

## Chairman writes ...



*It is extremely important to motivate oneself to succeed in life and in profession. New Year Resolutions can be an important tool to motivate oneself.*

My Dear Colleagues,

**Happy New Year, Pongal and Vishu**

SIRC wishes all the members, family and students a very happy and joyful New Year, Pongal and Vishu. May the occasion bring in prosperity to you and to your family.

**New Year 2011**

Let us look forward to a new era of professional excellence, glory and growth. We have four interesting dates this year - January 1, (1.1.11), January 11, (11.1.11), November 1, (1.11.11) and November 11 (11.11.11). All these dates are combination of number one. As professionals, we are regarded in high esteem at number one position. Let us on this occasion re-dedicate ourselves to our profession, serve the nation with more vigor and keep up our number one position.

**Origin of New Year**

New Year is the world's most celebrated festival. January 1 is the first day of the year in modern Gregorian calendar as well as in Julian calendar used in ancient Rome. The Roman emperor Julius Caesar officially declared January 1 to be a New Year in 46B.C. Romans worshiped God Janus who had two faces, one looking forward and the other looking backward. The Romans dedicated this day to Janus, the god of gates, doors, and beginnings.

Not all countries celebrate New Year at the same time or in the same way. This is because people in different parts of the world use different calendars. The Chinese New Year is celebrated sometime between January 17 and February 19, at the time of the new moon, and it is called Yuan Tan.

**New Year's Resolution**

New Year's Eve is time for looking back at past year and more importantly forward to the coming year. It is a time to reflect on the changes we want to make and resolve to follow through these changes. It is said that the tradition of making New Year's Resolutions was started by early Babylonians. Their most common resolution was to return borrowed farm equipment and begin the New Year on a clean slate.

It is extremely important to motivate oneself to succeed in life and in profession. New Year Resolutions can be an important tool to motivate oneself.

- **Looking for new opportunities**

New jobs, promotions and new professional opportunities for those in practice can be part of New Year Resolutions.

- **Getting more organised**

Well organized office, home and personal routine can improve our productivity substantially. We professionals should learn better time management skills and get more out of our day and life.

- **Financial plan**

If we do not have a clear financial plan and implement it properly, how can we advice others. We should set examples of moderation and stress free ways of handling our finance.

- **Learning something new**

One should resolve to learn something new in the coming year whether it is IFRS or CAATS or learn a new language.

- **Spend time with family**

Stressed out with our hectic lifestyles, we are often hard pressed for time and often ignore our family. We should relax and **reduce stress out of our life by spending more time with our family and dear ones. Reinvigorate passion for hobbies to make life more interesting.**

- **Doing service**

We should not forget our commitment to Society and our social responsibility. Let us associate with a noble and selfless cause of helping underprivileged. With in our own Institute there are ample opportunities. Let us also repay something to our own Institute which gave us our existence.

- **Getting into shape**

Looking better and feeling better is one of the most popular New Year's Resolution taken up by people all over the world. It is important to give up bad habits and start the New Year with healthier habits. In this regard, one can also consider to quitting up smoking or drinking altogether.

**Accomplish New Year's Resolution**

Most New Year Resolutions are short lived as it is not backed with proper implementation. Another reason is unrealistic goals. Focus on one major resolution rather than too many in too a short time. Have a backup plan to handle temptation to give up and procrastinate.

Keep in mind words of wisdom from **Benjamin Franklin** "Be always at war with your vices, at peace with your neighbors, and let each New Year find you a better man".

**42nd Regional Conference of SIRC of ICAI at Kochi on November 27 and 28, 2010**

We are deeply touched by feedback from large number of members appreciating and applauding the success of the 42nd Regional Conference at Kochi on November 27 and 28, 2010. Looking back, we realize that it was the result of an excellent team work of members of the Conference Committee, especially members from Ernakulam branch. Our members voluntarily took responsibilities, worked day in and out with absolute devotion and dedication. We once again place on record our deep sense of gratitude to all those who worked for the successes of the Conference especially members of Ernakulam Branch under the able leadership of Branch Chairman CA. Vivek Krishna Govind and the various Conference Committee Conveners.

It was a great honour for SIRC to have Union Finance Minister to inaugurate our Regional Conference since the year 2001. This Conference mobilized the highest sponsorship of around ₹ 80 lacs and witnessed the highest gathering of members in the State of Kerala.

The feedback received from members published in this newsletter is not exhaustive and for all the members who have made this conference a phenomenal success, SIRC expresses its thanks and appreciation.

**Challenges before the profession – The role of SIRC of ICAI**

2011, a Year to witness significant changes in numerous areas of our professional activity with convergence of IFRS from April 1, 2011 in the first phase, the new Direct Tax Code (DTC) Bill in the Parliament, New Companies Bill and the proposed General Sales Tax (GST). This is bound to throw lot of new professional opportunities for us.

This was quite visible from the fact that Two Day Workshop on Direct Tax Code Bill organized on December 18 and 19, 2010 at Chennai attracted huge response from membership across the Region.

## Chairman writes ...

Similarly one day seminar on International Taxation in December 2010 received an overwhelming response from the members, considering the fact that it is an emerging area of professional service.

SIRC under the auspices of the Committee for Members in Industry organized a One Day Seminar on Emerging Economic Challenges for Industry at Bengaluru on December 4, 2010 where large number of members from industry participated which was well acclaimed.

The end of the year was an occasion to recall the knowledge acquired on a continuous basis and SIRC conducted a Seminar titled "Refreshing Thoughts" which received response from more than 700 members, in spite of the members busy in time barred assessments.

Two Day Conference on Banking & Insurance at Thrissur organized by the Committee on Banking and Insurance of SIRC, hosted by Trichur Branch of SIRC and inaugurated by Sri. G. Srinivasan, CMD, United India Insurance Company Limited was a grand success.

SIRC, organised a Three Day Regional Residential Seminar at Malampuzha hosted by Palghat Branch. One more Regional Residential Seminar at Munnar is being organised on January 8 and 9, 2011 hosted by Kottayam Branch.

### Students' Activities

The month of December witnessed three mega Students' Conferences in the Southern Region in Tirupati, Ernakulam and Coimbatore. We are excited with the response from students in large numbers in each of these programmes. The SICASA Regional Conference at Tirupati, the home town of SICASA Chairman CA. E. Phalgun Kumar was inaugurated by our beloved President CA. Amarjit

Chopra along with Vice-President CA. G. Ramaswamy besides your Chairman. It was also an occasion for the students' fraternity to come together and share their knowledge by being the speakers and preparing themselves to achieve greater excellence.

### Constitution of Udupi Branch of SICASA

SIRC is also happy to inform that the Institute has formed a Students' Association at Udupi and the formal inauguration of the Branch is scheduled on February 5, 2011.

### Programmes of January 2011 – A Curtain Raiser

Year 2011 commences with an aura of programmes with the holding of International Conference at New Delhi organized by our Institute on January 4, 5 and 6.

On January 8, 2011, a One Day Seminar on "Changing Economic Legislation and Emerging Challenges for Industry" at Hyderabad under the auspices of the Committee for Members in Industry of SIRC is being held.

A National Conference on "Rising to the Challenges in Public Finance & Government Accounting" is being organised by Committee on Public Finance & Government Accounting, ICAI hosted by SIRC on January 13, 2011 at Chennai.

SIRC would be organizing a One Day Free CPE Seminar on January 19, 2011 at Chennai.

On January 20, 2011, a Seminar on "Settlement Commission – New Procedure; Interaction with Vice-Chairman and Members of ITSC, Chennai" is scheduled at the SIRC Premises. Our Past President CA. T.N. Manoharan and CA. Chetan Karia, Mumbai would be the resource persons at the seminar.

On June 25, 2011, SIRC would be organizing P.P. Gururaja Upadhyaya Memorial Lecture in

the memory of late P.P. Gururaja Upadhyaya, a former Central Council Member of our Institute in whose name a corpus has been created by SIRC. Considering his passion for students, this programme would be exclusive for the students.

On June 26, 2011, SIRC is celebrating its 62<sup>nd</sup> Republic Day of the country in a befitting manner.

A Two Day National Conference organised by the Committee on Banking, Insurance and Pension, ICAI and hosted by SIRC of ICAI is being held at Chennai on January 28 & 29, 2011. Under the auspices of the Committee on Banking and Insurance, SIRC a One Day Seminar at Bengaluru and Two Day Conference at Hyderabad on Banking & Insurance is scheduled on January 22, 2011 and February 4 & 5, 2011 respectively.

On the students' front, the Board of Studies is conducting a National Convention at Bengaluru hosted by the Bangalore Branch of SIRC and SICASA on January 8 & 9, 2011.

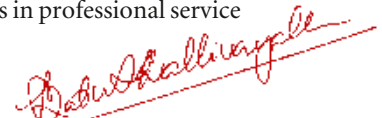
The details of the above programmes are published in this Newsletter.

### Extension of CPE compliance by members

The Institute has extended the time limit for the CPE compliance by members from December 31, 2010 to March 31, 2011 to enable such of those members who are yet to fulfill the minimum requirements.

Wishing you all once again a very Happy New Year 2011, Pongal and Vishu.

With warm regards,  
Yours in professional service



**CA. BABU ABRAHAM KALLIVAYALIL**  
chairmansirc@gmail.com

The Chairman and the Members of  
The Southern India Regional Council of  
The Institute of Chartered Accountants of India

cordially invite you to the

### Republic Day Celebrations

at 08.30 a.m.  
on Wednesday, the January 26, 2011  
at ICAI Bhawan, Chennai

**CA. Babu Abraham Kallivayalil**  
Chairman, SIRC of ICAI  
will hoist the National Flag

#### ALL ARE WELCOME

Special Lecture Meeting  
at 07.15 a.m.

on "KNOW YOUR POTENTIAL"  
by **CA. R. Sivakumar**, Chennai

Students are requested to attend the  
programme in large numbers.

