery provision clearly indicates that transfer pricing provisions would be redundant in cases where there is no income taxable in India.

It would be interesting to note here that prior to the Bombay High Court's judgment, many companies made applications for Advance Pricing Agreements on this issue to avoid litigation and obtain certainty on transactions involving issue of shares, mindful of the potential of huge adjustments. One expects that such APAs would be rendered moot in the context of the High Court's judgment and the tax authorities' subsequent decision to not challenge the same before the Supreme Court.

One important issue which continues to remain unsettled is the permissibility of the so-called 'secondary adjustments'. As mentioned above, in the Vodafone case, the tax authorities had sought to treat the alleged shortfall on the issue of equity shares as a deemed loan by the Indian company to its associated enterprise and had proceeded to tax notional interest in its hands. While it was contended that such adjustments were not permissible in the absence of express statutory provisions, this issue was not addressed by the Court since the primary adjustment itself was struck down. As such, litigation on this aspect is likely to continue. However, one hopes that as a logical corollary of the pragmatic approach adopted by the Government in tax matters recently, a suitable clarification on the non-permissibility of such secondary adjustments would be the icing on the cake!

In terms of the way forward, one expects that in line with the Bombay High Court's decision, other cases with similar adjustments will find quick resolution, both at the Departmental level or before the Courts. This will help finally bring closure to one of the most vexing issues in India's nascent transfer pricing regime. In the longer term, one would hope that the tax authorities would apply these important principles to other transfer pricing disputes with a view to avoiding protracted litigation and to build an environment that provides certainty and stability to taxpayers.

To sum up, there are two reasons why the developments surrounding the Vodafone decision assume significance. The fist, is obviously, the beneficial impact of the judgment in helping put an end to unnecessary controversy on this issue. The latter, and perhaps more important impact, lies in the welcome decision of the Government to not litigate this matter further before the Supreme Court. In many ways, this decision sets the stage for the onset of a more pragmatic, taxpayer-friendly tax regime, which will pave the way for increased foreign and well as domestic investments, thereby providing a kickstart to economic growth.

B.V. Jhaveri, *Advocate*

DIRECT TAXES
Supreme Court

Income-tax Act does not provide for any paramountcy of dues by way of income tax. Government dues only have priority over unsecured debts. By virtue of lien on securities under rule 43 of Bombay Stock Exchange Rules, BSE becomes a secured creditor of defaulting member and therefore, it would have priority over dues of Income-tax Department.

The Stock Exchange, Bombay vs. V.S. Kandalgaonkar (Supreme Court) – Civil Appeal No. 4354 of 2003 dated 25th September, 2014

Facts

By a notice dated 29th June, 1994, the Stock Exchange, Bombay declared Shri Suresh Damji Shah as a defaulter with immediate effect as he had failed to meet his obligations and discharge his liabilities.

By a notice dated 5th October, 1995 issued under Section 226(3) of the Income-tax Act, the Income-tax Department wrote to the Stock Exchange and told them that Shri Shah's membership card being liable to be auctioned, the amount realised at such auction should be paid towards Income-tax dues of Assessment Years 1989-90 and 1990-91 amounting to ` 25.43 lakhs.

The Stock Exchange, Mumbai by its letter dated 11th October, 1995 replied to the said notice and stated that under Rules 5 and 6 of the Bombay Stock Exchange Rules the membership right is a personal privilege and is inalienable. Further, under Rule 9 on death or default of a member his right of nomination shall cease and vest in the Exchange and accordingly the membership right of Shri Shah has vested with the Exchange on his being declared a defaulter.

By a prohibitory order dated 10th May, 1996, the Income-tax Department prohibited and restrained the Stock Exchange from making any payment relating to Shri Shah to any person whomsoever otherwise than to the Income-tax Department. The amount claimed in the prohibitory order was stated to be ` 37.48 lakhs plus interest.

On 18th July, 1996, the Solicitors of the Stock Exchange, Mumbai wrote to the Income-tax Department calling upon them to withdraw the prohibitory order dated 10th May, 1996 in view of the fact that the membership right of the Exchange is a personal privilege and is inalienable. By a letter dated 27th December, 1996, the Income-tax Department wrote back to the Bombay Stock Exchange refusing to recall its prohibitory order.

The Stock Exchange then filed a Writ Petition for quashing the impugned order dated 10-5-1996.

However, most of the contentions of the Stock Exchange were rejected and the Writ Petition was dismissed.

Allowing the SLP the Supreme Court held as under:

A reading of rules 5 and 9 lead to the conclusion that a membership card is only a personal permission from the Stock Exchange to exercise the rights and privileges that may be given subject to Rules, Bye-Laws and Regulations of the Stock Exchange. Further, the moment a member is declared a defaulter, his right of nomination shall cease and vest in the Exchange because even the personal privilege given is at that point taken away from the defaulting member. The matter is no longer *res integra*. It is clear therefore that no accrued right to property was ever vested in the defaulting member.

The rules and the bye-laws also make this clear. Under rule 16(iii), whenever the Governing Board exercises the right of nomination in respect of a membership which vests in the Exchange, the ultimate surplus that may remain after the membership card is sold by the Exchange comes only to the Exchange – it does not go to the member. This is in contrast with bye-law 400 (ix) which, deals with the application of the defaulting member's other assets and securities, and in this case ultimately the surplus is paid only to the defaulting member, making it clear that these amounts really belonged to the defaulting member.

It is clear that the conclusion of the High Court that the proceeds of a card which has been auctioned can be paid over to the Income-tax Department for the dues of the member by virtue of rule 16(iii) is incorrect as such member at no point owns any property capable of attachment.

The Chapter in the Rules entitled 'Membership Security' consists of Rules 36 to 46. Rule 36 specifies that a new member shall on admission provide security and shall maintain such security with the Stock Exchange for a determined sum at all the times that he carries on business. Rule 37 deals with the form of such security and states that it may be in the form of a deposit of cash or deposit receipt of a Bank or in the form of security approved by the Governing Board. Rule 38 deals with how these securities are held. Rule 41 enables the member to withdraw any security provided by him if he provides another security in lieu thereof of sufficient value to the satisfaction of the Governing Board. Rule 43 states that the security provided shall be a first and paramount lien for any sum due to the Stock Exchange and Rule 44 deals with the return of such security under certain circumstances. On a conjoint reading of these Rules what emerges is as follows:

- The entire Chapter deals only with security to be provided by a member as the Chapter heading states;
- The security to be furnished can be in various forms. What is important is that cash is in the form of a deposit and securities are also 'deposited' with the Stock Exchange under rule 37;
- Rule 38 which is crucial provides how securities are to be 'held' which is clear from the marginal note appended to it. What falls for construction is the expression 'securities shall be transferred to and held'. The expression 'transfer' can depend upon its context mean transfer of ownership or transfer of possession. It is clear that what is transferred is only possession as the member only 'deposits' these securities. Further a share transfer can be accomplished by physically transferring or delivering a share certificate together

with a blank transfer form signed by the transferor. The transfer of shares in favour of the Stock Exchange is only for the purposes of easy liquidity in the event of default.

- The expression 'transferred' must take colour from the expression 'lodged' in rule 38 when it comes to deposits of cash. Understood in this sense, transfer only means delivery for the purposes of holding such shares as securities;

- This is also clear from the language of rule 38 when it says 'such deposit shall be entirely at the risk of the member providing the security ....' Obviously, first and foremost the cash lodged and the shares transferred are only deposits. Secondly, they are entirely at the risk of the member who provides the security making it clear that such member continues to be the owner of the said shares by way of security for otherwise they cannot possibly be at the member's risk;

- Under rule 41 a member may withdraw any security provided by him if he satisfies the conditions of the Rules. This again shows that what is sought to be withdrawn is a security which the member owns;

- By rule 43 a lien on securities is provided to the Stock Exchange. Such lien is only compatible with the member being owner of the security, for otherwise no question arises of an owner (the Stock Exchange) having a lien on its own movable property;

- Therefore, when rule 44 speaks of repayment and transfer it has to be understood in the above sense as the security is being given back to the member under the circumstances mentioned in the Rule;

- Bye-laws 326 and 330 also refer to securities that are 'deposited' by the defaulter and recovery of securities and "other assets" due. Obviously, therefore, securities which are handed over to the Exchange continue to be assets of the member which can be liquidated on default.

- The argument of Stock Exchange would also create a dichotomy between "cash lodged" and Bank Deposit Receipts and securities 'transferred'. The form a particular security takes cannot possibly lead to a conclusion that cash lodged, being only a deposit, continues to belong to the member, whereas Bank Deposit Receipts and securities, being "transferred" would belong to the Stock Exchange.

It is settled law that Government debts have precedence only over unsecured creditors. What has been argued is that the moment the Stock Exchange has a lien over the member's securities, it would have precedence over income-tax dues.

In the present case, the first and paramount lien given to the Stock Exchange is by rule 43 of the Rules made under section 8 of the Securities Contract Act. Sections 7A, 8 and 30 of the Securities Contracts (Regulations) Act, 1956 deal with the power of recognised Stock Exchanges making rules restricting voting rights; rules relating to Stock Exchanges generally including membership thereof; and rules to carry out the purposes of the Securities Contracts (Regulation) Act respectively. Whereas, the rules made under section 7A and section 8 are made by recognised Stock Exchanges with the approval of the Central Government and published in the Official Gazette, rules made under section 30 are made by the Central Government itself for purposes of carrying into effect the objects of the Securities Contracts (Regulations) Act.

It will be seen that whether a rule is made under section 7A, section 8 or section 30, all rules made under the Act are to be laid before Parliament, making it clear thereby that rules made under each of these provisions are statutory in nature. The fact that the Stock Exchange makes these rules under sections 7A and 8 as opposed to the Central Government making them under section 30 does not take the matter very much further. Section 3(51) of the General Clauses Act defines "Rules" as meaning "a rule made in exercise of power conferred by law and shall include a Regulation made as a rule under any enactment." It is clear from this definition of 'Rule' also that Stock Exchange who make rules in exercise of powers conferred by the Securities Contracts (Regulation) Act are equally "Rules" and therefore subordinate legislation. This makes it amply clear that the lien spoken of by Rule 43 is a lien, conferred by Rules under a statute.

The question in instant case is whether the lien exercised under Rule 43 by the Stock Exchange can be said to be a superior right to income tax dues which may become payable by virtue of the Stock Exchange being a secured creditor.

The first thing to be noticed is that the Income-tax Act does not provide for any paramountcy of dues by way of income-tax. This is why the Court in *Dena Bank vs. Bhikhabbhai Prabhudas Parekh & Co. [2005] 5 SCC 694* held that Government dues only have priority over unsecured debts and in so holding the court referred to a judgment in *Giles vs. Grover [1832] (131) English Reports 563* in which it has been held that the Crown has no precedence over a pledgee of goods. The common law of England *qua* Crown debts became applicable by virtue of Article 372 of the Constitution which states that all laws in force in the territory of India immediately before the commencement of the Constitution shall continue in force until altered or repealed by a competent legislature or other competent authority. In fact, in *Collector of Aurangabad vs. Central Bank of India 1967 (3) SCR 855* after referring to various authorities held that the claim of the Government to priority for arrears of income tax dues stems from the English common law doctrine of priority of Crown debts and has been given judicial recognition in British India prior to 1950 and was therefore 'law in force' in the territory of India before the Constitution and was continued by Article 372 of the Constitution.

In the present case, the lien possessed by the Stock Exchange makes it a secured creditor. That being the case, it is clear that whether the lien under rule 43 is a statutory lien or is a lien arising out of agreement does not make much of a difference as the Stock Exchange, being a secured creditor, would have priority over Government dues.

No person will make a great business who wants to do it all himself or get all the credit.
Character is higher than intellect. A great soul will be strong to live as well as think.



Ashok Patil, Mandar Vaidya & Priti Shukla
Advocates

DIRECT TAXES
High Court

1] Section 43B – Provisions of interest on disputed excise duty – Not allowable – Assessee following mercantile system of accounting – A.Y. 1990-91

CIT vs. Simbhaoli Industries (P) Ltd. (2014) 111 DTR (All) 274

In the instant case the assessee had exported some spirits and IMFL and was liable to pay excise duty. There was a delayed payment of the excise duty on which interest was to be paid, but the same had become the subject matter of legal dispute. The assessee had made a provision of such interest payable. The same was not accepted by the department, as the department was of the view, that the duty and interest thereon is allowable u/s. 43B only on payment basis. The Hon'ble High Court held that Interest on excise duty liability is an extended liability of the excise duty for the belated payment is allowable only on the basis of actual payment.

2] Section 194A – Fixed deposits made with bank of amounts deposited with court on the direction of court – TDS not deducted on the interest accrued – Assessee Bank held not be be assessee in default

UCO Bank v. Union of India [2014] 51 taxmann.com 253 (Delhi)

The assessee-bank accepted a Fixed Deposit (FD) in the name of Register General of the High Court and issued a Fixed Deposit Receipt (FDR). The said FD was made in compliance of a direction passed by said Court in execution petition titled as *'Union of India v. 'B'*. In relation to proceedings pending against 'B', Income-tax (Investigation) issued summons under section 131(1A) directing the assessee to furnish details of the interest accrued with respect to the FDR, TDS deducted on the interest accrued and renewal of FD with respect to the company 'B'. The assessee complied with the said direction and intimated the details and status of the above stated FDR. Subsequently, the ACIT issued a show cause notice to the assessee for not deducting TDS on the interest accrued and to show cause why the assessee be not treated as an assessee in default under section 201(1)/201(1A). The assessee, by its reply submitted that the said FD was in the name of Register General of Court as a custodian and no TDS was deducted on the accrued interest because the actual beneficiary was not known as the matter was sub judice. Thereafter, the ACIT passed an order considering the assessee as an assessee-in-default and made a demanded under section 201(1) and section 201(1A) respectively for the financial years 2004-05 to 2010-11. By the said order, the penalty proceedings under section 271C were also initiated separately. On writ petition filed by the assessee, the Income-tax authorities made a statement before the Court that the CBDT, was seized of the matter and there was a possibility of some solution. In view of that statement, the Court disposed of the said writ petition with a direction to CDBT to pass necessary orders within three months. The Court also gave liberty to the assessee to approach this Court to an appropriate stage. The CBDT, thereafter, issued the Circular No. 8/2011, dated 14-10-2011 clarifying that banks would have to deduct TDS under section 194A at the time of accrual of interest and issue the TDS certificate in the name of the depositor. Thereafter, the Commissioner initiated proceeding under section 263 and held that there were other similar deposits, which would also require to be considered for assessing the liability of the assessee. Pursuant to the Commissioner's order, the ACIT issued a separate notice under section 201(1)/201(1A) directing the assessee to submit the details of all deposits made in the name of Registrar General of Court during the financial years 2005-06 to 2010-11. Subsequently, the DCIT issued a notice under section 201(1)/201(1A) calling upon the assessee to furnish information in respect of deposits/accrued interest for the financial year 2011-12. By the impugned order, the DCIT held the assessee to be an assessee-in-default within the meaning of section 201(1) and raised a demand of under section 201(1)/(1A). The assessee, thereafter, filed Writ Petition challenging the said order passed by the DCIT. Allowing the Writ Petition, the court held that in absence of an assessee, the machinery of provisions for deduction of tax to his credit are ineffective. The expression 'payee' under section 194A would mean the recipient of the income whose account is maintained by the person paying interest. In the present case, although the FD is made in the name of the Registrar General, the account represents funds which are in custody of this court and the Registrar General is neither the recipient of the amount credited to that account nor the interest accruing thereon. Therefore, the Registrar General cannot be considered as a 'payee' for the purposes of section 194A. The credit by the assessee in the name of the Registrar General would, thus, not attract the provisions of section 194A. Although, section 190(1) clarifies that deduction of tax can be made prior to the assessment year or regular assessment, nonetheless the same would not imply that deduction of tax is mandatory even where it is known that the payee is not the assessee and there is no other assessee.

