CA PROFESSION READY FOR THE FUTURE CHALLENGES

The profession of Chartered Accountancy is facing new challenges yet see more opportunities as the economic and regulatory scenario in India is changing very fast. The ICAI and various CA associations / societies are preparing the membership mentally and technically for the changing scenario.

Transparency and Integrity

The profession of Chartered Accountants is committed to remain completely transparent while reporting on true and fair presentation of financial statements by the corporates and to deal with financial matters as consultants with integrity and ethics.

It is well established that corruption is the root cause for failure of efforts by the state to have inclusive growth. The Chartered Accountants are committed not to be party to the corruption and to help eradicate corruption from public life, day today business operations and other dealings within and outside the business organizations and among all the stakeholders. Strengthening accounting standards requiring crucial disclosures and strict auditing standards requiring extensive checking and true reporting are the ongoing efforts made by the profession to prove its point in this regard. Preparing membership to conduct social audit is another important initiative by the regulatory body of the profession in this direction.

ICAI has offered to the Union Finance Minister to take support of the profession in structuring internal control procedures, delegation of authority and business processes in such a manner that corruption is significantly prevented in all government spending.

The government needs to respond positively.

IFRS

IFRS shall go a long way in preparation and presentation of financial statements by corporates. The ICAI has already gone through convergence process and the IND AS (equivalent to IFRS) have already been submitted to the government after due consideration by the NACAS. Before these are implemented, a lot of changes are required to be made in legal framework governing the corporate world.

The government has announced 1st April, 2011 as the date to implement phase-1 of IND AS to a selective list of corporates. The CA profession has already trained 50000 plus CAs in various cities for the new Accounting System. However, the government has neither notified the revised IND AS nor has taken any action to bring changes in the relevant laws and regulations.

The government should at least give a minimum one year notice before implementing the new system and method. The government can not be permitted to declare a date without even finalizing the text of the law to be followed by companies.

Companies Bill

The Companies Bill, 2009 has already undergone a large number of changes arising out of Parliamentary Committees deliberation, changes proposed by MCA and reactions from industries, businesses and professional bodies. The Government should again expose final draft of the Bill for public comments. It is a high time, the government should take its best effort to clear passing the Companies bill the coming session of the Parliament.

GST

The Goods and Services Tax law does not seem to be taking shape in the absence of a political will consensus within state Governments. The concept of having 2 separate GST without adjustment between State GST and Central GST will adversely impact the concept of eradication of cascading effect. The government need to consider that at least State GST credit may be allowed to be set-off against the Central CST liability. If the State Governments are not agreeing to

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1.0 BANKS GET 6 MORE MONTHS TO ADOPT BASE RATE NORMS

The Reserve Bank of India (RBI) gave banks another six months up to June 30, 2011 to change their benchmarks and methodologies of computation of base rate. The Base Rate system replaced the BPLR system with effect from July 1, 2010. Base Rate includes all those elements of the lending rates that are common across all categories of borrowers. Banks may choose any benchmark to arrive at the Base Rate for a specific tenor that may be disclosed transparently.

2.0 GOVT MANDATES RETIREMENT FUNDS TO TRADE ON BOURSES

The government has asked all retirement funds to compulsorily trade in debt instruments on the exchanges. The diktat aims at shifting some of the biggest bond buyers from an opaque market where deals are cut over the telephone to a more transparent one. Such one to one transactions often hamper liquidity, transparency and price discovery in the secondary bond market. The Government has now set a deadline of Feb 28 for pension funds to report all bond purchases on BSE, NSE or with FIMMDA. All bond transactions would also have to go through the two authorized clearing corporations - NSCCL or ICCL.

3.0 SEBI ALLOWS FIIs TO ISSUE ODIs TO NRIs

In an effort to strengthen the regulatory oversight on overseas entities and individuals investing in the Indian Capital Market, the Securities and Exchange Board of India (SEBI) introduced the concept of 'beneficial owner' by asking participatory note (PN) issuing foreign institutional investors (FII) to report their activities. It also removed restrictions on FII to issue ODI (Offshore Derivative Instruments) to non resident Indians (NRI)s. Participatory Notes are derivative instruments based on Indian securities issued by FIIs to those overseas entities or individuals who prefer to invest indirectly into Indian stock markets.

