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EDITORIAL

AUDITOR IS NOT A SCAPE GOAT

There has been a recent newspaper report wherein banks have been advised to file disciplinary case against auditors in case of default by the borrower. It appears that there is a significant gap in the understanding among various regulators, government and society about the actual and real role of an auditor and how to effectively utilise the audit work undertaken by the Auditors and the Audit report issued on the financial statements.

Auditors clearly understand that there is an expectation of the society that once an audit is undertaken, it will prevent occurrence of frauds and manipulation in the books of account or in the financial statements and the audit will ensure true and fair presentation of financial statements and statement of affairs of the audited entity. It may, however, be clearly noted that the transactions, documents or actions which are not brought on record, are extremely difficult for an auditor to identify. More particularly, when a fraud or manipulation is undertaken with the active connivance of top management team, it may still become more difficult to identify and pin point the fraud. Even the documentation, supporting vouchers as well as approval of the competent authorities are brought on record by such fraud team. Auditor is not a blood hound nor is the Auditor an investigator. The following points are necessary to be kept in mind by all the users of the audit services:

There are large numbers of instances where some miscreants may even forge the signatures and / or stamp of the auditors. It may therefore, be very necessary to confirm from the chartered accountant concerned as to whether he has authenticated such certificate or financial statements, before relying on the same.

- Auditors do not undertake verification of all the transactions (100%) and highly rely on testing of internal control mechanism and scientific audit sampling. Auditor is not present at the time of transactions and

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QUALITY OF CA EDUCATION – NEED FOR A MAJOR UPLIFT

ICAI has been making keen efforts to regularly upgrade the quality of education, training and examination and today the Indian CA qualification is the best in the world. However, in view of the fact that India is growing at a rapid pace, businesses are becoming larger and regulations are becoming complex, expectations from Indian chartered accountants are increasing phenomenally not only in India but also internationally. It has also been noted that the legal profession has significantly upgraded their level of education in the recent past by introducing national law schools and universities in various parts of the country, specially through their 5 year programme.

The CA education has been primarily delivered as a distant education coupled with training under a chartered accountant firm. The successful model followed by the profession for more than 6 decades has been recently impacted by a section of students and members by not undertaking their training and education seriously and by concentrating only on somehow qualifying the CA final examination. It is important for the Institute to examine the following suggestions :

- To significantly upgrade the level of examination at the CPT (enter) level, IPCC (CA intermediate) level as well as in the final level by ensuring high level practical oriented questions in the examination papers. This may include case studies and projects.
- ICAI may also consider to make it mandatory that all the students undergoing training are required to take permission of the Institute, on the recommendation of the chartered accountant concerned (Principal) before undertaking any kind of coaching or tuition, by a specific approval in each case, similar to form 112 for additional qualification.
- It may very import to ensure that the quality of such coaching institutions are up to the mark and they meet

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LATEST IN FINANCE

1.0 MF EXPOSURE TO HOUSING FINANCE RELAXED

In light of the important role played by the housing finance companies (HFCs) in the housing sector, the Securities & Exchange Board of India (SEBI) has been decided that an additional exposure not exceeding 10% of net assets of the scheme shall be allowed only to HFCs as part of financial services sector for prudential limits in debt oriented schemes.

2.0 MFs CAN NOW TAKE PART IN CDS MARKET

The Securities and Exchange Board of India (SEBI) has allowed mutual funds to participate in the Credit Default Swaps (CDS) market as well as in the repo in corporate debt securities segment.

3.0 INDIA TO GET RECORD \$70 Bn REMITTANCES IN 2012: WORLD BANK

The World Bank has said that India will receive record \$70 billion remittances in 2012, topping the list of developing countries which are expected to receive a total of \$406 billion this year.

According to the latest report by the bank, after India, China will stand second with \$66 billion, followed by Mexico and the Philippines with \$24 billion each.

4.0 RBI SYNCs INFRASTRUCTURE DEFINITION WITH GOVT's

The Reserve Bank of India (RBI) has come up with a new definition of infrastructure for the purpose of banks' lending.