## ONE DAY FREE CPE SEMINAR

**Wednesday - January 19, 2011 - 09.30 a.m. to 05.30 p.m.**

**P. Brahmayya Memorial Hall, "ICAI Bhawan"**

No. 122, M.G. Road, Chennai - 600 034

CPE Credit  
**6**  
HOURS

#### Inaugural Session 09.30 a.m.

#### Technical Sessions

Recommendations of the  
Sinha Committee on Companies Bill, 2009  
**CA. N.R. Sridharan**, Chennai

Cloud Computing Technology  
**CA. P. Selvamoorthy**, Chennai

Corporate Governance  
**CA. C. Ravisankar**, Vice-President,  
Finance, Sundaram Motors, Chennai

Mergers and Acquisitions – Due Diligence  
**CA. S. Ramakrishnan**, Chennai

#### DELEGATE FEE

Members : Nil  
ARS Members : Nil

Members & ARS Members may register  
their participation by sending their  
Name and M.No. by email to [sirc@icai.in](mailto:sirc@icai.in)

**Registration will be strictly restricted  
to 300 participants on first come first  
served basis by email only.**

<b>Treasurer</b> SIRC of ICAI	<b>Secretary</b> SIRC of ICAI	<b>Chairman</b> SIRC of ICAI
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**SIRC CALENDAR****JANUARY & FEBRUARY 2011**

Contact: Shri T.V. Srinivasan, Senior Assistant Secretary – ICAI - Phone: 044 – 30210320 / 321 – Email: sirc@icai.in

Date and time	Programme details	Resource person	Fee (₹)	CPE credit
Jan. 8, Saturday 09.15 a.m. – 06.00 p.m.	**One Day Seminar at Hyderabad on <b>CHANGING ECONOMIC LEGISLATION AND EMERGING CHALLENGES FOR INDUSTRY</b>	Details at Website: www.sircoficai.org		6 hrs
Jan. 8 & 9 Sat & Sunday	* <b>BLOOD DONATION CAMP</b>	Details at page 21 of December 2010 issue of SIRC Newsletter & Website: www.sircoficai.org		
Jan. 8 & 9 Sat & Sunday	<b>REGIONAL RESIDENTIAL CPE SEMINAR AT MUNNAR, KERALA</b>	Details at page 25 of December 2010 issue of SIRC Newsletter & Website: www.sircoficai.org		
Jan. 12, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on <b>LEGAL FRAMEWORK FOR NPOS – LATEST DEVELOPMENTS (FCRA 2010 &amp; DTC)</b>	CA. M. Kandasami Chennai	150/-	2 hrs
Jan. 13, Thursday 09.30 a.m. – 05.30 p.m.	* <b>NATIONAL CONFERENCE ON "RISING TO THE CHALLENGES IN PUBLIC FINANCE &amp; GOVERNMENT ACCOUNTING"</b>	Details at page 11		6 hrs
Jan. 19, Wednesday 09.30 a.m. – 05.30 p.m.	* <b>ONE DAY FREE CPE SEMINAR</b>	Details at page 04	No Delegate Fee	6 hrs
Jan. 20, Thursday 04.00 p.m. – 08.30 p.m.	*CPE Seminar on <b>SETTLEMENT COMMISSION – NEW PROCEDURE; INTERACTION WITH VICE-CHAIRMAN AND MEMBERS OF ITSC, CHENNAI</b>	Details below		4 hrs
Jan. 22, Saturday 09.00 a.m. – 05.30 p.m.	***One Day Seminar at Bengaluru on <b>BANKING &amp; INSURANCE</b>	Details at page 13		6 hrs
Jan. 25, Tuesday 09.30 a.m. – 05.00 p.m.	* <b>P.P. GURURAJA UPADHYAYA MEMORIAL LECTURE</b> for Students	Details below		-
Jan. 26, Wednesday	* <b>REPUBLIC DAY CELEBRATIONS</b>	Details at page 04		-
Jan. 28 & 29 Friday & Saturday	* <b>TWO DAY NATIONAL CONFERENCE ON BANKING &amp; INSURANCE</b>	Details at page 09		12 hrs
Feb. 2, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on <b>AS-19 - PROVISIONS, CONTINGENT LIABILITIES AND CONTINGENT ASSETS</b>	CA. D.M. Suresh Bengaluru	150/-	2 hrs
Feb. 04 & 05 Friday & Saturday	**** <b>TWO DAY CONFERENCE AT HYDERABAD ON BANKING &amp; INSURANCE</b>	Details at page 14		12 hrs
Feb. 9, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on <b>INTERPERSONAL RELATIONSHIP AND CAS</b>	CA. Abraham Zachariah Chennai	150/-	2 hrs

\* Programmes at P. Brahmayya Memorial Hall, ICAI Bhawan, SIRC Premises, Chennai.

\*\* Programme at Hotel Dasapalla, Jubilee Hills, Hyderabad.

\*\*\* Programme at Hotel Chancery Pavilion, Bengaluru - 560 025.

\*\*\*\* Programme at Hotel Fortune Manohar, Begampet, Hyderabad - 500 016.

Note: No CPE Study Circle Meeting on January 26, 2010 due to holiday on account of Republic Day.

No Delegate Fee for ARS Members for

• CPE Study Circle Meetings

• One Day Free CPE Seminar

• Seminar on Settlement Commission

• National Conference on Banking &amp; Insurance at Chennai

**P.P. GURURAJA UPADHYAYA MEMORIAL LECTURE**

Organized by Southern India Regional Council (SIRC) of the Institute of Chartered Accountants of India and Southern India Chartered Accountants Students' Association (SICASA)

**Tuesday - January 25, 2011** - 09.30 a.m. to 05.15 p.m.**P. Brahmayya Memorial Hall, ICAI Bhawan,**  
No.122, M.G. Road, Nungambakkam, Chennai – 600034**Exclusively for  
CA Students**Inauguration - 09.30 a.m. - **CA. T.N. Manoharan**, Past President, ICAITransfer Pricing in India  
**CA. N. Madhan**, ChennaiCapital Gains –  
Recent Issues  
**CA. T.G. Suresh**, ChennaiRecent Landmark Decisions  
in Taxation**CA. N.S. Srinivasan**, Chennai

Corporate Governance

**CA. P.B. Sampath**, Chennai**No Delegate Fee - All Students are Welcome****Chairman**  
SICASA**Treasurer**  
SIRC**Secretary**  
SIRC**Chairman**  
SIRC**SEMINAR ON  
SETTLEMENT COMMISSION – NEW PROCEDURE;  
INTERACTION WITH SHRI. VINOD KHURANA  
VICE-CHAIRMAN AND MEMBERS OF ITSC, CHENNAI****Thursday - January 20, 2011 - 04.00 p.m. to 08.30 p.m.****P. Brahmayya Memorial Hall, ICAI Bhawan,**  
No.122, M.G. Road, Nungambakkam, Chennai – 600034Discussion led by  
**CA.T.N. Manoharan**, Past President, ICAI  
**CA. Chetan Karia**, MumbaiCPE Credit  
**4**  
HOURS**DELEGATE FEE**Members : ₹ 500/-  
ARS Members : Nil  
Non-Members : ₹ 600/-

The delegate fee may be sent by way of Cash / Cheque at par / Demand Draft drawn in favour of "SIRC of ICAI" payable at Chennai.

**Treasurer**  
SIRC of ICAI**Secretary**  
SIRC of ICAI**Chairman**  
SIRC of ICAI





# TOGETHER WE ACHIEVED IT! – YOU ALL SAID IT!!

42<sup>nd</sup> Regional Conference of SIRC held on November 27 & 28, 2010 – A resounding success.

- ✗ "I am extremely delighted that under your chairmanship, the Conference was organized in an excellent manner. In spite of the fact of smaller population of Cochin and in Kerala State, you were able to have 3000 delegates participating in the Conference. This is a record on all counts. The arrangements in all spheres were excellent and the technical sessions were of highest standard with most eminent speakers. I am sure that the delegate would have returned home with full satisfaction and remember the conference for a long time. I congratulate the efforts of the Conference Committee Members on achieving their goal to have a grand successful conference." - **CA. R. Balakrishnan, Past President, ICAI.**
- ✗ "Hearty congratulations for the successfully organised conference with the largest ever gathering in Kerala. Great show, excellent hospitality and memorable experience." - **CA. T.N. Manoharan, Past President, ICAI.**
- ✗ "Despite large attendance, the arrangements were excellent not only in administrative matters but also in technical sessions. Discussions in technical sessions were of a very high order. One of the best conferences I had attended." - **CA. G. Narayanaswamy, Past Central Council Member, ICAI**
- ✗ "Congratulations for the wonderful and ever cherishable Conference. Kindly pass on my warm regards and appreciation to every member in the great organizing committee!! Our Ernakulam staff deserve special mention of appreciation." - **CA. R. Nagarajan, Past Chairman, SIRC.**
- ✗ "Congratulations. It is a great achievement." - **CA. Kirlosh Kumar, IAS, Deputy Secretary, Finance Department, Government of Tamil Nadu.**
- ✗ "You deserve all the credit for a well organised well attended function. All the best." - **Shri V.P. Ishwardas, Managing Director & CEO, Catholic Syrian Bank Ltd.**
- ✗ "It was truly a wonderful conference. A magnificent conference of outstanding success in every respect could be organised is testimony to your excellent personal and team leadership. All your chairmen and their committees did admirable work that left every delegate satisfied and excited beyond words. That is what truly matters in the final analysis. Hearty Congratulations and best wishes." - **CA. Venugopal C. Govind, Kochi.**
- ✗ "Pleased to know the success of the Conference. Your teamwork - congrats." - **Shri. Balasubramanian, Director, C&AG, Chennai.**
- ✗ "Compliments on holding a successful conference of such large magnitude. The arrangements were really wonderful and getting Finance Minister was the diamond in the crown." - **Shri B.S. Bhasin, CGM, State Bank of India, Kerala Circle.**
- ✗ "Congratulations! Wish you many more such laurels in your tenure!" - **CA. Ganesan, GM, Indian Bank, Chennai**
- ✗ "At the outset, please accept my hearty congratulations on the wonderful arrangements made for the conference, the selection of the best speakers to address on various contemporary issues, and the manner in which you and your team had taken care of our comforts right from beginning to end." - **CA. K.S. Samapth Kumar DGM, IOB, Chennai.**
- ✗ "Hats off to you and your team. You have proved your organizing skills once again." - **CA. Ashok Hastagiri, CGM, Dhanalakshmi Bank Limited.**
- ✗ "Congrats. One more feather on your cap. Enjoy." - **CA. G.N. Nair, Director (Finance), Central Warehousing Corporation, Delhi.**
- ✗ "Congrats. Excellent show." - **Shri Ramamurthy, Ex. G.M., State Bank India.**
- ✗ "Congrats. Every arrangement was superb. Another feather to your hat and your team." - **CA. N. Cherian Punnoose, Former Director (Finance), Cochin Refineries.**
- ✗ "Congrats to you and your team on conducting a wonderful and well managed Regional Conference. Let god bless you to perform even better in future." - **CA. C.B. Suresh Kumar, ITO, Kochi.**
- ✗ "Hats off to you and your team for successful Conference with a difference. You shown in action what you have been saying 'If there is Will there is Way'" - **CA. H. Shambhu Sharma, Chairman, Bangalore Br.**
- ✗ "This brief note is to congratulate you, CA. V.X. Jose and your team as well as the Ernakulam Branch led by CA. Vivek Krishna Govind on the successful conduct of the Conference. It is no exaggeration to say that you, by your meticulous planning, have proved that Chartered Accountants are second to none in organizational skills and also in the process have raised the bar for our future conferences. Though we were mere spectators, we could not but feel proud about the way you showcased the collective strength of our region and all of us salute you and your team on the resounding success." - **CA. A.S. Anshuman, Chairman and CA. T.V. Subramanian, Secretary, Mysore Br. of SIRC.**
- ✗ "Congrats" - **CA. K.R. Krishnan, Chairman, Palghat Branch.**
- ✗ "Excellent arrangements and good hospitality – successful conference. Congratulations." - **CA. R.M. Senthil Kumar, Chairman, Tirupur Br.**
- ✗ "Our hearty congratulations for organizing the conference in an excellent manner and most professionally." - **Trivandrum Branch.**
- ✗ "We are glad and proud to inform you that the Conference was a grand success. The inaugural address by the Hon'ble Union Minister of Finance Shri. Pranab Mukherjee and a galaxy of learned dignitaries, technical sessions by eminent faculty and valedictory session were in high order, which paved the way for the grand success of the Regional Conference making it a memorable one besides your exemplary hospitality, solidarity and your dedicated team which we shall cherish in our heart." - **CA. H. Raman, Chairman, Tuticorin Br. of SIRC of ICAI.**
- ✗ "You are great. Congrats for the Grand success." - **CA. C.M. Ravi Prasad, Chairman, Visakhapatnam Br.**
- ✗ "Really appreciate your leadership. One of the best conferences I have attended." - **CA. Santhosh Cherian, Vice Chairman, Trivandrum Br.**
- ✗ "Hearty congrats for grand success." - **CA. Venkateswara Rao Adusumilli, Vice-Chairman, Hyderabad Br.**
- ✗ "Extra-ordinary. unbelievable, unforgettable; unimaginable, superb food, excellent Conference hall, lovely memento, stunning attendance, continuous presence of delegates, eminent speakers. Hats off to you Chairman, SIRC and Hearty Congratulations to all Convenors of Conference, Conference Committee Members, members of Ernakulam Branch." - **CA.V. Jayaprakash, Chairman SICASA Salem Br.**
- ✗ "Hats off to you" - **CA. C. Mohan, Past Chairman, Calicut Br.**
- ✗ "Congratulations on the excellent show at the Ernakulam SIRC Regional Conference." - **CA. K.M. Muralidharan, Past Chairman, Calicut Br.**
- ✗ "Congrats for a wonderful show." - **CA. A. Mony, Past Chairman, Calicut Br.**
- ✗ "I would like to very specially thank you for your support for the Conference. It is the excellent team work that made the Conference a resounding success. Hon'ble Union Finance Minister's presence and inspiring words made a big difference." - **CA. Jomon K. George, Past Chairman, Ernakulam Br.**
- ✗ "I came to know that it was never before Conference. Congrats. You proved your leadership." - **CA. B. Jayarajan, Past Chairman, Palghat Br.**
- ✗ "Apt Captain, Apt team work and Apt weather turned the conference into an epoch making event. Your performance delighted the members." - **CA. N.A. Viswanathan, Past Chairman, Palghat Br.**
- ✗ "Hearty congrats for the great show. I can only say that you have won Gold in 10000 Mts hurdles! Keep up the good work." - **CA. N. Subramoniya Sarma, Past Chairman, Trivandrum Br.**
- ✗ "I would only wonder if the Conference was not a resounding success considering the great efforts, minute plans and perfect execution skills you possess as leader of SIRC. One more feather in your cap. I am sure you will bring in many more laurels for the profession and members." - **CA. Chinnasamy Ganesan, Chennai.**
- ✗ "Congrats. You did it. We are proud of you." - **CA. Abraham Zachariah, Chennai.**
- ✗ "Congratulations!! For grand success of Regional Conference." - **CA. Omprakash Jain, Chennai.**
- ✗ "Congratulations for a colourful and grand conference at Kochi. You deserve all accolades and laurels well earned." - **CA. R. Raghavendran, Bengaluru.**
- ✗ "Hats off to you for the magnificent performance." - **CA. V.M. Thomas, Kochi.**
- ✗ "Congrats for Excellent organizing of SIRC Conference." - **CA. K.M. George Roy, Kochi.**
- ✗ "Congratulations for the grand success of the conference. You and you only can 'Achieve' this." - **CA. Jojy Issac, Kochi.**
- ✗ "Many congratulations on arranging such a great event." - **CA. Sriram, Kochi.**
- ✗ "Congratulations for your great effort in making our conference a great success." - **CA. Besy Tomy, Kottayam**
- ✗ "Thank you for the excellent arrangements at the SIRC conference. You and your whole team deserve a special congratulation. The entire programme will be remembered for a very long period by persons like me." - **CA. P. Venugopala Menon, Kozhikode.**
- ✗ "The Regional Conference went off very very well and you and your team deserve lavish praise. Must have broken many a record!!" - **CA. V. Arjun Nedungadi, Kozhikode.**
- ✗ "Hats off, it was a life time experience for me. Thanks for grand Regional Conference." - **CA. Kumar Bhat, Kannur.**
- ✗ "I wish to say that 'you made it.'" - **CA. Selvam, Coimbatore.**
- ✗ "Great job, great conference." - **CA. Liju V. Rajan Kolath and Santhi Elizabeth Liju, Kochi.**

