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EDITORIAL VINOD JAIN*

EQUIPPING FOR E-FILING



The e-governance project of the Government of India is taking concrete shape. Initially the Income Tax Department offered e-filing of TDS returns as well as income tax returns (for salaried tax payers). The Central Excise Department has also partly moved to e-filing. The office of DGFT few years ago started online filing of certain licenses. The income tax department is still struggling to take off and has

faced numerous technical and non technical issues. The taxpayers are paying increased costs and efforts. Even after a persistent working of about two years now, the discomfort of tax payers in filing tax returns have not reduced significantly.

The Ministry of Company Affairs (MCA) has embarked upon an ambitious and massive MCA 21 project to make mandatory e-filing of all forms, papers, applications and documents with Registrar of Companies (ROC), Regional Directors as well as with the Ministry. Most of the forms are to be mandatorily certified by Chartered Accountants and other practicing professionals. This project is faced with severe initial systemic and implementation issues marred with deficiency at this point in time. The Government of India as well as Tata Consultancy Services, could not properly estimate the load, which the e-filing system is required to take. Some of the serious problems observed by the companies and Chartered Accountants include:

- Heavy rush at physical front office forcing people to spend a number of days and long hours in long queues, including multiple visits and repeat submissions.
- Increased time in approval of name availability upto three weeks from the earlier benchmark of same day / 24 hours.
- Increased time for incorporation of companies to three to five weeks as compared to about three to seven days incorporation at the time of physical filing.
- Non-availability of ROC officials for solving problem of sorting out issues. Public dealing has been almost stopped at ROC offices. It is completely inappropriate to not to meet people when they are struggling with initial troubles.

- Non-registration of various forms electronically filed for several days and months.
- Track status module does not give any details except "WIP".
- No committed time frame/ service delivery period benchmark observed.
- System and implementation issues.
- The master data including charges registered is not complete in case of a large number of companies. This has posed serious threat to title search and due-diligence exercise.

The MCA and TCS are aggressively and highly professionally working to solve the various issues troubling the corporate sector. However, lack of advance education, poor bandwidth and non-cooperation by a section of government officials towards successful implementation have all added to the chaos.

The Directors of the companies and professional signing various forms have to obtain Digital Signature Certificates (DSC). This is going to be mandatory by 30th June 2006. Even DIN are to be obtained by 30th June, 2006. Significant penalty is imposable for non compliance. **This last date has to be extended by about 6 months, as the government, TCS, professionals as well as corporates are not fully geared up.** The current certifying authorities, certifying DSC are charging hefty fees and the government needs to play a facilitating and regulatory role so that the DSC are available at a reasonable cost. Even a massive education campaign on the part of the government is necessary to educate about technical aspects of e-filing and security threats while using DSC.

Contd. 3

Contents

1. LATEST IN FINANCE	2
2. CAPITAL MARKET	3
3. TAXATION	4-5-6
4. INSURANCE	6
5. FEMA/EXIM	6
6. AUDIT	7
7. CORPORATE LAWS	7



LATEST IN FINANCE

1.0 DRAFT OF NBFCs FAIR PRACTICES CODE

RBI has laid down draft guidelines on fair practices code for NBFCs. As per the said code:

- NBFCs have been asked to provide a meaningful comparison to the terms and conditions of other NBFCs in their loan application form.
- NBFCs should convey in writing to the borrower, the amount of loan sanctioned along with the annualized rate of interest and method of application thereof.

2.0 BANKS PULLED UP ON ECB NORMS

It has been informed by the RBI that Regulatory Ceiling on interest rate on funds borrowed from overseas in the form of External Commercial Borrowings (ECBs) has been breached as the Interest rate charged has exceeded by more than 200 basis points above London Inter Bank Offering Rate (LIBOR). Even Loan Registration number has not been issued for syndicating loans overseas.

RBI has contemplated penal action against banks for all the said ECB violations.

