

# The Chartered Accountant World



## EDITORIAL ADVISORY BOARD

**Mr. Vinod Jain, FCA, Chairman**

**MEMBERS -** Mr. Anil Sharma, FCA;  
Mr. Avineesh Matta, FCA;  
Mr. Naveen Jain, FCA;  
Mr. Pramod K. Kapur, FCA;  
Mr. Praveen Sharma, FCA;  
Mr. Shiv Mittal, FCA;  
Mr. Sunil Khemka, FCA;  
Mr. Vijay Gupta, FCA;  
Mr. Vinod Rustagi, FCA.

## ANNUAL SUBSCRIPTION

• for Chartered Accountants:  
Rs. 200/- . Single Copy Rs. 20/-  
• for Others: Rs. 250/- .  
Single Copy Rs. 25/-

A JOURNAL OF  
ALL INDIA CHARTERED ACCOUNTANTS' SOCIETY

Volume XIX, No. 10, October 2008

## EDITORIAL

### THE TRUTH OF INTERNATIONAL DEBACLE OF FINANCIAL MARKET



CA VINOD JAIN\*

The recent fall of world largest investment bankers including Lehman Brothers, Goldman Sach, Morgan Stanley and Merryl Lynch followed by failure of a number of largest American and European Banks have brought the international financial market to a halt. American Insurance Group (AIG), one of the largest insurance company of United States of America had to be nationalized by US Government. This is followed

by insolvency of a Japan's largest insurance company. The G-7, Group of 7 largest economies of the world, at the highest level have decided to nationalize a larger number of Banks in American and European countries to arrest the loss of complete confidence and also to address liquidity crises. The U.S. President had to approach the senate and U.S. Congress to grant relief of about 700 billion US\$(Bailout Package) to the ailing financial system.

*contd. ... pg 3*

### HOW FAIR IS THE FAIR VALUE ACCOUNTING ?

The U.S. financial market debacle has initiated a debate on weaknesses in U.S. GAAP and International Financial Reporting Standards (IFRS). The major debate is around Fair Value Accounting which permit business entities to account for financial instruments on the basis of their fair value.

This concept enable accounting of mark to market profits as well as mark to market losses. The upsurge in market value of financial instruments based on fair value valuation techniques is recognized in accounts and even unrealized gains are considered in profitability and earnings besides assets and networth.

In terms of currently prevailing accounting standards in India, unrealized gains can not be considered as profits. In India, the fixed assets are accounted for on historical cost. The current assets are generally accounted for on cost or net realizable value whichever is lower. Except the investments held to maturity or as long term investments, the investment and derivatives are mark to market. The mark to market losses are accounted for and mark to market profit are not considered as income.

The Indian Regulators including RBI, SEBI, IRDA and ICAI have been actively considering shifting over to fair value accounting shortly by implementing AS30, AS31 ad AS32 and adopting International Financial Reporting Standards.

*contd. ... pg 3*

#### DALAL STREET

##### Top Losers

Company Name	Price*	Change(%)**
HDIL	93	-90.8
Indiabulls Financial Services	85	-89.6
Indiabulls Real Estate	95	-86.9
Unitech	83	-84.0
Jaiprakash Associates	76	-82.3
Century Textiles	222	-80.7
Reliance Infrastructure	515	-79.1
Suzion Energy	94	-78.8
Aban Offshore	1111	-77.5
IDFC	50	-76.1
DLF	282	-75.3
JSW Steel	297	-75.2
Reliance Natural Resources	53	-74.7
GMR Infrastructure	59	-74.2
ICICI Bank	364	-73.2
Sterlite Industries	274	-73.0
Adani Enterprises	306	-72.9
Reliance Capital	785	-71.4
Financial Technologies	680	-71.3

\* On October 10

\*\* Since January 10, 2008 when the market began to fall.



### All India Chartered Accountants' Society

announces

#### 3 Days Intensive Workshop on VAT & Sales Tax

Critical issues and complex situations including CST to be deliberated upon by prominent professionals and academicians

Dates:  
Saturday 8<sup>th</sup>; Friday 21<sup>st</sup> and  
Saturday 22<sup>nd</sup> November, 2008

Venue:  
Lecture Hall, India International  
Centre, Lodhi Estate, New Delhi

For further details, please see page 5.



