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The Management Accountant

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THE INSTITUTE STANDS FOR

❑ to develop the Cost and Manage-ment Accountancy profession ❑ to develop the body of members and properly equip them for functions ❑ to ensure sound professional ethics ❑ to keep abreast of new developments.

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"ICWAI Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting."

VISION STATEMENT

"ICWAI would be the preferred source of resources and professionals for the financial leadership of enterprises globally."

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Editorial

Grecian tragedy- redux

Just when the world appeared to be on the way to recovery after suffering from one of the worst bouts of economic hardship, the crisis at Greece has emerged as a party pooper. Thanks to greater financial interconnectedness, the upheaval in Athens has the ability to impact not just the European Union ; but even distant countries like India which have negligible economic relations with the Mediterranean country might be impacted too. Further the crisis at Greece has not been limited to the currency markets; alternative investment markets like gold too have felt the tremors of the Hellenic tectonic movements in the form of increased volatility of price.

Greece has an ancient and rich past and in many areas like warfare, philosophy, empire building, culture and economics it was the harbinger of modern ideas and concepts. However, post World War, it has never been a strong contender for economic supremacy. Thus its move to join the European Monetary Union in 1995 was seen as an attempt to piggyback on the strength of the EU's Common currency, unified capital markets and free trade. Interestingly, however, today this very membership to the EU is like a Damocles sword which is blocking the country's attempt to contain the crisis.

Throughout the period of its membership to EU, the country had never adhered to the stringent norms of fiscal deficit, external indebtedness and inflation that was required from all members. During the credit boom of 2005, there had been a surfeit of capital into Greece like other countries but this had merely fuelled huge fiscal expenses and runaway inflation without any real growth. The first signs of strain were felt when the present administration confessed to manipulating the public accounts by way of complex derivatives to under report actual public debt. When the true (and higher) public debt figure came into light, it created a panic among investors exposed to Greece. This was manifested in higher spreads on bonds and with a recession already underway led to an imminent prospect of sovereign default. Speculative attacks on the currency further compounded the problem.

The options before Greece are painful and unpalatable. In fact there are not too many options. A loose monetary policy would have allowed to inflate away its debt. Its membership to EU leaves it with no leeway for monetary and external management to manage the crisis barring fiscal tightening. Devaluing its drachma to restore competitiveness would have been a good solution but that would entail leaving the EU. But a weak nation would avoid leaving the aegis of a strong economic club. Fiscal contraction is not only politically unacceptable (especially since 40% of the nation's work force are public workers) but makes bad economic sense since it will reduce taxes, an important source of revenue needed to shore its public finances. Other economically strong members of the EU are hesitant to come to the nation's aid since they view Greece to be a chronically irresponsible nation. The assistance package of nearly one trillion dollars is seen to be too less when compared with a fiscal deficit of 13% of GDP and public debt of 140% of GDP. In the absence of sufficient assistance from either the EU or IMF, the only way out would be restructuring of existing debt or outright default. Thus Greece might win the battle but in the process will lose the war.

In this context, praise must be reserved for the exemplary handling of the near sovereign default that India faced in 1991. India neither defaulted nor restructured its debt; rather it was a combination of some painfully short term measures (like mortgage of the nation's gold) and prudent long term steps (like building of forex reserves and discipline in fiscal and forex management) aided with increased household savings (as against profligacy of the Greeks), that helped India emerge from the crisis.

Thus both the present crisis at Greece and the past crisis in India in 1991 teach us important lessons for the future. It is our duty and responsibility as Cost and Management Accountants to learn from these episodes, avoid making the same mistakes and contribute to better serving the nation.

• President's Communique •

Dear Professional Friends,

The month of May has been a very eventful month for our profession. The following events indicate the importance of the above statement:-

1. Visit of Mr. Robert Bunting, President, IFAC, to our Institute:

It was a historic moment for ICWAI to have with us Mr. Robert Bunting, President, IFAC at our Delhi Office. It was a good exchange of professional matters on current interest with the CEO of IFAC, Mr. Ian Ball, Mr. Mathew, Technical Manager and Mr. Robert Bunting, President, IFAC. He also attended our Cost Accounting Standards Board meeting. Mr. Bunting has indicated that **"in Cost Accounting Standards, perhaps India is the global leader."** He was also of the opinion that though the role of ICWAI Cost Accounting Standards are now limited to certain regions, select sectors and select countries, he advised ICWAI to spread this message to most of the other countries so that IFAC may discuss the possibilities to make this Cost Accounting Standard acceptable in more regions. Mr. Bunting was presented with the publication of Cost Accounting Standards 1-12 of the Institute. Mr. Chandra Wadhwa Chairman, CASB, gave a presentation and explained the constitution of CASB, the methodology adopted and the list of items identified for the development of Cost Accounting Standards.

2. MOU between ICWAI and MCX Stock Exchange Ltd:

I am happy to inform you that the Institute of Cost and Works Accountants of India (ICWAI) and MCX Stock Exchange Ltd., (MCX-SX) have signed a Memorandum of Understanding (MOU) on 7th May 2010 at Kolkata. The programme was graced by Shri R. Bandyopadhyay, IAS, Secretary, Ministry of Corporate Affairs, as the Chief Guest. On this occasion, a programme on **Corporate, Environmental and Social Governance** was also organized by MCX-SX. This MOU will result in joint programmes between ICWAI and MCX-SX for various certification programmes on financial markets, cost accounting standards and effective corporate functioning. For the first time, a private stock exchange company will be involved in promoting cost accounting standards developed by ICWAI.

3. CAS familiarisation programme:

Cost Accounting Standards Board (CASB), under the Chairmanship of Shri Chandra Wadhwa, took up the familiarisation programme for the professors and faculty members of universities, colleges and institutions of NCR on 11th May 2010 at YMCA Auditorium, New Delhi. Shri Jitesh Khosla, IAS, OSD, Indian Institute of Corporate Affairs, inaugurated the function. The programme was attended by more than 100 academicians. It was an opportunity for me as President, ICWAI and Shri B.M. Sharma, Vice President, ICWAI, to interact with the learned professors and faculties of various Colleges and Institutions and make them come forward to do the needful to promote Cost Accounting Standards.

4. ICWAI at NFCG Governing Council Meeting:

The Governing Council of National Foundation on Corporate Governance (NFCG) took place on 14th May 2010 under the Chairmanship of Shri Salman Khurshid, Hon'ble Minister of Corporate Affairs (I/c), Government of India. ICWAI was welcomed as the new member of the Governing Council of NFCG. Shri Bandyopadhyay, IAS, Secretary, MCA, and Chairman of NFCG, Shri Salman Khurshid, Hon'ble Minister of Corporate Affairs (I/c), Government of India, indicated that there will be an Investor Awareness Week in the month of July 2010 and announced that around 3000 programmes are to be conducted all over India by all professional and trade bodies and other institutions. He informed that ICWAI has been entrusted with conduct of 500 programmes involving all other Stake-holders including Investor Associations. All Chapters are requested to participate in this programme and conduct Investor Awareness Programmes and send the details as per the guidelines which are being issued shortly by ICWAI Head Quarters.

5. CAPA Board and Annual General Meeting:

I along with Shri B.M. Sharma, Vice President, ICWAI, attended the Confederation of Asian and Pacific Accountants (CAPA) Board Meeting and Annual General Meeting held on 20th and 21st May 2010 in Wellington,

• President's Communique •

New Zealand. There was also a presentation from all countries of CAPA as well as India on the latest professional achievements.

6. ICWAI represented by the President in MCA delegation to Netherlands and Germany:

An MCA delegation led by Shri R. Bandyopadhyay, IAS, Secretary, MCA, visited Netherlands and Germany during 24-31 May, 2010 to establish a Joint Working Group with the Governments of Netherlands and Germany in the area of Corporate Governance and Corporate Social Responsibility. There was also an interaction with various organizations engaged in the areas of CG/CSR in these two countries. During this visit, detailed discussions were held with the Netherlands Government at Hague to identify the areas of interest to develop a mutual consensus for exchanging points relating to Corporate Governance and Corporate Social Responsibility. The Netherlands Government appreciated the efforts taken by the Ministry of Corporate Affairs, Government of India in this regard.

We were happy to participate in an International Global Reporting Initiative Conference at Amsterdam and were among the 77 countries which discussed various practices of Global Reporting Initiative. Our Secretary, MCA, Shri R. Bandyopadhyay, IAS, addressed the Plenary Session on the inaugural day in addition to participation in various Group Discussions of GRI International Conference.

7. ICWAI at Parliamentary Standing Committee on Finance:

The Institute was given an opportunity to appear before the Hon'ble Parliamentary Committee on Finance for oral hearing on Companies Bill 2009 on 24th May 2010 at New Delhi. A presentation was made before the Hon'ble Committee and further replies were submitted for the queries.

8. Visit to Regions and Chapters:

Laying of Foundation Stone for new Building of Cochin Chapter:

I was happy to lay the foundation stone for the new building of Cochin Chapter of ICWAI on 9th May 2010 at Cochin. The new land purchased by the ICWAI Cochin Chapter serves the members' interest as well as students' interest in the region and it will enable Kerala to propagate more and more of Cost and Management Accounting Professionals. Once again congratulations to Cochin Chapter for its effort and wishing all the best in their endeavour. Shri Sukumaran Nair, Past President of ICWAI was present during the function in addition to the Chairman and other members of SIRC.

Seminar on Indirect Taxes organized by Bhopal Chapter:

During the seminar organized by Bhopal Chapter of Cost Accountants on Indirect Taxes on 2nd May 2010, I had the opportunity to interact with the members of the profession at Bhopal.

9. Announcement from Government of Kerala on inclusion of Cost Accountants in their Local Bodies for Accounting System:

The month ended with a happy note with the news from ICWAI Cochin Chapter regarding Government of Kerala's Notification on inclusion of Cost Accountants in Urban Local Bodies for the purpose of adoption of Double Entry Accrual based System of Accounting.

With regards,

Yours sincerely,

(GN Venkataraman)
President
Date : 4th June, 2010

Inaugural Speech of Mr. Jagdish Capoor, Chairman of HDFC Bank Ltd. delivered at the Seminar on 'Cost and Strategic Management for Growth of SME Sector' at Mumbai on 19th May, 2010

I am extremely happy to be a part of the proceedings of this seminar relating to the growth of SME sector in the country. I am grateful to the Indian Institute of Cost and Works Accountants, Western India Regional Council and personally to Shri V C Kothari for giving me this honour of speaking in the seminar. On a personal note, I recollect having met Shri Kothari first about 20 years ago when we had traveled together to Bhilai to address a well attended seminar and also to open there the local chapter of ICWA and I find that his enthusiasm for undertaking such training and developmental activities remains unshaken. Perhaps the same may be the case with his other colleagues in the Institute whom I may not have known closely. I am also happy that the Institute continues to focus its attention on the SME sector.

2. As we are all aware, the SME sector has a very important place in the Indian economic environment. Whenever we think of employment generation, whenever we think of exports and whenever we think of balanced growth, it is the SME sector that occupies our mind. Large industry depends on large capital doses to sustain itself. It involves heavy capital expenditure. My guess is that larger capital expenditure displaces human capital in the same proportion and sometimes even more. In a country where the growth of employment seeking population does not show signs of abatement, simultaneous growth of opportunities is an absolute must. Otherwise, a large population of unemployed youth is capable of creating havoc to the social fabric of any country and more so in the case of a country which has no provision for any sort of help from state sources to the unemployed.

3. Moving away from the employment concerns, it is the export sector where SMEs have done very well. As you may be aware, a dominant proportion of our exports come out of SME, whereas the larger units basically take care of huge domestic demand for various products. I am not for a moment suggesting that larger units are not capable of generating exports. They do sizeable exports themselves but the lead is with the SMEs. Also, most items in our export basket suit the smaller sector.

4. Another benefit that the smaller units provide, as I mentioned earlier, is that they get widely dispersed and provide a sort of balanced growth in geographical terms. Because of their smaller size they are able to derive smallest locational advantages which a larger outfit may perhaps find unviable.

5. Certain welcome changes have taken place in the SMEs over a period of time which augurs well for the future of this segment. When I look back 15-20 years back, SMEs used to be always considered weak in their organizational and managerial structure unable to negotiate successfully through the ups and downs of businesses. Also a large number of them were unable to focus on their production as the entrepreneurs were forced by circumstances to spend disproportionate amount of time in their efforts to raise finances and in complying with the regulatory requirements of the Govt. and local authorities and their inspectors. I think, matters have since improved considerably and the units are generally run more professionally. They have thus gained strength and confidence. Entrepreneurs are relatively more enlightened. I think a part of credit should go to the programmes like this arranged by professional bodies like the Institute of Cost & Work Accountants.

6. Having been associated with the banking sector for long I cannot help touching upon the views of banks in relation to the areas where they feel an amount of discomfort in dealing with SMEs. I am not for a moment suggesting that they would apply universally but certainly go to create a general perception. Most prominent amongst these are their low capital base which would mean that a units' capacity to deal with the ups and downs of the business would get diluted considerably. It would also lower its ability to leverage. If a unit is able to fill the resource gap with excessive debt, it could be a prescription for problems in the future. Again I may add that this is only a general observation and this may not be true universally for every single unit.

7. Another problem which is generally observed in the case of SMEs is absence of timely settlement of their receivables by the large corporates who are their buyers. This naturally affects the cash flow. Several corporates do arrange with their bankers in order to enable their vendors to discount their bills drawn on the corporates for the goods supplied. But not every vendor gets to enjoy this facility. SMEs do often find it difficult to negotiate better terms in view of their relatively weak bargaining power vis-a-vis the large corporates.

8. There could be several other risk factors also which determine a bank's appetite or lack of it to add SMEs to its asset portfolio. These could relate to absence of succession planning, non availability of private equity or venture capital, low credit ratings etc. Here we need to appreciate that Banks deal with somebody else's money and therefore their exercising caution in order to safeguard the depositors' interest should be quite understandable. In fact they have to do tight rope walking as between safeguarding depositors' interest and simultaneously taking lending decisions for the sake of their revenues and finally look after the interests of their shareholders. But there is no denying the fact that the industry problems do need a sympathetic approach from the bankers as well as from the Govt.

9. Here I would take the liberty of narrating a couple of personal experiences during the period I was with RBI. These may be old but still relevant. I was involved with a couple of Committees that were set up at different points in time to look into the problems of SSI. The Committees comprised Senior bankers, representatives of the industry and a Govt. representative at very senior level. On both the occasions the exercise threw up some valuable conclusions. I was, however, disappointed that on both the occasions lot of time was wasted in unproductive deliberations mainly due to reluctance to appreciate each others point of view and taking rigid positions and also indulging in a good amount of blame game between the industry and bankers. Time lost could have otherwise been used for focusing on genuine issues. Still, the deliberations did throw up some useful conclusions.

10. I may give another instance of this lack of effort to understand and appreciate others views. It was decided in RBI that we hold open house sessions at important SSI centres in order to understand better problems facing this sector. I participated in these programmes along with several top executives of banks and representative from Govt. at two centres - Ludhiana and Bhubaneswar. Members of the industry were invited in good number to participate and put their point of view. The Ludhiana one was a fairly placid affair. But the one at Bhubaneswar was simply boisterous. There was loud and agitated expression of grievances by the representatives from the industry and equally hot responses from the bankers and representative of the Govt. who defended themselves. It was clear to me that the industry had never had any opportunity earlier to air their grievances. Huge number of allegations were made against the bankers and the Govt. for responding indifferently to the problems faced by the members of the industry. While some of the grievances were really genuine the problem had arisen mainly on account of lack of mutual understanding, lack of proper communication and lack of faith. This was not at all a happy situation. RBI then decided to take this problem to its logical conclusion. We picked up 15 or 20 selected cases out of live cases quoted by the industry and asked a group comprising representative of the concerned banks, representative of the industry association and a senior representative from RBI to go deep into each of these cases and see where the matters had gone wrong. It was a useful exercise and I believe it sorted out several issues and helped in building mutual understanding and trust and perhaps things have been better. Thus we observe that for finding a lasting solution of any problem a two way communication with an open mind on both the sides is a must. Above all, if an industry runs into a genuine problem, it deserves a sympathetic approach from all concerned - its lenders, the government and also its customers.

11. Lastly I would like to make a short point about our labour laws. We need to seriously examine if in our anxiety to protect existing employment, which is nothing wrong in itself, are we creating hurdles in creation of additional employment. If employers are busy ensuring that its labour does not remain employed at a stretch more than a certain number of days, it does not serve anybody's purpose. If a unit has to split only to ensure that its labour strength does not exceed a certain number, again it does not serve anybody's purpose.

There could be several other similar restrictive provisions which create avoidable hassles. If exit is made difficult, there would always be reluctance to allow entry. You would recollect that we had a very strong exchange control in the past which prevented free outflow of foreign exchange. Still, our reserves reached rock bottom and the country was on the verge of default. That was in early nineties. But the moment the outflows were liberalized, you know what has happened. Our reserves are around US$ 270 billions despite liberal outflows. So our labour laws also need a very dispassionate relook.

12. I think I must conclude here. I once again thank the ICWA for giving me the privilege of speaking before you. I also thank the delegates for bearing with me. We have a full day of deliberations before us. All the sessions have been very carefully chosen and would be taken through by well selected faculty. There is a session dealing with success stories. I am sure it would be a great learning platform. I wish the seminar a very successful conclusion. I also take this opportunity to congratulate the Institute and its associates for holding this programme.

Thank you.

Jagdish Capoor*

***About Mr. Jagdish Capoor**

Mr. Jagdish Capoor holds a Master of Commerce Degree and is Fellow of Indian Institute of Banking and Finance.

Mr. Capoor retired as Deputy Governor of the Reserve Bank of India. Mr. Capoor was Chairman of Deposit Insurance and Credit Guarantee Corporation of India, Unit Trust of India, Bharatiya Reserve Bank Note Mudran Limited, Agricultural Finance Corporation Ltd., and Bombay Stock Exchange Ltd., and served as a Director on the Boards of Bank of Baroda, Export Import Bank of India, the State Bank of India, the National Bank of Agriculture and Rural Development, National Housing Bank, Infrastructure Development Finance Co., and GHCL Limited.

Presently, Mr. Capoor is Chairman of HDFC Bank Ltd., Assets Care Enterprise Ltd., and Quantum Trustee Co. Pvt. Ltd. Mr. Capoor is also on the Board of Directors of The Indian Hotels Company Limited, LIC Pension Fund Ltd.

He is also a member on the Board of Governors of the Indian Institute of Management, Indore.

Direct Tax Code - Value Based Services by Cost and Management Accountant

Mrityunjay Acharjee*

Introduction

To consolidate and amend the age old law relating to direct taxes and to establish an economically efficient, effective and equitable direct tax system, a new Direct Tax Code has been proposed to be introduced. The Direct Taxes Code Bill, 2009 ('Code') had been released on August 12, 2009. The discussion paper states that the objective of the Code is to achieve simplicity, clarity and transparency in direct taxes. In line with recent legislative trends, the Code is a bare framework to be augmented subsequently by the multiple rules, regulations and notifications, while conferring discretionary powers on the Income Tax Department, and also not backed by guiding principles or safeguards, either legislative or judicial. A significant change is the formulaic approach in calculation of certain exemptions and deductions, as opposed to the outdated, verbose and convoluted language used in the Income-tax Act, 1961, which in itself may have caused a fair share of tax disputes in the past. Certain procedural provisions in the Code are also made far more arbitrary and another significant feature in this regard is the almost total absence of provisions of natural justice in implementing the same. However, according to the Finance Minister the purpose of DTC , is "to improve the efficiency and equity of our tax system by eliminating distortions in the tax structure, introducing moderate level of taxation and expanding the tax base".

CMA, AICWA

The tax code makes radical changes in all areas of taxation. It lowers the incidence of tax on corporate and individual incomes but reintroduces wealth tax and capital gains tax, albeit at lower levels. It also proposes to bring an uniform pattern of taxation on all long-term savings in the form of EET - exempt at the stage of contribution, exempt during accumulation and taxed during withdrawal. The underlying philosophy behind the Code is the philosophy of the Government, which is wedded to a well-regulated free market system as claimed by the Government.

The most significant change in the proposal is to bring in the EET regime all the approved provident funds, approved superannuation funds, life insurance and new pension system trust from April 1, 2011. As the NPS is already subject to EET, where contributions and accruals in the scheme are not taxed but withdrawals are subject to tax, the new proposal is to deny the benefit which the working class earned by their massive struggles. The withdrawals will be taxed whenever they are made, that is, at maturity or prematurely at the personal marginal rate.

