

SIRC Newsletter

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OCTOBER 2012 | Volume 38 ■ Part 04



Southern India Regional Council ▶ THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA ▶ SET UP BY AN ACT OF PARLIAMENT



TRANSFER PRICING

SIRC CALENDAR

OCTOBER & NOVEMBER 2012

Contact: Dr. T. Paramasivan, Senior Deputy Director (Tech.) – ICAI - Phone: 044 – 30210320 / 321 – Email: sirc@icai.in

DATE and TIME	PROGRAM DETAILS	RESOURCE PERSON	FEE (₹)	CPE CREDIT
Oct. 03, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on INVESTMENT OPPORTUNITIES IN COMMODITY MARKET	CA. AP Prakasan Chennai	150/-	2 hrs
Oct 04, Thursday 5.00 p.m. – 7.00 p.m.	*P P Gururaja Upadhyaya Memorial Lecture	Padmashree CA. T.N. Manoharan Chennai	Nil	Nil
Oct 05, Friday 6.30 p.m. – 8.30 p.m.	*P. Brahmajya Memorial Lecture	Details at page 19 of September 2012 issue of SIRC Newsletter		
Oct 09, Tuesday 9.30 a.m. – 5.30 p.m	*Industry focused CPE Seminar SOFTWARE/KPO/BPO-ITES	Details will be hosted in the SIRC website www.sircoficai.org	750/-	6 hrs
Oct. 10, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on IT SECURITY	Mr. Ravishankar Mumbai	150/-	2 hrs
Oct. 12, Friday 04.00 p.m. – 08.00 p.m.	*CPE Programme on IND ASs	Details at page 31	500/-	4 hrs
Oct. 13, Saturday 09.30 a.m. – 05.30 p.m	*Industry focused CPE Seminar REAL ESTATE & CONSTRUCTION INDUSTRY	Details will be hosted in the SIRC website www.sircoficai.org	750/-	6 hrs
Oct. 15 & 16, Mon & Tue 09.30 a.m. – 05.30 p.m	*WORKSHOP on ENABLING SERVICE TAX PRACTICE	Details at page 31	1500/-	12 hrs
Oct. 16, Tuesday 02.00 p.m. – 08.00 p.m.	***CPE Hands on “Practical Workshop on ADVANCED EXCEL FOR CAs	Details at page 04	1200/-	6 hrs
Oct. 17, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on ISSUES IN PROJECT FINANCING AND PREPARATION OF REPORTS	CA. Dr. V Gopalan Chennai	No Delegate fee	2 hrs
Oct. 20, Saturday 09.30 a.m. – 05.30 p.m.	*CPE Seminar on INTERNAL AUDITING	Details at page 31	750/-	6 hrs
Oct. 26, Friday 09.30 a.m. – 05.30 p.m.	*Industry focused CPE Seminar AUTOMOBILE INDUSTRY	Details will be hosted in the SIRC website www.sircoficai.org	750/-	6 hrs
Oct. 31, Wednesday 06.15 p.m. – 08.30 p.m.	*CPE Study Circle Meeting on FOREIGN TAX CREDIT – IS YOUR CLAIM RIGHT	CA. S. Sudhakar Chennai	150/-	2 hrs
Nov. 03, Saturday 09.30 a.m. – 05.30 p.m.	*Industry focused CPE Seminar TRANSPORT INDUSTRY	Details will be hosted in the SIRC website www.sircoficai.org	750/-	6 hrs
Nov. 07, Wednesday 06.15 p.m. – 08.30 p.m	*CPE Study Circle Meeting on FINANCIAL MODELS FOR STOCK PRICES AND VOLATILITY	CA. Dr. Mathew A Thomas Chennai	150/-	2 hrs
Nov. 09, Friday 04.00 p.m. – 08.00 p.m.	*Workshop on VARIOUS ETHICAL ISSUES	Details at page 31	300/-	4 hrs
Nov. 14, Wednesday 06.15 p.m. – 08.30 p.m	*CPE Study Circle Meeting on ACCOUNTING FOR TAXES	CA. S. Sundararaman Chennai	150/-	2 hrs
Nov. 16, Friday 09.30 a.m. – 05.30 p.m.	*Industry focused CPE Seminar PHARMACEUTICAL INDUSTRY	Details will be hosted in the SIRC website www.sircoficai.org	750/-	6 hrs
Nov. 21, Wednesday 06.15 p.m. – 08.30 p.m	*CPE Study Circle Meeting on FINANCIAL INSTRUMENTS AN INTRODUCTION	CA. R.G. Rajan Chennai	No Delegate fee	2 hrs

NO CPE PROGRAMMES ON OCT. 24, 2012

* Programmes at “ICAI Bhawan”, SIRC Premises, Chennai – 600034.

** Programme at “ICAI Bhawan”, SIRC Premises, Chennai – 600034.

*** Programme at IIT Lab, 3rd Floor, Annexe Building, ICAI Bhawan, SIRC Premises, Chennai - 600034

SANGAMAM: TWO DAYS JOINT RESIDENTIAL SEMINAR ON TAXATION

Organised by Coimbatore & Salem Branches of SIRC of ICAI

SPRINGDALE HERITAGE,
Vandi Periyar,
Kerala

CPE Credit
12
HOURS

Saturday & Sunday - Nov 3 & 4 - 2012

- Seats are Limited, Members will be accommodated on “First Come – First Served” basis.
- Further details about the program will be announced shortly, kindly keep your dates blocked.

Chairman writes ...



My Dear Professional Colleagues,

The month of September, as usual, should have kept you and your colleagues and office on your toes to complete the Tax Audit for the current Assessment Year along with filing Tax Returns, and Advance Tax for the Assessment Year 2013-14. I am confident that all of you have discharged your responsibilities very consciously and professionally, using your knowledge and expertise at your command.

The Economy

The Global economy has been continued to face the receding effects of financial meltdown witnessed during 2008-09 when the impact of European economy crisis took over the world economy which continues to remain uncertain. Although the economic conditions have improved since then and the immediate pressures on the financial markets in the Euro area have been mitigated to a large extent by the injection of liquidity by various financial institutions such as European Central Bank (ECB), nevertheless, the recovery in developed countries has been generally slow, till a sustainable solution to the Euro area debt problem emerges. As a result, the World economy, including United States and China, is experiencing great difficulty. It has been observed that the coordinated efforts of respective governments and central banks across the nations, in fiscal and monetary policy calling for vigilant financial discipline have been showing signs of development in the state of world economy.

Similarly it is a fact that International Trade and National growth go hand in hand. The aims of the Doha round, launched by the world Trade Organisation (WTO) in 2001, were laudable. Experts feel that the Doha round, which covered numbers of indirect trade issues, such as anti trust, intellectual property, foreign investment rules etc., had taken due consideration of the economic interest of poor countries. It is time that the Doha trade talks which are dead should be replaced with a rapid new deal, which, as many trade pundits put it 'Global Recovery Round'.

The Indian economy has also not been spared by the cascading effect of global turmoil with GDP growth slipping from 8.4% in the year 2010-11 to around 6.5% in the year 2011-12. Further, the economy

is expected to grow at the range of 5.5% to 7.3% in 2012-13. According to economists, the long term fundamentals of our economy like rising incomes, increasing consumption base, favourable demographics and huge infrastructural growth continue to be broadly intact and expected to be sustained over medium to long term. The development is primarily being driven by domestic investment and consumption with positive impact of rising economic activity in rural areas. However, concerns like containing inflationary pressures on the back of rising food prices and commodities seems to have been the top priority of the Government. While the impact of these challenges may create periodic unpredictability in the short term, experts expect Indian economy to sustain high growth rate over medium to long term based on its strong fundamentals.

Recently Government of India has come out with new policy initiatives on Foreign Direct Investment in retail sector, reduction in fuel subsidy as stimulus to our Nations economy. To many economic observers there seems to be two key issues in the FDI – in – retail debate: beefing up supply chain infrastructure and enabling the small retailer to do well by providing IT enabled services. Both these issues could be effectively and efficiently addressed by our profession since we have established ourselves as the first contact point for any businesses – either small or big – for meeting legal, regulatory requirements. Similarly the recent 'Financial Restructuring of Distcoms' with nearly Rs. 2 lakh crore bailout plan for the State Electricity Distribution Boards is meant for achieving the financial turnaround of the utilities by restructuring their debt through a transitional finance mechanism of the Central Government. Let us hope that these measures, with our sincere efforts, would lead to overall economic development thereby every strata of the economy would be benefited in the long run.

Transfer pricing: Theme of this issue of our Newsletter

India introduced its own transfer pricing legislation in 2001 with an international perspective, covering multinational corporations. Furthermore, the Finance Act, 2012 has extended its scope to cover

certain domestic transactions with related parties with effect from financial year 2012-13. With our core competencies in the area of direct taxation, our profession has been playing an important role in the adaptation to this legislation framework which has its own intricacies. The write up 'Transfer Pricing Documentation' details about the primary and supportive information documents which are to be maintained by the tax payers. Article entitled 'Advance Pricing Agreement' (APA) deals with the concept of APA which has developed to ensure proper and smooth enforcement of transfer pricing regulation, by giving administrative confirmation as to the most rational method of calculating arm's length prices for corporations. The article 'Transfer Pricing - Recent Litigation Landscape in India' set out the approach generally adopted by the tax authorities in India in dealing with Transfer Pricing cases. The write up 'India steps in Domestic Transfer Pricing' discusses the amendments brought through Finance Act, 2012 extending the scope of Transfer Pricing to cover domestic transactions.

To balance the technical content of this issue we are carrying an article on 'The Reverse Charge Mechanism, 2012' to describe the discharge of service tax liability because of its prominence due to the changes introduced by the Finance Act, 2012. We are also carrying other regular features like 'Updates on Direct Taxes' and a column on 'Corporate Laws'

Programmes and Activities of SIRC

SIRC continued to conduct number of high quality continuing professional education programmes focusing on direct and indirect taxation, auditing including recently issued Standards on Auditing like SA 700, SA 705, SA 706, Enabling Service Tax Practice, TDS, Ethical Issues, IT Security and Commodity Markets.

As our gratitude to the leaders of our profession SIRC has lined up Shri PP Gururaja Upadhyaya Memorial Lecture on 4th October 2012 and Shri P Brahmayya Memorial Lecture on 5th October 2012 at Chennai. I request members and students fraternity to attend the Lectures in large numbers to make these programmes a grand success.

Our Members in Industry

Many of our members in industry have moved to the top management positions necessitating their role in strategy making. According to a recent research study undertaken by Mr. A.G. Lafley, a former chairman and CEO of Procter & Gamble and his team, applying creativity to a scientifically rigorous process (of strategy making) enables the strategy making teams to generate novel strategies and to pinpoint the one most likely to succeed. Similarly Professor Donald Sull, professor of management practice at the London Business School and his colleague, in their recently published research work, found that, a strategy would be more effective if employees have straight forward guidelines for making critical decisions when they encounter any implementation related problems during the process of implementation / adaptation of the strategies by an organisation. Likewise Mr Dwayne Spradlin, a renowned management expert, observed that to engage the largest number of (problem) solvers from the widest variety of fields, a problem statement must meet the twin goals of being extremely specific but not unnecessarily technical.

It is my sincere wish that lessons like these would enable our members in industry to emerge futuristic leaders developing world class organisations in the days to come.

Social Responsibility

Members associated with companies in which public are substantially interested should rise to the occasion by prompting those organisations to embrace corporate social responsibility focusing areas such as education, healthcare, entrepreneurship development, environment protection, ecological conservation, protection of heritage sites, promotion of artisans, craftsman, musicians, artists etc.,

At our professional level we – as one of most vibrant institutional systems in the world - should strive – at Regional, Branch levels encompassing the members and students alike - to socially directed initiatives such as blood donation, tree plantation and helping to educate under privileged young people and children to continue to reiterate the image of the ICAI as a dedicated partner in nation building.

Branch Visit

I had the opportunity to interact with our members and students, during September 2012, at Bellary, Belgaum, Mangalore and Mysore. I am impressed with the quality and focus of the programs organised at these branches for both students and members, during these interactions.

Students Related Activities

SICASA and its Branches continued to be active in conducting educational programmes of practical relevance to the our students community. Crash Courses

are being conducted for the students appearing in the forthcoming November 2012 Chartered Accountancy (IPC as well as Final) Examinations and December 2012 Chartered Accountancy CPT. On behalf of the SIRC I wish to convey my very best wishes to all the aspirants of November 2012 IPC and Final Examinations to come out with flying colours. There is a change of guard at the SICASA and I wish the new Management Committee all success to take its activities to further heights.

Support CABF Initiative

I earnestly appeal to all our members and stakeholders to come forward to support and contribute to the CABF (Chartered Accountants Benevolent Fund) initiative of the Institute towards the cause of the profession and its members. It provides financial support to our members in distress for fundamental needs including sustenance. I may mention that contributions to CABF are exempted under Section 80(G) of the Income-tax Act, 1961. My endeavour is to see that all members of the Southern Region should become permanent members of the CABF.

Until next month to share my thoughts with you again, I remain,

Yours in professional service



CA. K. VISWANATH
kviswanath.sirc@gmail.com

HANDS ON PRACTICAL WORKSHOP ON ADVANCED EXCEL FOR CAs

Organised by SIRC of ICAI under auspices of Information Technology Committee of SIRC of ICAI

Tuesday, October 16, 2012
02.00 a.m. to 08.00 p.m.

(Financial Analysis, Modelling
& Case Studies)

CPE Credit
6
HOURS

ITT Lab, Third Floor, Annexe Building, ICAI Bhawan
No.122 Mahatma Gandhi Road, Nungambakkam, Chennai – 600034

Course Contents

Resource Persons: CA. Deepak Kumar - CA. Pradeep Gadhiya

PIVOT TABLES

- ◆ Introduction to Pivot Tables & Why use Pivot Tables?
- ◆ Creating a Pivot Table
- ◆ Sorting & Filtering Pivot Table Data
- ◆ Summarising Data in Pivot Table
- ◆ Calculated Fields & Calculates Items
- ◆ Formatting a Pivot Table
- ◆ Grouping / Ungrouping and Totalling Pivot Table Data
- ◆ Modifying & Updating a Pivot Table
- ◆ Pivot Charts - Intro

FORMULAS & FUNCTIONS

FORMULA BASICS

BODMAS Rule, Referencing, Named Ranges, Simple Formulas – SUM, COUNT, PRODUCT, AVERAGE, ROUND, MROUND.

LOGICAL FUNCTIONS

IF Formula, IF with AND/ OR/ NOT, SUMIF and COUNTIFS.

LOOKUP FORMULAS

VLOOKUP & HLOOKUP Formula, VLOOKUP Formula with MATCH Formula

DELEGATE FEE: ₹ 1200/-

Seats limited to 35 only on first-come-first-serve basis. Kindly send email to sircpe@icai.in for early registrations. Since seats are limited, SPOT registrations are NOT encouraged.

Delegate fee by way of Cash / Cheque / DD drawn in favour of SIRC of ICAI payable at Chennai may be sent to SIRC of ICAI, ICAI Bhawan, No.122, Mahatma Gandhi Road, Nungambakkam, Chennai – 600034. Phone: 044-30210320; Email: sircpe@icai.in

TRANSFER PRICING DOCUMENTATION

CA. R. Devarajan
New Delhi
ca.rdevarajan@gmail.com

The Income Tax Rules prescribe detailed Transfer Pricing Documentation to be maintained by the taxpayer for demonstrating compliance with the arm's length standard. Every associated enterprise entering into an international transaction must maintain prescribed information/documents, which must be provided in the event of a request by the AO/Transfer Pricing Officer.

The documentation requirements are two-fold, viz., primary and support. While the taxpayer must maintain the primary documentation, the support documentation requirements are optional and may be maintained by the taxpayer.

Type of information and documents

Rule 10D(1) lays down thirteen different types of information and documents that a person has to keep and maintain. Broadly, these information and documents may be classified into three types:

- (i) *Enterprise-wise documents* – These are documents that describe the enterprise, the relationships with other associated enterprise, the nature of business carried out, etc. This information is, largely, descriptive.
- (ii) *Transaction-specific documents* – These are documents that explain the international transaction in greater detail. It includes information with regard to each transaction [nature and terms of the contract, etc.], description of the functions performed, assets employed and risks assumed by each party to the transaction, economic and market analyses, etc. This information is both descriptive and quantitative in nature
- (iii) *Computation related documents* – These are documents which describe and detail the methods considered, actual working assumptions, policies etc., adjustments made to transfer prices and any other relevant information, data, document relied for determination of arm's length price.

