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EDITORIAL

CA PROFESSION - FAST CHANGING SCENARIO



CA Vinod Jain*

The Profession of Chartered Accountants is witnessing a major shift in professional requirements, practices and expectations of clients and employers. The following major changes require attention :

- The various taxation statutes including value added tax, income tax, service tax and corporate laws are becoming compliance oriented and procedural requirements have been increased significantly.
- The use of technology and electronic filing has resulted into new problems of mismatches resulting into high demand in case of VAT. Also in case of tax deduction at source (TDS), it is becoming very difficult to obtain credit of tax deducted by other parties, even if Form 26AS is reflecting such deductions. Some times technical error may even impact reflection of credit in 26AS. The Income Tax department is not even considering 26AS as final and is relying on its own system OLTAS. A large number of credits appearing in 26AS are not appearing on OLTAS resulting into unnecessary demands and delay in refund.
- A large number of penalties and prosecutions have been legislated for non compliance of procedure, imposing large fines and penalties. In fact, earlier penalties and prosecutions were limited to substantive defaulteg. Evasion of tax. The government have been misdirected to concentrate on procedures and compliances.
- The compliance oriented atmosphere do not leave enough time to Chartered Accountants community to advise businesses on financial planning, business planning and tax planning and planning for growth.
- The recent service tax amendment bringing out comprehensive taxation on all the services except

those which are in the negative list and list of exempted services, has created a lot of confusion and issues including -

- Exempting CAG services indicate that the government feels that the services provided by Municipal Corporation, State Governments and various central government departments, judiciary as well as legislature may be subjected to service tax. It is important to appropriately carve out legislative and regulatory function from the definition of services itself.
- A number of services have been brought into reverse charge method, for example, legal services. It is noted that the chartered accountants also provide services which are similar to the services being provided by lawyers under various legislations including representation before tax authorities, CLB, BIFR, ITAT, SEBI, SAT etc. - will these services be subjected to reverse charge?
- Education at school level is included in exempt services, which indicate that any person including coaching organizations providing education up to high school education is exempted from service tax.
- Services provided by a transporter is included in exempted services, except those which are provided by a transport agency. How to distinguish a transport agency and a transporter will result in litigation.
- The Direct Tax Code, GST and New Companies Bill being in the pipe line may bring further stream of comprehensive changes for which all of us as chartered accountants need to gear up. The Council of the Institute and the AICAS is actively working on taking up all necessary issues to the Government and at the same time warming up the profession to meet the new challenges.

**LATEST IN FINANCE****1.0 Relief in sight for power companies**

The power ministry is set to refer the issue of cost escalations and price pass - troughs to the Central Electricity Regulatory Commission, providing a ray of hope to power players such as Tata Power and Reliance Power and the state run NTPC.

2.0 RBI: Guidelines for issue of Certificate of Deposit (CDs)

- Eligibility: CDs can be issued by (i) Scheduled commercial banks (excluding RRBs & Local area bank); (ii) Selected FIs that have been permitted by RBI.
- Aggregate Amount: Banks have the freedom to issue but FIs can only issue within Specified limit
- Minimum size of issue should be 1 lakh.
- Maturity should not be less than 7 days and not more than one year.
- CDs may be issued at discount.
- CDs may be transferred as per the procedure prescribed. CDs in physical form only are freely transferable by endorsement and delivery.
- Banks/FIs cannot grant loans against CDs.
- The physical certificates may be presented for payment by the last holder.

Reference: RBI/2012-13/100, dated 02.07.2012

3.0 RBI: Guidelines for issue of Commercial Papers

- Eligible issuers of Commercial Papers: Corporates, Primary dealers & All India Financial institutions. A Corporate would be eligible only if:
 - Tangible net worth > 4 crores;
 - It has been sanctioned working capital limit by banks or FIs;
 - & classification of borrowal a/c should be Standard Asset.
- Rating Requirement: All eligible participants shall obtain a minimum credit rating of 'A2' from the agencies as specified by the RBI.
- Maturity: Minimum of 7 days & maximum

of up to 1 year.