3] Section 32 – Toll road would not qualify as a 'plant' so as to entitle assessee a higher rate of depreciation

Moradabad Toll Road Co. Ltd. vs. ACIT [2014] 52 taxmann.com 21 (Delhi)

The assessee was a 100 per cent subsidiary of National Highways Authority of India (NHAI) and was formed with the sole object of constructing the highway and bypass which was ultimately executed on Build, Operate and Transfer (BOT) basis. The AO held that the assessee could claim depreciation at the rate of 10 per cent on roads and not at the rate of 25 per cent, as claimed by the assessee and, accordingly, allowed depreciation. The CIT(Appeals) held that the road cannot be said to be a 'plant' but would fall under the heading 'Building' for the purpose of allowing depreciation and, accordingly, he rejected the appeal. The Tribunal upheld the order of the CIT (Appeals). Dismissing assessees appeal in High Court, the court held that it was the intent of the Legislature to construe 'buildings' and 'plant' separately or not to construe a 'buildings' as a 'plant' and vice versa. It was clear that in the real test to construe a structure as a 'plant', it was to be seen that the structure is used as a tool or apparatus in the business of the assessee. In other words, the structure is so constructed so as to serve the assessee's special technical requirements, which in normal parlance is called the functional test. The toll road execute on built, operate and transfer basis (BOT) is a form of project financing wherein a private entity receives a concession from the public sector or for that matter private sector to finance, design, construct and operate a facility stated in the concession contract. This enables the project proponent to recover its investment, operating and maintenance expenses in the project. The facility shall be transferred to the public sector at the end of the concession period. The word 'build' signifies construction of a road, whereby the taxpayer brings into existence a structure/surface and nothing more. The word 'operate' signifies the understanding between the assessee and the public authority to collect charge for the usage of the road. The road is a surface on which the vehicles ply. No special features have been pointed out which serves as tool or apparatus while operating the road. No doubt in some roads toll plazas are erected for collecting the usage charges. These are small booths which are manned at some places and unmanned at some, where the user deposits the money in a machine which opens the gate. To cut costs and minimise the time delay, the usage charges are collected by some form of automatic or electronic toll collection equipment. In any case, the manned toll booths/toll plazas are primarily a facility/convenience for collecting the usage charges of the road and nothing more. That would not change the characteristic of 'road'. Further it was held that 'plant' as defined and understood for tax purposes means tool or equipment used for purposes of business or profession. Toll road is a capital asset which when used by any person, who makes payment for the said use, generates and results in accrual of income and is part of the very business of the assessee and not an implement or a tool used by the assessee for his business. Therefore toll road would not qualify as a 'plant' so as to entitle the assessee a higher rate of depreciation.

4] Section 119(2)(b) – Belated refund claim filed by an assessee – Admissibility

Artist Tree (P.) Ltd. vs. CBDT [2014] 52 taxmann.com 152 (Mumbai)

Assessee filed return of income beyond the period specified for belated return in section 139(4) and claimed refund of the TDS. AO did not act on the same and, consequently, assessee approached CBDT u/s. 119(2)(b) and sought condonation of delay in filing return of income. It was stated by the assessee in the application that, at the relevant time, its office was shifted and certain records including TDS certificates got misplaced and it took considerable time to retrieve them which caused delay in filing of return. CBDT declined to condone the delay, *inter alia*, on the following grounds: (a) that audited accounts were prepared well before the due date of filing of return of income. However, there was no proper explanation was furnished by assessee as to why the return was not filed within due date. All this, led to the inference that delayed return was filed only to avoid scrutiny; (b) that no documentary evidence in support of misplacement of TDS Certificate by postal authorities on account of change in address of the assessee's company or evidencing delay in receipt of duplicate TDS Certificate was produced. Assessee challenged CBDT's order by filing a writ petition in the High Court. The High Court held in favour of assessee as under – It may be true that the returns might not have been filed within the period specified under section 139(1) of the Income-tax Act, nevertheless, the returns were filed in respect of all assessment years (except assessment year in question) within the time allowable under section 139(4) of the said Act. Further, in almost all cases return was accepted with only some minor disallowances. In light of such facts, the CBDT was obviously not right in condemning the assessee as a 'habitual late filer'. It could not be said that intention behind late filing of return was to avoid scrutiny since assessee had already made it clear that it had no objection to scrutiny assessment for the purposes of determining refund for the relevant Assessment Year. The circumstance that the accounts were duly audited within due date of filing of return was not a circumstance that could be held against the assessee. This circumstance, on the contrary added force to the explanation furnished by the assessee that the delay in filing of returns was only on account of misplacement of the TDS Certificates. For condonation of delay, what was really important was the acceptability of the explanation offered by the assessee rather than length of delay. Explanation offered by assessee that TDS certificates got misplaced due to shifting of office was not bogus. Hence, it could not be said that the assessee had obtained any undue advantage out of delay in filing of Income Tax Returns. In every case of delay, there might be some lapse on the part of the party concerned. That by itself was not ordinarily sufficient to turn down the plea or to shut the doors against him. If the explanation offered did not smack of *mala fides* or it was not put forth as a part of dilatory strategy, the Court was expected to show utmost consideration to the applicant. An acceptable explanation was offered by the assessee and a case of genuine hardship was made out. Accordingly, the impugned order made by the CBDT was to be set aside. The delay in filing the Return of Income for the relevant Assessment Year was to be condoned and Return of Income was directed to be admitted for consideration. The jurisdictional AO was to be directed to scrutinise the Return of Income and to examine the claim for refund on merits in accordance with law.

Unreported:

5] Section 14A – Expenditure incurred on income not forming part of the total income – Where no exempt income is earned by the assessee, section 14A cannot be invoked.

CIT vs. Holcim (I) Pvt. Ltd. Income Tax Appeal Nos. 486 & 299 of 2014 dated 5th September, 2014. – Delhi High Court.

The assessee, a subsidiary of Holderind Investments Ltd., Mauritius, was formed as a holding company for making downstream investments in cement manufacturing ventures in India. The learned CIT(A) invoked section 14A, which was not invoked by the ITO, and held that the assessee was engaged in the business of holding of investment and is to act as a holding company for downstream investment and had incurred expenses to protect its investments and to explore new avenues of investments. In view of these facts, the learned CIT(A) held that section 14A was triggered. However the assessee had not claimed any exempt income. The learned CIT(A) observed that non-earning of exempt income does not make section 14A inapplicable. The Tribunal held that if there was no exempt income claimed/earned by the assessee, section 14A cannot be invoked. The Hon'ble High Court upheld the view that where no exempt income is earned by the assessee, section 14A has no application. Further the Hon'ble High Court has also impliedly held that there was every possibility that the shareholding may result into a taxable capital gain (i.e. taxable income) and hence section 14A was to be ruled out.

6] Section 2(22)(e) – Assessee leased out its property to its company where it held majority shares – Company incurred renovation expenses – Such

renovation expenses cannot be equated as loans and advances.

CIT vs. Vir Vikram Vaid Income Tax Appeal No. 496 of 2012 dt. 1st September, 2014. Bombay High Court

The assessee had leased out his premises to the company (of which he held majority shares and was a Executive Director) and the company incurred expenditure to the tune of ` 2.51 crs. towards renovation etc. The learned AO had held that such improvement in the factory premises was for benefit of assessee and invoked section 2(22)(e) for ` 2.51 crores. The learned CIT(A) upheld the order of the Ld. AO. The Tribunal allowed the assessee's appeal and deleted the addition by holding that section 2(22)(e) is not applicable. In appeal by the Revenue, it was held by the Hon'ble High Court that no money was paid to the assessee by way of advance or loan nor was any payment made for his individual benefit. The Company had taken the premises on rent and expenditure was incurred for renovation on the rented premises. So the asset of assessee may have enhanced in value by virtue of repairs and renovation but the same would not amount to ' advance' or 'loan' to the assessee. Further it cannot be treated as payment by the company on behalf of the assessee share holder or for the individual benefit of such share holder.

7] Section 143(3) – Revised return filed on wrong advise – During assessment proceedings request made to ignore revised return – Assessee filed revised computation during assessment proceedings – Assessing officer ought to have accepted such revised computation.

DIT(Exemptions) vs. Ajay Piramal Foundation Income Tax Appeal No. 188 of 2014 dated 25th August ,2014. Delhi High Court.

The assessee filed its Return, declaring income "Nil" income, for the assessment year 2006-07 on 30-10-2006. On 10-1-2007, the respondent assessee filed a revised return declaring income of ` 13,95,711/-. During the course of the assessment proceedings, the assessee claimed that the revised return dated 10-1-2007 was filed under a wrong legal advice and hence be ignored and the first return should be treated as the correct and true return. The assessee filed a revised computation. The AO did not agree and held that in terms of the decision of the Supreme Court in *Goetze (India) Limited v. CIT [284] ITR 323*, the assessee could not have filed the revised computation and said claim could have been only made by way of a re-revised return. Further, the time period for filing of a revised or re-revised return under section 139(5) had come to an end. Thus, the revised return dated 10-1-2007, could only be taken into consideration. The Tribunal held that the revised computation filed by the assessee during the course of the assessment proceedings and their submission that they were withdrawing the revised return, should have been accepted. It was held by the Hon'ble High Court that the decision in Goetze (Supra) did not come in the way of the assessee since the assessee had stated that the revised return had been filed under a wrong advice.

All intelligent thoughts have already been thought; what is necessary is only to try to think them again.

CA. Sunil K. Jain

DIRECT TAXES
Statutes, Circulars & Notifications

NOTIFICATIONS

Change in rules & forms, fees – Income Tax Advance Ruling by Resident Applicant – CBDT increases fees for advance ruling to ` 10 lakh – Income-tax (Twelfth Amendment) Rules, 2014 – Amendment in Rule 44E and insertion of Form No. 34DA:

The CBDT has made rules to amend the Income-tax Rules, 1962, to be called the Income-tax (12th Amendment) Rules, 2014 which shall come into force on the date of its publication in the Official Gazette. Amendments have been made in rule 44E and New Form 34DA has been inserted. Now, an application for obtaining an advance ruling under sub-section (1) of section 245Q shall be made in quadruplicate,

- In Form No. 34C in respect of a non-resident applicant referred to in sub-clause (i) of clause (a) of section 245N; in Form No. 34D in respect of a resident applicant referred to in sub-clause (ii) of clause (a) of section 245N seeking advance ruling in relation to a transaction undertaken or proposed to be undertaken by him with a non-resident; and
- In Form No. 34DA in respect of a resident applicant referred to in sub-clause (iia) of clause (a) of section 245N falling within any such class or category of person as notified by the Central Government;
- In Form No. 34E in respect of a resident falling within any such class or category of person as notified by the Central Government;
- In Form No. 34EA, in respect of an applicant referred to in sub-clause (iiia) of clause (b) of section 245N of the Act,

and shall be verified in the manner indicated therein.

Every application in the Form as applicable shall be accompanied by the proof of payment of fees as specified in sub-rule (4) and the fees payable along with application for advance ruling shall be in accordance with the table prescribed:

New FORM NO. 34DA (rule 44E) has been inserted being Form of application by a resident applicant referred to in section 245N(b)(iia) seeking advance ruling under section 245Q (1) of the Income-tax Act, 1961 in relation to a transaction undertaken or proposed to be undertaken by him.

(Notification No. 74/2014, dated 28-11-2014)

Section 10(23C) (iv)/(v)/(vi)/(via) of the Income-tax Act, 1961 – Exemptions – Charitable funds /institutions /charitable /religious trust – Notified prescribed authority

The Central Board of Direct Taxes has authorised the Commissioner of Income-tax (Exemptions), to act as 'prescribed authority' for the purposes of sub-clause (iv) and sub-clause (v)/(vi)/(via) of clause (23C) of section 10 with effect from the 'specified date'. The 'specified date' for the purpose of the aforesaid rule 2C/ 2CA shall be the 15th day of November, 2014.

(Notification Nos. 75-76/2014, dated 1-12-2014)

Sukanya Samriddhi Account Rules, 2014

To help channellise small savings, government has launched a Special Deposit Scheme for girl child – Sukanya Samriddhi Account – which can be opened in banks and post offices and half of the funds can be withdrawn for her higher education and marriage. In exercise of the powers conferred by section 15 of the Government Savings Banks Act, 1873 (5 of 1873), the Central Government made the rules, for above with following basic features of the scheme:

1. Account can be opened in name of minor girl child only up to the age of 10 years.
2. Account will be operated by natural or legal guardian up to the age of 10 years of girl child, after that child can operate herself.
3. The account will be closed after 21 years from the date of opening.
4. Minimum amount can be deposited in account is ` 1,000 and maximum limit is ` 1,50,000 in each financial year.
5. Default fee of ` 50 will be levied if minimum amount of ` 1,000 is not deposited.
6. The withdrawal can be made on attaining the age of 18 years of girl child up to maximum of 50% of the balance credited in the previous year.

(Notification No. GSR 863(E) [F.No. 2/3/2014.NS-II], dated 2-12-2014)

Section 10(46) of the Income-tax Act, 1961 – Exemptions – Statutory body/ authority/board/commission – Notified body or authority – Karnataka Electricity Regulatory Commission

The Central Government notified "Karnataka Electricity Regulatory Commission", a Commission constituted by the Government of Karnataka in respect of the following specified incomes arising to that Commission on account of

(a) Amount received in the form of grant and loans from the Government of Karnataka;

(b) Statutory fees;

(c) Interest earned from investment. The notification shall be applicable for the financial years 2014-15 to 2018-19.

The notification shall be subject to the conditions that Karnataka Electricity Regulatory Commission

(a) Shall not engage in any commercial activity;

(b) Its activities and nature of specified income remains unchanged throughout the financial year;

(c) It files return of income in accordance with the provision of section 139(4C) of the said Act.

(Notification No. 78/2014, dated 12-12-2014)

Section 10(23C) – Incomes which do not form part of total income – Income-tax (Thirteenth Amendment) Rules, 2014 – Insertion of Rule 2BBB

The CBDT has made rules to amend the Income-tax Rules, 1962, to be called the Income-tax (13th Amendment) Rules, 2014 by inserting rule 2BBB after rule 2BBA to provide that for the purposes of section 10(23C) sub-clauses (iiiab) and (iiiac) for incomes which do not form part of total income; any university or other educational institution, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds fifty per cent of the total receipts including any voluntary contributions, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year. The said rule shall come into force from the date of their publication in the Official Gazette.

(Notification No. 79/2014, dated 12-12-2014)

Section 35AD of the Income-tax Act, 1961 – Specified business –Semiconductor wafer fabrication manufacturing unit – Insertion of rule 11-OB and Form 3CS

In exercise of the powers conferred by section 35AD(8)(c)(xiii) of the Income-tax Act the CBDT made the rules to be called the Income-tax (14th Amendment) Rules, 2014 which shall come into force from the date of their publication in the Official Gazette. In the Income-tax Rules, 1962, after rule 11-OA the following rule has been inserted:

RULE 11-OB: The semiconductor wafer fabrication manufacturing unit shall be considered for notification as specified business under Section 35AD, if it fulfils all of the following conditions:

(a) The unit shall be exclusively for the manufacture of semiconductor wafer fabrications;

(b) The unit shall have prior approval of the competent authority on the recommendation of the Appraisal Committee under the Modified Special Incentive Package Scheme notified by the Department of Electronics and Information Technology, Ministry of Communications and Information Technology, Government of India;

(c) The date of commencement of operations of the unit shall be on or after the 1st day of April, 2014;

(d) The unit may have one or more manufacturing facilities and all the facilities shall be located in India.

The said notification shall be applicable to the extent it is not in contravention with the provisions of the Act, as amended from time to time. The notification of a unit as a specified business under section 35AD of the Act shall be in accordance of the following procedure:

(a) The applicant shall apply for notification of the unit in Form No. 3CS to Member (Income-tax), Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi;

(b) The Board shall serve a deficiency letter on the applicant if any defect is noticed in the application in Form No. 3CS or if any relevant document is not attached thereto;

(c) The applicant shall remove the deficiency within a period of 15 days from the date of service of the deficiency letter or within such further period which on an application made in this behalf may be extended;

(d) If the applicant fails to remove the deficiency within the period so allowed, the Board, if satisfied, may pass an order treating the application as invalid (provided opportunity of being heard is given to the assessee);

(e) The Board may call for such documents or information from the applicant as it may consider necessary and may call for further details or information from the applicant as well as from the income-tax authorities and other Departments or agencies, as it may deem fit;

(f) The Board may, after considering the application and the documents or the information, either issue the notification to be published in the Official Gazette granting approval to the unit or for reasons to be recorded in writing reject the application (provided opportunity of being heard is given to the assessee);

(g) A copy of the order invalidating or rejecting the application or withdrawing the approval shall be communicated to the applicant and the Assessing Officer and the Commissioner having jurisdiction over the assessee.