Ownership, profile and business

A description of the ownership structure of the assessee enterprise with details of shares or other ownership interest held therein by other enterprises. [clause (a), Rule 10D(1)].

Where the person is a company, the names

of members who are associated enterprises, the number of shares held by each of them and the percentage of their holding to the total holding has to be stated. However, where the number of members is very large, a generic classification of the ownership structure may be given. Where the person is a firm or an association of persons, the names of the partners of the firm or members of the association of persons and their profit sharing ratios have to be stated. Similar details, to the extent applicable, need to be furnished when the person is a body of individuals, trust, Hindu undivided family, etc. The description of the ownership structure should be stated as at the day on which one person became an associated enterprise of another and as at every other day on which there was change in the ownership interest of that other enterprise.

The accountant shall verify that the assessee maintains information regarding enterprises having direct or indirect ownership interests, through intermediaries, in the assessee enterprise. The accountant may rely on representation from the management with regard to the veracity of the same.

A profile of the multinational group of which the assessee enterprise is a part along with the name, address, legal status and country of tax residence of each of the enterprises comprised in the group with whom international transactions have been entered into by the assessee, and ownership linkages among them. [clause (b), Rule 10D(1)].

As part of the profile of the multinational group, it may be advisable to maintain, amongst other things, corporate brochures, catalogues and other similar printed and / or electronic material that describe the principal line(s) of business in which the group is engaged, such as manufacturing of electronic goods, trading in chemicals, wholesale trade in food grains, pharmaceuticals, etc., geographical areas in which the group one operates and summarised global financials and other details such as capital invested, assets employed, turnovers achieved, incomes earned, profits made / losses incurred, etc.

With respect to each of the associated enterprises in the group with whom the assessee has entered into international transaction, the following specific details must be maintained:

- Name;
- Address;
- Legal status (company, limited liability partnership, firm, etc.);
- Country of tax residence;
- Ownership linkages between the assessee and the associated enterprise.

Sometimes, the establishment of ownership linkages between the assessee and other associated enterprises is a problem for the reason that sufficient reportable information is not available. In such cases, the assessee will have to provide only the information that is available with him.

The accountant should obtain written representation from management providing him with name, address, legal status and country of tax residence of each of the enterprises comprised in the group with whom international transactions have been entered into by the assessee, and ownership linkages among them. He shall exercise his professional judgement and due diligence to verify that the same is *prima facie* correct.

The accountant shall perform certain checks in regard to the various categories and situations in which the two enterprises are associated enterprises as provided in section 92A(1) and clause (a) and (b) of section 92A(2). He should check the register of members maintained by the assessee under section 150 of the Companies Act, 1956 and the voting rights corresponding to the shares of the associated enterprise.

A broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated enterprises with whom the assessee has transacted. [Clause (c), Rule 10D (1)].

Under this clause, a general explanation of the business carried out by the assessee and the associated enterprise with whom it has transacted has to be stated. Where the assessee/ associated enterprise are engaged in more than one line of business, the explanation will have to cover all businesses.

The broad description of the industry in which the assessee operates will include reports about the industry, which are available in the public domain. This could be material published in business newspapers, trade journals and magazines, etc. all of which provide a macro-economic perspective to the industry.

The accountant should obtain written representation by management detailing the overview of the business of the assessee and a description of the business of the associated enterprises with whom the assessee has transacted.

Details of International Transactions

The nature and terms (including prices) of international transactions entered into with each associated enterprise, details of property transferred or services provided and the quantum and the value of each such transaction or class of such transaction. [clause (d), Rule 10D(1)].

The list of individual international transactions entered into by the assessee with each of its associated enterprises is required to be stated here. For ease in comprehension and verification, the details may be compiled and presented in a tabular form giving the details required.

While the data may be classified in any convenient manner, for the purpose of facilitating the study of comparability, it is suggested that the nature of the property transferred or service provided be used as the primary key.

In addition to the standard inclusions such as name of associated enterprise, product transferred or service provided, quantity, price per unit of measurement etc., the data should, also, provide information on matters such as:

- form and time of payment;
- discounts;
- shipment;
- purchase commitments;
- product returns by the customer;
- supportive services; etc.

The listing should, also, include transactions where the property has been transferred or service has been provided "free of cost".

The accountant should examine the details of nature and terms (including prices) of international transactions entered into with each associated enterprise, details of property transferred or services provided and the quantum and the value of each such transaction or class of such transaction. The accountant should verify the information provided by the assessee, by using standard examination procedures from the books of accounts maintained by the assessee and information/explanations obtained during the course of such examination.

A description of the functions performed, risks assumed and assets employed or to be employed by the assessee and by the associated enterprises involved in the

international transaction. [clause (e), Rule 10D(1)].

The assessee is required to undertake and describe the results of a detailed functional analysis of the business process involved in the transaction with the associated enterprise. In analysing of the business process, the study should not only cover the activities of the resident enterprise but, also, the activities of the non-resident enterprise. In other words, it is the business process that it analysed and not the enterprise.

The accountant shall obtain a representation from management to the effect that the functional analysis so done is complete and covers all the functions performed by the company.

Records having a bearing on international transaction

A record of the economic and market analyses, forecasts, budgets or any other financial estimates prepared by the assessee for the business as a whole and for each division or product separately, which may have a bearing on the international transactions entered into by the assessee. [clause (f), Rule 10D(1)].

The accountant shall obtain copies of budgets or forecasts, if any, from the management and shall exercise his professional judgement to ensure its correctness and validity. He shall also obtain the representation from management to the effect that all the budgets and forecasts prepared are being provided.

A record of uncontrolled transactions taken into account for analysing their comparability with the international transactions entered into, including a record of the nature, terms and conditions relating to any uncontrolled transaction with third parties which may be of relevance to the pricing of the international transactions. [clause (g), Rule 10D(1)].

The enterprise must establish that the uncontrolled transactions listed include transactions in only those products or services in respect of which the enterprise has dealt with associated enterprises.

The accountant shall examine details of the comparable transactions/data compiled by the enterprise. Further, exercising his professional judgement, the accountant should verify that the data used to determine the price of the international transaction is in tune with the findings of the functional analysis. This would ensure the authenticity of the price so arrived on the basis of the data.

A record of the analysis performed to evaluate comparability of uncontrolled transactions with the relevant international transaction.

The accountant shall examine whether the enterprise has prepared a thorough comparability analysis giving reasons for adjustments made to make the comparability more reliable.

Description of methods considered and working thereof

A description of the methods considered for determining the arm's length price in relation to each international transaction or class of transaction, the method selected as the most appropriate method along with explanations as to why such method was so selected, and how such method was applied in each case.

Under this clause, the assessee has to describe the nature of the international transaction, explain why the method chosen is the most appropriate method (may be, even, explaining why other methods were excluded) and then detail the manner in which the method was applied to the transaction under examination. In detailing the manner in which the method was applied, a numerical exercise is not expected.

The accountant shall verify the method used to arrive at the arm's length price and reasons thereof for the choice of the method. The reasons may be either positive in favour of the method used or negative as to why other methods were not applied.

A record of the actual working carried out for determining the arm's length price, including details of the comparable data and financial information used in applying the most appropriate method, and adjustments, if any, which were made to account for differences between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions.

Here, the enterprise will have to detail all the mathematical iterations and arithmetic steps that have been undertaken to arrive at the arm's length price. Where any assumption have been made, or where any critical factors have affected the determination of the arm's length price, the numerical effect of these factors have not only to be stated but computed. The actual listing of these assumption, factors, etc. is required to be done under the provisions of clause (k), infra.

The accountant should examine the correctness of such working and the adjustments made with reference to the relevant information and data.

INDUSTRY SPECIFIC CPE PROGRAMMES

Under the auspices for Committee for Members in Industry, SIRC

SIRC Premises, ICAI Bhawan
No.122, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600034CPE Credit
6
HOURS

09.30 a.m. - 05.30 p.m.

Registration: 09.00 a.m.

Programme Day & Date	Focus Industry	List of Indicative Topics
October 9, 2012 - Tuesday	Software/KPD/BPO-ITES	• Recent Developments in Reporting like Revised Schedule VI, XBRL & IFRSs
October 13, 2012 - Saturday	Real Estate & Construction Industry	• Auditing/ Reporting & Compliance Aspects related to the industry
October 26, 2012 - Friday	Automobile Industry	• Internal Auditing Aspects related to industry
November 3, 2012 - Saturday	Transport Industry	• Matters related to taxation- Income Tax and TDS
November 16, 2012 - Friday	Pharmaceutical industry	• Service Tax, VAT related issues and other issues related to Indirect Taxes

DELEGATE FEE**Members - ₹ 750/-**Further Details about the programme will be hosted in the website www.sircoficai.orgDelegate fee by way of Cash or by Cheque/DD drawn in favour of **SIRC of ICAI** payable at Chennai may be sent to SIRC of ICAI, ICAI Bhawan, No. 122, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034. Phone: 044-30210320, Fax: 044-30210355; Email: sircspe@icai.in

The assumptions, policies and price negotiations, if any, which have critically affected the determination of the arm's length price. [clause (k), Rule 10D (1)].

This part requires the enterprise to render a narrative description of the various assumptions, policies, price negotiations that have been considered in determining the arm's length price.

The accountant shall obtain information about the assumptions, policies and price negotiations, if any, which influenced the determination of the arm's length price by way of representation from management. The accountant shall examine the functional and economic analysis to determine the assumptions, policies and price negotiations that have been considered for determining the arm's length price and shall verify if the enterprise has maintained a document explicitly stating these assumptions, policies and price negotiations.

Details of the adjustments, if any, made to transfer prices to align them with arm's length prices determined under these rules and consequent adjustment made to the total income for tax purposes. .

This process requires the enterprise to prepare a reconciliation statement detailing how the actual transaction value can be compared with the arm's length price. This is a two-stage process, detailed below.

The accountant shall verify the alterations made to transfer price of the company so as to align it with the arm's length prices, as determined under these rules and verify that consequent adjustment is made to the total income for tax purposes.

Any other information, data or document, including information or data relating to the associated enterprise, which may be

relevant for determination of the arm's length price.

This is a residuary clause that allows the enterprise to use any other extraneous reasons that may have affected its judgement in the process of complying with the arm's length principle.

Relief from maintenance of specific records

In a case where the aggregate value, as recorded in the books of account, of international transactions entered into by the assessee does not exceed one crore rupees the above-mentioned requirements will not apply.

The ceiling limit of Rs.1 crore is with reference to an assessee and not with reference to any undertaking or unit. The limit applies with reference to all the international transactions entered into during a previous year. The amount is reckoned on the basis of the aggregate value of international transaction as recorded in the books of account of the assessee. In case of assessee who fall within this category in a particular previous year, the relief given is from maintaining the specific records and documents prescribed in rule 10D. There is no exemption for such assessee in obtaining and furnishing audit report under section 92E of the Act.

Supporting documents

The information specified in sub-rule (1) shall be supported by authentic documents, which may include the following:

- official publications, reports, studies and data bases from the Government of the country of residence of the associated enterprise or of any other country;
- reports of market research studies carried out and technical publications brought out by institutions of national or international repute;

- price publications including stock exchange and commodity market quotations;
- published accounts and financial statements relating to the business affairs of the associated enterprises;
- agreement and contracts entered into with associated enterprises or with unrelated enterprises in respect of transactions similar to the international transactions;
- letters and other correspondence documenting any terms negotiated between the assessee and the associated enterprise;
- documents normally issued in connection with various transactions under the accounting practices followed.

Relaxation of Requirement to Maintain Fresh Documentation

It is prescribed that in cases where an international transaction continues to have effect over more than one financial year, fresh documentation need not be maintained separately in respect of each financial year, unless there is any significant change in the nature or terms of the international transaction, in the assumptions made, or in any other factor which could influence the transfer price, and in case of such significant change, fresh documentation shall be maintained bringing out the impact of the change on the pricing of the international transaction.

Period of Maintenance of Documentation

The specified information and documents are required to be maintained for a period of eight years from the end of the relevant assessment year. ■



CA. A. Pradeep
Chennai
pradeep.a@in.ey.com



CA. Sriram Soundarajan
Chennai
sriram.soundararajan@in.ey.com

Advance Pricing Agreement

Introduction and History

India is currently ranked to be one of the most aggressive transfer pricing destinations across the globe. The tax authorities have constantly emerged with ways of imputing transfer pricing adjustments which have eventually resulted in extended litigation. However, introduction of APA scheme is a welcome step towards restoring the taxpayers' confidence and it would also serve as a more informed way of resolving disputes amicably amongst the tax authorities and taxpayers.

APAs were originally developed as an alternate means of resolving intercompany pricing issues prospectively through a negotiated agreement between the taxpayer, local tax authority and where relevant, a foreign tax authority. The system of APA was first introduced in Japan in 1987. It was developed to ensure proper and smooth enforcement of transfer pricing regulation by giving administrative confirmation as to the most rational method of calculating arm's length prices for corporations. The United States Internal Revenue Service (IRS) also formally adopted APAs in 1991. Subsequently, Canada (1994), New Zealand (1994), Australia (1995), and Mexico (1995) also introduced APA in their respective countries. After the 1995 OECD report on transfer pricing further promoted APAs, Korea (1996), China (1998), U.K. (1999), France (1999), Netherlands (1999), and Germany (2000) created the system, and it truly became a focus of Global interest.

Finally, India has decided to implement APAs and the Union Government in the Finance Act 2012, has included APA mechanism as part of the Incometax Act with effect from 1 July 2012. The Finance Ministry vide notification dated 30th August 2012 in the Official Gazette, has introduced rules 10G to 10T and 44GA to govern the APA mechanism.

Bird's Eye View of the Indian APA Regime

The salient features of the APA scheme notified by the Finance Ministry are as follows:

- The APA mechanism would permit unilateral, bilateral and multilateral agreements with a maximum validity of 5 years
- Rules are predominantly based on practices prevalent in other APA regime countries
- A fee would be applicable that would vary depending upon the value of transaction(s)

Amount of international transaction entered into or proposed to be undertaken in respect of which agreement is proposed during the proposed period of agreement.	Fee
Amount not exceeding Rs. 100 crores	Rs. 10 lacs
Amount not exceeding Rs. 200 crores	Rs. 15 lacs
Amount exceeding Rs. 200 crores	Rs. 20 lacs

- The applications for bilateral and multilateral APAs would be handled by the Competent Authority, whereas unilateral APAs would be handled by the APA Directorate, headed by Director General of Income Tax (International Taxation)
- The scheme permits amendment, rejection and withdrawal of APAs
- The APA team of tax authorities shall include experts in economics, statistics, law or any other field as may be nominated by the APA Directorate
- The Rules notified are also in line with most of the OECD's recommendations on APA.

Brief Overview of Types of APA and the Process Involved

APAs may involve either one country only (unilateral APA), or two (bilateral APA) or more countries (multilateral APA).

A unilateral APA determines the method to be used to calculate arm's length price by the competent authority for the taxpayer in his home (resident) country. However, a unilateral APA does not ensure avoidance of tax by associated taxpayers in the other countries under foreign tax administrations.

A bilateral APA, on the other hand, includes consultations regarding the method of calculation of arm's length prices amongst the two tax administrations that have jurisdiction over the related taxpayers. Its objective is to ensure:

- Predictability of transfer pricing taxation; and
- Minimize / prevent the risks related to double taxation.

A multilateral APA is similar to that of bilateral APA, except for the fact that it involves consultations between more than two tax administrations having jurisdiction over the associated taxpayers. With a bilateral or multilateral APA, the taxpayer is ensured of legal stability of both / all the tax administrations.