3.0 TIGHT FINANCIAL NORMS FOR ULTRA MEGA PROJECTS

Public sector banks and financial institutions have indicated that project finance for the four proposed ultra mega projects in the country would have to be supported by guarantees.

Financing would be allowed only on the basis of assignment of project revenues to the lenders which would in turn have to be supported by guarantees by the State Governments, who are currently the major stakeholders in the electricity distribution companies (ESCOM).

4.0 CHEAPER IIFCL LOANS FOR PVT. INFRASTRUCTURAL COs

Private Companies may soon be able to access low-cost government funds for infrastructure development. They are eligible for both direct lending as well as refinance from the special purpose vehicle (SPV) created for the purpose.

The SPV shall finance only commercially viable projects. Total lending for private projects will, not exceed 20% of the lending programmes of SPV in any accounting years. The SPV, known as Indian Infrastructure Company Ltd. (IIFCL) will be administered by the Ministry of Finance. The SPV would fund roads, railways, ports, power, urban infrastructure projects.

The funding policy also stipulates that private players will be given a period of more than 10 years to repay the debt. While at least 25% of the funds will come from a participating lead bank for a single project, the rest will come in the form of soft loan from IIFCL.

5.0 BANKS TO DISPLAY SERVICE CHARGES

The Reserve Bank of India has made it obligatory for Schedule Commercial banks, Regional Rural Banks and Urban/Primary Cooperative Banks to display and update on their Websites, as also in their offices and branches, the details of the charges prescribed by them for various services in a format to be approved by it. The display may also be in local language.

6.0 FDI INFLOWS STATISTICS

Foreign Direct Investment (FDI) in equity during the year 2005-06 was US\$ 5.135 billion. It represents an increase of 60% over the corresponding figure last year. The FDI for the month of March 2006 at US \$ 831 million recorded an increase of 200 % over the inflows received during March 2005. However keeping the past trends in view it can be expected that the reinvested earnings and other capital could be about US\$ 3.2 billion. This should make an aggregate FDI inflow in 2005-06 of about US\$ 8.3 billion i.e. 50% increase over the previous years figure of US\$ 5.535 billion.

7.0 REGULATORS MAY FIX OPEN ACCESS SURCHARGE

The Government is likely to amend the National Tariff Policy to allow state power regulators to fix the open access surcharge, a move that will enable high-end consumers to select their electricity suppliers. The Policy fixed a uniform formula for all state regulators to calculate cross subsidy surcharge for open access in distribution.

Surcharge has to be paid by consumers to compensate for the revenue loss to their existing electricity suppliers.

8.0 CORPORATES PREFER TERM LOANS THAN BONDS

Term loans fetch almost the same price as of bonds or in some cases are even cheaper than the bonds. Most banks are advising corporates to take to term loan route to raise money and not to invest in corporate bonds for fear of depreciation losses. The said move has led to the bond market becoming illiquid with virtually no trading.

9.0 NORMS EASED FOR PPP PROJECTS

Government is planning to ease the norms for private players to undertake infrastructure projects through the Public Private Partnership (PPP) mode by doing away with technical bids at the pre qualification stage.

10.0 OPEN ACCOUNT TRADING SYSTEM TO REPLACE LC

The muscle power of global megacorporations is now intimidating a host of wannabe Indian suppliers and exporters into giving up their traditional forms of financing and accepting newer versions that suit the large, consolidated buyers. A new form of trade finance is replacing the decades-old trusted Letter of Credit (LC) system. Although Indian suppliers support the continuation of LCs since it provides a guarantee of payment by the buyer, on the contrary, the large Western buyers find it a drag on costs and time. **Upshot:** exit LC, enter new instruments that save costs called "Open Account Trading". It involves buyers and sellers dealing their transaction seamlessly through the Net.



CAPITAL MARKET

Contd. from page no. 1

EQUIPPING FOR....