The Board may, withdraw the approval if it is satisfied that:—

(a) The assessee has ceased its activities relating to the specified business; or

(b) Such activities are not genuine or are not being carried out in accordance with all or any of the conditions under section 35AD or under this rule; or

(c) The approval granted by the competent authority on the recommendations of the Appraisal Committee under the Modified Special Incentive Package Scheme of the Department of Electronics and Information Technology has been withdrawn.

(Notification No. 80/2014, dated 12-12-2014)

CIRCULARS

Section 192 of the Income-tax Act –Deduction of tax at source – Salary – Income-tax deduction from salaries during the Financial Year 2014-15 under section 192

CBDT has released Circular that contains the rates of deduction of income-tax from the payment of income chargeable under the head 'Salaries' during the financial year 2014-15 and explains certain related provisions of the Act and Income-tax Rules, 1962. Circular helps employer to correctly deduct TDS on salary of its employees for Financial Year 2014-15 or Assessment Year 2015-16 and it also help salaried people to correctly calculate the tax liability. Circular explain provision related to all the components of salary and their taxability-which includes allowances, perquisites, retirement benefits and other benefits.

(Circular No. 17/2014 dated 10th December, 2014.)

Special Deposit Scheme, 1975 – Payment of Interest for the Calendar Year 2014

The Reserve Bank of India advised that interest for the calendar year 2014 may be promptly disbursed to the SDS account holders @ 8.7% per annum from January 1, 2014 to December 31, 2014 through electronic mode such as ECS/NECS/ NEFT/RTGS or by way of account payee cheques on January 1, 2015 itself, subject to instructions, as applicable, contained in paragraphs 3 and 4 of our circular CO.DT.No. 15.01.001/H-3527/2003-04 dated December 30, 2003 and issue suitable instructions to all your Deposit Offices and acknowledge the receipt.

(Circular IDMD (DGBA).CDD. No. 2600/15.01.001/2014-15, dated 12-12-2014)

Section 132, read with section 133A of the Income-tax Act, 1961 – Search & Seizure – Admissions of undisclosed income under coercion/pressure during search/ survey

Noticing instances/complaints of undue influence/ coercion by the CBDT that some assessees were coerced to admit undisclosed income during Searches/Surveys conducted by the Department and that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence, such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light.

In view of the above, while referring to the Instructions/Guidelines issued by the Board time and again to emphasise upon the need to focus on gathering evidences during search/survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence, directed that any instance of undue influence/coercion in the recording of the statement during Search/ Survey/Other proceedings under the I.T. Act, 1961 and/or recording a disclosure of undisclosed income under undue pressure/ coercion shall be viewed by the Board adversely.

CBDT also directed that these guidelines should be brought to the notice of all concerned in respective Region for strict compliance and to closely observe/oversee the actions of the officers functioning under you in this regard.

(Letter [F.No.286/98/2013-IT (INV.II)], dated 18-12-2014)

INSTRUCTIONS

Section 143, read with sections 144 and 147 of the Income-tax Act, 1961 –

Assessment – Functionality for CSIT (CO) for generation of miscellaneous of auditable cases

Since, it is important to provide requisite information to the offices of Audit across the country in a structured manner on regular basis, a new functionality has been provided in the ITD application to generate MIS of auditable cases (u/ss. 143(3), 144 & 147) from the system. The functionality is made available to CsIT (CO). By using this functionality, CsIT (CO) will be able to generate MIS report of auditable cases (u/ss. 143(3), 144 & 147) falling under their region.

The salient features of the functionality are as under:

- MIS report will be generated on the basis of date of uploading of scrutiny completed cases.
- The Report will be generated for less than or equal to six months only.
- The detailed report can be generated both in CSV (excel) and PDF format. The summary report can be generated in PDF format only.

The navigation path of the functionality is AST – Reports – Scrutiny MIS Reports. This screen is accessible by CIT (CO) through their login id. The complete procedure is elaborated in the user manual for the functionality which is available on i-Taxnet.

(AST Instruction No. 132, dated 27-11-2014)

PRESS RELEASES

Government sets up a High Level Committee (HLC) to interact with trade and industry on tax laws

In his Budget Speech 2014-15, the Union Finance Minister Shri Arun Jaitley had announced the setting-up of a High Level Committee to interact with trade and industry and ascertain areas where clarity on tax laws is required. Accordingly, a High Level Committee has been constituted.

The Terms of Reference (ToR) of the Committee are as follows:-

(i) The High Level Committee (HLC) will interact with trade and industry on regular basis and ascertain areas where clarity in tax laws is required.

(ii) The HLC will give recommendations to the CBDT/CBEC for issuance of appropriate clarifications by way of circulars, instructions etc. on tax issues.

(iii) The CBDT/CBEC will issue the required clarifications, circulars, instructions etc. within a period of 2 months from the date of receipt of recommendations of the HLC.

(iv) The HLC will be assisted by two Nodal Officers not below the rank of Joint Secretary/Commissioner, one each from Income Tax and Customs & Central Excise. The choice of Nodal Officers will be recommended by CBDT and CBEC. The appointment of the Nodal Officers will be made with the approval of Revenue Secretary.

(v) The HLC shall set its own procedures for regulating its work

(vi) The HLC may consult experts and tax professionals from outside as it may consider appropriate. The HLC may also invite officers from Department of Revenue, including CBEC and CBDT and other Government Departments/Agencies for interaction, as may be necessary.

(vii) The Chairman and two members of the Committee will function on part time basis.

(viii) The term of the Committee shall be for one year from the date of its constitution, subject to further extensions, as may be considered appropriate by the Department of Revenue, Ministry of Finance.

(ix) The HLC shall submit half-yearly reports to the Finance Minister.

(Press Release, dated 3-12-2014)

Relevant portions of the second report of the Special Investigation Team (SIT) on black money; on the directions of

SIT, CBDT directs various assessing officers to finalise the assessments for all actionable cases (427), whose names are appearing in the HSBC list received by the department

Below are the relevant portions of the Second Report of the Special Investigation Team (SIT) on Black Money which was recently submitted by the SIT to the Hon'ble Supreme Court:

I. In response to the directions issued by the SIT, CBDT has directed various Assessing Officers to finalise the assessments for all actionable cases (427), whose names are appearing in the HSBC list received by the Department. As per the information received from France, there are in all 628 persons/entities (except in 2 cases where the same names have appeared twice). Out of these 628 persons/entities, amounts/balances are shown against 339 persons and no amounts/balances are shown against 289 persons/entities. In respect of the latter category also, further investigations and assessments are being taken to logical end.

Out of the said 628 persons, 201 are either non–residents or non–traceable, leaving 427 persons' cases as actionable cases. The amount involved in these cases as per details available in the information received, is about ` 4,479 crores approximately ($ converted @ ` 45). Out of these, Department has finalised assessment of 79 assessees (involving more than 300 assessments). An amount of ` 2,926 crores has been brought to tax towards the undisclosed balances in the accounts relating to these persons. For the said amount, these assessees have been levied tax and interest at the appropriate rates. Penalty proceedings under Section 271 (1)(c) of the Income-Tax Act, 1961 (I.T. Act) have been initiated in 46 cases. Such penalties have been levied in 3 cases so far. With regard to the other assessees, proceedings are pending.

Further, prosecutions have been initiated in 6 cases u/s. 276C (1) of the Income-tax (I.T.) Act for wilful attempt to evade taxes and in 5 cases, proceedings have been initiated u/s. 276D of the I.T. Act on account of wilful failure to furnish information in response to the notices issued by the Income Tax Department. Show Cause Notices for filing prosecution have been issued in 10 more cases and further action would be taken at the earliest.

In other cases, necessary action is being expedited and substantial progress is expected in coming months.

Apart from HSBC list, further actions have also been taken by various agencies like Directorate of Revenue Intelligence, Directorate of Enforcement on the basis of directions given by SIT. In respect of most of the above noted cases, the CBDT has also reported about the actions taken by the assessing officers. Valuable suggestions and recommendations for taking action to control black money have also been made by Financial Action Task Force (FATF).

Appropriate directions are expected to be issued to the Central Government for implementation of suggestions/recommendations made so that substantive result could be achieved in curbing the menace of black money and stashing thereof in foreign tax havens.

(Press Release, dated 12-12-2014)

Section 92CC of the Income-tax Act, 1961 – Advance Pricing Agreement (APA) – Signing of first bilateral APA by CBDT

The CBDT signed a bilateral Advance Pricing Agreement (APA) with a Japanese Company. This is India's first bilateral APA. The APA is for a period of five years. The APA scheme has been introduced to bring about certainty and uniformity in transfer pricing matters of multi-national companies and reducing litigation. APAs will improve investment climate in the country. In the context of growing economic ties between Japan and India, this APA is expected to generate positive sentiments among Japanese investors in India.

(Press Release, dated 19-12-2014)

CA Tarunkumar Singhal & Sunil Moti Lala, *Advocate*

INTERNATIONAL TAXATION

Case Law Update

A] HIGH COURT JUDGMENTS

I. Payments made for live telecast of horse races is not royalty as per Explanation 2 to Section 9(1)(vi) thus, no TDS was to be deducted under Section 194J

CIT vs. Delhi Race Club (1940) Ltd. (51 taxmann.com 550) (Delhi High Court) Assessment Years: 2007-08 and 2009-10

Facts

1. The assessee was engaged in conducting horse races and thereby derived income from betting, commission, entry fee, etc. The assessee was also engaged in display of horse races conducted by other clubs by making payment to them towards purchase of right to display.

2. During the year under consideration, the Assessing Officer ('AO') disallowed the payment made to other clubs under Section 40(a)(ia) of the Income-tax Act, 1961 ('the Act'). He held that payments made to other clubs was on account of live-telecast royalty and the same being royalties were covered under Section 194J and subject to tax deduction.

3. On further appeal, the CIT(A) upheld the finding of AO in respect of payment made after 13-7-2006 i.e. the date when royalty was included in the scope of Section 194J of the Act. The Hon'ble Tribunal ruled in favour of assessee by relying on the judgment of *DIT vs. Neo Sports Broadcast (P) Ltd. 133 ITD 468 (Mumbai)* and also held that there was no creation of "work" as defined under Section 2(y) of the Copyright Act, 1957 ('CA').

4. Aggrieved by the same, the revenue preferred an appeal before Hon'ble High Court

5. The revenue contended that the Clause (v) to Explanation 2 to clause (vi) of sub-section (1) of Section 9 includes transfer of all or any right:

a) In any copyright irrespective of the category viz. literary, artistic, dramatic, musical works.

b) In any literary and artistic work irrespective of any copyright subsisting or not

c) In any scientific work including films and video tapes in respect of television and tapes in respect of radio broadcasting.

He further contended that live telecast of an event was the outcome of "scientific work" which made the telecast of the event possible at a distant place over television and the transaction was covered under the definition of "royalty".

6. The assessee contended that the right to broadcast/telecast was a special right distinct and different from "copyright" and the payment for live telecast was not a payment for transfer of any "copyright". He further contended that a sporting event was meant for public viewing and payment made for live telecast could not be held to be a payment for transfer of "copyright".

Judgment

1. The Hon'ble High Court observed that a perusal of clause (v) as reproduced above would reveal that royalty would include consideration for transfer of all or any rights in respect of any "copyright" and the word "copyright" is followed by the words "literary', "artistic" or "scientific work". It also exists in other works like dramatic, musical etc., which are not included. If the intention of the legislature was to include such words, the legislature would have said so or would not have qualified the word 'copyright' with the words 'literary' and 'artistic' as the word 'copyright' encompassed in itself all the categories of work. Having not done, it is a case of "Expressio Unis". (The mention of one thing is the exclusion of the other). Also the word "copyright" does not synchronize with the words "literary", "artistic" as they are the works in which "copyright' exists.

2. Thus the provision if read as it is, would be meaningless and the provision would be more meaningful if the word 'in' was read by implication in between the words 'copyright' and 'literary'. Thus the Hon'ble High Court re-read the provision on royalty for the purpose of interpretation as "transfer of all or any rights (including granting of licence) in respect of any copyright in literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting but not including consideration for the sale, distribution or exhibition of cinematographic films".

3. The Hon'ble High Court observed various provisions of CA and held that a live TV coverage of any event was a communication of visual images to the public and would fall within the definition of the word 'broadcast' in Section 2(dd) of CA. It further held that Section 13 of CA did not contemplate broadcast as a work in which 'copyright' subsisted as the said Section contemplated 'copyright' to subsist in literary, dramatic, musical and artistic work, cinematograph films and sound recording only. It held that as per Section 14 of CA, 'copyright' means exclusive right to reproduce, issue copies, translate, adapt etc., of a work which is already existing.

4. The Hon'ble High Court concluded that the broadcast/live telecast was not a work within the definition of 2(y) of the CA and therefore had no 'copyright'.

5. It rejected the contention of the revenue and stated that because the live telecast of an event was done at a distant place, the same would not be a 'scientific work'. When reference was made to films or video tapes in clause (v), then the intention of the provision was related to work of visual recording on any medium or video tape and which can be seen on the television and therefore such a work would not include a live telecast. The argument of the revenue that analysis, commentary and use of technology to live feed made the broadcast a subject matter of distant copyright, was rejected as the same was not known and also was not before the lower authorities.

6. The Hon'ble High Court relied on the decision of *ESPN Star Sports vs. Global Broadcast News Ltd. & Ors. 2008 (38) PTC*

477 (Del.), Akuate Internet Services Pvt. Ltd. & Anr. vs. Star India Pvt. Ltd. & Anr. [FAO (OS) 153/2013] and National Basketball Assoc. vs. Motorola, Inc. 105 F. 3d. 841 (1997).

II. Issue of shares does not give rise to any 'Income' from an 'International Transaction', absent which, provisions of Chapter X of the Income-tax Act, 1961 cannot be invoked – Even if alternate remedy is available, since issue was covered on merits, High Court can decide the petition

Shell India Markets Pvt. Ltd. v. ACIT & Ors. (WP No. 1205 of 2013) (Bombay High Court) – Assessment Year: 2009-10

Facts

1. The petitioner, Shell India Markets Pvt. Ltd., was belonging to Shell group of companies whose headquarters was in Holland. During the year, the assessee issued 85.88 crore equity shares to its non-resident associated enterprises ('AE') at face value of ` 10/- each. In Form 3CEB for A.Y. 2009-10, the petitioner did not disclose the issue of equity shares to its AE as it was of the view that in the absence of income arising (for the reason that it was on capital account), it was not an international transaction.

2. On reference made by the Assessing Officer ('AO'), the Transfer Pricing Officer ('TPO') passed an order holding that in view of Chapter X of the Act, once a transaction between the parties is an 'international transaction', adjustments to transfer price can be done even on capital account (balance sheet items). TPO further held that the shares were re-allotted to AE's at a price which was lower than ALP of issue of shares which resulted in short receipt of consideration. Accordingly, the TPO enhanced the issue price of shares from ` 10 to ` 183.44 per share and also charged interest on the amount short received resulting in a transfer pricing adjustment of ` 15,220 crores. Thereafter, AO passed the draft assessment order making adjustment as directed by TPO.

3. Aggrieved, the petitioner filed a writ petition against TPO's order and AO's draft assessment order before Hon'ble Bombay High Court.

4. The petitioner contended that the issue was no longer *res integra* in view of decision in the case of *Vodafone India Services Pvt. Ltd. vs. UOI (368 ITR 1)(Bom)*. Further, since, out of abundant caution it had also challenged the jurisdictional issue before the DRP, before the High Court, it undertook to withdraw those objections before DRP.

5. The Revenue contended that the decision in case of Vodafone should not be applied in view of the following distinguishing features:

a. The Petitioner had an alternative remedy of prosecuting its grievances, since it had also filed an application before the DRP raising an identical grievance. In these circumstances, this petition ought not to be entertained.

b. Petitioner in its Form 3CEB had not disclosed its transaction of issue of shares to AEs, even though it was an 'international transaction'. This failure on part of petitioner to disclose the same in Form 3CEB should by itself disentitle the petitioner from any relief; and

c. In the present facts, issue of shares to AEs at face value of ` 10 per share would in view of *inter se* change in shareholding amongst AEs in the petitioner, would be covered under the definition of 'international transaction' as given in Explanation (e) to Section 92B. This would be so as it would amount to 'restructuring / reorganizing' of the petitioner.