"Any withdrawal made, or amount received, under whatever circumstances, from this account will be included in the income of the assessee under the head 'Income from residuary sources' in the year in which the withdrawal is made or the amount is received" is the new proposal to make EEE regime to EET regime. The New Pension Scheme (NPS) operational from January 1, 2004 makes mandatory to contribute by all new recruits to the Central Government service from January 1, 2004. It has been opened up for the employees of the State Government, private sector or self-employed. To synchronize the savings with exempt-exempt tax, it is provided to exempt from income-tax any income received or any dividend paid or purchase and sale of equity and derivatives by the NPS trust shall be exempt from securities transaction tax. However, the benefits shall not be extended to the terminal or withdrawal stage of the savings in par with the EPF or PPF which enjoy exemption even on withdrawal. Since by not giving the Exempt-Exempt-Exempt (EEE) status to the NPS funds it is not considered as a substantial benefit, it only delayed the event of taxation.

Path way towards Tax Reforms

The Direct Tax Code is a bit of a mixed bag for individuals, particularly the salaried class. Prima facie, the tax liability will reduce significantly as the Draft Code proposes to tax incomes up to Rs. 10 lakhs at 10 per cent, that between Rs. 10 lakhs and Rs. 25 lakhs, at 20 per cent and sum in excess of that, at 30 per cent. Thus, an individual with taxable gross income of Rs. 10 lakhs, will pay tax of Rs. 84,000 as opposed to about Rs. 2.11 lakhs, he pays this fiscal year. Significant reform proposal that has been prescribed in the Direct Tax Code, inter-alia includes business losses are to be allowed to be carried forward indefinitely, wealth to be taxed on net basis (asset value less debt in respect of that asset), to include all assets including shares, if it exceeds Rs. 50 crore, abolition of distinction between long-term and short-term capital gains is supposed to encourage trading, Financial intermediaries such as mutual funds venture capital funds and life insurance companies will have a pass through status and their income is to be tax free, security transactions tax is to be abolished, etc. The instant reaction of the industry was very positive immediately after pronouncement of the Direct Tax Code. Sensex gained -198 points or 3.3 per cent on the next day. Industry hailed the Code as path breaking, reformative and innovative. However, on detailed analysis and understanding of the provisions relating to DTC, the other side of the bill has been revealed out. This article shall provide an indeapth analysis about the significant amendments that has been proposed in the Direct Tax Code (DTC) with particular emphasis on International Taxation and Taxation on Cross Border Transactions.

Framing the Strategy

The strategy for broadening the base essentially comprises of three elements. The first is to minimize exemptions. For many decades, the tax base has been eroded through a steadily escalating range of exemptions. The removal of these exemptions will have three consequences:

(i) it will result in a higher tax-GDP ratio;

(ii) it will enhance GDP growth, since tax exemptions and deductions distort allocative efficiency; and

(iii) it will improve equity (both horizontal and vertical), reduce compliance costs, lower administrative burdens, and discourage corruption.

(iv) The second element of the strategy relates to the problem of ambiguity in the law, which facilitates tax avoidance.

Therefore, it is necessary to undertake a periodic exercise of rewriting the Tax Code in the light of new trends in interpretation by the judiciary, aggressive tax planning by taxpayers, and new opportunities for reducing compliance cost through massive induction of technology and public private partnership. The third element of the strategy relates to checking of erosion of the tax base through tax evasion.

Objective of Direct Tax Code

The Code seeks to consolidate and amend the law relating to direct taxes, that is, income-tax, dividend distribution tax, fringe benefit tax and wealth-tax, so as to enable to establish an economically efficient, effective and equitable direct tax system which will facilitate voluntary compliance and help increase in the tax-GDP ratio. Another objective is to reduce the scope for dispute and minimise litigation.

Salient Features

The following are the salient features of the Code-

1. Single code for direct taxes;
2. Use of simple language - as to convey with clarity the intent, scope and amplitude of the provisions of law;
3. Reducing the scope of litigation - by avoiding ambiguity in the provisions so that the taxpayer and tax administration are ad idem on the provisions and the assessment results in a finality;
4. Flexibility- by reflecting the general principles in the statute and leaving the matter of details to rules, Schedules so that changes in the structure of growing economy are accommodated without resorting to frequent amendments;
5. Ensuring that the law can be reflected in a Form - by designing the structure of tax laws so that it is capable of being logically reproduced in a Form;
6. Consolidation of regulatory functions provisions relating to definitions, incentives, procedure and rates of taxes have been consolidated for better understanding of the legislation by rearranging various provisions to make them consistent with general scheme of the Act;
7. Elimination of regulatory functions - by withdrawing the regulatory function of the taxing statute; Providing stability - by prescribing the rates of taxes in the Schedule of the Code instead of being done annually in the Finance Act.

Highlight of the New Direct Tax Code

- All Direct Taxes integrated in one Act.
- Effective from April 1, 2011
- 16 Chapters, 285 sections, 18 Schedules

Tax rates, TDS rates, etc., in Schedules to the code.

The concept of Assessment Year and Previous Year removed.

Tax Audit Ceiling remains the same.

Books to be maintained for notified professions and for business if Income> 2 lakhs and Turnover > 10 lakhs.

- Depreciation rates largely remain the same.

  Non-compete fees specifically made eligible for depreciation @ 25 per cent.

  Lease premium specifically made eligible for depreciation @ 25 per cent.

  Personal taxation reduced drastically by increasing the slab ranges, though the basic exemption limit remains the same.
- Corporate tax rate proposed to be at 25 per cent.
- MAT at the rate of 2 per cent of Gross Assets (0.5 per cent for banking company)
- No Surcharge, No cess to be levied.
- Dividend Distribution Tax @ 15 per cent
- Foreign companies liable to pay

branch profit tax at the rate of 15 per cent

- No wealth-tax for companies. Wealth-tax only for individuals, HUF and private discretionary trust, if wealth exceeds 50 crores.
- Wealth-tax rate 0.25 per cent above 50 crores.
- TDS rates largely remain the same.
- Definition of 'person' to include an office or establishment of the Central or the State Government (For TDS compliance)
- Advance tax installments and due dates remain the same.
- Definition of books of account to include data stored in Pc. (Existing Act includes only print outs and not soft copy). .
- Capital asset to exclude only stock-in-trade, consumable stores and raw materials in business. Even personal effects, etc., not liable to CG tax.
- A foreign company will be treated as resident in India, if at any time in the financial year, it is controlled partly in India (as against wholly in the present Act)
- The concept of R but NOR done away with, but their taxation remains the same.
- Heads of income remain the same, though nomenclature slightly changed.
- Only capital loss and speculation loss not allowed against other heads. Other losses to be aggregated and indefinitely c/fd. So even business loss c/fd. can be set off against other heads.
- Provisions similar to Section 14A and Rule 8D remains.
- All expenditures to be disallowed for TDS defaults. Existing provision of March expenditure allowed up to due date extended to last quarter.
- If TDS paid subsequently, expenditure allowed in that year (as at present). But if paid more than 2 years late, not allowable.
- VRS, gratuity and commuted pensions, taxable if not invested in specified savings. Will be taxable on withdrawal.
- Difference in taxation of the Government and non-Government employees removed.
- Standard Deduction of 30 per cent of NA V now made 20 per cent of gross rent.

  Annual value linked to rateable value (litigation on fair rent now academic)
- Housing loan interest not allowed for self occupied house.
- Composite letting (with machinery, etc.), included in IFHP
- Profits on business assets (old sections 50, 50A, 50B, etc.) to be business income and not capital gains.
- Radical changes in computation of business income, though the substance obviously remains the same.
- Business expenditure classified in three groups.
- Difference between LTCG and STCG abolished. However, indexation allowed if held for more than 1 year (as against 3 at present).
- Base year for indexation shall be revised and Year 2000-01 to be considered a the base year
- STT to be abolished. So, share profit taxable as usual.
- Capital gains reinvestment only in agricultural land and in one residential house
- Interest income to be under residuary head (earlier income from other sources) always.
- Savings to be taxable on withdrawals (EET), except pure life policies and provident funds.
- Loan more than Rs.20000, taken or repaid, if not by account payee cheque or draft, to be taken as income.
- Certain exemption under section 10 retained and listed in 6th and 7th Schedule.
- EET only for new investments and not the existing ones.
- Savings limit eligible for deduction increased to Rs. 3 lakhs from existing Rs. 1 lakh .
- Tuition fees for children allowed to individuals and HUF
- Deductions like 80D, 80DD, 80DDB, 80U, 80E, 80GG retained. (Obviously with new Section Nos.)
- Profit based incentives like section 80-lA, etc., changed to investment based incentives.
- Co-operative societies deductions, royalty for copyright, patents, etc., retained.
- No carry-forward of MAT credit.
- Limits on remuneration and interest to partners removed.
- 'Charitable purpose' renamed as 'Permitted welfare activity', but definition largely remains the same.
- Various exemptions to charitable entitles clubbed together for simplification.
- Charitable entities liable to tax at the rate of 15 per cent of their surplus as calculated in a prescribed manner and under cash system
- Due dates for return 30th June for non business income of non-corporate assessees and 31st August in other cases (including cases where audit is compulsory required)
- Notice to be issued to stop filers and nonfilers (as defined)
- Returns to be processed within one year, otherwise no demand notice can be raised.

- Scrutiny selection to be centralized Scrutiny notice by 31st July.

If the assessment is not in conformity with any decision of IT AT/ NTT/HC/SC in any body's case, income is deemed to have escaped assessment.

Reassessment up to 7 years

- If return not filed by due date, income is deemed concealment. Enjoy penalty
- Revision by CIT within 6 months

Appeal against consequential order after revision, only to the Commissioner (Appeals), no appeal to the Tribunal against revision order.

Easily Understandable Tax Law Proposed

If many of the redundant provisions are deleted, exemption provisions removed, or provisions relating to computation of profits from ship, natural gas, special economic zones, special sources, specified business, or provisions relating to determination of income from presumptive basis, or provisions relating to non-taxable income ete., are shifted to separate Schedules as the new Code has done, the present Act would be as simple and easily understandable and administrable as the new Code is claimed to be, if not more.

The new language of the Code, the language that is understandable by a common man and not legal, will confuse the court and tax administrator and practitioners. The confusion would be more confounded if they have to interpret the provisions ot the Act by keeping in view of definition clause.

The definition clause defines 318 words and expressions. Even a simple word 'however' has been defined. Some are defined exhaustively while some other inclusively. Attempt appears to have been made to avoid all ambiguity by keeping the words and expression' plain'. But the' plain and unambiguous meaning of words' of which courts so often believe themselves to be governed is really a delusion, since no words are so plain and unambiguous that they do not need interpretation in the context of the language or circumstances. Without this process, the intention of the Legislature is always undiscoverable. Words are vehicle of meaning. But 'what is that meaning that the Legislature wants to convey. With as many as 318 definitions, the courts and the tax administrators are bound to be confused even while trying interpretation contextually.

In an attempt of giving a simple and common man language, the role of proviso, Explanations and exceptions etc., has been downgraded. The provisions which should have been introduced as provisos or Explanations have been done as sub- sections and sections. This may result more confusion than removed. A statute is arranged in sections and sub-sections which are grouped in distinct chapters and sub-chapters. When a section or sub-section needs qualification, clarification, Explanation or detailed annexure or lists, it is done with the aid of a proviso, Explanation, exception, or a schedule. The usual drafting practice is that the words 'section' and subsection' should be used while referring to a provision. Each sub-section is a part of section of an Act and is considered as a separate enactment. In order to understand a sub-section, one must look at the whole section of which it forms a part [c. Busshel v. H. Hmnmord (1904) 2 KB 563 (CA)]. The sub-sections of a section must be construed as a whole; each portion is throwing light, if need be, on the rest. [CIT v. Victoria Mills Ltd. [1985] 153 ITR 733 (Born.)] But where two sub-sections of a statute provide for a different matters, there is no need or necessity for construing the sub-sections together [Smt. Sudhira Bala Roy v. State of West Bengal AIR 1981 Ca!' 130] But a proviso or an Explanation or an exception has different role to play. It is confined to the section to which it is a proviso, Explanation or exception, qualifying, clarifying and explaining something in that section. Further, the proviso immediately follows the section to which it is a proviso. For example, section 5 of the Code would have given a better reading and understanding if sub-sections (3) and (4) could have immediately followed sub-section (1) as proviso or Explanation and not as separate sub-sections.

Another example that comes immediately to mind is sub-section 6(b) which could better have been explained with the help of a proviso. It reads as under:

"The following income shall be deemed to be received in the financial year"

"any contribution made by the employer to any fund, other than an approved fund, or the interest thereon" Perhaps the provision intends to say that any contribution to an approved fund or the interest thereon would not be income deemed to be received. But it conveys that contribution would not but interest thereon would be so deemed. It could have been better expressed as "any contribution made by the employer to any fund or interest thereon, provided it is not an approved fund".

Best way to Amend The Tax Laws is to Retain The Basic Fabric of the Income-Tax Act, 1961

The best way to amend the tax laws is to retain the basic fabric of the present Indian Income tax Act, 1961. If redundant provisions and exemption provisions are deleted, it would be relieved of its bulk and become easier to understand. The tax administrators, the lawyers, the courts and the assessee are all well conversant of its provisions and terminology used therein. It conforms the pattern of the tax laws world over. Much litigation is not because the law is complex or its provisions are not understandable, but because of the procedural lapses and lack of proper administration. There is a story by Plutarch in his Life of Aristides about the Greek general Aristides called the Just, because he managed to assess the cities of ancient Greece in such a way that they had the feeling of being fairly and justly taxed. According to Plutarch, Aristides drew up the lists of assessments with scrupulous integrity and justice. Scrupulous integrity and justice would always inspire confidence. There is a public perception, perhaps not correctly ingrained, that assessments are drawn not with scrupulous integrity and justice. That perception is so deeply rooted that a taxman is looked upon as an adversary and not a friend, philosopher and guide; his" arrogance" and "insensitivity" to their problems scare people away.

There is misconception that the tax laws are complex because they are drafted not in a common man language. They are complex not because of the complexity of the language but because of the complexity of the society and economy. In a complex society and developing economy, tax laws dre bound to be complex. Complexity lies in their administration and not in the language. Simple or common man language cannot make the laws simple. As aforesaid, no words are so plain and unambiguous that they do not need interpretation in the context of the language or circumstances. The more we attempt to draft laws in the common man language and not the legal language in the hope that they would be faithfully complied with and administered efficiently, the more we find contrary results.

The Direct Tax Code, in its present form is expected to adversely affect foreign investors and foreign companies, desirous of taking advantage of the relative growth and stability inherent in the Indian economy.

EET Model, Whether the same would encourage Long Term Savings ?

EET mode of taxation, the Code said would encourage long-term savings by the people. How it will encourage saving, as the accruals to be subjected to taxation at the time of its maturity or its withdrawal. On the other hand, it constitutes a cheat on the people to encourage saving and subject to tax on its accrual at the time of its withdrawal. The Government rushes to implement the Exempt-Exempt-Tax whereas the previous Governments not dared to tax the accruals on its maturity or any withdrawals of EPF, PPF and GPF. When the New Pension Scheme for the new recruits in the Central Government employment was introduced during 2004, the Government had not faced any protest from the working class since it will not affect the incumbents. Unlike

Proposed Rate & Slab of Taxation as proposed in DTC is as follows

Rates of Income Tax

Individual, other than women and senior citizens		**Women below 65 years at any time during the financial year**		**In the case of senior citizens**	
Where income is below Rs.1,60,000	Nil	Where income is below Rs.1,90,000	Nil	Where income is below Rs.2,40,000	Nil
Where income exceeds Rs.1,60,000 but is below Rs.10,00,000	10% of income exceeding Rs.1,60,000	Where income exceeds Rs.1,90,000 but is below Rs.10,00,000	10% of income exceeding Rs.1,90,000	Where income exceeds Rs.2,40,000 but is below Rs.10,00,000	10% of income exceeding Rs.2,40,000
Where income exceeds Rs. 10,00,000 but is below 25,00,000	Rs.84,000+20% of income exceeding Rs.10,00,000	Where income exceeds Rs. 10,00,000 but is below 25,00,000	Rs.81,000+20% of income exceeding Rs.10,00,000	Where income exceeds Rs. 10,00,000 but is below 25,00,000	Rs.76,000+20% of income exceeding Rs.10,00,000
Where income exceeds Rs.25,00,000	Rs.3,84,000+30% of income exceeding Rs.25,00,000	Where income exceeds Rs.25,00,000	Rs.3,81,000+30% of income exceeding Rs.25,00,000	Where income exceeds Rs.25,00,000	Rs.3,76,000+30% of income exceeding Rs.25,00,000

various other saving schemes, the proposal to tax the withdrawals from PPF, EPF and GPF would be a tough task to implement.

Taxation regarding Capital Gains on Sale of assets

Capital assets have been classified into two categories - business capital assets and investment assets. While the tax rate for income from sale of both the categories is identical (except for capital gains in case of non residents), some key differences are tabulated below:

	Business Capital Assets	Investment Assets
Definition	Tangible assets (buildings, plant, etc) and intangible assets (goodwill, trademark, etc) connected with or used for the purpose of the business	Capital assets other than business capital assets
Profit on sale of assets Under the Act Under the Code	 Capital gains **Business income**	 Capital gains Capital gains
Indexation benefits	Not available	Available

Slump sale

Profit on sale of an undertaking (slump sale) is also considered as business income under the Code. While the consideration is to be credited to gross earnings, the "net worth' of the undertaking (the term will be defined once the Rules are published under the Code) will be allowed as a deduction. This is similar to the existing provisions, except that the difference between the consideration and net worth is chargeable to capital gains tax under the Act.It is interesting to note that the commentary attached with the Code indicates that the loss on sale of the business capital asset will be treated as an intangible asset for which deduction would be allowed on a deferred basis. The deferment of loss is intended to serve as a disincentive for asset stripping and loss manipulation. However, since, the gross consideration and net worth are to be added to the gross earnings and deductions respectively while computing the taxable income, it appears that the loss incurred on sale of the undertaking should also be fully allowed in the year of sale itself. Thus, the dichotomy between the commentary and the provisions will need to be resolved.

The Code also provides that the tax base of the assets in the hands of the buyer would be the tax base in the hands of the seller. Presently, under the Act, the buyer of an undertaking in a slump sale allocates the consideration to the assets (tangible and intangible) at their fair values and claims depreciation accordingly. Hence, after the Code comes into effect, the buyer will not get any tax breaks for the enhanced amount paid for acquisition of the undertaking. The notional written down value of the assets will get reduced for computing the value of the block of assets in the hands of the seller.

Impact of Direct Tax Code in International Taxation

The code in it's present form shall invariably affect adversely all the foreign investors, foreign companies intended to take part and accelerate the economic growth of the nation. Significant impact that are expected are enumerated herein below :

Tax residency and income deemed to accrue or a rise in India

Under the Code (DTC) a company shall be deemed to be a tax resident in India if its control or management is even partly in India (as opposed to wholly in India under the present law).

Thus, the tax residency provision is made very wide in its scope and will cover a lot more companies. The only silver lining (possibly not intended) is that an associated enterprise which is outside India, but deemed resident under this provision, and deals with its associate in India will be out of the purview of transfer pricing compliances.

Further, under the proposed Code income arising out of direct or indirect transfer of a capital asset situated in India will now be deemed to accrue in India and subject to tax. Under the present law, income arising from the indirect transfer of a capital asset was out of the purview of income deemed to accrue in India. This amendment is a direct consequence of the Vodafone International Holdings B V v. Union of India [2008] 175 Taxman 399 (Bom.). The principle of territorial nexus with income deemed to accrue in India enunciated by the Apex Court in the case of Ishikawajima Harima Heavy Industries Ltd. v. DIT [2007] 288 ITR 408/158 Taxman 259 is also given a big blow to the assesses having presence in the International Business Segments.

Impact on the Capital markets

The Code proposes to tax capital gains on all assets uniformly instead of the selective and differential rate taxation system at present. The removal of the securities transaction tax which was the main differentiator between capital gains taxation on securities and other assets is significant.

Losses against the head 'Capital Gains' are freely offsetable against any other head of income and also may be carried forward indefinitely. However, a Foreign Institutional Investor (FII') which is not expected to have income from any source except investment, this provision is a very retrograde one, since it will have to compulsorily carry forward capital losses (since dividends are tax free in its hands in any case) only to offset against future capital gains.

General Anti Avoidance Rules ('GAAR')

This is perhaps the most arbitrary provision of the Code as a whole and this provision is applicable both to resident and non-resident alike. Under this provision, a Commissioner may:-

Negate, disregard, set aside or re-characterize any arrangement Derecognize one or more parties to a transaction Simply by characterizing such arrangement as an impermissible avoidance arrangement, even on mere suspicion or whim, the onus of proof is now put on the assessee to prove that the arrangement is genuine. What is very alarming is that there is no scope for any 'natural justice' in this provision and it has the potential to become a hydra headed monster of harassment and corruption in the Income-tax Department.