ICAI needs to come forward on most urgent basis to issue a guidance Note to the members who are required to verify various forms and documents, to guide them about verification procedures, due-diligence requirements as well as documentation to be retained.

The practicing Chartered Accountants are spending a lot of time in verifying supporting documents while certifying electronic records with increased burden of costs inflicted through compliance by higher technical tools and fast changing operational environment for the profession. Adequate fee, based on time spent should be charged while keeping in view the possible professional liability, which may be attracted including future requirement of appearance before courts and other regulatory authorities to verify testified documents. Due diligence is a mandatory professional ethic.

The Finance Ministry should consider exempting stamping of all electronic documents except certain exemptions where heavy revenue stakes may be identified. This can be done on the lines of exemptions given for transfer of de-mat shares. The Cost of collection of revenue by exchequer in such cases outweighs the reasonableness of the quantum of stamp duty. This step on part of the government will significantly reduce cost of governance, inconvenience and procedures. In case of non-exempted stamping cases, electronic stamping should be implemented without any further delay. The MCA should consider improving the technology further by automating most of the back-office authorisations and approvals by the system itself. They can also

plan to reduce the manpower by about 80% and utilize them for alternative usage in the government. The physical submission of papers relating to ROCs all over India could be authorized in any of the PFOs/ ROCs offices all across India so that all service requests could be transacted anywhere on a national basis.

We congratulate the Ministry of Company Affairs to take such a big technological leap forward. This MCA 21 project once fully implemented and the various issues are addressed, can become an international benchmark. The Income Tax Department should take a lesson from MCA for a very advanced e-governance model as compare to a poor attempt on the part of Department of Revenue. To eradicate corruption, e-governance will provide about 90% solutions if implemented aggressively, vigorously and in a planned phased manner.

CAPITAL MARKET

1.0 LOCK-IN GOES FOR QIB PLACEMENTS

Listed companies can now make domestic placements of shares and convertibles (excluding warrants) to Qualified Institutional Buyers (QIBs), without any lock-in period. The Highlights of scheme are as follows :

- Maximum amount under such placement to QIBs in a financial year shall be limited to 5 times of opening net worth.
- Minimum 10% is reserved for mutual funds.
- Pricing formula is same as that for preferential allotments.
- Single investor cannot get more than 50% of issue.
- Minimum two allottees for issues upto Rs. 250 crores and minimum 5 allottees for more than Rs. 250 crores.
- Convertible instruments can be converted within 60 months.
- No pre-placement approval required from SEBI.
- QIBs can sell freely on Stock Exchanges.

2.0 PSBs CAN ISSUE PREFERENCE SHARES

The Government has cleared the Public Sector Banks (PSBs) to issue preference shares to shore up their capital. The Government has also reduced the number of elected directors in the banks to three from the current six.

3.0 MODIFIED ALBM TO COME BACK

SEBI is looking at re-introducing the deferral borrowing and lending mechanisms (known as ALBM on the NSE and BLESS on the BSE), with major modifications. The regulator would now put in place a strong lending borrowing mechanism before introducing short selling in the cash segment for institutional investors.

Sebi is now evolving a strong lending borrowing mechanism for institutional short selling as it is good for growing markets such as India but naked short selling should be avoided as it was one of the causes for the disaster in stock market in March, 2001.

4.0 NCDEX TO LAUNCH METAL FUTURES

The National Commodity & Derivative Exchange Ltd. (NCDEX) has launched futures contracts in zinc ingot, aluminum ingot and nickel cathode. Contract size, called delivery unit, is set at 250 kg.

