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EDITORIAL

FINANCE MINISTER: ARE YOU LISTENING!

The Finance Minister promised to bring out a new tax law which is yet to be unfolded. The Union Budget exercise is already on and in this backdrop, some important suggestions require consideration in the interest of the society and the Country as a whole:

- Territory Based Taxation:** Hong Kong, Pakistan and several other countries tax incomes of their residents only on income accruing or arising within their respective territories. India Inc. is developing multi-nationally and the Government may consider exempting international income for Indians including Income from Royalty, Know how fee, Consulting, interest and even Manufacturing and Trading operations.
- National Goods Services Tax (GST) :** The law on VAT has stabilized. The Government should withdraw the Central Sales Tax completely to increase inter-state trade of goods and increase economic activity. The Government may also expedite the introduction of unified GST to cover the entire gamut of taxation on goods and services. Being one unified tax, the cost of administration for the Central and State Governments shall be lower on one hand; and at the other by providing entire CENVAT credit for Excise Duty, Service Tax, Sales Tax, VAT the provider of goods and services will gain for simplicity in procedures. Needless to say that the consumer shall be the ultimate beneficiary. Allocation of revenue between the Centre and States may need to be worked out in harmony to make the concept successful under Indian Political conditions.
- Fringe Benefit Tax:** In the garb of taking employee related perquisites, the government is actually taxing genuine business expenses. Fringe Benefit Tax has actually become a tool for tax avoidance and tax planning and benefit large MNCs to pay low tax benefits to employees and others. There is no justification called for separate return or separate assessment, etc. This tax has opened a floodgate of litigation. The Central Board of Direct Taxes Circular

Contd. 3

PROFESSIONAL THREAT : Lawyers move Court against Chartered Accountants' legal right to argue before Income Tax Appellate Tribunal (ITAT)

The Bar Council of India has challenged the right of Chartered Accountants' to practice before Income Tax Appellate Tribunal (ITAT) and other similar judicial authority by filing a writ petition in Delhi High Court, which is listed for hearing on January 18, 2006.

All India Chartered Accountants' Society (AICAS) as well as The Institute of Chartered Accountants of India (ICAI) have decided to implead themselves to oppose the writ petition. The writ is based on Section 29 of The Advocates Act, 1961 which permits only advocates to practice before judicial and other authorities. Whereas Section 288 of the Income Tax Act, 1961 gives unrestricted power to Chartered Accountants to appear before the ITAT. In the writ so filed, Section 288 is being challenged before the court.

Appeal to Chartered Accountant Fraternity

The Chartered Accountants are requested to send their views and support to All India Chartered Accountants' Society (AICAS) to enable them to contest this matter vigorously and the Chartered Accountants are hereby appealed to contribute generously in favour of "All India Chartered Accountants' Society" by account payee cheques towards the legal cost.

The cheques and/or suggestions can be sent at following address: -

All India Chartered Accountants' Society
ELCINA House, 422 Okhla Industrial Estate,
Behind Modi Flour Mill, Opp. Punjab National Bank,
New Delhi - 110 020 Email: cfoworld@vsnl.net



All India Chartered Accountants' Society
MEMBERSHIP OF SOCIETY

For Society's Membership Form and details, please see Page No. 4



All India Chartered Accountants' Society
Announces



18 hours of Intensive Professional Learning

WORKSHOP ON SERVICE TAX

3 DAYS WORKSHOP
from 17th to 24th December 2005
(17th, 23rd & 24th)

from concepts to practice
TIMINGS:
1.30 p.m. to 8.30 p.m.

36 hours of Intensive Professional Learning

3rd ANNUAL WORKSHOP ON DIRECT TAXES

6 DAYS WORKSHOP
from 16th to 31st January 2006
(16th, 19th, 20th, 23rd, 24th & 31st)

TIMINGS:
1.30 p.m. to 8.30 p.m.

VENUE:

India International Centre (IIC), Annexe Building, Lecture Hall, 40, Max Mueller Marg, New Delhi - 110003

for details please see page no. 5

for details please see page no. 5

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LATEST IN FINANCE

1.0 INSURE AND GET 'AAA' RATINGS

Indian companies now have the option of "buying" a triple-A rating and bring down the cost of their overseas debt issues. All they need to do is buy an insurance cover offered by general insurers in the United States.

The cover offers the investors in debt instrument, a guarantee of 'AAA' quality of assets.

2.0 E-FUNDS TRANSFER SYSTEM GOES LIVE

RBI has recently commenced the live operation of the National Electronic Funds Transfer (NEFT). This system will enable retail customers to transfer funds instantly, provided the issuing bank and receiving bank are part of the NEFT system.

As of now, it takes seven days for funds to be transferred in an inter-city transfer and three days for an intra-city transfer and only high value transactions were possible instantly through Real Time Gross Settlement (RTGS). Now, with NEFT, funds will be transferred on the same day and even small depositors can enjoy the facility of instant transfer.

3.0 ICD MARKET IS NOW INACTIVE

Unlike the Certificates of Deposit and Commercial Paper markets, which have witnessed a huge jump, the inter-corporate deposits (ICDs) market has now become inactive.