These provisions virtually empower a Commissioner to lift the corporate veil on the slightest 'whim' to reallocate income, negate transactions and treat several entities as one for taxation purposes. In fact the discussion paper equates tax avoidance with tax evasion. Thus the Supreme Court's landmark decision in Union of India v. Azaadi Bachao Aandolan [2003] 263 ITR 768/ 132 Taxman 373 which had conferred legality on treaty shopping as a legitimate tax planning method has been overruled and the' ghost' of McDowell which was supposed to be exorcised by Azaadi Bachao, will continue to haunt Indian tax jurisprudence with the enactment of the Code.

Tax Impact of Royalty & Technical Knowhow fees in Cross Border Transaction

Newly introduced definitions of 'royalty' and 'fees for technical services' as provided by the Direct Taxes Code and their impact is explained below. The introduced new definitions of' royalty' and' fees for technical services'. These will have direct impact on the tax liability of non-residents receiving payments from Indian payers. Mere have been discussed implications of these definitions.

ROYALTY

Royalty is defined in para 240 of section 284 of the Code, as under:

"284 (240) 'royalty' means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head 'Capital gains') for-

(a) the transfer of all or any rights (including the granting of a license) in respect of a patent, invention, model, design, secret formula, process, trade mark or similar property;

(b) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula, process, trade mark or similar property;

(c) the use of any patent, invention, model. design, secret formula, process, trade mark or similar property;

(d) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

(e') the use or right to use of any industrial commercial or scientific equipment including ship or aircraft but excluding the amount, referred to in item numbers 10 and 11 of Table in the Fourteenth Schedule, which is subjected to tax in accordance with the provision of that schedule;

(f) the use or right to use of transmission by satellite, cable, optic fibre or similar technology;

(g) the transfer of all or any rights (including the granting of a licence) in respect of:-

(i) any copyright, literary, artistic or scientific work; or

(ii) cinematographic films or work on films, tapes or any other means of reproduction; or

(iii) live coverage of any event;

(h) the rendering of any services in connection with the activities referred to in sub-clauses (a) to (g);"

If definition is compared with the existing definition in Explanation 2 to clause (vi') of subsection (1) of section 9, the following differences are found:

(a) The phrase 'secret formula or process or trade mark' has been replaced by 'secret formula, process, trademark', in sub-clauses (a) to (c);

(b) Proposed definition would now cover: the use of transmission by satellite, cable, optic fibre or similar technology; the transfer of all or any rights (including the granting of license) in respect of live coverage of any event;

(c) Inclusive coverage of 'films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting but not including consideration for the sale, distribution or exhibition of cinematographic films' has been replaced by 'cinematographic films or work on films, tapes or any means of reproduction'.

Earlier definition of 'royalty' could be interpreted that because of 'comma', appearing after 'trademark', the word' secret' qualified not only' formula', but 'process' and 'trade mark'. Thus, change will reduce litigation.

Addition of sub-clauses - the use of transmission by satellite, cable, optic fibre or similar technology; the transfer of all or any rights (including the granting of license) in respect of live coverage of any event will bring more revenue to exchequer, since till now these activities were being claimed tax-free and so there was litigation between the taxpayer and the revenue. Litigation will now be reduced.

The phrase, 'the use or right to use of transmission by satellite, cable, optic fibre or similar technology', was part of 'royalty' definition in Indo-Hungary DTA, notified way back on 31-3-2005. It is not too late that this activity has been included in the domestic definition of 'royalty'. This phrase would be omitted from Indo-Hungary DT A, because India has entered into DTA with OECD member countries, in which this phrase does not find place, after entering DTA with Hungary.

Further change in the definition, replacing phrase 'films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting but not including consideration for the sale, distribution or exhibition of cinematographic films' by 'cinematographic films or work on films, tapes. or any means of reproduction', is making language simple and spreading tax net by omitting the exemption to 'consideration for the sale, distribution or exhibition of cinematographic films'. This measure may bring level playing field to Indian film producers.

Fees For Technical Services

The proposed definition of 'fees for technical services' is as under:

"284(105) 'fees for technical services'

(a) means any consideration (including any lump sum consideration) paid or payable directly or indirectly for -

(i) rendering of any managerial, technical or consultancy services;

(ii) provision of services of technical or other personnel; or

(iii) development and transfer of a design, drawing, plan or software, or any other service of similar nature; and

(b) does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head 'Income from employment';

On comparing the above definition with the existing definition in Explanation 2 to clause (vii) of sub-section (1) of section 9, the following changes are found:

(a) Consideration would be such fees, whether paid or payable directly or indirectly;

(b) Proposed definition will henceforth cover:

Development and transfer of a

- design
- drawing, plan or
- software, or any other service of similar nature

The phrase, 'paid or payable directly or indirectly' has been added in the definition of 'fees for technical services'. New definition is again pro-revenue, by including indirect consideration in the fold. Extended definition of 'fees for technical services', proposed in the code is: development and transfer of a :

- design
- drawing
- plan or software or any other service of similar nature status of the changes:

The activity 'design' is covered by existing or proposed definition of 'royalty', as shown below:

(a) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula, process, trade mark or similar property;

(b) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula, process, trade mark or similar property;

(c) the use of any patent, invention, model, design, secret formula, process, trade mark or similar property;

(d) the rendering of any services in connection with the activities referred to in sub-clauses (a) to (g);

Constitutional Validity -

Out of the provisions, proposed in the code, the constitutional validity of the following, 'whether these are treaty overrides, has to be considered:

Royalty:

The replacement of phrase' secret formula or process or trade mark' by 'secret formula, process, trademark', in sub-clauses (a) to (c);

Addition of the phrase 'the use of transmission by satellite, cable, optic fibre or similar technology

(iii) Addition of the phrase 'the transfer of all or any rights (including the granting of license) in respect of live coverage of any event' ;

(iv) The replacement of phrase included' films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting but not including consideration for the sale, distribution or exhibition of cinematographic films' by 'cinematographic films or work on films, tapes or any means of reproduction'

Fees for technical services:

(i) Addition of the phrase: 'paid or payable directly or indirectly';

(ii) Restricting the meaning of ' technical services' by making the phrase 'provision of services of technical or other personnel' exclusive instead of inclusive;

(iii) Addition of the phrase:' development and transfer of a design, drawing, plan or software, or any other service of similar nature'.

Treaty overrides -

International view - McIntyre (Tax Notes Int'l611-614 (December 1989) A Defence of Treaty Overrides), divided all of the override legislations that had actually been adopted by the United States into three non-exclusive categories: interpretive overrides, non-material overrides, and prospective overrides that have been or may be acceded to by US treaty partners, According to him, , overrides fitting into one or more of these categories would not violate existing international law.' Interpretive overrides was introduced in the Income-tax Act, 1961 by sub-section (3) of section 90, through the Finance Act, 2003, effective April 1, 2.004. These have held the fort for last several years. Overrides discussed above do not seem to' be non-material.

These may be justified by the Income-tax Department, on the ground of following provision proposed in the code:

"258(8) For the purposes of determining the relationship between a provision of a treaty and this code,- neither the treaty nor the code shall have a preferential status by reason of its being a treaty or law; and the provision which is later in time shall prevail."

Simplicity· Promise V. Performance

The Direct Taxes Code claims that its attempt is "to simplify the language to enable better comprehension and remove ambiguity to foster voluntary compliance." Just consider this. Section 284 of the Code dealing with 'definitions' defines as many as 318 terms and expressions, including commercial and common words, which contain cross-references to meanings assigned under nearly 50 different Acts or legislations, a taxpayer would be required to refer to.

Even a simple word of daily use such as 'however' has been defined in such an intricate manner so as to mean "an alternative intention, or a contrast, with the previous section, sub-section, clause or sub-clause, item or phrase, as the case may be, and a modification of it under such circumstances as specified therein." Complex and alien jargon under the Code such as 'stop filer' and 'non filer' is bound to baffle any common taxpayer.

One Assessment - Five Authorities!

Under the Code, for purposes of assessment, a taxpayer would be required not to just deal with his Assessing Officer, but also be prepared to encounter the suo motu intervention of the Joint Commissioner or even the Commissioner, who have been empowered to call for and examine the record of any scrutiny assessment proceeding. This is over and above the matters he would need to handle with a Transfer Pricing Officer, in case of an international transaction or with a Valuation Officer, if estimation of the value of any asset, investment or expenditure in his case is referred to by the Assessing Officer.

Thus, for a single assessment, one taxpayer may be required to have interface with as many as five departmental authorities. How distressing and nerve-racking an experience this could be?

Sweeping powers with no accountability

Sweeping powers to tax authorities for reopening of assessment, rectification of mistakes and revision of orders prejudicial to revenue have been provided under the Code in such a dare-devil fashion, which virtually nullifies the ratio of all judicial decisions equitably interpreting the scope of these powers as currently prevailing under the Income-tax Act, 1961.

One major area of concern on the procedural front is in regard to the highly discretionary and unrestricted powers granted under the proposed General Anti-Avoidance Rules (GAAR) to treat an arrangement as an 'impermissible avoidance arrangement.' The fear is that even genuine and bonafide transactions may come to be torpedoed by GAAR creating undue hardships and undesired Litigation.

Harsh penalties, harsher prosecutions

Several provisions in regard to penalties and prosecutions as proposed under the Code are simply hair-raising and mind-boggling. A person has been deemed to have willfully concealed income simply because he has not filed the return by the due date or the assessed income or wealth is higher than the returned amount. Moreover, for computing the amount of penalty at the minimum of 100 per cent or maximum of 200 per cent of the tax payable on concealed income, the tax is required to be worked out, not at the applicable rate but at the maximum marginal rate of tax in the case of the concerned taxpayer.

On the prosecution front, it has been provided that these proceedings shall be independent of any order under this Code and no defence shall be available under prosecution that such an order may be made or has not been made. When prosecution hinges upon an alleged evasion, how can there be a presumption of an offence, until a conclusive finding of concealment is finally arrived at?

Position in Double Tax Avoidance Agreements

4. The proposed phrase in the definition of 'fees for technical services' in the Code, by addition of 'consideration for development and transfer of a design. drawing, plan or software, or any other service of similar nature' occurs in the Indian DT As. For example:

USA/Canada/Cyprus/Malta: Fees for included services (Finland, Netherlands, UK technical services): 'payments of any kind to any person in consideration for the rendering of technical or consultancy services…if such services… consist of the development and transfer of a technical plan or technical design'

Double tax avoidance agreements (DTAA) proposed to be overruled by the DTC

The most draconian overarching principle for international taxation is the one that negates a Double Tax Avoidance Agreement CDT AA') prevailing over the local income tax law. The Code merely states that the provision 'later in point of time' will prevail. This is a 'heads I win, tails you lose' situation since the tax authorities can easily bring out a notification which is 'later in point of time' and override a DT AA and/ or any judicial interpretation.

This effectively overturns the principle enshrined in the landmark case of Azaadi Bachao Aandolan (supra) which puts the stamp of legality on tax planning by routing of investments through a favourable tax jurisdiction and also enshrined the Westminster principle that 'a person is entitled to plan his affairs so as to minimize the incidence of tax' .

The Code as it presently stands with its DT AA override as well as the General Anti Avoidance Principle now penalizes an assessee if he does not so arrange his affairs so as to maximize the incidence of tax!

Further the Code proposes that any foreign company proposing to take the benefit of a DTAA must obtain a tax residency certificate from the country of its tax residence. This provision is otiose since the Code, which will be later in point of time on most occasions will prevail over the DTAA.

Provisions relating to transfer pricing in DTC

Transfer pricing is another area where the Code proposes sweeping changes since it drastically reduces thresholds for deeming two transacting parties as Associated Enterprises ('AEs'). Thus, as a consequence the number of compliances and transfer pricing audits will register an increase of geometric proportions and transfer pricing auditors are expected to laugh all the way to the bank!

The Code proposes the benefit of a safe harbour of a .5 per cent range in case there is only one Arms Length Price. It also proposes to have an. advance pricing arrangement of a binding nature (subject to conditions) and proposes to frame a scheme in this regard.

The report of an accountant is now required to be filed with the Transfer Pricing Officer and also by the due date of filing the return of income (referred to as return of tax base under the code), Transfer Pricing scrutiny will be applicable based on a 'secret risk management strategy' rather than on transaction value as at present. It is noteworthy that the concept of 'secret risk management strategy' is proposed notwithstanding India being the world's largest and most populous democracy.

The benefit of the dispute resolution mechanism for transfer pricing cases [proposed only in the Finance (No 2) Act, 2009] is to be curtailed to disputes over INR 25 million. Certain penalty provisions have also been revisited with ranges prescribed, conferring discretion on the Assessing Officer. However, certain penalties, for venial breaches have also been reduced.

Impact on foreign companies taxation

The Code proposes to tax corporate profits at a reduced rate but the benefit of this largesse is sought to be curtailed by doing away with the slew of exemptions and deductions proposed earlier. The Code also proposes to bring in Minimum Alternate Tax ('MAT') on a corporation based on the value of its assets as per a formula prescribed, irrespective of its profits (as opposed to its current form based on the book profits of a corporation). This tax cannot be carried forward for credit against future tax liabilities (as the present law permits). This in effect discriminates against the manufacturing sector vis-a-vis the service sector and also amounts to a back door wealth (capital) tax. Whether foreign companies/ branches will be subject to this MAT remains to be seen.

Branch Profit Tax (BPT)

The Code also proposes to tax branch profits made by a foreign company in addition to regular corporate taxes (like the PE tax in USA) but still leaves a lot of lacunae in drafting. It does not define what constitutes a branch. Thus, an FII based offshore trading through an independent broker from India mayor may not be categorized as a branch.

Whether an associated enterprise of a foreign company deemed as resident due to the 'partial control and management provision' would be deemed as a branch and, therefore, liable to branch profits tax, is also debatable.

Another lacuna in this regard is that the branch profits tax, is not classified as 'income tax' and, therefore, a company paying it may not be able to obtain a tax credit for the same in its residential tax jurisdiction.

Cross border merger & acquisition - tax impact

Mergers of an Indian company into a foreign company are also not made tax neutral under the Code. Based on the above, the unkindest cut for foreign investors are provisions relating to cross border capital gains whereon Withholding Tax ('WHT') at the high rate is attracted. In such cases, it is unlikely that the residence jurisdiction of such a taxpayer would allow credit for this

WHT if the local capital gains tax is at lower rate (or even worse if it is nil).

Another feature potentially impacting capita markets is the decision to treat mutual fund:: employee benefit funds and trusts on a pas through basis for taxation purposes where the income is taxed in the hands of the ultimate recipient. However, in the absence of detailed provisions relating to the method of such pass through, the impact on the ultimate investors in such mutual funds and venture capital funds is unascertainable.

Is the Direct Tax Code Really Simplified ?

The Code with 318 definitions, is clumsily drafted in an attempt to avoiding use of well known tools of legal drafting such as provisos, Explanations, non obstante clauses, etc. Every word or expression used in the Act appears to find a place in the definition clause. When a word has been statutorily defined, its dictionary meaning cannot be looked at. An ordinary man of average intelligence, not versed in law, may not find it easy to understand its provisions as its every word has a statutory meaning and not a popular meaning. Even if they do with little efforts, its administration by the tax administrators and interpretation by the courts would be difficult. With the passage of time, the Code will have to accommodate provisos and Explanations if it is to retain its relevance and efficacy.

Simplicity is apparent from the way the clauses have been drafted, but the frequent references to definitions, clause 284 and 2 Schedules make the reading and understanding of these clauses cumbersome and time-consuming. For example, reading clause 4 for understanding the meaning of 'residents' and then referring to clause 284 for the definition of 'non-resident' cannot be considered a good planning. One line definition of 'non-resident' could also have been given in clause 4 itself to give a complete picture at one place about' residence' aspects. Similarly, transferring the provisions presently contained in section 10 by clauses (9) and (10) has made these provisions look short and sleek, but these by themselves have no legs to stand without the crutches of Schedules VI and VII. Drafting the Code in this manner cannot be said to achieve the objectives of simplicity and easy understanding_ Hence, a re-look of the proposals contained in Chapter-II is called for. As against its avowed objectives, the Code al its most elementary level is another round of the endless 'yin-yang' between the 'tax advisors and the taxman', with the taxman placed in an advantageous position due to the Code.

Role of Cost & Management Accountants

The Direct Taxes Code is being mooted as a replacement to the Income Tax Act 1961. The Cost & Management Accountants (CMA) being the member of the Institute set up under an Act of the Parliament shall have a very important role bridging the tax administrates and the tax payers/ tax assessees. With their in-depth knowledge and experience in the field of accounting, taxation and valuation management, the CMA would be in a much better place in providing value added services to the assessees and also protecting the revenue to the Government in the following manner :

1. Determining the total income and tax liability in the case where having regard to the nature & complexity of the accounts of the assessee, the assessing officer may direct the assessee to get his accounts audited.
2. Accurate determining of arms length price in case of any international transactions
3. providing compliance certification under the provisions of 'General Anti Avoidance Rule' in respect of any arrangement entered into by any person
4. determining Income Tax arising out of transaction resulting in transfer of income to non resident
5. Proper determination of fair market value regarding disallowance of expenditure and correct valuation required towards determination of capital gains on merger & acquisition.
6. Selection of most appropriate method which a person may adopt while determining arms length price and enter into an advance pricing agreement with the Central Government.
7. Proper and accurate determination of net wealth for the purpose of charging wealth tax.
8. Authentication of all deductions and allowances available under different provisions of the Act
9. Proper determination of Capital Gains in respect of different category of Assets.
10. Ascertainment of business Income/ Loss in case of Business re-organisation
11. To ensure proper withholding tax in respect of remittances out of India
12. Providing compliance certificates in respect of all the provisions of the Act.

In view of the incredible scope & opportunity in the regime of Direct Tax Code, the cost & management accountants shall have the role of an catalyst in bringing in total reforms in Direct Taxes in our country. ❑

Direct Tax Code 2009: Fate of FDI-flow through Indo-Mauritius DTAA?

A paradigm change is going to take place very shortly in the Indian Tax system with the release of the draft Direct Tax Code 2009. The code contains such changes in the existing tax system, that it is claimed that it will reduce the FDI-flow into India from Mauritius.

The paper makes a comparative analysis of different provisions of the Income Tax Act 1961 and the proposed DTC 2009 in regard to tax treaty and income from different sources by a non-resident to assess how far the claim is justified from income tax point of view.

Dr. Sudipta Sarkar *

Introduction

A paradigm change is going to take place very shortly in the Indian Economy in line with the New Economic Policy 1991 and WTO commitment. The Finance Minister Pranab Mukherjee on Wednesday, 12 August 2009, released the draft of Direct Tax Code 2009 (DTC) for public opinion and debate (www.finmin.nic.in). This Code, if implemented, will replace the existing Income Tax Act 1961 with more simplified tax provisions. The basic objective of this tax code is to broad base the tax umbrella and to bring a horizontal equity among different classes of tax payers in line with best international practices. It is claimed by the Government that the DTC through radical changes of the existing Direct Tax Laws not only simplify the direct tax structure for individual tax payers, corporate houses and foreign investors but also reduces the cost of tax administration machinery. The proposed code, envisages meaningful reduction of tax burden at all levels while simultaneously being revenue neutral for the government. It is expected that the new code will facilitate higher consumerism and thereby promote economic growth. The Government plans to enact and implement the DTC, with modification, if necessary, from the Financial Year 2011 onwards.

Experts have already started to analyse the proposed changes of the existing direct tax system threadbare. The DTC already attains mixed reactions from different corners regarding different changes of the existing tax system. An important area in this regard is Double Taxation Avoidance Agreements (DTAAs), to avoid double taxation on capital gains from transfer of shares and securities by a non-resident.

India has bilateral tax treaties, in the form of DTAAs, with various countries to provide double taxation relief as an incentive for investment in India by the residents of those countries. Among those countries Mauritius is highly significant because of the magnitude of the Foreign Direct Investment (FDI) came into India through this country. DTC proposes such radical changes in the tax on Capital Gains and other incomes of NRI that will surely hit the existing DTAAs and consequently on the FDI-flow from the tax treaty countries.

Considering this background, the present paper is intended to survey the proposed changes in the Indian income tax system with the existing one in regard to DTAAs and tax on capital gains and other incomes of NRI to assess how far the claim that the DTC will act a setback for FDI into India via Mauritius is tenable. Here lies the importance of this paper.