## VIDEO RECORDING OF 42<sup>nd</sup> REGIONAL CONFERENCE

Members who could not attend the 42<sup>nd</sup> Regional Conference of SIRC of ICAI – "Jnana Marga – New Challenges, New Frontiers" at Kochi on November 27 & 28, 2010 inaugurated by Hon'ble Union Finance Minister Shri. Pranab Kumar Mukherjee, can watch the video recording of the entire Conference proceedings uploaded in the website of the SIRC of ICAI [www.sircoficai.org](http://www.sircoficai.org). You may click the link "Jnana Marga" on the Home page and watch the recordings. *Don't miss this golden opportunity.*



**CA. K.S. Ravi Shankar**  
Advocate, Bangalore  
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# Anti-Money Laundering Law (A brief analysis of money laundering and organized crime vis-à-vis the MLPA)©

## A. Introduction:

- A.1. This paper outlines the need for and intent of legislation to combat the dangerous and anti-national activity of money laundering. It is not exhaustive, and as far as practicable nuances of the statute, viz. the MLPA, 2002 (Money Laundering Prevention Act, 2002) have been consciously omitted, but the paper focuses on the segments of the economy and society which are affected and the likes of people who resort to the activity of laundering money, which is a disease of cancerous nature that can consume the economy and society.
- A.2. Money is honey my little sonny the rich man's words are funny! is an old adage. When money in the form of currency replaced the barter system of payment for value received, counterfeiting was resorted to and deception and illegal gains resulted. But when currency itself has been replaced by instruments of different types, including securities and valuable documents, such as bank notes, pay orders, cheques, drafts, letters of credit and other negotiable instruments, counterfeiting is a piffling and trifling mechanism resorted to by fraudsters and hooligans, and sophisticated forms of receipt and payment routed through the banking system have replaced the traditional money robbing. Banking transactions are common in national and international trade, and transfer of funds intra-national and international has become speedier after the advent of money transfer systems through the satellite modes and internet as also telecommunication channels. These latter developments intended for legitimate transactions, have been many a time misused by crooks to transfer proceeds of criminal activity to various zones, and to siphon away illegal gains to places where they are least questioned.
- A.3. Tax evasion is only one angle from which money laundering activity can be looked at but punishment under tax law of persons who are found to be indulging

**MONEY MAKES THE  
BLIND SEE AND THE LAME  
WALK!!!**



in tax evasion having laundered money is an insufficient deterrent and therefore stringent punishments through special courts with heavy punitive inflictions and physical confinement for specified periods in the form of imprisonments appear to be the solution, for which reason anti-money laundering laws have been enacted across the world by many developed countries.

## B. Money- general discussion and types:

- B.1. The word *money* signifies a commodity generally accepted by consent as a medium of economic exchange. It is the medium to express prices and values. It circulates from person to person and country to country facilitating trade and is the principal measure of wealth. However, when the value of money falls, it is treated as mere paper and in such situations costly or scarce commodities may be used as a substitute as for instance expensive goods which are also scarce such as cigarettes and cognac were the medium of exchange during the 2<sup>nd</sup> world war years in Germany. In countries with

a high inflationary rate, stable foreign currencies may become the medium of exchange for international transactions, and when full convertibility is allowed even for domestic transactions.

- B.2. Many items have been historically used as *money*, for instance shells, beads, whale's teeth, tobacco, stone discs, cigarettes, wine and cattle. The word *pecuniary* comes from *pecus* meaning cattle (from the original *pashu* = cattle in Sanskrit). Metallic money became common and the highest value was attributed to the costliest metal, e.g. gold, silver, copper, nickel denoting the descending order of the cost and value. In the 17<sup>th</sup> and 18<sup>th</sup> centuries, paper money and banknotes spread widely. After abolition of the international gold-standard, which wavered after the world wars, emergence of a unified currency area based on reserves of bullion in that area substituted gold as a medium of settlement of international transactions.
- B.3. Electronic money prevents stealth of currency and forgery and facilitates anonymity. Therefore this has now come to substitute hard currency transactions, through the banking cum telecommunication medium, with the rapid advancement of technology. Electronic Fund Transfer or EFT through teller machines for withdrawing money from banks, smart cards or stored value cards, debit and credit cards while making or receiving payments and automated clearinghouses increase the speed of regular payments and settlements.
- ## C. Laundering- meaning of:
- C.1. The word "laundry" has its etymological origin in the word *lavender* or *lava* i.e. to colour. To launder is to colour or change the colour. *Lavo* or *lavare* in Latin, means to wash, bathe, wet, drench, wash away the dirt. A laundry is a place where clothes are washed. A laundryman is one whose business is to wash clothes. The term, however, does not include persons who merely receive and collect soiled clothes to be washed,

acting as agents of those engaged in the laundry business, and receiving by way of compensation a discount from the price charged from the price charged from the general public.

C.2. Laundering means to pass off by fraud and deception. Launder means to transfer money or instruments deriving from illegal activity, so as to conceal the true nature and source. Laundering is a term used to describe investment or other transfer of money flowing from racketeering, drug transactions and other illegal sources into legitimate channels so that its original source cannot be traced. It is a method of disguising the origin of funds by moving them rapidly from one account or country to another. It thus becomes a complicated business to trace their origins, movements and eventual destination. Counterfeit money, stolen money or money received for illegal activity may be laundered.

**D. Gangsters, robbers, racketeers, financial crime and money laundering:**

D.1. Financial crime (including financial fraud) has been by and large a scenario emerging in the 20<sup>th</sup> century. It is another thing that history has witnessed open-stealth of gold and silver by powerful marauding nations and communities as for instance India was subjected to unlimited theft and robbery of bullion, precious stones, gems and valuable minerals by invading nations, including but not limited to the British. The *peacock throne* was stolen by Nadir Shah, only to land in a museum in England. In history, countries have been raped by incoming merchants who spread their tentacles of bargaining power for goods received and money spent and investment made to political power and altering the balance of power

and permeating through the nation's security through military power. This rapacious tendency of imperialists is depreciable. Doing business for mutual benefit based on the theory of comparative cost and advantage is one thing, but raping a country financially and ruining its economy is another and imperialists revel in the latter activity. They also impose on weak countries sanctions and compel them to sign on dotted lines (one-way agreements), which bring the unwilling signatory to a state of economic, political and social slavery. The latter part of the discussion in this paragraph depicts laundering of another type resorted to by so-called respectable countries with an uncanny ability to deceive others and make the latter their client-states. Interventionist and expansionist policies of imperialistic states with shifting geographical and political points, has been a feature of world politics for the last two hundred or more years.

D.2. Money laundering takes place and roots in places where opportunity is available to barons of prohibited goods and services, crusaders of crime, racketeers and Mafiosi. The war on drugs has resulted in the increase of international crime, apart from illegal migration of men and women, the latter being used to satisfy the carnal appetite of many players across the world and for a consideration in money and money's worth. Gun-running, is another crime which in India is commonly called *suprai killing*. That is murder for gain. There is international disorder in many countries, where political bosses who are corrupt to the core, have stashed away ill-gotten gains elsewhere through shady deals and disregarded the national debt of their own country. Looting of a nation by its national leaders has been common

in Asian countries resulting in evasion, flight and fraud. Bankers are party to such transactions and the fraudsters themselves have a vested interest in banking and financial institutions and thereby facilitate commission of acts of laundering. Capital has become toxic and smuggling, violence, corruption and immoral trafficking have shown an upward trend. A new system of slavery has descended the world, with the barons and mafia dominating many institutions. Closely knit, ethnically distinct, and ruthlessly efficient, these mafias control the drugs trade, people trafficking and other serious crimes. Multinational corporations, politicians and bureaucrats are the players in organized crime apart from accountants and lawyers. It is also said that the most mouth-watering opportunities for illegal profits are provided by corporations in thriving economies. Also human organs are now a source of business and rampant trade is prevalent. Read Woodiwiss on Gangster Capitalism.