Judgment

1. The Hon'ble High Court, at the outset, noted that it was an agreed position between the parties that the decision in Vodafone would cover the issue in principle. Further, the Court while rejecting all the contentions of the Revenue, held as under:

a. Regarding the availability of alternative remedy, since in view of the fact that the Revenue did not dispute that the issue on merits stood covered by the decision of Vodafone, it would serve no useful purpose by directing the petitioner to prosecute its objections before the DRP.

b. Regarding the contention of non-disclosure of share issue transaction as an 'international transaction' in Form 3CEB, it was held that this stand taken was exactly opposite to the stand taken by the Revenue in Vodafone's case. Further, the Revenue is expected to be consistent and not change its stand from case to case, remarked the High Court. It was further stated that if the petitioner did not file a particular transaction in Form 3CEB when so required to be filed, the consequences of the same as provided in the Act would follow. However, the mere not filing of Form 3CEB on the part of the petitioner would not give jurisdiction to the revenue to tax an amount which it does not have jurisdiction to tax.

c. Regarding the last objection of Revenue, the High Court held that even if it was assumed that it was an 'International Transaction', the jurisdictional requirement for Chapter X of the Act to be applicable was that 'Income' must arise. In that case, admittedly no income had arisen and thus, the jurisdictional requirement for application of Chapter X of the Act was not satisfied.

2. The High Court accordingly allowed the writ petition and consequently, the draft assessment order of the AO and the order of the TPO, to the extent of the subject transfer pricing adjustments, were quashed.

B) Tribunal Decisions

III. Application of MFN Clause in Protocol to India-Sweden DTAA –Taxation of Management Service Fees – Application of Provisions of Article 12 of India-Portuguese DTAA containing concept of "Make Available" – Nature and Impact of Protocol to a Tax Treaty – Held that Management Service Fees not taxable as FTS under India-Sweden DTAA

Sandvik AB vs. DDIT – [2014] 52 taxmann.com 211 (Pune–Trib.) – Assessment Year: 2007-08

Facts

1. The assessee is a Swedish company. It does not have a Permanent Establishment (PE) in India. During the year, the assessee received Management Service Fees from its Indian subsidiary companies.

2. The assessee claimed that payment received from subsidiary companies are not taxable in India in view of the beneficial provisions of the India-Sweden tax treaty read with the Protocol. Accordingly, the fees received towards rendering the management services are not taxable as FTS under Article 12 of the India-Sweden tax treaty.

3. The A.O. held that the payments received by the assessee from its subsidiaries are in the nature of the FTS u/s. 9(1)(vii) of the Income-tax Act, 1961 (the Act) as well

as under Article 12 of India-Sweden tax treaty. The Dispute Resolution Panel (DRP) confirmed the order of the A.O.

Decision

The Tribunal held in assessee's favour as under:

1. The India-Sweden tax treaty does not have a 'make available' clause within the definition of FTS. The India-Portuguese tax treaty contains the 'make available' clause. It uses the word FIS instead of FTS and as per Article 12(4) of the India-Portuguese tax treaty, payment for the consideration of technical or consultancy services will be treated as FIS if such services 'make available' technical knowledge, skill, know-how or process, etc.

2. In the case of *Sandvik Australia Pty. Ltd. vs. DDIT (ITA No. 93/PN/2011)*, the Pune Tribunal dealt with the expression 'make available' and held that unless the service provider makes available his technical knowledge, experience, skill, know-how or process to the recipient of the technical service, the liability to tax is not attracted.

3. Under the Protocol to the India-Sweden tax treaty, there is an MFN clause. As per the MFN clause, if India signs a tax treaty with a third country which restricts the rate or scope of dividend, interest, royalty or FTS income, the same rate or scope shall also apply in case of the India-Sweden tax treaty.

4. An MFN clause refers to a situation wherein two non-resident assessees are given impartial treatment by the concerned country. In tax treaties, the MFN clause finds place when countries are reluctant to forego their right to tax some elements of the income. An MFN clause can direct more favourable treatment available in other treaties only in regard to the same subject matter, the same category of matter or the same clause of the matter.

5. The Protocol attached to the tax treaty takes care of a situation wherein either of the contracting states enter into a bilateral agreement in the nature of a tax treaty with another sovereign state and where the same subject matter has been given more favourable treatment by way of definition or mode of tax, then the parties can claim the benefit on the recognised principle of the MFN clause.

6. Klaus Vogel in his Third Edition on Double Taxation Convention has explained the role of the Protocol and its role in interpreting the treaty. The same has been considered by the Kolkata Tribunal in the case of *DCIT vs. ITC Ltd. [2002] 76 TTJ 323 (Kol.)*.

7. In the case of *Maruti Udyog Ltd vs. ADIT [2010] 34 SOT 480 (Del.)*, the Delhi Tribunal has explained the scope of the Protocol. It was held that Protocol is an indispensable part of the treaty with the same binding force as the main clauses therein. The provisions of the tax treaty are, therefore, required to be read with the Protocol and are subject to the provisions contained in such Protocol.

8. The Tribunal referred the AAR ruling in the case of Poonavala Aviations which relied on the Double Taxation Convention (Third Edition), Klaus Vogel, who has clarified the role of a Protocol and its role in integrating a treaty. Legally, Protocol is a part of the tax treaty, and its binding force is equal to that of the principal treaty text. When applying a tax treaty, it is necessary to examine these additional documents. A Protocol is said to be a treaty by itself that amends or supports the existing treaty.

9. In the present case, on the basis of the Protocol to the India-Sweden tax treaty, the assessee can claim the benefit of the conditions imposed for bringing to tax the FTS in the India-Portuguese tax treaty.

10. Accordingly, it has been held that on the principle of the MFN clauses, the payment received by the assessee from its Indian subsidies cannot be brought to tax.

IV. India-USA DTAA – Taxation of Reimbursement of Remuneration of Seconded Employees – Taxability under Article 12 or Article 7 – Employees deputed / seconded to India for providing support services constitutes Service PE – Application of provisions of Article 12(6) – Reimbursement of salary paid to deputed employees taxable as "Business profit" and not as Fees for Included Services – Accordingly, there would be no Net Profit taxable under Article 7

Morgan Stanley International Incorporated vs. DDIT – 2014-TII-186-ITAT-MUM-INTL – Assessment Year: 2005-06

Facts

1. The assessee company is a resident of USA and is a 100 % subsidiary of M/s. Morgan Stanley USA. The assessee's primary activity was to provide support services to various subsidiaries all over the world including India

2. The assessee had entered into an agreement with M/s. J. M. Morgan Stanley Securities Private Limited, an Indian Company, for providing support services.

3. The assessee had deputed five of its employees in terms of the deputation letter. These employees were seconded to India to render their services to the Indian companies under supervision and control of the Board of Directors of the Indian company and their day to day responsibility and activities were managed by the Indian company.

4. The seconded employee's salary was paid by the assessee company after deducting tax u/s. 192 of the Act. The entire salary paid by the assessee has been reimbursed by the Indian company

5. The A.O. held that the consideration received by the assessee is for the services provided by the deputed persons to the Indian subsidiaries and it is taxable as Fees for Technical Services (FTS) under Section 9(1)(vii) of the Income-tax Act, 1961 (the Act). Even under Article 12(4) of the tax treaty, the consideration received for rendering of technical services in India, was taxable in India as FIS since these services given by deputed employees, make available technical knowledge, experience, skill, know-how, etc.

Decision

The Tribunal concluded the matter in favour of the assessee as under:

Re: Service PE

1. The Delhi High Court in the case of *Centrica India Offshore (P.) Ltd.*, held that seconded employees were rendering the service on behalf of the overseas employer and accordingly they have established Service PE in India.

2. Further, while interpreting Article 13 of India-UK tax treaty and Article 12 of India-Canada tax treaty, on similar kind of transaction (*vis-à-vis* the present case), Delhi High Court held that secondment of employees of overseas entities who have been paid salary by the overseas entity and reimbursed to the overseas company by the Indian company was held to be payment for technical services within the meaning of FIS clause and also under "make available" clause of Article 12, respectively.

3. Applying the ratio laid down by Delhi High Court in the present case, it had to be seen, whether overseas entity i.e. the

assessee, was the real economic employer of the seconded employees i.e. the employees are maintaining their lien on employment with the original overseas entity and whether the assessee remains responsible for the work of seconded employees in India or not.

4. In the present case, the Tribunal proceeded on the premise that the seconded employees are the real employees of the assessee who had come to India to render services and therefore, they constitute service PE in India.

5. Such an establishment of PE under these circumstances have been dealt with the Supreme Court in the case of *DIT (IT) vs. Morgan Stanley & Co. [2007] 292 ITR 416 (SC)* wherein it was held that the secondment of the employees of overseas entities to the Indian entity constitutes service PE in India. Based on this decision, it was clear that such deputed employees if continued to be on payrolls of overseas entities or they continue to have their lien with jobs with overseas entities and were rendering their services in India, service PE will emerge.

6. Consequently, the seconded employees or deputed employees working in India for the Indian entity constituted a service PE in India.

Re: Character of the Payment – Whether Fees for Included Service or Business Profit

1. Article 12(6) of the tax treaty makes it clear that if the resident of the contracting state (USA) carries on the business in other contracting state (India) in which FIS arises through PE situated therein, then in such case the provisions of Article 7 i.e. 'Business Profits' shall apply.

2. If the taxability of such payment has to be examined and determined on the basis of computation of business profit under Article 7, then the salary paid by the assessee would amount to cost to the assessee, which is to be allowed as deduction while computing the business profit of the PE in India.

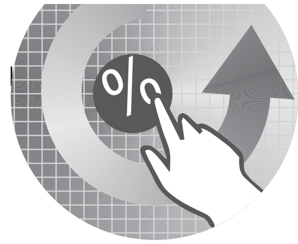
3. Accordingly, the ratio laid down in the decision of Delhi High Court in the case of Centrica India Offshore (P.) Ltd., will not help the case of the tax department, in any manner because under the concept of PE, FIS cannot be taxed under Article 12, but only as a business profit under Article 7. Similar provision is also embodied in Article 12(6) of the India-Canada tax treaty but this issue was neither raised or brought to the notice before the Delhi High Court nor it was contested by either parties.

4. There is an inherent contradiction in this concept, as in most of the treaties, exclusionary clause like Article 12(6) has been embodied, which makes the issue of taxability of FTS/FIS in such cases as non-applicable, and have to be viewed from the angle of Article 7.

5. Accordingly, the decision of the Delhi High Court and all other decisions relied upon by the revenue will not apply in the case of the assessee, as nowhere the concept of Article 12(6) have been taken into account for determining the taxability of such a payment under the provisions of tax treaty.

6. The payment made by the Indian entity to the assessee on account of reimbursement of salary cost of the seconded employees will have to be examined under Article 7 only. While computing the profits under Article 7, payment received by the assessee is to be treated as revenue receipt and any cost incurred has to be allowed as deduction because salary is a cost to the assessee which is to be allowed.

7. Accordingly, the A.O. was directed to compute the payment strictly under terms of Article 7 and not under Article 12 of the tax treaty.



CA Rajkamal Shah & CA Naresh Sheth

INDIRECT TAXES

Service Tax – Statute Update

Amendment in Service Tax Rules pertaining to audit of service tax assessees

Prior to amendment in Service Tax Rule 5A(2), assessee was obliged to make available specified records on demand to the officers authorised under Rule 5A(1) or audit party deputed by Commissioner or Comptroller and Audit General of India.

Service Tax Rule 5A(2) is now amended by notification wherein obligation is cast on assessee to produce prescribed records to Cost Accountants or Chartered Accountants nominated U/s. 72A of the Act in addition to above referred persons.

Assessee is now obliged to produce cost audit report (if any) u/s 148 Companies Act, 2013 to audit team in addition to normal records maintained and tax audit report u/s 44AB of the Income-tax Act, 1961 which were specified prior to this amendment. The 'trial balance or its equivalent' which was a specified record till 5-12-2014 is not specifically included in specified records in amended Rule.

[Notification No. 23/2012 ST dated 5-12-2014]

Clarification on service tax audit by departmental officers

Hon'ble Delhi High Court, *vide* its Judgment dated 4-8-2014 in case of *M/s Travelite (India) [2014-TIOL-1304-HC-DEL-ST]*, quashed Rule 5A(2) empowering department to carry out audit on the ground that such Rule did not have appropriate statutory backing.

The circular draws an attention to the fact that Finance Act, 2014 has enacted Clause (k) to section 94(2) to provide for "imposition, on persons liable to pay service tax, for proper levy and collection of tax, of duty of furnishing information, keeping records and manner in which such records shall be verified" and such an amendment is an adequate statutory backing empowering service tax authorities to conduct audit of service tax assessees. In view of this statutory amendment, the decision of the Delhi High Court can be distinguished.

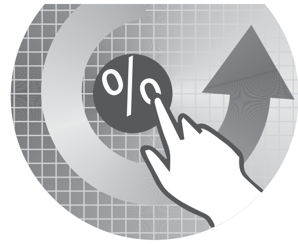
[Circular No. 181/7/2014 – ST dated 1-12-2014]

Author's view

Audit can be construed as a Systematic examination and verification of records. One may, therefore, believe that the Government has acquired statutory power to frame the Rules for conducting Audit of service tax assessees *vide* section 94(2)(k) of the Act w.e.f. 6-8-2014.

Rule 5A (2) grants statutory backing to service tax authorities to conduct service tax audit w.e.f. 6-8-2014. The Cost Accountant or Chartered Accountant authorised u/s. 72A gets power to do service tax audit on or after 5-12-2014.

In light of decision of Hon'ble Delhi High Court referred above, one may feel that service tax audits done on or before 5-8-2014 are without authority of law. Hon'ble Supreme Court has admitted SLP and also stayed the operation of above referred decision of *Hon'ble Delhi High Court (UOI vs. M/s Travelite (India) [2014-TIOL-101-SC-ST-LB]*. One, therefore, has to wait till Apex Court finally decides this issue.



CA Bharat Shemlani

INDIRECT TAXES
Service Tax – Case Law Update

1. Services

Management, Maintenance and Repair Service

1.1 CC&CE vs. J. P. Transformers 2014 (36) STR 961 (All.)

The assessee in this case utilised excise duty/VAT paid goods and materials for repair of transformers and separately disclosed in agreement and mentioned in Invoices also. The High Court held that, service tax could not be demanded on component representing value of goods and materials used for carrying out repairs. It is also held that, mere fact that cost of various items was shown for purpose of price variation, could not make any difference to legal position.

Business Auxiliary Service

1.2 Conwood Pre Fab Ltd. vs. CCE, Raigad 2014 (36) STR 1064 (Tri.-Mumbai.)

The department sought to tax the activity of laying of paver blocks at Port under BAS as the said work was sub-contracted to the appellant. The Tribunal held that the said activity more appropriately fall under Commercial or Industrial Construction Service and not under BAS.

Commercial or Industrial Construction Service

1.3 The Carpenters vs. CCE&ST, Pune-III/Mumbai-II. 2014 (36) STR 1137 (Tri.-Mumbai)

The appellant in this case engaged in plastering of walls, tiling of floors, carpentry work etc. The Tribunal held that, as per definition under section 65(25b) of FA, 1994 activity undertaken on existing building amount to renovation or restoration or alternation or repair. To attract clause (c) of section 65(25b) activity is to be undertaken on new or unfinished building. The work undertaken by the appellant merits classification under section 65(25b)(d) and therefore benefit of Notification No. 1/2006-ST is available upon satisfaction that activities pertaining to existing building or civil structure.

1.4 JMC Projects (India) Ltd. vs. CST 2014 (36) STR 1223 (Guj.)

The Gujarat High Court in this case held that, after 1-6-2007, with introduction of entry Works Contract Service, it was open to the assessee to change the classification, provided it satisfied the requirement thereof. It is also held that, for ongoing projects as on 1-6-2007, if any payment of Service Tax was made under the respective taxable service before the said date, *qua* such contract, composition scheme was not available.

Authorised Service Station Service

1.5 CCE, Indore vs. Jabalpur Motors Ltd. 2014 (36) STR 1160 (Tri.-Del.)

The Tribunal in this case held that, providing free services is part of functions and duties of dealers entitled to dealership commission and since no amount is collected from customers or reimbursed by manufacturer the demand is misconceived. It is also held that, service tax cannot be demanded on amount received for salary of drivers used for providing mobile services to car owners as customer is car owner and recipient of service and not authorised service station service provided to manufacturers.