- Denominations should be of ₹ 5 lakhs or multiples. Single investment should not be less than 5 lakhs.
- Limits & amount of CP: Aggregate amount = (Limit approved by BOD or quantum indicated by CRA, whichever is lower)
- Investment in CP: Individuals, banking companies, other body corporate, NRIs & FIIs (should be within limit).
- Procedure of issuance:
 - Every issuer must appoint an IPA for issuance of CP.
 - The issuer should disclose to the potential investors its financial position
 - After the deal confirmation, physical certificates will be issued to the investor or shall be credited to the investor's account with a depository.

Reference: RBI/2012-13/99, dated 02.07.2012

4.0 Exemptions from the provisions of the RBI Act, 1934**➤ Micro Finance Institutions**

Section 45-IA, 45-IB and 45-IC of the Reserve bank of India Act, 1934 (2 of 1934) shall not apply to any Non Banking Financial Company (NBFC) which is: -

- a. Engaged in micro financing activities, providing credit not exceeding ₹ 50,000 for a business enterprise and ₹ 1,25,000 for meeting the cost of a dwelling unit to any poor person for enabling him to raise his level of income and standard of living; and
- b. Licensed under Section 25 of the Companies Act, 1956; and
- c. Not accepting public deposits.

➤ Core Investment Companies

- a. The provisions of Section 45-IA of the Act shall not apply to a Non Banking Financial Company (NBFC) being a Core Investment Company (CIC) which is not a Systematically Important Core Investment Company (CIC); and
- b. The provisions of Section 45-IA (1)(b) of the Act shall not apply to a Non Banking



Financial Company (NBFC) being a systematically Important Core Investment Company (CIC) subject to the condition that it meets with the capital requirements and leverage ratio as specified in the said directions.

- c. The Non Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007 shall not apply to a Non Banking Financial Company (NBFC) being a Core Investment Company (CIC) which is not a Systematically Core investment Company.
- d. The provisions of paragraphs 15, 16 and 18 of these Directions shall not apply to a Systematically Important Core Investment company.

Reference: RBI/2012-13/29, dated 02.07.2012

5.0 External Commercial Borrowings (ECB) - Repayment of Rupee loans permitted

The Reserve Bank of India (RBI) has decided to allow Indian companies to avail of External Commercial Borrowings (ECBs) for repayment of Rupee loan(s) availed of from the domestic banking system and / or for fresh rupee capital expenditure, under the approval route, subject to them satisfying the following conditions:-

- i. Only companies in the manufacturing and infrastructure sector will be eligible to avail of such ECBs;
- ii. Such companies shall be a consistent foreign exchange earner during the past three financial years;
- iii. Such companies are not in the default list/caution list of the Reserve Bank of India (RBI); and
- iv. Such ECBs shall only be utilized for repayment of the Rupee loan(s) availed of for 'capital expenditure' incurred earlier and are still outstanding in the books of the domestic banking system and / or for fresh Rupee capital expenditure.

The maximum permissible ECB that can be availed of by an individual company will be limited to 50 per cent of the average annual export earnings realised during the past three financial years.

Authorised Dealer should ensure that the foreign exchange for repayment of ECBs is not accessed from Indian markets and the liability arising out of ECBs is extinguished only out of the foreign exchange earnings of the borrowing company.

Reference: A.P. (DIR Series) Circular No. 134, dated 25.06.2012.

6.0 Interest Rates on Rupee Export Credit interest subvention

Government of India has decided to extend interest subvention of 2% on rupee export credit on specified export sectors from April 1, 2012 to March 31, 2013.

Reference: RBI/2011-12/619, dated 26.06.2012

7.0 RBI relaxes Export Credit Refinance Facility

The Reserve Bank of India (RBI) has decided to enhance the eligible limit of the ECR facility for scheduled banks (excluding RRBs) from 15 per cent of the outstanding export credit eligible for refinance to 50 per cent, effective fortnight beginning June 30, 2012. This will provide additional liquidity support to banks of over 300 billion. The rate of interest charged on the ECR facility will continue to be the prevailing repo rate under the LAF, which is currently 8.0 per cent.