D.3. Law enforcement agencies which are supposed to enforce law often turn a blind-eye to many crimes and selectively deal with cases, and many officials of such agencies themselves have been found operating criminal enterprises. Hospitals, educational institutions and other such organizations also profit by criminal activity, e.g. asking a patient to undergo tests unnecessary for diagnosis or treatment (for the sake of kick-backs from the referred center), pumping-in money through the medium of trusts and charitable organizations into educational and medical institutions, but control being vested in *benami* hands who are picked by the vested interests are some of the examples of money laundering.

**TWO DAY NATIONAL CONFERENCE ON BANKING & INSURANCE**

Organised by Committee on Banking, Insurance & Pension, ICAI

Host: SIRC of ICAI

**Friday & Saturday - January 28 & 29, 2011 - 09.00 a.m. - 05.30 p.m.**

**P. Brahmayya Memorial Hall, ICAI Bhawan, No.122, M.G. Road, Nungambakkam, Chennai – 600034**

CPE Credit  
**12**  
HOURS

**Day 1 – Friday, January 28, 2011**

Key Note Address  
Eminent Personality  
Concurrent Audit and Disciplinary Proceedings - An analysis  
**CA. K. Ravi**, Chennai  
Practical Approach to Concurrent Audit of Banks under CBS Environment  
**CA. D. Venkataraman**, Salem  
IFRS in Banking Scenario  
**CA. P.R. Ramesh**, Secunderabad  
Stock, Receivables and End Use Audit in Banks  
Eminent Faculty

**Day 2 – Saturday, January 29, 2011**

Opportunities in Insurance Sector & Regulators Perspective  
**CA. S. N. Jayasimhan**, Joint Director (Investments), IRDA, Hyderabad  
Practical Approach to Audit of Insurance Companies  
**CA. P.S. Prabhakar**, Chennai  
Audit of CBS Branches - Bankers' Practice Perspective  
Eminent Faculty  
Frauds in Banks and Forensic Audit  
**CA. R. Vittal Raj**, Chennai

**DELEGATE FEE**

Members : ₹ 1000/-  
ARS Members : Nil  
Non-Members : ₹ 1400/-

The delegate fee may be sent by way of Cash / Cheque at par / Demand Draft drawn in favour of "SIRC of ICAI" payable at Chennai.

Note: Speakers are subject to confirmation

Registration  
08.30 a.m.

**Treasurer**  
SIRC of ICAI

**Secretary**  
SIRC of ICAI

**Chairman**  
CB & I, SIRC

**Chairman**  
SIRC of ICAI

**Chairman**  
Committee on Banking, Insurance & Pension, ICAI



D.4. Bootleggers, racketeers and bank robbers apart from kidnappers are players assisted by corrupt bureaucrats, corporate fraudsters and politicians apart from lawyers and accountants. Mafia families (meaning families of the latter species) have a major stake in the activity of money laundering and command tremendous influence politically and economically. Public cannot easily comprehend how criminal activity emerges in institutions and they are unable to appreciate how abuse of public interest escapes from legal jurisdiction, and they are discouraged from considering the identical impact of tax avoidance and tax evasion on national budgets for example. *Feasts of fraud* are enjoyed by what these people engage in. Read the treatise of M. Woodiwiss. The learned professor says that allowing the market mechanism to be the sole director of the fate of human beings and their natural environment..... would result in the demolition of society (quoting from Karl Polanyi – *The Great Transformation*).

D.5. Financial scandals such as the *Watergate*, *BCCI* i.e. *Bank of Credit and Commerce International* (founded by a Pakistani banker called *Agha Hasan Abedi* in 1972), *Enron*, *WorldCom* and in India the recent episode of *Satyam Computers* have brought to public notice the fact that all is not well with the much touted globalization etc. Convicted corporate executives share the prison cells with common thieves but would be reluctant to share their criminal know-how and explain where they went wrong to a new generation. The results of de-regulation and unregulated economic activity may lead to phenomenal increase in the fortune of corporate executives and breed economic inequality leading to social breakdown.

### **E. Organized crime and the crimes scheduled in the MLPA:**

E.1. The UNTOC (United Nations Convention on Transnational Organized Crime) defined an organized crime as *a structured group of three or more persons existing for a period of time and having the aim of committing one or more serious crimes or offences established in accordance with this Convention in order to obtain, directly or indirectly, a financial or other material benefit.*

E.2. Martin Short says that organized crime is a self-perpetuating, continuing criminal conspiracy for profit and power, using fear and corruption and seeking immunity from law. It is a society that seeks to operate outside the control of the public and their governments. It involves thousands of

***Its actions are not impulsive but the result of intricate conspiracies, carried on over many years and aimed at gaining control over whole fields of activity in order to amass huge profits.***



criminals, working within structures as complex as those of legitimate governments. Its actions are not impulsive but the result of intricate conspiracies, carried on over many years and aimed at gaining control over whole fields of activity in order to amass huge profits. The core activities are supply of illegal goods and services, such as gambling, loan-sharking, narcotics, arms, other forms of vice. The crime syndicates are also engaged in legitimate business and labor unions.

E.3. From the standpoint of the MLPA, organized crime would mean any of the scheduled offences, as per section 2(y) of the Act, viz. the following:

1. Offences under the IPC, 1860- Waging War or attempting to wage war or abetting waging of war against the government of India; Conspiracy to commit offences punishable by section 121 against the State. Criminal conspiracy, counterfeiting government stamps or sale, possession thereof or using counterfeit stamp as genuine.
2. Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 in relation to poppy straw, opium, cannabis plant, psychotropic substances, illegal import or export of such substances, financing such traffic and harbouring offenders, abetment and criminal conspiracy.
3. Offences under the IPC viz. murder, culpable homicide not amounting to

murder, attempt to do either of the two preceding things, causing hurt to extort property or valuable security, kidnapping for ransom, extortion, robbery, dacoity, forgery of a valuable security or will etc., counterfeiting currency or bank notes and using as genuine, such currency or notes, offences relating to property marks, cheating by personation, offences relating to stolen property etc.

4. Offences under the arms Act, 1959 such as manufacture, sale, transfer, conversion, repair or test, proving or exposing or offering for sale arms or ammunition in contravention of the Arms Act, use of arms or ammunition in contravention of the said enactment, use of fire arms or imitation fire arms, knowingly purchasing arms from unlicensed persons or delivery to person not entitled to possess the same or contravention of any of the provisions of the Act.
5. Offences under the Wild Life (Protection) Act, 1972 such as contravention of prohibition of picking, uprooting of specified plants, contravention of provisions relating to wild animals, trophy, animal articles, purchase of animals requiring a licence to purchase and dealing in such items or animals.
6. Offences under the Immoral Traffic (Prevention) Act, 1956 (SITA)-procuring, inducing or taking person for the sake of prostitution, detaining a person in premises where prostitution is carried on, seducing or soliciting for the purpose of prostitution, seduction of a person in custody.
7. Offences under the Prevention of Corruption Act, 1988 - Public Servant taking gratification other than legal remuneration in respect of an official act, taking gratification in order, by corrupt or illegal means to influence public servant, taking gratification for exercise of personal influence with public servant, abetment by public servant of offences *supra*.
8. Offences under the Explosive Substances Act, 1908 causing explosion endangering life or property, making explosives or preparing them under suspicious circumstances.
9. Offences under the Unlawful Activities Prevention Act, 1967 viz., being members of an unlawful association, terrorism, recruiting people for terrorist activities, organizing camps for them, supporting them, being a member of such organization, conspiring with them, raising funds for them, harbouring them, and related offences.
10. Offences under the Explosives Act, 1884, Antiquities and Arts Treasures

Act, 1972, SEBI Act, 1992- pertaining to manipulation and deception, insider trading and contravention of substantial acquisition of securities regulations.

11. Evasion of customs duty under Customs Act, 1962.
  12. Offences under the Bonded Labour System Abolition Act, 1976 for enforcing bonded labor, extracting bonded labour or abetment thereof.
  13. Offences under the Child Labour Prohibition and Regulation Act, 1986 by employing any child to work in contravention of the said Act.
  14. Offences under Transplantation of Human Organs Act, 1994 by removal of human organs without authority, dealing in such organs.
  15. Offences under the Juvenile Justice Act, 2000 – cruelty to juvenile or child, employing such persons for begging, giving intoxicating liquor or narcotic drugs etc., to such persons, exploitation of such persons.
  16. Offences under the Emigration Act, 1983, the Passports Act, 1967, the Foreigners Act, 1946, the Copyright Act, 1957, the Trade Marks Act, 1999, the Information Technology Act, 2000, the Biological Diversity Act, 2002, the Protection of Plant Varieties and Farmers’ Rights Act, 2001, the Environment Protection Act, 1986, the Water Pollution Act, 1974, Air Pollution Act, 1981, Suppression of Unlawful Acts Against Safety of Maritime Navigation etc., on Continental Shelves Act, 2002.
- E.4. There are totally 25 paragraphs containing lists of scheduled offences under the Act. Therefore, the MLPA fundamentally deals with proceeds of crime, derived or obtained from activities of *organized crime* under the scheduled laws.

**F. Why MLPA was enacted:**

F.1. The Act, i.e. MLPA received Presidential assent on 20.1.2003, as Act No. 15 of 2003 vide Gazette of India notification (E) No.16 dt.20.1.2003 Pt. II Section 1. The Act came into force from 1.7.2005 as per Notification No. GSR 436 (E) dt.1.7.2005. Initially the Bill for enactment of a law was introduced in Parliament on 4.8.1998 and was discussed and debated, and passed only in the Winter Session of Parliament in 2002. The attack on the Indian Parliament on 13.12.2001 was a very serious affront to the national integrity, the democratic structure of and sovereignty of India and the previous year’s attacks at Bombay (Nov. 2008) by terrorists taking several people hostage apart from killing of innocents shows that activities such as these, which

are enacted on Indian soil by non-Indian agencies or elements, cannot but happen without the involvement of several players who are networked intricately across the seas.

- F.2. The UN General Assembly during June 1998 adopted a resolution against illegal drug trafficking and members resolved to adopt a comprehensive legislation. Apart from the above, the FATF on Money Laundering (Financial Action Task Force) made as many as forty recommendations to provide the basis for a law against the offence of money laundering and there was consensus in the form of Political Declaration and Global Programme of Action adopted by the UN General Assembly in Feb. 1990 for members to develop a mechanism to prevent the financial institutions from being used for laundering of money and to enact a law to prevent such acts.
- F.3. The countries of the world are economically and socially characterized as developed, developing and undeveloped. The sizes of these countries vary as also their economic and social problems. Internal and external threats, tax rates etc. are reasons for money being transferred into or outside the country apart from funding of operations of covert nature involving conspiracies to destabilize the countries. There are very small countries (nation-states) which have thousands in population but hundreds in banks. Funneling of funds into and out of countries where questions are not asked about the legitimacy of the source, the purpose of transfer of funds and absence of tax rates and maintenance of secrecy by the bankers are reasons why money is parked in such countries and with

banks therein. Illegal funds obtained from organized crime, or proceeds of crime (as defined in MLPA) are kept in secretly coded accounts and operations clandestinely done by the holders of accounts. The purpose of transfer of funds outside such accounts may be legitimate, but the source illegal. The source of the funds in some cases may be legitimate but the purposes of intended use illegal. Funding of arms building by insurgents, drug trafficking, immoral activity, murder for gain, dealing in prohibited substances and pay-offs to bureaucrats and politicians are all made from such accounts by transfer of funds.

- F.4. The economy gets devoured by the activities of money launderers. Black money is not the same as laundered money. Parallel economies thrive in countries across the world, where untaxed funds account for major chunk of the activities in society and that would not mean that untaxed money is laundered. However, laundered money may percolate into capital of an economy in the form of ostensible investment by seemingly legitimate groups of persons or firms and the returns thereof re-fuelled into gainful and seemingly lawful economic activity.