4.0 BANK LICENCE NORMS SHORTLY

The government has indicated to the Reserve Bank of India that well-capitalised industrial houses should be permitted entry into the banking sector subject to appropriate safeguards. The finance ministry officials indicated that minimum capital of Rs.1000 crore would be required for a corporate entity applying for a banking licence.

5.0 FOREIGN BANKS TO CONVERT AS SUBSIDIARIES

The RBI would like 'systemically important' foreign banks to consolidate their branches in India into 'wholly-owned' subsidiaries, which would be easier to monitor and control. Foreign bank branches would be considered to be systemically important once their assets (including off-balance sheet items) become 0.25 per cent of the total assets of all scheduled commercial banks in India.

Fast Facts

- 34 foreign banks (from 24 countries) operate in India. They have 315 branches.
- Additionally, 45 foreign banks operate in India through representative offices.
- Foreign banks have a 7.2% share in the total assets of the banking sector.

6.0 FOREIGN BANKS' ARMS TOO MUST MEET 40% PRIORITY SECTOR LENDING TARGET: RBI

Foreign banks set up as wholly-owned subsidiaries will be required to meet the priority sector lending target of 40% of adjusted net bank credit, which is the same for domestic commercial banks, said the Reserve Bank of India(RBI), in its discussion paper. The Central Bank has, however, proposed to prescribe a lower sub-target of 10 per cent for lending to agriculture sector by the wholly-owned subsidiaries, since the branch spread of these banks will be limited.

New Norms-Wholly-owned subsidiaries set up by conversion of existing branches may be allowed a transition period of five years from the year in which they incorporate in India for meeting priority sector lending norms.

7.0 DEFICIT IN CURRENT A/C - NEED TO ARREST FALL IN FDI

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<td>NRI deposits (net)</td>
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8.0 HOME LOAN EXPOSURE ONLY 5% OF ASSETS FOR CO-OPERATIVE BANKS

According to the Reserve Bank of India, state co-operative banks and central co-operative banks exposure to housing loans would be 5% of total assets as on March 31 of the preceding year against the current practice of 10% of total loans. The revised limit is with immediate effect.

9.0 REVISED REGULATORY FRAMEWORK FOR CICs

The RBI, on January 5, 2011, revised regulatory framework for (CIC’s) and asked all Systematically Important Core Investment Companies (CIC’s-ND-SI) to apply for registration certificate within six months from the date of notification. In case an investment or loan company is not a CIC, it would also require registration.
The revised regulations have far reaching implications and non compliance shall result in imprisonment for 1-5 years with fine upto Rs. 1-5 lakhs.

Registration requirements and exemptions available have been depicted in the diagram below:

CIC means a NBFC carrying on the business of acquisition of shares and securities, satisfying the following conditions as on the date of the last audited balance-sheet:

- Holds atleast 90% investment of its net assets in equity/ Preference shares, bonds, debentures or loans in group companies.
- Its investments in the equity shares including compulsorily convertible instruments within a maximum period of 10 years in group companies constitutes atleast 60% of its net assets.
- Does not trade in its investments in shares/bonds/ debentures etc. in group companies except for the purpose of dilution or disinvestment.
- Does not carry on any other financial activity referred to in Section 45 IC of RBI Act.

CIC-ND-SI means a CIC, having total assets of not less than Rs. 100 core, individually or with group companies in aggregate and Raises or holds public funds.

'Adjusted net worth' means aggregate of owned funds, as appearing in the last audited balance sheet as at the end of the financial year. Adjusted net worth can be increased by 50% of unrealized appreciation in the book value of quoted investments. Adjusted net worth can be reduced by the amount of diminution in the aggregate book value of quoted investments.

Conclusion
- Definition of CIC is stringent and may not be fulfilled by many investment companies.
- Requirement of investment of at least 60% of the net assets needs to be removed.
- Threshold limit of 90% of its net assets in group companies is very steep and should be reduced to 75%.