Reference: RBI/2011-12/603, dated 18.06.2012

8.0 Withdrawal of fore-closure charges / pre-payment penalty

The Reserve Bank of India (RBI) has decided that banks will not be permitted to charge foreclosure charges / pre-payment penalties on home loans on floating interest rate basis, with immediate effect.

Reference: RBI/2011-12/589, dated 05.06.2012

9.0 RBI signals green to Spectrum mortgage

In a major relief to the telecom industry, laden with high debt, the Reserve Bank of India (RBI) has given its green signal to the proposal to mortgage, spectrum. This will enable telecom companies to raise money from financial lending institutions.

10.0 Micro-lending norms to be eased in phases

One problem that has still persisted even after the introduction of the base rate system relates to the lack of transparency in the customer-



specific spread charged to a borrower over the base rate. The RBI governor also said that there have been complaints that the spread charged to a customer has been revised upwards without any apparent change in risk profile.

Also, where floating rate loans are concerned, existing customers have been disadvantaged vis-à-vis new customers with similar credit ratings, resulting in complaints about discrimination.

To address this, the Reserve Bank of India (RBI) has constituted a working group under the chairmanship of Deputy Governor, Mr Anand Sinha, to determine the principles that must govern proper, transparent and non-discriminatory pricing of credit. The working group is expected to submit its report by August 2012.

11.0 Interest subsidy scheme extended to end-March 2013 on Home Loans

Home loan borrowers will get interest subsidy at the rate of one per cent for loans up to ₹ 15 lakh taken during the current financial year, that is, 2012-13. However, the condition is that the cost of house should not exceed ₹ 25 lakh.

12.0 PM to retain Finance

Prime Minister, Dr. Manmohan Singh, has decided to keep the Finance portfolio for now. He will keep the portfolio till any further announcement is made.

13.0 Syndicate bank SME Funding

Syndicate Bank by revisiting its existing micro and small enterprises products now has brought all of them under one umbrella - 'SyndMSE' and have come out with a reduced interest rate, margin and liberalized terms and conditions to micro and small enterprises. Further to encourage micro enterprises, rebate in interest rate for prompt repayment has also been introduced.

The bank's board has also approved a policy for restructure/rehabilitation of potentially viable MSME units.

14.0 Apollo Hospitals allots 13.8 lakh shares to IFC in lieu of FCCBs

The Apollo Hospitals board has approved the allotment of 13.8 lakh equity shares to International Finance Corporation (IFC), Washington, as the latter insisted to convert their

Foreign Currency Convertible Bonds (FCCBs). With this, the company has no outstanding FCCBs.

IFC, a member of the World Bank Group, finances and provides advice for private sector ventures and projects in developing countries.

15.0 Gulf investors keen on India

The Finance Ministry has claimed that Qualified Foreign Investors (QFIs) in the Gulf were looking to invest for the medium and long term in India. They desired easy exit and entry, stability in policy and also lower tax.

FEMA

1.0 FIIs Investment in government debt long term and corporate debt long term infra category

The Reserve Bank of India (RBI), vide its circular dated 25.06.2012 has decided to enhance the existing limit for investment by SEBI registered Foreign Institutional Investors (FIIs) in government debt by a further amount of USD 5 billion taking the overall limit for FII investment in Government debt from USD 15 billion to 20 billion.

AUDIT

1.0 Cos' audited reports with qualifications to face SEBI scrutiny

A committee set up by the Securities and Exchange Board of India (SEBI) will scrutinise all auditor qualifications of balance sheets of listed companies and ask the management to restate numbers in case of violation of accounting rules. If, prima facie, the committee is of the view that the qualifications are significant and the explanation given by the management or the board's audit committee is unsatisfactory, the case may be referred to ICAI - FRRB.