Corporates having surplus funds now prefer to deploy it with mutual fund houses or bank deposits, which are considered to be a safer heaven than lending it to a corporate, which may default in the transaction. At the same time, the borrower would prefer to fund his requirements through bank loans instead of the ICD route, which has led to an inactive ICD market.

4.0 DEBT RESTRUCTURING MECHANISM FOR SMEs

RBI has further issued a clarification in respect of recently issued guidelines on debt restructuring of Small & medium enterprises (SMEs). The guidelines provided that accounts involving wilful default, fraud and malfeasance are not eligible for restructuring.

As per the clarification, an opportunity shall be provided to the borrower to make representation before final classification is made. While corporate indulging in frauds and malfeasance will continue to remain ineligible for restructuring under the Debt Restructuring Mechanism for SMEs, banks may review the reasons for classification of the borrower as wilful defaulter specially in old cases where the manner of classification of a borrower as a wilful defaulter was not transparent and satisfy itself that the borrower is in a position to rectify the wilful default provided he is granted an opportunity under the Debt Restructuring Mechanism for SMEs.

Such exceptional cases may be admitted for restructuring with the approval of the Board of Directors of the banks only.

(Source: RBI/2005-06/205 dt. 10.11.2005)

5.0 BANKS INCREASED NRE DEPOSITS RATES

The Reserve Bank of India has allowed Banks to pay higher interest on repatriable non-resident external (NRE) rupee deposits. The central bank has raised the ceiling on interest rates on NRE deposits for one to three years by 25 basis points to 75 basis points above the London Inter-Bank offered Rate (Libor) swap rates.

One year Libor, to which banks link the NRE deposits, is now 4.8 per cent.

6.0 RBI PROPOSED SPECIAL ACCOUNT FOR FII FUNDS

According to a recent RBI proposal, Foreign Institutional Investors (FII) may need to channel funds through a special non-resident (NR) account. This will give the monetary regulator stronger means to monitor the flow of FII investments to check if undesirable funds are coming into India.

7.0 ECB - CLARIFICATION BY RBI

RBI has clarified that Special Purposes Vehicles (SPVs) or any other entity, notified by the Reserve bank, set up to finance infrastructure companies/ projects exclusively will also be treated as financial institutions. ECB by such entities will be considered under the approval route on case to case basis.

With a view to facilitate capacity expansion and technology upgradation in the Indian Textile industry after the phasing out of Multi-Fibre Agreement, bank will be allowed to issues guarantees, stand by letter of credit, letter of undertaking or letter of comfort in respect of ECB by textile Companies for modernization or expansion of their textile units. Such applications will be considered under the automatic route subject to prudential norms.

(Source: RBI/2005-06 dt. 4.11.2005)

8.0 FDI IN TERRESTRIAL BROADCASTING FM

The Government of India has permitted foreign investment including FDI, NRI and PIO investments and portfolio investments upto 20% equity for FM Radio's Broadcasting Services subject to such terms and conditions as may be specified from time to time.

(Source: Press Note No. 6(2005 Series) dt. 15-11-2005)

9.0 IOB GETS NOD FOR BHARAT OVERSEAS TAKEOVER

The government has given the green signal to the state-owned Indian Overseas Bank to gain control of Bharat Overseas Bank (BoB), a Chennai-based private bank.

10.0 BANKS FIX FLOOR RATE FOR FIRMS

The entire Indian banking industry has decided not to lend to corporates below 6.75 per cent interest rate for short-term loans. For the long-term loans of over 12 years, the floor rate has been fixed at 9 per cent. These floor rates will be revised depending on the movement of interest rates. Except ICICI Bank, all private and PSU banks are united. Bankers refused to describe the move as cartelisation.

11.0 FDI IN ARCS

RBI in consultation with Government of India has decided to permit persons/entities eligible under the Foreign Direct Investment (FDI) route, other than FIIs to invest in the equity capital of Asset Reconstruction Companies (ARCs) registered with the Reserve Bank of India. The Investment will be made subject to the following conditions:

(a) Maximum foreign equity shall not exceed 49% of the paid up equity capital of the ARC.

(b) Where investment by any individual entity exceeds 10% of the paid up equity capital, ARC should comply with the provisions of Section 3(3)(f) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

It has also been decided to grant general permission to FIIs registered with SEBI to invest in Security Receipts (SRs) issued by ARCs registered with RBI. FIIs can invest upto 49 per cent of each tranche of scheme of Security Receipts subject to condition that investment of a single FII in each tranche of scheme of SRs shall not exceed 10 per cent of the issue.

(Source: RBI/2005-06/203 dt. 11.11.2005)

12.0 FED RATE HIKE LIFTS DOLLAR

The dollar surged to an 18-month high against the euro last week as the Federal Reserve raised the benchmark US interest rate to 4 per cent and said it would keep increasing borrowing costs at a "measured" pace.

The currency also reached the strongest in 26 months against the yen as the Fed's decision widened the US rate advantage over Japan and Europe.