**LATEST IN FINANCE**

**1.0 ISSUE OF FOREIGN CURRENCY EXCHANGE-ABLE BONDS SCHEME, 2008'**

"Foreign Currency Exchange-able Bond" means a bond expressed in foreign currency, the principal and interest in respect of which is payable in foreign currency, issued by an Issuing Company and subscribed to by a person who is a resident outside India, in foreign currency and exchangeable into equity share of another company, to be called the Offered Company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments. The FCEB may be denominated in any freely convertible Foreign currency.

**1.1 Eligible Issuer:** The Issuing Company shall be part of the promoter group of the Offered Company and shall hold the equity share/s being offered at the time of issuance of FCEB.

**1.2 Offered Company:** The Offered Company shall be a listed company, which is engaged in a sector eligible to receive Foreign Direct Investment and eligible to issue or avail of Foreign Currency Convertible Bond (FCCB) or External Commercial Borrowings (ECB).

**1.3 Entities not eligible to issue FCEB:** An Indian company, which is not eligible to raise Funds from the Indian securities market, including a company which has been restrained from accessing the securities market by the SEBI shall not be eligible to issue FCEB.

**1.4 End-use of FCEB proceeds:**

**a) Issuing Company:**

(i) The proceeds of FCEB may be invested by the issuing company overseas by way of direct investment

including in Joint Ventures or Wholly Owned Subsidiaries abroad, subject to the existing guidelines on overseas investment in Joint Ventures / Wholly Owned Subsidiaries.

(ii) The proceeds of FCEB may be invested by the issuing company in the promoter group companies.

**b) Promoter Group Companies:** Promoter Group Companies receiving investments out of the FCEB proceeds may utilize the amount in accordance with end-uses prescribed under the ECB policy.

**1.5 End-uses not permitted :** The promoter group company receiving such investments will not be permitted to utilise the proceeds for investments in the capital market or in real estate in India.

**1.6 Average Maturity:** Minimum maturity of FCEB shall be five years. The exchange option can be exercised at any time before redemption. While exercising the exchange option, the holder of the FCEB shall take delivery of the offered shares. Cash (Net) settlement of FCEB shall not be permissible.

**1.7 Parking of FCEB proceeds abroad:**

The proceeds of FCEB shall be retained and / or deployed overseas by the issuing / promoter group companies in accordance with the policy for the ECB. There are also condition of all-in-cost ceiling, issue pricing etc.

*(RBI/2008-09/192A.P. (DIR Series) -Cir. No. 17 dtd. 23.09.08)*

**2.0 EXTERNAL COMMERCIAL BORROWINGS POLICY - LIBERALISATION**

At present, borrowers in the infrastructure sector are allowed

to avail ECB up to USD100 million per financial year for Rupee expenditure for permissible end-uses under the Approval Route. Considering the huge funding requirements of the sector ,particularly for meeting Rupee expenditure, the existing limit of USD 100 million has been raised to USD 500 million per financial year for the borrowers in the infrastructure sector for Rupee expenditure under the Approval Route. ECBs in excess of USD 100 million for Rupee expenditure should have a minimum average maturity period of 7 years.

In view of widening of credit spreads in the international financial markets, the all-in-cost ceilings for ECBs are modified as follows:

Average Maturity Period	All-in-Cost ceilings over 6 Months LIBOR*	
	Existing	Revised
Three years and up to five years	200 bps	200 bps
More than five years and up to seven years	350 bps	350 bps
More than seven years	350 bps	450 bps

\* for the respective currency of borrowing or applicable benchmark

The amendments to the ECB guidelines will come into force with immediate effect. All other aspects of the ECB policy such as USD 500 million limit per borrower per financial year under the Automatic Route, eligible borrower, recognized lender, end-use of foreign currency expenditure for import of capital goods and overseas investments, average maturity period, prepayment, refinancing of existing ECB and reporting arrangements remain unchanged. The existing limit of USD 50 million for Rupee expenditure under the Approval Route for borrowers other than those in the infrastructure sector also remains unchanged.