With the move, the central bank has harmonised its definition of infrastructure with that of master list of infrastructure sector / sub-sectors notified by the Central Government in March this year.

5.0 NORMS REVISED FOR INSURERS INVESTING IN CREDIT DEFAULT SWAPS

Insurance Regulatory and Development Authority (IRDA) has revised its draft guidelines

for insurers investing in Credit Default Swaps (CDS) on corporate bonds, allowing them to buy unlisted bonds, but only for infrastructure companies.

A Credit Default Swaps (CDS) is an agreement that the seller of the instrument will compensate the buyer in event of the loan default.

6.0 CHANGES IN MONEY LAUNDERING LAW GET LOK SABHA OK

The updated money Laundering law allows for attachment and confiscation of the proceeds of crime even sans a conviction so long as authorities can prove that offence of money laundering has taken place and property in question was involved in the act.

The bill has also expanded the list of entities that are required to report high value transactions to the financial intelligence unit.

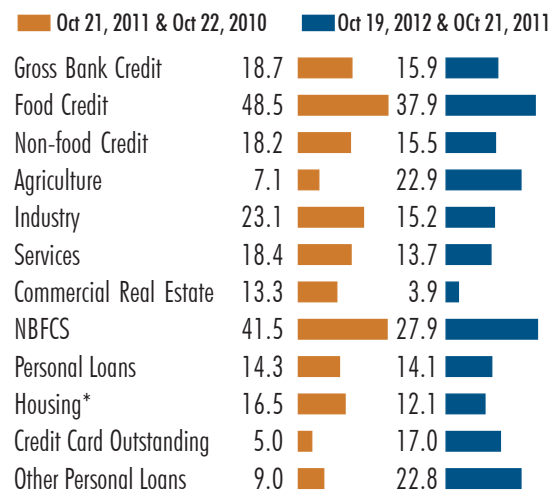
7.0 US EXEMPTS FOREX SWAPS FROM NEW RULES

The US treasury has exempted foreign exchange swaps and forwards from post-crisis requirements imposed on the derivatives market.

The financial instruments, used to speculate or to hedge fluctuations in currencies, will not be forced on to clearing houses or be required to be traded on exchanges.

8.0 SECTORAL FLOW OF BANK CREDIT

Variation % (Year-on-Year)



*(Including Priority Sector Housing)

Source: RBI



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AUDITOR IS NOT.....

he has to rely on documentary and circumstantial evidence.

- Audit will ensure detection and prevention of most of the fraudulent and manipulative practices. However, it cannot guarantee a complete absence of fraud.
- The audit report, notes to accounts and other disclosures in the financial statements authenticated by the auditors are very important to be examined and understood carefully, If necessary, with the help of an expert who understand such documents and disclosures and their implications.
- There are large numbers of instances where some miscreants may even forge the signatures and / or stamp of the auditors. It may therefore, be very necessary to confirm from the chartered accountant concerned as to whether he has authenticated such certificate or financial statements, before relying on the same.
- Only a full-fledged audit provide a safety from the risk and compilation of accounts or a copy of certified financial statements, without a proper audit report, is of no value.
- Obtaining the signatures of a chartered accountant on provisional/draft financial statements or obtaining similar signatures on projected balance-sheets/financial statements are completely wrong on the part of the user, as in the absence of full-

Auditors do not undertake verification of all the transactions (100%) and highly rely on testing of internal control mechanism and scientific audit sampling. Auditor is not present at the time of transactions and he has to rely on documentary and circumstantial evidence.

fledged audit report, such certification has no legal validity.

- In case a client (Borrower) , subject to audit is not able to repay debt, it may arise due to genuine business reasons or siphoning of funds by the promoters through colorful devices. It is, therefore, very important for all lenders to not only verify the audited financial statements but also to physically examine the progress of the project, verification of relevant assets, documents, papers.
- In desirable cases, may be beyond a specified size of exposure, the lenders should appoint special auditors to examine the books of accounts and records of the borrower at the time of disbursement as well as during the currency of loan with a well defined scope, coverage and reporting requirement, so that all the requirement of lenders are duly met.
- It has been noted that in certain cases the lenders are not undertaking due diligence and their credit monitoring is very poor. It is also important to undertake detailed training program for all the lenders' officials, in consultation with the Institute of Chartered Accountants of India so that lack of knowledge and diligence should not result into non performing assets.