The process of development of an APA involves a fairly extensive course of fact-finding and negotiation. Let us have a quick look into the process that would be involved to conclude an APA based on the rules notified by Ministry of Finance:

<ul style="list-style-type: none"> ❖ Phase I – Due Diligence <ul style="list-style-type: none"> • Data gathering / functional analysis • Economic analysis • APA Strategy 	<ul style="list-style-type: none"> • To identify whether the taxpayer satisfies the eligibility criteria
<ul style="list-style-type: none"> ❖ Phase II – Analysis <ul style="list-style-type: none"> • Prepare pre-filing documents (Form 3CEC) • Pre filing meeting with tax authorities / competent authority 	<ul style="list-style-type: none"> • Anonymous pre-filing consultation is also permitted
<ul style="list-style-type: none"> ❖ Phase III – Application <ul style="list-style-type: none"> • Prepare and file APA request (Form 3CED) • Acceptance letter / notification 	<p>Detailed proposal stating (enclosing):</p> <ul style="list-style-type: none"> • the transactions involved; • countries involved, ; • global management structure of taxpayer; • business history; • industry overview; • audited financials; • proposed TP method; • applicability of other methods; • Expected range of results; • Functional analysis • critical assumptions; • duration; • compliance with laws
<ul style="list-style-type: none"> ❖ Phase IV – Discussion and agreement <ul style="list-style-type: none"> • Initial meeting with tax authorities • Receive questions from tax authorities • Reply to questions • Site visits • Receive additional questions from tax authorities • Reply to questions • Meet the tax authorities to discuss their positions • Competent authority negotiations 	<ul style="list-style-type: none"> • Discussions for joint fact finding based on information provided by the applicant (taxpayer) • Draft agreement • Withdraw the application proposing to enter into APA (Form 3CEE)
<ul style="list-style-type: none"> ❖ Phase V – Drafting, review and execution <ul style="list-style-type: none"> • Finalize APA and sign agreement with tax authorities • Monitoring implementation through annual compliance reports (Form 3CEF) and income tax returns 	<ul style="list-style-type: none"> • Final Agreement • APA cancellation / revocation due to non-compliance / misrepresentation etc. • Renewal of APA

- The process of Bilateral/Multilateral APAs shall not be initiated unless the associated enterprise situated outside India has first initiated the process of APA with their competent authority.
- No time limit has been prescribed for the tax authorities to finalize an APA
- APA regime in other countries usually permits revision of APA only in case of significant change in critical assumptions. However, the Indian APA regime permits amendment of a unilateral, bilateral or multilateral APA due to change in any law thereby creating a sense of insecurity among applicants in the backdrop of retrospective amendments
- Power of tax authorities to visit the taxpayers premises during the processing of APA application and also to call for additional information based on annual compliance report could be a bit far reaching and demanding

Further, the APA scheme currently lacks clarity in respect of the following issues. However, one would expect these issues to be resolved in the near future:

- The rules do not articulate on the procedure to be adopted for transfer pricing audit during the period between application for APA and finalization of APA, especially considering the fact that this duration could invariably vary in the range of 2-4 years
- The appeal mechanism available to an applicant aggrieved by the outcome of APA – whether a similar option of appeal before High Court or Supreme Court as available in case of decision of Advance Authority Ruling (AAR) is available for APA scheme
- What exactly constitutes a critical assumption – the current definition is quite ambiguous.

Scenario in Other Countries

The principal APA jurisdictions as on date remain those with developed transfer pricing regimes such as USA, UK, Canada, Australia and Japan. USA has one of the most established APA regimes in the globe with its inception dating back to well over 2 decades. A brief outline of the state of affairs of APA mechanism in USA would give us

A Few Misses and Points to Ponder Over

A few disappointments from a taxpayers’ perspective in relation to the proposed APA scheme are as follows:

- APAs do not contain firewall provisions, which mean that in case of an unsuccessful APA outcome, the information obtained by the APA team would be shared with the Revenue Authorities
- Roll back of APA to resolve disputes of tax years ending prior to the first year of the APA is not permitted

a hint regarding what could be possibly expected from the Indian APA regime.

The APA program in US is managed by the Advance Pricing and Mutual Agreement (APMA) Office which has a headcount of around 35 employees consisting of about eleven economists and other personnel such as technical advisors, field officer, etc. Further, the APMA office also hired additional managers and staff in 2011, marking a 50 percent increase in the headcount - primarily to reduce the increasing duration involved in concluding an APA. As per the thirteenth annual APA report published by IRS on 2 April 2012, the following is a summary statistics about APA applications, executed APAs and pending APAs during the year 2011.

Year	Unilateral			Bilateral			Total		
	2011	2010	2009	2011	2010	2009	2011	2010	2009
APA Applications	20	46	39	76	98	88	96	144	127
APAs executed	8	20	21	34	49	42	42	69	63
APA renewal executed	2	14	8	13	18	20	15	32	28
Revised or amended APAs	1	5	4	0	4	4	1	9	8
Pending requests for APAs	93	85	70	352	315	282	445	400	352
Pending requests for new APAs	44	38	47	214	186	174	258	224	221
Pending requests for renewal APAs	49	47	23	138	129	108	187	176	131
APAs cancelled or revoked	2	0	0	0	0	0	0	2	0
APAs withdrawn	4	8	6	5	11	8	9	19	14

Further, the below data reported by APMA office indicates the average time currently involved for completion of new bilateral APAs and unilateral APAs.

Year	Bilateral (new)			Bilateral (renewal)			Bilateral (combined)		
	2011	2010	2009	2011	2010	2009	2011	2010	2009
Average in months	43.9	43.6	45.2	44.1	40.7	44.9	44.0	42.5	45.1
Year	Unilateral (new)			Unilateral (renewal)			Unilateral (combined)		
	2011	2010	2009	2011	2010	2009	2011	2010	2009
Average in months	31.2	26.0	25.5	14.2	23.3	20.5	27.0	24.1	23.6

Also the below statistics indicates the transactions which are more often than not preferred to be covered by an APA.

Transaction Type	2011	2010	2009
Sale of tangible property into the United States	22	40	29
Performance of services by US entity	15	28	18
Sale of tangible property from the US	15	11	9
Use of services by US entity	9	n/a	n/a
Use of intangible property by non-US entity	8	11	15
Use of intangible property by US entity	5	19	10
Commodity trading on globally integrated basis	<=3	n/a	n/a
Financial Products – non US parent/US Sub	<=3	n/a	n/a
Financial Products – US branch of foreign Company	<=3	n/a	n/a
Other	<=3	<=3	8
Performance of services by non-US entity	n/a	21	14
Cost sharing - US parent/foreign subsidiary	n/a	<=3	<=3
Cost sharing – non US parent/domestic subsidiary	n/a	<=3	n/a

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Further, in 2011, following were the top 3 industries that were covered by APAs in the US:

- Computer and electronic product manufacturing
- Wholesale trade, durable goods
- Miscellaneous manufacturing

Considering the above stats, one would concur with the view that APAs are a more matured way of resolving disputes, provided the same is effectively implemented. According to the Ernst & Young Global Transfer Pricing Survey 2010, although only 23 percent of respondents had used APA as a controversy management tool, the level of satisfaction among them was quite high – with 90 percent indicating that they will implement APA in future.

Conclusion

In the context of above developments, the success of APA scheme in India would hinge much upon the effective implementation of rules. Further, the option of filing ‘anonymous’ pre-filing consultations would certainly assist the taxpayers in gaining an insight into the expectations of tax authorities and also the probable outcome of an APA application.

Moreover, the tax authorities should give a considerable leeway during the APA process in order to ensure that the initial stumbling blocks between tax payers and tax authorities are set aside. One of the welcome measures intended towards building taxpayers’ confidence is the inclusion of economists and other experts in the APA panel. Further, the recent assurances by Finance Minister with regard to a fair and friendly approach in implementation of policies by tax authorities should also add to the comfort of taxpayers.

Nonetheless, the above developments continue to provide wide opportunities for the professionals, taxpayers and tax authorities to explore at the moment. ■



CA. S. Siddhartha
Chennai
s.siddhartha@in.ey.com



CA. R. Naveen Kumar
Chennai
naveenkumar.r@in.ey.com

Transfer Pricing – Recent Litigation Landscape in India

Introduction

It's been a decade since the introduction of the Transfer Pricing (TP) regulation in India and so far seven rounds of TP audit cycles have been completed. The quantum of TP additions made in the seventh audit cycle (i.e.) for Assessment Year (AY) 2008-09 was around INR 44,500 Crores (approx) which is trifling short of the cumulative additions made in the earlier six audit cycles. With around 3500 disputes pending adjudication, it's no surprise that India ranks third in the world behind Japan and Canada with cases pending in litigation.¹ There are so many other data points that reflect the fact that India is perhaps the most difficult TP destination on the Globe at this point in time.

Taxpayers in India are required² to maintain contemporaneous TP documentation³ for a period of eight years from the end of the relevant AY in which it has entered into an international transaction. With the recent budget extending the time span to complete an assessment by three calendar months⁴, the Transfer Pricing Officers (TPOs)⁵ would also have an additional time of three months to perform an in depth audit encompassing all related issues. As per internal instructions issued to tax authorities all cases with quantum of international transactions in excess of INR 15 Crores are mandatorily scrutinized.

This Article sets out the approach generally adopted by the tax authorities in India in dealing with TP cases including the typical areas where

additions are made and also the impact of certain amendments brought out by the latest Finance Act.

Issue 1 – Computation of Arm's Length Price (ALP)

It is a most common issue that the comparables selected by taxpayers as part of its documentation are rejected and a new set of comparables are brought in by the TPO. It's needless to state that there is a substantial timing difference between preparing a TP document and the same being taken up for a TP audit by the TPOs.

1.1 Adoption of single year data as against multiple year data

Rule 10B(4) specifies that the data to be used in analyzing the comparability shall be the data relating to the relevant financial year (FY) in which the international transaction has taken place. However, the proviso to the said Rule also permits usage of prior two years data in addition to relevant FY's data if such data has an effect in determining the transfer price in relation to the transaction being compared. The obligation casted upon the taxpayer to maintain contemporaneous documentation within the specified date of filing the return of income throws up a practical challenge for taxpayers as the data relating to the relevant FY is not generally available at the time of preparing the documentation and hence the taxpayer is compelled to use prior year's data.

However, the relevant FY's data is normally available at the time of TP audit. It has therefore become routine

for the TPOs to reject the taxpayer's documentation citing that the relevant FY's data was not adopted while preparing the documentation. Further, the TPOs tend to recompute the ALP by identifying new set of comparable companies using updated version of databases⁶ at the time of conducting the TP audit (which were not available to the taxpayer at the time of maintaining the TP documentation). This approach, even though questionable, has been upheld by the Tribunal in several instances. However, it would be impossible for the taxpayers to take cognizance of the data that was not publicly available as on the specified date.

1.2 Access to other sources of information to select comparables

Off late it has also become customary for the TPOs to issue notices to various companies to obtain specific information that are not publically available in the annual reports. This approach is based on the express powers granted by section 92CA(7) read with section 133(6)⁷ of the Act enabling TPOs to issue notices to any person to collect required information. Thus, the information available with the TPO is generally either used to select additional comparable companies or to reject the taxpayer's comparable by identifying certain defects not explicitly available in the public domain. In the process certain high profit margin companies and companies with significant related party transactions are also cherry picked by the TPOs resulting in a higher ALP.

1 Source - http://articles.economictimes.indiatimes.com/2012-08-20/news/33288009_1_transfer-prices-e-y-partner-inter-company-transactions.

2 Section 92D of the Income-tax Act, 1961 ('the Act') read with Rule 10D of the Income-tax Rules, 1962 ('Rule').

3 The documentation should exist latest by the due date of filing of the return of income for the relevant AY.

4 Proviso 3 to section 153(1) of the Act, has extended the time limit to complete an assessment by three months (i.e.) from the existing limit of 33 months from the end of relevant AY to 36 months.

5 TP Audit is generally undertaken by TPOs who are specialist officers generally responsible to determine the ALP for international transactions.

6 Prowess and Capitaline are widely used databases to select comparables which are updated on a regular basis.

7 Section 133(6) of the Act, empowers a tax officer to call for information from any person in relation to such points or matters which in his opinion will be useful or relevant for any inquiry or proceeding under the Act.

8 Genisys Integrating Systems India P Ltd. (TS-509-Tribunal-2011-Bang), Kodiak Networks India P Ltd. (TS-49-Tribunal-2012-Bang) etc.

It has been the concern of taxpayers that the information collected and sought to be used is not available in the public domain. Further, since the same is also not audited, the authenticity and reliability are always questionable. **It is also possible that the TPOs may not have collected the complete set of information to perform an objective comparability analysis or might have obtained some other information that is relevant for purpose of comparability, but has not disclosed the same with the taxpayers.** It would also be important to note that not all companies respond to these notices, which clearly casts doubts on the effectiveness of the process.

While the taxpayers continue to argue against the use of such information, the recent Tribunal⁸ rulings have upheld the power of TPOs to issue such notices to collect the required information. The said rulings have however clarified that the principle of natural justice would only require the TPO to share the information sought to be used against the taxpayer for presenting his objections and that it is not necessary to inform the taxpayers about the entire process adopted to issue notices/search for comparables. These rulings have also provided that the taxpayers have to be given an opportunity to cross-examine the party that has provided the information. While there could be some practical challenges in enforcing cross-examination, one would hope that the same acts as a deterrent against indiscriminate use of such powers by the TPO.

There have also been instances of TPOs resorting to use customs data to determine ALP. The customs tariff rate declared/the import price paid by other importers of similar goods (which otherwise may not be publically available) have been considered as comparable uncontrolled price to test the import price paid by the taxpayers. Though taxpayers have expressed concerns about the conflicting intention of the respective authorities, recent Tribunal⁹ rulings, have upheld the use of such custom data for TP purposes, since the methodology adopted by the

customs authorities for assigning values are scientific and reliable.

Further, with the Finance Act, 2011 granting TPOs with the power of survey under section 133A of the Act, one would need to wait and see how this power is actually applied by the TPOs in practice.

1.3 Economic adjustments for better comparability

Rule 10B(3) provides that an uncontrolled transaction shall be comparable to a controlled transaction if reasonable and accurate adjustments could be made to eliminate material effects of such differences. The most commonly claimed adjustments are for the differences in the level of working capital, risk assumed, capacity utilisation, customs duty paid on account of greater imports etc. Other adjustments could also be performed based on the specific facts and circumstances to improve comparability.

Tribunals in plethora of cases have upheld the need to perform such economic adjustments to ensure a level playing field between the taxpayer and the comparables. In a recent ruling the Tribunal¹⁰ reiterated the need to carry out adjustments on account of differences in the level of working capital and also granted the benefit of import duty adjustment to eliminate the differences on account of higher imports. Further, the Tribunal¹¹ in the case of a captive risk mitigated unit upheld the necessity to carry out a risk adjustment while selecting comparables which were predominantly entrepreneurial entities bearing significant risks. The recent rulings of the Tribunal¹² have also granted adjustments for idle time, higher depreciation cost and other abnormal costs incurred by taxpayers.

Though it's a positive outcome for the taxpayers that the Tribunals have accepted these claims for adjustments it is recommended that taxpayers claim these adjustments as part of their TP documentation rather than at a later stage to avoid controversies at a future date.¹³

1.4 Use of segmented approach and Parity benefit

Arm's length consideration for transactions/activities is based on their respective functions, assets and risks. Tribunals and other published commentaries have consistently held that where functions performed, asset employed, risk assumed are significantly different from each activity, a separate analysis is required to test the transfer price. In this regard, TPOs have rejected the aggregated approach of taxpayers in many instances and have resorted to a transaction/activity level analysis.

Hence, it is important to draw separate segments to benchmark transactions on a standalone basis rather than on an entity wide basis. Further, at times the segmentation drawn for TP purposes are also rejected by the TPOs on an arbitrary basis. In this regard, the Tribunals¹⁴ have held that the segmentation prepared by taxpayers on the basis of scientific allocation keys should be accepted for TP purpose and the same cannot be rejected since it does not form part of the taxpayer's financial statements (disclosure under AS-17).

As stated above, it is ideal to have an activity level analysis not only to assess the arm's length nature of the relevant activity but also to restrict variations in transfer price only to the respective segment. To explain, it is common for the TPOs to propose a TP adjustment on total revenue/cost of a taxpayer by disregarding the segmental/activity level analysis. This, consequently, entails in adjusting the entire revenue/cost base rather than restricting it only to the international transactions which is in question. However, the Tribunals¹⁵ have in plethora of cases held that TP adjustments, if any should be restricted to the quantum of international transactions and cannot be made on the total revenue/cost of a taxpayer.