2.0 Vote against reappointment of auditor, says IIAS

Institutional Investor Advisory Services (IIAS) has recommended the auditors must be rotated every six years and the signing partner must be rotated every three years to maintain independence. Hence, it also recommends voting against the reappointment statutory auditor and audit partner of companies not following this policy.



CAPITAL MARKET

1.0 E-voting mandated by SEBI

The Securities & Exchange board of India (SEBI) has mandated listed companies to use electronic voting for seeking shareholder approvals. This will enable greater shareholder participation in decision-making.

2.0 DRI Alerted SEBI about ADAG Cos Share Manipulation in 2008

The Directorate of Revenue Intelligence (DRI) had warned the Securities & Exchange Board of India (SEBI) in June 2008 that funds transferred through a Mauritius - based entity were being used to manipulate stock of two companies of the Anil Ambani - led Reliance Group.

3.0 Promoters to dilute stake - SEBI announces new share auction mechanism

The Securities and Exchange Board of India (SEBI), has made it easier for promoters of listed companies to dilute their stake and comply with public holding rules by next year.

Private sector companies as well as state-owned corporations must have a minimum public holding of 25% by August 2013. Till now, this could have been achieved through follow-on public offerings and institutional placement of stocks.

The Securities & Exchange board of India (SEBI) board, announced a simpler share auction mechanism that would help listed companies to attract investors. The regulator has provided institutional investors with the option of applying for shares either with 100% margin or with a lesser margin to be fixed by stock exchanges. But in the latter case, the bids cannot be changed.

4.0 Online applications, wider distribution for IPOs on cards

You will be able to invest in an initial public offer electronically. Markets regulator Securities and Exchange Board of India (SEBI) has said implementing e-IPOs is next on its agenda to revitalize the primary market.

5.0 Entry load will stay

The Securities & Exchange Board of India (SEBI) is not in favour of revoking the three-year ban on entry load. All these issues were discussed at a meeting called by the Finance Ministry with fund houses and SEBI officials.

Meanwhile, the regulator also indicated it is considering increasing the expense ratio limit, as well as providing mutual funds greater flexibility on expenses, within the overall limit.

6.0 China tells temples no listing

Buddhist and Taoist temples have no right to go public and list shares on stock exchanges, Xinhua news agency quoted Liu Wei, an official with the State Administration of Religious Affairs.

CORPORATE AND ECONOMIC LAWS

1.0 Imposing fees on certain e-forms filed with ROC, RD or MCA(HQ) under MCA-21 where at present no fee is prescribed.

The Ministry of Corporate Affairs (MCA) has decided that fees shall be applicable on the number of forms including form 23B regarding information by statutory auditor to the Registrar of Companies Act, 1956 pursuant to Section 224(1)(a) of the Companies Act, 1956.

The circular shall come into force w.e.f. 22.07.2012

Reference: General Circular No. 14/2012, MCA

2.0 Filing of Balance Sheet and profit and loss Account in Extensible Business Reporting Language (XBRL) Mode for financial year commencing on or after 01.04.2011

It has now been decided by the ministry to mandate the following select class of Companies

FINANCIAL INDICATORS

	Current Rate* (in %)	Month Ago (in %)	3 Month Ago (in %)	6 Month Ago (in %)
3 Month LIBOR (\$)	0.458	0.468	0.47	0.58
3 Month MIBOR (₹)	9.35	9.62	10.57	9.79
SENSEX	17489	16719	17243	16067
NIFTY	5306	5178	5244	4821
CRR	4.75	4.75	4.75	6
REPO	8	8	8.5	8.5
REVERSE REPO	7	7	7.5	7.5
Gold (per 10 gm)	29465	27834	28140	27555
Silver (per kg)	52283	57827	55554	51968
Crude (USD/bbl)	99.15	98.00	119.88	113.09
Rs. vs USD	55.81	55.37	51.20	52.22
Rs. vs Euro	68.59	69.21	67.16	66.79
Rs. vs Yen (₹100)	70.22	69.88	63.00	67.99
Rs. vs RMB	8.69	8.70	8.14	8.27
Rs. vs Pound	86.53	85.64	81.50	80.84
MCX Aluminium	105.45	107.30	105.00	108.80
MCX Copper	423.80	400.95	420.55	397.15