*(RBI/2008-09/ 190-A. P. (DIR Series) Cir. No. 16, dtd. 22.09.08)*



*contd. pg. 1*

**THE TRUTH OF .....**

The Indian financial market and capital market is witnessing worst period of negative sentiments. The stock markets are on a falling spree with sensex nearing 4 figures (a fall of about 50% since January 2008, whereas some of the blue chip shares loosing 70% to 90% in their market capitalisation.

**The truth of financial debacle started unfolding about a year ago when sub prime crises hit the U.S. market. The source of problem was indiscriminate lending by US Banks and financial services companies to Real Estate acquisitions and other sub-prime lending, with larger risk and of course decent returns.**

The credit risk of these high risk - high yield loans were hived off into "credit link notes" derivative instruments. The high risk derivatives were bundled with low risk derivatives and marketed and the credit risk were insured by companies like AIG to further improve the credit rating. The top notch credit rating companies provided investment grade credit rating to these derivative instruments. The top notch investment bankers, largest hedge funds and top bankers in the world invested in these credit risk linked derivatives to substantially improve their earning levels and increased bonus to operating top executives. The investment bankers and international banks were highly leveraged financially with lower capital adequacy than was needed.

The sub prime borrowers started defaulting towards end of 2006 and beginning of 2007 resulting into sale of real estate by mortgage financiers. This fueled a substantial fall in real estate prices, the most common underlying security for these loans. The default in sub-prime loans rose aggressively towards the beginning of 2008, in spite of substantial reduction in US federal interest rates by more than 60% to about 2% per annum.

The problem got aggravated when the financial system stopped lending against mortgage-backed securities and banks were unwilling to sell them

at a loss. The market price reduction of mortgage backed securities and credit linked derivatives is so substantial that not only liquidity but also solvency of all banks, hedge funds and investment bankers became a matter of serious concern.

It is apprehended that this crises will take a further toll much deeper and harder and International Monetary Fund has predicted a world wide recession comparable to 1929 worlds worst recession. The banks are not willing to lend other banks and interbank financial lending system has come to a halt with LIBOR and EURIBOR ruling at about 200 to 300 basis points over Federal Rates as compared to usual margin of 25 bps to 30 bps. The money is not even available at these rates.

**Impact on India?**

The Indian Stock Market is already witnessing a selling spree not only by FIIs but also by mutual funds and other domestic institutions and investors. The capital market may see another 20%- 30% fall from current levels.

The mutual funds are witnessing indiscriminate withdrawal (redemptions) and Indian Mutual Funds are facing liquidity crisis besides a substantial fall in Net Asset Value (NAV) across the board.

There is apprehension of failure of some of Indian private sector banks. RBI and Govt. Of India has announced that there is no such risk. The Indian banking system is also facing severe liquidity crunch with call rates and MIBORC (Mumbai Inter-bank offering rate) touching a high of about 18% to 20%. RBI has recently (during 6<sup>th</sup> – 11<sup>th</sup> October week) reduced cash reserve ratio by 1.5 per cent injecting Rs. 60,000 crores in the banking system to address liquidity crisis.

In view of a very small exposure (about 450 million \$) of Indian banking system to credit link notes and credit derivatives, the Indian banking system appears to be safe. The information technology companies, BPOs, KPOs and other IT enabled services companies are highly dependent on U.S. market and more particularly U.S. financial services

corporates, banks and funds. The order book of these IT and IT enabled companies has already taken a substantial hit and top I.T. companies have not only retrenched software engineers on the bench but have also initiated cost reduction exercise including substantial cut in salaries and bonuses. The textile sector and other export dependent industries may also take a hit. However India's dependence on U.S. and European markets is limited and may at best hit India's GDP growth rate adversely. The Real Estate market may also witness a severe cut in market price.

Indian economy is robust. It may however be very important for Indian Government, Reserve Bank of India, SEBI and other Indian Regulators to strategically move firmly and fast and take necessary corrective actions and regulatory measures.

*contd. pg. 1*

**HOW FAIR IS .....**

The crucial issue is how fair is the fair value estimation in the absence of a reliable and robust valuation, tremendous fluctuations and volatility even in the stock market and commodity market. The OTC (Over the Counter Market) in case of foreign exchange, unlisted securities and derivatives being non transparent and highly illiquid, the valuation of fair value of these financial instruments pose a major challenge to valuers.