In all those cases where any chartered accountant is found to be a party to fraud or is grossly negligent, in any case is being severely punished by the CA Institute very actively.

9.0 BANK FINANCE FOR PURCHASE OF GOLD BANNED

The Reserve Bank of India (RBI) has been advised that no advances should be granted by banks for purchase of gold in any form, including primary gold, gold bullion, gold jewellery, gold coins, units of gold Exchange Traded Funds (ETF) and units of gold Mutual Funds. However, banks can provide finance for genuine working capital requirements of jewellers. The scheme of Gold (Metal) Loan detailed vide Circular DBOD.No.IBS.BC/1519/23.67.001/1998-99

dated December 31,1998, as amended from time to time, will continue to be in force.

Reference: RBI/2012-13/296

10.0 SEBI SETS OUT RULES TO REJECT DRAFT OFFER PLANS

For the first time, stock market regulator the Securities & Exchange Board of India (SEBI) has come out with rejection criteria for draft offer documents. Earlier, SEBI used to issue observations for every offer document and when issuers fulfilled the conditions, they were allowed to go ahead and issue securities.



FEMA

1.0 ED PROBING BHARTI WALMART, FLIPKART CASES: GOVT

The Government has referred "Bharti Walmart and Flipkart" Online Service's alleged violation of Foreign Direct Investment (FDI) regulations to the Enforcement Directorate.

2.0 GOVT OPENS WINDOWS FOR FIIs TO INVEST \$10 BILLION MORE IN DEBT

The Government has opened two new windows of \$5 billion each for long-term foreign investors. This will raise the overall Foreign Institutional Investor (FII) limit in debt instruments.

However, the Finance Ministry found no case for raising the External Commercial Borrowings (ECBs) limit. At present the limit is \$30 billion and another \$10 billion for refinance of rupee debt.

(In \$ billion)

LIMIT FOR FII INVESTMENT IN DEBT

Particulars	Existing	New
Corporate Debt (short and long term)	45	45
Corporate Debt (new window for long term)	–	5

3.0 RBI TO INTERVENE ONLY IN CASE OF EXTREME VOLATILITY: DEPUTY GOVERNOR

CURRENCIES AGAINST \$

	Oct 19, 2012	Nov 19, 2012	% change
South Korean won	1,103.45	1,086.98	1.49
China renminbi	6.25	6.23	0.30
Indonesian rupiah	9,629.00	9,632.00	-0.03
Malaysian ringgit	3.05	3.06	-0.38
British pound	0.62	0.63	-0.58
Euro	0.77	0.78	-1.91
Indian rupee	53.84	55.07	-2.28

Source: Bloomberg

4.0 EXTERNAL COMMERCIAL BORROWINGS (ECBs) FOR SMALL & MEDIUM ENTERPRISES (SMEs)

The Reserve Bank of India (RBI) has decided to include Small Industries Development Bank of India (SIDBI) as an eligible borrower for availing of ECB for on-lending to Micro Small and Medium Enterprises (MSME) sector, as defined under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, subject to the following terms and conditions:-

- A) Such on-lending by Small Industries Development Bank of India (SIDBI) shall be to the borrowers directly either in INR or in foreign currency (FCY).
 - (i) The foreign currency risk shall be hedged by Small Industries Development Bank of India (SIDBI) in full in case of on-lending to Micro Small and Medium Enterprises (MSME) sector in INR.
 - (ii) On-lending in foreign currency shall be subject to Regulation 5(5) of Foreign Exchange Management Act (FEMA) Notification No. 3/2000-RBI dated May 03, 2000, as amended from time to time and shall only be to those beneficiaries which have natural hedge by way of foreign exchange earnings.
- (B) Availment of External Commercial Borrowing (ECBs), including the outstanding ECBs, up to 50 per cent of their owned funds, for on-lending to MSME sector, will be under the automatic route and beyond 50 per cent of owned funds, will be under the approval route, subject to a ceiling of USD 500 million per financial year.
- (C) The proceeds of ECB availed by SIDBI, shall be used for on-lending to MSME sector only for the permissible end-uses as provided under the extant ECB policy.