Considering the above, it would be worthwhile for taxpayers to pay attention to identify and arrive at segments from entity level accounts for TP purposes using a rationale allocation approach. These are essential to keep unrelated party transactions which do

⁹ *Coastal Energy P Ltd. (TS-356-Tribunal-2011-Chennai), Liberty Agri Products P Ltd. (TS-503-Tribunal-2011-Chennai)*

¹⁰ *Demag Cranes & Components India Pvt. Ltd. (ITA No. 120/PN/2011) – In the said case for working capital adjustment reliance was placed on the rulings of Mentor Graphics (Noida) Pvt. Ltd. (112 ITJ 408) and Egain Communication (P) Ltd. V. ITO (118 ITD 243) and for import duty adjustment reliance was placed on the ruling of Skoda Auto India p Ltd 122 TTJ 699 (Pune).*

¹¹ *Intellinet Technologies India Pvt. Ltd. (I.T.A. No.1237(Bang.)/2010)*

¹² *Transwitch India Private Ltd. (ITA No 6083/Delhi/2010), Qual Core Logic Ltd. (ITA No. 893/HYD/2011)*

¹³ *ADP Private Ltd (ITA No: 106 & 155/Hyd/2009) - the claim for adjustment was rejected since the same was not part of the TP documentation*

¹⁴ *Birlasoft (India) Ltd (44 SOT 664 (Delhi)*

¹⁵ *Il Jin Electronics (India) P Ltd [36 SOT 227], Emersons Process Management India Pvt Ltd [ITA No. 8118/Mum/2010] etc.*

not have a bearing on the revenue/cost of an international transaction, outside the purview of TP analysis.

Issue 2 Issues involved in respect of certain international transactions

Absence of specific TP rules in India dealing with certain class of transactions and the controversial positions taken by tax officers have resulted in protracted litigation.

2.1 Intra Group Service (IGS) transactions between Indian affiliate and AE's

One of the most widely contested issues during TP audit is the price paid for receipt of various services from AE's. During audits, TPOs seek additional information through a comprehensive questionnaire to test the ALP and genuineness of these transactions. The typical information requested is as below:

- Copy of service agreement, invoices/debit notes with adequate back-up details;
- Description of the service received and its uniqueness;
- Reasons to demonstrate why AEs were involved in the transaction – along with AEs' capabilities;
- Need for such services and proof that these services were actually requested;
- Demonstration of the benefits derived by the Indian affiliate;
- Evidences for receipt of services – through copies of mails exchanged, minutes of the meeting, management reports, proof of visits etc.;
- Justification for the charge – along with evidence that these services do not fall under the category of shareholder activity, duplicative services etc which do not warrant compensation;

Failure to submit the above data, have resulted in TPOs disregarding the entire quantum of transaction by contending that the service were either not received or if received, fall within the category

ANNOUNCEMENT TO MEMBERS

61st ANNUAL GENERAL MEETING OF SIRC OF ICAI

It is hereby informed to the Members that the date for the **61st Annual General Meeting of SIRC of ICAI** will be communicated to the Members in due course.

SIRC of ICAI

of shareholder activities/duplicative services not warranting a compensation, thus determining the ALP as Zero.

In a recent ruling the Honorable Delhi High Court¹⁷ deciding on the TP aspects of royalty payments held that the TPO can only examine the quantum of a transaction and should not disregard/re-characterize a legitimate business transaction except in exceptional circumstances. Further, in the facts of the said case, the court also appreciated the justification provided by the taxpayer for incurrence of losses and emphasized that the financial health of a taxpayer could never be a criterion to judge the allowability of an expense. The recent Tribunal rulings¹⁸ have also upheld that the TPOs do not have powers to dictate the business affairs of a taxpayer by questioning the need for an IGS. Further, the rulings have also clarified that the benefits derived are to be considered from the angle of a prudent businessman, as the TPOs cannot evaluate the true intrinsic value of a service received by the taxpayers. However, in the said cases, the detailed documentations submitted by the taxpayers along with necessary evidences demonstrating receipt of services and justification for the benefits derived have been clearly appreciated.

In the days to come these IGS transactions are only bound to increase due to various considerations of a group like confidentiality of information, use of existing internal expertise, minimizing duplication of efforts, cost arbitrage and economies of scale etc. While earlier one could be satisfied with a net margin level analysis for these transactions, the shift in focus now is to assess the economic benefits derived by the payer on account of these charges.

Thus, considering the stakes involved it would be prudent for taxpayers to be proactive by having in place a robust documentation to justify the benefits derived for the costs expended. Further, it would also be a worthwhile exercise to benchmark these transactions¹⁹ on a standalone basis with comparable data available in public domain than combining them in an entity level net margin analysis.

2.2 Advertising, Marketing and Promotion (AMP) expenditure incurred by an Indian affiliate and creation of an intangible for the owner of the brand/trademark

Off late there has been an increased focus on TP issues arising from distribution activities undertaken by Indian affiliates who do not own the brand/trademark. The common approach adopted by the TPOs is to claim that the licensor of the brand/trademark should compensate the Indian affiliate for the part of latter's "non-routine" AMP expenditure which is attributable to developing the brand/trademark owned by the licensor. TPOs place reliance on the "bright line"²⁰ approach which is determined by comparing the level of AMP expenses incurred by the Indian affiliate with that incurred by uncontrolled enterprises, which the TPOs believes are comparable to the Indian affiliate.

The said issue was considered by the Honorable High Court,²¹ wherein the Court observed that the AMP expenditure incurred by a domestic enterprise using a brand/trademark of its foreign AE does not require any compensation by the owner, so long as such expenses do not exceed the expenses, which a similarly situated and

¹⁶ Include technical service, management service, consultancy service (including support services of any kind) received from AE's.

¹⁷ EKL Appliances Ltd. (TS-206-HC-2012(Delhi))

¹⁸ Dresser Rand India P Ltd. (ITA No.8753/Mum/2010), McCann Erickson India P Ltd (ITA No 5871/Del/2011)

¹⁹ Payments made for license to use technology, trademark, brand can be benchmarked using databases like Royalty and PowerK. These databases have a compilation of global agreements entered between parties for licensing technology, trademark, brand etc.

²⁰ Espoused by the US Tax Court in the case of DHL v/s Commissioner.

²¹ In a writ petition filed by Maruti Suzuki India Limited (WP.(C) No. 6876/2008)

²² Nokia India P Ltd. (ITA No.4559/Del/2011)

²³ Refer explanation 1 to Section 92B, recently inserted by the Finance Act, 2012 with retrospective effect from 01 April 2002

²⁴ RayBan Sun Optics India Ltd. (ITA No.5282/Del/2011)

²⁵ Nokia India P Ltd. (ITA No.4559/Del/2011)

comparable uncontrolled enterprise would have incurred.

On the other hand, it has been the contention of the taxpayer²² that AMP expenses incurred by an Indian affiliate represent a transaction between the Indian affiliate and domestic unrelated entities and does not involve an international transaction.²³ Even the Tribunal in its recent ruling²⁴ has appreciated the said contention of the taxpayer that incurrence of AMP expenditure is an arrangement of expense with unrelated parties and does not entail provision of service to AEs.

The taxpayers²⁵ have also questioned the application of "bright line" in the Indian context, as the same is not a method specified under the Act for computation of ALP. Even the Tribunal in one of its recent ruling²⁶ held that the arithmetic mean of AMP spend of comparables cannot be the ALP for AMP to be incurred by a taxpayer. The Tribunal also observed the said approach to be an incorrect application of TNMM²⁷. Though the said defect in the approach adopted by the TPOs could be curable with effect from FY 2011-12 by the introduction of the sixth method²⁸ to compute ALP, one has to wait and watch as to how TPOs manage the taxpayer's objections for the earlier years.

Considering the controversies around the subject, the Delhi Tribunal is contemplating to setup a special bench to decide on these issues. However, it would be prudent for taxpayers to monitor their AMP spend which are routine in nature and those that are non-routine on which compensation may be sought from AE's owning the brand/trademark.

2.3 Intra group financial transactions - Provision of loan/guarantee

Intra-group financial transactions such as provision of loans and guarantees are garnering increased attention from tax authorities. With the difficult fiscal situation limiting the availability of easily accessible banks' funding, the taxpayers are increasingly transacting with group companies in order to meet their funding requirements.

Typically when a loan is advanced by an Indian parent to its affiliate key factors like credit rating of the affiliate, the time value, default premium, market risk premium etc. are not considered to arrive at the interest rate to be charged. At times loans are also granted at zero interest rates. The Tribunals²⁹ have affirmed the view that interest free loan do not comply with ALP and hence have imputed notional income based on arm's length interest rates. On the question of Interest rates to be adopted, the Tribunals³⁰ have clarified that the interest rate in the foreign country (LIBOR or EURIBOR) would be relevant than the interest rate prevailing in India.

With respect to Guarantees provided by Indian parent on behalf of its foreign affiliate, there were doubts whether the same would be an International transaction or not. In this context the taxpayers were placing reliance on a Tribunal ruling,³¹ which held that the guarantee provided would not be covered within the scope of an international transaction and in the absence of specific guidance in respect of this transaction adjustments on account of not charging a guarantee fee were not required. TPOs on the other hand contend that the AEs (borrower) derive benefit from the guarantee provided by the Indian parent and therefore, the Indian parent should have charged an arm's length fee for the same. The TPOs generally determine ALP for guarantee fee to be charged either by identifying fees charged by scheduled banks while extending guarantees to similar credit worthy entities as the AE (or) by determining the direct benefit derived by the borrower (i.e.) the reduction in the interest rate charged by the lender of the loan with and without guarantees.

Further, the Finance Act, 2012 has brought in an explanation to include provision of guarantee within the definition of an international transaction with retrospective effect from 01 April 2002. This could possibly create issues to taxpayers who have either taken a position that guarantee provided was not an international transaction or have not charged an arm's length guarantee fee based on commercial reasons. However, during

the TP audit it would be advisable for the taxpayers to inform the TPOs of these transactions. This would add to the bona fide action of the taxpayers to avoid penal exposure of non-disclosure of these transactions. The taxpayers could also look at building additional documentation to substantiate the technical position/economic analysis for these transactions.

Way forward

Considering the revenue potential from TP cases, the departments focus on the subject has grown rapidly. The TPOs are imparted trainings abroad on a regular basis under the guidance of various international organizations like IBFD, OECD etc. The TPOs have also been provided with the powers to scrutinize any transaction that they believe to be an international transaction. However, there are many other positive developments which taxpayers and tax practitioners should look forward to:

Introduction of Advanced Pricing Arrangements (APA) regime where in taxpayer and tax authority agree on an appropriate TP methodology for a set of transaction for a specified period of time;

Introduction of the Sixth transfer pricing method (Rule 10AB) with effect from FY 2011-12, providing flexibility to use various valuation methods, quotations etc.;

Extension of the 5 percent tolerable range³² benefit for FY 2011-12;

Formulation of safe harbour rules which is expected to be completed by the end of this year.

Considering all the above developments, one would expect that the subjectivity presented by various TP issues would to an extent be normalized leading to reduction in litigation. However, the key to success would lie in its effective implementation. The onus would still remains on the taxpayers to arrange their transactions which ought to be a judicious mix of economic, commercial and group considerations. Therefore, it is high time that taxpayers relook in to the TP aspects as a strategic move rather than with a conventional compliance attitude. ■

26 *Genom Biotech P Ltd. (ITA No. 5272/Mum/2007)*

27 *As per Rule 10B(1)(e), TNMM compares the net margins earned by an enterprise with a relevant base and not a particular head of expenses incurred with a relevant base.*

28 *Notification No.18/2012[F.No.142/5/2012-TPL], 23 May 2012 - insertion of Rule 10AB*

29 *Perot Systems India Ltd. (ITA No. 2320, 2321 and 2322/ Del/ 2008)*

30 *Tata Autocomp Systems Limited (ITA NO. 7354/MUM/11), Siva Industries & Holdings Ltd (I.T.A. No. 2148/Mds/2010)*

31 *Four Soft Ltd. (ITA No. 1495/HYD/2010)*

32 *Refer second proviso to section 92C(2) of the Act*

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI – 110 002**

3rd September, 2012

**NOTIFICATION
(Chartered Accountants)**

No. 54-EL(1)/1/2012: In pursuance of sub-rules (3) and (5) of rule 6 of the Chartered Accountants (Election to the Council) Rules, 2006 specified under the Chartered Accountants Act, 1949 read with sub-regulations (4) and (10) of regulation 134 of the Chartered Accountants Regulations, 1988, it is hereby notified that the list of members eligible to vote (i.e., List of Voters) from the various regional constituencies for elections to the Twenty Second Council and Twenty First Regional Councils of the Institute will be available on payment of Rs. 350/- per copy for any of the five regional constituencies from the office of the Institute at ICAI Bhawan, Indraprastha Marg, New Delhi 110 002 effective from 5th September, 2012. Copies of the List of Voters pertaining to relevant regional constituency will also be available for sale at the said rate in the concerned Regional Councils at Mumbai, Chennai, Kolkata and Kanpur and their respective Branches. The List of Voters will also be available in CD at a cost of Rs. 350/- per CD from the offices of the Institute at New Delhi and its Regional Offices at Mumbai, Chennai, Kolkata and Kanpur.

(T. Karthikeyan)
Secretary

[TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA,
EXTRA - ORDINARY DATED 5TH SEPTEMBER, 2012]

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI – 110 002**

5th September, 2012

**NOTIFICATION
(Chartered Accountants)**

No. 54-EL(1)/2/2012: In pursuance of sub-rule (2) of rule 4 of the Chartered Accountants (Election to the Council) Rules, 2006 specified under the Chartered Accountants Act, 1949 read with sub-regulation (10) of regulation 134 of the Chartered Accountants Regulations, 1988, the Institute of Chartered Accountants of India is pleased to notify the following important dates relating to the next elections of members to its Council and Regional Councils:-

Sl. No.	Stages of Election	Dates Fixed
1.	The last date and time for receipt of nominations	26.9.2012 - 6.00 P.M.
2.	(i) Date(s) and place of scrutiny of Nominations; and (ii) Last date for scrutiny of nominations	1.10.2012 to 9.10.2012 (New Delhi)
3.	The last date and time for withdrawal of nominations	19.10.2012 - 6.00 P.M.
4.	The date or dates of polling - (i) Ahmedabad, Bangalore, Chennai, Delhi/New Delhi, Gurgaon, Hyderabad, Jaipur, Kolkata, Mumbai and Pune (ii) Other cities/towns	7 & 8.12.2012 8.12.2012
5.	The last date for receipt of applications for permission to vote by post under rule 28 of the Chartered Accountants (Election to the Council) Rules, 2006	5.10.2012
6.	The last date and time for receipt by post of ballot papers back	17.12.2012 - 5.00 P.M.
7.	Dates of Counting of Votes	19.12.2012 to 7.1.2013
8.	The date of declaration of results	9.1.2013* (latest)

* The date to be reckoned for the purpose of determining the limitation period for filing election dispute application shall be the date on which the declaration of results is eventually notified in the Gazette of India.