**G. Black Money – R.K.Garg decision of Apex Court:**

G.1. In R.K.Garg v. UOI, 1982 (133) ITR 239 (SC), the apex court was seized of a case wherein the constitutionality of the Special Bearer Bonds Immunities and Exemptions Act, 1981 and the preceding ordinance promulgated by the President, were questioned. The Constitution Bench speaking through Justice Bhagwati, made many important

<b>NATIONAL CONFERENCE ON “RISING TO THE CHALLENGES IN PUBLIC FINANCE &amp; GOVERNMENT ACCOUNTING”</b>			
Organized by Committee on Public Finance & Government Accounting, ICAI - <b>Host: SIRC of ICAI</b>			
<b>Thursday - January 13, 2011 - 09.30 a.m. to 05.30 p.m.</b>			
<b>P. Brahmayya Memorial Hall, “ICAI Bhawan”, No. 122, M.G. Road, Chennai - 600 034</b>			
			<b>CPE Credit</b> <b>6</b> <b>HOURS</b>
<b>Inaugural cum Key Note Address Session – 9.30 a.m.</b>		<b>Technical Sessions</b>	
Chief Guest <b>CA. G. Ramaswamy</b> , Vice-President, ICAI		IFRS Convergence – Opportunities for SME Sector – Rising to the Challenges	
Guest of Honour &: Key Note Address on the theme <b>Mrs. Usha Sankar</b> , Dy. General, C&AG of India		<b>CA. Chinnasamy Ganesan</b> , Chennai	
Welcome Address <b>CA. Babu Abraham Kallivayalil</b> , Chairman, SIRC		Paradigm Shift in Government Accounting – Cash to Accrual – Challenges & Opportunities	
Special Address <b>CA. Anuj Goyal</b> , Chairman, CPF&GA		<b>Mr. K. Srinivasan</b> , Principal Director of Commercial Audit & Ex-Officio - Member, Audit Board, Chennai	
<b>DELEGATE FEE</b>		Managing Public Finance	
Members : ₹ 400/-	The delegate fee may be sent by way of Cash / Cheque at par / Demand Draft drawn in favour of “SIRC of ICAI” payable at Chennai.	<b>Mr. A. Rangachari</b> , IAAS (Retd.), Former Additional Secretary, Ministry of Finance, Govt. of India & Former Advisor, IMF (Budget & Finance), Chennai	
ARS Members : Nil		Issues in TDS & MAT	
Non-Members : ₹ 600/-		<b>CA. (Dr.) Girish Ahuja</b> , New Delhi	
<b>Treasurer</b> SIRC of ICAI	<b>Secretary</b> SIRC of ICAI	<b>Chairman</b> SIRC of ICAI	<b>Chairman</b> Chairman, CPF&GA, ICAI



observations on the phenomenon of black money inter-alia holding thus:

*“Those who are honest and who observe the law are mulcted in paying the taxes legitimately due from them while those who have broken the law and evaded payment of taxes are allowed by the provisions of the Act to convert their black money into “white” without payment of any tax or penalty. The provisions of the Act may thus seem to be putting a premium on dishonesty and they may, not without some justification, be accused of being tinged with some immorality, but howsoever regrettable or unfortunate it may be, they had to be enacted by the Legislature in order to bring out black money in the open and canalize it for productive purposes. Notwithstanding stringent laws imposing severe penalties and vigorous steps taken by the tax administration to detect black money and despite various voluntary disclosure schemes introduced by the Government from time to time, it had not been possible to unearth black money and the menace of black money had, over the years, assumed alarming proportions causing havoc to the economy of the country and the Legislature was, therefore, constrained to enact the Act with a view to mopping up black money so that instead of remaining idle, such money could be utilized for productive purposes.”*

G.2. Black money is an expression which was used inter-alia in the Wanchoo Committee report and it was pointed out therein that black money was a serious threat to the national economy and it was an undisputed fact that there was considerable black money in circulation, which was unaccounted or concealed and outside the disclosed trading channels, largely the product of black market transactions and tax evasion. There was a parallel economy which had grown in size and dimension and even on a conservative estimate ran into thousands of crores (when the Report was made). The abundance of such money gave rise to a parallel economy operating simultaneously and competing with the official economy, which menace had reached staggering proportions and posed a serious threat to the fulfillment of the objects of the Constitution. The high rates of taxation, economy of shortages resulting in hoarding and corruption, license-permit system, donations of black money encouraged by political parties to fund elections, payment of secret commission as corrupt business practices, bribes, poguee money, ineffective administration of tax laws, deterioration in moral standards of tax payers, who no longer considered tax evasion as immoral or unethical. Refer 133 ITR 239 (SC) *ibid*.

***“Laundered money is not the same as black money. Laundered money stems from proceeds of crime, arising as a result of participating directly or indirectly in criminal activity of the schedule types in the MLPA.”***



G.3. The Swadeshi Jagaran Manch (SJM), has conducted a detailed study as per which some seventy or more territories in different locations of the world seek to attract investment from outside their borders, offering financial secrecy laws as an incentive, and are known as *tax havens* and impose little or no tax on income from outside sources, and are ideal lodges for black money of many countries. Switzerland is the major tax haven with more than a third of global private funds. India has done very little to prevent flight of capital to tax havens and secret banks. The issues raised by the SJM are of paramount importance to India, the volatility of the stock markets in India are due to the inflow and outgo of foreign money and it is feared that such flows may be of ill-gotten gains / wealth of Indians kept overseas in tax havens or domestic funds sent out and brought back to facilitate some activities. The estimate of Indian money in tax havens varies from 500 billion USD to 1.4 trillion USD.

G.4. Laundered money is not the same as black money. Laundered money stems from proceeds of crime, arising as a result of participating directly or indirectly in criminal activity of the schedule types in the MLPA. The Act (MLPA) seeks to trap such money or property derived as a result of investing such money and the punishing the offender who launders the money. It has nothing to do directly with taxation.

G.5. The MLPA was amended on 6.3.2009 after the 2008 Bombay terrorist

attack incident, as a consequence of which Offences under the Unlawful Activities Prevention Act and Explosive substances Act were introduced.

#### **H. Important concepts under MLPA:**

1. The MLPA intends to punish those who deal in proceeds of crime, by enacting in section 3 that those who attempt to indulge or knowingly assist or are party or actually involved in any process or activity connected with the proceeds of crime and project the same as untainted property, shall be guilty of money laundering.
2. Money laundering therefore means dealing in proceedings of crime in the manner envisaged in section 3. The expression *proceeds of crime* is defined in section 2(u) to denote any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property.
3. Thus, not only the criminal who obtains property or derives property as a result of criminal activity is punishable, but those who aid, assist or abet in the laundering of such proceeds of crime are also made punishable. Laundering is the act of projecting criminal proceeds as untainted property.
4. The person is punished under section 4 with rigorous imprisonment for a period of not less than three years, but which may extend to seven years and fine upto five lakh rupees. However in certain cases the punishment may extend in the form of imprisonment upto ten years, i.e. cases relating to drug-offences. It may be noted that *rigorous imprisonment* shall have the meaning assigned to it in the Indian Penal Code, which according to section 53 means *hard labour*.
5. The offender is therefore punished under the concerned laws, apart from which a parallel punishment is meted out under the MLPA. This is not double jeopardy as per the Constitution of India. Refer *Thomas Dana v. State of Punjab*, AIR 1959 SC 375. The punishment under MLPA is in addition and without prejudice to the punishment(s) under the other laws.
6. The proceeds of crime, i.e. the property relating to the crime is first attached under section 5 of the Act, and thereafter upon adjudication the provisional attachment of property is confirmed by confiscating the same under section 8. The confiscated property shall vest in the Central Government. The principles of natural justice shall inform the proceedings under section 8.
7. The guilt of the person when proved in the trial court and order of the trial court attaining finality shall result in

the attachment or retention of property becoming final. The proceedings under the respective laws for trial and prosecution are independent of trial under the MLPA. That is to say, parallel proceedings may go on in various courts and before various authorities and tribunals in respect of the offences committed and the laundered money.

8. The word *property* has a wide meaning- and brings within its purview property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.
9. The word *person* is defined in section 2(s) to include individuals, HUF, company, firm, AOP, BOI, artificial juridical person, agency, office or branch owned or controlled by any person. The word *value* means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.
10. Appointment and powers of adjudicating authorities and their composition and powers are governed by section 6 and 11 (including power of summons, production of documents and evidence). Staff of such authorities under section 7.
11. The manner of managing properties confiscated under the Act by the Central Government shall be as per the Act by an administrator appointed by it.
12. Banks, financial intermediaries, financial institutions such as banking companies etc., shall be obliged to act in accordance with section 12 and furnish

information and records of transactions of the prescribed types for the purpose of ensuring compliance with the requirements of the Act. The RBI and Central Government have issued / framed several rules and regulations under the Act.

13. Power of survey is governed by section 16, search and seizure by section 17, search of person by section 18.
14. Persons whom the authorized officers have reason to believe are guilty of offences under the Act, are liable to be arrested and section 19 deals with the manner of treating and producing them before the Magisterial authorities. Seized property shall be retained in accordance with section 20. Records should be retained as per section 21.
15. The provisions relating to presumption as to records or property and interconnected transactions are laid down in sections 22 and 23 and the burden of proof that proceeds of crime are not tainted property shall be on the accused vide section 24. Culpable mental state is presumed under the Act, like the earlier FERA, 1973.
16. A Tribunal shall be established as per section 25, to hear appeals against adjudication orders in accordance with section 26. The composition of members and chairperson of the tribunal shall be as per section 27 and the qualifications of the appointee to the tribunal are envisaged in section 28 and the conditions of their service under section 30. There are other provisions

## INTERNATIONAL TAXATION CONFERENCE - JNANADEEP

<b>Monday - January 24, 2011</b> <b>Shilpakalavedika, Madhapur, Hyderabad.</b> <b>09.30 a.m. to 05.45 p.m.</b>	Organized by: International Taxation Committee, ICAI Host: Hyderabad Branch of SIRC of ICAI	
<b>Inaugural Session: 09.30 a.m. to 10.15 a.m.</b>  Guest of Honours: <b>CA. Amarjit Chopra</b> , President, ICAI <b>CA. G. Ramaswamy</b> , Vice-President, ICAI <b>CA. Babu Abraham Kallivayalil</b> , Chairman, SIRC	CPE Credit <span style="font-size: 2em; font-weight: bold;">6</span> HOURS	
<b>DELEGATE FEE: ₹ 900/-</b>  The delegate fee may be sent by way of cash / cheque at par / demand draft in favour of "Hyderabad Branch of SIRC of ICAI" payable at Hyderabad and sent to Hyderabad Branch of SIRC of ICAI, 11-5-398/C, Red Hills, Hyderabad - 500004. Ph: 040-2331 7026, 2339 3182 - Fax: 2339 3200 - Email: hyderabad@icai.org - Website: www.icaihyd.org	<b>Technical Sessions</b> <b>Basics in International Taxation</b> CA.T.P. Ostwal, Mumbai  <b>Transfer Pricing – Current Issues &amp; Case Law</b> CA. P.V.S.S. Prasad, Hyderabad  <b>Payments to Non-Residents - Deduction of Taxes - Issues</b> Adv. K.K. Chythanya, Bengaluru  <b>Key Proposals – Non Resident Taxation – Direct Taxes Code</b> CA. Sampath Raghunathan, Hyderabad  <i>The first mega event of 2011 where two thousand delegates are expected to participate. Join us to herald 2011-2012 the Diamond Jubilee year of SIRC and Golden Jubilee year of the Hyderabad Branch</i>	
<b>Conference Chairman</b> Chairman, Committee on International Taxation, ICAI	<b>Conference Convenors</b> Central Council Members, ICAI Regional Council Members, SIRC from Hyderabad	<b>Conference Co-ordinators</b> Chairman & Secretary Hyderabad Branch of SIRC