The creditability of valuation is tested in times of falling financial market and may pose a greater risk. How to ensure fairness of fair value valuation? Should Indian accounting system allow mark to market profit accounting for financial asset/ financial liability valuation, recognitions, measurement and disclosure of profitability, net-worth and assets besides for distribution of profits.

The Regulators need to openly debate as to how will they address risk of manipulation, Risk of error of judgement and resultant risk on liquidity & solvency of business Enterprises, banks, insurance companies, financial services sector and mutual funds. Incase a debacle like U.S. hit the Indian Financial System

# "SECRETS TO A HAPPY, HEALTHY AND MEANINGFUL LIFE"

## PROGRAMME HIGHLIGHTS



Inaugural Session



Inauguration by Guruji



Guruji accepting the salutation



Dhyan



Felicitation of Guruji by Mr. Vinod Jain



Guruji disclosing the "Secrets to Happy, Healthy and Meaningful Life"



Question hour



Guruji answering the queries



Devotees



Satsang



Mr. Naveen Jain & Mr. Vinod Jain Presenting momento to Guruji



AICAS & CFO World Team



**DATES:**  
From 8<sup>th</sup> November 2008 to 22<sup>nd</sup> November 2008  
(8<sup>th</sup>, 21<sup>st</sup> & 22<sup>nd</sup> November 2008)

**TIME:**  
1.00 p.m. to 8.30 p.m.  
(Lunch: 1.00 p.m. to 1.30 p.m.)  
(High Tea: 5.30 p.m. to 6.00 p.m.)

**VENUE:**  
India International Centre,  
Annexe Building, Lecture Hall,  
40 Max Mueller Marg, New Delhi

**THE COMPREHENSIVE REFERESHER COURSE ON VAT & SALES TAX**

A Comprehensive Refresher Course/ Workshop on VAT & Sales Tax is being conducted spread over 3 days with the active participation of eminent speakers and professionals. The MAIN THRUST is to carry out an indepth study of the basic concepts, critical issues and their practical applications including rules and regulations and recent case laws relating to VAT & Sales Tax.

**DAY 1 – 8<sup>TH</sup> NOVEMBER 2008 (SATURDAY)**

**Registration & Lunch : 1.00 p.m.**

**Inaugural Session • Delegate's Introduction**

- Session I** • Concept & Evolution of VAT, CST & Entry Tax • Powers of States under Constitution to Levy VAT, CST & Entry Tax • Event of Levy • Rates of VAT & CST • VAT, CST and Entry Tax- Interplay of levies • Structure of VAT Department
- Session II** • Definitions: Dealer, Casual Dealer/Trader, Sale, Capital Goods/Assets • Levy of Tax on Sale of Goods & Assets shown under Fixed Assets • Sales Exempt from Levy of VAT & CST • Tax Invoice vs. Retail Invoice - Information to be disclosed • Pre-printed vs. Computerised Invoices • Concept of Credit Note
- Session III** • Registration – Threshold limits & requirements • Time limits for Registration • Procedure to take Registration • Surety/Bank Guarantee

- Session IV** • Transfer of Goods to Branch/Agents – Issues & precautions • Concept of Form 'F' - Related issues • Inter State Sale of Goods – Concept of Form 'C'
- Session V** • Input Tax Credit- Availability & restrictions • Input Tax Credit on Capital Goods/Assets • Input Credit on Second Hand Goods • Reversal of Input Tax Credit - Circumstances • Utilisation of Input Tax Credit • Adjustment of Entry Tax against VAT • Refund of Input Tax Credit
- Session VI** Levy of VAT on: • Lease, Hire Purchase Transactions • Transfer of Property in Goods otherwise than in pursuance of a contract • Supply of Goods to Members in Clubs etc. • Supply of Foods Articles in hotels, restaurants etc.
- Session VII** Levy of VAT on: • Right to Use of Goods - Event of levy • Works Contracts - Event of levy