All other conditions of ECB, such as recognized lender, all-in-cost, average maturity, prepayment, refinancing of existing ECB and reporting arrangements shall remain unchanged

Reference: RBI/2012-13/284



CAPITAL MARKET

1.0 SEBI TO GET CALL DATA RECORDS IN SPECIFIC CASES

The Securities and Exchange Board of India (SEBI) will soon be able to access call data records of persons who are being probed for capital market malpractices. Access to such records is expected to add a lot of firepower to the Securities and Exchange Board of India (SEBI's) investigation capabilities.

2.0 INFOSYS TO TRANSFER ADR FROM NASDAQ TO NYSE EURO NEXT

Infosys, India's second-largest information technology services company said that it would be transferring the listing of its American Depository Receipts (ADR) to the New York Stock Exchange (NYSE) from the Nasdaq Global Select Market (NASDAQ). An official release from the company also said it was seeking to list ADS on the Paris and London exchanges of NYSE Euro next.

3.0 MFS ALLOWED TO LEVY BROKERAGE, BUT WITH LIMIT

The Securities & Exchange Board of India (SEBI) said that the brokerage and transaction cost incurred for the purpose of execution of trade may be capitalized to the extent of 12 Basis Points and 5 Bps for Cash Market Transactions and Derivatives Transactions.

4.0 ALL IPO DISCLOSURES ARE LEGALLY BINDING ON COMPANIES: SEBI

The Securities & Exchange Board of India (SEBI) said that a listed company is legally bound to abide by the commitments made in its public offer documents, even if they do not fall under mandatory requirements, and post Initial Public Offer (IPO) are claimed to have been made inadvertently.

5.0 SEC ASKS COURT TO SLAP \$15-MN FINE ON RAJAT GUPTA

The United States's (US) Securities Exchange Commission (SEC) has asked a court to slap a maximum penalty of \$15 million on India-born fallen Wall Street titan Rajat Gupta and permanently bar him from serving as director of

any publicly-traded firm for his "terrible breach of trust" by indulging in insider trading.

6.0 BONUS STRIPPING-A TREASURY TOOL

Corporate treasuries, desperate to make a little more money in a difficult market, are believed to be pushing some of the Asset Management Companies (AMCs) to offer bonus units that can be traded to lower tax. Bonus units in debt plans "a favourite of many treasurers" help companies set off gains against 'managed' losses arising out of a strategy known as 'bonus stripping'. The trade involves investors buying fund units before the record date, pocketing the bonus units and then selling the original units (bought before the bonus record date) at a lower net asset values (NAV) (which drops post bonus).

7.0 POST FLASH CRASH, SEBI PLANNING NORMS FOR ANNULMENT OF TRADES

The Securities and Exchange Board of India (SEBI) will soon frame guidelines related to annulment of trade in the event of a flash crash. The capital market regulator's move follows flash crash that saw the benchmark Nifty losing 900 points in a matter of seconds.

8.0 SEBI TO UNVEIL MARKET-FRIENDLY STEPS, CUT TRANSACTION CHARGES

The mandate given to the board of the Securities and Exchange Board of India (SEBI) is clear. The 'feel good' euphoria created by the government by way of reforms needs to be continued and supported by market-friendly measures.

INDIRECT TAXATION

1.0 TDSAT QUASHES GOVT MOVE TO TAX BROADBAND SERVICES

The Telecom Disputes Tribunal quashed the government's plans to charge internet service providers (ISPs) a fee of 8% of their annual revenue from April 2013. The tribunal upheld an Internet Services Providers Association of India (ISPAI) petition challenging the government's bid to tax internet and broadband, industry body representing ISPs had appealed to the Telecom Disputes Settlement & Appellate Tribunal



(TDSAT) for quashing the government's move, claiming it would force a change in the license agreement without mutual consent.