5.0 SEBI PROPOSES REVAMP OF BROKER FEES

The Securities and Exchange Board of India (SEBI) has proposed a revised fee structure for brokers, trading and clearing members in the cash and the derivatives segment based on the Anjaria Committee recommendations and public comments on the report. The Highlights of the structure are as follows:

Cash Segment

Proposed : Rs. 20 per Rs. 1 crore turnover for new brokers continuously

Present : 0.1% of fees on 5 yrs turnover

Derivatives

Proposed : Rs. 20 per Rs. 1 crore turnover

Present : Rs. 10 per Rs. 1 crore turnover

1.0 INCOME TAX DECISIONS

1.1 Exemption u/s 54E is available on investment of gains on sale of depreciable assets also : Hon'ble Guahawati High Court in the matter of CIT Vs. Assam Petroleum Industries Pvt. Ltd. held that Section 54E is an independent provision, which is not controlled by Section 50 when the building held for more than 56 months was sold though on which depreciation has been allowed and whole of the net consideration invested in the specified asset as per Section 54E, was entitled to exemption. [262 ITR 587].

A similar view was also taken by Hon'ble Bombay High Court while deciding the case of CIT Vs. ACE Builders Pvt. Ltd. wherein Hon'ble Court held that fiction created in sub-section 1 and 2 of section 50 is restricted only to the mode of computation of capital gain contained in Section 48 and 49 and does not apply to another provision and therefore, an assessee is entitled to exemption under Section 54E in respect of capital gains arising on the transfer of a long term capital asset on which depreciation has been allowed. [144 Taxman 855].

1.2 Income from property as business income: Hon'ble Madhya Pradesh High Court in the matter of CIT Vs. Kohinoor Tobacco Products Pvt. Ltd. held that the property were temporarily let out to keep them in good condition so that they could be used and exploited again for the purpose of assessee's business and that the assessee's intention was to increase its business gradually and not to close down his business. Hence rental income was assessable as business income. [283 ITR 162].

1.3 Invalidity of notice u/s 148 : Hon'ble Delhi High Court in the matter of Techspan India Pvt. Ltd. and Another Vs. Income Tax Officer held that once deduction is allowed after scrutiny in the assessment order, change of opinion afterwards is not a valid reason for reassessment. Reason to believe that income is escaped assessment is not justified. [283 ITR 212]

1.4 Transfer of property in a family settlement is not transfer chargeable to capital gains tax : Hon'ble Madras High Court in the matter of CIT Vs. A.L. Ramanathan held that family arrangement was a bonafide one in as much as it was made voluntarily to resolve the disputes among members of family and not induced by any fraud or collusion and it was arrived at in the presence of Panchayatdars, it did not amount to transfer and no chargeable capital gains arose from the transaction. [245 ITR 494].

1.5 Land is separate from the building for the purpose of calculating capital gains tax : Hon'ble Bombay High Court in the matter of CIT Vs. Citibank N.A. interpreted Section 50 of the Income Tax Act more elaborately and treated land on which building is constructed which is depreciable, as long term assets for the purpose of arriving capital gains. Hon'ble Court held that for the purpose of capital gains land and building are two separate and distinct assets and therefore profits arising from sale of land was required to be considered as long term capital gain whereas profit arising from sale of building was required to be considered as short term capital gain. [261 ITR 570].

2.0 DRAWBACK RATES TO COVER SERVICE TAX ON INPUTS

The new duty drawback rates for the current fiscal will incorporate the incidence of service tax for the first time. A committee, appointed by the revenue department to finalise the drawback rates has favoured a composite drawback rate which would include the incidence of service tax.

The new drawback rates may be notified by 15th June, 2006.

3.0 SHARES AS 'DEALING IN BUSINESS' OR 'INVESTMENT'

Central Board of Direct Taxes (CBDT) has issued certain tests vide draft Supplementary Instructions to the main Instructions No. 1827 dated 31.8.1989 to distinguish between shares held as 'Investment' or as 'Stock in trade'.

CBDT has invited comments on this draft supplementary instruction from stakeholders which may be forwarded to Director (TPL-1) Room No. 147D, North Block, New Delhi or through email at dirtpl1@nic.in.