Advertising Agency Service

1.6 CST, Mumbai vs. Mad Entertainment Ltd. 2014 (36) STR 1162 (Tri.-Mumbai.)

The department in this case sought to demand tax on shooting of programmes prepared by advertising agency under Advertising Agency Service. The Tribunal held that, the assessee has obtained registration under Video Tape Production Service and service tax liability has already been discharged and the activity undertaken is not connected with preparation, display or exhibition of advertisement.

Storage & Warehousing Service

1.7 CCE, Ghaziabad vs. Goyal M.G. Gases (Pvt.) Ltd. 2014 (36) STR 1165 (Tri.-Del.)

The assessee in this case supplied various gas and storage tanks to hospital. The department sought to tax the said activity under Storage & Warehousing Service. The Tribunal observed that, hospital is responsible for maintenance of tanks and regular inspection as per provisions of Explosives Act and held that, gas is stored in tanks sold to hospital and in custody or control of hospital, hence assessee cannot be treated as storage or warehouse keeper.

Banking & Other Financial Service

1.8 Uco Bank vs. CST, Kolkata 2014 (36) STR 1169 (Tri.-Kolkata)

The Tribunal in this case held that confirmation of demand on value of interest received in rendering bill discounting facility and imposition of penalty thereon deserves to be set aside.

Restaurant Service

1.9 UOI vs. Kerala Bar Hotels Association 2014 (36) STR 1205 (Ker.)

The Division Bench of High Court upholding single judge decision held that, it was beyond legislative competence of Central Government to impose service tax on Restaurant Service as it relates to supply of food and other consumables in restaurant. After Constitution (46th Amendment) Act, this activity is deemed as sale of goods, and cannot be said to be service. Tax on the same can be imposed only by States under Entry 54 of List II of VII Schedule. In view of Article 366(29A)(f) of Constitution of India, bill raised on customer has to be for whole amount of consideration received by restaurant owner, and cannot be split as charge for food parts and service, even though restaurant owner may have provided goods furniture, furnishings and fixtures, linen, crockery and cutlery, music etc.

It is further held that, "Luxuries" in Entry 62 of List II means activity of enjoyment of or indulgence in that which is costly or which is generally recognised as being beyond necessary requirement of average member of society and same is beyond legislative competence of Union to impose tax as same is related to Entry 62 of List II of VII Schedule and States alone had legislative competence to enact any law imposing tax on it.

Chartered Accountant Service

1.10 CCCE & ST vs. Magham Pullaiah 2014 (36) STR 1257 (AP)

The High Court in this case held that, billing activity undertaken at the behest of chartered accountant is not liable under CA service as CA themselves do not prepare bills or vouchers and this is done by ministerial staff and clerks. Therefore, said activity is not liable to service tax under CA Service.

Business Support Service

1.11 Indian Hotels Co. Ltd. vs. CST, Bengaluru 2014 (36) STR 1268 (Tri.-Bang.)

The department in this case sought to demand service tax on charges received by assessee allowing customers to use photocopier, printer etc. available in business centre. The Tribunal held that, in absence of any knowledge regarding purpose of usage of service, services received by customers cannot be held as one of various services listed under support service of business or commerce. The Revenue department is responsible to show occurrence of taxable event and service leviable to tax.

Clearing & Forwarding Agent Service

1.12 B. K. Sales Corporation vs. CCE, Rohtak 2014 (36) STR 1281 (Tri.-Del.)

The assessee in this case engaged in sale of product supplied by principal in smaller lots to customers at prices fixed by the principal by issuing invoices in the name of principal. The Tribunal held that the main activity of C&F Agent is receipt of dispatch orders from principal and arrangement for clearance of goods in terms of direction. Since the assessee has permission to sell goods in smaller lots is indicative of the fact that assessee is not working as C&F Agent of principal.

Management, Maintenance and Repair Service

1.13 MIDC vs. CCE, Nashik 2014 (36) STR 1281 (Tri.-Del.)

The department in this case sought to tax services charges collected by the appellant for maintaining road, street lights etc. under MMR service. The Tribunal held that, assessee is discharging statutory function governed by MID Act and rules framed thereunder. The service charges are collected for performing activity in the nature of compulsory/statutory levy and not in nature of any service to any particular individual or for any consideration. Therefore, activity carried out by the appellant is not covered under MMR Service.

2. Interest/Penalties/Others

2.1 General Manager (CMTS) vs. CCE, Chandigarh 2014 (36) STR 1084 (Tri.-Del.)

The department in this case denied adjustment of service tax for failure to opt for centralised registration under rule 4(2) of STR, 1994. The appellant contended that adjustment is permissible in terms of Rule 6(4A) of STR, 1994. The Tribunal held that refusing adjustment against tax liability during other months amount to collection of tax without authority of law contrary to Article 265 of Constitution of India. Further there is no condition in rule 6(4A) r.w.r. 6(4B) requiring assessee to opt for centralised registration for availment of adjustment facility, therefore the adjustment of excess tax paid is permissible.

2.2 Prathyusha Associates Shipping P. Ltd. vs. CCE, C&ST Visakhapatnam-I 2014 (36) STR 1145 (Tri.-Bang.)

The Tribunal in this case held that, so long as the activity is a service and even if it is not taxable, it has to be considered as an exempted service. It is not necessary that a service should be taxable and an exemption notification exempting from levy of service tax should have been issued. Non-taxable service rendered by appellant is also to be considered as an exempted service.

3. CENVAT Credit

3.1 CCE vs. Chandresh Shah 2014 (36) STR 972 (Guj.)

The assessee in this case utilised CENVAT credit at registered office without distribution to various units and also not registered themselves as ISD. They have contended that if they have properly distributed the credit, they would have utilised it fully. The High Court held that, it was case of procedural irregularities and revenue neutrality which was required to be considered sympathetically. As there was not fraud or collusion or wilful misstatement or suppression of facts or contravention of statutory provision with intent to evade payment of duty, penalty was not sustainable.

3.2 *Delphi Automotive System P. Ltd. vs. CC, CE&ST Noida 2014 (36) STR 1089 (Tri.-Del.)*

The Tribunal in this case allowed CENVAT credit of service tax paid on Clearing service, legal service and event management service used for celebration of annual day and honouring outstanding employees by way of rewarding and entertaining them to encourage in general for better performance.

3.3 *Shree Cement Ltd. vs. CCE&ST, Jaipur-II 2014 (36) STR 1107 (Tri-Del.)*

The appellant in this case claimed CENVAT credit of service tax paid on event management service organised at temple to facilitate organisation of dealer/retailer meet for promotion, marketing, advertising and promotion of assessee's products. The department denied the credit by observing that temple premises are used only for religious function and for no other social activity. The Tribunal held that, it is well established by contemporaneous social evidence that temple premises are employed for a variety of social functions including marriages, hence impugned order denying credit is not sustainable.

3.4 *DCM Shriram Consolidated Ltd. vs. CCE, Jaipur-I 2014 (36) STR 1120 (Tri.-Del.)*

The Tribunal in this case allowed CENVAT credit on following services;

- As number of factory workers are more than 250 and it being mandatory to provide canteen facility to workers, credit is admissible for outdoor catering service.
- Maintenance of lawns and gardens are essential as per condition imposed by Pollution Control Board for operating factory.
- Cycle stand is a necessary requirement in factory
- Maintenance of guest house a necessary business requirement as factory located outside city boundaries.

3.5 *Hero Motocorp Ltd. vs. CCE, Delhi-III 2014 (36) STR 1128 (Tri-Del.)*

The Tribunal in this case held that, final product if being cleared either under specific rate of duty or in terms of MRP declarations as per section 4A of CEA, 1944, 'Place of removal' would be factory gate, hence Cenvat credit of service tax paid on courier service from and/or up to factory gate is not available. It is further held that, since assessee is regularly filing statutory returns regarding utilization of Cenvat credit of service tax paid on courier service suppression of facts with intent to evade payment of duty cannot be alleged.

3.6 *Resil Chemicals Pvt. Ltd. vs. CCE, Bangalore 2014 (36) STR 1260 (Kar.)*

The High Court in this case held that obligation to run canteen under Factories Act is neither necessary nor number of employees required to exceed 250 as canteen is run for welfare of employees so that they get best foods and are able to perform well in factory premises which has direct nexus with production of goods. Hence, Cenvat credit availed on outdoor catering service is admissible.

3.7 *Praj Industries Ltd. vs. CCE, Pune-III 2014 (36) STR 1273 (Tri-Mumbai.)*

The assessee availed Cenvat credit on services of overseas commission agent for procuring orders for goods manufactured by 100% EOU but distributed to DTA unit. The Tribunal held that, HO as ISD required to pay service tax on these input service on discharge of service tax liability arising under RCM and prior to insertion of clause (c) in rule 7 of CCR, 2004, there was no bar on ISD to distribute credit pertaining to one unit to another unit.

Janak C. Pandya, Company Secretary

CORPORATE LAWS
Company Law Update

[2014] 187 Comp Cas 243 (Delhi) – [In the Delhi High Court] – RS LIVEMEDIA P. LTD., in re

A company can reduce capital by cancelling and returning money to certain share holders only and payment for such cancellation can be at different rate as nothing prohibits the same under section 100 of the Act or any other law so long as company complies with all specific procedure as provided in the sections 101 to 104 of the Act.

Brief facts

The petitioner company has filed this petition under sections 101-104 of the Companies Act, 1956 ("Act"). The company has two non-resident investors also.

As per the petition, company has provided the reason that it has excess capital then what it requires for its business and hence proposed the followings.

1. To reduce its subscribed and paid-up equity capital and preference shares.
2. The reduction of shares will be by way of cancellation of shares held by investor's share holders.
3. The amount to be payable on such cancelled shares.
4. The amount to be paid on cancelled shares is determined by an independent valuer on DCF method.
5. The proposed rates per share for cancellation of shares are different for different investors.
6. The company has no secured creditor.

The company has completed all formalities for reduction of share capital including obtaining the approval from the share holders.

The court has issued necessary order for filing the scheme with the Registrar of Companies ("RoC") and Regional Director, Northern Region ("RD") as well as publication in the newspaper. As company has no secured creditors, court has also granted an exemption from the compliances under section 101(2) of the Act.

RD has provided its observation to the proposed reduction of share capital.

1. As the company is a profit making company, the proposed reduction is nothing but a distribution of dividend. This is outside the scope of sections 100(1) (a) to 100(1)(c) of the Act which provides for various ways of reduction of share capital.
2. Preference shares are in the nature of "convertible preference shares" and not as a "redeemable preference shares" and thus cancelling preference shares without first converting are treated as "redemption of preference shares".

3. As per the RBI guidelines, redeemable preference shares are to be treated as debt and hence ECB norms have to be complied with.
4. Cancellations of shares are not in proportionate to all share holders and only shares held by foreign investors are getting cancelled.
5. Section 100(1)(c) provides for payment of face value of shares, whereas in this reduction the same is in excess of face value.

The submission made by the company is as follows:

1. The methods of reduction as per section 100 are only illustrative in nature and not exhaustive. In its support, the judgment of this court in the case of *Reckitt Benckiser (India) Ltd., in re [2005] 122 DLT 612.*
2. The proposed payment reflects the true and correct picture of the financial statements of the company and that value of shares did not represent the value of the company.
3. The payment to certain investors is to provide them exit and promoter share holders are continue to hold shares. Thus, proposal is for reduction and not the distribution of profit, which otherwise available for all share holders.
4. The disproportionate rate for reduction of capital is based on period of holdings of such shares by each share holders.
5. On ECB norms for preference shares, it is submitted that same is convertible preference shares and hence should be treated as share capital only and necessary reference to FEMA master circular was provided.
6. On cancellation of shares of selective investors, the company is best judge for its requirements and section 100 of the Act does not restrict payment to selective class of share holders.
7. The reduction of capital in any manner is permissible and court has to observe that same is not inequitable and unfair. The judgments in case of House of Lords in British and American Trustee and *Finance Corporation vs. Couper [1894] AC 399 (HL)* and Decision of Chancery Division in Thomas De La Rue and Co. Ltd. and Reduced in re [1911] 2 Ch. D 361.

Judgments and reasoning

The court has approved the petition and provided the following reasons for each of RD's observation.

1. Section 100(1)(c) permits the reduction of capital in excess of requirement and in present case, the company has submitted that it has excess capital and nothing contrary to that is on record.
2. There is no such principle that a profitable company cannot reduce the capital. And the fact that company is profitable and thus generates the funds is itself indicates that the petitioner has capital in excess of its requirements.
3. Since the reduction is not in proportionate to shareholding, it appears that same cannot be treated as distribution of dividend which otherwise would have to be distributed in proportion of shareholding.
4. On ECB norms, the present shares are issued as convertible preference shares and hence how same can be treated as debts? Further, there is no merit in first converting preference into equity and then to reduced.
5. The sanction of this court for reduction does not absolves the company from the compliance of FEMA or any other statute.

[Contd. on page 94]

CA Mayur Nayak, CA Natwar Thakrar &
CA Pankaj Bhuta

OTHER LAWS
FEMA Update

In this article, we have discussed recent amendments to FEMA through Circulars issued by RBI:

1. Remittance of Assets – Submission of Auditor's certificate

RBI *vide* A.P. (DIR Series) Circular No. 151 dated June 30, 2014, had informed the ADs that henceforth it will not issue any instructions under the FEMA in respect of deduction of tax at source while allowing remittances to the non-residents. However, RBI simultaneously had made it mandatory for ADs to comply with provisions of Section 195(6) and the rules framed by the CBDT while allowing such remittances.

The Principal Regulations contained in the FEMA – Notification No. 13 "Remittance of Assets" are accordingly amended through Notification No. FEMA 324/2014-RB dated October 31, 2014.

(A.P. (DIR Series) Circular No. 43 dated 2nd December, 2014)

(Comments: Through this Circular, RBI has drawn attention of ADs to amendments to the Principal Notification which are in line with its earlier Circular No. 151 dated June 30, 2014 with respect to submission of CA certificate for tax payments in which RBI has categorically stated that CBDT will be the only authority to prescribe and the same will be binding on the ADs).

2. Foreign Direct Investment (FDI) in India – Review of FDI policy – Sector Specific conditions

In order to bring uniformity in the sectoral classification/conditionalities for FDI/ foreign investment as notified under the latest Consolidated FDI Policy Circular of 2014 dated April 17, 2014 with the FEMA Regulations, the Anne-B of Schedule 1 to Notification No. FEMA 20 "Transfer or Issue of Security by a Person Resident outside India" has been suitably revised by the amending notification.

(A.P. (DIR Series) Circular No. 45 dated 8th December, 2014)

(Comments: This is a welcome move by RBI. Through Notification No. 312, RBI has attempted to bring uniformity between the FDI policy and RBI regulations notified under Annex-B to Notification No. 20 "Transfer or Issue of Security by a Person Resident outside India" dated May 3, 2000).

3. Review of FDI policy – Defence

DIPP, effective August 26, 2014, has allowed foreign investment [FDI, FIIs, RFPIs, NRIs, FVCIs and QFIs] up to 49% under Government route in Defence Sector subject to the conditions contained therein *vide* Press Note No. 7 (2014 Series) dated August 26, 2014.

RBI has now amended FEMA Notification FEMA–13 "Remittance of Assets" *vide* Notification No. FEMA 319 dated September 5, 2014 to bring in uniformity with the amended FDI Policy.

(A.P. (DIR Series) Circular No. 46 dated December 8, 2014)

(Comments: RBI through this Circular, has drawn attention of ADs to the amendments made to the Principal Notification No. 20 "Transfer or Issue of Security by a Person Resident outside India" dated May 3, 2000).

4. Review of FDI policy – Railway Infrastructure

DIPP, effective August 27, 2014, amended FDI policy to allow 100% FDI in railway Infrastructure sector under automatic route subject to certain conditions.

RBI has now amended Notification FEMA-20 "Transfer or Issue of Security by a Person Resident outside India" *vide* Notification No. FEMA 319 dated September 5, 2014 to bring in uniformity with FDI Policy.

(A.P. (DIR Series) Circular No. 47 dated December 8, 2014)

(Comments: RBI through this Circular, RBI has drawn attention of ADs to amendments made to the Principal Notification No. 20 "Transfer or Issue of Security by a Person Resident outside India" dated May 3, 2000).