**DAY 2 – 21<sup>ST</sup> NOVEMBER 2008 (FRIDAY)**

- Session VIII** • Local/inter State Levy on Right to Use Goods • Local/Inter State Works Contracts - Complexities & issues • Valuation of Works Contracts - Inclusions & exclusions • Deduction of Tax at Source – Concept & requirements
- Session IX** • Composite Contracts - Concept & issues • Installation Contracts, Printing Contracts, Catering Contracts etc. • Rules of Valuation of Composite Contract
- Session X** • Levy of VAT on Real Estate Builders – Legal provisions & precedents • Levy of VAT on Construction Contractors – Legal provisions & precedents
- Session XI** • Levy of VAT on Intangibles • Levy of VAT on Customised Software- Whether a Contract for Service or Sale
- Session XII** • Applicability of VAT on • Hospitals – Whether a contract for service or for sale of medicines • Telecommunication – Whether Sim Cards are subject to VAT • Rent a Cab
- Session XIII** • High Seas Sales - Concept • Agreement of High Sea Sale – Precautions while drafting
- Session XIV** • Job Work- Concept & legal provisions • Local vs. Inter State Job Work – Situations & Issues • Open House for discussion

**DAY 3 – 22<sup>ND</sup> NOVEMBER 2008 (SATURDAY)**

- Session XV** • Units in Uttaranchal/HP/J&K/North East-Availability of benefits of CST/VAT • Other Tax Planning Measures
- Session XVI** • VAT & CST Liability – How to be calculated • Return of Goods Sold - Adjustment • Deposit of VAT & CST – Periodicity • Filing of Return/e-Return of VAT & CST – Periodicity • Return - Filed without payment of tax, whether a valid return • Revision of Returns • Records to be maintained under VAT/CST Regulations
- Session XVII** • Interest & Penalties – Circumstances & legal provisions • Penalty – Mandatorily to be paid along with the payment of tax and interest
- Session XVIII** • Refund of Input Tax Credit • Refund of VAT/CST to STPI Units, UN Organisations etc. • Procedure for Claiming Refund
- Session XIX** • Assessments – Legal provisions & practical aspects • Appeals • Determination of Questions
- Session XX** • VAT/CST Liability on Transfer of Business under: • Stock transfer mode • Slump sale mode • Itemised sale mode • Transfer of Business – Liability of transferor & transferee
- Session XXI** • Moving towards GST • Possible Structure of GST • Possible impact on Dealers • Open House for discussion

**FEE DETAILS**

Non CAs/ Corporates	3250
CAs / CA Firms	3000
AICAS / CFO Members	2750

**For further details please contact :**  
**Ms. Chhaya (9873230416)**  
**aicas.cfo@gmail.com, cfoworld@gmail.com**

**NOTE:**

- Speakers being finalized include prominent professionals and academicians with applied knowledge.
- Seats are limited to 100 and on first come first serve basis.
- Participation fees covers background material to the participants, lunch and high tea
- A voluntary Appraisal Questionnaire to judge the understanding of the workshop is proposed
- A Certificate of satisfactory completion of workshop will be issued
- Participants are expected to share their own practical experience and raised queries during interactive session
- Alternative nominee for specific session(s) or day(s) could be permitted.
- Programme can be restructured to suit the speakers.

**REGISTRATION FORM**

\* Fax form to : 91-11-26223014  
\* E-mail form to : aicas.cfo@gmail.com  
All India Chartered Accountants' Society  
503-504, Chiranjiv Tower, 43, Nehru Place, New Delhi-110019  
Tel. : 26223712, 26226933, 26228410

Registration for  VAT & Sales Tax

Name : Mr/Ms .....  
CA Membership No. : .....  
Designation : .....  
Company Name : .....  
Address : ..... Pin .....  
Phone : (O) ..... (R) .....  
E-mail : .....  
**Payable to "All India Chartered Accountants' Society"**  
Via DD/Cheque (Delhi only) No. : .....  
Date : ..... Bank : .....  
Amount : ..... Signature .....



## TAXATION

### 1.0 TAX SOPS FOR FOREIGN R&D COs WITH NO BASE IN INDIA

Foreign companies without a permanent establishment in India and providing research facilities to Indian firms for developing new drugs are exempt from paying tax in the country. Further, the Authority for Advanced Rulings (Income Tax) has said unless there is a transfer of technology or know-how to the recipient of the service, it cannot be classified as technical services.