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Double Taxation Avoidance Agreement and Flow of Foreign Direct Investment

Double taxation can be defined as the levy of taxes on income or capital gains in the hands of the same tax payer in more than one country, in respect of the same income or capital gains for the same period. Double taxation may arise when the jurisdictional connections, used by different countries, overlap or it may arise when the taxpayer has connections with more than one country. For e.g. a Non Resident Indian (NRI) will have to pay tax on the income earned in India on source basis i.e. where income accrues or arises. On the same income, tax will have to be paid in the country of residence on residence basis. As such, an NRI will end up paying Income-tax twice on the same income. Tax Treaties provide protection to tax payers against such double taxation. To avoid this hardship of double taxation, Government of India has entered into DTAAs with various countries. DTAAs provide for the reduced rates of tax on capital gains, business income, dividend, interest, royalties, technical service fees, etc., received by residents of one country from those in the other. Where total exemption is not granted in the DTAAs and the income is taxed in both countries, the country in which the person is resident and is paying tax will get tax credit for the tax paid in the other country. These treaties are based on the general principles laid down in the model draft of the Organisation for Economic Cooperation and Development (OECD) with suitable modifications as agreed to by the other contracting countries.

India has bilateral tax treaty, under section 90 of the Income Tax Act 1961, with Mauritius and 75 other countries like Singapore Japan, USA, UK etc. to avoid double taxation on capital gains and prevention of fiscal evasion. These treaties serve as a vehicle for routing FDI into India because of the tax benefits it offers, as FDI is highly sensitive to tax. Among these treaties the Indo-Mauritian agreement is highly significant because of the quantum of FDI India has received through this country. During the past 4 years, between 2006-07 and 2009-10, FDI from Mauritius amounted to Rs 177,784 crore (Table 1) which is 44 percent of the total FDI received by India during this period.

Why Mauritius Route?

The Indo-Mauritius DTAA was first signed in 1982 and came into force on 06-12-1983 [vide Notification F. No. 501/ 20/73-FTD]. Under this treaty or Convention, taxing rights were allocated between the two countries and also various reliefs for the tax payers hit by the tax systems of both the countries were provided (in the form of 'double tax reliefs'). The main provision was that no resident of Mauritius would be taxed in India on capital gains arising out of transfer of share or securities in India as India imposes tax on source based. While Mauritius taxation is on residence based. Thus capital gain on such sale should be taxable in Mauritius. But as per Mauritius domestic tax rule, capital gain is tax free. Thus capital gain in case of such sale remains unassessed in both countries. Thus the treaty virtually makes capital gains tax free, for investments if routed via Mauritius. This made Mauritius as India's major trading partners in FDI.

But it is interesting to note that Mauritius itself is not such an investing country in its own right. Actually Mauritius is used as holding company's jurisdiction for making investments in India with actual investors being tax residents of countries outside Mauritius. Even the Mauritius

Table 1. SHARE OF TOP TEN INVESTING COUNTRIES IN INDIA

(Rs. in crores)

Ranks	Country	2006-07 (April-March)	2007-08 (April-March)	2008-09 (April-March)	2009-10 (April-June '09)	Cumulative Inflows (April '00 to June '09)	%age to total Inflows (in terms of rupees)
1.	**MAURITIUS**	**28,759**	**44,483**	**50,794**	**16,511**	**177,784**	**44 %**
2.	SINGAPORE	2,662	12,319	15,727	1,814	35,666	9 %
3.	U.S.A.	3,861	4,377	8,002	3,906	31,865	8 %
4.	U.K.	8,389	4,690	3,840	502	23,406	6 %
5.	NETHERLANDS	2,905	2,780	3,922	984	16,827	4 %
6.	JAPAN	382	3,336	1,889	2,285	13,509	3 %
7.	CYPRUS	266	3,385	5,983	2,345	12,395	3 %
8.	GERMANY	540	2,075	2,750	1,365	10,853	3 %
9.	FRANCE	528	583	2,098	348	5,830	1 %
10.	U.A.E.	1,174	1,039	1,133	742	4,749	1 %
TOTAL FDI INFLOWS *		70,630	98,664	122,919	34,211	403,294	-

Source: www.dipp.nic.in/fdi_statistics/india_FDI_June2009.pdf visited on 15.09.09

government itself is alleged to advocate for companies from abroad to set their subsidiaries or structured their business through a holding company in Mauritius so as to get incorporated (or otherwise become Resident) in Mauritius and thereupon invest outside Mauritius, specially in the fast growing markets of India to take advantage of the India-Mauritius DTAAs.

Hence, by this 'Treaty Shopping' though huge amount of FDI is coming into India but India government actually losses the tax revenue on account of misuse of DTAAs by conduit companies registered in Mauritius.

Comparative Analysis of Income Tax Act 1961 and Proposed Direct Tax Code 2009 in Regard to Tax on Capital Gains and other Incomes of NRI

Let us make a comparative analysis of the present Income Tax Act 1961 and the proposed DTC 2009 to get a clear picture of changes, in regard to tax on Capital Gains and other incomes of NRI and also the position of the prevailing DTAA.

4.1. Tax on Capital Gains of NRI

Income Tax Act 1961	Direct Tax Code 2009
1. Under the provisions of the Indian Income Tax Act, 1961, gains from the sale of shares of Indian companies are taxable in India.	1. Under DTC it is proposed that capital gains from sale of shares of Indian companies will be taxable as regular income at normal rate.
2. While determining tax a distinction is made between short term capital gain and long term capital gains depending on the period of holding of the transferred asset.	2. The present distinction between short-term capital gain and long-term capital gain on the basis of the length of holding of the transferred asset will be eliminated.
3. The level of tax is determined by whether the gains from the purchase and sale of shares are deemed business income or capital gains.	3. The Code makes a distinction between investment assets and business capital assets [Section 284(27)]. Gains on transfers of investment assets will continue to be taxed as capital gains but gains on transfer of business capital assets and slump sale will be taxed as business income [Section 31(XI)].
4. India currently does not impose capital gains tax on long-term gains from shares sold on a recognized Indian stock exchange. For all off-exchange share sales, the provisions of the DTAA are important in determining whether the investor can avoid paying capital gains tax in India.	4. Under the proposed situation capital gains by an offshore company, whether tax treaty exists or not, from transfer of shares in an Indian company becomes taxable in India. A lower rate of tax for long term capital gains on sale of shares is eliminated.
5. If a foreign investor is an active trader and Indian revenue authorities classify the investor's gains from the sale of shares as business income, India will usually tax such business income only if the investor has a tax residence in India. As a result, the country from which the investments have been made-and any prevailing DTAA-is not usually relevant in determining tax liability as long as the investor has no tax residence in India.	5. In the DTC it is proposed that Income from the transfer, directly or indirectly of a capital asset situated in India shall be deemed to accrue in India. Hence capital gains will be taxable in India irrespective of the tax residence in India. The DTC will override the prevailing DTAA in this respect
6. Present capital gains tax varies from 10.5 percent to 42 percent (plus surcharge and education cess) depending on the sale of shares of a private company or a listed company, whether the sale was on or outside of a recognized Indian stock exchange and whether the gains were short-term gains or long-term gains. Besides there are Securities Transaction Tax.	6. Tax on Capital Gain for Non-Resident will be 30% whether deducted at source or at the time of calculating total income. Securities Transaction Tax is proposed to be abolished.

Note - In so many countries including Mauritius capital gain is tax free so under the proposed scenario investment in India will be costlier, from income tax point of view, than what it is today. It is highly expected that this situation will surely hit the flow of FDI into India through Mauritius route, if not some changes are made in the DTC to save capital gains tax of the non-resident investors.

4.2. Tax on Business Income of NRI

Income Tax Act 1961	Direct Tax Code 2009
1. For a foreign company (including branch/ project offices), tax rate on business profit is @ 40% plus surcharge of 5%. An Indian registered company, which is a subsidiary of a foreign company, is also considered an Indian company for this purpose.	1. In the DTC corporate tax rate of foreign companies is proposed at 25% plus 15% for branch profits resulting in effective tax rate of 36.25 percent.
2. Non-resident corporations are essentially taxed on the income earned from a business connection in India or from other Indian sources. A corporation is deemed to be resident in India if it is incorporated in India or if it's control and management is situated entirely in India. But as per present DTAA if the investors is a tax resident of the country from where investment is made and have no permanent establishment in India , then he will get the benefit of tax relief The business income of a non-resident is taxable in India under section 9(1)(i) of the Income Tax Act 1961 only if it accrues or arises, directly or indirectly, through or from any business connection in India, property in India, asset or source of income in India, or through the transfer of an Indian capital asset.	2. A foreign company is considered to be a resident in India if its place of control and management at any time during the year is situated wholly or partly in India. Consequently it will be taxed at the rate applicable for the domestic company. Thus, though tax rate is reduced for business profits, but due to increase in the periphery of residential status so many foreign companies become taxable in India. The existing DTAA will not guard the tax liability in this case.

Note- In Mauritius tax rate on business profits is only 15 percent. A survey by KPMG International on Global Corporate Tax shows that corporate tax rates in Asian countries are significantly lower than those of India's. For example, Hong Kong's corporate tax rate is 17.5%, Singapore's 20% and Malaysia's 27%. These countries are also in the process of developing their economies, and with their lower corporate tax rates, they can provide stiff competition to India in attracting FDI.

4.3. Tax on Dividend, Interest etc. Income of NRI

Income Tax Act 1961	Direct Tax Code 2009
1. Current Indian tax laws do not tax dividends in the hands of a shareholder. However, Indian companies are subject to a dividend distribution tax at on the amount they distribute as dividends.Some of the DTAAs India has entered into (with Mauritius, for example) stipulate a concessional tax rate on dividends received by investors who are tax residents of the applicable country.	1. Dividend will continue to be tax-free in the hands of investors. Rate of tax proposed in the First Schedule of DTC for Non-resident are as follows: (a) On investment income by way of dividends on which distribution tax has not been paid -20 per cent
2. Interest income, on the other hand, is subject to withholding tax at an effective rate of approximately 42 percent for a foreign company and 23 percent for an Indian company. The provisions of a DTAA, however, may modify this tax rate. The India-Mauritius DTAA does not provide any concession with respect to Indian tax on interest payments, so Mauritian tax residents will pay an approximate rate of 42 percent on interest income received from Indian companies.	2. Rate of tax proposed in the First Schedule of DTC for income by way of interest on investment of NRI is 20%.

Note: In Mauritius tax on dividend income from Indian companies is nil if more than 5 percent of the Indian company is owned by the Mauritius resident and 3 percent otherwise. In case of interest received from an Indian company tax is nil if business holds a global business license.

4.4. Double Taxation Avoidance Agreement

Income Tax Act 1961	Direct Tax Code 2009
Under the present situation relief against double taxation is provided in two ways: A. Section 90: Bilateral Relief: The Central Government may enter into a DTAA with another country, based on mutually acceptable terms, to avoid double taxation. Such relief may be offered under two methods:1.Exemption method - This ensures complete avoidance of tax overlapping.2.Tax credit method - This provides relief by giving the tax payer a deduction from the tax payable in India.As per section 90(2) Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.Explanation 1. For the removal of doubts, it is hereby declared that the charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such foreign company.In case of a remittance to a country with which a DTAA is in force, the tax should be deducted at the rate provided in the Finance Act of the relevant year or at the rate provided in the DTAA, whichever is more beneficial to the assessee. [Circular No. 728, dated 30.11.95]Where a specific provision is made in the DTAA, that provision will prevail over the general provisions contained in the Income Tax Act. Where such agreement provided for a particular mode of computation of income the same should be followed irrespective of the provisions of the Act. [Circular No 333, dated 02.04.82]This facility is also available for agreement between any specified association in India and any specified association in the specified territory outside India as per section 90AB. Section 91- Unilateral Relief The Central Government can relieve an individual from double taxation irrespective of whether there is a DTAA between India and the other country concerned. Unilateral relief may be offered to a tax payer if:1.The person or company has been a resident of India in the previous year.2. The same income must be accrued to and received by the tax payer outside India in the previous year. 3. The income should have been taxed in India and in another country with which there is no tax treaty.4. The person or company has paid tax under the laws of the foreign country in question. Double taxation agreement restricts the jurisdiction of the contracting states to taxing business income of a foreign enterprise only if such enterprise carries on business in India through a permanent establishment	Under the proposed Direct Taxes Code Bill, 2009 following points are worth to be mentioned Section 3.3 - Any income which accrues to a resident outside India in the year, or is received outside India in the year by, or on behalf of, such resident, shall be included in the total income of the resident, regardless of -(a) the income having been charged to tax outside India; or(b) the method for granting of relief for the avoidance of double taxation under any agreement referred to in section 258.Section 285- Agreement with Foreign CountriesSection 258(5): A person shall not be entitled to claim relief under the provisions of the agreement unless a certificate of his being a resident in the other country or specified territory is obtained by him from the tax authority of that country or specified territory, in the prescribed form.Section 258(6): The provisions of this Code shall not be regarded as discriminatory against the foreign company merely on the consideration that the liability of the foreign company to pay tax is calculated at a rate higher than the rate at which the liability of a domestic company is calculated.Section 258(8): For the purposes of determining the relationship between a provision of a treaty and this Code, -(a) neither the treaty nor the Code shall have a preferential status by reason of its being a treaty or law; and(b) the provision which is later in time shall prevail.Section 206 - Foreign tax credit(1) An assessee shall be allowed a credit in respect of income-tax paid by deduction, or otherwise, in any other country under the law in force in that country.(2) An assessee shall be allowed a credit against the Indian income-tax payable by him in respect of his income which has accrued during the financial year outside India, of the amount determined in accordance with the Agreement entered into with such other country under section 258.(3) However, in a case where there is no agreement under section 258 with the other country, the amount referred to in 206(2), shall be calculated at lower tax rate among the rates of the two country.(4) An assessee shall, regardless of anything contained in 206(3), not be entitled to credit against the Indian income tax payable by him if -(i) the income is also deemed to accrue in India; and (ii) no Agreement under section 258 has been entered into with the other country in which the income has accrued.(5) The Central Government may prescribe the method for computing the amount of credit, the manner of claiming credit and such other particulars as are necessary for the relief or avoidance of double taxation.It is also proposed that tax due from non-residents could be recovered from any of his assets even if situated outside India or from any amount payable by any person to the non-resident.

Note: Thus, new tax code is that India's domestic law of income tax will effectively override the tax treaty and certainly reduce the benefit of the tax treaty. One thing is very important is that under the proposed situation, neither the treaty nor the code shall have a preferential status by reason of its being a treaty or law; and the provisions which is later in time shall prevail. This will certainly hit the commitments made by India at the time of entering the treaty and this vulnerability will surely hit the minds of the foreign investors and routing investments into India through a third country may become a thing of the past.

International Practice for Tax Treaties

The practice of applying tax treaty vis-à-vis domestic law varies from country to country. However, in most of the countries, the treaties supersede the domestic law, a practice which is followed, at present, in India also. Wherever the domestic law overrides the tax treaties, such a practice is not considered appropriate under the International Treaty Convention. In this context, reference may be made to the Vienna Convention, which provides: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith" and "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." [Agarwal HP, 2009].

Conclusion

Thus from the above analysis it is clear that the proposed Direct Tax Code 2009, if implemented in its present form will override the DTAAs India has entered into with different countries. In such case, though treaty shopping can be avoided to some extent but it will surely hit the inflow of FDI into India. Especially in case of Mauritius route India will not be so much attractive for investment as it is today.

It is to be noted that in developing countries, treaty shopping is often regarded as a tax incentive to attract scarce foreign capital or technology. The Supreme Court of India also pointed out the advantages of tax treaties in the context of developing countries. "Developing countries need foreign investments, and the treaty shopping opportunities can be an additional factor to attract them. The use of Cyprus as a treaty haven has helped capital inflows into Eastern Europe. Madeira (Portugal) is attractive for investments into the European Union. Singapore is developing itself as a base for investments in South East Asia and China. Mauritius today provides a suitable treaty conduit for South Asia and South Africa. In recent years, India has been the beneficiary of significant foreign funds through the 'Mauritius conduit'. Although the Indian economic reforms since 1991 permitted such capital transfers, the amount would have been much lower without the India-Mauritius tax treaty." [Ref. Azadi Bachao Andolan 263 ITR 706.]

The apex court clarified that a tax treaty is essentially a bargain between two sovereign States. Therefore, where the tax treaty provides for a particular mode of computation of income, the same should be followed, irrespective of the provisions in the Income Tax Act. Where there is no specific provision in the agreement, it is the basic law, i.e. the Income Tax Act that will govern the taxation of income.

Lastly, it is to be noted that the Finance Minister Pranab Mukherjee recently announced that the Government has identified seven critical areas including DTAAs, on the DTC 2009 for further detailed re-examination. Hence it is expected that necessary changes will be made in the draft DTC before presenting in the parliament so as to guard the treaty shopping on one hand and simultaneously make Indian Tax system internationally competitive so that it will not act as hindrances in the flow of FDI into India specially through Mauritius route.

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Direct Tax Code 2009: Boon or Bane

Satya Ranjan Doley*

Introduction

The taxation structure of the country can play a very important role in the working of our economy. While designing the taxation structure, it has to be seen that it is in conformity with our economic and social objectives. It should not impair the incentives to personal savings and investment flow and on the other hand it should not result into decrease in revenue for the state.

Income Tax Act 1961 consists of a large numbers of sections, sub-sections running into thousands, schedules, rules, sub-rules etc. and is supported by other acts and rules. This Act has been amended by several amending Acts since 1961. But the act is still cumbersome and complicated which in most cases are not understood by the ordinary tax payers. As such, they have no option but to take help of experts in the calculation of tax and submission of Tax Return. Keeping this in view, there has been proposal to replace the existing Income Tax Act 1961. Direct Tax Code 2009 is a draft proposal to make existing tax structure easy and simple so that tax payers themselves can compute and file income tax return.

Direct Tax Code 2009

A step has been taken towards bringing about structural changes by releasing a draft of the Direct Tax Code for public debate. The Code follows the promises made by Finance Minister in his Budget Speech on July, 2009 of releasing draft code. The code along with a Discussion Paper was released on August 12, 2009 with the stated objective of improving the efficiency and equity of the Indian tax system by eliminating distortions in the structure, introducing moderate levels of taxation and expanding the tax base.

It is necessary to analyze some of the drawbacks of the proposal which need to be taken into account before making it act. The paper deals with some of the points contained in the proposal which is required to be addressed.

New tax slab: Under the Direct Tax Code 2009, the amount of non taxable limit is Rs.160000. this non taxable amount of individual assessee needs to be increased to give benefit to lower income group because of high cost of living due to price rise in the present time. Thus, it is seen in the proposal of Direct Tax Code that the assessee having income between Rs.1600000 and Rs.10 lakhs, the rate of tax is 10%, the person earning income from Rs.10 lakhs to Rs.25 Lakhs need to pay 20% and 30% for the person having income over Rs.25 lakhs. Thus it can be observed that the proposal of Direct Tax Code would give more benefit to the upper class group than that of lower group.

Leving tax on withdrawals of PPF and other pension scheme:

After retirement from service, some of the retirees and pensioners are merely dependent on the amount of PPF and pension amount for rest of their lives in the future. Charging tax on withdrawals of PPF and other pension scheme will have adverse impact on the retirees and pensioners. This would reduce their willingness to contribute less amount of this fund to avoid tax burden. Apart from, this source of fund is also revenue to the government which it can use for development activities. The government, therefore, would face shortage of fund and as a result the government will have no option but to adopt other mode of getting fund i.e. (borrowing) paying higher rate of interest from financial institution and abroad at the cost of state exchequer which will badly affect the economy of the country as a whole.

Removal of deduction for interest on house building loan:

There is a proposal that deduction of interest on house building loan is to be deleted. This is not an appropriate decision and this is to be reconsidered by the government taking into account that many taxpayers purchase residential house on banks' loan. Tax payers would not like to pay interest on house building loan because of withdrawal of deduction for interest in this case. Some of the tax payers may desire to stay on rented house for availing house rent allowance. On the other hand, the decision of deleting deduction for interest on house building loan, the construction and allied industries i.e. cement factories, iron and steel industries, brick factories and the labor market etc. will receive a jolt which in turn will have impact on the economy.

Reduction of standard deduction for repairs and maintenance of house property:

The direct tax code 2009 reduces the standard deduction for repairs and maintenance of house property from 30% to 20%. The rate is to be maintained the same as earlier because there is high cost of repairs and maintenance of house in time of skyrocketing prices of materials connected with it.

Conclusion:

Direct Tax Code 2009 is to replace the Income Tax Act 1961 which has been complicated and complex due to large numbers of sections and sub-sections. This is, no doubt, an appreciative step but before implementing such proposal, the government needs to examine some of the cases from the taxpayers' points of view which will have impact on them adversely and accordingly, modification is to be done considering various perspectives of angle. On the one hand, this will enable the government to increase collection of tax revenue for developmental work and on the other, will give relief to the lower and middle income group to large extent.❑

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Direct Tax Code Bill-Meaning, Features and Accountants Role

The Finance Minister during his speech in the Parliament on 6 July 2009 had promised to bring about structural changes in direct taxes by releasing the new Direct Tax Code to improve the efficiency and equity of the Indian tax system by eliminating distortions in the tax structure, introducing moderate levels of taxation and expanding the tax base. An accountant is certified and are extremely versed in the tax code, finances and tax issues. In this paper an attempt is made to specify the accountants role in calculating the tax by taking care of Direct Tax Code.