On issuances of these instructions, one can't take the benefit of ambiguity in the law in treating share held as investment or stock in trade as per his choice.

COMMENT :

This circular is against the initial commitment of the Government while they imposed Security Transaction Tax (STT). It was clarified by the Finance Minister at that time that STT is being imposed to simplify the taxation on share transactions and investors will have an option to treat the share dealings as business transaction or as investment.

This circular need to be withdrawn by the Government as it will increase litigation.

The Government should :

1. Accept the treatment by the assessee as per Books of Accounts, or
2. Treat all cases of holding as follows :
 - Less than one month holdings as **Business Income**,
 - One month to twelve months holdings as **Short Term Gains**, and
 - More than twelve months holdings as **Long Term Gains**

Unless the assessee opts to offer these as business income.

Efforts of Government should be to develop faith of assesseees in the system. Government need to trust people and should not now become greedy. Litigation needs to be avoided.

4.0 DEDUCTION U/S 80HHC OF THE INCOME TAX ACT, 1961

By virtue of provisions of Section 8 of General Clauses Act, 1897, read with Rule 18 of the Customs and Central Excise Duties Drawback Rules, 1995, which provides for repeals and savings of the 1971 rules, the benefit of section 80HHC cannot be denied to an assessee claiming refund of the duty drawback under Duty Drawback Rules, 1995 subject to fulfillment of all other conditions provided under section 80HHC.

This clarification will apply to assessment year 1996-97 and subsequent assessment years.

(Source: C.No.-5/06 dt.15.05.06)

5.0 DEFICIENCIES IN AIRS FILED BY BANK

Commissioner of Income Tax (Systems) has complained to RBI about late filing and deficiencies in Annual Information Reports (AIRs) filed by the banks under section 285 BA for the financial year 2004-05.

While reacting on the complaint, RBI has issued a circular to all public sector as well as private sector banks including UTI bank, ICICI bank, HDFC bank, IDBI bank and Stock holding corporation of India Ltd. advising to submit 'Supplementary Information Report' if Income Tax Department so desire. RBI also advised to submit correct return for the financial year 2005-06 by August 31st, 2006.

The major deficiencies which were noticed in the Returns are entering incomplete names and address of transacting parties, incorrect district codes, state codes, transaction codes, incomplete name of filers etc.

(Source: RBI/2005-06/383 dt.08.05.06)

6.0 VALUE ADDED TAX (VAT)

6.1 States demand entire proceeds from VAT on imports : States have demanded imposition of VAT on imports, with 100% of the proceeds earmarked for them. In Budget 2006-07, the Central Government had imposed a countervailing duty (CVD) on all imports to compensate for the state-level taxes. Full credit of the CVD levied at a rate of 40% is allowed to manufacturers of excisable goods.

The proceeds from the CVD go to the divisible pool and are shared between the center and states as per the 12th Finance Commission formula, under which states get 30.5%.

6.2 VAT Revenue Growth : Dr. Dasgupta, Chairman of the Empowered Committee of State Finance Ministers said that the tax revenues of all VAT implementing states taken together grew by about 14%, even while it exceeded 20% in some states, during 2005-06.

6.3 Non - VAT States Hold Key to CST Phaseout : Chidambaram said the introduction of VAT system, to replace sales tax, resulted in 13.8 percent increase in revenue for the states implementing it during 2005-06. The minister said the phase out of Central Sales Tax (CST) will depend on quick adoption of VAT model by Tamil Nadu, Uttar Pradesh and Pondicherry.

6.4 VAT panel asks States to list out deviations in rates : The VAT Panel has asked the states to come up with an "authoritative list" spelling out the deviations in the VAT rates adopted by them as compared to those decided by the empowered committee of State Finance Ministers.