## ONE DAY SEMINAR ON BANKING & INSURANCE

Organised by Banking & Insurance Committee, SIRC of ICAI Host: Bangalore Branch of SIRC of ICAI	<b>Saturday - January 22, 2011 - 09.00 a.m. - 05.30 p.m.</b> <b>Hotel Chancery Pavilion, Residency Road, Bengaluru - 25</b>	
Keynote Address <b>Shri. Radhakrishnan Nair</b> , Member, IRDA  Opportunities in Insurance Sector & Regulators Perspective <b>CA. S.N. Jayasimhan</b> , Joint Director (Investments), IRDA, Hyderabad  Practical Approach to Concurrent Audit of Banks under CBS Environment <b>CA. D Venkataraman</b> , Salem	Practical Approach to Audit of Insurance Companies <b>CA. P.S Prabhakar</b> , Chennai  Panel Discussion - Open House <b>CA. P. R. Suresh</b> <b>CA. S.N. Jayasimhan</b> , IRDA RBI Official GM - Inspection of Reputed Bank <b>CA. D. Venkataraman</b>	08.30 a.m. Registration  <b>DELEGATE FEE</b> Members : ₹ 1000/- Non-Members : ₹ 1500/-  The delegate fee may be sent by way of Cash / Cheque at par / Demand Draft drawn in favour of "Bangalore Branch of SIRC of ICAI" payable at Bengaluru to the branch at ICAI Bhawan, 16/0, Millers Tank Bed Area, Bengaluru - 560 052. Ph: 080-30563500, 30563541. Fax: 30563042. Email: bangalore@icai.org  Note: Speakers are subject to confirmation
<b>Conference Co-ordinator</b> <b>Chairman</b> Bangalore Branch	<b>Conference Convenor</b> <b>Chairman</b> Banking & Insurance Committee, SIRC	<b>Ex-Officio Members</b> , Bangalore Branch & Regional Council Members, SIRC/ Central Council Members, ICAI  <b>Secretary</b> SIRC of ICAI  <b>Chairman</b> SIRC of ICAI

relating to the tribunal in sections 32 to 40. Section 41 bars the civil courts to entertain matters under the Act and ousts the jurisdiction of such courts. An appeal to the High Court is provided for on any question of fact or law arising out of an order of the Tribunal under section 42.

17. Special courts shall be established as per section 32, to try the offence of money laundering. The trials shall be tried in accordance with sections 44 read with the Code of Criminal Procedure, 1973 (section 46). The offences under the Act are cognizable and non-bailable-section 45. An appeal lies against the order of the special court to the High Court as per the Cr. PC, 1973.
18. The authorities who investigate offences under the Act are in the rank of director, additional director, joint director, deputy director and assistant director. There may in addition be such other class of officers as may be appointed by the Central Government for the purpose as per section 48. The powers of the officers are contained in section 49 as also the manner of appointing them. They have power to discover and inspect, enforce attendance of persons, compel the production of record, receive evidence on affidavits and issuing commissions for examination of witnesses and documents and incidental matters as per section 50. Jurisdiction of authorities is as per section 51. The Central Govt. may issue directions to the authorities under section 52, and other officers of Central / State Government to act as authority under the Act. Officers of customs, central excise, income tax, NDPS, stock exchange, RBI, SEBI, FEMA,

bodies constituted or established under Central or State enactments or other officers including those of local authorities or banking companies are empowered and required to assist the authorities in the enforcement of the Act as per section 54.

19. Agreements with foreign countries may be entered into for the enforcement of the Act, exchange of information, investigation of cases and tracing or identification of property and the nature, source, disposition, movement, title or ownership of property, as per sections 55 and 56. Provisions relating to letters of request to contracting state outside India, assistance to such states and reciprocal arrangement for processes and assistance for transfer of accused persons under the MLPA to and from the contracting states are provided for in sections 57 to 59. Attachment of foreign property by Indian authorities and attachment of Indian property by foreign authorities, in respect of cases adjudicated under the Act is provided for in section 60.
20. Offences by companies are made punishable under section 70 and manner of recovery of fines imposed is as per section 69. The Act shall override any other law notwithstanding anything inconsistent therewith contained in the other law. Continuation of proceedings in the event of death or insolvency as provided for in section 72 of the Act is permitted. The Central Government is empowered to frame rules under section 73 (which shall be laid before Parliament as per section 74). The Central Government is empowered to remove difficulties under section 75 of the Act.

## SIRC OF ICAI CONGRATULATES

**CA. T.R. CHANDRASEKARAN, FCA,** Chennai on his appointment as **Director of Karnataka Bank Limited;**

**CA. B. SUDHAKAR PAI, FCA,** Bangalore on being conferred '**Karnataka Rajyotsava Award 2010**' by the Government of Karnataka for his outstanding contribution in industrial facilitation.

## J. Rules and Regulations under MLPA:

The following are some of the rules and regulations have been issued/ framed under the Act:

1. Manner of forwarding copy of order of provisional attachment of property;
2. Receipt and Management of Confiscated Property;
3. Maintenance of records and nature and value of transactions, procedure of maintaining and time for furnishing information, verification of records, identity of clients of banking companies and other financial institutions;
4. Search, seizure and manner of forwarding reasons therefore, custody of records, impounding of records;
5. Arrest of persons and forwarding copy of arrest order;
6. Forwarding of seized property order copies;
7. Manner of receiving the records authenticated outside India;
8. Appeals against the orders under the Act;
9. Adjudicating Authority Regulations.

# TWO DAY CONFERENCE ON BANKING & INSURANCE

Organised by Banking & Insurance Committee, SIRC of ICAI

Host: Hyderabad Branch of SIRC of ICAI

Friday & Saturday - February 04 & 05, 2011

Hotel Fortune Manohar, Hyderabad - 16

09.00 a.m. - 05.30 p.m.

CPE Credit  
**12**  
HOURS

### Day 1 – Friday, February 04, 2011

Concurrent Audit and Disciplinary Proceedings - An analysis

**CA. K. Ravi,** Chennai

Practical Approach to Concurrent Audit of Banks under CBS Environment

**CA. D. Venkataraman,** Salem

IFRS in Banking Scenario

**CA. P.R. Ramesh,** Secunderabad

Stock, Receivables and End Use Audit in Banks  
Eminent Faculty

### Day 2 – Saturday, February 05, 2011

Opportunities in Insurance Sector & Regulators Perspective

**CA. S. N. Jayasimhan,** Joint Director (Investments), IRDA, Hyderabad

Practical Approach to Audit of Insurance Companies

**CA. P.S. Prabhakar,** Chennai

Audit of CBS Branches - Bankers' Perspective  
Eminent Faculty

Frauds in Banks and Forensic Audit

**CA. R. Vittal Raj,** Chennai

### DELEGATE FEE

Members : ₹ 1500/- Registration  
Non-Members : ₹ 2000/- 08.30 a.m.

The delegate fee may be sent by way of cash / cheque at par / demand draft in favour of "Hyderabad Branch of SIRC of ICAI" payable at Hyderabad and sent to Hyderabad Branch of SIRC of ICAI, 11-5-398/C, Red Hills, Hyderabad - 500004. Ph: 040-2331 7026, 2339 3182 - Fax: 2339 3200 - Email: hyderabad@icai.org - Website: www.icaihyd.org

Note: Speakers are subject to confirmation

Conference Co-ordinator

**Chairman**

Hyderabad Branch

Conference Convener

**Chairman**

Banking & Insurance Committee, SIRC

**Ex-Officio Members,** Hyderabad Branch

& Regional Council Members, SIRC

Central Council Members, ICAI

**Secretary**

SIRC of ICAI

**Chairman**

SIRC of ICAI



**K. Dimensions, players and the cycle of laundering:**

- K.1. Money laundering has several dimensions. The actors include pimps, prostitutes, panderers, politicians, bureaucrats, liars, bankers, lawyers, accountants, fraudsters of all descriptions, racketeers, drug barons, gun-runners, smugglers, terrorists, bankers and the royalty. The game of laundering involves sporting swindlers, fakers and forgers, financial fraudsters, impish imposters, lady liars, hit-men, doctors, scanners, insurers and bankers. As long as people commit crimes motivated by greed, financial investigative techniques can be used to resolve those crimes. Crimes motivated by greed have been in existence since time immemorial, so have efforts by the criminals to conceal ill-gotten gains to launder the money. Money is the fruit of evil as often the root.
- K.2. The cycle of laundering involves- placement mechanisms (placement stage) -----à layering mechanisms (layering stage) -----à Integration mechanisms----- -à Illicit activity and criminal organization. The stages are most sophisticated as per the FinCEN i.e. the Financial Crimes Enforcement Network.


**L. Conclusion:**

- L.1. Global economic liberalization has not been accompanied by adequate control of international financial and business transactions. Unmanaged globalization and the crime-friendly world it created tended to make the rich richer and poor more desperate. The activities of organized crime involve many ongoing conspiracies against public, using fraud and force to achieve their ends and the key actors in these activities resemble the robber barons. It is outright theft which has a world wide market, which thrives with the Third World countries opening up their markets to foreign ownership. The current world faces a choice between a return to the principles and high ideals and the destruction of democracy and freedom in a future of increasingly shameless fraud. (Ref. Prof. M. Woodiwiss).

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# Standards on Auditing – The new regime

## Introduction

The Auditing & Assurance Standards Board of the ICAI has issued a new “Preface to Standards on Quality Control, Auditing, Review, Other Assurance & Related Services” effective from 01.04.2008, as a move towards integrating our standards with the international practices.

**As per this preface, the standards are now classified into:**

- Standards on Quality Control – Applicable to all services.
- Engagement Standards.

**Engagement Standards are further classified into:**

- Standards on Auditing (SAs).
- Standards on Review Engagements (SREs).
- Standards on Assurance Engagements (SAEs).
- Standards on Related Services (SRSs).

**The list of standards in force as on 01.12.2010 are given below :**

No.	Description
SQC 1	Quality Control for firms that perform audits and reviews of historical financial information and other assurance and other related services engagements.
SA 200	Overall Objectives of the Independent auditor and the conduct of an audit in accordance with Standards on auditing.
SA 210	Agreeing the Terms of Audit Engagements.
SA 220	Quality Control for an Audit of Financial Statements.
SA 230	Audit Documentation.
SA 240	The Auditor’s Responsibilities relating to Fraud in an Audit of Financial Statements.
SA 250	The auditors responsibilities relating to Laws and Regulations in an Audit of Financial Statements.
SA 260	Communication with those charged with governance.
SA 265	Communicating deficiencies in internal control to those charged with governance and management.
SA 299	Responsibilities of Joint Auditors.

***“Apart from the re-numbering, major changes have been brought about in Audit Documentation (SA 230) and in the Format of the Auditors Report (SA 700).”***



SA 300	Planning an audit of Financial Statements.
SA 315	Identifying & Assessing the Risks of Material misstatement through understanding the entity & its environment.
SA 320	Materiality in Planning and Performing an Audit.
SA 330	The auditors responses to Assessed Risks.
SA 402	Audit Considerations relating to an Entity using a Service Organization.
SA 450	Evaluation of misstatements identified during the audit.
SA 500	Audit Evidence.
SA 501	Audit Evidence – Specific considerations for selected items.
SA 505	External Confirmations.
SA 510	Initial Audit Engagements – Opening Balances.
SA 520	Analytical Procedures.
SA 530	Audit Sampling.
SA 540	Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures.