*As on 10th July 2012

(Sources: Bloomberg, NSE, BSE, RBI, MCX)



to file their Balance Sheet and Profit & loss Account in XBRL mode for the financial year commencing on or after 01.04.2011:

- i. All companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
- ii. All companies having paid up capital of Rupees five crore and above;
- iii. All companies having turnover of Rupees one hundred crore and above; or
- iv. All companies who were required to file their financial statements for FY 2010-11, using XBRL mode.

However, banking companies, insurance companies, power companies and Non-Banking Financial Corporations (NBFCs) are exempted from XBRL filing till further orders.

Reference: General Circular No. 16/2012, MCA

3.0 Foreign law firms can't open liaison offices in India: SC to RBI

The Supreme Court directed the Reserve Bank of India (RBI) not to allow foreign law firms to open liaison offices in the country.

The order was passed on an appeal filed by the Bar Council of India against a February judgment of the Madras High Court that allowed foreign advocates to visit India to offer legal advice to their clients.

It also clarified that under section 29 of the Advocates Act, 1961, the term 'practice' covers consultation, legal drafting and all other non-litigious matters, besides litigious matters.

The BCI had sought clarification on the Madras HC's order as it was opposed to an earlier ruling of the Bombay High Court, which had asked the BCI to take action against firms that were flouting provisions under the Advocates Act.

Based on the BCI's appeal, the Supreme Court also issued notices to 31 law firms in the country.

4.0 Large banks to fund Exporters: FinMin

Banks with overseas presence will have to extend credit directly or make funds available to exporters through smaller banks for which arrangements have to be finalized within a week, the finance ministry has told chief executives of public and private sector banks.

Big banks to lend through small banks with a mark - up of not more than 10 basis points.

TAXATION

1.0 E-filing of returns must if annual income above Rs.10L

The government made it compulsory for people with annual income of over Rs.10 lakh to file their tax returns for 2011-12 electronically.

2.0 Foreign Assets to disclose in tax return

With the new disclosure requirement, the penalty for concealing income - three times the tax evaded in addition to the payable tax - would now come into play for non-disclosure or inaccurate reporting of foreign assets as well.

3.0 GAAR may not apply to investments

Investors coming via Mauritius and Singapore may breathe easy, as the provisions of the General Anti-Avoidance Rules (GAAR) may not apply to their transactions. The government will also spare investors of Foreign Institutional Investors (FIIs) who route their investments through tax havens, provided the FII is a genuine residents the tax havens. To end uncertainty, a clarification will also be issued on retrospective amendments.

4.0 Tax benefits cannot be withdrawn from a past date: High Court

The Gujarat High Court (HC) verdict has thrown open the debate on constitutional validity of retrospective changes in the income tax laws. It has said that an amendment in income tax law, withdrawing benefits under a popular export incentive scheme, could not be done from a past date.

A division bench of acting Chief Justice Bhaskar Bhattacharya and Justice J B Padriwala has held that the amendment to section 80-HHC in 2005 seeking to withdraw incentives granted to exporters from 1998 was valid but could not be implemented retrospectively.

5.0 No PAN needed for people outside income tax bracket: High Court

The Karnataka High Court (HC) has held that people with income below taxable limit need not furnish Permanent Account Number (PAN). The High Court order came as a relief to thousands of individuals who are asked to provide PAN despite having income below the taxable limit. Section 206 AA of the Income-Tax Act, which became effective from assessment year 2010-11,



makes it mandatory for every person to furnish PAN in their transactions with banks and financial institutions.