2.0 SOME IMPORTANT JUDGEMENTS

- **The Mumbai CESTAT** held that so long as duty is paid either on goods or service, assessee is rightly entitled for credit, even if such duty is wrongly charged /paid by supplier.

Citation: - Racold Thermo Ltd. Vs CCE, Pune, [2012] 28 taxmann.com 79 (Mumbai - CESTAT)

- **The New Delhi CESTAT** held that date of receipt of consideration is date of encashment of cheque; and not date of receipt of cheque towards value of services.

Citation: - Sarvashaktiman Traders (P.) Ltd. Vs CCE, Kanpur, [2012] 28 taxmann.com 19 (New Delhi - CESTAT)

CORPORATE AND ECONOMIC LAWS

1.0 SECTION 138: SIGNATURE VARIATION IN CHEQUE

The Supreme Court set aside the view of the Gujarat high court which held that prosecution for issuing a dishonoured cheque was valid only in cases where the cheque is dishonoured either because the amount of money is insufficient to pay the cheque amount or the cheque amount exceeds the amount arranged to be paid from the account.

Dishonour of a cheque on the ground that the signatures of the drawer does not match the specimen signatures available with the bank does not, according to the high court, fall in either of the two contingencies. In such cases prosecution was not permissible.

The Supreme Court overruled this decision and stated that so long as the change in the signature is brought about "with view to preventing the cheque being honoured the dishonour would become an offence under Section 138 of the Negotiable Instruments Act, subject to the conditions being satisfied." There may be change in the directors of a company or other valid reasons for the mismatch between the signatories

on the cheque. These cases would not attract the penal provisions.

2.0 PERMANENT EPF NUMBER

After launching an online passbook facility for subscribers, the Employees' Provident Fund Organization (EPFO) is now planning to roll out a number portability system that will make the 'AADHAAR' card number a permanent EPF account number for an employee throughout his career.

DIRECT TAXATION

1.0 RAJIV GANDHI EQUITY SAVINGS SCHEME NOTIFIED

The Central Board of Direct Taxes (CBDT) has notified The Rajiv Gandhi Equity Savings Scheme (RGESS), to encourage small investors to channelise their savings into domestic capital markets.

The new retail investor will be eligible for a deduction on the actual amount invested in 'Eligible Securities' in the first financial year, subject to maximum deduction limit of ₹ 50,000.

2.0 I-T DEPT'S CLAIMS ON TRANSFER PRICING UP 85% IN FY12

Transfer pricing audit per year	Assessment Year	Amount of adjustment in Income (in ₹ cr)
2005-06	2002-03	1220
2006-07	2003-04	2287
2007-08	2004-05	3432
2008-09	2005-06	7754
2009-10	2006-07	10908
2010-11	2007-08	24111
2011-12	2008-09	44532

3.0 NO DEPRECIATION FOR NON-COMPETE FEE

The Delhi high court, in the case of sharp business systems held that the non-compete fee paid is not a depreciable intangible asset as defined



under the income tax act, 1961.

It reasoned that the rights under the definition of "intangible asset" - which expressly refers to 'know-how', 'patents', 'copyrights', 'trademarks', 'licenses' and 'franchises' - spell out an element of exclusivity that ensures to the assessee as a result of the ownership. These rights are exclusive in the sense that the owner can assert them against the world at large (in rem, in legal parlance).

Further, these rights, including goodwill, can be traded or transferred. However, in the case of a non-competition agreement, the advantage is restricted only against the former joint venture partner (in personam). The non-compete right is not alienable and is purely personal. The court concluded that the non-compete fee would not result in an intangible asset that qualifies for depreciation.

4.0 NEED TO REVISIT DTC AND GST PROVISIONS: SHOME

Parthasarathi Shome, director and chief executive, Indian Council for Research on International Economic Relations said that there was a need to look again at the provisions of the proposed direct taxes code (DTC) and the goods and services tax (GST).