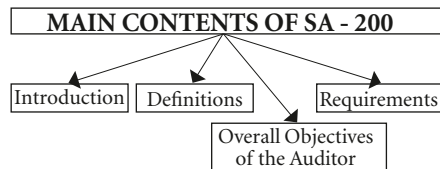
SA 550	Related Parties.
SA 560	Subsequent Events.
SA 570	Going Concern.
SA 580	Written Representations.
SA 600	Special Considerations – Audits of Group Financial Statements (including the work of component auditors).
SA 610	Using the Work of Internal Auditors.
SA 620	Using the work of an Auditor’s expert.
SA 700	Forming an opinion and reporting on Financial Statements.
SA 705	Modifications to the opinion in the independent auditors report.
SA 706	Emphasis of matter paragraphs and other matter paragraphs in the independent auditors report.
SA 710	Comparative Information – corresponding figures and comparative financial statements.
SA 720	The auditors responsibility in relation to other information in documents containing audited financial statements.
SA 800	Special considerations – Audits of financial statements prepared in accordance with special purpose framework.
SA 805	Special considerations – Audits of single purpose financial statements and specific elements, accounts or items of a financial statement.
SA 810	Engagements to report on summary financial statements.
SRE 2400	Engagements to review Financial Information.
SRE 2410	Review of Interim Financial Information performed by the independent auditor of the entity.
SAE 3400	The examination of prospective financial information.
SRS 4400	Engagements to perform agreed upon procedures regarding Financial Information.
SRS 4410	Engagements to compile Financial Information.

## Impacting changes

Apart from the re-numbering, major changes have been brought about in Audit Documentation (SA 230) and in the Format of the Auditors Report (SA 700).

**As the introductory standard, a brief analysis of SA 200 is made hereunder:**

This SA is effective for audits of financial statements for periods beginning on or after **April 1, 2010**.



### Scope

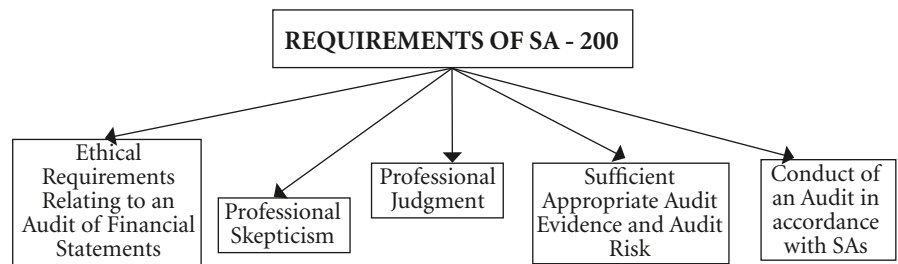
- Establishing the independent auditor's **overall responsibilities** when conducting an audit.
- Setting out the **overall objectives** of the independent auditor.
- Explains the basic **nature and scope** of an audit.
- Explains the **scope, authority and structure** of the Standards on Auditing as well as the obligation to comply with them.

### AN AUDIT OF FINANCIAL STATEMENTS

- **Basic Purpose**
  - To **express an opinion** as to whether the Financial Statements reflect a true and fair view of the financial position of the enterprise.
  - To enhance the degree of confidence of intended users in the financial statements.
- **Reasonable Assurance**
  - SAs require the auditor to obtain reasonable assurance as to whether the financial statements as a whole are free from material misstatement, whether due to fraud or error. It is obtained when the auditor has obtained sufficient appropriate audit evidence to reduce audit risk to an acceptably low level.
- **The Materiality Concept**
  - Information is material if its omission or misstatement could influence the economic decision of users taken on the basis of the financial statements.

### OVERALL OBJECTIVES OF THE AUDITOR

- To obtain reasonable assurance as to whether the financial statements, as a whole are free from material misstatement, whether due to fraud or error, thereby enabling the auditor to express an opinion on whether the financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework; and
- To report on the financial statements, and communicate as required by the SAs, in accordance with the auditor's findings.



### ETHICAL REQUIREMENTS IN AN AUDIT OF FINANCIAL STATEMENTS

- The auditor of Financial Statements is expected to meet relevant ethical requirements, ordinarily comprising the Code of Ethics issued by the Institute of Chartered Accountants of India.
- The Code establishes the following as the fundamental principles of professional ethics relevant to the auditor;
  - (a) Integrity;
  - (b) Objectivity;
  - (c) Professional competence and due care;
  - (d) Confidentiality; and
  - (e) Professional behavior.

### Professional Skepticism

- Professional skepticism means:
  - Not accepting the evidence you have gathered at face value.
  - Continuing to pursue all avenues of inquiry on the topic at hand.
- Professional skepticism is necessary for the critical assessment of audit evidence.

### Professional Judgement

- Professional judgment is essential to the proper conduct of an audit as interpretation of relevant ethical requirements and the SAs. Professional judgment is necessary in particular regarding decisions about:
  - Materiality and audit risk.
  - The nature, timing, and extent of audit procedures used.

- Evaluating whether sufficient appropriate audit evidence has been obtained.
- The evaluation of management's judgments.
- The drawing of conclusions based on the audit evidence obtained.

### Sufficient appropriate Audit Evidence and Audit Risk

- To obtain reasonable assurance, the auditor shall obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level.
- Sufficiency is the measure of the quantity of audit evidence. Appropriateness is the measure of the quality of audit evidence i.e., its relevance and reliability.

### Conduct of an Audit in accordance with the SA's

- The auditor shall comply with all SAs relevant to the audit. An SA is relevant to the audit when the SA is in effect and the circumstances addressed by the SA exist. The auditor shall have an understanding of the entire text of an SA, including its application and other explanatory material, to understand its objectives and to apply its requirements properly.
- The auditor shall not represent compliance with SAs in the auditor's report unless the auditor has complied with the requirements of this SA and all other SAs relevant to the audit. ■



## Readers' Response



- ✉ Good communication tool because 1000s of fellow members would have missed the event. Hence photos really helped. – **CA. Ciby Joseph, Dubai.**
- ✉ This is good and thanks for the efforts. – **CA. P. Narasimha Sekhar, Secunderabad.**
- ✉ Good attempt. This ejournal would help to save the natural resources and communication cost. Good start and can be maintained. – **CA. P. Durairaj, Chennai.**
- ✉ It is very nice, quick and easy to access and read e.News letter, - **CA. Rajaram Hegde, Bengaluru.**
- ✉ Saving the environment is the top priority of the day. ICAI should send monthly journal only by e mail. It should instruct all Regional Councils and

Branches of Regional Councils to send the newsletter only by e mail. We can save the environment and also save printing and postage costs. – **CA. N. Avinashilingam, Coimbatore.**

✉ It would be very convenient to also receive a soft copy of SIRC newsletter to mail id. Thank you very much. – **CA. Damodar Nayak, Bengaluru.**

✉ "Congrats. Read the SIRC newsletter in full. You have really up lifted the image of all of us. The content and quality is par excellence. Proud to claim that you are close to me." – **CA. A. Mony, Past Chairman, Calicut Branch.**

✉ It has come off really well. The effort to send E-Newsletter is commendable. Please do keep up the good work. – **CA. Ravi Veeraghavan.**



# Legal Decisions Update - Direct Taxes

CA J. Prabhakar, Chennai  
prabhakar@vsnl.com

## **Taxes paid Abroad whether entitled to DTAA credit as well as an expense write off**

The Assessee M/s. Tata Sons, claimed the federal taxes as well as state taxes paid at USA, as deduction from income, in addition to claiming the same as tax credit under DTAA; The reasons adopted by the assessee was that similar claims made in earlier years, had the stamp of approval by virtue of the ITAT's decision and the Department's reference applications for further adjudication having been rejected u/s 256 (1) and (2) of the Act.

In the present year, the Tribunal went into the gamut of the entire issues regarding DTAA and bought on record that what the assessee was claiming was not merely a Double Tax Relief but a claim of 1.38 times the relief under DTAA which would normally being applicable.

It is pertinent to note that the income on which taxes were paid in USA, were claimed as exempt u/s 80 HHD of the Act and allowed accordingly.

The Tribunal held that the payment of foreign taxes is also akin to sum paid on account of any rate or tax levied on profits u/s 40 (a) (ii) and explanations thereunder.

Thus, it negated the claim both for deduction of taxes paid as well as taxes paid at USA, as a relief under DTAA, in as much as the entire income itself earned abroad was not subject to taxation in India (see **unreported decision in DCIT, Mumbai Vs. Tata Sons Ltd in ITA.No.4776/Mum/04 – source: itatonline.org**).

## **Transfer pricing decision in Maruti Suzuki India Ltd by Delhi High Court set aside by the Supreme Court.**

The Transfer Pricing Officer made an addition of 206.52 crores against "Maruti Suzuki" (India), on the ground that Suzuki Motors, Japan, did not compensate Maruti Suzuki (India), for the brand logo "Maruti" which had achieved a super brand image in the market as against a weak logo of "Suzuki" in India; On the contrary, Suzuki motors, had charged a royalty on Maruti Suzuki (India) on the sales achieved by the Indian company.

The assessee company questioned the jurisdiction of the TPO to issue notice on the above adjustment and filed a writ petition in the Delhi High Court. The Delhi High Court granted an interim stay.

The high Court while disposing the writ petition gave certain directions to the TPO on the merits of the case; the assessee filed an SLP against the order on which a three member bench ruled that the high court not merely set aside the show cause notice of the TPO but also made observations on the merits of the case which concludes the matter thereunder-therefore it directed the TPO to dispose off the matter untrammelled by the observations of the high court before 31<sup>st</sup> December 2010. [Source: **unreported decisions: Itatonline.org**]

## **Stay of demand-whether to exhaust remedy before revenue authorities before approaching ITAT:**

The grant of stay by lower authority being directory and not mandatory, there is no necessity to approach revenue authorities before filing stay petition before ITAT. [source: **Itatonline.org –DHL Express (India) P Ltd vs. ACIT (ITAT Mumbai)**]

## **Set off of tax credit on MAT in the year of normal profits-whether before or after credit for other taxes such as TDS, Advance tax, 140A etc and consequent levy of Interest under section 234 A, B & C:**

Supreme Court held that MAT credit available for set-off is to treated like any other tax payment and should be adjusted against total Tax payable before levy of interest under section 234B etc. [Source: **Itatonline.org –CIT Vs. Tulsyan NEC**]

## **Dis-allowance of Interest paid on loan advanced by share-holders on account of skewed debt -equity ratio- not permitted in the absence of legislative intent:**

The assessee, a Belgium company, was set up to execute a project in India and had a PE in India. The assessee's share capital of Rs. 38 lakhs was owned by two foreign companies (shareholders) in the ratio of 60:40. The said two shareholders also advanced loans to the assessee aggregating Rs. 94.10 crores in the same ratio in which they held shares in the assessee i.e. 60:40. **The assessee's debt-equity ratio was 248:1.** The assessee paid interest of Rs. 5.73 crores on the loans obtained from its shareholders and claimed that as a deduction. The AO disallowed the claim on the ground that (i) **though the moneys were borrowed from the shareholders, in view of the abnormal**

**debt-equity ratio, they were to be treated as capital/ loan taken from the Head Office** and (ii) that as the RBI approval did not permit the PE to borrow, the loan was in contravention of law.