7.0 STATES' INTEREST IN DEMAT OF FORM C

Administration of inter-state trade may get more streamlined with a number of States now keen to adopt a dematerialised system for the 'C Forms' that are issued to track inter-state trade transactions. 'C Form' or some other mechanism was necessary for tracking inter-State transactions even if Central Sales Tax were to be abolished.

CALL FOR NON-COOPERATION MOVEMENT

SERVICE TAX ON CA's NON AUDIT SERVICES

While we, as professionals, are pursuing the matter before Delhi High Court, Punjab & Haryana High Court, Chennai High Court etc. It is important to ensure that the decision of the Government to impose Service Tax on Non-Audit services of CAs is not implemented in effect. CAs can provide tax advisory, accounting and others legal or consulting services through consulting companies. The council has already passed an unanimous resolution permitting CAs to promote consulting companies and still be in full time practice. The council of ICAI need to notify this decision for effective implementation. No Service Tax should be paid by us on services for which other citizens in profession are not required to pay tax. We will not tolerate unequal treatment at any cost.

Let us join hands in Non Cooperation against unconstitutional decision of Government.

SERVICE TAX

1.0 CCR TO BE AMENDED

The draft proposal by the Finance Ministry has cast specific legal responsibility on a purchaser of goods / services for which he has taken Cenvat credit under Cenvat Credit Rules (CCR) to ensure that critical details regarding payment of tax, description of goods/services and factory or input service provider particulars are available on the document on which credit is taken.

If the proposal is accepted, corporate India would not have to comply with the existing 'reasonable steps' for availing Cenvat credit.



2.0 ENTRY/EXIT LOAD TO BE TAXED

The Central Excise Department indicated that service tax will be applicable on entry and exit loads linked to Mutual Fund (MF) schemes. The load is charged over and above the net asset value of the mutual fund scheme.

Tax on entry load would amount to double taxation since distributors brokerage is paid after deducting the service tax.

3.0 R A S T O G I COMMISSION ON MASTER CIRCULAR

The government will constitute a one-man committee under TR Rastogi to compile all the circulars issued on service tax since 1994 into a single circular.

4.0 FRESH NOTICE FOR SHIPPING COs

The Director General Excise Intelligence (DGCEI) has slapped fresh notices on Indian shipping companies late last month, asking them to pay service tax retrospectively from August 2002 to March 2006 in respect of services received and consumed outside India by the companies during this period.

INSURANCE

1.0 LOAN SHIELD POLICY GUIDELINES

The Insurance Regulatory & Development Authority (IRDA) has decided to issue a set of strict guidelines for loan shield policies being sold by general insurance companies. All such companies selling the product as a result may have to redesign this particular product to meet IRDA's guidelines. This follows the authority's recent decision to scrap ICICI Lombard's loan shield policy.

2.0 INSURERS CAN INVEST IN HYBRID INSTRUMENTS

The Insurance Regulatory and Development Authority (IRDA) has decided to permit insurance companies to invest in the hybrid instruments offered by banks for augmenting their capital adequacy. IRDA has decided to include these hybrid instruments under 'approved investments'.

3.0 PRIVATE INSURERS MAY FACE CAPITAL CRUNCH

Capitalisation of private sector insurance companies is likely to face difficulties in view of the Reserve Bank of India's clampdown on borrowings from overseas corporate bodies (OCBs). RBI has recently notified and clarified that OCBs are not recognised lenders.

4.0 NON-TARIFF INSURANCE PREMIUMS TO COST MORE

Individuals will have to pay more for health, home, overseas travel and student medical insurance covers, while companies will see premium rates going up for marine, corporate and liability insurance.

As per IRDA decision the insurance sector will shift to a detariff refine with effect from 1st January, 2007. This would mean that insurance companies shall be completely free to fix their insurance premium subject to market competitive force.

This may put a lot of burden on common man. Regulators can not be allowed to come under pressure of the lobby of insurance companies. The Insurance rates should be regulated if not controlled.