5. Overseas Investments by Alternative Investment Fund (AIF)

RBI has allowed Indian Alternative Investment Fund (AIF), registered with SEBI to invest abroad subject to the provisions contained under A.P. (DIR Series) Circulars No. 49 and 50 dated April 30, 2007 and May 04, 2007 respectively to invest in equity and equity-linked instruments only of off-shore Venture Capital Undertakings.

Accordingly, FEMA Notification – 20 "Transfer or Issue of Security by a Person Resident outside India" is amended through Notification No. FEMA 326 dated November 12, 2014 to bring in uniformity with FDI Policy.

(A.P. (DIR Series) Circular No. 48 dated December 9, 2014)

6. Money Transfer Service Scheme – Delegation of work to Regional Offices

Subsequent to delegation of the Scheme, RBI has once again reminded all Authorised Persons who are Indian agents under Money Transfer Service Scheme (MTSS) work, that, they are required to make all their correspondence/submission of prescribed statements to the Regional Office of the Foreign Exchange Department of the RBI, under whose jurisdiction their registered offices function.

(A.P. (DIR Series) Circular No. 49 dated December 12, 2014)

7. Rupee Drawing Arrangement – Delegation of work to Regional Offices

RBI has reiterated that subsequent to delegation of Rupee Drawing Arrangement (RDA) work, AD Category-I banks are required to make all their correspondence including submission of prescribed statements to the Regional Office of the Foreign Exchange Department of the RBI under whose jurisdiction their registered offices function.

(A.P. (DIR Series) Circular No. 50 dated December 16, 2014)

8. Foreign Exchange Management (Deposit) Regulations, 2000 – Exemption thereof

With the objective of bringing all the multilateral organisations at par for opening of accounts in India, exemptions meant for UNO and its subsidiary/ affiliate bodies in India contained in Regulation 4(5) of Notification No 5 – FEMA (Deposit) regulations are extended to deposits with ADs by any multilateral organisation of which India is a member nation, and its subsidiary/affiliate bodies in India, and its or their officials in India.

(A.P. (DIR Series) Circular No. 51 dated December 17, 2014)

9. Overseas Direct Investments by Indian Party – Rationalisation/ Liberalisation

Currently, creation of charge (pledge) on the shares of JV/WOS held by an Indian Party in favour of domestic/overseas lender for availing facilities (funded or non-funded) by the Indian party/the concerned JV/WOS is under the automatic route.

Whereas, creation of charge on domestic assets (movable/immovable/ financial/other) of an Indian party (or its group/sister/associate concern including the individual promoter/ director) (irrespective of the level) in favour of an overseas lender to the JV/WOS/step down subsidiary (SDS) and creation of charge on the overseas assets of JV/WOS/SDS in favour of a domestic lender to the Indian party or to its group/sister/associate concern or to any of its overseas JV/WOS/ SDS requires prior approval of the Reserve Bank.

In order to grant more flexibility, RBI has allowed designated AD banks to grant permission under automatic route subject to fulfilment of the following conditions:

– The Indian party is complying with the provisions under Regulation 6 (and Regulation 7, if applicable) of Notification No. 120 for undertaking financial commitment;

– Compliance to the provisions under Regulation 18, 18A(1) or 18A(2) of the Notification No. 120, as the case may be;

– The domestic assets (other than shares) and foreign assets on which charge is being created, are not securitised

– The period of charge, if not specified upfront, may be co-terminus with the period of end use (like loan or other facility) for which charge has been created;

– The loan/facility availed by the JV/ WOS/SDS from the domestic/overseas lender shall be utilised only for its core business activities overseas and not for investing back in India in any manner whatsoever;

– A certificate from the Statutory Auditors' of the Indian party, to the effect that the loan/facility availed by the JV/WOS/SDS has not been utilised for direct or indirect investments in India, is to be obtained and kept by the designated AD;

– The matter relating to the setting up/ acquiring the multi-layered structure of overseas entities by the Indian party, wherever applicable, is under the examination of the Reserve Bank and the decision taken in this regard shall be conveyed in due course for necessary compliance at AD/Indian party level.

Additional conditions for creation of charge on shares of JV/WOS/step down subsidiary (SDS) in favour of domestic/ overseas lender

– The invocation of charge resulting into the domestic lender acquiring the shares of the overseas JV/WOS/step down subsidiary shall be governed by the extant FEMA provisions/regulations issued by the Reserve Bank from time to time;

– The facilities (funded or non-funded) extended by the domestic lender to the Indian party or to its group/ sister/ associate concern or to any of its overseas JV/WOS/SDS shall also be governed by the prudential norms and other guidelines issued by the Department of Banking Regulation (DBR, the erstwhile DBOD), Reserve Bank of India from time-to-time; and

Additional conditions for creation of charge on the domestic assets in favour of overseas lenders to the JV/WOS/step down subsidiary

– The overseas lender undertakes that, in the event of enforcement of charge, they shall transfer the domestic assets by way of sale to a resident only;

– In case of invocation of charge, the resultant remittance of the proceeds exceeding the prescribed limit of the financial commitment of the Indian party (prevailed at the time of creation of charge) shall require prior approval of the Reserve Bank;

– Wherever creation of charge involves pledge of shares of an Indian company, the pledge shall also be governed by the extant FEMA provisions/regulations issued by the Reserve Bank and the consolidated Foreign Direct Investment (FDI) policy issued by the Government of India from time-to-time; and

Additional conditions for creation of charge on overseas assets in favour of domestic lender

– The invocation of charge resulting into the domestic lender acquiring the overseas assets shall require prior approval of the Reserve Bank; and

[A.P. (DIR Series) Circular No. 52 dated 29 December, 2014]

(Comments: RBI has categorically stated that the loan/funds raised overseas by the JV/WOS/SDS shall be utilised only for its core business activities overseas and not for investing back in India in any manner (i.e. avoid round tripping) whatsoever and made it mandatory to obtain a certificate from the Statutory Auditors' of the Indian party, to the effect that the loan/funds raised overseas by the JV/WOS/SDS has not been utilized for direct or indirect investments in India, is to be obtained and kept by the designated AD).

Try not to become a man of success, but rather try to become a man of value.


Ajay Singh & Suchitra Kamble, *Advocates*

BEST OF THE REST

1. Special Leave Petition – Maintainability – Delay / Laches/ Limitation – Unexplained delay by Government – Delay of 481 days – Moving of file from one department/officer to other – Held, not sufficient reason for condoning such an abnormal delay – Constitution of India, Article 136

There was a delay of 481 days in filing Special Leave Petition and petitioner sought condonation. The petitioner has attributed the delay to the moving of file from one Department/Officer to the other. The Supreme Court held that there is no sufficient explanation for condoning an abnormal delay. It further quoted the paras in the case of *Postmaster General and Ors. vs. Living Media India Ltd.; (2012) 3 SCC 563* wherein it was deprecated that such practices on the part of the Government Authorities/ Departments in the following words:–

> "27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a Special Leave Petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with Court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.
>
> 28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of *bona fides*, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.
>
> 29. In our view, it is the right time to inform all the Government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and

> there was *bona fide* effort, there is no need to accept the usual explanation that the file was kept pending for process. The Government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the Government Departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

The Supreme Court refused to condone the delay and dismissed the Special Leave Petition of the Petitioner.

State of U.P. & Anr. vs. Amar Nath Yadav (2014) 2 SCC 422

2. Negligence – Contributory or composite (i.e. joint and several) – Motor Vehicles Act, 1988 – Ss. 166 and 173

Appellant claimants represented two deceased and one injured person who were travelling in jeep owned by R-1 and driven by R-2, which met with an accident with a truck coming from opposite direction. As truck had fled from spot, driver/owner and insurer of said truck could not be impleaded in any claim petition. Thus, Tribunal denied compensation. The High Court held that the drivers/owners of both the truck as well as the jeep, in which the deceased and the injured were travelling, were responsible for the accident and thus invoking the principle of contributory negligence held that the liability of the driver/owner of the truck should be estimated at 70% and that of the driver/owner of the jeep at 30%.

The Hon'ble Supreme Court observed that "Composite negligence" refers to the negligence on the part of two or more persons: Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the inured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

The Supreme Court held, as neither driver/owner nor insurer of jeep have filed any appeal or cross-objection against findings of High Court that both vehicles were responsible for accident, the same are accepted. But, held, that High Court was not correct in apportioning liability for accident between the two vehicles. The present case is one of composite negligence of both vehicles. Hence, drivers/owners of both vehicles are jointly and severally liable to pay entire compensation, in view of their composite negligence and it is open to claimants to enforce the award against both of them or entirely against any one of them. The order of High Court modified to that extent.

Pawan Kumar & Anr vs. Harkishan Dass Mohan Lal & Ors. (2014) 3 SCC 590

3. Right of legal representatives of deceased – Scope – Corporate body or Collective entity when may claim compensation as legal representative – Motor Vehicles Act, 1988, Ss. 166, 168 and 173

Appellant 1 is a charitable society registered under the Societies Registration Act, 1960. It runs various institutions as a constituent unit of Catholic Church. Its members after joining the appellant Society renounce the world and are known as a "Brother". Such a "Brother" severs his all relations with the natural family and is bound by the constitution of the Society.

One 'Brother' of the Society, namely, Alex Chandy Thomas was a Director-cum-Head Master of St. Peter High School and he died in a motor accident. The accident was between a Jeep driven by the deceased and a Maruti Gypsy covered by insurance policy issued by the respondent Insurance Company. At the time of death the deceased was aged 34 years and was drawing monthly salary of ` 4,190/-. The claim petition was filed before M.A.C.T., by appellant No.2 on being duly authorised by the appellant No.1 the society. The owner of the Gypsy vehicle stated in his written statement that vehicle was duly insured and hence liability, if any, was upon the Insurance Company.

The respondent-Insurance Company also filed a written statement and thereby raised various objections to the claim. But it is clear from the written statement that it never raised the issue that since the deceased was a 'Brother' and therefore without any family or heir, the appellant could not file claim petition for want of locus standi. The issue No. 1 regarding maintainability of claim petition was not pressed by the respondents. The Tribunal awarded a compensation of ` 2,52,000/- in favour of the claimant and against the opposite parties with a direction to the insurer to deposit ` 2,27,000/- with the Tribunal as ` 25,000/- had already been deposited as interim compensation. The Tribunal also permitted interest at the rate of 12% per annum, but from the date of judgment passed in MACT case.

Instead of preferring appeal against the order of the Tribunal, the respondent-company preferred a writ petition under Article 226 of the Constitution of India before the Guwahati High Court and by the impugned order under appeal, the High Court allowed the aforesaid writ petition ex parte, and held the judgment and order of the learned Tribunal to be invalid and incompetent being in favour of person/ persons who according to the High court were not competent to claim compensation under the Motor Vehicle Act.

The Hon'ble Court observed that the issue as to who is a legal representative or its agent is basically an issue of fact and may be decided one way or the other dependent upon the facts of a particular case. But as a legal proposition it is undeniable that a person claiming to be a legal representative has the locus to maintain an application for compensation under sec. 166 of the Act, either directly or through any agent, subject to result of a dispute raised by the other side on this issue.

The Court observed that Tribunal had relied on the decision of FB judgment of Patna High Court in *Sudama Devi vs. Jogendra Choudhary AIR 1987 Pat 239* wherein it was held that term `legal representative' is *vide* enough to include even "intermeddlers" with the estate of a deceased. Further, the proceeding before Motor Accidents Claims Tribunal being summary in nature, unless there is evidence before Claims Tribunal in support of such pleading that the claimant is not a legal representative and therefore the claim petition is liable to be dismissed as not maintainable, no such plea can be raised at a subsequent stage and that too through a writ petition.

Accordingly the order of High Court was set aside.

Montfort Brothers of St. Gabriel & Anr. vs. United India Insurance Company Ltd. & Anr. (2014) 3 SCC 394

4. Interpretation of statutes – Expression "paid" used in S. 24(2) includes deposit of compensation in court, and cannot be limited to mean "offered" or "tendered" to landowners/persons interested – Land Acquisition Act, 1894 being an expropriatory legislation should be strictly followed

The question for decision relates to true meaning of the expression: "compensation has not been paid" occurring in Section 24(2) of the 2013 Act. To find out the meaning of the expression, "compensation has not been paid", it is necessary to have a look at Sec. 31 of the Land Acquisition Act, 1894.

Section 31(1) of the 1894 Act enjoins upon the Collector, on making an award u/s. 11 to tender payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-sec. (2).

Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the court. This provision requires that the collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to happening of any contingency as contemplated in sec. 31(2), the compensation has not been paid, the Collector should deposit the amount of compensation in the court to which reference can be made under sec. 18.

The Hon'ble Court observed that while enacting sec. 24(2), Parliament definitely had in its view sec. 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word "paid" to "offered" or "tendered". But at the same time, we do not think that by use of the word "paid", Parliament intended receipt of compensation by the landowners/persons interested. The Court observed that it is not appropriate to give a literal construction to the expression "paid" used in sub-sec. (2) of sec. 24. If a literal construction were to be given, then it would amount to ignoring the procedure, mode and manner of deposit provided in sec. 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the collector from making actual payment of compensation. Therefore, for the purposes of sec. 24(2), the compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference u/s. 18 can be made on happening of any of the contingencies contemplated u/s.31(2) of the 1894 Act. In other words, the compensation may be said to have been "paid" within the meaning of sec. 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in secs. 32 and 33.

The 1894 Act being an expropriatory legislation has to be strictly followed. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in Nazir Ahmad) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

Pune Municipal Corporation & Anr. vs. Harakchand Misirimal Solanki & Ors. (2014) 3 SCC 183

5. Trademark and copyright – Infringement of – Injunction – Damages – Impugned trademark KETKET & KIT-KET of the defendants is deceptively similar to the plaintiffs' trademark KITKAT. Specific Relief Act, 1963 – Trade Marks Act, 1999 – Copyright Act, 1957.

The KITKAT logo and colour combination of red and white constitutes key, essential and distinguishing visual features of plaintiffs trade mark KITKAT and the same constitute original "artistic work" within the meaning of sec. 2(c) of the Copyright Act, 1957 and the plaintiffs are the owners of copyright in KITKAT logo, thereby having an exclusive statutory right to use or reproduce it in any material form. Present suit has been filed by the plaintiffs for permanent injunction restraining infringement of trademark, copyright, delition, unfair compensation, rendition of accounts of profits/damages and delivery upo.

The Court observed that the use of the words KETKET & KIT-KET by the defendants is likely to dilute the distinctive character of the plaintiffs' trademark KITKAT and the same is likely to erode the goodwill and reputation of the plaintiffs among its existing as well as potential customers in the market. The adoption and use of the identical and/or deceptively similar trademark by the defendants in relation to identical products amounts to an infringement of the plaintiffs' statutory rights in the registered trademark KITKAT.

The High Court held that the defendants are also guilty of passing off as by using an deceptively similar mark as that of the plaintiffs, the defendants are misrepresenting to the purchasing public that it is selling its goods in association with/in connection with the plaintiffs and thus causing confusion as to the source of the goods and passing off his goods as that of the plaintiffs. Furthermore, the defendants in a *mala fide*, dishonest and an unethical manner are encashing upon the goodwill and reputation of the plaintiffs', established by the latter over the period of many years. A party who chooses not to participate in court proceedings and stays away must, thus, suffer the consequences of damages as stated and set out by the plaintiffs. The plaintiffs have made out a case for grant of decree as prayed in the plaint. Accordingly, the order was confirmed and the suit is decreed in favour of the plaintiffs and against the defendants. Plaintiffs are also entitled to damages.

Societe Des Produits Nestle, S.A & Anr. vs. Montu Sadhu & Ors. AIR 2014 Delhi 156.

"To devote your life to the good of all and to the happiness of all is religion. Whatever you do for your own sake is not religion"

CA Rajaram Ajgaonkar

ECONOMY AND FINANCE

Patience should pay

Normally the month of December is considered a slack month for the global economies due to year end considerations. Festive season and long holidays in the western countries reduce commercial activities not only in those countries but across the world. However, this December turned out to be quite volatile for the whole world. The phenomenon of continuous fall in the price of the crude oil persisted, which created a risk to large number of economies. The oil exporters were affected adversely and for the oil importers, the development turned out to be very positive. The declining oil created substantial uncertainty and it affected the sentiments in the global markets. The commodity prices eased across the board. The economic forecast of many developing countries and especially oil exporting countries took a beating, and towards middle of December, major stock markets retreated for a while. Fortunately, they bounced back in the second half of the month without causing much damage.