(T. Karthikeyan)
Secretary

[TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA,
EXTRA - ORDINARY DATED 5TH SEPTEMBER, 2012]

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI – 110 002**

5th September, 2012

**NOTIFICATION
(Chartered Accountants)**

No.54-EL(1)/3/2012: In pursuance of sub-rule (1) of rule 9 of the Chartered Accountants (Election to the Council) Rules, 2006 specified under the Chartered Accountants Act, 1949 read with Schedule 4 thereto, the Institute of Chartered Accountants of India is pleased to notify that nominations of candidates who desire to stand for election to its Twenty Second Council, to be held in December, 2012 should be forwarded in the manner specified in rule 9 of the said Rules (details of which will be found printed in the Nomination Form also) addressed to Shri T. Karthikeyan, Secretary to the Council (by name), at ICAI Bhawan, Indraprastha Marg, New Delhi - 110 002 so as to reach him not later than **6.00 P.M. on 26.9.2012.**

'The nomination shall be in the Form approved by the Council of the Institute under sub-rule (3) and in the manner specified in rule 9 of the said Rules. While filing the nominations, candidates should keep in mind the provisions of the Chartered Accountants (Election to the Council) Rules, 2006, particularly those contained in rules 9, 10, 11 and 12 of the said Rules. The nomination forms can be had from the Office of the Institute at ICAI Bhawan, Indraprastha Marg, New Delhi as well as from the Regional Offices at Mumbai, Chennai, Kolkata and Kanpur and Decentralised Offices at Ahmedabad, Bangalore, Ernakulam (Kochi), Hyderabad, Indore, Jaipur, Nagpur, Pune, Surat, Thane and Vadodara w.e.f. **5th September, 2012. The nomination forms will however be accepted by the Secretary to the Council at the above address at New Delhi only, effective from the said date.**

The number of persons to be elected from each Regional Constituency is shown below in column (3) against the respective Constituency:

Sl. No.	Name of the Regional Constituency	No. of persons to be Elected
(1)	(2)	(3)
1.	Western India Regional Constituency The States of Goa, Gujarat and Maharashtra and the Union Territories of Dadra & Nagar Haveli and Daman & Diu.	11
2.	Southern India Regional Constituency The States of Andhra Pradesh, Karnataka, Kerala and Tamil Nadu and the Union Territories of Lakshadweep and Pondicherry.	7
3.	Eastern India Regional Constituency The States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim, Tripura, West Bengal and the Union Territory of Andaman & Nicobar Islands.	3
4.	Central India Regional Constituency The States of Bihar, Chattisgarh, Jharkhand, Madhya Pradesh, Rajasthan, Uttaranchal/ Uttarakhand and Uttar Pradesh	5
5.	Northern India Regional Constituency The States of Haryana, Himachal Pradesh, Jammu & Kashmir and Punjab and the Union Territories of Chandigarh and Delhi.	6

The fee of election and security deposit required to be paid under rules 10 and 11 of the said Rules must be by way of demand draft drawn in favour of the Secretary, the Institute of Chartered Accountants of India, payable at New Delhi.

(T. Karthikeyan)
Secretary

[TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA,
EXTRA - ORDINARY DATED 5TH SEPTEMBER, 2012]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI – 110 002

5th September, 2012

NOTIFICATION
(Chartered Accountants)

No.54-EL(1)/4/2012: In pursuance of sub-regulations (5) and (6) of regulation 134 of the Chartered Accountants Regulations, 1988 read with rule 9 of the Chartered Accountants (Election to the Council) Rules, 2006 and Schedule 4 thereto, the Institute of Chartered Accountants of India is pleased to notify that nominations of candidates who desire to stand for election to its Twenty First Regional Councils, to be held in December, 2012 should be forwarded in the manner prescribed/specified therein (details of which will be found printed in the Nomination Form also) addressed to Shri T. Karthikeyan, Secretary to the Council (by name) at ICAI Bhawan, Indraprastha Marg, New Delhi -110 002 so as to reach him not later than **6.00 P.M. on 26.9.2012.**

The nomination shall be in the Form approved by the Council. While filing the nominations, candidates should keep in mind the provisions of sub-regulations (6A), (7) and (7A) of the said regulation read with the Chartered Accountants (Election to the Council) Rules, 2006, particularly those contained in rules 9, 10, 11 and 12 of the said Rules. The nomination forms can be had from the Office of the Institute at ICAI Bhawan, Indraprastha Marg, New Delhi as well as from the Regional Offices at Mumbai, Chennai, Kolkata and Kanpur and Decentralised Offices at Ahmedabad, Bangalore, Ernakulam (Kochi), Hyderabad, Indore, Jaipur, Nagpur, Pune, Surat, Thane and Vadodara w.e.f. **5th September, 2012. The nomination forms will however be accepted by the Secretary to the Council at the above address at New Delhi only, effective from the said date.**

The number of persons to be elected to each Regional Council is shown below in column (3) against the respective Regional Council:

Sl. No. (1)	Name of the Regional Council (2)	No. of persons to be Elected (3)
1.	Western India Regional Council	22
2.	Southern India Regional Council	14
3.	Eastern India Regional Council	6
4.	Central India Regional Council	9
5.	Northern India Regional Council	13

The fee of election and security deposit required to be paid under regulation 134 of the said Regulations read with rule 10 of the said Rules must be by way of demand draft drawn in favour of the Secretary, the Institute of Chartered Accountants of India, payable at New Delhi.

For the purpose of elections to the Regional Councils, subject to the provisions contained in Chapter VII of the Chartered Accountants Regulations, 1988, the provisions relating to elections as contained in the Chartered Accountants (Election to the Council) Rules, 2006 specified under the Chartered Accountants Act, 1949, shall 'mutatis mutandis' apply.

(T. Karthikeyan)
Secretary

[TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA,
EXTRA - ORDINARY DATED 5TH SEPTEMBER, 2012]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI – 110 002

5th September, 2012

NOTIFICATION
(Chartered Accountants)

No.54-EL(1)/5/2012: In exercise of the powers conferred by sub-rule (1) of rule 10 of the Chartered Accountants (Election to the Council) Rules, 2006 specified under the Chartered Accountants Act, 1949, the Institute of Chartered Accountants of India has decided that in respect of election to its Twenty Second Council to be held in December, 2012, a candidate for election shall pay in all a fee of Rs. 5000/- (Rupees Five Thousand only) for his candidature, irrespective of the number of nominations that may be filed.

The said fee is required to be paid by a demand draft drawn in favour of Secretary, the Institute of Chartered Accountants of India, payable at New Delhi.

(T. Karthikeyan)
Secretary

[TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA,
EXTRA - ORDINARY DATED 5TH SEPTEMBER, 2012]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI – 110 002

5th September, 2012

NOTIFICATION
(Chartered Accountants)

No.54-EL(1)/6/2012: In exercise of the powers conferred by sub-rugulation (7) of regulation 134 of the Chartered Accountants Regulations, 1988 read with sub-regulation (10) of the said regulation and rule 10 of the Chartered Accountants (Election to the Council) Rules, 2006, the Institute of Chartered Accountants of India has decided that in respect of election to its Twenty First Regional Councils to be held in December, 2012, a candidate for election shall pay in all a fee of Rs. 2500/- (Rupees Two Thousand Five Hundred only) for his candidature, irrespective of the number of nominations that may be filed.

The said fee is required to be paid by a demand draft drawn in favour of Secretary, the Institute of Chartered Accountants of India, payable at New Delhi.

(T. Karthikeyan)
Secretary

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EXTRA - ORDINARY DATED 5TH SEPTEMBER, 2012]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI – 110 002

5th September, 2012

NOTIFICATION
(Chartered Accountants)

No.54-EL(1)/7/2012: In pursuance of sub-rule (1) of rule 11 of the Chartered Accountants (Election to the Council) Rules, 2006 specified under the Chartered Accountants Act 1949, the Institute of Chartered Accountants of India has hereby notifies that in respect of election to its Twenty Second Council to be held in December, 2012, a candidate shall pay an amount of Rs.20,000/- (Rupees Twenty Thousand only) as security deposit, for his candidature, irrespective of the number of nominations that may be filed. The security deposit so paid shall be forfeited, if he fails to secure not less than 2% (two percent) of the original votes, as defined in rule 35 of the said Rules, polled in the concerned regional constituency.

The said deposit is required to be paid by a demand draft drawn in favour of Secretary, the Institute of Chartered Accountants of India, payable at New Delhi.

(T. Karthikeyan)
Secretary

[TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA,
EXTRA - ORDINARY DATED 5TH SEPTEMBER, 2012]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI – 110 002

5th September, 2012

NOTIFICATION
(Chartered Accountants)

No.54-EL(1)/8/2012: In pursuance of sub-regulation (7A) of regulation 134 of the Chartered Accountants Regulations, 1988 read with sub-regulation (10) of the said regulation and the Chartered Accountants (Election to the Council) Rules, 2006 specified under the Chartered Accountants Act, 1949, the Institute of Chartered Accountants of India hereby notifies that in respect of election to the Twenty First Regional Councils to be held in December, 2012, a candidate shall pay an amount of Rs.10,000/- (Rupees Ten Thousand only) as security deposit, for his candidature, irrespective of the number of nominations that may be filed. The security deposit so paid shall be forfeited if he fails to secure not less than 1% (One percent) of the original votes, as defined in rule 35 of the said Rules, polled in the concerned regional Constituency.

The said deposit is required to be paid by a demand draft drawn in favour of Secretary, the Institute of Chartered Accountants of India, payable at New Delhi.

T. Karthikeyan)
Secretary

[TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA,
EXTRA - ORDINARY DATED 5TH SEPTEMBER, 2012]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI – 110 002

5th September, 2012

NOTIFICATION
(Chartered Accountants)

No.54-EL(1)/9/2012: In pursuance of sub-rule (3) of rule 12 of the Chartered Accountants (Election to the Council) Rules, 2006 specified under the Chartered Accountants Act, 1949 read with sub-regulation (10) of regulation 134 of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India hereby notifies that the Panel for the scrutiny of nominations for elections to its Twenty Second Council and Twenty First Regional Councils to be held in December, 2012, shall be composed of the following:-

- | | | |
|--|---|--|
| 1. Shri T. Karthikeyan
Returning Officer and Secretary,
The Institute of Chartered Accountants
of India,
ICAI Bhawan, Indraprastha Marg,
NEW DELHI - 110 002. | 2. Shri Manoj Kumar, IAS
Joint Secretary
Ministry of Company Affairs
Government of India
5 th Floor, Room No. 506, A Wing,
Shastri Bhawan,
Dr. Rajendra Prasad Road,
NEW DELHI - 110 001. | 3. Shri Gautam Guha
Director General (Commercial) - I
Office of the Comptroller & Auditor
General of India,
9, Deen Dayal Upadhyay Marg,
NEW DELHI - 110 002. |
|--|---|--|

(T. Karthikeyan)
Secretary

[TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA,
EXTRA - ORDINARY DATED 5TH SEPTEMBER, 2012]

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI – 110 002

5th September, 2012

NOTIFICATION
(Chartered Accountants)

No.54-EL(1)/10/2012: In pursuance of rules 21 and 29 of the Chartered Accountants (Election to the Council) Rules, 2006, specified under the Chartered Accountants Act, 1949 read with Schedule 6 thereof and sub-regulation (10) of regulation 134 of the Chartered Accountants Regulations, 1988, it is hereby notified that 7th and 8th December, 2012 have been appointed as the dates for the recording of votes for elections to the Twenty Second Council and Twenty First Regional Councils of the Institute of Chartered Accountants of India for Ahmedabad, Bangalore, Chennai, Delhi/New Delhi, Gurgaon, Hyderabad, Jaipur, Kolkata, Mumbai and Pune. At all other places 8th December, 2012 has been appointed as the date for recording of votes.

All polling booths will remain open from 8.00 a.m. to 8.00 p.m. on the respective date(s).

T. Karthikeyan)
Secretary

GMCS – 1 PROGRAMME REGISTRATION

As per the Board of Studies decision (Refer Announcement given in SIRC newsletter September - 2012 in page 19) SIRC is proposing to start organizing the GMCS-1 Course. In view of the above, students who have registered for Articled Training on or after 1st May, 2012 are required to undergo GMCS-1 Course during the 1st year of Articled Training.

Eligible students are requested to register for the GMCS-1 Course as early as possible to avoid last minute rush. The Application form and challan for payment of fees may be obtained from SIRC office at "ICAI Bhawan, 122, Mahatma Gandhi Road, Nungambakkam, Chennai-600034. Details of the GMCS-1 Course are also posted in the SIRC website www.sircoficai.org under 'Students' section, the Application form can also be downloaded.

Date of commencement of the GMCS – 1 Programme (which will be decided based on the registrations as aforesaid) will be intimated to the registered candidates in due course.

Students Helpline for
GMCS-1 : 044 30210321
Email ID : kirubakartl@icai.in



CA. Gagandeep Nagpal
Chennai
gagandeep.nagpal@in.ey.com



CA. V. Mayur Madhavi
Chennai
mayor.madhavi@in.ey.com

India Steps in Domestic Transfer Pricing

India introduced its own transfer pricing legislation in 2001 through provisions in the Income-Tax Act, 1961. The transfer pricing (TP) law applied only to cross border transactions between group companies and was aimed to ensure that international transactions adhere to the globally accepted arm's length standard. More than a decade has passed since and India is developing to become one of the most aggressive TP regimes in the world.

However now, the Finance Act 2012 has extended its scope to cover certain domestic transactions with related parties within India defined as 'Specified Domestic Transactions' (SDT) with effect from FY 2012-13. There are precedences for domestic transfer pricing in other countries in the world for e.g. US, UK, China, Indonesia, Netherlands, but rules in all of these countries is a kind of provision to make these applicable or bring these under scrutiny only where there is a perceptible risk. This is a significant change and it clearly shows the Indian revenue's intent to further augment their anti-tax evasion drive.

The genesis of Specified Domestic Transactions (SDT) can be traced back to the suggestions made by the Hon'ble Supreme Court's (SC) to Ministry of Finance (MoF) in the case of CIT vs GlaxoSmithkline Asia (P) Ltd. The SC alluded to the possibility of profit shifting in domestic transactions and suggested that the MoF could consider bringing in legislation similar to the TP regulation to help the tax officers in applying provisions governing transactions between domestic related parties. The SC in its order indicated that ordinarily such transactions would be revenue neutral, except the following two situations:

(1) If one of the related companies is loss making and the other is profit making and profit is shifted to the loss making concern; and

(2) If there are different rates for the two related units (on account of different status, area based incentives, nature of activity, etc.) and if profit is diverted towards the unit on the lower side of tax arbitrage.

Towards the above possibilities, the SC suggested necessary amendments in provisions like section 40A(2) and section 80-IA(10), empowering the Assessing officer ('AO') to apply generally accepted methods of determination of arm's length price, including the methods provided under TP regulations, for the purpose of assessing fair market value. The SC further suggested making it obligatory for taxpayers to maintain documentation and file audit report certification for such domestic transactions as is currently done for related party international transactions under applicable TP regulations. The MoF based on the directions of the SC and introduced the SDT provisions.

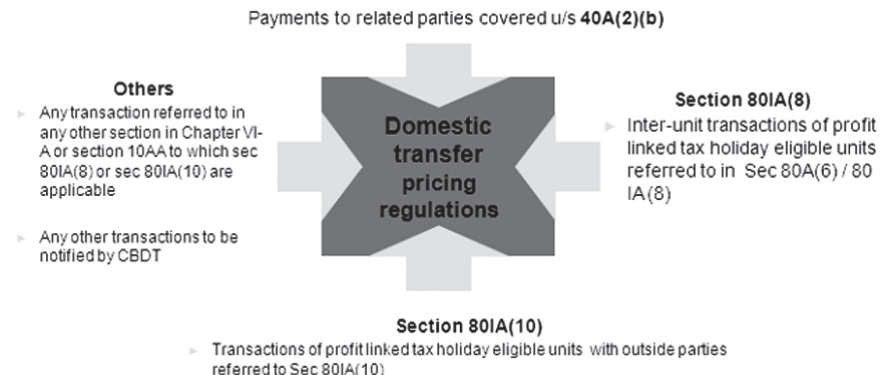
Purpose

Doing away with Tax Arbitrage abuse - This amendment strives to do away with tax arbitrage abuse that stems from:

- Differential tax base:** An entity enjoying tax holiday could shift profit from a its related entity through non arm length pricing thereby minimizing its overall effective tax rate.
- Presence of accumulated loss:** When one the party to the transaction have accumulated loss in their book, they might be tempted shift profit from profit making entity to the organization with accumulated loss in a bid to profiteer from reduced combined tax obligation

Bringing in objectivity in the determination of FMV – The Act already has provisions like 80IA(8) and 80IA(10) insisting that the transactions should be transacted at Fair Market Value (FMV). However FMV is not defined which leaves a scope for subjectivity and conflict in interpretation. Thus introducing the ALP mechanism shall result in moving away from discretionary undefined situation to a situation that is better defined paving the path for objectivity and greater discipline in pricing by the industry and better governance from revenue administration.