**The argument of the revenue that the abnormal debt-equity ratio attracts the "Thin Capitalization Rule" and that the "debt" should be characterized as "equity" for purposes of considering whether interest is deductible is not acceptable.** Several countries have detailed "thin capitalization rules" (e.g. Belgium). However, there are no such rules in India though the DTC 2010 has proposed this vide s. 123(1)(f). In the absence of specific "thin capitalization" rules, it is not open to the revenue to characterize debt as equity and disallow the interest.

## **Petition for sanction of Scheme under sections 391 to 394 of Companies Act, 1956-I.T dept opposes petition on ground of Tax evasion-arrangement not permissible.**

Vodafone Essar Gujarat limited filed company petition before Gujarat High court whereby passive infrastructure assets of the said company along with passive infrastructure assets of group companies were to be transferred to another group company (Vodafone Essar infrastructure Ltd).

The Income tax department opposed the scheme stating that inter-alia there are several pending tax liabilities against the company and that the proposal envisages transfer of passive assets without corresponding liabilities and there being no consideration for the transfer either by allotment of shares or otherwise in favor of the company; it further submitted that it is a gift intended to defeat the provisions of the Income Tax Act and that it is not a scheme is neither an arrangement or compromise contemplated in section 391 of the companies Act.

The High court accepted the contentions of the department and refused to sanction the scheme.

P.S: The high court suspended for weeks the judgment to enable the petitioner to approach higher forum for relief. ■

## **DISCLAIMER**

The SIRC/ICAI does not accept any responsibility for the views expressed in different contributions / advertisements published in this Newsletter.

# Legal Decisions Update - Indirect Taxes

CA K.R. Ramankutty, Kochi  
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## SERVICE TAX

### Circular

**CBE&C Letter F.No.187/107/2010-CX.4 dated 17-09-2010[2010 (20) STR C 45]. Stock broker's service – expenses to be included – excluded** - It has been clarified that exclusion of certain reimbursements from the value of taxable service shall be subject to the conditions specified in Rule 5(2) of the Service Tax (Determination of Value) Rules 2006. Stamp duty and Security Transaction Tax are not includible in the value of taxable services in terms Rule 5(2) of the Service Tax (Determination of Value) Rules 2006 and all other expenses by whatever name called, recovered by the broker from the buyer /seller of securities are includible in the taxable value of services in terms of Rule 5(1) of the Service Tax (Determination of Value) Rules 2006.

### Notifications

Notification 53/2010-ST dated 21st December 2010 exempts taxable service referred to in item (v) of sub-clause (zzzzz) of clause 105 of section 65 for packed or canned software from whole of service tax subject to certain conditions as to the payment of excise duty /customs duty including additional duty of customs and a declaration by the service provider.

Notification 54/2010-ST dated 21st December 2010 amended notification 24/2009-Service Tax dated 27th July 2009 by substituting the words "management, maintenance or repair of roads" by the words "management, maintenance or repair of roads, bridges, tunnels, dams, airports, railways and transport terminals".

### Case laws

**Renting of Immovable property :Shubh Timb Steels Ltd Vs UOI 2010 (20)STR 737 (P&H)** - Constitutional validity in respect of renting of immovable property as well as the retrospective amendment introduced by the Finance Act 2010 was challenged before the High Court. It was held that the activity being covered by the entry 92C of the Constitution read with entry 97 of the list I, the power of legislature cannot be questioned. The High Court also upheld the retrospective amendment introduced by the Finance Act 2010.

**Construction of Complex Service-explanation to section 65(zzzh) inserted by the Finance Act 2010 – validity upheld - M/s G S Promoters Vs Union Of India And Another 2010-TIOL-813-HC-P&H-ST** - Explanation to Section 65(zzzh) of the Finance Act 1994 and the CBEC circular 334/3/2010-TRU dated 1.07.2010 was

under challenge before the High Court. According to the explanation inserted by the Finance Act 2010, construction complex by a builder was deemed to be a taxable service even in the case of an agreement to sell, excepting the case where no payment was received before the grant of completion certificate. The Court observed that what has been taxed is the element of service in construction and not a case falling under Entry 54 List II relating to sale or purchase of goods. It was held that the amendment is within the legislative competence of the Parliament.

**Financial Leasing including Equipment Leasing: Association of Leasing & Financial service Companies Vs UOI 2010(20) STR417(SC)** - When sales tax is already paid for the transfer of right to use goods whether it was open to the Parliament to impose Service Tax on the same transaction once again under leasing and hire purchase (Under the category Banking and Other Financial Services) was the issue before the Supreme Court. It was answered in the affirmative on the ground that service tax was levied on the finance/interest charges in addition to management fees document charges and not on the material or sale.

### CENVAT Credit – Input service and input

**CCE Nagpur Vs Manikgarh Cement 2010 (20) STR 456 (Bom)** - The admissibility of Cenvat credit on the service tax paid on 'repair, maintenance and Civil constructions' used in residential colony was challenged in this appeal by

Dept. The High Court observed that activities which are integrally related to the business activity of the assessee only are covered within the meaning of expression "relating to business" under Rule 2(1) of the Cenvat Credit Rules 2004. It was held that rendering of taxable services at the residential colony established by the assessee is not an activity integrally connected with the business of the assessee; Cenvat credit is not allowable.

**CCE Nagpur Vs Ultratech Cement Ltd 2010STR 577(Bom)** - The question of law raised in this Dept.appeal was whether Cenvat credit was allowable on 'outdoor catering services' provided in the factory for employees of the factory. It was held that the outdoor catering services having nexus or integral connection with manufacture of final product, services tax paid on the services are admissible as Cenvat credit to the extent the service tax is borne by the manufacturer.

## CUSTOMS

**Presence of lawyer during interrogation under section 108 of the Customs Act: Anand Prakash Choudhari Vs UOI 2010 – TIOL – 98-SC-Cus** - The petitioner had prayed for a direction from the court, that if the petitioner had to be interrogated under section 108 of the Customs act 1962, such interrogation should be in the presence of his advocate. The prayer was allowed with a direction that it shall be in presence of his advocate who would be entitled to stay at a visible distance, but beyond hearing distance, from the place of interrogation. ■

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Director - Finance, Franco-Indian Pharmaceuticals Pvt. Ltd.,  
20, Dr. E.Moses Road, Mahalaxmi, Mumbai – 400 011.  
Email: lbyadav@francoindian.com

Adv.

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- For further details visit [www.sircoficai.org](http://www.sircoficai.org) – Ph: 044-3021 0322 / 320– Email: [sircclasses@icai.in](mailto:sircclasses@icai.in); [sirc@icai.in](mailto:sirc@icai.in)

## RESTORATION OF MEMBERSHIP & CERTIFICATE OF PRACTICE

The names of members who have not paid their Membership fee and/or Certificate of Practice fee for the year 2010-11 on or before 30.09.2010 are in the process of being removed and/or their Certificate of Practice are under cancellation. The removal notification and cancellation of Certificate of Practice notification w.e.f. 01.10.2010 are under issue.

Regulations provide for retrospective restoration of Membership and Certificate of Practice provided the application in the prescribed Form 9/101 (available on the website [www.icai.org](http://www.icai.org)) complete in all respects, together with restoration fees of Rs.1,000/- is received by the Institute on or before 31.03.2011. Members falling within the jurisdiction of Southern Region should send their application to The Institute of Chartered Accountants of India, ICAI Bhawan, No.122, MG Road, Nungambakkam, Chennai – 600034.

## PROUD CONTRIBUTORS TO CABF [Chartered Accountants' Benevolent Fund]

SIRC of ICAI profusely expresses its gratitude and sincere thanks to all the Members who have responded to our request to contribute generously to the corpus of the Chartered Accountants' Benevolent Fund. While we acknowledge the contributions, SIRC would like to specifically make a special mention of those members who have contributed Rs.10,000/- and above, through this Newsletter:

Name	M.No.	Place	Amount
CA. Babu Abraham Kallivayalil	026973	Kochi	₹ 25200/-
CA. S. Murali	044677	Chennai	₹ 25000/-
CA. Y. Neelakandan	214049	Chennai	₹ 15000/-
CA. C.S. Prithviraj Jain	011529	Chennai	₹ 10000/-

## UDUPI BRANCH OF SICASA

In pursuance of Regulation 81[5] of the Chartered Accountants Regulations, 1988, read with Rule 4 of the Chartered Accountants Students' Association Rules (as contained in Appendix No. (5) to the C.A. Regulation 1988), the Council of the Institute of Chartered Accountants of India has announced the setting up of a Branch of Southern India Chartered Accountants Students' Association at Udupi with effect from October 28, 2010 vide Announcement dated November 29, 2010. The Branch shall be known as Udupi Branch of Southern India Chartered Accountants Students' Association (Udupi Branch of SICASA).

## INVITATION TO COMMENT ON EXPOSURE DRAFTS

The Committee on Accounting Standards for Local Bodies (CASLB) of the Institute of Chartered Accountants of India invites comments on any aspect of this Exposure Draft of the Accounting Standard for Local Bodies (ASLB) 1, Presentation of Financial Statements and (ASLB) 7, Inventories. The Committee would particularly welcome answers to the questions set out in the Exposure Draft for (ASLB) 1. Comments are most helpful if they indicate the specific paragraph or group of paragraphs to which they relate, contain a clear rationale and, where applicable, provide a suggestion for alternative wording. Comments should be submitted in writing to the Chairman, Southern India Regional Council of the Institute of Chartered Accountants of India, ICAI Bhawan, 122, Mahatma Gandhi Road, Nungambakkam, Chennai - 600034 so as to be received not later than **January 25, 2011**. Comments can also be sent by e-mail at [sirc@icai.in](mailto:sirc@icai.in); [chairmansirc@gmail.com](mailto:chairmansirc@gmail.com)

## COMMITTEE ON CAPACITY BUILDING OF CA FIRMS & SMALL MEDIUM PRACTITIONERS, ICAI

### CAPACITY BUILDING INITIATIVE

- Ready-to-use Checklists & Templates and Template Service
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- e-Secretary - Software for CAs to ease Secretarial and Organizational Tasks with Ready-to-use Correspondence Templates
- Access template service at: [www.km4ca.com/templates/](http://www.km4ca.com/templates/)
- For complete details and registration log on to <http://www.icai.org/ccbcf/kdoc-esecretary.html>

### NATIONAL SUMMIT ON NETWORKING & CAPACITY BUILDING OF CA FIRMS

on Saturday, 22 January, 2011 at Holiday Inn, Mumbai -73 from 9:30A.M. to 5:30P.M - Organised by: Committee for Capacity Building of CA Firms & Small and Medium Practitioners. Host: WIRC of ICAI - Registration Amount : Rs. 1000/- per participant. (Remit cheque in favour of WIRC of ICAI) - For complete details, please visit <http://www.icai.org/event.html?event=768>

## OBITUARY

Mem. No.	Name	Status	Place	Date of Death
002307	MR. SANKARARAMAN T S	FCA	SALEM	14/07/2010
002695	MR. SUBRAHMANYAM ROYYURU	FCA	HYDERABAD	17/08/2010
003282	MR. GOVINDAPPSETTY THAIE	FCA	BELLARY	21/10/2010
004939	MR. PANDURANGA BHAT K	FCA	BANGALORE	24/03/2010
010146	MR. JOHN O C	FCA	KOTTAYAM	11/07/2010
024514	MR. KRISHNA BHAT P	FCA	CHENNAI	06/11/2010
086277	MR. WAHI ANIL	FCA	BANGALORE	11/03/2010

*May the Almighty Architect of the Universe rest their souls in peace.*