CA PROFESSION

the concept at least one way fungability may be agreed to by the Central Government to make the concept viable and workable.

Direct Tax Code

The Direct Tax Code, as originally drafted by a team appointed by the then Finance Minister has already been completely diluted. The government may consider as to whether it will be enough to bring in necessary changes in the Income Tax Act, 1961 itself to bring in necessary concept and law on which consensus is achieved in the Direct Tax Code discussion.

Bank Audit Allotment

The Reserve Bank of India did not agree to centralized appointment of bank branches auditors and delegated the same to the respective banks. In case of appointment of Central Statutory Auditors, the RBI has provided names of two CA firms to provide option to each of the appointing banks. The system of appointment of auditors by the banks is moving towards pleasing the appointing authority, thereby severely impacting the independence and financial disciplines of the banking sector.

The government and RBI need to reconsider the decision otherwise they alone will be responsible for the fall in the financial discipline and resultant failure of regulatory framework in the public sector banks.

Audit of NAREGA

In terms of the latest published report the entire expenses incurred by the government on NAREGA have been incurred without any free and fair audit. There is no detailed internal control procedure or proper delegation of powers. The necessary checks and balances to ensure that the payments have been made only against the actual work done need to be put in place and be subjected to an independent audit. Mechanism of performance audit is also required to be put in place to ensure achieving the objectives of the scheme.

Absence of audit is a serious lapse and may result into grave misuse of financial resources of the government considering that more than Rs. 1 lakh crore has been spent on NAREGA in the current year. Similarly there are number of social welfare schemes for which subsidies/ huge sums of monies are spent by the Government. This all has been done without adequate procedure, delegation of authority and a detailed audit and compliance of various guidelines.

The profession of Chartered Accountants is ready to meet any challenge and to provide support to the government and other stakeholders in respect of the aforesaid matters in the most efficient and transparent manner.
1.0 GOODWILL IS AN INTANGIBLE ASSET U/S 32(1)(II) OF INCOME TAX ACT, 1961 AND ELIGIBLE FOR DEPRECIATION

On merits, sec. 32(1)(ii) allows depreciation in respect of know-how, patent, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. The term "commercial rights" are such rights which are obtained for effectively carrying on business and commerce. "Commerce" is a wide term which encompasses many a facet. Accordingly, any right obtained for carrying on business with effectiveness comes within the sweep of meaning of "intangible asset". Goodwill, being the positive reputation built by a person over a period of time, is of "similar nature" as the other items enumerated in the definition of "intangible assets.

Citation : Commissioner of income tax Vs hindustan coca cola beverages Pvt. Ltd.

2.0 AMEESHA GETS TAX BREAK ON COSTUMES, COSMETICS

The Income Tax Appellate Tribunal has allowed Bollywood actress Ameesha Patel to claim full tax deduction on the money she spent on her costume and make up in 2004-05. "The compulsions of public glare and virtual blurring of the line of demarcation between personal life and professional life requires these glamour professionals to be on their best all the time, and no part of the expenses on their make up and costumes can, for public appearances therefore, be disallowed as personal expenses."

3.0 TAX VEX ON BANK ARMS RESOLVED

Foreign banks converting their branches into wholly owned subsidiaries will not be required to pay capital gains tax from the transfer of assets and properties during this procedure. The finance ministry has resolved the tax tangle in the issue and wants the Reserve Bank of India to go ahead and allow foreign banks to convert themselves into wholly-owned subsidiaries at the earliest.

4.0 ROAMING PAID BY TELCOs NOT SUBJECT TO TAX: TRIBUNAL

Roaming charges paid by one service provider to another are not liable for deduction of tax at source, according to a recent ruling by Income-tax Appellate Tribunal (ITAT), Mumbai. The Income Tax Appellate Tribunal, Mumbai in an order on December 22 on an appeal field by Vodafone Essar, held that the service provider's role is limited to collecting the roaming charges from its subscriber and pass it on to the other service provider whose facility is used by the subscriber. Therefore, the service provider is not required to deduct tax.