Transactions Covered



The SDT would essentially include:

- Payment made by a company to a related person referred in Section 40A(2)(b) of the Act including payment to a director of the company or any person who has a substantial interest in the company (person having a beneficial ownership of shares carrying not less than 20 per cent of voting power);
- Transactions referred to in Section 80A(6) of the Act (for example, Transfer of goods or services to/from eligible business (tax holiday undertaking) from/to other business (non-tax holiday undertaking); and
- Transactions referred to in Section 80IA(8), 80IA(10) and 10AA(9) of the Act (carried out by industrial undertakings, infrastructure companies and units operating in special economic zones).

Any taxpayer falling within the above provision of the Act would be required to file an Accountant's Report in Form 3CEB and maintain the prescribed TP documentation if the aggregate value of such SDT during a financial year exceeds INR 5 crore with effect from 1 April 2012.

Considering the nature of transactions presently covered and limitation on powers of AO to make any TP adjustment favorable to the taxpayer, it appears that application of SDT provisions cannot lead to taxation of any notional income. At the highest, they may lead to disallowance of excessive expenditure and/or reduction of quantum of deduction under s. 10AA / Chapter VI-A.

As a defense against the applicability of an anti-avoidance provision, the taxpayer may seek to justify his bonafide conduct by the overall tax impact of the transaction in the hands of all the parties to the transaction or otherwise "The look at" approach. To illustrate, in case of payment by one Indian company (A Co) to another Indian company (B Co) which is related under s. 40A(2)(b), the fact that BCO attracts same rate of taxation as A Co is considered relevant for determining bonafide conduct and reasonableness of the expenditure. While overall impact may be considered

for determining applicability or otherwise of anti avoidance provision, once the provisions apply, generally no co-relative adjustment is permitted to give effect of consequences in the hands of both the parties.

The second proviso to s. 92C (4) permits a single track adjustment and prohibit consequential adjustment in the hands of other party. This provision is applicable to SDT as well. As a result, disallowance of expenditure in the hands of A Co does not mean that there would be co-relative reduction in the hands of recipient B Co. B Co will be assessed with reference to actual income as earned even assuming entire expenditure is disallowed in hands of A Co.

Procedural Aspect for SDT

The procedural aspect applicable to international transactions are also applicable to SDT. The amendments require the taxpayer to maintain requisite documentation as prescribed under rule 10D of the Income Tax Rules, 1962 (the Rules); and furnish a certificate from an Accountant in Form 3CEB. Further, the taxpayer must substantiate the ALP using one of the most appropriate TP methods specified under sec 92C including the sixth method prescribed by the CBDT in Rule 10AB. Furthermore the provisions of Sec 92 shall not apply to SDT if the computation of the ALP results in reducing the income chargeable to tax or increases the loss, as the case may be.

The penalties as applicable for international transactions will as apply for SDT. For example non-disclosure, non-maintenance or non-furnishing of necessary TP documentation will attract a penalty of 2% of the transaction value for each such failure.

Sec 92CA has been amended to include SDT. Thus, AO can refer the computation of ALP in respect of SDT to the TPO and consequently all the provisions related to TP assessments as currently applicable to international transactions will also apply to SDT. A taxpayer can also avail DRP route if there is variation to returned income/loss on account of TP assessment order passed by TPO under sec 92CA(3) as its scope has been extended to include SDT. However it can be noted that no amendment is made to extend the scope

of s. 92CA(2A) and s. 92CA(2B) to SDT which empowers the TPO to suo-moto take cognizance of the international transactions which was not referred by the AO or reported by the taxpayer. Hence a view can be taken that a TPO will not have power to compute ALP of SDT not referred by AO or not reported in TP audit report.

Key Implications

- **Increased compliance burden:** Even though SDT appears to be a specific anti avoidance measure, maintenance of TP documentation and furnishing of accountants report becomes necessary for tax payer in the light of penal provision. Further, this has clearly increased the compliance burden of the taxpayer.
- **Increased administrative burden on revenue department:** On an average the time taken by the tax office in assessing a tax payer in respect of international transaction ranges from two and half to three years. Given the significant volume of the domestic transaction as against the international transaction and the inadequacy of administrative machinery, completion of the assessments by the revenue authorities appears to be a up-hill task
- **Impact on litigation:** Although SC had suggested introduction of TP to the domestic turf in a bid to bring legislative clarity and reduce litigation. However, given the litigative record of Revenue department on TP matter it could only add up to the existing litigation.
- **Formulation of product pricing methods:** In what appears to be a silver lining for affected taxpayers, the said TP provisions would help taxpayers formalize their product pricing methods and also enable legitimate tax cost management (TCM) opportunities. It would be possible for such taxpayers to utilize TP concepts and methodologies (such as risk -reward planning, benchmark driven pricing, supply chain re-engineering, location planning study, etc.) for both commercial gains and TCM purposes.

- **Robust TP Documentation:** Taxpayers will have to design their domestic TP policies based on sound commercial substance and business rationale while maintaining robust documentation to pass any scrutiny of the Revenue. As a corollary, maintenance of robust TP documentation would be accorded paramount significance.

Issues

In order to comply with the new provisions, it will be necessary for the taxpayer to identify and map the transactions which will now be covered under SDT. The taxpayer would need to ensure that such identified transactions are analysed so as to comply with the Arm's Length Principle based on the application of the most appropriate method adequately supported by a robust economic analysis. The taxpayers are bound to face certain issues while dealing with this are, as follows:

- **Exclusion of entities, where there is no risk of tax erosion:** TP provisions to domestic transactions are prevalent in most countries with certain exceptions like Japan, Australia, US, UK, China, Indonesia, Netherlands etc. However in most of such jurisdictions there is a provision to exempt transaction, where there is no perceptible risk involved of tax erosion. There is no mention of such relief clause as

yet. Such exclusionary provision would go a long way in reducing the compliance and administrative burden.

- **Managerial Remuneration of Director:** On literal interpretation applying TP to Sec 40 A would also include application ALP for determination of managerial remuneration of directors (directors being related party). This may pose a challenge for benchmarking purposes especially due to unavailability of independent data points. How would one benchmark such transaction remains anybody's guess.
- **Close connection:** Threshold limit under section 40A and section 92 A as of the Act for complying with transfer pricing provisions is 20% and 26% is respectively. However the term "Close Connection" used in section 80 IA has not been defined leaving a larger scope for subjective interpretation. Close connection could mean to include companies which participate, directly or indirectly or through one or more intermediaries, in the management or control or capital of the company as in case of Sec 92A. It could also include companies which are not closely related but with whom arrangements have been made to avoid tax. Thus, given the varied ground rules for application of

SDT and international transaction a harmonization of definitions shall bring more objectivity.

- **Inclusion of marketing intangibles, Corporate guarantee etc.:** Experts opine that unless a payment is made and these items actually appear in the books of accounts they shall not be covered by domestic TP (International TP covers such transaction), however there are still judicial precedents to evolve on this issue.
- **Mechanism of set off / Instances of double taxation:** In case tax authority identifies a case of excessive cost or under invoicing of sales and resultantly makes adjustment enhancing the tax liability of the concerned assessee, there is no provision to provide corresponding benefit to the other party to the transaction. This might result in double taxation (Countries like UK provide a mechanism of set off to the other party in such circumstances). Also in international taxation, such cases are covered by the treaty which invariably has the provisions to arrest the instances of double taxation.

Way Forward

To get ready taxpayers must adopt a methodological and pro-active approach. This would essentially include:

- Careful assessment of all inter/intra-group transactions
- Documenting the nature of such transactions and the relevant functions, asset and risk analysis and characterization of the entities.
- Documenting the price-setting mechanism and analyzing the most appropriate method that can be applied.
- Make relevant personnel within the group entities aware of these developments so that a TP documentation system can be proactively put in place.
- Meeting the compliance requirements relating to reporting of transactions. ■



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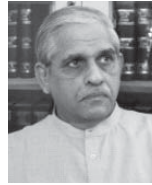
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CA. K R RAMANKUTTY
Cochin

ramankuttyk@yahoo.com

THE REVERSE CHARGE MECHANISM 2012

Introductory

The reverse charge mechanism in the discharge of service tax liability is not a new concept. It has assumed more importance because of the changes introduced by the Finance Act 2012 in extending its scope to more services by shifting the tax liability from the service provider to the service receiver either in full or in part. In terms of sub-section (2) of section 68 of the Finance Act 1994 the Central Government is empowered to notify the services and the persons who are liable to pay service tax. Further according to the proviso to sub section, notification can be issued by the Central Government specifying the services and the extent of service tax payable by the persons mentioned therein. Accordingly notification 30/2012 dated 20.06.2012 was issued prescribing the percentage of tax liability of service provider and service receiver. Notification 30/2012 has been further amended by notification 45/2012 dated 7th August. As a result of the above amendments more services are covered under reverse charge mechanism with full or part liability for service tax on the service receiver. An effort has been made in this article to address some of the issues arising out of the recent amendments.

Liability of the service receiver

The point of taxation under reverse charge shall be the date of payment to the service provider except in the case of associated enterprises where date of debit or the date of making the payment whichever is earlier is to be reckoned. The basic exemption limit of Rs ten lakhs is not available to the service receiver. Therefore even if the service turnover of the service provider is below the exemption limit of Rs ten lakhs, the service receiver will have to discharge the service tax liability in specified cases, where part liability for service tax has to be discharged by him by virtue of the notification. Similarly even if the service receiver is not rendering any service, he has a service tax liability under reverse

charge for the amount paid to service providers specified under notification 30/2012 as amended by notification 45 of 2012. Service to be provided is also taxable, therefore payment of advance to the service provider also attracts service tax liability. The specified services attracting reverse charge liability notified are briefly discussed below.

Services provided by Insurance agent

In the case of services provided by Insurance Agent to any person carrying on Insurance Business, the liability is to be discharged by the Insurance Company.

Service Provided by a Goods Transport Agency

Liability is to be discharged by the specified person who pays freight to the Goods Transport Agency. Specified person includes, factory registered under the Factories Act, Society, Co operative society, Dealer of excisable goods, Body Corporate and Partnership firm. This is subject to the exemptions (provided in the Mega exemption notification 25/2012 dated 20-06-2012) for transportation of fruits, vegetables, eggs, milk, food grains or pulses, transportation in single goods carriage where the amount charged does not exceed Rs.1500 and transportation charges for a single consignee for all goods together does not exceed Rs.750.

Sponsorship-if the sponsor is in India or outside India

Where the Sponsor is in India, service provided by way of sponsorship to any body corporate or partnership firm located in the taxable territory, the Sponsor is liable for service tax. But if the Sponsor is abroad and the event sponsored is conducted in India, service provider in India is liable for payment of service tax applying the Place of Provision of Service Rules 2012. Sponsorship of certain sports events are exempt by notification 25/2012 dated 20-06-2012

Arbitral tribunal, Advocates

In respect of services provided by Arbitral tribunal, individual advocate or a firm of advocates by way of legal services liability is to be discharged by the service receiver, if the service receiver is a 'business entity having turnover' more than Rs 10 Lakhs in the preceding financial year. Only in the case of Arbitral Tribunal and Advocate's service the threshold exemption of 10lakhs is available if the service receiver is a business entity. Business entity is defined in section 65B(17) of the Finance Act as: "..... means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession". This definition makes a marked change from the definition contained in Section 65(19b) which was in force till 1.07.2012 where there was an exclusion for individual. Therefore the reverse charge is applicable to individuals also who are engaged in the activity of business or commerce. Further, the Mega exemption notification 25/2012 or the Finance act does not define the term 'turnover' in the context of exemption of ten lakhs, whether it is service turnover or goods turnover or turnover of the business concern as a whole is not clear, one has to take a conservative view so that the client is not exposed to risks.

Government-or-local authorities by way of support services

In respect of "Support Services" rendered by Government, the receiver is liable subject to certain exceptions. Section 65B(49) defines support services as:

"support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of

immovable property, security, testing and analysis”

But the above is subject to exceptions specified in sub clause (i)(ii)(iii) of clause a of the section 66D of the Finance Act which are stated below .

- Renting of immovable property
- services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
- services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- transport of goods or passengers; or

For (i) – (iv) above liability shall be on the Government or local authority. (notification 30/2012)

Service rendered by person located in a non taxable territory and received by a person in a taxable territory

Where the service provider is outside India and the service receiver is within India the service receiver is liable to pay service tax whether the service is rendered by the foreigner at a place outside India or within India. The taxability of service received by a person from a place outside outside the taxable territory after 1.07.2012, entirely depends upon Place of Provision of Service Rules 2012 and the amendment introduced in Service Tax Rules by Notification 36/2012 dated 20-06-2012. First proviso to erstwhile section 66A (1) provided that “*where the recipient of service is an individual and such services are received by him is otherwise than for the purpose of use in any business or commerce , the provisions of sub section shall not apply*”. Absence of equivalent provisions in the new set of rules is bound to create problems to individuals who are not using the service in connection with business but pays for the service to the expatriate .

Eg: An NRI coming to India pays to a clearing agent for the service rendered by him in booking his un accompanied baggage through a steamer agency, it appears, he has a liability under reverse charge. Hope CBEC would clarify the position soon as it might not be the intention of law .

Further in respect of payments to expatriates for technical services in India or abroad, technology transfer etc the valuation of such services were

covered by Rule 7 of the valuation rule which stands deleted with effect from 1.07.2012. What is to be included or excluded in the value is going to be disputed in the days to come and valuation dispute is a costly affair as the appeal goes to Supreme Court directly from CESTAT. In the absence of any valuation rule, guidance has to be taken from section 67 of the Finance Act .

Other than the contractual payment any other conditions are to be satisfied for the foreign service provider to undertake the service, money value of all such considerations/facilities are to be included in the value of taxable service, like withholding tax payment met by the service receiver, air ticket charges, charges for free accommodation etc. (Absence of equivalent provision as section 66A and the absence of valuation rule has given enough scope for litigation in this particular area).

Services provided by Directors of Companies

With effect from 7-08-2012, “services provided by the director to the company” will be covered under the reverse charge mechanism.(for the period between 1.07.2012 and 6-08-2012 the individual Directors will be liable for service tax provided the service turnover has exceeded the threshold exemption limit in their individual case). Services provided by Managing Director or Whole Time Directors are covered by the exclusion clause of definition of service and hence not liable for service tax, but any payment made to them other than under employee employer relationship can attract service tax .In the cases of Non Executive directors / Independent directors any sum paid to them for any services are liable to tax under reverse charge. What is value on which service tax is to be paid under reverse charge? It will cover all payments made to Non Executive Directors and payments other than salary in the case of Executive Directors / Managing Director. For Valuation one has to take guidance section 67 of the Finance Act read with Service Tax Valuation Rule 2006.

Partial Reverse Charge

In all the cases discussed above the entire liability for service tax payment falls on the person who makes payment for the services. In the following cases service tax liability falls on the service receiver partially, notwithstanding the exemption available to the service provider. Eg: The taxable service turnover of the contractor is less than

10 lakhs, still the service receiver has a liability for payment of service tax to the extent of his share notified .

Services received by business entity registered as body corporate

Nature of Service		Service recipients liability@
Works Contract : Where the service provider is an Individual ,HUF,Partnership,AOP located in a taxable territory .		50%
Manpower /Security Services		75%
Hiring of Motor Vehicle designed to carry passengers, to any person who is not in the same line of business.	Abatement claimed	100%
	Abatement NOT claimed	40%
@ Balance liability to be met by the service provider		

[For full details refer to notification 30/2012 as amended by Notification 45/2012]

Whether service receiver absolved of the liability for payment of his share of service tax when the service provider makes full payment service tax ?

No.

The service receiver is not absolved of the liability cast upon him by section 68(2)read with Notification 30/2012 dated 20-06-2012 even if the entire service tax liability is discharged by the service provider.The liability is distinct and separate and has to discharged accordingly. In terms of rule 4A of the Service Tax Rules read with proviso to section 68(2), the service provider’s Invoice should mention the service tax payable by him.