6.0 Registration is not a mandatory Requirement to avail Cenvat Credit: CESTAT

The Delhi CESTAT in *M/s J R Herbal Care India Ltd. v/s CCE, Noida, Excise Appeal No. 847/08-SM* has upheld that nowhere in CCR, 02 or CCR, 04 there is any provision that Cenvat Credit relating to prior to registration would not be available to a manufacturer of excisable goods who is not registered. Actually the question before the Court arises as to where the Cenvat Credit can be denied just because assessee had not taken central excise registration during the period prior to registration under rule 9 of Central Excise Rules 2002.

7.0 Service Tax Negative List

With effect from 1st July 2012, all services besides being covered under negative list or exempted by notification will be liable to service tax @ 12.36%. Movement towards the negative list will result in reducing nearly 290 definitions and descriptions in the act to 54, and exemptions from existing 88 to 10.

Finance act has nailed down 17 activities which will be reckoned as non taxable for the purpose of levy of service tax. Thus apart from these, all other activities which are covered within the meaning and scope of definition of service will be made taxable.

8.0 Withholding tax on Iran oil trade soon

The Finance Ministry will shortly issue the much-awaited notification granting oil companies exemption from withholding tax on payments to Iran for oil imports in rupees.

Mrs Pratibha Patil, has also given her assent to the move. The Government has also received the required undertaking from the National Iranian Oil Company (NIOC) to go ahead with the operationalisation of the rupee payment mechanism.

9.0 Life insurance firms get relief; to be out of MAT regime

The Finance Ministry has withdrawn its proposal to bring life insurance companies under the Minimum Alternative Tax (MAT) regime.

10.0 Latest Judgments:

➤ Disallowance Due to Default in TDS / Section 40(a)(ia)

The Visakhapatnam ITAT bench in *Merilyn Shipping & Transports v/s ACIT, Range - 1, Visakhapatnam, 20 taxmann.com 244 (Visakhapatnam - Trib.) (SB)* has held that provisions of Section 40(a)(ia) are applicable only to amounts of expenditure which are payable as on 31st March of every year and it cannot be invoked to disallow expenditure which has been actually paid during previous year, without deduction of TDS.

➤ Fees For Technical Services / Section 9, Read With Article 12 Of DTAA Between India and Singapore (Royalties and Fees for Technical Services)

The Delhi ITAT bench in *Nimbus Sport International Pte. Ltd. v/s Deputy Director of Income Tax, Circle -2(2), International Taxation, New Delhi, 18 taxmann.com 105 (Delhi- trib.)* has held that services of production and generation of live television signal rendered by a non - resident company, is technical services liable to tax in India as 'fee for technical services'.

➤ Assessment / Reassessment / Revision / Appeal / Demand / Section 147

- **The Mumbai ITAT bench** in *Tata International Ltd. vs. DCIT* has held that non-supply of recorded reasons before passing reassessment order renders the reopening void u/s 147. Subsequent supply does not validate reassessment order.

- **The Mumbai High Court** in *CIT vs. Pruthvi Brokers & Shareholders Pvt. Ltd.* has held that assessee is entitled to raise claims before appellate authorities even if claim is not made in return of income.

➤ International Taxation / 10A / 10B / FTS / Royalty

- **The Kolkata ITAT bench** in *Dongfang Electric Corporation vs. DDIT* has explained the law on taxability of "turnkey contracts" for offshore & onshore supply.

➤ Penalty / Section 50C

The Ahmedabad ITAT bench in *Chimanlal*

Manilal Patel vs. ACIT has held that penalty u/s. 271(1)(c) is not leviable for breach of s. 50C

⇒ **Miscellaneous**

- **The Gujarat High Court** in *Avani Export & Anrs vs. CIT* has held that retrospective effect given to 3rd & 4th Provisos to s. 80HHC is ultra vires.
- **The Kerala High Court** in *CIT vs. Hindustan Latex Ltd.* has held that S. 43B(f) which allows deduction for leave encashment only on payment basis is ultravires.

- **The Mumbai High Court** in *CIT vs. Suresh R. Shah* has held that despite speculation activity and short period of holding, shares gain is STCG & not business profits.

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