5.0 DELAY IN FILING OF RETURN SHOULD NOT BE A REASON TO DENY THE ASSESSEE'S CLAIM OF EXEMPTION U/S 10B (1)

The court stated that exemption under section 10B which provides that no exemption shall be allowed if return is not furnished by due date prescribed under section 139(1), is directory and not mandatory in nature. Therefore, in genuine cases exemption under section 10B may be allowed even if the return is not filed by the due date mentioned in section 139(1).

Citation : Asstt. CIT v. DhirGlobal Industries (P.) Ltd.

6.0 ONCE THE TAX IS DEDUCTED AT SOURCE, THE SAME CANNOT BE LEVIED ONCE AGAIN ON THE ASSESSEE WHO HAS SUFFERED THE DEDUCTION

From the language of section 205, it is clear that once the tax is deducted at source, the same cannot be levied once again on the assessee who has suffered the deduction. Once it is established that the tax has been deducted at source from the salary of the employee, the bar under section 205 of the Act comes into operation and it is immaterial as to whether the tax deducted at source has been paid to the Central Government or not, because elaborate provisions are made under the Act for recovery of tax deducted at source from the person who has deducted such tax.

Citation: Yashpal Sahni v. Rekha Hajarnavis, Assistant Commissioner of Income-tax [2007] 293 ITR 539 (Bom.)
7.0 ADMINISTRATIVE EXPENSES CAN NOT BE DISALLOWED UNDER SECTION 14A - KERALA HIGH COURT

The Kerala High Court has held that in the absence of no precise formula for proportionate disallowance of administrative expenditure, no disallowance is called for, for proportionate administrative expenditure attributable to earning of Tax free Income until rule 8D come into force. The proportionate disallowance under Section 14A should be limited to only interest liability and not overheads or administrative expenditure; which should be considered for disallowance under Rule 8D from 2007-2008 onwards. The High Court remanded all the assessment back to the AO for reworking disallowance under section 14A in case of each assessee for each assessment year.

Citation: The Commissioner of Income Tax (CIT), Trichur Vs the Catholic Syrian Bank Ltd., Trichur.

8.0 CBDT ASKS PARTIES TO DISCLOSE DONATIONS

Political parties that do not fully and properly disclose in time the details about donations, could lose I-T exemption. According to CBDT, if a political party loses the exempt status for its income, it is a good reason for the Chief Election Commission (CEC) to cancel that party’s registration.

9.0 TDS CREDIT RIGHT OF PAYEE- THE REFUND MADE TO THE TAX DEDUCTOR, EVEN IF WRONGFUL, HAS NO ADVERSE IMPACT ON THE RIGHTS OF THE ASSESSEE

Learned CIT(A) erred in not directing the AO to unconditionally grant full tax credit to the appellant or the taxes deducted at source by Reliance Infocomm Limited of Rs 24,41,58,046 and, consequently, grant refund of the said amount as the entire addition made by the AO was deleted by the CIT(A).

Citation: Lucent Technologies GRL LLC vs DDIT (International Taxation) (ITAT).

10.0 SC JUDGMENT ON APPLICABILITY OF INTEREST U/S, 234B/234C ON TAX PAYABLE U/S.115JA/115JB

The Supreme Court delivered judgement in favour of the revenue department on the issue which arose, namely, interest under Section 234B and section 234C can be charged on the tax calculated on book profits under Section 115JA. In other words, advance tax was payable on book profits under Section 115JA.

Citation: Jt. C. I. T., Mumbai versus M/s Rolta India Ltd.
AUDIT

1.0 ICAI CAUTIONS RBI ON BANK BRANCH AUDITS

According to ICAI President, accounting regulator ICAI cautioned the Reserve Bank of India against over-reliance on a centralized audit system for banks that have completed computerization of their operations in view of the Rs.400 crore fraud unearthed at Citibank's Gurgaon branch. The Citibank fraud has brought to forefront that audits need to be more vigorously followed at the branch level, rather than relying upon the audit of the information generated at the central / regional or zonal level alone.