How the tax is to be remitted and under what code

If the service receiver has no service tax liability other than under reverse charge method, then he will have to take registration under service tax and pay service tax under “All taxable services code” - 00441089 .The invoices from 1.07.2012 need not mention the category of service –relevant part in the rule stands deleted. Cenvat Credit cannot be utilised for discharging the service tax liability under the reverse charge with effect from 1.07.2012 in view of explanation added to rule 3(4) of the CCR 2004 .But the amount of service tax paid can be availed as Cenvat credit provided the same is within the meaning of definition of input service as per the Cenvat Credit Rule 2004 and attributable to manufacturing activity or output service. ■

WORK DISPOSAL POSITION

The position of disposal of various matters relating to Members and Students of Regional Office, Chennai as on 27.09.2012 is as under:

Particulars	Disposal of records received upto
Members	
Enrolment of Members	10/09/2012
Fellow Admission	14/09/2012
Grant of COP	14/09/2012
Restoration of Name – Recommended upto	19/09/2012
Restoration of Name – Cleared upto	19/09/2012
Constitution of Firms	21/09/2012
Reconstitution of Firms	14/09/2012
Paid Assistant	14/09/2012
Change of Address – Members	21/09/2012
Change of Address – Firms	21/09/2012
Students	
Registration of Articles	28/08/2012
Re-registration of Articles	03/09/2012
Industrial Training	03/09/2012
Termination of Articles	04/09/2012
Completion of Articles	24/08/2012
Permission to pursue Other Courses	03/09/2012
Change of Address – Students	17/09/2012
Despatch of Materials – CPT	26/08/2012
Despatch of Materials – IPCC	29/08/2012
Despatch of Materials – ATC	29/08/2012
Despatch of Materials – Final	27/08/2012
Despatch of Materials - ITT	29/08/2012

OUR DEEPEST CONDOLENCE ON SAD DEMISE OF SHRI K RANGANATHA



SIRC of ICAI deeply condole the sad demise of **Shri K. Ranganatha**, Senior Daftri, Southern Regional Office of the Institute on 3rd August 2012. Shri K. Ranganatha joined in the Institute on 2nd January 1984 at ICAI's Bangalore Office as Peon. Subsequently he had been transferred to ICAI, Chennai in November 1990. After serving 27 years, he was promoted as Senior Daftri with effect from 28th May 2011. He was dedicated hard working and sincere and has worked in ICAI, Chennai in various sections. He is survived by wife and two daughters.

May the Almighty Architect of the Universe rest his soul in peace.

THE MONTH THAT WAS (SEPTEMBER 2012)

1 st	CPE National Seminar
3 rd & 4 th	ALL India CPE Conference
8 th	CPE Seminar on Taxation
14 th	CPE Programme on Standards on Auditing
20 th & 21 st	Workshop on Enabling Service Tax Practice
21 st	CPE Hands on Practical Workshop on Advanced Excel
27 st	Workshop on Ethical Issues
7 th , 12 th , 17 th & 26 th	CPE Study Circle Meetings & Teleconferences

SIRC acknowledges the contribution and support extended by Immediate Past President of ICAI, Central Council Members of ICAI, Regional Council Members of SIRC, Resource Persons and the delegates/participants for making all the programmes a resounding success.

SOUTHERN REGIONAL LEVEL NATIONAL DEBATE COMPETITION – CHENNAI

The National Debate Competition for Students of classes XI & XII will be conducted at three levels: Branch level, Regional Level and All India Level. The **Regional level competition** is scheduled to be held on **Monday 15th October, 2012 at 9.30 a.m.** at SIRC Premises, ICAI Bhawan, 122, Mahatma Gandhi Road, Chennai – 600 034.

The **topic** for the **Regional Level Debate** (at SIRC of ICAI, Chennai) is **Impact of Social Networking Sites on Youth**. Only winners of the (SIRC's) Branch level Debate Competitions are eligible for participation in this **Regional Level**.

We invite students and members to attend the debate competition to make the competition successful.

For any clarification and assistance you may please contact:

CA. T L Kirubakar, Executive Officer (044 – 3021 0322/0323)
email: kirubakartl@icai.in

Mr. R Rajendran, Assistant Secretary (044 – 3021 0322/0323)
email: sircclasses@icai.in

Dr. T Paramasivan, Senior Deputy Director (044 – 3021 0361)
email: tparamasivan@icai.in

Invitation for Contribution of Articles

SIRC of ICAI invites Articles from Members for publication in the SIRC Newsletter. SIRC is releasing Theme Based monthly Newsletter. The theme finalized for the November, December 2012 & January 2013 issues are as follows:

Month	Theme	Articles to reach SIRC on or before
November 2012	Information Technology	October 15, 2012
December 2012	Financial Management & Capital Markets	November 10, 2012
January 2013	Insurance & Risk Management	December 10, 2012

Members may send the soft copy of their article, profile and passport size colour photograph to SIRC by email to sirc@icai.in and sircnewsltr@icai.in for consideration by the Editorial Board on or before the above said dates.

DO YOU WANT TO BE A RESOURCE PERSON ?

If you would like to be a Resource Person to address on technical topics in the programmes organised for Members and Students (including coaching classes for CPT/ IPCC/Final levels & GMCS Programme), please send an email with details of subjects / topics which could be handled by you to sircclasses@icai.in.

DIVERSIFICATION OF COMPANY'S BUSINESS UNDER COMPANY LAW

Mr. Henry Richard
Registrar of Companies
 Tamil Nadu, Andaman & Nicobar Islands
 Chennai

Diversification of company's business activity is a healthy sign of corporate growth. However, the companies, while diversifying their activities need to adhere to the procedure prescribed under the Companies Act, 1956.

It has been observed in many cases which came to the notice of Registrar of Companies that the companies have not adhered to the prescribed procedure. Hence in this Article, an attempt is made to highlight the procedures prescribed under the Companies Act which the companies are expected to follow.

The Memorandum of Association defines the area of activity of a company under the Object Clause. Public Limited Companies are required to pass a Special Resolution pursuant to Section 149(2A) of the Companies Act, 1956 for commencing any new business activity covered under the "Other Object" under object clause of the Memorandum of Association. Private Companies can commence any such activity covered under the "Other Object" of the Memorandum of Association by passing a Board Resolution. If such activity undertaken by a company which is covered under the "other object" becomes the main activity of the company, the company can approach Registrar of Companies for change of its name to reflect the new activity after complying with the Provisions of Section 20 and 21 of the Companies Act, 1956. For e.g. a company registered with the name "Vikram Construction Limited" does not have any construction activity as stated in the "main object" and the shareholders have passed a Special Resolution u/s. 149(2A) of the Companies Act, 1956 to commence activity relating to computer software and hardware covered under the "other objects" of the object clause of the Memorandum of Association, the company can approach the Registrar of Companies for change of name as "Vikram Computers Limited", if the income generated from new activity is more than 50% of the total income as the existing name does not reflect its main activity. Such application can be made to Registrar of Companies after complying with the requirements of Section 20 and

21 of the Companies Act, 1956. SEBI has also mandated that no listed company can change its name to reflect any new activity if the company does not generate more than 50% of the total income from such new activity. However, in the case of Non-Banking Financial Companies as defined under the directions issued by RBI, No Objection Certificate from NBFC Division of RBI is also required for change of name of an NBFC company.

In cases where a company wants to diversity into a new activity which is not covered under the object clause of Memorandum of Association of the company, the company can alter the object clause of the Memorandum of Association, so as to enable the company to carry on such new activity. However, the alteration of the object clause can be carried out only under certain specific circumstances as stipulated in Clauses (a) to (g) of sub-section (1) of Section 17 of the Companies Act, 1956 which is reproduced below. The company may by Special Resolution alter the provisions of the Object Clause of Memorandum of Association so as to enable it to

- (a) carry on its business more economically or more efficiently ;
- (b) attain its main purpose by new or improved means ;
- (c) enlarge or change the local area of its operations ;
- (d) carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company ;
- (e) restrict or abandon any of the objects specified in the Memorandum;
- (f) sell or dispose of the whole, or any part, of the undertaking, or of any of the undertakings, of the company, or
- (g) amalgamate with any other company or body of persons.

If the proposed alteration of the object clause does not fit into any of the clauses

mentioned above, the company is not authorized to make such alteration and any such alteration outside the scope of clauses (a) to (g) of sub-section (1) of Section 17 of the Companies Act, 1956 would be construed as invalid.

In the case of listed companies, apart from the above requirement, any resolution passed for alteration of object clause should be through postal ballot and proper advertisement in a leading English Newspaper and one vernacular Newspaper circulating in the State in which the registered office of the company is situated should be published at the time of dispatching the postal ballot papers to the members/shareholders of the company as required under 2, 3 and 4 of the Companies (Passing of the Resolution by Postal Ballot Rules) 2011.

It has been observed that in large number of cases, the above requirements are not being strictly adhered to when the companies alter the object clause of Memorandum of Association or Change the Name of the Company. The above requirements are not only mentioned in the Companies Act and the Rules made thereunder but also clarified through Circular of Ministry of Corporate Affairs in the form of guidelines issued under section 20 and 21 of the Companies Act, 1956.

Corporate growth through diversification of business activity is welcome and signifies healthy sign but at the same time adequate attention should be bestowed upon due compliance of the requirements of the Companies Act, 1956 while undertaking such diversification of business activity.

Companies, Stakeholders and professionals need to adhere to the procedure prescribed in the Companies Act as well as the circulars issued by the Ministry of Corporate Affairs in the matter of change of name of the company or alteration of its object clause which is a step in the right direction to establish good corporate governance as enshrined in the Companies Act and other legislations. ■

CA. V.K. Subramani
Erode
vksintax@gmail.com

Updates on Direct Taxes

1. **No depreciation on assets though forming part of block when discarded on account of obsolescence:**

In *CIT v. Luwa India Ltd (2012) 75 DTR (Kar) 367* the assessee claimed depreciation in respect of some of the assets forming part of the block which were discarded but the Assessing Officer denied the claim of depreciation for those assets. The assessee argued that once block of assets has been accepted, mere deletion of some of the items which have lost value due to obsolescence cannot go to reduce the value of assets for the purpose of computing depreciation. The court held that the depreciation can be claimed only in respect of machineries that are used and when certain machineries out of the block of assets have been discarded, no depreciation could be claimed in respect of those machineries. The proportionate reduction in the block value for the discarded assets for computing depreciation resorted to by the Assessing Officer was upheld by the Court. With respect, the decision of the tribunal upholding the assessee's claim seems to be correct and the reversal of tribunal decision by the court requires reconsideration in the light of applicable legal principles.

2. **Reinvestment of capital gain and intention of assessee aids in availing capital gain exemption:**

In *Smt. V.A.Tharabai v. Dy. CIT (2012) 75 DTR (Chennai)(Trib) 113* the assessee sold a long-term capital asset and acquired a plot immediately for construction of residential house. Because of the litigation and restraint order of the Civil Court, the construction could not be made within the stipulated period of three years as per section 54F. The claim of exemption under section 54F to the extent of investment in the plot was the subject matter of dispute. The tribunal held that the assessee had demonstrated her intention by acquiring a vacant site soon after the transfer of long-term capital asset. Because of the Court order, the construction of the residential house could not be made within the next three years. It held that the assessee could not comply with the legal requirements due to restraint

order of the Civil Court and the law never dictates a person to perform a duty that is impossible to perform. The impossibility of constructing a residential house within the stipulated period of three years cannot go to deny the benefit of exemption under section 54F. The court accordingly held that the assessee is eligible for exemption under section 54F to the extent of the investment made in the residential plot notwithstanding the construction was not completed within the stipulated time of three years.

3. **In the absence of failure of disclosure by the taxpayer reassessment after four years could not be made:**

In *V.B.Investments v. Dy. CIT (2012) 346 ITR 193 (Guj)* the assessment was completed under section 143(3) and after the expiry of four years, a notice for reassessment of income was issued to scrutinize the assessee's claim of bad debts of Rs.9.59 lakhs. At the time of assessment the assessee had given detailed written submissions and supporting evidences for explaining the loss by embezzlement of funds to support the claim of deduction as bad debt. The assessee challenged the reassessment as fishing enquiry sought to be made by the Assessing Officer as a result of mere change of opinion. The court held that the assessee had disclosed all the material facts at the time of original assessment. There was no case for the Revenue to prove that there was any failure on part of the assessee to make full and true disclosure of all material facts contemplated under section 147 of the Act. Hence, the extended time limit beyond four years could not be availed by the Revenue unless it proved that there was failure on the part of the assessee to disclose material facts at the time of original assessment.

4. **Investors with income below taxable limit need not furnish PAN:**

In *Smt. A.Kowsalya Bai & Others v. Union of India (2012) 346 ITR 156 (Karn)* the assessee filed a writ praying that the declaration under section 206AA of the Income-tax Act, 1961 be held as unconstitutional. Being small investors with income below the

limit for tax purposes, the petitioners furnished declaration under section 197A but did not have Permanent Account Number (PAN) mandated under section 206AA as amended by the Finance (No.2) Act, 2009. The court held that section 206AA would run contrary to section 139A which was introduced way back in April, 1991 which is in vogue and stood the scrutiny of the article 14 of the constitution for reasonableness. Since section 139A is a specific provision mandating obtaining / allotment of PAN only when the income exceeded the maximum amount which is not chargeable to income-tax, section 206AA could not be applied to such of those persons who have total income below taxable limit. Hence, the court held that banking and financial institutions shall not invariably insist upon PAN from such small investors like the petitioners as well as from persons who intend to open an account in the bank or financial institution. Readers may note that this decision will have binding effect in the State of Karnataka and persuasive effect in other States.

5. **Sanction for reassessment to be given by Joint Commissioner:**

In *Ghanshyam K.Khabrani v. Asst. CIT (2012) 346 ITR 443 (Bom)* the notice for initiating reassessment proceedings was signed by Commissioner of Income-tax though the law mandates in the case of the notice issued by Assessing Officer below the rank of Joint Commissioner, to be approved by Joint Commissioner. The term 'Joint Commissioner' is defined in section 2(28C) of the Act which includes Additional Commissioner of Income-tax. Section 151(2) dealing with sanction for issue of notice mandates the satisfaction of the Joint Commissioner. When the Commissioner of Income-tax gives such approval for reopening the assessment, it is contrary to legal provisions notwithstanding the power was exercised by an Officer superior to the Officer upon whom the powers are vested. The court accordingly held that the notice issued by Commissioner instead of Joint Commissioner as not valid and has to be quashed. ■

SIRC OF ICAI - COACHING CLASSES FOR CA STUDENTS

1. Coaching Classes for IPCC and Final Courses

The next batch of the regular coaching classes for IPCC and FINAL courses for May, 2013 Examinations will commence on 26th November, 2012.

Course Fee

Final : For Both Groups – Rs.5,000/- For One Group Rs.2,500/-
 IPCC : For Both Groups – Rs.4,000/ For One Group Rs.2,000/-

Class Timings

Final & IPCC : Group-I : 6.30 am to 9.30 am
 Group-II : 5.30 pm to 8.30 pm

2. 10-Day CPT Rapid Revision Classes for December, 2012 Exam

The 10-Day CPT Rapid Revision Classes will commence on 19th November, 2012. Students who have already appeared CPT Examination and yet to qualify and students who already attended CPT coaching classes in other institutions may join this CPT Rapid Revision Classes.

Senior Faculty Members will discuss the Model Test Papers (Questions) in detail. Fully Examination oriented. One CPT Model Examination will also be conducted on 01/12/2012.

Course Fee : Rs.1,500/-

Class Timings

Fundamentals of Accounting : 06.30 am to 9.30 am &
 05.30 pm to 8.30 pm

Mercantile Laws }
 General Economics } : 10.00 am to 1.00 pm & 2.00 pm to 4.00 pm
 Quantitative Aptitude }

Limited Seats only. Registration is on "first come first served basis".

Venue : SIRC of ICAI, "ICAI Bhawan", 122, M.G. Road, Nungambakkam, Chennai 600034

The coaching class fee should be remitted through Syndicate Bank, Nungambakkam branch, Chennai-34. The application form and bank challan can be had from the SIRC office. The outstation students may remit the fee by demand draft drawn in favour of **SIRC of ICAI** payable at Chennai. The demand draft along with the details, viz. course and group to be attended should be sent to SIRC of ICAI, "ICAI Bhawan", 122 Mahatma Gandhi Road, Chennai 600034.