5.0 ONLY INSURANCE JVS IN SEZs

The Insurance Regulatory & Development Authority (IRDA) has said that insurance firms with 100% FDI in Special Economic Zones (SEZ) cannot be regulated within the country and so should not be allowed.

Any disputes arising out of claims will have to be settled by a court outside the country, since the SEZ, by definition, is not included in the domestic tariff area.

FEMA/EXIM

1.0 CAR CAN BE IMPORTED FOR R & D

For limited purpose of carrying out endurance test, evaluation test and for other testing purposes as a part of Research & Development activity, the Vehicle manufactures and auto component manufactures are allowed to import vehicles including cars.

The Vehicles as procured shall be required to register in terms of the applicable CMVR Rules.

(Source: C.No.06(RE-06)/2004-09 dt.18.05.06)

2.0 FDI IN PROPRIETARY FIRMS - FIPB DECISIONS DELAYED

The Reserve Bank of India (RBI) stands regarding investment by NRIs and PIOs in partnership firms is holding up clearance of applications for fresh investments by the Foreign Investment Promotion Board (FIPB). The central bank has been asked to furnish its "reasoned comments" to enable the Government to take a stand on such proposals.

While the regulations issued by the RBI itself under Foreign Exchange Management Act (FEMA) provide for the approval to such investments, the latter has not cleared applications required to be made under these regulations. Consequently, the FIPB has been unable to clear these proposals.

3.0 DUTY FREE IMPORT AUTHORISATION SCHEME

The Finance Ministry (FM) has operationalised the Duty Free Import Authorisation Scheme (DFIAS) announced in the recent Annual Supplement to the Foreign Policy. Imports made under this authorization scheme are now exempt from basic customs duty, additional customs duty, anti dumping duty as long as certain conditions are met. One of the objectives of the DFIAS is to enable exporters to import the required inputs before exports and also allow them to transfer the scrip once the export obligation is completed.



AUDIT

1. TREATMENT OF HEDGE ACCOUNTING DEFERRED

ICAI has deferred the applicability of its announcement on 'Accounting for exchange differences arising on a forward exchange contract entered into, to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction' by one year.

Pending the issuance of the proposed Accounting Standard on 'Financial Instruments: Recognition and Measurement' which is under formulation, the said announcement prescribes the accounting treatment which should be followed in respect of the exchange differences arising on the foreign exchange contracts entered into to hedge the foreign currency risks of a firm commitment or a highly probable forecast transaction.

Now this Announcement would be applicable in respect of accounting period(s) commencing on or after 1st April, 2007.

2.0 BANK'S RISK WEIGHT EXPOSURE LIMIT RAISED

The risk weight on banks' exposure to the **commercial real estate** has been increased from 100% to 125% and the same is applicable on an on-going basis. In addition to this it has also been decided to increase the risk weight on banks' exposure to 150%.

Besides this, Bank's total exposure to **venture capital funds** shall henceforth, as a part of capital market exposure, has been assigned a higher risk weight of 150%.

(Source: RBI/2005-06/391 dt.25.05.06)

3.0 STANDARDS ON INTERNAL AUDIT

The Central Council of ICAI has given approval to a standard titled as 'Planning an Internal Audit'.

4.0 GUIDANCE NOTE ON RECOGNITION OF REVENUE BY REAL ESTATE DEVELOPERS

According to the Guidance Note, revenue in the case of real estate sales should be recognized when all the following conditions are satisfied:

- (i) seller has transferred to the buyer all significant risks and rewards of ownership and the seller retains no effective control of the real estate to a degree usually associated with ownership;
- (ii) no significant uncertainty exists regarding the amount of the consideration that will be derived from the real estate sales; and
- (iii) it is not unreasonable to expect ultimate collection

The determination of point of time when all significant risks and rewards of ownership are transferred depends on the facts and circumstances of each case considering the terms and conditions of agreement.