Pooja Sareen*

Introduction

In a global market in the contemporary economic environment all business needs relevant and appropriate information quantitative as well as qualitative information, which is adequate to survive and grow in a market. In current times the market is unpredictable and dynamic in nature, The main objective of business organization is to maximize owners wealth or put it in other words to be profitable in the short-tern as well as in the long-term. The designation of the accountant is proving to be an indispensable part of the business and its responsibilities are more than that accounting task He is a person who has the requisite skill and experience in establishing and maintaining accurate financial records for an individual or a business. The duties of an accountant may include designing and controlling systems of records, auditing books, and preparing financial statements. An accountant also give tax advice and prepare tax returns.. These people are passionate about the numbers, figures or data of the business. Their career lies with the same passion in the varieties of businesses. And their services include a wide range to fit with the smaller accountancy as well as big corporations and government offices.

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Direct Tax Code Bill

The Finance Minister during his speech in the Parliament on 6 July 2009 had promised to bring about structural changes in direct taxes by releasing the new Direct Tax Code. Keeping with his promise, the Finance Minister has released the draft Code along with a discussion paper on 12 August 2009 inviting the public to share their views and suggestions. The final version of the Code would then be presented before the Parliament in the Winter Session, 2009 for enactment.

The Discussion Paper states that the thrust of the Code is to improve the efficiency and equity of the Indian tax system by eliminating distortions in the tax structure, introducing moderate levels of taxation and expanding the tax base. The attempt is to simplify the language, remove ambiguity, provide stability and adopt best international practices. The code seeks to consolidate all direct taxes i.e. Income Tax, DDT, FBT & Wealth Tax under a single umbrella. Features of Direct Tax Code Bill is as follows:-

1. The regulatory function of the taxing statute has been withdrawn. This is being labelled as a great simplification measure.
2. Under the code all rates of taxes are proposed to be prescribed in the First to the fourth Schedule to the code itself thereby obviating the need for an Annual Finance Bill. The changes in the rates will be done through appropriate amendments to the Schedules.
3. The Code has provided a comprehensive definition of income. It includes all accrual and receipts of revenue and capital nature unless otherwise specified. It is important to note in this regard that agricultural income has been excluded from the scope of this code.
4. The separate concept of "Previous Year" and "Assessment Year" will be replaced by a unified concept of "Financial Year"
5. Unabsorbed business losses shall be allowed to be carried forward indefinitely.
6. Classification of source of Income (Section 12)

For the purpose of computation of total income of any person for any financial year, income from all sources shall be classified under the following :

a. Income from Special Sources

§ Items listed in the Table in Rule 3 of the First Schedule shall be considered as income from special sources

b. Income from Ordinary Sources

All income accruing from a source other than the special sources, shall be classified under the following heads of income

- Income from Employment
- Income from House Property
- Income from Business
- Capital Gain
- Income from Residuary Sources

It is explained as follows:-

- Income from House Property - No deduction for taxes or interest will be allowed in case of a self-occupied property.
- The earlier limit of Rs. 1,50,000/- on account of interest on capital borrowed for the purpose of acquiring constructing repairing renewing or reconstructing the property has been withdrawn. As per the code any amount of interest paid in this regard shall be admissible.
- Income from Business - profit on sale of business capital assets and undertaking under a slump sale will no longer be treated as capital gain. They will be treated as genuine business income.
- Income by way of interest earned by the assessee other than financial institutions shall now be treated as "Income from Residuary Sources".
- Business expenditure has been classified into 3 mutually exclusive categories:

Operating Expenditure

Permitted Financial Charges

Capital Allowances

- Depreciation on business capital assets will now include expenses amortised.
- In order to curb the growing cases of asset stripping and loss manipulation the code proposes that loss on sale of business capital assets will be treated as intangible assets and depreciation will be allowed at the same rate applicable to the relevant block of assets. Thereby, only a fraction of loss shall be allowable every year.
- Income from Capital Gains - The present distinction on the basis of the length of holding of the asset between short-term capital asset and long-term capital asset will be eliminated.
- The Securities Transaction Tax (STT) will be abolished.
- The base date for determining the cost of acquisition of asset has now been shifted from 01-04-1981 to 01-04-2000.
- It has been held time and again by various judicial authorities that where the cost of acquisition of capital asset is indeterminable, the machinery provisions for computing capital gains fail. In this regard, the code now proposes a new provision wherein if the cost of acquisition of an investment is not determinable or ascertainable for any reason, the cost of acquisition shall be deemed to be 'NIL'.
- Income from Residuary Sources - Any amount exceeding Rs. 20,000/- taken or accepted or repaid as loan or deposit otherwise than by account payee cheque or draft shall now be treated as " Income from Residuary Source.

7. Incentive for Savings - The code now proposes a new method of taxation of savings i.e EET (Exempt-Exempt-Taxation). Under this method the contributions to savings intermediary are exempt from tax, the accumulation/accretion is also exempt from tax and only withdrawals from such account would be taxed. The aggregate amount of deduction admissible under this scheme shall be limited to Rs. 3,00,000/-.
8. Tax Holiday for certain business:- The new code substitutes profit linked incentive by a new scheme as the profit linked incentive is regressive in nature. Under the new scheme a person would be allowed to recover all capital and revenue expenditure (except expenditure on land, goodwill and financial instrument) and he would be liable to income tax on all profits made thereafter.
9. Liability under Minimum Alternate Tax (MAT): a radical change has been proposed under the scheme of MAT. The code provides for MAT calculated with reference to the "Value of the Gross Assets" and not according to the existing book profit method. The rate of MAT as proposed is 2 percent of the value of the gross assets. The same shall be 0.25 percent in case of banking companies.
10. Set off MAT credit: - Under the code it has been proposed that MAT will be a final tax and hence it would not be allowed to be carried forward for claiming tax credit in subsequent years.
11. Rate of Income Tax : In case of Individual, other than women and senior
12. In case women the basis exemption limit raised to Rs. 1,90,000/- and for senior citizen to Rs. 2,40,000/-

Particulars	Rate of Income Tax
Where the total income does not exceed Rs.1,60,000/-	Nil
Where the total income exceed Rs.1,60,000/- but does not exceed Rs. 10,00,000/-	10% of the amount by which the total income exceeds Rs. 1,60,000/-
Where the total income exceed Rs.10,00,000/- but does not exceed Rs. 25,00,000/-	Rs. 84,000/- plus 20% of the amount by which the total income exceeds Rs. 10,00,000/-.
Where the total income exceed Rs.25,,00,000/-.	Rs. 3,84,000/- plus 30% of the amount by which the total income exceeds Rs. 25,00,000/-.

13. It has been proposed that the Tax Rate of Companies shall be reduced to 25 percent.
14. Wealth Tax :- The Individual and HUF has been included under the purview of wealth tax. Further, the exemption limit for them has been fixed at Rs. 50 crores. Rate has been fixed at 0.25%.
15. Income Tax Authorities shall now also include Transfer Pricing officer.
16. Due date of filing of return in case of companies proposed to be 31st August.
17. The time limit for filing revised return will be limited to 21 months from the end of the relevant financial year.
18. Under the code, the time limit for filing an appeal before higher forum i.e CIT(A), ITAT , shall be thirty days from the date of receipt of the order.
19. Income Escaping Assessment :- A case can be reopened under the code for the following reasons :
    - If computation has not been made in accordance with decision rendered by the appellate authority
    - Computation has not been made in accordance with the direction contained in Circulars, instructions issued by the CBDT.
    - Any objection has been raised regarding the computation by the C&AG.
20. The time limit has been increased from existing 4 years to 7 years from end of the Financial Year.
21. The notice of reassessment must contain in writing the reason for reopening the case.
22. Penalty Provisions:- A person who wilfully under reports his tax liability shall be liable to penalty not less than and upto twice the amount of tax payable. No income tax authority has power to waive the penalty
23. Specific Anti Abuse Rules : The general anti avoidance rules will further supported by anti avoidance rules to deal with the following circumstances:-
    - Payment of associated persons in respect of expenditure
    - International transaction not at arm length
    - Transaction resulting in transfer of income to non resident;
    - Avoidance of tax in certain transaction in securities
24. Value of Gross Assets :- Value of Gross assets shall be computed in accordance with the formula

    A+B+C-D-E

A= The value of the gross block of fixed assets of the co. as on the close fo the financial year

B= The value of the capital work in progress of the co. as on the close fo the financial year

C= book value of all the assets of the company as on the close of the FY

D= accumulated depreciation on the value of the Gross block claimed upto the last day of the of the relevant financial year

E= the amount of debit balance of profit and loss account if included in the amount "C"

Accountants Role in providing tax services

"Anyone may so arrange his affairs so that his taxes shall be as low as possible. He is not bound to choose that pattern which best pays the Treasury. There is not even a patriotic duty to increase one's taxes."

-- Judge Learned Hand

The breakdown of the financial oversight system led to billions in losses for investors, tens of thousands of unemployment checks for workers, and a crisis of confidence in our capital-markets system.

It has become apparent that many of the corporate bankruptcies of the past couple of years were caused, at least in part, by the voluntary nature of our tax-compliance system. Simply put, the system is based on individuals and businesses paying their "fair share" of tax liability.

Given that loosely policed honor system, it's fair to ask what role tax professionals are playing, or perhaps more importantly, what role they should play. But there's little consensus among government officials, consumer advocates, journalists, professional organizations, and tax preparers from both small and large firms, about what the extent and nature of that role is. It can be explained as follows:-

1. An accountant or a chartered accountant firm India needs to be apt in calculating different kinds of taxation like sales tax, income tax, value-added tax, property tax, emergency tax, corporation tax, retirement tax, capital gains tax, poll tax, excise duty, and inheritance tax.
2. Since tax calculation involves very complex intricacies, thus it is very difficult for people who are unaware of its procedure to calculate and file tax returns. More over most of the business people do not have much of time to carry all this taxation procedure themselves and thus hire a professional accountant to help them in their financial calculation.
3. Accountants are people experts in providing financial services like tax calculation, cost evaluation, budget analysis, selecting JV Partners, asset management, investment planning, legal consulting and auditing consulting services. Chartered accountants are certified public accountants with high level accounting degrees, knowledge and advanced level of expertise and follow certain financial accounting rules laid down in national tax laws to calculate your tax or assist you in your financial holdings.

Role of Accountant in Direct Tax Code Bill

An accountant is a licensed profession who has gone to hell and back to gain their designation as a certified public accountant. The testing for the certification is beyond brutal. If an accountant is certified, it means they are extremely versed in the tax code, finances and tax issues.

Many people are under the mistaken belief that accountants simply provide tax return preparation services. The stereotypical view involves a person dropping off their receipts a month before tax returns are due and the accountant doing the best he or she can to prepare a tax return while limiting the amount of money you owe the government. This occurs, but people are wasting money if this is how they are using their accountant.

Accountants have expertise in the tax code. You should use this. Ideally, an accountant will aware of all aspects of your financial life. They should also be aware of significant events in your private life, such as the fact you are about to have a child. The reason this is important is it gives the accountant the ability to solve your tax mystery.

Solving a tax mystery simply refers to an accountant figuring out the best way to limit your taxes. As you know from police shows on television or mystery novels, finding as many clues as possible is the way to solve the mystery. The accountant needs to do the same with you and you need to help them. Each part of your finances represents a clue to solving the mystery of how to cut your tax bill.

Once an accountant has all the clues, he or she can do their job. They will give you specific direction on the steps to be taken to save money on your tax bill this year. Equally important, they will give you advice on how you are going to save taxes in future years. Depending on your situation, they may even recommend a long-term tax strategy for stuffing away money to pay for your kids' college tuition or your retirement.

The purpose of using an accountant is not just to put tax returns together. They put together tax strategies to save you money this year, the next and throughout your life..

With products like Turbo Tax improving, many wonder where this leaves accountants. Ironically, the evolving role of accountants is helping people save on their taxes.❑

CANCELLATION OF REGISTRATION UNDER REGULATION 25(1) OF CWA ACT, 1959
REGISTRATION NUMBERS CANCELLED FOR JUNE-2010 EXAMINATION
UPTO
ERS/000904
NRS/001056 (EXCEPT 96, 119, 127, 140-145, 488-499, 533-600, 901-923, 937-950)
SRS/002191 (EXCEPT 2062–2104)
WRS/001818
RSW/075376
RAF/005824
RE-REGISTRATION

The students whose Registration Numbers have been cancelled (inclusive of the students registered upto 31st December-2002) as above but desire to take the Institute's Examination in June-2010 must apply for **DE-NOVO** Registration and on being Registered DE-NOVO, **Exemption** from individual subject(s) at Intermediate/Final Examination of the Institute secured under their former Registration, if any, shall remain valid as per prevalent Rules.

For **DE-NOVO** Registration, a candidate shall have to apply to Director of Studies in prescribed Form (which can be had either from the Institute's H.Q. at Kolkata or from the concerned Regional Offices on payment of Rs. 5/-) along with a remittance of Rs. 2000/- only as Registration Fee through Demand Draft drawn in favour of THE ICWA OF INDIA, payable at KOLKATA.

Kindly ignore the earlier Circular dt. 27th January, 2010 in this regard.

Arnab Chakraborty,
Director of Studies

Date: 24th March, 2010

Role of Cost and Management Accountant Under Direct Tax Code

Dr.Sukamal Datta*
Tamal Taru Roy**

Direct Tax Code - A Step towards Tax Reforms in India

The present Income Tax Act was enacted in 1961 to replace the earlier Act which had been legislated in 1922, before independence. About 50 years have been elapsed since the enactment of present Income Tax Act. At the time of presenting the Union Budget for 2005-06 the Government had announced its intention to introduce a revised and simplified Income Tax Bill. Subsequently, the Government under took a work on drafting a Direct Tax Code to replace the existing Income Tax Act,1961 and the Wealth Tax Act,1957.

Hon'ble Finance Minister Shri Pranab Mukherjee during his speech in the Parliament on 6th July 2009 had promised to bring about structural changes in direct taxes by releasing the new Direct Tax Code (DTC). Keeping with his promise, the Finance Minister released the draft Direct Tax Code along with a discussion paper on 12th August, 2009 for public debate. The draft DTC envisaged promoting voluntary tax compliance and an equitable and progressive tax regime, introducing moderate levels of taxation, expanding the tax base and simplifying the drafting language by eliminating distortions in the tax structure. The attempt is also taken to remove ambiguity, provide stability and adopt best international practices. Based on the inputs and suggestions received from the public the Government would finalize the DTC Bill for presentation in the winter session on Parliament, 2009. The Government plans to implement the DTC from the financial year 2011-12 (starting from 1st April, 2011). Before finalizing it, the Government would take suggestions on seven critical areas of concern in the code. The critical areas of concern include shifting the base for computation of Minimum Alternate Tax (MAT) from book profits to assets; capital gains taxation for non-residents; taxation of foreign companies; double tax avoidance agreements; General Anti-Avoidance Rules (GAAR), taxation of charitable institutions; and shift to EET (Exempt-Exempt-Tax) methodology for taxation of savings. Finance Minister Shri Pranab Mukherjee said that tax reform, like all reforms, is a process and not an event. He said that to simplify tax laws and moderate tax rate all direct taxes including EBT and income tax would be brought under one code. The new code is aimed at eliminating the scope of litigation as far as possible. The proposed DTC when it would be implemented would go a long way streamlining the existing complex tax structure. Since international best practices will be included in DTC, its adoption would ensure that the Indian tax structure would be at par with global standards.

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How does DTC impact on Common People

There is going to be some big changes in tax laws if DTC will be effective from 1st April, 2011. Common people are not at all interested regarding amendments, alteration, modification and introduction of various provisions and sections through Finance Bill each year or the change of political equations of Minister-in-Charge and socio-economic requirements, they are only concerned with present and the future and plan their income appropriation to get maximum benefit. The draft DTC which is a document containing changes in exemptions, tax slab etc. This will perhaps be a big change in the five decades old Income Tax Act. As per the proposal, the new tax slab would be :

0% tax for income less than Rs.1.6 lac

10% tax for income from Rs.1.6 lac to 10 lac

20% tax for income form Rs.10 lac to 25 lac and

30% tax for income more than Rs.25 lac

For Female, second slab begins from Rs.1.90 lac and for Senior Citizen it begins from Rs.2.40 lac.

The new tax slab is really amazing because almost 98% of Indian will then pay 10% or less tax because income of majority of people is below 10 lac. In planning and framing an ideal Income Tax Structure of a welfare state likes ours the objectives are to give relief to the maximum possible extent to the lower and middle income group taxpayers and check certain black money at one hand and to enable the Government to increase collection of tax revenue for development works on the other.

Savings and Investments

At present we get exemption for investment upto Rs.1 lac under section 80C. This amount may be raised to Rs.3 lac. Section 80C gets major hit by introduction of EET methodology. The investment is to be exempted when invested. The investment is to be taxed when it will be withdrawn. The investments are to be considered only of those invested through savings intermediaries approved by Pension Fund Regulatory and Development Authority (PFRDA). Such savings intermediaries may in turn invest in Government Securities, Public Sector Securities, ELSS Mutual Funds etc. In addition to this Tuition Fees for children, expenses for medical treatments, higher education loan interest, donation and rent paid by self-employed individual will be allowed as deduction. Handicapped individuals will also get deduction upto Rs.75,000 under the Code.

Under current Income Tax Act only interest accruals are taxed in some schemes like National Savings Certificates (NSC) but the savings schemes like Public Provident Fund (PPF) and General Provident Fund (GPF) are not taxed at all. Now, any withdrawals of the investment and interest would be taxable. However, no tax would be payable in respect of withdrawals of accumulations upto 31st March, 2011 in an approved provident fund.

Housing Loan

If the draft DTC becomes a law then it will spill water to a common people's plan to buy home. Under current provisions allowance of interest on housing loans for individuals is up to Rs.1.5 lac u/s 80C which encouraged home-ownership. But in the draft proposal there is a suggestion that this deduction alongwith repayment of principal amount of loan will be deleted. It is an injustice to those tax payers who have constructed or purchased residential accommodations on bank loan following the Government taxation policy. The withdrawal of allowance will obviously increase taxable income of individuals who were availing such tax benefits earlier.

Standard Deduction for House Property

At the draft there is a proposal of reducing standard deduction for repairs and maintenance of house property to 20% from 30% as applicable now. The opportunity once given to tax payer should not be withdrawn or reduced when the cost of repairs and maintenance of house is going high due to inflation.

Capital Gains Tax

As per existing provisions there is a difference between (i) short-term investment asset and (ii) long-term investment asset depending on period for which such Capital asset is held. Concessional tax rate is imposed on long-term Capital gains. As per proposed DTC distinction between short-term investment asset and long-term investment asset to be eliminated. Capital gains from transfer of personal effects and agricultural land are excluded from the ambit of taxation. Income from transaction in all investment assets to be taxed under the head 'Capital gains' and uniformly charged at normal rate. The advantages of concessional tax rate for long-term capital gains to be removed, which may result in higher tax burden to the tax payers for investment transactions. The base date for determining cost of acquisition for the purpose of computing Capital gains to be shifted from 1st April, 1981 to 1st April. 2000. The benefit of indexation will be available in computing Capital gains in transfer of Capital assets held for more than one year.

As per existing provisions Securities Transaction Tax (STT) is levied on purchase or sale of equity shares on stock exchanges. Consequently, long-term or short-term Capital gains arising on sale of such share is exempted or taxed at lower rate respectively. But proposed DTC suggested abolishing the STT. So, the long-term Capital exemption and concessional tax rate for short-term Capital gains in respect of listed securities will no longer available. At present a transfer of Capital asset in a scheme of reverse mortgage is not considered as taxable transfer but under the Code it will be considered as taxable transfer and taxable as Capital gains.

Income from Employment

The Code formulated rules for computation of income from Employment (currently income from salaries). To compute Income from Employment gross salary will include value of perquisites and profit in lieu of salary and that will be taxed on due or receipt basis, whichever is earlier and to be reduced by permissible deductions. Permissible deductions will include professional tax, transport allowance, prescribed special allowance, and compensation under voluntary retirement scheme, gratuity and commutation of pension amongst others. But perks will be included as a part of income from employment, so tax burden may slightly be high. All the perks, an employee is allowed by his employer like interest free loan, free lunch etc. will be added to his income from employment and to be taxed.

Is DTC Good for Common People

We have discussed so far the impact of proposed DTC on common people. Now we may rise a question is the new Tax Code is good are or bad? The Tax Code is good one from the point of tax liability of common people. The biggest thing is that the tax slab is just 10% for income from Rs.1.6 lac to Rs.10 lac and about 98 % of Indian will pay 10% or less tax whose incomes are within Rs.10 lac per annum. There are many changes in the DTC which may look bad and adversely affect but at the end common people will gain from it, because tax will be charged by just 10% on almost all common people. As a result, though taxable income from employment of a common people will go up to a certain extent due to adverse affect of DTC but ultimately tax liability will reduce far more.