The savior was the U.S. economy, which grew at the rate of 5% against lower expectations. The growth of the largest economy at such a good rate improved the sagging sentiments across the world. The high U.S. growth is likely to increase the demand of goods and services in the U.S., which can directly benefit the European countries as well as many developing countries. This created a positive wave of sentiments in many economies resulting in the bounce back in the second half of the month. The strengthening U.S. stock markets pushed S & P to its highest level ever and buoyed the mood of the investors.

The upbeat U.S. market also gave a push to the stock markets across the world and the losses made around mid month of December were more or less recouped. The sentiments are still strong and an immediate downside seems limited. Though the valuations of stocks are not cheap in most of the markets, the possibility of upside is intact. On the back of low interest rates, the U.S. economy can strengthen further. If it continues to grow above 5% or above for a few more quarters, it will give a fillip to the rest of the world and the global trade can expand resulting in higher GDP across the economies. The size of the U.S. economy is about 1/4th of the world economy and it is around the same size as that of the European Union. High growth therein can balance the negatives of low growth in Europe and falling growth in China.

Due to recent reversal of the commodity cycle, many countries, who are exporters of commodities, may suffer but the overall growth in the world can get a momentum. The biggest risk lies in geopolitical situation and as of now it is very difficult to predict its development in the near future. The imbalances created by the lowering oil prices have started creating political tensions. They remain subdued as of now but a sudden flare up cannot be ruled out. Though the fall in oil prices is welcome, its sudden collapse has created geopolitical risks, which needs to be managed well for reaping the benefits of low energy costs in the years to come.

Indian economy continues to remain in a positive mood due to great expectations from the new Government. The party in power in the Centre has won majority in Jharkhand and it has emerged reasonably well in Jammu & Kashmir resulting in boosting the hope of speedy reforms. Though the ruling party is not in majority in the Upper House as of now, and it is creating obstacles in the passing of many legislations, things are likely to change in couple of years, during which their strength can increase to a majority. India needs to patiently wait for the opportune time and should not get disappointed due to excessive expectations running ahead of realities.

The Indian economy seems to be moving in the right direction and it can achieve 6% growth rate for the financial year 2015-16, if proper policy measures are put in place. The substantial drop in oil price has created an optimistic environment for higher economic growth in the country. In the globalised economy, the international winds play an important role and no country can isolate itself from the same. As the Indian economy is growing, it is getting more and more prone to these global winds. In spite of the best efforts by the Government, the growth can remain subdued when the world is in low growth mode. On the other hand, when the global economic growth gives tail winds, India can grow faster. Current times are a bit uncertain but the expectations are quite high. India is steadily attracting foreign investments and it is likely to remain a preferred destination for the years to come. Over a medium term, India may unfold as one of the best growth stories.

The global stock markets are on a high and so are the Indian stock markets. When the S & P lost about 5% in the middle of December, the Indian stock markets also plunged in tandem therewith, though the developments in the month were positive for the country. The reversal of trend in the U.S. markets which put the S & P index at an all time high, gave a positive push to the Indian stocks and Indian stock markets recovered the lost ground within a very short time. Though no great economic reforms have emerged due to political and other reasons, the present Government has shown its willingness to work its way through to the hurdles posed by the Opposition. For the issues where consensus cannot be reached, the Government has started resorting to issuing ordinances, thereby showing its commitment to reforms. However, the ordinances cannot be mistaken for law and they need to be ratified within 6 months by both the Houses of Parliament. As the Government does not have majority in the Upper House, some of the ordinances which have been promulgated may not ultimately get converted into law and they may lapse by the efflux of time. Therefore, the possibility of delay in reforms cannot be ruled out. The ruling party will take some more time to move towards the majority in the Upper House and therefore it is likely that the speed of reforms for the next couple of years may not be as robust. Slow speed of reforms is not supportive to the growth of the economy but India may have to live with it for some more time.

The global stock markets have performed well in 2014. The economic recovery has pushed the stock prices in most of the markets. China has overtaken India as the best performing market for the year. Most of the other developing as well as developed countries have done well, with a few exceptions. The current mood is upbeat but the movement of oil price can create hiccups for some countries and specially in the oil exporting countries. Cheap oil will give boost to economies like India and many other developing countries but their economic interest is closely connected to that of many oil exporting countries, who are importing goods and services from them. Low oil prices will reduce demand in many economies, which may result in slowing global trade and the economic growth. Though the low price of petroleum products is well received by the world, the speed in which the price has collapsed has created risks.

The stock markets in India are expected to remain strong but it is very unlikely that they will repeat their stellar performance, which they achieved in the calendar year 2014. For that year, the change of guard in the Government was the big booster. The year 2015 may not give any such game changer event. On the contrary, some investors will feel disappointed due to slower than expected pace of reforms. Stocks are likely to outperform most of the other asset classes but the movement may not be continuously upward and there can be ups and downs. The growth of the stock market is likely to be a bit slower for the next 6 months and the budget of 2015 as well as monsoon for the year will be the deciding factors for direction of the market. The investors need to select stocks after appropriate studies, as valuations are not cheap. Alternatively, investment in equity oriented schemes of mutual funds can be an easier option for less savvy investors.

Though there have been continuous talks about easing of interest rates by the RBI, there is no certainty about its timing. It is expected to happen soon but how soon remains a million dollar question. Looking at the current tempo of inflation in India and the persistent demand of the industry to cut the rate as it is holding back investments, it is very likely the reversal of rate cycle will start in the first quarter of 2015. Though inflation is getting reined, cheaper credit may push the demand and demand push inflation may re-emerge. Therefore RBI is holding back the rate cut, in spite of political opposition. However, it is expected that the conducive circumstances will emerge in the next month or two, thereby paving a way for rate reduction. As the things stand, the possibility of hardening of interest rates in India in the near future is unlikely. The question is when it will start easing and how far they will ease thereafter. In all probabilities, the rate of interest may not go down by more than 100 basis points in the financial year 2015-16. However Indian post of tax interest rates for high net worth investors may not be able to beat the inflation in the years to come.

Property prices are remaining stagnant due to lack of adequate demand. The builders as well as investors are not ready to release the supplies, though there is a fair amount of unsold inventory in the market. Their reluctance to ease the prices has distorted the property market to an extent, wherein the demand and supply forces are not operating in their pure form. Supply continues to increase and at the same time costs are getting pushed due to higher burden of taxes such as VAT, service tax and even stamp duty, which has made investment in this sector less lucrative. High rate of interest is an additional dampener. The provisions of section 50C for taxing capital gains on the basis of stamp duty valuations have started creating anomalous situations in many cases. The tax provisions and high stamp duty valuations have dampened the sentiments in the property markets and the Government needs to take reasonable corrective measures, if it wants to keep the sector on proper tracks. The expectations of returns from this sector are not very high for the investors over the next one year and it may be more appropriate to wait for an opportune time.

Globally the dollar has started becoming stronger on the back of reduction of trade deficit by the US. The shale gas has turned out to be a boon for the US economy. The process of fracking has gained momentum in the U.S. and therefore the supply of shale gas has increased, taking care of a larger portion of the energy requirements of the country. There has been substantial reduction in the imports of petroleum products by the US. US economy has strengthened substantially over the past few quarters and that has strengthened the US currency. Better opportunities in the US markets are increasing the fund flow in the country and therefore dollar demand is increasing globally. The situation is likely to continue and the US dollar is also likely to remain strong for some more time. This development will weaken the currencies of many developed and developing countries and India cannot be an exception. Indian rupee has lost about 3% against the US dollars over the last couple of months and the downtrend may not be easily curbed. The volatility in the currency market will remain and over the next few years, dollar denominated investments may fetch lucrative returns for the investors.

The process of reform has already started in India but due to unfavourable political equations in the Upper House, the reforms may come through at a slower pace than the expectations. It is essential that investors should not get misled with high expectations and must retain their patience. The pace of economic development will not show sudden change but good speed will be gathered only after about a year. Investors should draw a medium-to long-term strategy to gain from the progress of Indian economy and patience will continue to remain a key trait for making substantial gains.

[Contd. from page 81]

6. On reduction of capital of only selective share holders and disproportionate payment to different share holders, court has observed that it has to look in to the following two aspects;

   a. Whether it is permissible to reduce the capital of selective share holders and also on disproportionate rate of payment? and

   b. Whether there is any provision in law which would bar or prescribe reduction in share capital as proposed.

   The court has observed that only court has to look at compliances of all process as prescribed in the law including obtaining all necessary consents and approvals from creditors and share holders. Further to examine that whether proposed reduction is inequitable to any party or prejudicially affects any rights or interest of any person.

   Court has referred to various judgments including the judgment in Reckitt Benckiser (India) Ltd., British and American Trustee and *Finance Corporation vs. Couper and* in Thomas De La Rue and Co. Ltd. and Reduced in re as mentioned above. Based on above, court has viewed that no such provisions which prohibits the above reduction and that same is not prejudicially affects any rights or interest of any person.

CA. Ninad Karpe

The Lighter Side

HAPPY NEW YEAR

As we began a new year, I got a barrage of SMS, WhatsAPP and messages on my Facebook, Twitter and Instagram accounts. The charm of greeting cards seems to be lost in this digital world.

In the good old days, I would proudly line up all the greeting cards on my side-table. This year, I have received only 5 cards and my side table looks empty!

I also got an indignant message saying that the year has changed but not your work!

Tax professionals can look forward to yet another taxing year. Interestingly, the Union Budget is announced in the second month of the year and sets the tone for a year-long discussion on what has been enacted in the tax laws and the intention. Like in cricket, tax laws also have a "googly" or the "doosra" – retrospective amendment!

After the hue and cry over the "Vodafone" retrospective amendment, we thought we had seen the last of this "doosra". However, we saw yet another one in July (for taxing Debt Mutual Fund investments at 12 months and not 36). The Government claimed that it is not retrospective, but retroactive. But, pray, isn't the effect retrospective? How do tax professionals explain such logic to a hapless taxpayer?

We have a lot to look forward to in the coming years for taxation – GST, simplification, lower tax incidence and hopefully, no more retroactive amendments!

And I do hope 2015 is a blockbuster year for all tax professionals, just like the movie with that name.


CA Hinesh R. Doshi, Ajay Singh, *Advocate*
Hon. Jt. Secretaries

The Chamber News

Important events and happenings that took place between 8th December, 2014 to 8th January, 2015 are being reported as under.

I. Admission of New Members

1) The following new members were admitted in the Managing Council Meeting held on 17th December, 2014.

ASSOCIATE MEMBERSHIP

1	Indusind Bank Ltd.		Mumbai

LIFE MEMBERSHIP

1	Mr. Bahadur Sumeet Rajesh	CA	Bhilai

ORDINARY MEMBERSHIP

1	Mr. Punwani Vishal Bhagwan	Advocate	Mumbai
2	Mr. Gadhiya Darshan Pravinchandra (Half Year Oct., 14 - Mar., 15)	CA	Mumbai
3	Mr. Jain Nemi Chand (Half Year Oct., 14 - Mar., 15)	Advocate	Mumbai
4	Mr. Nagasnali Murugesh (Half Year Oct., 14 - Mar., 15)	ITP	Bengaluru
5	Miss Mehta Alpa Kishor (Half Year Oct., 14 - Mar., 15)	CA	Mumbai
6	Mr. Patel Hetan Thakordhai (Half Year Oct., 14 - Mar., 15)	CA	Mumbai

II. Past Programmes

Sr. No.	*Programme Name / Committee/Venue*	*Date / Subjects*	*Chairman / Speakers*
1.	**Allied Laws Committee**		
	1st RRC on the Companies Act, 2013 with the flavour of LLP Act, 2008 *(Jointly with Corporate Members Committee)* Venue : Ras Resort Silvassa	**Friday, 12th December, 2014 to Sunday, 14th December, 2014** Subjects : 1) Paper of Presentation – Role and Responsibilities of Directors, Independent Directors, Key Management Personnel, Managerial Remuneration	CA Nilesh Vikamsey

Sr. No.	*Programme Name / Committee/Venue*	*Date / Subjects*	*Chairman / Speakers*
		2) Paper for Discussion – Case Studies-2 on Raising of Finance – Share Capital, Debentures, Deposits etc.	CA Anand Bathiya
		3) Paper for Presentation – Private / Unlisted Companies – Benefits Lost and retained – Way forward through LLP	CA Anup Shah
		4) Paper for Discussion – Case Studies-1 on Accounts, Audits, Internal Audit, Fraud Reporting, NFRA, Responsibilities of Auditors, lending and investments, Related Party Transactions.	CA Himanshu Kishnadwala
		5) Brains' Trust – Important issues on Companies Act, 2013	Dr. V. R. Narsimhan (Chief Regulations, National Stock Exchange) & CA Jayant Thakkar
2.	**Direct Taxes Committee**		
	Intensive Study Group on Direct Tax (Only for ISG Members) Venue : CTC Conference Room	**23rd December, 2014** Subject : Recent Important Decisions under Direct Tax	CA Mahendra Sanghvi
3.	**International Taxation Committee**		
A.	**FEMA Study Circle Meetings** Venue : CTC Conference Room	**10th December, 2014** **24th December, 2014** Subject : Foreign Investments in India – Part 1 & Part 2	CA Shreyas Shah & CA Chintan Gandhi
B.	**Intensive Study Group on International Taxation** Venue : CTC Conference Room	**15th December, 2014** Subject : BEPS Action–7 – Preventing the Artificial Avoidance of PE status – Public Discussion Draft **29th December, 2014** (Continuation of earlier meeting held on 15th December, 2014)	—

Sr. No.	*Programme Name / Committee/Venue*	*Date / Subjects*	*Chairman / Speakers*
		6th January, 2015 (Continuation of earlier meeting held on 29th December, 2014)	
C.	**Workshop on Taxation of Foreign Remittances** Venue: West End Hotel, New Marine Lines, Mumbai	**19th December, 2014** **20th December, 2014** Subjects :	
		1) Law and procedure applicable to Taxation of Foreign Remittance, applicable Rules Circulars and Provisions of the Treaty, Law, Procedure of TDS provisions for Non Residents	CA Sushil Lakhani
		2) Subject : Overview of the DTAA – Application scope, (Articles 1, 2, 3 and 4) and Mechanism of Use of Treaty, Interplay between ITA and Treaty, Priority of Articles, Tax credit mechanism etc.	CA Rashmin Sanghvi
		3) Business profits	CA Radhakishan Rawal:
		4) Taxation of other payments –.Artists and Sportsmen, other Income, Directors Fees and students Remuneration	CA Sudhir Nayak
		5) Income of Non Residents from Shipping and Aircraft Operation	CA Shreyas Shah
		6) Taxation of Interest and Dividend	CA Shabbir Motorwala
		7) FTS and Royalty	Mr. S. R. Patnaik, Advocate
		8) Taxation of Capital Gains including Indirect transfers	CA Paresh P. Shah
		9) Expatriates Taxation – Inbound and Outbound deputation – Payment to Non-Residents for Services in India as well as Outside India	CA Nihar Jambusaria
		10) Brains' Trust	CA M. P. Lohia

Sr. No.	*Programme Name / Committee/Venue*	*Date / Subjects*	*Chairman / Speakers*
D.	**Transfer Pricing Study Circle Meeting** Venue : Kilachand Hall, 2nd Floor, IMC, Churchgate	**22nd December, 2014** Subject : Benchmarking Approaches : Case Studies	CA Namrata Dedhia
4.	**Membership & EOP Committee**		
A.	**Joint Seminar of The Chamber of Tax Consultants and Jalgaon Branch of WIRC of the ICAI** Venue : Jalgaon	**21st December, 2014** Subjects : 1) Law of Evidence w.r.t. Income Tax Assessment Proceedings 2) Scrutiny Assessment Proceedings	Mr. Rahul Sarada, Advocate CA Atul Bheda
B.	**Self Awareness Series** Venue : CTC Conference Room	**5th January, 2015** Subject : Law of Attraction	Mr. Harish Mehta
5.	**Study Circle & Study Group Committee**		
	Study Group Meeting Venue : Babubhai Chinai Committee Room, 2nd Floor, IMC.	**11th December, 2014** Subject: Recent Judgments under Direct Taxes	Mr. Vipul Joshi, Advocate
6.	**Students Committee**		
	Student Study Circle Meeting Venue : Maheshwari Bhawan, Chira Bazar, Marine Lines, Mumbai.	**8th January, 2015** Subject : Compliance under Companies Act, 2013	CS Trusha Parikh CS Bijal Gada