CORPORATE LAWS

1.0 IMPORTANT DECISIONS

1.1 Overriding preferential payments under Sec. 529A

In the judgement of ICICI Bank Ltd. V. Official Liquidator, the Madras High court has held that the claim of a secured Creditor will prevail over claims of Income Tax Department and State Sales Tax Department, but subject to the provisions of Section 529A of the Companies Act, 1956.

1.2 SICA shall prevail over Companies Act

In the judgement of NGEF Ltd. V. Chandra Developers (P.) Ltd. the Hon'ble Supreme Court of India has held the following:

(a) In regard to section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), read with Section 536 of the Companies Act, 1956, the Provisions of the SICA shall prevail over the provisions of Companies Act, 1956.

(b) Board for Industrial and Financial Reconstruction has exclusive power to sell assets of sick industrial Company till a winding up order is passed by the High Court.

Contd. from page no. 1

Finance Minister

is ultra vires the Finance Act and is clearly against commitment made by the Finance Minister on the floor of the Parliament to not to charge tax on genuine business expenses. It may be appropriate to withdraw this levy and tax all employee perquisites directly.

- **Special Economic Zones (SEZ):** The Government is at final stage of detailed policy making on SEZs. Internationally, SEZ is completely free from Income Tax, Custom Duty and any other levy. It is like an offshore territory, where even employees working are not subject to tax. The Import and Export of goods and services from SEZs are free from any bureaucratic interference and even other local laws including Labour Laws are exempted in SEZ for their applications. The Government should give these relief, incentives and exemptions completely with free hands and with strong political will.
- **Partnership Firm – Disallowance:** The disallowance of salary, commission or remuneration to partners should be

considered for immediate withdrawal. In professional firms, there is no justification for this disallowance. As in any case, the amount paid to partners will be taxed in the hands of partner concerned, even if it is allowed as a deduction in the hands of the firm.

- **Politicians' Tax Compliance:** Person contesting any election of any public office should mandatorily file his Income Tax Returns.
- **TDS returns** should be collected only on Annual Basis.
- **Income Tax Refunds:** Income Tax Refunds are being delayed significantly and even appeal effect is not being given for even more than a year. **The corruption is unabated.** Time bound refunds with compulsory electronic credit to the bank account of the assessee are the only solution. Electronic credit should be made mandatory in all the cases, without any exception.
- **The Authority of Advance Ruling** has to act more judicially and cannot disregard the Law, the department circulars and Double Tax Avoidance Treaties. These powers may be given to the Income Tax Appellate Tribunal or senior judges be appointed to ensure proper justice.
- **Exempt – Exempt Tax :** This concept is completely against the interest of the Government and will only bring a lot of litigation, corruption and tax avoidance. How can Government tax interest or interest on interest on Provident Fund, Gratuity, LIC and PPF, even if there is a proposal to tax them prospectively. All the saving schemes with Exempt-Exempt Tax, if not appropriately planned, will be only used for tax avoidance and tax planning and will seriously hamper genuine savings.
- **Service Tax Payments and Service Tax Returns** are to be filed on or before the 5th of the next month. This in its entirety, is conceptually incorrect as abysmally little time is provided to comply. The Government should consider reverting back to 25th or 15th of the next month.

PRE-BUDGET MEMORANDUM

The Society is sending a detailed 'Pre-Budget Memorandum' consisting of the aforesaid points besides others. The readers may like to send their own suggestions and comments to cfoworld@vsnl.net on urgent basis.



All India Chartered Accountants' Society

APPLICATION FOR MEMBERSHIP (Individual)

Passport Size
Photograph

To,
The Secretary
All India Chartered Accountants' Society

I hereby apply for the membership of the All India Chartered Accountants' Society in accordance with the provisions contained in the All India Chartered Accountants' Society's Memorandum of Association and Rules. I further declare that I am qualified to be a member of the Society and not subject to any disabilities stated in the Memorandum of Association and Rules of the Society. I understand that the membership of society is subject to acceptance by the National Board of Society. The required particulars are furnished below:

1. Name in Full _____
(In Block Letters) First Name Middle Name Surname
2. Father's Name _____
3. Date of Birth (dd/mm/yy) _____ 4. Nationality _____
5. ICAI Membership Number _____ 6. Whether Associate/Fellow member _____
7. Date of admission as Associate/Fellow member of ICAI _____
8. Educational Qualification _____
9. Professional Qualification _____
10. Directorship of the Companies (Optional) _____
12. Whether holding Certificate of Practice: Yes/No _____
Date of Certificate of Practice _____
13. Professional Address
Name of Company/Organisation _____
Designation _____
Address _____
Pin Code _____ Telephone No. _____ Mobile No. _____
Fax No. _____ E-mail _____
14. Residential Address _____
Pin Code _____ Telephone No. _____
Fax No. _____ E-mail _____
15. For all correspondence _____
(Please tick the desired address) Professional Residential

Declaration: I do hereby certify that the particulars and information given above is true and correct and I understand that my application for the membership of the society is considered on the basis of correctness of the particulars furnished here-in-above.