There should be fresh consultation over DTC and the structure of GST was not being put together in an ideal way, he said. "Construction of GST is not happening the way it should. We should have a GST that makes sense, and (where) goods and services are treated equally.

Shome, who also heads an expert committee set up by the Prime Minister to address foreign investor concerns on the much-dreaded General Anti-Avoidance Rules (GAAR), made these comments at an interactive session organized by the Merchants' Chamber of Commerce.

5.0 TAX RESIDENCY CERTIFICATE MANDATORY FOR FOREIGN INVESTORS

All foreign investors will have to produce tax residency certificates (TRC) of their base nation to claim benefits under the double taxation avoidance treaty from April 1, 2013.

6.0 CBDT PANEL RECOMMENDS 14 TAX ACCOUNTING STANDARDS

A The Central Board of Direct Taxes (CBDT) appointed committee has recommended as many as 14 tax accounting standards.

These standards, also known as TAS, if and when adopted, will have a significant impact on computation of income chargeable to tax. The Central Board of Direct Taxes (CBDT) had in December 2010 set up this committee to study the harmonization of accounting standards issued by the CA Institute with the direct tax laws in India.

7.0 SOME IMPORTANT JUDGEMENTS

- **The Calcutta High Court** held that where scheme of arrangement was approved by overwhelming majority of shareholders, Court is not competent to question such decision on ground that scheme would increase promoters' shares.

Citation: - J.K. Agri Genetics Ltd. Vs Union of India, [2012] 27 taxmann.com 339 (Calcutta)

- **The Bangalore ITAT** held that Premium paid on Keyman insurance policy by a firm on life of its partners is revenue expenditure.

Citation: - Emdee Apparels Vs ACIT, Bangalore, [2012] 28 taxmann.com 10 (Bangalore - Trib.)

FINANCIAL INDICATORS				
	Current Rate* (in %)	Month Ago (in %)	3 Month Ago (in %)	6 Month Ago (in %)
3 Month LIBOR (\$)	0.31	0.31	0.41	0.47
3 Month MIBOR (₹)	8.72	8.68	8.87	9.62
SENSEX	19355	18846	17767	16719
NIFTY	5888	5738	5364	5178
CRR	4.25	4.25	4.75	4.75
REPO	8	8	8	8
REVERSE REPO	7	7	7	7
Gold (per 10 gm)	30886	31415	31951	27834
Silver (per kg)	60699	59933	62065	57827
Crude (USD/bbl)	108.01	107.25	114.81	98.00
Rs. vs USD	54.23	54.34	55.52	55.37
Rs. vs Euro	70.94	69.43	70.85	69.21
Rs. vs Yen (₹ 100)	64.86	68.31	70.99	69.88
Rs. vs RMB	8.70	8.63	8.75	8.70
Rs. vs Pound	87.53	86.97	88.85	85.64
MCX Aluminium	115.45	103.65	114.00	107.30
MCX Copper	444.60	416.40	450.00	400.95

*As on 10th Dec. 2012 (Sources: Bloomberg, NSE, BSE, RBI, MCX)

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QUALITY OF CA EDUCATION.....

various norms prescribed by the Institute including teaching timing, number of students in a class, number of hours for which continuous education can be given, level of fee charged and the quality of education is at high level on the lines prescribed by ICAI and compliance of similar other parameters as may be decided based on consensus arrived at after a debate.

- 4. ICAI may also consider mandating class room teaching by ICAI itself by creating necessary

infrastructure, all across India to ensure high quality education at reasonable cost. It is important to ensure that a minimum 3 months to 6 months class room education is provided to every CA final students, before the final examination by the Institute itself. This may require small restructuring and if necessary training period can be curtailed to 2years 6 months, which may be followed by the class room training of about 3 to 6 months before the CA Final examinations. This will require adequate financial resources. This is not difficult to achieve over a period of 2 years from the date of the finalization of the blue print plan and once the council is convinced through consensus.

- Risk Management
- Internal Audit Services
- Management Information Systems
- Fraud Detection & Investigation
- Business Process Reengineering



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