CORPORATE LAWS

1.0 IMPORTANT DECISIONS IN COMPANIES ACT 1956

1.1 No stamp duty on Merger : The concept of transfer cannot be applied to the case of amalgamation and/or compromise governed simply by Section 394 of the Companies Act, 1956. The transfer of assets and liabilities of the transferor company to the transferee company takes place on an order made under section (1) of section 394 by operation of sub-section (2) thereof and is not liable to stamp duty.

Madhu Intra Ltd. & Ors Vs. Registrar Of Companies & Ors [(2006) 130 COMP CAS 510(CAL-DB)]

1.2 Maruti Limited & ORS [128(2006) Dlt 425] : Sec.10F, 397 and 398 - Petition alleging Oppression and Mismanagement - CLB found no merit - CLB directed the purchase of minority shares by majority - Whether the CLB is correct in arriving at such finding and giving such direction - Held by Delhi High Court, Yes.

1.3 Company under liquidation - 'Rights of Landlord' : The petitioner landlord had rented out his premises to a company that went into liquidation. The Official liquidator took possession of the premises and kept it under his lock and key. The company did not need the premises. Landlord was also not getting his rent. Therefore, he petitioned the company's court for handing over of his property to him- Shivkaran Buhadia Vs. Official Liquidator [(2006) 130 comp Cas 592 (Raj)]

2.0 IPAB SOON IN OTHER METROS

The Intellectual Property Appellate Board (IPAB) currently functioning only in Chennai will shortly have presence in other metropolitan centres also, as per Union Department of Industrial Policy and Promotion (DIPP).

3.0 PATENTS RULES NOTIFY TIME LIMITS

The Patents (Amendment) Rules 2006 has prescribed definitive time lines for various activities by the patent offices. All patent related activities can now be performed by all the patent offices at Kolkata, Chennai, Delhi and Mumbai.

4.0 CONTRACT OF GUARANTEE - LAW OF LIMITATION

A guarantor's liability depends upon the terms of his contract. There is a difference between a guarantee which stipulates that the guarantor is liable to buy only on a demand by the creditor and a guarantee which does not contain such a condition. In a case where the guarantee is payable on demand, the limitation begins to run when the demand is made and the guarantor commits breach by not complying with the demand. **Syndicate Bank Vs. Channaveerappa Beleri & Ors** [JT 2006 (4) SC 579]

APPOINTMENT OF STATUTORY AUDITORS FOR PUBLIC SECTOR BANKS BRANCHES

The National Board of All India CA Society has decided to aggressively take up the issue of rationalisation of appointment of Auditors of Banks Branches with ICAI, Reserve Bank of India, CAG and Government of India. It is important to ensure that appointments are made independently by RBI only. Adequate emphasis is necessary to ensure that sole proprietorship firms, young members and CA firms, who have not been getting allotment should get their adequate share.

The Government can not be allowed to delegate powers to appoint Statutory Auditors of public sector banks to their Board of Directors. It will only encourage corruption, pulls-pushes and approaches besides concentration of work in the hands of those who are influential or who are ready to oblige Banks management. Since the appointment of Central Statutory Auditors is to be finalised by July 2006/ August 2006, we are also pursuing the matter with political leaders including the left parties, Congress and BJP. Members may please come forward to support our endeavour by writing letters to MPs, RBI, FM, and Prime Minister in this matter.

PROBLEMS IN MCA 21 E - FILING

The Chartered Accountants facing difficulties of any kind in e-filing of various documents are advised to send us the details for necessary help and advise as well as taking up the issues with Ministry of Company Affairs (MCA) and TCS/PFO. Our efforts to bring normalcy, efficiency and effectiveness in MCA 21 are continuous. Please send emails to vinodjain@inmacsindia.com, Mobile No: 9811040004 with a copy to vivekgupta@inmacsindia.com/aicas.cfo@gmail.com

CONGRATULATIONS

C.A. AT HELM

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