I am enclosing herewith a Cheque of Rs. 1100/- in favour of "All India Chartered Accountants' Society" to be adjusted towards my annual membership fee of Rs. 1000/- and Rs. 100/- being the admission fee as a member of the All India Chartered Accountants' Society.

Place: _____ Yours Faithfully

Date: _____ Signature

AUDIT

1.0 GUIDELINES FOR SELECTION OF CASES FOR DESK REVIEW BY CA/CWA

To enhance the effectiveness of Excise Audit 2000, the Central Board of Excise & Customs has decided to avail the expertise of the Chartered/Cost Accountants

(CA/CWA) in the process of Desk review. The services of CAs/CWAs would be paid at the rate of Rs. 5000/- per day with service tax and other government dues being extra.

To facilitate the process of selection, both the ICWAI& ICAI have identified a panel of their accountants whose services can be used taking into consideration the issue of conflict of interest i.e. the accountant who is in any way connected to the assessee or its group of companies should not be engaged.

INMAGS

..... International Corporate & Tax Structuring

COMMODITY MARKET

1.0 DGCX COMMENCED TRADING

DUBAI Gold and Commodities Exchange (DGCX), the world's newest commodities exchange and the first such market place in West Asia, has commenced trading on November 22, 2005.

2.0 REFCO UNDER LIQUIDATION

Bankrupt Refco Inc. had received five bids for its futures trading arm and other parts of its commodities brokerage business as a deadline for offers passed.

Once the largest US independent futures and commodities brokerage house, Refco plunged into bankruptcy last month after its chief executive, Mr. Philip Bennett, was charged with securities fraud, which caused customers to abandon the company.

3.0 BSE TIES UP WITH 7 COMMESES

Capital markets behemoth BSE Ltd. is tying up with seven leading regional or single commodity exchanges under the umbrella of the Federation of Commodity Exchanges (FCE) to launch a new nation-wide commodity derivatives exchange, to be called Indo-com or Connex, it will take on the already-established National Commodity & Derivatives Exchange Ltd. (NCDEX) and Multi-Commodity Exchange (MCX). Commodities market regulator Forward Markets Commission (FMC) has already given an in-principle approval for the creation of a new nation-wide exchange.

Commodities market regulator Forward Markets Commission (FMC) has already given an in-principle approval for the creation of a new nationwide exchange. The new platform is most likely to be on the lines of the Indonext platform which houses securities listed on other stock exchanges.

SPECIAL COMBO OFFER COMBINED FEE STRUCTURE FOR SERVICE TAX & DIRECT TAXES WORKSHOP

Category of Participants	Fee under Special Combo Offer
Non CAs/ Corporate	Rs. 7000/-
CAs/CA Firm	Rs. 6250/-
AICAS Members	Rs. 5500/-
CFO World Members	Rs. 5500/-

CERTIFICATE COURSE



All India Chartered Accountants' Society

36 HOURS
of an intensive professional learning
3rd ANNUAL WORKSHOP ON
DIRECT TAXES
from concepts to practice ...



DATES:

from 16th January, 2006 to 31st January, 2006
(16th, 19th, 20th, 23rd, 24th & 31st January 2006)

TIME:

1.30 p.m. to 8.30 p.m.

VENUE:

India International Centre (IIC), Annexe Building,
Lecture Hall, 40, Max Mueller Marg, New Delhi.

(Lunch: 1.30 p.m. to 2.00 p.m.)

THE COMPREHENSIVE REFRESHER COURSE ON DIRECT TAXES

A Comprehensive Refresher Course/ Workshop on Direct Taxes is being conducted spread over 6 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 tax planning of the laws, rules and regulations and recent case laws relating to Direct Taxes.

6 DAYS WORKSHOP COVERAGE

Day 1 - 16/01/2006 (Monday)

- Basic framework / Overview of Income Tax Law
- Basic of charge
- Interpretation of statutes (Practical aspects)
- Scope of total income
- Residential Status
- Income of Charitable Trusts, NGOs, Societies, Section 25 Cos., Mutual benefit Societies, Not for profit Organisations and Institutions
- FCRA
- Exempted Incomes
- Disallowability of expenses u/s 14A
- Income from House Property
- Income from other sources

Day 2 - 19/01/2006 (Thursday)

- Salary, expatriate salary, posting outside India
- Corporate Taxation, MAT, Deemed dividend
- TDS / TCS
- Clubbing of incomes
- Certain Deemed incomes
- Aggregate of income
- Set off and Carry forward of losses
- Taxation issues related to conversion of proprietorship/partnership into Company

SPEAKERS

Experts invited to address the participants at the workshop are:

- | | |
|-----------------------------|------------------------------|
| • Sh. Ajay Bahl, FCA | • Sh. Pradeep Dinodia, FCA |
| • Sh. Ajay Vohra, FCA | • Sh. Rakesh Gupta, FCA |
| • Sh. Ajay Wadhwa, FCA | • Sh. Ravi Gupta |
| • Sh. Dinesh Kanabar, FCA | • Sh. Rajesh Jain, FCA |
| • Sh. Girish Ahuja, FCA | • Sh. R.N. Lakhotia |
| • Sh. Krishan Malhotra, FCA | • Sh. Sanjeev Choudhary, FCA |
| • Sh. K. Sampath, FCA | • Sh. Ved Jain, FCA |
| • Sh. Pramod Jain, FCA | • Sh. Vinod Jain, FCA |

Note: Certain speakers are under confirmation.