2.0 BANKS GET WAIVER FOR MFI LOAN RECAST

The Reserve Bank of India granted a one-time waiver to banks for restructuring loans given to microfinance institutions (MFI). Accordingly, these unsecured loans - restructured before March 2011 - will be treated as standard assets. The central bank has also asked banks to continue to lend to the MFI sector to ensure continuity of operations.

3.0 BANKS MUST REPORT LOSS FROM ARMS

According to RBI, Banks are required to recognize any diminution, other than temporary, in the value of their investments in subsidiaries / joint ventures which are included under ‘held to maturity’ category and provide therefore.

4.0 RBI ON VALUE OF INVESTMENT IN JOINT VENTURES

According to the Reserve Bank of India, banks would have to assess the value of their investments in joint ventures and strategic equity investment on a continuous basis. If there was erosion in value of such investment, banks should get the investment assessed by valuer and make provisions.

5.0 NBFCs PROVISIONING NORMS

The Reserve Bank of India has asked of the Non-Banking Financial (Deposit Accepting or Holding) Companies, to make a general provision at 0.25% of the outstanding standard assets in a bid to strengthen their balance-sheets. However, the provisions on standard assets should not be reckoned for arriving at net NPAs. Also the provisions towards standard assets need not be netted from gross advances but shown separately as 'contingent Provisions against Standard Assets' in the balance sheet.

6.0 JEWELLERS, BULLION DEALERS HIGH-RISK CUSTOMERS : RBI

Fearing possible flow of black money into the system through jewellers and bullion dealers, the Reserve Bank of India has asked banks to treat such entities as 'high risk' customers and subject their accounts to strict monitoring.

ICAI

1.0 UNIQUE CODE NUMBERS TO CAs TO CHECK FRAUDS

According to ICAI president, the Institute of Chartered Accountants of India will introduce unique code numbers (UCD) from next month for Chartered Accountants (CAs) to help them check increasing incidents of fraudulent practices, including forged attestations. Once introduced, ICAI would ask banks to insist on UCD, as people file different balance sheets for various purposes without the knowledge or approval of CAs.

2.0 ICAI ON CORPORATE FUNDING TO POLITICOS

According to ICAI, Corporate funding to political parties should be treated as expenditure in order to increase transparency in financial statements and curb black money flow. Further Companies Bill should incorporate this provision.

INSURANCE

1.0 IRDA RELAXES SOLVENCY NORMS

The solvency margin norms for general insurance companies offering health insurance schemes of the Government have been relaxed by Insurance Regulatory and Development Authority (IRDA). Acting on requests from the industry, the regulator would allow a maximum period of 180 days if the solvency margin falls below the stipulated 1.50 per cent on account of delay of receivables from Central / State Government.

2.0 IRDA BANS OUTSOURCING OF CORE ACTIVITIES BY INSURANCE FIRMS

Insurance Regulator (IRDA) has announced the do's & don'ts of outsourcing in the fast growing insurance industry. IRDA said that core activities including underwriting, product design and all actuarial functions and enterprise wide risk management, investment and related functions, fund accounting, including NAV calculations, admitting or repudiation of all claims, bank reconciliation, policyholder grievances redressal, approving advertisements, market conduct issues, compliance with AML, KYC cannot be outsourced by the insurers.
CAPITAL MARKET

1.0 SEBI REDUCES AUCTION SHARES SETTLEMENT BY A DAY
Henceforth, all auction sessions will be conducted on the T+2 day and the respective auction settlement would be effected on the T+3 day.

2.0 SEBI ALLOWS DERIVATIVES BASED ON FOREIGN INDICES
Indian investors will soon be able to place bets on foreign markets. The Securities and Exchange Board of India has issued guidelines for introducing derivatives contracts based on foreign indices.