Due to introduction of EET

methodology for investment at the time of maturity of Insurance Policy, withdrawal of Provident Fund, Mutual Fund a lump-sum amount of tax will be paid by the common people who invest that amount for living during the rest days of their lives of superannuation period. From the point of the Government, investment of common people in these funds serves as a significant source of long term finance for the Government which uses the finance for developmental purpose. Since tax is imposed on withdrawals from the Provident Fund, the assesses may not hereafter generously contribute to avoid additional tax burden. As a result, the Government may face shortage of finance and have to borrow fund at a higher rate of interest from the financial institutions or others. By the existing system of Provident Fund not only the common people are benefited but also the Government is equally benefited. Any way, this is now a debatable topic and putting argument on it will be going on.

Corporate Tax

DTC will reduce the Corporate tax rate from 33% (including surcharge) to 25% which will benefit the corporate (company across) sector. Business losses will be allowed to be carried forward indefinitely, unlike 8 years at present. The reduction in tax rate is to be compensated by withdrawal of various tax incentives that are available to this sector such as infrastructure, exports, area-based tax holidays etc. In addition to that, allowable rate of depreciation on plant and machinery is proposed to be reduced to 15%. The draft DTC recommended for reduction of Corporate Tax of foreign companies from 40% to 25%. The branches of foreign companies in India have to pay additional branch profits tax of 15% (on after tax total income) resulting in Effective Tax Rate of 36.25%. It is also recommended that a company is considered to be resident in India if its place of control and management at any time during the year is situated wholly or partly in India. This will obviously cheer up those foreign companies as their tax burden would reduce.

Dividend Distribution Tax

All the companies would be liable to pay Dividend Distribution Tax (DDT) at the rate of 15% of the amount declared by way of dividends and the recipient will be exempted from tax. The effective tax rate for the domestic company would be 34.78% and that of foreign company would be reduced from the existing 42.23% to 34.78% (including branch profit tax).

Minimum Alternate Tax

The Tax Code proposed a radical change in MAT (Minimum Alternate Tax) provisions. As per draft MAT will be paid at a specified percentage of gross assets of a company (although it is not clear whether net or gross current assets will be considered for computation). The proposed rate is 0.25% for banking companies and 2% for all other companies. The draft had raised some controversial issue because companies suffering from a genuine losses or sub-normal ROCE due to initial gestation period or cyclical downturn would also have to pay MAT at 2% on gross assets. Moreover, MAT will be a final tax and will not be allowed to be carried forward. Another controversial issue is that under IFRS (International Financial Reporting Standard), assets such as investments and derivatives are fair valued with corresponding gains or losses recognized through the profit and loss statement. Accordingly, the measurement of prescribed assets at fair value under IFRS would have significant impact on MAT. So, the proposal evoked sharp reaction from companies which described the move as introducing wealth tax on enterprise.

Transfer Pricing

The Finance Act, 2001 has introduced detailed provisions relating transfer pricing, requiring all 'international transaction' between 'associated enterprises' to be at arm's length. This was applicable with effect from 1st April'2001.

The then provisions was to treat any income / expense arising from an international transaction with an associated enterprise must be computed having regard to the arm's length or apportioned between two or more associated enterprise should be determined having regard to arm's length prices.

Concept of arm's length price is proposed to be replaced by introducing Advance Pricing Agreement (APA) with effect from 2011-12 under DTC. The Code provides for up front determination of the arm's length price / pricing methodology in international transactions between associated enterprises. This will reduce litigation on the basis of acceptable arm's length prices. This will ultimately alter the international transfer pricing agreement in India.

Double Taxation

The proposed DTC will give relief from Double Taxation. The Central Government is empowered to enter into an agreement with the Government of any country in order to provide relief on double taxation and exchanging information for prevention of evasion or avoidance of income tax. If there raise any conflict between the provisions of a tax treaty and the provisions of DTC whichever is later in time shall prevail.

It is observed that both the domestic as well as foreign companies will enjoy some tax relief under DTC but radical changes in MAT raise controversy.

The draft DTC is only 'illustrative' and open for discussion. Any one can put forward suitable suggestions for future consideration. There is no need to think that all things have been finalized. The Government has identified seven critical areas of concern in the DTC and would take suggestions on the board before finalizing it.

Role of Cost and Management Accountant

In the era of liberalization, privatization and globalization Cost and Management Accounting profession plays an important role both in manufacturing and service sector. Cost and Management Accountant evaluates the efficiency of production and service management. He also evaluates operational efficiency by collection, compilation, organization, verification and analysis of information from various departments of an organization. A Cost and Management Accountant analyses the trend of sales for maintaining the proper balance between the forces of demand and supply. This analysis also helps to compare the financial performances, and taking managerial decisions regarding future pricing and costing policies. Cost and management accounting facilitates in planning, controlling and monitoring the price and cost of a product or service. During the recession or business slowdown the efficiency of Cost and Management Accountant is evaluated. The enterprise having efficient cost and management accounting system are expected to be survive in the global competitive market. Moreover the management of the enterprise may rely on this professional for necessary advisory services relating to different critical areas since Cost and Management Accountant provides valuable services relating to investment planning, tax planning, project appraisal as well as overall management decision making process. This profession plays a pivotal role in the globalization process of economics in terms of valuation, performance management, strategic management, resource management and knowledge management. To facilitate the increasingly interactive role the Cost and Management Accountants will need broader business understanding in their academic and professional background. Considering all these things and as per recommendation of International Federation of Accountants (IFAC) ICAI remodeled its syllabus in the line with the principles, standards and guidelines set our within IFAC International Education Standards (IES) for professional Accountants. The institute also equips their members with adequate practical training to enable them to understand the functioning of an enterprise which will help them to be more efficient with practical knowledge. Moreover the institute arranges for seminars, workshops, symposium with good number well informed resource persons to update and refresh their members to the latest developments in the specialized areas of this profession.

Critical Role of Cost and Management Accountant under DTC

The importance of qualified Cost and Management Accountants in economic development of a country in the globalized era has led to their involvement in advising the Government in cost and pricing policies and also in framing of tax and fiscal policies. The Cost and Management Accountants also work as tax consultants, advisors, executives, administrators, valuers etc. in the corporate world. They perform the work to administer tax policies and procedures, to supervise and to co-ordinate in preparing the reports for Government agencies.

ICAI, being an apex body to regulate the profession of cost and management accountancy in India approached the Union Minister of Corporate Affairs Mr.Salman Khurshid to empower the Institute through its members for more regulating powers including inclusion of Cost Accountants within the definition of 'Accountant' of the Direct Tax Code Bill 2009, clause 284(2).

The draft Direct Tax Code is still in the pipe line. The Central Government has near to completion of the process of consultation on the draft DTC. The draft code moves one step towards finalizing a new tax structure which is proposed to be introduced during the financial year 2011-12. DTC is a revolutionary mechanism in Indian economic and financial arena. With a view to replacing the 50 years old Income-Tax Act, 1961, the Government had come out with a draft code aimed at simplifying the direct tax structure by was to lowering the tax rate with reducing a number of exemptions. The draft was placed before the public for discussion following which a number of issues were raised by the individuals and corporate world. Eventually, a list of about 9-10 contentious issues have been pointed out by the Finance Ministry that required a fresh look-in. Since Direct Tax Code is a universally acceptable Tax Code. The Cost and Management Accountants are expected to take initiative being experts as tax consultants to co-operate the Government before taking final decision of DTC.

This is the high time for Cost and Management Accountants being experienced tax consultants with their expertise and knowledge of professional excellence thoroughly analyze each and every point of the code. They will put forward their valuable suggestions and recommendations specially on taxation of long-term savings on withdrawal by way if EET (Exempt-Exempt-Tax), doing away with tax rebates on home loans, changing the criteria for imposition of MAT (Minimum Alternate Tax) and taxation of foreign companies in India to the Government so that those recommendations may favourably be considered by the Government which make a balance between the facilities to be enjoyed by the individuals, corporate bodies and other tax payers on the one hand and the Government the collector of direct tax on the other.❑

Impairment of Financial Assets in the Era of IFRS

The article seeks to discuss issues relating to impairment of financial assets that will be encountered by banks once they move towards IFRS. Existing stipulations of IAS 39 on impairment is woven around an Incurred Loss Model wherein triggers in the form of objective evidence of impairment are required for recognizing impairment losses. Once it is established that there is objective evidence of impairment, the amount of loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the financial asset's original effective interest rate. This is in variance with current provisioning norms for Non Performing Assets issued by RBI, which are essentially formula based. Now, IASB has issued an Exposure Draft seeking to amend IAS 39 and one of the major amendments is moving to Expected Loss Model for impairment from Incurred Loss Model. International Accounting Standards Board expects that the new requirements will not be mandatory before January 2012. Thus, while Indian banks adopt the existing IFRS in April 2011, it may undergo a major revision by January 2012 and accounting/regulatory bodies will have to take note of this.

P. V. Antony*

Ragesh M.**

The most challenging issue facing Indian banks who are gearing up to be IFRS compliant by April 1, 2011 is provisions relating to impairment of financial assets as per IAS 39. Further, IASB is considering revising the existing provisions in toto and an Exposure Draft to this effect has been released. This article is an attempt to understand the existing and proposed provisions relating to impairment in IFRS.

1. Extant RBI Guidelines

As per extant RBI guidelines, an asset becomes Non Performing according to the 90 days delinquency norm and once it become a Non Performing Asset (NPA), the impairment provision is calculated as a percentage of asset values based on classification as secured/unsecured, substandard, doubtful and loss.

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Other than provisioning for NPA, another form of impairment provision required as per RBI guidelines is provision for diminution in the fair value of the advance in the case of restructuring of advances. The erosion in the fair value of the advance should be computed as the difference between the fair value of the loan before and after restructuring. Fair value of the loan before restructuring will be computed as the present value of cash flows representing the interest at the existing rate charged on the advance before restructuring and the principal, discounted at a rate equal to the bank's BPLR as on the date of restructuring plus the appropriate term premium and credit risk premium for the borrower category on the date of restructuring. Fair value of the loan after restructuring will be computed as the present value of cash flows representing the interest at the rate charged on the advance on restructuring and the principal, discounted at a rate equal to the bank's BPLR as on the date of restructuring plus the appropriate term premium and credit risk premium for the borrower category on the date of restructuring.

2. Existing Stipulations of IAS 39 on Impairment

Under IAS 39, the process of recognition and provisioning for impairment is a bit complex, as explained below:

2.1 Incurred Loss Model

Existing provisions of IAS 39 on impairment is woven around the concept of Incurred Loss Model. Accordingly, impairment losses should be recognized only when they are incurred (i.e. a deterioration in the credit quality of an asset or group of assets after their initial recognition). For a loss to be 'incurred' an event that provides objective evidence of impairment must have occurred after the initial recognition of the financial asset.

2.2 Objective Evidence of Impairment

As per IAS 39, an entity shall assess at the end of each reporting period whether there is any objective evidence that a financial asset or a group of financial assets is impaired. Objective evidence that a financial asset or group of assets is impaired includes observable data that comes to the attention of the holder of the asset about the following loss events:

a) significant financial difficulty of the issuer or obligor

b) a breach of contract, such as a default or delinquency in interest or principal payments

c) the lender, for economic or legal reasons relating to the borrower's financial difficulty, granting to the borrower a concession that the lender would not otherwise consider

d) it becoming probable that the borrower will enter bankruptcy or other financial reorganization

e) the disappearance of an active market for the financial asset because of financial difficulties

f) observable data indicating that there is measurable decrease in the estimated future cash flows from a group of financial assets since the initial recognition of those assets, although the decrease cannot yet be identified with the individual financial assets in the group, including:

i) adverse changes in the payment status of borrowers in the group

ii) national or local economic conditions that correlate with defaults on the assets in the group (e.g. a decrease in property prices for mortgage in the relevant area, adverse changes in industry conditions that affect the borrowers in the group].

In some cases the observable data required to estimate the amount of impairment loss on a financial asset may be limited or no longer fully relevant to current circumstances. For example, this may be case when a borrower is in financial difficulties and there are few available historical data relating to similar borrowers. In such cases, an entity uses its experienced judgment to estimate the amount of any impairment loss. Similarly, an entity uses its experienced judgment to adjust observable data for a group of financial assets to reflect current circumstances.

As per RBI guidelines, only two triggers (viz. delinquency and restructuring] will invite impairment provisioning, while under IAS 39 there are many more triggers as explained above.

2.3 Individual and Collective Assessment

An entity first assesses whether objective evidence of impairment exists individually for financial assets that are individually significant, and individually or collectively for financial assets that are not individually significant. If an entity determines that no objective evidence of impairment exists for an individually assessed financial asset, it includes the asset in a group of financial assets with similar credit risk characteristics and collectively assesses them for impairment. Assets that are individually assessed for impairment and for which an impairment loss is or continues to be recognized are not included in a collective assessment of impairment. In other words, measurement of impairment on a portfolio basis under IAS 39 is confined to

a) groups of small balance items and

b) financial assets that are individually assessed and found not be impaired when there is indication of impairment in a group of similar assets and impairment cannot be identified with an individual asset in that group.

For example, if the trigger event is fall in exports in the country, the bank will be assessing individually customers for impairment. On such individual assessment, if no evidence of impairment is found in an accounts, the bank will have to include the account in the export credit group and test the group as a whole for impairment, drawing from past correlations between fall in export and increase in delinquency of export customers.

2.4 Bases for Grouping

Different methods are conceivable for grouping assets for the purpose of assessing impairment and computing historical and expected loss rates. For example, assets may be grouped on the basis of one or more of the following characteristics:

a) established default probabilities or credit risk grades

b) type (for example residential mortgage, consumer credit etc.)

c) geographical location

d) collateral type

e) counterparty type

f) past-due status

g) maturity.

2.5 Amount of Provisioning

Once it is established that there is objective evidence of impairment, the amount of loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the financial asset's original effective interest rate. The amount of the loss shall be recognized in P&L account.

If a loan has a variable interest rate, the discount rate for measuring any impairment loss is the current effective interest rate determined under the contract.

Future cash flows in a group of financial assets that are collectively evaluated for impairment are estimated on the basis of historical loss experience for assets with credit risk characteristics similar to those in the group. Entities that have no entity-specific loss experience or insufficient experience use peer group experience for comparable group of financial assets. Historical loss experience is adjusted on the basis of current observable data to reflect the effects of current conditions that did not affect the period on which the historical loss experience is based and to remove the effects of the conditions in the historical period that did not exist currently.

Formula based approaches or statistical methods may be used to determine impairment losses in a group of financial assets as long as the model used incorporates the effect of the time value of money, considers the cash flows for all the remaining life of an asset, considers the age of the loans within the portfolio and does not give rise to an impairment loss on initial recognition of financial asset.

Thus, the method of arriving at amount of provision is different from that of extant RBI guidelines on provisioning for NPA, while the financial mathematics is essentially the same as the extant RBI guidelines on provisioning for restructured advances (though the conceptual underpinnings of the discount rate used are different).

2.6 Excess Provisioning

Amounts that an entity might want to set aside for additional possible impairment in financial assets, such as reserves that cannot be supported by objective evidence about impairment, are not recognized as impairment or bad debt losses under IAS 39.

2.7 Collaterals

RBI guidelines prescribe lower

provisioning for secured advances compared to that for unsecured advances. Under IAS 39, the measurement of the impaired financial asset reflects the fair value of the collateral.

3. Incurred Loss Model to Expected Loss Model

In July 2009, the International Accounting Standards Board released the Exposure draft to IAS 39 - Financial Instruments: Classification & Measurement. As per the Exposure Draft, Impairment is to be based on Expected Loss Model (in place of Incurred Loss Model). At the time of arriving at the original effective interest for a loan, the expected losses have to be considered under the proposed approach (while it is not done under the current IFRS). Further, there is continuous re-estimation of all expected cash flows and the carrying amount of the loan is adjusted whenever there is a revision of cash flow estimates. Under the current IFRS, this process starts only when there is objective evidence of impairment (i.e. only when the loss is incurred].

The expected cash flow approach uses from the outset the best estimate of expected future cash flows. This estimate includes any expected reductions in cash flows owing to credit risk. Expected cash flow approach would not involve any trigger or threshold with regard to impairment testing. The requirement of continuously reestimating all the expected cash flows would include any revisions of cash flow estimates that occur under the incurred loss model. In other words, an 'impairment test' is integral to the expected cash flow approach. IASB expects that by eliminating 'triggers' and 'thresholds' with respect to assessing credit losses results in a consistent approach to revisions of cash flow estimates, whether for effective interest rate purpose or assessing credit losses.

Thus, the key difference between the incurred loss model and expected loss model is that the estimates of the future cash flows are not limited by the 'incurred' threshold (of objective evidence of impairment).

Because the expected cash flow approach does not involve a threshold for impairment testing, the interplay between a collective and an individual assessment would be principle based: the type of assessment that better facilitates the cash flow estimate would be used.

Viewed from a different perspective, the basic difference between the two models stems from the way effective interest rate of a financial asset (i.e the rate that exactly discounts future cash flows to the carrying amount of the financial asset) is recognized. Expected Loss Model factors in expected future credit losses while arriving at the effective interest rate as against Incurred Loss Model which ignores the expected future credit losses while arriving at the effective interest rate at the starting point (i.e. the date of origination of loan).

4. Illustration

Suppose a bank grants Rs 1 crore to Mr.X at an interest rate of 10% p.a. and payable in 5 equal annual instalments. The contractual cashflows will be as follows:

Period	Contractual Cash Flow
0	-10000000
1	2637975
2	2637975
3	2637975
4	2637975
5	2637975

As per extant IAS 39 (i.e. incurred loss approach), the Effective Interest Rate arrived at will be the same as the interest rate for the loan i.e. 10%. But, under expected loss approach, the Effective Interest Rate will have to be computed based on expected cash flows, rather than contractual cash flows. Based on past delinquency rates of customer group to which Mr.X belongs, the bank may be expecting a default of 10%, 20% and 30% in years 3,4 and 5. Then, the expected cash flows will be as follows:

Year	Contractual Cash Flow	Expected Defaults	Expected Cash Flows
0	-10000000		
1	2637975	0	2637975
2	2637975	0	2637975
3	2637975	263797	2374177
4	2637975	527595	2110380
5	2637975	791392	1846582

By trial and error, we get the effective interest rate as 5.53435% (i.e. the discount rate that will equate the expected cash flows to the initial loan of Rs 1 crore.).

Now let us compute the interest income and impairment loss that will be recognized in the different years under the two approaches.

Year 1

Interest income recognized in year 1 under the incurred loss model will be Rs 10,00,000/- (i.e. 1,00,00,000 x 10%) and the carrying amount at the end of the year will be Rs 83,62,025/- (i.e. 1,00,00,000 - 26,37,975 +10,00,000)

Interest income will be Rs 5,53,435/- only in the case of expected loss model. Carrying amount will be Rs 79,15,460/- (i.e. 1,00,00,000 - 26,37,975 +5,53,435)

Year 2

Interest income recognized in year 2 under the incurred loss model will be Rs 8,36,203/- [i.e. 10% x 83,62,025] while it will be only Rs 4,38,069/- [i.e. 5.53435% x 79,15,460] in expected loss method.

Carrying amount at the end of Year 2 will be Rs 65,60,253/- (i.e. 83,62,025 - 26,37,975 + 8,36,203) in the case of Incurred Loss Model and Rs 57,15,555/

- (i.e. 79,15,460 - 26,37,975 + 4,38,069) in the case of expected loss model.

Year 3

Suppose 10% delinquency is incurred (as expected). Now, since objective evidence of impairment is present, under the incurred loss model, the estimated future cash flows will have to be computed and discounted at 10%, compared with the carrying amount and the difference provided as impairment loss.

Carrying amount at the end of Year 3 will be Rs 48,42,101/- (65,60,253 - 23,74,177 + 6,56,025). But the present value of expected cash flows is Rs 34,44,628/- as arrived below:

Period	Contractual Cash Flow	Expected Defaults	Expected Cash Flows	Expected Cash Flows Discounted at 10%
4	2637975	527595	2110380	1918527
5	2637975	791392	1846582	1526101
Total				3444628

Thus at Year 3, using incurred loss model, the impairment loss to be debited to Profit & Loss Account will be Rs 13,97,473/- (i.e 48,42,101 - 34,44,628). Since Rs 6,56,025/- will be recognized as interest income, the net debit to profit and loss account in Year 3 will be Rs 7,41,448/-.

Under Expected Loss Model, the interest income that will be recognized will be Rs 3,16,319/- (i.e. 5.53435% of 57,15,555) and the carrying amount will be Rs 36,57,696/- (i.e. 57,15,555 - 23,74,177 + 3,16,319). No impairment loss need be recognized since the loss is as per expectations and there is no change in future expected losses.