AICAS DIRECT TAXES COMMITTEE

- Sh. Pramod Jain, FCA, Chairman (9811073867)
- Sh. Yatinder Khemka, FCA, Vice Chairman (9810693421)
- Sh. Manoj Pahwa, FCA, Vice Chairman (9811066276)
- Sh. D.C. Garg, FCA, Member Secretary (9811039211)
- Sh. Amit Khosla, FCA (9810268150)
- Sh. Ajay Kumar Malta, FCA (9811277781)

Day 3 - 20/01/2006 (Friday)

- Profits and gains of business or profession - Section 28, 30, 32, 35D, 40, 40A & 43B
- Section 37 & precaution to be taken for disallowances by Assessing Officer
- Presumptive Incomes u/s 44AD, 44AE & 44AF
- Special provisions for computing profits of foreign companies and non-residents regarding turnkey projects, head office expenses and royalties
- Special deductions for certain priority sectors locationwise / industrywise
- Deductions available under Chapter VI-A
- Deductions under Sections 10A, 10B

Day 4 - 23/01/2006 (Monday)

- Relevancy of other laws in Tax assessments and practical aspects
- Taxation issues related to mergers, demergers, amalgamation and restructuring
- Fringe Benefit Tax
- Implication of Accounting Standards on Taxable income - allowances and disallowances
- Taxation of agriculture assets and agriculture incomes

PARTICIPATION FEES

- | | |
|----------------------------|------------------------------|
| • NON CAs/CORPORATE | Rs. 4750/- per person |
| • CAs/CA FIRM | Rs. 4250/- per person |
| • AICAS MEMBERS* | Rs. 3750/- per person |
| • CFO WORLD MEMBERS | Rs. 3750/- per person |

* For All India Chartered Accountants' Society's (AICAS) Membership please see, AICAS Membership form at page no. 4.

PLEASE SEE AICAS SPECIAL COMBO OFFER AT PAGE NO. 4

For further details please contact
Kanika (9350503880) / Medha (9899600345)

NOTE:

- Participation fees covers high tea, lunch and background material to the participants.
- Alternative nominee for specific session(s) or day(s) could be permitted.
- 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 experiences and raised queries during interactive session.
- All participants should bring their copy of Income Tax Act and Income Tax Rules for ready reference.

**RESTRICTED TO ONLY 100 PARTICIPANTS
ON FIRST COME FIRST SERVE BASIS**

Day 5 - 24/01/2006 (Tuesday)

- Concept of 'Transfer'
- Capital Gains on House property, Collaboration, Securities, compulsory acquisition, depreciable assets/other assets & Investment options
- Taxation of Mutual Fund Incomes and Venture Capital Funds
- Transfer Pricing - Determination of appropriate method, practical issues, TP Study and documentation
- Special provisions relating to certain income of Non-residents
- DTAA & Implications of variations in treaties
- Advance rulings, withholding tax
- Taxation of family/private Trusts

Day 6 - 31/01/2006 (Tuesday)

- Survey, search and seizure
- Reassessments, offences, penalties & prosecution, TRO powers
- Appeal to CIT, ITAT, High Court & Supreme Court
- Wealth Tax

Valedictory Function (8.00 p.m. to 8.30 p.m.)

REGISTRATION FORM

- **By Fax** - Fax Form to : 91-11-2622 3014
- **By email** - email Form to : cfoworld@vsnl.net
- **By Mail** - Mail to The Secretariat:

All India Chartered Accountants' Society
503-504, Chiranvij Tower, 43, Nehru Place, New Delhi-19

- Name : Mr./Ms.
- CA Membership No. :
- Designation :
- Company Name :
- Address : Pin :
- Phone : (O) (R)
- Fax : Mobile :
- E-mail :

Please tick : Direct Tax ☐ Service Tax ☐ Both ☐

payable to "All India Chartered Accountants' Society"

Via DD/Cheque (Delhi only) No. :

Date : Bank :

Amount :

Signature :

1.0 INCOME TAX DECISIONS

1.1 Ignorance of law can be excused

Hon'ble Bombay High court in the matter of CIT Vs. Schell International supported the view of ITAT that "A bona fide omission to file a statement, that was required to be filed by a cinema producer, but was not so filed, because the assessee was new to the business and was unaware of the requirement of law, omission was not intentional or deliberate so as to merit penalty."