3.0 SEBI EXTENDS ARBITRATION CLAIM TIME FRAME
According to the Securities and Exchange Board of India (SEBI), arbitration claims could be filed beyond six months. With the limitation period for arbitration being modified to three years as prescribed under the Limitation Act of 1963, as per the capital market regulator said the modified limitation period would be applicable in cases where three years had not elapsed and no arbitration had been filed. It also added that it would also be applicable on cases where arbitration was filed but rejected solely on ground of delay in filing earlier six month limitation period.

4.0 BSE DELIVERY-BASED F&O TRADING COMMENCE
The BSE will provide delivery-based trading in single stock futures and options in its derivatives segment from February 1, expiring on or after April 13, 2011. Final settlement will be done business day after expiry. This means that all open positions at expiry will result in delivery obligations (obligation to buy or sell the stock) for stock futures. For stock options, there will be no auto automatic exercise any more. Exercise of all open positions will depend on the option buyer's discretion. If he chooses to exercise the option on the expiry day, he has to give an exercise notice to his broker, who, in turn, will intimate the exchange within the time window provided between the time(9 a.m. to 4.30 p.m.) on the day of expiry of the contract.

5.0 NSDL STARTS INSTANT SMS TO CHECK FRAUD
In a bid to check misuse of investors account by stock brokers, the National Securities Depository (NSDL) has started providing instant SMS alerts to investors for any debt or credit transactions in their account.

6.0 MERCHANT BANKS CAN’T REFER CLIENTS FOR NON-MARKET INVESTMENTS: SEBI
SEBI has said while rejecting a plea by Barclays Securities that the Merchant Bankers cannot refer clients for alternative investments beyond securities market, such as corporate deposits and real estate.

7.0 PARTICIPATION IN CURRENCY FUTURES & OPTIONS
It has been decided that the FFMCs and the Ads Category -II [which are not Regional Rural Bank(RRBs), Local Area Banks (LABs), Urban Co-operative Banks (UCBs) and Non-Banking Financial Companies (NBFCs)], having a minimum net worth of Rs.5 crore, may participate in the designated currency futures and currency options on exchanges recognized by the SEBI as clients only for the purpose of hedging their underlying foreign exposures.

CORPORATE LAW

1.0 ARBITRATOR BOUND TO GIVE REASONS FOR AWARD OTHERWISE INVALID
The Supreme Court has held that an arbitrator is bound to give detailed reasons for his award and if he does not do so, the award will be invalid.

2.0 COMPENSATION FOR LAND ACQUIRED TO BE BASED ON FAIR MARKET VALUE - SUPREME COURT
The compensation for land acquired should be based on the fair market value received for similar land in the neighbourhood, but not sold in auction. This was because auction sales stood on a different footing. In auction, there is an element of competition triggered by "human ego, and desire to do better than other
competitors. This leads to high prices. On the other hand, when the auction is by banks, financial institutions or courts, "there is an element of distress, a cloud regarding title, and a chance of litigation." These factors depress the price. Therefore, auction price should not be the criterion for calculating compensation for acquired land.

**Citation:** Karnataka Housing Board vs. Land Acquisition Officer.

### 3.0 TRADEMARK, PATENT SEEKERS GET ACCESS TO DATABASE

Patent and trademark seekers will no longer have to wait for weeks to get the go-ahead for their applications from the government's patent registrar. The commerce and industry ministry has thrown open the entire trademark and patent database for free online searches. The Controller General of Patents, Designs and Trademarks is in charge of clearing intellectual property registrations in the country. The new search facility also allows users to look for pictures and logos, under the Vienna Classification Code adopted by the World Intellectual Property Organization (WIPO). The Vienna Code breaks down visual images into categories and sections so as to enable any applicant to crosscheck if similar designs, logos or images are registered in another entity's name. Though the search facility has been made free, the cost of patent and trademark applications has been raised from Rs. 2,500 to Rs. 3,500, effective from December 29, 2010.

### 4.0 FLYERS CAN NOW GET REFUND ON ALL NON-REFUNDABLE TICKETS

In a big relief to air travellers, domestic airlines have agreed to refund passengers all costs barring the base fare if a non-refundable ticket is cancelled. However, passengers can avail this facility only if they cancel their tickets two hours prior to the flight departure.