Year 4

Suppose 20% default is incurred (as expected). Under incurred loss method interest income of Rs 3,44,463/- (i.e. 10% of the carrying amount of Rs 34,44,628) will be recognized. Carrying amount of loan will be Rs 16,78,712/- (i.e.34,44,628 + 3,44,463 - 21,10,380). Present value of future cash flows will also be the same (i.e. 18,46,582/1.10) and hence no impairment loss should be debited to Profit & Loss Account.

Under Expected Loss Model, the interest income that will be recognized will be Rs 2,02,430/- (i.e. 5.53435% of 36,57,696) and the carrying amount will be Rs 17,49,746/- (i.e. 36,57,696 - 21,10,380+ 2,02,430). No impairment loss need be recognized since the loss is as per expectations and there is no change in future expected losses.

Year 5

Suppose 30% default is incurred (as expected). Under incurred loss model, interest income of Rs 1,67,871/- (10% of 16,78,712) will be recognized. With the receipt of Rs 18,46,582, the carrying amount will be reduced to zero (16,78,712 + 1,67,871 - 18,46,582).

Under Expected Loss Model, the interest income of Rs 96,837 (i.e. 5.53435% of 17,49,746) will be recognized and with the receipt of Rs 18,46,582, the carrying amount will be reduced to zero (i.e. 17,49,746 + 96,837).

The following table summarises the impact on Profit & Loss Account using the two different methods:

Year	Impact on Profit & Loss Account under Incurred Loss Model	Impact on Profit & Loss Account under Expected Loss Model
1	Rs 10,00,000 Credit	Rs 5,53,435 Credit
2	Rs 8,36,203 Credit	Rs 4,38,069 Credit
3	Rs 7,41,448 Debit	Rs 3,16,319 Credit
4	Rs 3,44,463 Credit	Rs 2,02,430 Credit
5	Rs 1,67,871 Credit	Rs 96,837 Credit
Total	Rs 16,07,089 Credit	Rs 16,07,089 Credit

As shown by the above table Expected Loss Model is bound to reduce the volatility of reported earnings compared to Incurred Loss Model. Incurred Loss Model, in the above illustration, has led to overstatement of income in the initial loss, big one time debit to Profit & Loss account in the year of impairment trigger (the loss is overstated in that the original yield, which do not consider the expected loss, is used to discount the future cash flows) and over statement of income in the subsequent years (since the same high in appropriate yield is used to recognize income). Expected Loss Model in fact recognizes income in a manner which is consistent with economic substance of the loan contract.

5. Conclusion

Compliance with the impairment norms of IAS 39 requires build up of data on delinquency rates across various borrower groupings, capability to arrive at reliable estimates of future cash flows and above all the exercise of a lot of judgement on the part of bankers, auditors and regulators. As to the proposed amendments to IAS 39, International Accounting Standards Board expects that the new requirements will not be mandatory before January 2012. Thus, while Indian banks adopt the existing IFRS in April 2011, it may undergo a major revision by January 2012 and accounting/ regulatory bodies will have to take note of this.

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National Company Law Tribunal: Supreme Court Judgement

Dr. K. S. Ravichandran*

Supreme Court clears issues relating to the establishment of National Company Law Tribunal and Appellate Tribunal

The Constitution Bench Supreme Court has finally upheld the constitution of the National Company Law Tribunal (NCLT).

Background

Parts IB and IC were inserted in the Companies Act, 1956 by the Companies (Second Amendment) Act, 2002. Part IB dealt with the establishment of a National Company Law Tribunal [NCLT] and Part IC dealt with the establishment of a National Company Law Appellate Tribunal [NCLAT]. This Second Amendment Act, 2002 received the assent of the President of India on 13/01/2003. In pursuance of the same, the Government of India brought into force Sections 2 and 6 of the Companies (Second Amendment) Act, 2002 w.e.f. 01/04/2003. The primary objective of bringing into force the above two sections alone was to commence preliminary steps towards establishing the National Company.

Law Tribunal and make it operational. The Government of India issued a press release on 04/04/2003 to inform the public that the bringing into effect of Section 6 of the Companies (Second Amendment) Act, 2002 (11 of 2003) will only set in motion all preliminary steps required for establishment of National Company Law Tribunal. Upon establishment of the same a separate Notification regarding constitution of NCLT will be issued. Till such time jurisdiction of Company Law Board will continue to remain unchanged.

In Thiru R.Gandhi v Union of India, the Madras High Court way back in 2004 declared that the constitution of NCLT is not unconstitutional but had stipulated certain amendments to the provisions contained in Parts IB and IC of the Companies Act, 1956 are needed to redefine provisions relating to composition, tenure of the Tribunals, members and their selection, the powers of the President, etc., and to allay the fears about gradual erosion of judicial independence in the special areas for which the Tribunals are created.

On an appeal against the above decision by the Government of India, Supreme Court had referred the matter to a constitution bench which has now upheld the constitution of the NCLT.

Role of NCLT

Presently under the Companies Act, 1956 certain matters require the consent confirmation, and sanction of the Company Law Board [CLB] and certain matters require the consent, confirmation and sanction of the respective High Courts. Further in respect of sick industrial companies, revival and rehabilitation schemes require the approval of the Board for Industrial and Financial Reconstruction [BIFR]. Matters relating to mergers, demergers, schemes of arrangements and compromises and liquidation, winding up and dissolution of companies were under the purview and control of High Courts. Certain litigations and contested matters were under the jurisdiction of the CLB. In order to bring all these matters relating to companies, the Government of India had thought it fit to introduce NCLT as a special tribunal with benches at different places of the country. In addition to advocates, Company Secretaries, Chartered Accountants and Cost Accountants are entitled to appear before the NCLT. Even under the LLP Act, 2008, lot of powers and functions have been conferred upon NCLT.

Repeal of SICA

Consequent upon the move to introduce the NCLT, there was a simultaneous attempt to do away with the system of BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985 [Act 1 of 1986]. Therefore the Parliament enacted the Sick Industrial Companies (Special Provisions) Repeal Act, 1985 in order to do away with the BIFR mechanism. Section 2 of the Repeal Act has not yet been notified. This will also be done once the NCLT gets established and becomes operational.

The Decision of the Supreme Court

In Union of India (UOI) v R. Gandhi, President, Madras Bar Association, and Madras Bar Association v Union of India (UOI), the Constitution Bench of the Supreme Court comprising of Hon'ble Judges K.G. Balakrishnan, C.J., R.V. Raveendran, D.K. Jain, P. Sathasivam and J.M. Panchal, JJ, in Para 56 of their decision dated 11/05/2010, stated as follows:

(i) Only Judges and Advocates can be considered for appointment as Judicial Members of the Tribunal. Only the High Court Judges, or Judges who have served in the rank of a District Judge for at least five years or a person who has practiced as a Lawyer for ten years can be considered for appointment as a Judicial Member. Persons who

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have held a Group A or equivalent post under the Central or State Government with experience in the Indian Company Law Service (Legal Branch) and Indian Legal Service (Grade-1) cannot be considered for appointment as judicial members as provided in Sub-section 2(c) and (d) of Section 10FD. The expertise in Company Law service or Indian Legal service will at best enable them to be considered for appointment as technical members.

(ii) As the NCLT takes over the functions of High Court, the members should as nearly as possible have the same position and status as High Court Judges. This can be achieved, not by giving the salary and perks of a High Court Judge to the members, but by ensuring that persons who are as nearly equal in rank, experience or competence to High Court Judges are appointed as members. Therefore, only officers who are holding the ranks of Secretaries or Additional Secretaries alone can be considered for appointment as Technical members of the National Company Law Tribunal. Clauses (c) and (d) of Sub-section (2) and Clauses (a) and (b) of Sub-section (3) of Section 10FD which provide for persons with 15 years experience in Group A post or persons holding the post of Joint Secretary or equivalent post in Central or State Government, being qualified for appointment as Members of Tribunal is invalid.

(iii) A `Technical Member' presupposes an experience in the field to which the Tribunal relates. A member of Indian Company Law Service who has worked with Accounts Branch or officers in other departments who might have incidentally dealt with some aspect of Company Law cannot be considered as `experts' qualified to be appointed as Technical Members. Therefore Clauses (a) and (b) of sub-section (3) are not valid.

(iv) The first part of Clause (f) of sub-section (3) providing that any person having special knowledge or professional experience of 15 years [the clause actually provided 20 years experience] in science, technology, economics, banking, industry could be considered to be persons with expertise in company law, for being appointed as Technical Members in Company Law Tribunal, is invalid.

(v) Persons having ability, integrity, standing and special knowledge and professional experience of not less than fifteen years [the clause actually provided 20 years experience] in industrial finance, industrial management, industrial reconstruction, investment and accountancy, may however be considered as persons having expertise in rehabilitation/revival of companies and therefore, eligible for being considered for appointment as Technical Members.

(vi) In regard to category of persons referred in Clause (g) of Sub-section (3) at least five years experience should be specified.

(vii) Only Clauses (c), (d), (e), [these clauses provide for appointment of chartered accountants, cost accountants and company secretaries with a minimum of 15 years experience] (g), (h), and later part of Clause (f) in sub-section (3) of Section 10FD and officers of civil services of the rank of the Secretary or Additional Secretary in Indian Company Law Service and Indian Legal Service can be considered for purposes of appointment as Technical Members of the Tribunal.

(viii) Instead of a five-member Selection Committee with Chief Justice of India (or his nominee) as Chairperson and two Secretaries from the Ministry of Finance and Company Affairs and the Secretary in the Ministry of Labour and Secretary in the Ministry of Law and Justice as members mentioned in Section 10FX, the Selection Committee should broadly be on the following lines:

(a) Chief Justice of India or his nominee - Chairperson (with a casting vote);

(b) A senior Judge of the Supreme Court or Chief Justice of High Court - Member;

(c) Secretary in the Ministry of Finance and Company Affairs - Member; and

(d) Secretary in the Ministry of Law and Justice - Member.

(ix) The term of office of three years shall be changed to a term of seven or five years subject to eligibility for appointment for one more term. This is because considerable time is required to achieve expertise in the concerned field. A term of three years is very short and by the time the members achieve the required knowledge, expertise and efficiency, one term will be over. Further the said term of three years with the retirement age of 65 years is perceived as having been tailor-made for persons who have retired or shortly to retire and encourages these Tribunals to be treated as post- retirement havens. If these Tribunals are to function effectively and efficiently they should be able to attract younger members who will have a reasonable period of service.

(x) The second proviso to Section 10FE enabling the President and members to retain lien with their parent cadre/ministry/department while holding office as President or Members will not be conducive for the independence of members. Any person appointed as members should be prepared to totally disassociate himself from the Executive. The lien cannot therefore exceed a period of one year.

(xi) To maintain independence and security in service, sub-section (3) of Section 10FJ and Section 10FV should provide that suspension of the President/Chairman or member of a Tribunal can be only with the concurrence of the Chief Justice of India.

(xii) The administrative support for all Tribunals should be from the Ministry of Law & Justice. Neither the Tribunals nor its members shall seek or be provided with facilities from the respective sponsoring or parent Ministries or concerned Department.

(xiii) Two-Member Benches of the Tribunal should always have a judicial member. Whenever any larger or special benches are constituted, the number of Technical Members shall not exceed the Judicial Members.

Will NCLT come?

The Government is busy in introducing a new company law. Mr.Salman Khurshid, Minister for Corporate Affairs introduced the Companies Bill, 2009 to the Lok Sabha [Parliament] on 03rd August 2009. Recently the Minister had announced that the bill is expected to be enacted by the end of 2010. The bill contains redesigned and improved provisions as regards the role of NCLT.

Clause 395 of the Companies Bill, 2009 states that on the date of the constitution of the NCLT, all matters, proceedings or cases pending before CLB immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act. Similarly all proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to NCLT and the NCLT may proceed to deal with such proceedings either de novo or from the stage before their transfer.

Clause 424 of the Companies Bill, 2009 contained the enabling provision for the dissolution of CLB and its consequential provisions. Clause 424 of the Companies Bill, 2009 states that upon constitution of the NCLT and the Appellate Tribunal, CLB shall stand dissolved.

Conclusion

Even though NCLT has become a near reality, it may take some more time, a year or more, before we see the same functioning. Otherwise NCLT and the Appellate Tribunal will have to be established under the present law and the clauses of the Companies Bill, 2009 will have to be modified! ❑

ANNOUNCEMENT

The Management Accountant - July, 2010 will be a special issue on

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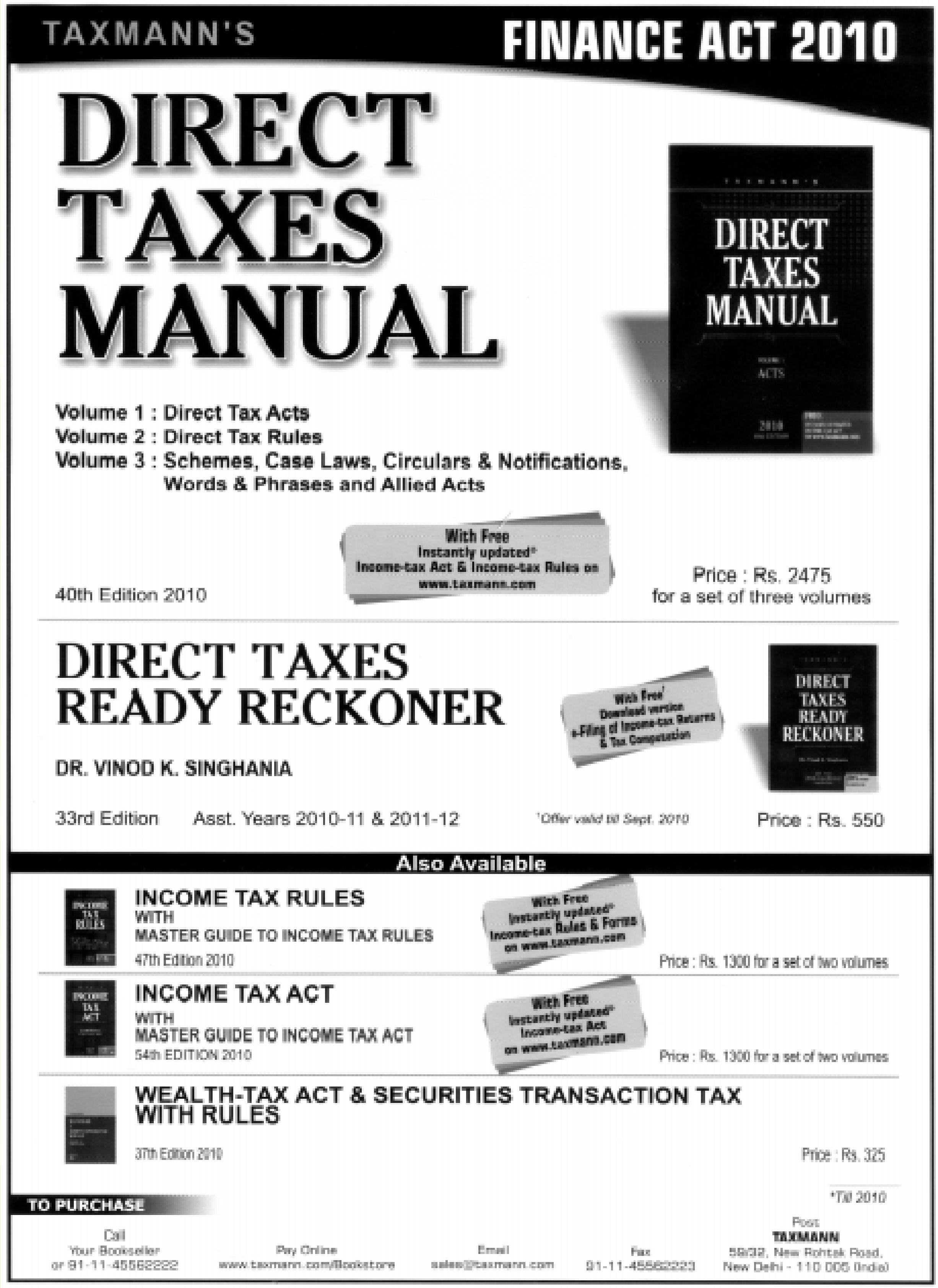

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An Alternative Approach to an Analysis of Standard Cost Variances

Variances, or the differences between budgeted, planned, or standard amounts and the actual amounts incurred or sold, are a critical part of managerial accounting. They give managers a basis for making informed decisions, yet many accounting students have a difficulty with variance analysis. Part of this difficulty may be caused by their manner in which this topic is typically presented in cost/managerial accounting text books.

The case presented in this paper allows students to see the "Big Picture" without being overly complex. While students are required to calculate all variances typically presented in cost/managerial textbooks, they are continuously reminded of the numerous similarities in the computational aspects of these variances. Furthermore, they learn - and understand -alternative methods for computing variances and presenting their solutions.

Ramamohana Rao Guttikonda*

Variances or the differences between budgeted, planned or standard amounts and the actual amounts incurred or sold are a critical part of managerial/cost accounting. This provides managers a basis for making informed decisions, yet many accounting students have difficulty analyzing and understanding of variance analysis. Part of this difficulty may be caused by the manner in which this topic is typically presented in cost/managerial accounting text books. Some text book coverage is disjointed, with brief mentions of flexible budget variances just prior to discussion manufacturing cost variances. Then, in a much later chapter sales variance analysis may be covered with little or no reference to the earlier sections. Discussion of input mix and yield variances may be presented in appendices, if at all.

In addition to these disjointed presentations, text book coverage is often heavily formula driven, offering no alternative methodology. Although some textbooks provide overview tables (and problems) showing the interrelationships of the variances in a particular chapter, comprehensive coverage of variances in the entire textbook is lacking. In other words, there is typically no discussion of how variances covered in earlier chapters may be incorporated with variances covered in the later chapters. Thus, many students fail to see how they are related, as well as the similarities between the computational aspects of some of the variances.

This paper presents a case study to help students better understand variance analysis. The case allows students to see the 'Big Picture' without being overly complex. While students are required to calculate all variances typically presented in cost/managerial textbooks, they are continuously reminded of the numerous similarities in the computational aspects of these variances. Furthermore they learn and understand alternative methods for computing variances and presenting their solutions.

The case requires the students to calculate all the traditional sales variances and the flexible budget variances for the Avanthi Company which manufactures three types of fine pool cues: Good, Better and Best. The only difference is the materials used in their production.

The Avanthi Company

The Avanthi Case (Table I) has five parts. Part I requires students to make several detailed calculations in a table similar to those usually included in text book coverage of flexible budgeting. The Avanthi company table, however, has additional columns to incorporate the sales mix variance and rows both for variable and fixed operating expenses. Because accurate completion of this table is vital for students to fulfill and better understand the remaining requirements students may complete the table manually, but the use of spread sheet package is encouraged as they may clearly observe the computational similarities of each number and thus are better prepared to understand the differences. Students comfortable with a spread sheet package tend to use the copy command and then revise the formula as needed. The completed table appears in table 2, Sales Volume, Sales Mix, and Sales Quantity Variances.

Part 2 of the Avanthi case requires students to detail the calculations of the variances. The Sales volume variance is equal to the difference of contribution margin between the flexible budget (based on actual sales mix and the static budget based on original budgeted sales mix). In table 2, it is simply the difference between the contribution margins (and incomes) in the third column (Actual mix at budgeted dollars) and the seventh column (The Static Budget). The volume variance may be broken down into a mix variance (column three minus column five) and

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the Quantity Variance (column five minus column seven). Some students calculate the respective weighted average contribution margins of $39.60 per unit (actual) and $36.00 per unit (budgeted). Using this information, the solution of the volume variance, mix variance, and quantity variance is presented in Table 3.

The amounts of course agree with those in the solution of Part 1. Students observe that all variable items (sales and all variable costs) increase by 10% because the quantity increases by 10%. Some students explain the 'mix' variance in a little more detail, noting that the $6.00 ($106-$100) increase in the average budgeted sale price times 110,000 units equals the $660,000 sales difference. The variable operating expenses' increase of $0.60 (for the 10% sales commissions based on the higher average price)times 110,000 equals the $66,000 variable operating expense difference and the $1.80 increase in the average budgeted cost of materials due to the change in the sales mix times 110,000 equals $198,000 increase in materials cost. These differences amount for the $3.60 per unit increase ($6.00 - $0.80 - $1.80) in average budgeted contribution margin. Table 4 shows another approach; it is not necessarily simpler but gives students a better view of the underlying cause of the mix variance.

Sales Price Variance

The sales price variance is the $341,000 at the top of the flexible budget variance column in table 2. It is the difference between the actual sales (in the actual mix at actual prices) and the budgeted sales (in the actual mix at budgeted prices). Students are provided with the actual average selling price ($109.10) and the average budgeted selling price based on the actual mix ($106.00) The $341,000 sales price variance comes from the difference between these two averages ($109.10 - $106 = $3.10) multiplied by 110,000 units. Another method is to calculate the variance by multiplying the individual differences in actual and budgeted sales prices times the actual number of units sold and then to prove the mathematical equivalency of the two approaches.