The above finding is based on the decision of Hon'ble Supreme Court reported in 118 ITR326 Motilal Padampat Sugar Mills Co. Ltd. Vs State of Uttar Pradesh. [278 ITR 630]

1.2 Penalty for re-payment in cash

Hon'ble Income Tax Appellate Tribunal Pune Bench in the matter of Muslim Urban Co-operative Credit Society Limited Vs. Jt. CIT held that penalty for re-payment in cash beyond the specified limit in violation of Section 269T under section 271E is a matter of discretion where the assessee claimed that it was dealing with agriculturists and small businessman without taxable income, the provision was not applicable. [278 ITR (AT) 246].

1.3 Family settlement cannot be considered as transfer

Hon'ble Income Tax Appellate Tribunal Chennai Bench in the matter of KAY ARR Enterprises vs. Jt. Commissioner of Income Tax held that re-arrangement of shareholdings in Companies by way of family arrangement to avoid possible litigation among family members and to control companies effectively by major shareholders, could not be held as a transfer within the meaning of Sec. 2(47) which is eligible to capital gains tax [97 ITD 291].

1.4 Penalty for failure to get account audited u/s 44AB

Hon'ble Income Tax Appellate Tribunal Amritsar Bench upheld the decision of CIT (Appeal) wherein penalty u/s 271B was deleted because of the fact that the assessee was a Carriage Contractor for army authorities located at far-flung areas and difficult in communicating with such party due to bad weather and closure of route caused delay in getting information required for getting the audit work completed. Explanation submitted by assessee constituted reasonable cause for delay in filing audit report and therefore, levy of penalty u/s 271B is unjustified. [97 ITD 227].

1.5 Tribunal decisions binding on Assessing Officer

Hon'ble Income Tax Appellate Tribunal Chennai Bench in the matter T.T. Narasimhan vs. Asstt. Commissioner of Income Tax held that Assessing Officer is bound by decision of Tribunal unless and until same is reversed by High Court or Supreme Court. [97 ITD 197].

2.0 TAX AUDIT DATE EXTENDED

Central Board of Direct Taxes (CBDT) has granted extension of due date for obtaining tax audit report u/s 44AB as well as for filing return up to 31st March, 2006 for assessee in Jammu & Kashmir.

(Source: F.No.220/1/2005-IT.A-II dt. 27.10.2005)

SERVICE TAX

1.0 SERVICE TAX CASES

1.1 Clearing & Forwarding Agents

New Delhi Tribunal in the case of CCE Vs. Ram Shree Steels (P.) Ltd. [2005] has held that where the respondents worked as commission agent for finalization of sales transaction between purchaser and seller and they did not handle goods of the seller, they could not be said to be carrying out any clearing & forwarding activities.

1.2 Levy of Service Tax on Gross Amount in case of Photographic Services

In the case of C.K. Jidheesh Vs. Union of India [2005], Supreme Court dismissed the writ petition filed by the petitioner seeking to challenge the letter in which it had been clarified that the service tax would be on the entire amount recovered by the persons like petitioner. The petitioner was running the business of developing and printing of photographic films. In the writ petition, petitioner also prayed for an order for bifurcation of the gross receipts of processing of photographs into the portion attributable to goods and that attributable to service.

Supreme Court in its decision in the case of Rainbow Colour Lab vs. State of M.P. [2000] held that in case of photographic business, there are contracts of service pure and simple. It was also held that in such contracts there is no element of sale of goods. Giving reference to its earlier decision as mentioned above, Supreme Court dismissed the writ petition filed by the petitioner.

1.3 Levy of Service Tax on Govt. Advertisement of Public Welfare

Mumbai Tribunal in the case of Prithvi Associates Vs. Commissioner of Central Excise [2005] has held that in the definition of 'Advertisement' given in Section 65 of Chapter V of Finance Act, 1994, no distinction has been made in respect of the services provided to a private person or to the State/Central Government agencies. As such, the fact that Government Departments are releasing advertisements so as to create public awareness will not take away the status of the activity as advertisement and the appellants as advertisement agency.

2.0 SERVICE TAX-TRADE NOTICE

Commissioner of Central Excise, Madurai -2 has issued a Trade Notice clarifying that wages and contribution towards ESI and PF will be included in gross amount for the purpose of charging service tax in respect of Security Agency Service.

(Source: Trade Notice No. 77/2005 dt. 13.10.2005)

INMAGS

..... Due Diligence, Takeover, Merger & Amalgamation



CAPITAL MARKET

1.0 NO EXTENSION OF CLAUSE 49 DEADLINE

The Securities and Exchange Board of India has recently announced that it would stick to its December 31 deadline for listed companies to comply with the revised Clause 49 of the Listing Agreement. The revised Clause 49 prescribes corporate governance norms that need to be adhered by listed entities.

2.0 SEBI TO RELAUNCH MAPIN

SEBI will shortly begin another round of its Unique Identification programme under MAPIN (Market Participant and Investor Database), this time without the requirement for fingerprinting of market participants.

Unlike the earlier system, the new method would be based on the alternative system, a new software system called "dedupe" which will issue unique numbers to each market participant without having to use the biometric system.

Those who had already been issued their unique identification number (UIN) would be exempted from the second round.