Anapharm had sought to know whether the fee it received from the pharmaceutical companies for undertaking clinical and bio-analytical studies under the agreements would be subject to tax in India under DTAA between India and Canada. The AAR has ruled that its fees should be considered as business income, but since it does not have a permanent establishment in India, it is not liable to pay tax in the country under the Indo-Canadian DTAA

### 2.0 NO QUESTION MARK ON AUDITED ACCOUNTS : SC TOIT

The Supreme Court has said the income-tax department has to accept the authenticity of the accounts maintained in accordance with the provisions of the Companies Act and certified by the auditors. The assessing officer cannot go beyond the net profit shown in the profit and loss account, except to examine whether the books of accounts were duly certified by the authorities and properly maintained. The AO does not have the jurisdiction to go beyond the net profits shown in the profit and loss account except to the extent provided in the explanation

(appended to Section 115J of the Income Tax Act).

### 3.0 NO TAX DEDUCTION ON BAD DEBT PROVISIONING: SUPREME COURT

The Supreme Court has ruled that provisioning for bad debt cannot be considered for deduction against the taxable income. The Supreme Court's decision pertains to a company following the Minimum Alternate Tax (MAT) under Section 115JA of the Income Tax Act, 1961. According to the judgement, a provision for liability will be eligible for deduction from the taxable income and not a provision for bad debt.

### 4.0 CBDT EXEMPTS NRIS' AGENTS FROM E-FILING OF TAX RETURNS

Central Board of Direct Taxes (CBDT) exempted agents of non-resident Indians from mandatory e-filing of income-tax returns.

### 5.0 SETTLEMENT EXPENSES- AN ALLOWABLE EXPENSE

The Delhi High Court has held that where expenditure is incurred on account of commercial expediency, it would be an allowable business expense though it has not arisen explicitly based on contract. The assessee incurred settlement expenditure so as to avoid the possibility of the litigation ensuing, in respect of its early exit from the premises it had obtained on lease. The non-payment of the same could have resulted in suit of damages for breach of contract and/or specific performance. The assessee claimed the same as business expenditure under section 37. The assessee paid the said amount considering various factors like avoiding higher user charges for unexpired lease period, getting back immediate payment of the

interest free security period, etc. The AO was of the view that under the contract there was no legal obligation of the assessee to pay the settlement expense and hence, the same was not wholly and exclusively laid out for the purpose of the business. The court observed that the settlement expense paid in relation to early exit from the premises falls squarely within the meaning of the expression "commercial expediency" when seen from the perspective from an assessee's business. Accordingly, the same is an allowable expense under section 37.

### 6.0 NO ADDITION ALLOWED UNDER MAT

THE Gujarat High Court, in a recent ruling, has held that an assessing officer (AO) cannot make addition to the income while working out the book profit for the purpose of minimum Alternate Tax- under section 115J on the Income Tax Act – with regard to the difference arising due to change in the method of depreciation adopted by the assessee. The assessee has changed his method of providing depreciation from Straight Line Method (SLM) to Written Down Value (WDV) method during the year. The AO was of the view that assessee was required to provide depreciation in its books as per rates provided in schedule of the companies Act and could not the WDV method as per the I-T Act. The Gujarat High Court has held the AO has limited power of making changes in the net profit while working out the book profit in terms of section 115J, as provided for in explanation to the said section and has limited jurisdiction to the specific extend provided in the explanation. Accordingly the court rejected the contention of the A.O.



### INDIRECT TAX

#### 1.0 CBEC ASKS MANUFACTURING COs TO FILE ANNUAL CAPACITY REPORT

Manufacturing companies will now have to file an annual statement of their installed capacity. The Central Board of Excise and Customs (CBEC) has made it mandatory for companies to give these details, in a move that is targeted at curbing rampant evasion in excise duty. Every assessee shall submit to the superintendent of Central Excise, an Annual Installed Capacity Statement declaring the annual production capacity of the factory for the financial year to which the statement relates in the form specified by notification by the Board by 30<sup>th</sup> day of April of the succeeding financial year.