III. Future Programmes

Sr. No.	*Programme Name / Committee/Venue*	*Date*
1.	**Allied Laws Committee**	
A.	**Allied Laws Study Circle Meetings** Subject : Opportunities for Professionals in "Alternate Dispute Resolutions" (ADR) (Arbitration, Conciliation, Mediation and Negotiation)." Venue : Maheshwari Bhavan Hall, 1st Floor, Chira Bazar Road, Princess Street, Opp. Parsi Agiary, Mumbai – 400 002.	13th January, 2015

Sr. No.	Programme Name / Committee/Venue	Date
	Subject : Provisions relating to Cheque bouncing as per section 138 of The Negotiable Instruments Act, 1881 including recent judgments by the Supreme Court Venue : Babubhai Chinai Committee Room, 2nd Floor, IMC, Churchgate, Mumbai – 400 020	28th January, 2015
2.	**Direct Taxes Committee**	
A.	**Study Course on Interpretation of Taxing Statutes** Subjects : 1. General Introduction to Interpretation 2. Principles and Rules of Interpretation – Heydon's Rule, Mischief Rule, Purposive Construction, Literal Construction, Strict Construction etc.; Interpretation of Penal Statutes 3. Subsidiary rules i.e. Mandatory and Directory Provisions, Harmonious and Beneficial Construction 4. Aids to Construction, Internal and External aids 5. Principles of Interpretation of Double Tax Avoidance Agreement (DTAA) 6. Principles of Transfer Pricing provisions including Domestic Transfer Pricing 7. Principles of Natural Justice 8. General Clauses Act – Interpretation 9. Doctrine of Res judicata and Estoppel as applicable to tax law: Doctrine of Binding Precedent/stare decis 10. Constitution of India vis-à-vis Income-tax Act 11. Some Important Legal concepts like Ownership, Possession, Transfer etc. under general law and tax laws Venue : Babubhai Chinai Committee Room, 2nd floor, Indian Merchants Chambers, Churchgate, Mumbai – 400 020	**30th & 31st January, 2015** **6th & 7th February, 2015**
B.	**Half Day Workshop on Charitable Trusts** (Jointly with Bombay Chartered Accountants Society) Subject : 1) Key Provisions of Maharashtra Public Trust Act 2) Taxation of Charitable Trusts 3) Foreign Contributions Regulations Act Venue: Audio Visual Centre, Jai Hind College, 'A' Road, Churchgate, Mumbai – 400 020	**13th February, 2015**

Sr. No.	*Programme Name / Committee/Venue*	*Date*
3.	**Indirect Taxes Committee**	
A.	**3rd Residential Refresher Course on Service Tax** Subjects : Paper – I – Case Studies on Indirect Tax Issues in Real Estate Industry Paper – II – Case Studies in Place of Provision and Point of Taxation Rules under Service Tax Paper – III – Case Studies under Service Tax (other than on the above two topics) Presentation – I - Settlement Commission, Compounding of Offences and Advance Ruling under Service Tax Venue : Fountainhead Leadership Centre, Bamansure, Post Kihim, Alibag, Maharashtra – 402 201.	**23rd January, 2015 to 25th January, 2015**
B.	**Indirect Tax Study Circle Meeting (Only for IDT SC Members)**	
	Subject : Circulars and Notifications issued during 2014-15 under Service Tax Laws Venue : Babubhai Chinai Committee Room, 2nd Floor, IMC	**10th February, 2015**
4.	**International Taxation Committee**	
A.	**6th International Tax Conference with Focus on Practical Evolving Issues** Subjects : 1) Keynote address 2) Revised in Digital economy in the light of BEPS report and Implications in Indian situation 3) Taxation in Digital economy in the light of BEPS report and Implications in Indian situation 4) Emerging issues for Inbound and Outbound Structuring of Investments from tax perspective 5) Emerging issues in Royalties and FTS considering BEPS Venue: Palladium Hotel, Near High Street Phoenix Mall, Lower Parel, Mumbai	**14th February, 2015**
B.	**5th Intensive Study Course on Transfer Pricing (Including Domestic Transfer Pricing) – 24 Sessions – 6 Days** Subjects : 1) Basic of Transfer Pricing 2) Benchmarking	**14th and 20th March, 2015** **10th and 11th April, 2015** **24th and 25th April, 2015**

Sr. No.	Programme Name / Committee/Venue	Date
	3) Industry Specific Sessions 4) Key Controversy Areas – Recent TP Audit experience 5) Practice Areas 6) Other areas having TP implications 7) Domestic Transfer Pricing 8) The Road Ahead 9) Attribution issues, experiences, recent rulings and Revenue's perspective 10) Closing Session Venue : Hotel West End, New Marine Lines, Opp. Bombay Hospital, Mumbai	
C.	**FEMA Study Circle Meeting (Only for FEMA SC members)** Subject : Foreign Investments in India – Part 2 Venue : CTC Conference Room, 3, Rewa Chambers Ground Floor, 31, New Marine Lines, Mumbai – 400 020.	**16th January, 2015**
5.	**Information Technology Committee**	
	Open Doors to Open Source Subjects : • Myths and truths of software licensing • Need to a typical CA office vs. possibility • Practical possibilities for open source options • Hitches in change management • Agonies of licensing • Need and stage assessment for licensing • Practical Issues on licensing • Case studies on adaptation • Advantages BSS Office • Possibilities of running tax utilities with Open Office • Simplicity of implementation of Open Office Venue : Babubhai Chinai Committee Room, 2nd Floor, IMC, Churchgate, Mumbai – 400 020	**15th January, 2015**
6.	**Residential Refresher Course & Public Relations Committee**	
	38th Residential Refresher Course Subjects : Paper I – Deeming Provisions under the Income-tax Act	Thursday, 19th February, 2015 to Sunday, 22nd February, 2015

Sr. No.	*Programme Name / Committee/Venue*	*Date*
	Paper – II – Issues in Corporate Taxation including LLP Paper – III – Case Studies on Direct Tax Paper for Presentation : Domestic Transfer Pricing Brains' Trust – Direct Tax Venue : At Toshali Sands Resort, Puri, Odisha	
7.	**Students Committee**	
A.	**Half Day Visit at National Stock Exchange** Subject : 1. Introduction to Capital market, Introduction to Stock Exchanges, brief Introduction of NSE Various products of NSE – IPO, Listing, Secondary, Market, delisting etc. 2. Trading in various segments – Cash segments, Stock Derivative, Index Derivative, and currency derivative Do's & don'ts in market Venue: National Stock Exchange, BKC	**16th January, 2015**
B.	**1st Indoor Sports Tournament** (Jointly with Membership & EOP and RRC & Public Relations Committees) Sports Events : 1. Badminton (Singles, Doubles) 2. Table Tennis (Singles, Doubles) 3. Carrom (Singles, Doubles) 4. Chess Venue: Andheri Sports Complex, Veera Desai Road, Andheri West, Mumbai – 400 058	**1st February, 2015**
C.	**Student Study Circle Meetings** Subjects : 1. E-Filing of TDS Return 2. Finance Bill Venue : Maheshwari Bhawan, Chira Bazar, Marine Lines, Mumbai.	**5th February, 2015** **& 5th March, 2015**

Sr. No.	***Programme Name / Committee/Venue***	***Date***
8.	**Study Circle & Study Group Committee**	
A.	**Study Group Meeting** (Only for SG Members) Subject : Recent Judgments under Direct Taxes Venue : Babubhai Chinai Committee Room, IMC	**27th January, 2015**
B.	**Study Circle Meeting (Only for Study Circle Members)** Subject : Issues in Wealth Tax Venue : Babubhai Chinai Committee Room, IMC	**2nd February, 2015**
9.	**Amita Memorial Lecture Meeting** (Jointly with BCAS) Subject : Anger – The Enemy within Venue : Jaihind College Auditorium, A Road, Next to Churchgate Station, Mumbai – 400 020	**13th February, 2015**
10.	**Delhi Chapter**	
	The Companies Act, 2013 Provisions affecting Private Companies and Unlisted Public Companies: Case Study Based Analysis Subject : 1. Capital/Fund Raising, Deposits 2. Loans & Advances, Related Party Transactions 3. Compliances/ Disclosures Regime vis-à-vis Private & Unlisted Public Companies, Privileges/ Exemptions available to Private Companies including impact of proposed MCA exemption notification & Amendment Bill 2014 4. Corporate Social Responsibility Venue : India International Centre, Lecture Room I, Annexue Building, Dr. K. K. Birla Lane, Max Mueller Marg, Lodhi Estate, New Delhi – 110003	**17th January, 2015**
11. A.	***Publication :*** **Transfer Pricing** An Industry & Technical Perspective	Special price for Members only ` 1,250/-
B.	Paper Book **1st RRC on Companies Act, 2013 with the flavour of LLP Act, 2008**	` 350/-

For further details of the Future Events, kindly visit our website www.ctconline.org.

The Chamber of Tax Consultants

Vision Statement

The Chamber of Tax Consultants (The Chamber) shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.

The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.

The Chamber shall be a voice which is heard and recognised by all Government and Regulatory agencies through effective representations.

The Chamber shall be pre–eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility.

MEMBERSHIP & EOP COMMITTEE

Seminar on Income Tax Scrutiny Assessment jointly with Jalgaon Dist. Tax Practitioners Association held on 21st December, 2014 at Jalgaon.

Dignitaries during the inaugural lamp lighting at Seminar of Income Tax Scrutiny Assessment. Seen from L to R: CA Magan Patil, Jalgaon Branch of WIRC of ICAI, CA Hemant Parab, Vice Chairman, Membership & EOP Committee, CTC, CA Jayesh Lalwani, Jalgaon Branch of WIRC of ICAI, Shri Rahul Sarda, Advocate, Faculty, CA Atul Bheda, Faculty, CA Paras K. Savla, President, CTC, CA Nitin Zawar, Shri M. R. Shirude, CA Parikshit Bhadade, CA Nikita Daga, Jalgaon Branch of WIRC of ICAI, CA Parimal Parikh, Chariman, Membership & EOP Committee, CTC, Shri Sahebrao Patil, and CA N. S. Doshi, Jalgaon Branch of WIRC of ICAI.

CA Paras K. Savla, President, CTC welcoming the delegates. Seen from L to R : CA Nitin Zawar, Jalgaon Branch of WIRC of ICAI, CA Parimal Parikh, Chairman, Membership & EOP Committee, CTC, Shri M. R. Shirode, Advocate, CA Jayesh Lalwani, Jalgaon Branch of WIRC of ICAI, CA Hemant Parab, Vice Chairman, Membership & EOP Committee, CTC and Shri Sahebrao Patil, Jalgaon Branch of WIRC of ICAI.

CA Parimal Parikh, Chairman, Membership & EOP Committee, CTC welcoming the delegates. Seen from L to R : CA Nitin Zawar, Jalgaon Branch of WIRC of ICAI, Shri M. R. Shirode, Advocate, Jalgaon Branch of WIRC of ICAI, CA Paras K. Savla, President, CTC, CA Jayesh Lalwani, Jalgaon Branch of WIRC of ICAI, CA Hemant Parab, Vice Chairman, Membership & EOP Committee, CTC and Shri Sahebrao Patil, Jalgaon Branch of WIRC of ICAI.

CA Atul Bheda, Addressing the delegates. Seen from L to R : CA Magan Patil, and CA Harshit Malpani, Jalgaon Branch of WIRC of ICAI.

Shri Rahul Sarda, Advocate addressing the delegates. Seen from L to R : Shri Niranjan Doshi and CA Nikita Daga, Jalgaon Branch of WIRC of ICAI.

PRE-BUDGET MEMORANDUM MEETING HELD ON 15TH DECEMBER, 2014 AT DELHI

The Chamber team for Representation of Pre-Budget Memorandum at North Block, New Delhi. Seen from L to R: Shri Vipul Joshi, Chairman, Law & Representation Committee, CA Mahendra Sanghvi, Co-Chairman, Law & Representation Committee, Ms. Anita Kapor, Chairperson, CBDT, CA Paras K. Savla President, Shri V. P. Verma, Advisor, CTC Delhi Chapter, CA C. S. Mathur, Chairman, CTC Delhi Chapter, CA Hinesh Doshi, Hon. Jt. Secretary.

INTERNATIONAL TAXATION COMMITTEE

Workshop on Taxation of Foreign Remittances held on 19th & 20th December, 2014 at West End Hotel.

CA Paras K. Savla, President inaugurating workshop by lighting the lamp. Seen from L to R : S/Shri CA Naresh Ajwani, Chairman, International Taxation Committee, CA Isha Sekhri, Member.

CA Paras K. Savla, President welcoming the delegates. Seen from L to R : CA Naresh Ajwani, Chairman, International Taxation Committee, CA Sushil Lakhani, Faculty.

CA Naresh Ajwani, Chairman, International Taxation Committee addressing the delegates. Seen from L to R : CA Sushil Lakhani, Faculty, CA Paras K. Savla, President, CA Isha Sekhri, Member, International Taxation Committee.

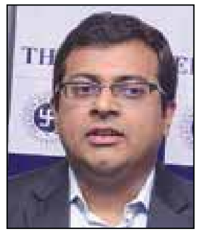
INTERNATIONAL TAXATION COMMITTEE

Workshop on Taxation of Foreign Remittances held on 19th & 20th December, 2014 at West End Hotel.

Faculties

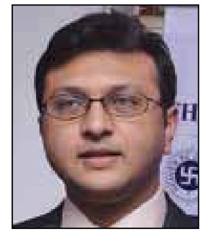

CA Sushil Lakhani


CA Rashmin Sanghvi


CA Radhakishan Rawal


CA Mayur Nayak


CA Sudhir Nayak


CA Shreyas Shah

Faculties


CA Shabbir Motorwala


S. R. Patnaik, Advocate


CA Paresh P. Shah

Brain Trustees


CA Nihar Jambusaria


CA M. P. Lohia


Section of delegates.

FEMA Study Circle Meeting held on 10th December, 2014 on the subject "Foreign Investments in Indian – Part–1" at CTC Conference Room.


CA Shreyas Shah addressing the members

FEMA Study Circle Meeting held on 14th December, 2014 on the subject "Foreign Investments in India – Part–2" at CTC Conference Room.


CA Chintan Gandhi addressing the members

Transfer Pricing Study Circle Meeting held on 22nd December, 2014 on the subject "Benchmarking Approaches : Case Studies" at Kilachand Hall, IMC.


CA Namrata Dedhia addressing the members.

MEMBERSHIP & EOP COMMITTEE

Self Awareness Series Meeting held on 5th January, 2015 on the subject "Law of Attraction" at CTC Conference Room.

Prof. Harish Mehta addressing the members

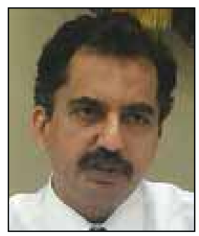
DIRECT TAXES COMMITTEE

Intensive Study Group on Direct Taxes Meeting held on 23rd December, 2014 on the subject "Recent Important Decisions under Direct Tax" at CTC Conference Room.

CA Mahendra Sanghvi addressing the members.

STUDY CIRCLE & STUDY GROUP COMMITTEE

Study Group Meeting held on 11th December, 2014 on the subject "Recent Judgments under Direct Taxes" at Babubhai Chinai Committee Room, IMC.



Mr. Vipul Joshi, Advocate, addressing the members.

Mr. Rahul Sarda, Advocate, addressing the members.

STUDENTS COMMITTEE

Students Study Circle Meeting on the subject "Compliance under Companies Act, 2013 held on 8th January, 2015 at Maheshwari Bhawan, Chira Bazaar, Mumbai.

CS Trusha Parikh addressing the students.

CS Bijal Gada addressing the students.

THE CHAMBER'S JOURNAL

Posted at the Mumbai Patrika Channel
Sorting Office, Mumbai 400 001.
Date of Posting: 15th & 16th January 2015

No. MA/MR/South-365/2013-15
R.N.I. No. MAHENG/2012/47041
Date of Publishing 12th of Every Month

Printed and Published by Shri. Kishor D. Vanjara on behalf of The Chamber of Tax Consultants, 3 Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020 and Printed at Finesse Graphics & Prints Pvt. Ltd., 309 Parvati Industrial Premises, Sun Mill Compound, Lower Parel (W), Mumbai - 400 013. Tel: 4036 4600 and published at The Chamber of Tax Consultants, 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020.