3.0 SEBI TO HAVE A THIRD FULL-TIME MEMBER

A third whole-time member will soon be taking charge at the Securities and Exchange Board of India (Sebi). The slot is tipped to be occupied by managing director of Bharatiya Reserve Bank Note Mudran Ltd. TC Nair.

At present, Sebi has two whole-time members – G. Ananthraman and Madhukar. Once the new member joins, it would be for the first time, after the Sebi Act was amended in December 2002, that all the three posts of whole-time members would be filled-up.

4.0 ONE SEBI REGISTRATION VALID FOR ALL EXCHANGES

In a landmark judgement the Delhi HC has ordered that a stock broker need registration with the Securities and Exchange Board of India (Sebi) only once, even if he operates in or out of several stock exchanges. The court also directed Sebi to refund fee paid by stock brokers for any subsequent registrations paid after the first registration.

5.0 SEBI SLAPS FINE FOR NON DISCLOSURE OF PSI

The Securities and Exchange Board of India (SEBI) has imposed Rs. 1 lakh penalty on Ispat Industries for non-disclosure of Price Sensitive Information (PSI) to stock exchanges. The action has been taken against Ispat Ind. for a statement made by the company finance director in a news channel about Ispat's financials and expansion plans which were price sensitive.

6.0 FRESH NORMS FOR ADR, GDR PRICING

Companies planning simultaneous issue of domestic and American Depository Receipts (ADR) or Global Depository Receipts (GDR) will have to price the overseas offering at or above the domestic offer price and thus will be exempted from the revised pricing guidelines.

The norms will also be applicable to companies which issue ADRs or GDRs within 30 days of the domestic issue. Further, SEBI's approval for such an issue will be required to specify the percentage to be offered in the domestic and ADR/GDR market.

The unlisted companies which have already issued ADRs, GDRs or Foreign Currency Convertible Bonds in the international market would be required to list domestically by March 31, 2006.

ACKNOWLEDGEMENT

Society hereby acknowledges the contributions made by the following persons on regular basis in The Chartered Accountant World:

1. Mr. Vijay Goel, FCA (vijaygoel@inmacsindia.com) for contribution in the field of Latest in Finance.
2. Mr. D.C. Garg, FCA (dcgarg@inmacsindia.com) for contribution in the field of Taxation.
3. Mr. Rajesh Gosain, FCA (rajeshgosain@inmacsindia.com) for contribution in the field of Service Tax, Audit and Central Excise.
4. Mr. Manish Goyal, ACA (manishgoyal@inmacsindia.com) for contribution in the field of Latest in Finance.

INSURANCE

1.0 CAs & ENGINEERINGS CAN BECOME INSURANCE SURVEYORS

The eligibility criteria for insurance surveyors are being revised. As per the new criteria, expected to be announced shortly, only Chartered Accountants (CAs) and engineers will qualify to become insurance surveyors.

2.0 INSTITUTE OF INSURANCE SURVEYORS INCORPORATED

The Insurance Regulatory and Development Authority (Irda) has incorporated 'Indian Institute of Insurance Surveyors and Loss Assessors' on October 4, 2005, under section 25 of the Companies Act, 1956.

3.0 IRDA ALLOWS SALE OF MICROINSURANCE PRODUCTS

In a bid to increase the penetration of insurance services among the underprivileged, the Insurance Regulatory and Development Authority (IRDA) has allowed the sale of microinsurance products. Such products are subject to more liberal distribution norms.

4.0 INSURERS LOBBYING FOR KEYMAN POLICY CONTINUATION

The Insurance Regulatory and Development Authority (IRDA) is in a dilemma over keyman insurance covers – the controversial product that life insurers went overboard in selling last year. Keyman policies are usually sold to key corporate personnel and high net-worth individuals. While in April 2005 the IRDA has banned the sale of keyman policies with maturity benefits on the grounds that there were aberrations in their sale, it is grappling with frenetic lobbying by insurance firms, which are keenly awaiting the promised 'fresh guidelines'.

Insurance companies say that irregularities are more in the nature of tax aberrations and they have not violated any guideline or regulation of IRDA and the tax implications are between their policy holders and the Income Tax Department. This is possibly where IRDA may find itself in a Catch-22 situation. But some officials point out that there is a lapse on the part of the insurance companies which have not done proper financial underwriting.

CERTIFICATE COURSE



All India Chartered Accountants' Society

DATES:

from 17th December, 2005 to 24th December, 2005
(17th, 23rd & 24th December 2005)

TIME:

1.30 p.m. to 8.30 p.m.
(Lunch: 1.30 p.m. to 2.00 p.m.)

18 HOURS

of an intensive professional learning

WORKSHOP ON SERVICE TAX

from concepts to practice

VENUE:

India International Centre (IIC), Annexe Building,
Lecture Hall, 40, Max Mueller Marg, New Delhi.



THE COMPREHENSIVE REFRESHER COURSE ON SERVICE TAX

A Comprehensive Refresher Course/ Workshop on Service 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 tax planning of the laws, rules and regulations and recent case laws relating to Service Tax.