For assistance :

Ph: 044-30210322, Email: sircclasses@icai.in
 Website: www.sircoficai.org

Chartered Accountants Benevolent Fund (CABF)

ICAI is one of the leading professional bodies of the world which has established a dedicated welfare fund for Chartered Accountant and their families in distress to provide financial assistance and support. CABF, established in 1962, is a fund set up by members for extending a helping hand to the members and their families. CABF generates its corpus from grant of life membership and voluntary contribution received from the members.

Objective: The Fund provide financial assistance for maintenance, education, medical treatment or any other similar purpose to necessitous persons being:-

- persons who are or have been members of the Institute, whether subscribers to the fund or not; or,
- wife and children of a person who is or has been members of the Institute, whether subscribers to the fund or not.
- Widow and children of a deceased person who has been members of the Institute whether subscribers to the fund or not.
- Relatives or others who were dependent for support on a person who has been a member of the Institute, whether subscriber to the fund or not; and who has died without leaving a widow or child.

Procedure for becoming a member of the CABF:

There are two categories of membership :-

- Life Member:** A single payment of Rs. 2500/- shall make a person eligible to be admitted as a life member of the fund and shall be styled as a 'Life Member'. Thereafter member may pay annual or voluntary contribution towards the fund.
- Ordinary members:** All other members shall be described as 'Ordinary Members' and shall have to pay an annual subscription of Rs. 500/-.

Apart from this any member can subscribe for 'Voluntary Contribution' up to any extent. All subscription and contribution may towards the CABF is exempted under section 80(g) in 1961.

Procedure for making payment

Membership subscription to the Chartered Accountants Benevolent Fund can be paid along with annual membership fee. Alternatively it can be paid separately by local cheque/DD to the respective Decentralised offices or Regional offices or Head office.

Application format

The application for enrolment as a member of the fund shall be made in form 'A'.

Extent of assistance available:

Monthly Assistance

Maximum monthly assistance available to a member or persons eligible to receive the assistance is from Rs.5500/- to Rs.7500/- per month according to the circumstances of the use renewable after one year. This is for maintenance of family of members/widow/relatives of deceased members.

Ex-gratia lumpsum financial Assistance:

Financial assistance will be given only to the members/widows/relatives whose monthly family income is not more than Rs. 15000/- depending upon need and exigency. In case of accidental death/unnatural death of a member aged below 55 years as well as for medical treatment under specified category.

Eligibility:

Ex-gratia financial assistance of Rs.150000/- is provided to the legal heir of deceased member in case of accidental death/unnatural death at the age below 55 years against claim.

Benefits given from CABF:

Financial Year	Amount of assistance released (in Rs.)
2008-09	57,00,000/-
2009-10	2,29,75,500/-
2010-11	2,08,55,500/-
2011-12	2,09,21,612/-

CABF has disbursed a total sum of Rs. 63, 37,112/- as ex-gratia financial assistance to the family of deceased member on account of death/on medical need of member in the year 2011-2012.

Procedure for availing assistance

Application for financial assistance should be made in prescribed format along with all relevant supporting documents mentioned therein. The application must be recommended by any Central Council Member or Chairman/Vice Chairman/Secretary of any Regional Council or Branch/ Ex-President/Chairman/Vice-Chairman and Member Secretary/Member of Managing Committee of CABF / Member of Managing Committee of Regional Council.

For complete details of the Fund please visit
http://www.icai.org/post.html?post_id=745

Certificate Course on Forex and Treasury Management

The Committee on Financial Markets and Investors' Protection (CFM&IP) is one of the Non-Standing Committees of the ICAI which conducts Certificate Course on Forex and Treasury Management (FxTM) for professional development of members in this field. The aim of this Course is to provide a platform to the members to interact with experts and to understand the recent developments in the field of Forex and Treasury.

The Committee will be starting new batches of Certificate Course on Forex and Treasury Management at Delhi, Mumbai, Chennai and Kolkata. The tentative dates are as follows:

S. No.	Place	Tentative date
1.	Delhi	27 th October 2012
2.	Mumbai	3 rd November 2012

3.	Chennai	4 th November 2012
4.	Kolkata	17 th November 2012

Important Links:

Course Contents : http://220.227.161.86/13463course_curriculum_forex.pdf

Registration Form : http://220.227.161.86/18248form_cftm.pdf

Online Payment : <http://www.icaai.org/ccm.html?progid=9>

Registrations for the Course have commenced and registrations will be on first come first served basis in view of limited seats. For any query or further details, please contact (0120) 3045945, 9650075010/9310542607 or by email fxtm@icaai.org.

RECENT ADDITIONS TO SIRC LIBRARY

General Books:

BOOK TITLE	AUTHOR NAME
365 steps to self confidence	Preston D L
5 things we need to be happy and money isn't one of them	Lorenz P
50 magnificent Indians of the 20th century	Lal S
51 greatest modern heroes: Heroes who changed the world	Otto L
8 positive attitudes	Schuller R H
Abraham Lincoln: The inspirational wisdom of Abraham Lincoln	Ostergard P L
Adolf Hitler	Bunting J
The age of Napoleon	Conner S P
Alexander the great: Leadership lessons from the man who created an empire	Kurke L
The argumentative Indian	Sen A
Autobiography of a yogi	Yogananda P
Autobiography of an unknown Indian	Chaudhuri N C
Before memory fades: An autobiography	Nariman F S
Beyond Auditing: An autobiography	Narajanaswamy G
Coaching for emotional intelligence: The secret to developing the star potential in your employees	Wall B
Corporate governance in India	Sarkar J
Corruption and reform in India: Public services in the Digital age	Bussell J
Culture in the vanity bag	Chaudhuri N C
The Dalai Lama: A biography	Marcello P C
Digital dharma: A user's guide to expanding consciousness in the info sphere	Vedro S
Einstein for everyone: Real science for real people	Piccioni R L
Final summit: A quest to find the one principle that will save humanity	Andrews A
Gandhi on personal leadership: Lessons from the life and times of India's visionary leader	Kumarasamy A
Gandhi the man : how one man changed himself to change the world	Easwaran E
Gandhi: thoughts to inspire and celebrate	Khergamker G
Gandhi an management: The paragon of higher order management	Pratap R
Getting through what you are going through: 10 steps to hope and encouragement	Schuller R A
Hitler and the Nazi leaders	Lattimer
Hitler: The man and the military leader	Schramm P E
Hitler's lies: An answer to Hitler's mien kempt	Harand I
Honeybees of Solomon : Experience of the Justice	Thomas K T
The idea of Justice	Sen A
India: An illustrated history	Kishore P
Innovate 90 days to transform your business	Shetty R
Jawaharlal Nehru : A biography	Moraes F

BOOK TITLE	AUTHOR NAME
Journey to self realization: collected talks and essays on realizing god in daily life	Yogananda P
Joy 24x7 Jeetendra Jain explores joy with sadhguru	Sadhguru
Lord Halisham - A Life	Lewis G
Ram Jethmalani: The authorized biography	Gera N
Reaching for the knowledge edge	Hatten K J
Daily inspiration	Sharma R
Discover your destiny	Sharma R
Family wisdom	Sharma R
The greatness guide	Sharma R
The greatness guide 2	Sharma R
Kabir: Thoughts to inspire and celebrate	Khergamker G
Leadership wisdom	Sharma R
Lokmanya Tilak: A Biography	Bhagwat A K
Mahatma Gandhi: essays and reflections	Radhakrishnan S
Mahatma Gandhi : his life and ideas	Andrews C F
Mahatma Vs Gandhi: Based on the life of Harilal Gandhi	Joshi D
Martin Luther King, JR.: A biography	Bruns R
Mega Living	Sharma R
Mohandas K.Gandhi: A Biography	Marcello P C
The Monk who sold his Ferrari	Sharma R
Mother Teresa : A Biography	Greene M
Mother Teresa: Thoughts to inspire and celebrate	Moulthrop G H
Napoleon: A great soldier, politician, lover and first modern European: Biography	Ludwig E
Nelson Mandela: A Biography	Limb P
Of mystics and mistakes	Sadhguru
Pebbles of wisdom	Sadhguru
The power to succeed: 30 principles for maximizing your personal effectiveness	Rubino J
Ramakrishna: Thoughts to inspire and celebrate	Khergamker G
Road to success: Timeless advice for today	Hill N
Seeds of success plant your own seeds to Excel on the job	Myrick J
Speeches Changed world	Whiticker A J
Stephen Hawking: A Biography	Larsen K
The Steve Jobs Way	Simon J L
Subhash Chandra Bose The Spring Tiger	Toye H
The theory of everything	Hawking S
The Two Gandhi's	Easwaran E
The Untold Story of Kasturba wife of Mahatma Gandhi	Gandhi A S
Who will cry when you die	Sharma R

OBITUARY

M.No	Name	Status	Place	Date of Death
002971	MR. KAMESWARA RAO J S	FCA	HYDERABAD	15/08/2012
006331	MR. GOVINDARAJAN T V	FCA	COONOOR	12/04/2012
008742	MR. AMARLAL S	FCA	BANGALORE	09/01/2012
009008	MR. DHANDAPANI A	FCA	POLLACHI	10/05/2012
012414	MR. TIRUMALAIYAPPAN K A	FCA	KARUR	23/07/2012
019813	MR. KASIRAJA T	FCA	TIRUNELVELI	08/08/2012
025573	MR. DHANANJAYA C	FCA	BANGALORE	11/07/2011
207549	MR. CHENTHIL KUMAR K C	ACA	KOCHI	29/08/2012
217046	MR. RAJANI KANTH K V S	FCA	KAKINADA	16/06/2012

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

DISCLAIMER

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

CPE PROGRAMME ON IND ASs

SIRC Premises, ICAI Bhawan
No.122, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600034

CPE Credit
4
HOURS

Friday, October 12, 2012 - 04.00 p.m. - 08.00 p.m.*

Registration: 03.30 p.m.

Session	Resource Persons
Standards on Auditing	
Ind AS-32 – Financial Instruments Presentation	CA. Chinnsamy Ganesan Chennai
Ind AS-39 – Financial Instruments – Recognition & Measurement	
Ind AS-107 – Financial Instruments Disclosures	CA. L Venkatesan Chennai
Ind AS-16 – Property, Plant and Equipment	
Ind AS-38 – Intangible Assets	

DELEGATE FEE

Members - ₹ 500/-

Delegate fee by way of Cash or by Cheque/DD drawn in favour of **SIRC of ICAI** payable at Chennai may be sent to SIRC of ICAI, ICAI Bhawan, No. 122, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034. Phone: 044-30210320, Fax: 044-30210355; Email: sircpcpe@icai.in

Delegates may send their queries – related to the topics covered in the programme- in advance to sircpcpe@icai.in

***The meeting will be followed by dinner**
REGISTRATIONS WILL CLOSE AT 4.00 P.M. ON 12.10.2012

WORKSHOP ON
ENABLING SERVICE TAX PRACTICE
Organised by Indirect Taxes Committee - Hosted by SIRC of ICAI

SIRC Premises, ICAI Bhawan
No.122, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600034

CPE Credit
12
HOURS

Monday & Tuesday, October 15 & 16, 2012 - 09.30 a.m. - 05.30 p.m.

Registration: 09.00 a.m.

Day 1: Monday – 9.30 a.m. to 5.30 p.m.

Day 2: Tuesday – 9.30 a.m. to 5.30 p.m.

Technical Sessions	Resource Persons
Definition of Service and its taxability ' Declared service' & Place of provision of Service	CA. J. Purushothaman Chennai
Concept of negative list of services, 'Exempted Service'	CA. N K Bharath Kumar Chennai
Point of taxation – Concepts & Opportunities in Service Tax	CA. Prasanna Krishnan Chennai

Technical Sessions	Resource Persons
Valuation of Taxable Service	CA. Samad Chennai
Tax liability under ' Reverse charge Mechanism' & Joint Charge Mechanism	CA. N K Bharath Kumar Chennai
CENVAT Credit Rules	CA. P. Sankaran Chennai

DELEGATE FEE

Members - ₹ 1500/-

Delegate fee by way of Cash or by Cheque/DD drawn in favour of **SIRC of ICAI** payable at Chennai may be sent to SIRC of ICAI, ICAI Bhawan, No. 122, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034. Phone: 044-30210320, Fax: 044-30210355; Email: sircpcpe@icai.in

Statutory compliance like registration, issue of invoice, payment of Tax, Adjustment of Excess Payment of Tax: filing of Periodical Returns, Refund of Service Tax, etc.

Recent issues in service tax including Construction Activities & Works Contract

CA. Vijay Anand V
Chennai

CA. J. Purushothaman
Chennai

CPE SEMINAR ON INTERNAL AUDIT

Organised by SIRC of ICAI under the auspices of the Internal Audit Committee of SIRC

SIRC Premises, ICAI Bhawan
No.122, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600034

CPE Credit
6
HOURS

Saturday, October 20, 2012 - 09.30 a.m. - 05.30 p.m.

Registration: 09.00 a.m.

Technical Sessions	Resource Persons
Internal Audit - Expectation from statutory auditors	CA. Chinnsamy Ganesan , Chennai
Data analytics in Internal Audits	CA. N. Balaji , Chennai
Internal Auditing Standards of ICAI - Common Body of knowledge	CA. H. Venkatesan , Chennai
Fraud Risk Assessment	CA. K. Paul Jayakar , Chennai

DELEGATE FEE

Members - ₹ 750/-

Delegate fee by way of Cash or by Cheque/DD drawn in favour of **SIRC of ICAI** payable at Chennai may be sent to SIRC of ICAI, ICAI Bhawan, No. 122, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034. Phone: 044-30210320, Fax: 044-30210355; Email: sircpcpe@icai.in

WORKSHOP ON
VARIOUS ETHICAL ISSUES

SIRC Premises, ICAI Bhawan
No.122, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600034

CPE Credit
4
HOURS

Friday, November 9, 2012 - 04.00 p.m. - 08.00 p.m.

Registration: 03.30 p.m.

Technical Sessions	Resource Persons
Issues and Cases relating to Unjustified Removal of Auditors and Independence of Auditors	CA. K. Ravi Chennai
Code of Ethics – Emerging issues	CA. G. Narayanaswamy Chennai

DELEGATE FEE

Members - ₹ 300/-

Delegate fee by way of Cash or by Cheque/DD drawn in favour of **SIRC of ICAI** payable at Chennai may be sent to SIRC of ICAI, ICAI Bhawan, No. 122, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034. Phone: 044-30210320, Fax: 044-30210355; Email: sircpcpe@icai.in

CFOs ROLE IN MANAGING EXTERNAL RISKS

Organised by Corporate Laws and Corporate Governance Committee, ICAI-September 4, 2012 - Chennai



CA. Jaydeep Narendra Shah, President-ICAI giving memento to CA. S. A. Murali Prasad, Chennai in the presence of CA. K. Sridharan, Chennai

CPE SEMINAR ON TAX AUDIT

August 31, 2012 - Belgaum Branch



CA. K. Viswanath, Chairman-SIRC addressing the delegates during his official visit to the Belgaum Branch.

CPE SEMINAR ON ISSUES IN TAX AUDIT

September 1, 2012 - Mangalore Branch



CA. K. Viswanath, Chairman-SIRC addressing the delegates during his official visit to the Mangalore Branch.

TEACHERS DAY

September 5, 2012



Dr. P.R. Vittal, Senior Faculty addressing the Teachers Day Function. (L-R) Dr. P.V. Raghavan, CA. R. Ranga Rao, Dr. P.T. Giridharan, Dr. V. Seshadri and CA. R. Sivakumar

REGIONAL LEVEL ELOCUTION CONTEST - CHENNAI

Organised jointly by SIRC & SICASA
August 30, 2012



(L-R) Mr. Rohit, SICASA, Mr. Mohit, SICASA, Major Lakhshmanan, Shri T. Jagatjivan Ram, Ms. P. Abhirami, Ms. Pai Pratiksha Manjunath, Ms. Medini S Bhat, Ms. R. Shruti - Winners of Regional Level Elocution Contest, CA. P.B. Sampath, Director & Secretary, TAFE Ltd., Chennai and Mr. Lijil, SICASA

REGIONAL LEVEL QUIZ CONTEST - CHENNAI

Organised jointly by SIRC & SICASA
August 31, 2012



Quiz Master CA. V. Pattabhi Ram, Chennai conducting the Regional Level Quiz Contest. Students of Four teams which had participated in the Final Round of the Regional Level Quiz Contest