#### 2.0 SALES TAX AND RIGHT TO USE GOODS

The Allahabad High Court has held that a contract for transportation of passengers, where the contractor uses its own vehicles, operates staff like drivers and conductors and bears all running expenses, would not be liable to sales tax as a transfer of the right to use goods since at no point in time is control and possession in the vehicles transferred to the contractee. The assessee contended that the possession of the buses was never given to any party at any point of time and the control over buses was always with them. The High Court accepted the arguments of the assessee.

#### 3.0 SERVICES OF THE HIRE PURCHASE

The service tax tribunal has held that with respect to services of the hire purchase the rate of service tax applicable is the rate prevailing on the day on which the hire purchase agreement is entered into. In this case the

assessee was engaged in the providing services of hire purchase and was registered under the category of "Banking and other financial services". They have been paying service tax at the rate of 5%. Subsequently the rate of service tax was increased to 8% with effect from 14 May 2003. The department contended that service tax at 8% would be applicable on monthly installments which were paid after 14 May 2003. The assessee contended that in respect of hire purchase contract, the rate of tax applicable is the rate prevailing on the day the contract is entered into. The higher rate is not applicable for the contract entered prior to the hike. The tribunal accepted the arguments of the assessee and held that when the hire purchase contract is entered, the taxable event occurs and therefore the rate of service tax will be rate prevailing on the day on which the contract is entered into.

#### 4.0 NON-PAYMENT OF SERVICE TAX BY SEZ UNITS PROVIDING TAXABLE SERVICE OUTSIDE SEZ

There is no exclusion to SEZs in the Chapter V of the Finance Act, 1994 (Service Tax law). Taxable services received by SEZ units and SEZ developers for consumption within the SEZ are exempt for service tax under notification No. 4/2004-ST, dated 31.3.2004. However, service tax is applicable on taxable services provided by SEZ units, except such services which are exempt by notification No. 4/2004-ST. The C & AG, in its recent report has pointed out instances, where SEZ units in Chennai & Cochin were providing taxable services like manpower supply service, technical testing and analysis service etc., to units / persons outside SEZ, without payment of service tax.

### FEMA

#### 1.0 ADVANCE REMITTANCES FOR IMPORT OF SERVICES

It has been decided to raise the limit of USD 100,000 for advance remittance for all admissible current account transactions for import of services without bank guarantee to USD 500,000 or its equivalent.

Where the amount of advance exceeds USD 500,000 or its equivalent, a guarantee from a bank of international repute situated outside India, or a guarantee from an AD Category-I bank in India, if such a guarantee is issued against the counter-guarantee of a bank of international repute situated outside India, should be obtained from the overseas beneficiary.

*(RBI/2008-09/158-A.P.(DIR Series) Cir. No. 15, dt. 8.09.08)*

#### 2.0 INDIAN EDITIONS OF FOREIGN NEWS MAGAZINES ALLOWED

In a departure from the existing norms, the Government allowed Indian editions of foreign news and current affairs magazines stipulating a 26-per cent foreign direct investment ceiling. Magazines such as the Time and Newsweek will now be able to publish Indian editions, as long as they follow the FDI ownership cap and rope in an Indian partner.

#### 3.0 SC DEFENDS PROVISION OF PRE-DEPOSIT OF PENALTY IN FEMA CASES

The Supreme Court has defended the requirement of pre-deposit of penalty amount before hearing the appeal of a firm which was accused of acquiring foreign exchange contravening the provisions of the Foreign Exchange Management Act. In this case, *Monotosh Saha vs. Special Director, Enforcement Directorate*, the firm was imposed a penalty of Rs. 25 lakh. When it

moved the appellate tribunal (foreign exchange), it directed the firm to deposit 60 per cent of the penalty amount if it wanted the appeal to be heard. The firm appealed to the Calcutta High Court contending that the order imposed 'undue hardship' on it. The high court rejected it. The Supreme Court justified the condition stating that "for a hardship to be undue, it must be shown that the burden is out of proportion to the nature of the requirement and the hardship is greater than the circumstances warrant." It was not so in this case.