3 DAYS WORKSHOP COVERAGE

Day 1 - 17/12/2005 (Saturday)

- Concept of Service Tax • Evolution/Scheme of Service Tax Levy • Services rendered in India/ out of India • Service Tax Authorities • Structure of Service Tax Departments • Applicability to Residents/Non-residents/MNCs • Impact of Central Excise Act and Laws on Service Tax

- Business Auxiliary Services • Franchise Services • Intellectual Property Services • Goods Transport Agency Services • Courier Agency Services • Transport of Goods by Air Services • Clearing and Forwarding Agent Services • Customs House Agent Services • Cargo Handling Services • Storage and warehousing Services

Day 2 - 23/12/2005 (Friday)

- Practicing CA/ CS/ CWA Services • Management Consultancy/other specific services rendered by CA Firms • Consulting Engineer's Services • Scientific and Technical Consultancy Services • Technical Testing and Analysis Services • Commercial or Industrial Construction Services • Construction of Complex Services • Architect Services • Real Estate Agent/ Consultant Services • Interior Decorator Services • Banking & Financial Services • Stockbroker Services • Foreign Exchange Broker Services • Critical Issues in Service Tax • Registration procedure - Centralised/ Decentralised • PAN based code (STC) • Payment of Service Tax • Filing of returns • Exemption/Abatements from Service Tax • Assessments

Day 3 - 24/12/2005 (Saturday)

- Concept of Tax Credit • Operational issues of Cenvat credit • Practical aspects and issues in availment of Cenvat Credit • Accounting and auditing issues in Service Tax • Program Production Services • Advertisement Services • Broadcasting Services • Convention Services • Business Exhibition Services • Event Management Services • Cable Operator Services • Commercial Training or Coaching Services • Maintenance or Repair Services • Authorised Service Station Services • Manpower Recruitment Services • Clubs or Association Services • Export of Services Rules 2005 • Concept of import of services • Issues of Cross Border Services • Panel of Experts • Practical issues in various aspects of service tax

SPECIFIC SERVICES - Each specific service will include Concept, Scope, Interpretations, Clarifications, Circulars, Notifications and Case Laws - under Service Tax Act, under Central Excise & other Laws, Advance Rulings, Service wise exemption.

REGISTRATION FORM

- By Fax - Fax Form to : 91-11-2622 3014
- By email - email Form to: cfoworld@vsnl.net
- By Mail - Mail to The Secretariat:

All India Chartered Accountants' Society
503-504, Chiranjiv Tower, 43, Nehru Place, New Delhi-19

- Name: Mr./Ms.
- CA Membership No. :
- Designation :
- Company Name :
- Address :
- Pin :
- Phone : (O) (R)
- Fax : Mobile :
- E-mail :

Please tick : Direct Tax ☐ Service Tax ☐ Both ☐

payable to "All India Chartered Accountants' Society"

Via DD/Cheque (Delhi only) No. :

Date : Bank :

Amount :

Signature :

SPEAKERS

Experts invited to address the participants at the workshop are:

- Ms. Anita Rastogi, PWC
- Mr. Ashok Batra, FCA
- Mr. Atul Gupta, Deloitte Haskins & Sells
- Mr. J. K. Mittal, FCA, LL.B.
- Mr. Jatin Arora, RSM & Co.
- Mr. Nilambar Marawah
- Mr. N. Mathivanan, Advocate
- Mr. P. K. Sahu, Advocate
- Mr. Sanjiv Aggarwal, FCA
- Mr. S. Vasudevan, ACA
- Mr. Tapas Misra, RSM & Co.
- Mr. V. Lakshmi Kumaran, Senior Advocate, Supreme Court of India

AICAS SERVICE TAX COMMITTEE

- Sh. Rajiv Kohli, FCA, Chairman (9873430075)
- Sh. Manmohan Khemka, FCA, Vice Chairman (9810064427)
- Sh. Rajesh Gosain, FCA, Vice Chairman (9810618348)
- Sh. Atul Gupta, FCA (9810103611)

PARTICIPATION FEES

- NON CAs/CORPORATE Rs. 2750/- per person
- CAs/CA FIRM Rs. 2500/- per person
- AICAS MEMBERS* Rs. 2250/- per person
- CFO WORLD MEMBERS Rs. 2250/- per person

* For All India Chartered Accountants' Society's (AICAS) Membership please see, AICAS Membership form at page no. 4.

PLEASE SEE AICAS SPECIAL COMBO OFFER AT PAGE NO. 4

For further details please contact:

Kanika (9350503880) / Medha (9899600345)

**RESTRICTED TO ONLY 100 PARTICIPANTS
ON FIRST COME FIRST SERVE BASIS**

NOTE:

- Participation fees covers high tea, lunch and background material to the participants.
- Alternative nominee for specific session(s) or day(s) could be permitted.
- 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 experiences and raised queries during interactive session.

If undelivered, please return to:

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4696, Brij Bhawan 21A, Ansari Road,
Darya Ganj, New Delhi - 110 002