## CAPITAL MARKET

### 1.0 APPLICATIONS SUPPORTED BY BLOCKED AMOUNT (ASBA) FACILITY IN RIGHTS ISSUES

SEBI has introduced the facility of making applications through "Applications Supported by Blocked Amount" process, in book built public issues vide its circular dated July 30, 2008. It has now been decided to enable process of ASBA in Rights Issues on a pilot basis

Merchant Bankers, Registrars and Self Certified Syndicate Banks (SCSBs) are advised to provide the ASBA facility in rights issues with suitable modifications to ASBA process specified by SEBI for public issue through book building route, as deemed fit. ASBA process in rights issue shall have the following features:

- (a) All shareholders of the company as on record date shall be eligible to apply through ASBA (hereinafter referred as "ASBA shareholder") provided if he applies through a bank account maintained with SCSBs.
- (b) The SCSB shall then block in the bank account, the application money specified in the application, on the basis of an authorization to this effect given by the account holder in the application. The application data captured by SCSB shall be made available to the Registrar.
- (c) The Registrars shall take give suitable instructions to the SCSBs for transfer of money to the issuer account after satisfying the designated stock exchange about receipt of Minimum subscription of 90% in terms of provisions of SEBI (DIP) guidelines, and for any other matter relevant to a rights issue.

(SEBI/CFD/DIL/25-09-2008)

### 2.0 SEBI CANNOT DICTATE BUYBACK PRICE: SAT

While allowing telecom software services firm Sasken to go ahead with its Rs.40 crore buyback offer, Securities Appellate Tribunal (SAT) has said that market regulator SEBI has no right to advise a company regarding the price it needs to put for the buyback offer.

The tribunal said the company has already informed SEBI that the buyback will be from open market through the stock exchange mechanism, which obviously means that the shares will be purchased at the prevailing price as determined by the system subject to maximum price. "This being the position, there was hardly a need to tell the company to place its but orders at the market price,"

## NBFC

### 1.0 MONITORING FRAMEWORK FOR NON-DEPOSIT TAKING NBFCs

It has been decided to call for basic information from non-deposit taking NBFCs with asset size of Rs. 50 crore and above but less than Rs. 100 crore at quarterly intervals. The first such returns for the quarter ended September 2008 may be submitted by first week of December 2008. The quarterly return as at the end of each quarter may be filed online with the Regional Office of the Department of Non-Banking Supervision in whose jurisdiction NBFC is registered, with in a period of one month from the close of the quarter.

(RBI/2008-09/194DNBS.PD/ CC.No.130 / 03.05.002 /2008-09, dtd. 24.09.08)

### 2.0 RECLASSIFICATION OF NBFCs

Consequent upon re-classification of NBFCs, in the proposed structure, the following categories of NBFCs will emerge:

- (i) Asset Finance Company
- (ii) Investment Company
- (iii) Loan Company

It has now been decided that erstwhile EL/HP NBFCs should submit their request, duly supported by Statutory Auditors' Certificate indicating the asset / income pattern of the company as on March 31, 2008, immediately approach the Regional Office concerned for appropriate classification latest by December 31, 2008 after which NBFCs which have not opted for the classification would be deemed to be loan companies.

(RBI / 2008-09/167-DNBS.PD. CC No. 128 / 03.02.059 /2008-09, dtd. 15.09.08)

● **Contact details** : Dharampal (9350597662) / Chhaya (9873230416) All India Chartered Accountants' Society - CFO World 422, Okhla Industrial Estate, Phase-III, New Delhi-110020. Ph: 26223712, 41000043, 32478997 E-mail:cfoworld@gmail.com / aicas.cfo@gmail.com ● **EDITOR**: Pankaj Gupta, LLB, FCS E-mail: pankajguptafcs@gmail.com ● **PUBLISHED & PRINTED**: At New Delhi by Satish Chandra, Administrative Officer, on behalf of All India Chartered Accountants' Society, 4696, Brij Bhawan, 21A, Ansari Road, Darya Ganj, New Delhi-110 002 Phone 23265320, 23288101 E-mail : aicas.cfo@gmail.com Printed at: EIH Ltd., Unit : Printing Press, No. 7, Sham Nath Marg, Delhi-110054. Views expressed by contributors are their own and the Society does not accept any responsibility.

If undelivered, please return to :  
All India Chartered Accountants' Society  
4696, Brij Bhawan 21A, Ansari Road,  
Darya Ganj, New Delhi-110 002