Materials and Labor Variances

The total material variance may be broken down between price and quantity (efficiency) differences while most textbooks present these horizontally. This is typically presented vertically with the actual quantity and prices on the top (using the same format as with the sales mix and quantity variances.) Because the calculations involve costs, positive differences reflect unfavorable variances and negative differences reflect favorable variances. The unfavorable material variance in table 2 ($87,725) is explained in table 5. The labor variance can be presented using the same format as material variances. Table 6 illustrates the $33,000 favorable labor variance.

Variable Overhead Variances

When manufacturing overhead is allocated on the basis of direct labor hours, the variable overhead efficiency variance will be consistent with the labor efficiency variance. A quick way to calculate the overhead efficiency is to multiply the labor efficiency variance by 7/25 (the budgeted variable overhead rate per hour divided by the budgeted labor rate per hour). In this case, the answer would be a favorable $38,500 ($137,500 x 7/25). Table 2 shows the total variable overhead variance is $13,750 unfavorable. Thus, the variable overhead spending variance must be $52,250 unfavorable. The variable overhead variance can be shown in a format similar to the materials and labor variances in table 7.

Fixed Overhead Variances

The fixed overhead spending variance is typically the easiest to compute because both the actual amount and the budgeted amount are known; it is simply a matter of subtracting in the Avanthi case. The actual fixed overhead is $2,150,000 and the budgeted fixed overhead is $2,000.00. The difference of $150,000 is the unfavorable fixed overhead spending variance.

The fixed overhead volume variance represents the under (over) applied fixed overhead. It can be calculated easily by multiplying the budgeted fixed overhead rate by the percentage difference in the number of actual units sold and the number of units originally predicted. If the units produced exceed the original budget, the variance is favorable (more fixed overhead cost allocated/applied than budgeted) and vice versa. Thus, the fixed overhead volume variance in this case is $200,000 favorable ($2,000.000 10%). Because the volume variance in this case is closed to cost of goods sold (or gross margin) this variance does not reflect a difference in the actual income and the static budget income.

Operating Expense Variances

In this case, variable operating expenses were larger than anticipated because of higher sales commissions associated with higher sales prices. Because sales commissions were 10% of Sales prices, the unfavorable variable operating expense variance of $34,100 is equal to 10% of the favorable sales price variance of $341,000. The fixed operating expense variance is similar to the fixed overhead spending variance. It is calculated by subtracting the budgeted fixed operating expenses from the actual fixed operating expenses. In this case, the unfavorable fixed operating expense variance spending variance is $50,000 ($1,050,000 - $1,000,000). Part 3 of the Avanthi case requires students to summarize parts 1 and 2 as previously noted, the fixed overhead volume variance is the only one not used in reconciling the difference between actual income and static budget income.

Market Size and Market Share Variances

Part 4 of Avanthi Company case provides information about the budgeted market size (1,000,000 units) and the actual market size (880,000 units). Students are asked to compute the market size and market share variances.

Avanthi Company budgeted 100,000

units (10% of the budgeted market) but sold 110,000 units (12.5%) of the actual market). Textbook solutions are traditionally much more complex than necessary. For example, using the data from this case, a typical solution would be: Market share = actual market share x (actual market share - budgeted market share) x budgeted weighted average contribution margin per unit = 800,000 (.125-.10) x $36.00 = $792.000 favorable. Market size = (actual market size - budgeted market size) x budgeted market share x budgeted weighted average contribution margin per unit= (880,000 -1,000,000) x .10x$36 = $432,400 unfavorable. Together the market share and market size variances account for the $360,000 favorable quantity variance. To simplify the complex procedure is to focus on the causes of each variance. For example one way to present it is:

Market share = (actual sales in units - 10% of actual market) x $36.00

(110,000 - 88,000) x $36 = $792,000.22,000 x $36 = $792,000 Favorable.

Market Size =(10% of actual market size - static budget) x $36(88,000 -100,000) x $36 (88,000-100,000) x $36 = - $ 432,000 Unfavorable

Another way to present the variances is to note that the market size variance is simply 12% (the decline in market size) times $3,600,000 (the static budget contribution margin) or $432,000 unfavorable. The market share variance is 25% (the percentage increase in the market share from 10% to 12.5%) times $3,168,000 ($3,600,000 - $432,000). An

TABLE 1: THE AVANTHI COMPANY

	SALES UNITS		SALES PRICES	
PRODUCT	BUDGET	ACTUAL	BUDGET	ACTUAL
Good	60,000	55,000	$80.00	$82.00
Better	30,000	38,500	120.00	123.00
Best	10,000	16,500	160.00	167.00
Total/Average	100,000	110,000	100.00	109.10
The average budgeted sales price based on actual mix is $106.00				

	BUDGET	ACTUAL					
Fixed Cost-Overhead	$2,000,000	$2,150,000					
Fixed Cost Operating Expense	1,000,000	1,050,000					
Total	$3,000,000	$3,200,000					
	PRODUCT	BUDGET	ACTUAL	BUDGET	ACTUAL		
MATERIALS	GOOD	$2.40	$2.30	5.0	5.5		
	BETTER	4.80	4.50	5.0	5.5		
	BEST	7.20	6.80	5.0	5.5		
	ALL	Budgeted	and actual	$3.00 per	Unit for a	carrying	case
LABOR	ALL	$25.00	$26.00	1.0	0.95		
VARIABLE OVERHEAD	ALL	7.00	7.50	1.0	0.95		
VARIABLE OPERATING EXPENSE		Budgeted	and actual	10% sales	Commission and	$1.00 per	Unit shipping
REQUIREMENTS:							
	First	Complete	The	Following	Table		
	ACTUAL	FLEXIBLE BUDGET VARIANCE	ACTUAL MIX	MIX VARIANCE BUDGET	BUDGET MIX/ BUDGET	QUANTITY VARIANCE	STATIC BUDGET
UNITS	110,000			110,000	110,000	10,000	100,000
SALES							
MATERIALS							
LABOR							
VARIABLE O/H							
VARIABLE OPERATING							
TOTAL VARIABLE COST							
CONTRIBUTION MARGIN							
FIXED COSTS							
INCOME							

even simpler presentation representing just a minor modification is:

Actual units 110,000 budgeted share of actual market 10% of 880,000) 88,000.

Assuming no beginning nor ending inventories of any kind, show the calculation of the following variances.

Sales Volume Variance

Sales Mix Variance

Sales Quantity Variance

Sales Price Variance

Material efficiency and price variances for each of the three materials and the total material variance

Labor efficiency and price variances

Variable overhead efficiency and spending variances

Fixed overhead volume and spending variances

Variable and fixed operation expense variances

Using the above variances to reconcile the difference between the actual operating income and the static budget operating income.

Assume that the total fine pool cue market was anticipated to be 1,000,000 units. The actual total market size was only 880,000 units. Explain the Avanthi company's quantity variance I terms of market size and market share.

Static Budget Units 100,000

The market share variance ($792,000 Favorable) is simply the difference between the first two numbers (22,000) times the budgeted contribution margin ($36). Likewise, the market share variance is the difference between the

TABLE 2: COMPLETED CALCULATIONS – AVATHI CASE

	ACUTAL $	FLEXIBLE BUDGET VARIANCE	ACTUAL MIX BUDGETED $	MIX VARIANCE	BUDGET MIX/BUDGET $	QUATITY VARIANCE	STATIC BUDGET
UNITS	110,000	-	110,000	-	110,000	10,000	100,000
SALES	12,001,000	341,000	11,660,000	660,000	11,000,000	1,000,000	10,000,000
MATERIALS	2,595,725	87,725	2,508,000	198,000	2,310,000	210,000	2,100,000
LABOR	2,717,000	(33,000)	2,750,000	-	2,750,000	250,000	2,500,000
VARIABLE OVERHEAD	783,750	13,750	770,000	-	770,000	70,000	700,000
VARIABLE OPERATING	1,310,100	34,100	1,276,000	66,000	1,210,000	110,000	1,100,000
TOTAL VARIABLE COSTS	7,406,575	102,575	7,304,000	264,000	7,040,000	640,000	6,400,000
CONTRIBUTION MARGIN	4,594,425	238,425	4, 356,000	396,000	3,960,000	360,000	3,600,000
FIXED COSTS	3,200,000	200,000	3,000,000	-	3,000,000	-	3,000,000
INCOME	$1,394,425	$238,425	$1,356,000	$396,000	$960,000	$360,000	$600,000

TABLE 3: VOLUME VARIANCE, MIX VARIANCE, AND QUANTITY VARIANCE

	QUANTITY	BUDGETED CONTRIBUTION MARGIN	TOTALS
FLEXIBLE BUDGET	110,000	$39.60	$4,356,000
STATIC BUDGET	100,000	36.00	3,600,000
DIFFERENCES	10,000 X $36.00	$3.60 X 110,000	
	$360,000	$396,000	$756,000
	QUANTITY	MIX	VOLUME

TABLE 4: ALTERNATIVE VIEW OF VARIANCES

	ACTUAL UNITS	UNITS AT BUDGET MX	DIFFERENCE	CONTRIBUTION MARGIN/UNIT	
GOOD	55,000	66,000	-11,500	$24.00	($264,000)
BETTER	38,500	33,000	5,500	48.00	264,000
BEST	16,500	11,000	5,500	72.00	396,000
TOTAL	110,000	110,000	-		$396,000

TABLE 5: UNFAVORABLE MATERIAL VARIANCE

		EFFICIENCY	PRICE	TOTAL
GOOD	ACTUAL	302,500	$2.30	$695,750
	STANDARD	275,000	2.40	660,000
	DIFFERENCE	27,500	($0.10)	
	TIMES	$2.40	302,500	
		$66,000	($30,250)	$35,750
BETTER	ACTUAL	211,750	$4.50	$952,875
	STANDARD	192,500	4.80	924,000
	DIFFERENCE	19,250	$(0.30)	
	TIMES	$4.80	211,750	
		$92,400	$(63,525)	$28,875
BEST	ACTUAL	90,750	$6.80	$617,100
	STANDARD	82,500	7.20	594,000
	DIFFERNCED	8,250	($0.40)	
	TIMES	$7.20	90,750	
		$59,400	$36,300	$23,100
TOTAL FLEXIBLE BUDGET MATERIAL VARIANCE		$217,000	$(130,075)	$87,725

TABLE 6: FAVORABLE LABOR VARIANCE

		EFFICIENCY	PRICE	TOTAL
LABOR	ACTUAL	104,500	$26.00	$2,717,000
	STANDARD	110,000	25.00	2,750,000
	DIFFERENCE	(5,500)	$1.00	
	TIMES	$25.00	104,500	
		($137,500)	$104,500	($33,000)

TABLE 7: VARIABLE OVERHEAD VARIANCES

		EFFICIENCY	SPENDING	TOTAL
VARIABLE O/H	ACTUAL	104,500	$7.50	$783,750
	STANDARD	110,000	7.00	770,000
	DIFFERENCE	(5,500)	0.50	
	TIMES	$7.00	104,500	
		(38,500)	$52,250	$13,750

second and third numbers times the budgeted contribution margin (-12,000 x $36= $492,000 unfavorable).

Part 5 asks students to discuss computational similarities between the variances calculated and the calculations involved with strategic analysis of operating income (Growth component, Price-Recovery compo-nent, and Productivity component). While strategic analysis is not 'variance analysis' per se, certainly the computations involved in the growth and price - recovery components.

Exposing Students to A Variety of Approaches

Students could be required to provide the mathematical equivalency of alternative methods and perhaps challenged to offer their own alternatives. More labor variances could be added by including additional classes (and costs) of labor for each product and by having each product exhibit different efficiency variances for materials and labor. Students may provide logical explanations of possible causes of individual variances.❑

NOTIFICATION

Ref. No. DS-3/1/1/10 January 12, 2010

Finance (No.2) Act 2009, involving Assessment Year 2010-2011 will be applicable for the subjects Business Taxation (Intermediate) and Strategic Tax Management (Final) under Syllabus 2002 for the purpose of June 2010 term of Examination.

Arnab Chakraborty
Director-Studies

NOTIFICATION

Ref. No. DS-3/2/1/10 January 12, 2010

Finance (No.2) Act 2009, involving Assessment Year 2010-2011 will be applicable for the subjects Applied Direct Taxation (Intermediate), Applied Indirect Taxation (Intermediate) and Indirect & Direct-Tax Management (Final) for the purpose of June 2010 term of Examination under Revised Syllabus 2008.

Arnab Chakraborty
Director-Studies

Challenges in Implementing Operational Risk Management

Thirunellai Radhakrishnan Anand*

Introduction

All Banks in India have implemented the Basic Indicator Approach for Operational Risks with effect from 31-March-2009. Reserve Bank of India has now announced the timelines for introduction advanced approaches of Basel II Framework in India[1]. The timelines are as follows.

The banks now have to undertake an internal assessment of their preparedness for migration to advanced approaches, in the light of the criteria envisaged in the Basel II document, as per the aforesaid time schedule. However, banks at their discretion, would have the option of adopting the advanced approaches for any of the risk categories, while continuing with the simpler approaches for other risk categories.

In this context, it is sought to analyse the various challenges that banks are likely to face in implementing an operational risk management framework that will support the Standardized Approach or the Advanced Measurement Approach (AMA).

Traditional operational risk management in financial services is driven on four wheels - (1) Risk and Control Self Assessment (RC5A), (2) Loss Data Collection, (3) Key Risk Indicator tracking and (4) Operational Risk Capital Computation.

In each of these areas, there are pockets of ambiguity that can impede smooth implementation of an operational risk management framework. Also, operational risk management is rapidly evolving and therefore, has many loose ends where literature is scarce. This creates many bottlenecks in the smooth implementation of the above framework in financial institutions. Some of these are discussed below.

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The concept of risk

Risk is present when there is a possibility of loss in the future. This means that the loss has not materialized. It also means that there is only a possibility of loss and that loss is not certain. If loss were certain to be incurred, the organization might as well make a provision for the loss in its books of accounts. It is particularly important to understand this concept while doing the operational risk management exercise, because in operational risk management we deal with both realized and potential losses.

How do realized and potential losses compare with expected and unexpected losses? Realized losses are those which have already occurred while expected losses are expected to occur in the future. Potential losses on the other hand are those that are more or less certain to occur in future, though the magnitude of loss remains to be determined.

For example, consider a person who leans out of a 10th storey window. She has a 50% chance of falling over and injuring herself. In case her value to her company is Rs.100 Crores, the company's expected loss would be 50% x 100 - Rs.50 Crores. However, if the probability increased from 50% to 100%, the risk would become zero and certainty would take over. Therefore, existence of risk implies uncertainty of the outcome and once an outcome becomes certain, there is no risk.

This paradigm squarely fits operational risk as defined by the BASEL Committee2, where both expected and unexpected losses are taken into account. Every bank that uses Advanced Measurement Approach (AMA) is required to calculate expected and unexpected losses and the regulatory capital requirement for operational loss will be the sum of expected and unexpected losses, unless the bank can demonstrate that it captures expected losses as a business practice and makes adequate provisions for meeting expected losses.

Key Risk Indicators, Performance Indicators and Control Indicators

How do we deal with overlapping definitions?

There is a large amount of literature on KRIs, KPIs and KCIs. However, in practice there is a fair bit of overlap between these indicators.

For example, consider staff turnover ratio, is it a key risk indicator or a key control indicator? The answer is "it depends" on what you want to track. If you are tracking a key risk indicator, higher staff turnover can indicate trouble. Staff turnover ratio can also be used as a control indicator to judge

[1] Refer RBI Circular No. RBI/2009-10/99 DBOD.8P.BC.No. 23 /21.06.001/2009-10 fhttp://www.rbi.ore.in/scriDts/NotificatignUser.a5Eix?Mode=oa:ld=5167)

Approach	Earliest date of making application by banks to the RBI	Likely date of approval by the RBI
The Standardised Approach (TSA) for Operational Risk	April 1, 2010	September 30, 2010
Advanced Measurement Approach (AMA) for Operational Risk	April 1, 2012	March 31, 2014

Table 1 - Timelines for Implementing Basel II Advanced Approaches for Operational Risk

Figure 1 - Operational Risk Management Framework

whether newly instituted retention efforts are successful. The ratio can also be used as a Key Performance Indicator if reduction in staff turnover ratio is stated as a key objective of the process improvement plan. Therefore, it is important to take the context into account.

However, consider a company that is consciously trying to rationalise headcount. In this case, just higher turnover would not be a sufficient indicator, but the quality and /or level of people leaving the organization would become key risk indicator. This brings in another dimension to the problem in that, key indicators have to be tailored specifically to the individual needs of any organization.

Given this complication, in an operational risk management programme the same set of indicators may crop up in many places under many guises. Such indicators are called "common indicators". The number of audit points is an example of a common indicator. Similarly, the number of customer complaints, turnaround times are common indicators.

Specific indicators as opposed to common indicators are those that are related to a particular process, e.g., number of outstanding trade confirmations can predict losses from the settlement process.

Using such common indicators might work well for most day-to-day operations in financial services, but won't work for many specialized functions, e.g., treasury, lending, etc. Risk managers have to spend time with staff in specialized functions to identify the most critical parameters that govern the performance of these functions and transform them to metrics that can be tracked on a periodic basis.

Comparability of key indicators

While selecting key indicators, risk managers are mostly internally focused. The question often asked is "Which indicators best reflect the inherent and residual risks in the company?" Many a times an equally important question "Can these key indicators be compared with industry benchmarks?" does not get asked. Comparability of key indicators with industry benchmarks is important while using risk management as a tool for gaining competitive advantage.

Initially this challenge may seem too difficult to surmount, particularly in India, where very limited data is published on relevant risk related benchmarks in the financial services industry and the risk manager may find her heretofore healthy-looking list of indicators drastically pruned after applying this criteria. Moreover, various competitors do in fact track the same indicator but name it differently.

Another issue is the calculation methodology, which may be different across the industry. It is therefore important to understand the methodology to compute the indicators tracked by peers. Diligent scanning of annual reports, analyst reports and regulator publications can help in understanding the nuances in calculations that will lend comparability to indicators and also help in augmenting the list of indicators.

Key Indicator Specification

Key Indicators are often selected on the basis of a general understanding of a process or function, usually by department representatives. Implication of methodologies used to compute the indicator is not immediately visible to the risk manager. Even slight changes to the methodology over time can rob the key indicator of comparability. Therefore, it is imperative to specify the computation method for at a sufficient level of detail for each key indicator. Features to be observed in a key indicator, for example, trends like growth decline, cyclical behaviour, value vis-a-vis a benchmark, etc., have to be documented.

For most indicators it is possible to specify "soft" and "hard" thresholds. A soft threshold is one which invites management action when breached. Management action is directed towards restoring the indicator within the soft threshold. A "hard" threshold is not expected to be breached except when the company is in severe stress.

Thresholds directly relate to the risk appetite of a company. A company that has a higher risk appetite can allow the indicator to fluctuate in a larger band, while a company that is relatively risk averse is likely to have a narrow band. Consequences of breach of indicator thresholds need to be articulated.

The audience for key indicators could be spread across the company across levels. Therefore, it may be necessary sometimes to segregate the indicators into different categories and tailor them to the nature of the audience.

[2]BASEL Committee defines operational risk as the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events. This definition includes legal risk, but excludes strategic and reputational risk.

This can best be achieved through a business intelligence solution, where users can view reports that are relevant for them. This can also facilitate integration of risk management into the day-to-day decision making and move the organization a step closer to the "use test"3 postulated by regulators.

Given below are some of the key indicator specifications that are important

- Description of the indicator
- Data source
- Frequency of indicator collection and analysis
- Computation steps to arrive at the indicator
- Thresholds (minimum / maximum) of the indicator and interpretation of each level
- Audience
- Management action in case of breach of thresholds

Loss Data

Collection of loss data presents unique challenges. There are unique practices followed by financial institutions in collecting, analyzing, reporting and monitoring operational losses. A cross-section of areas where there are continuing ambiguities are analysed.

Operational Loss Categories

One of the pain points is to define the boundary of operational risk related loss. Classification of a loss as operational risk requires detailed analysis of the root cause. In many cases, losses are reported several months after the date of actual occurrence that adds to the fuzziness. To surmount this obstacle, it is always advisable to first compile a long list of operational loss examples mapped to their respective risk categories. One such illustrative list is presented at the end of this article.

Loss that affects more than one business line

Basel Committee on Banking Supervision (BCBS) has defined eight business lines to which operational losses have to be mapped. The Basel-defined business lines are

- Corporate Finance
- Trading £t Sales
- Retail Banking
- Commercial Banking
- Payment & Settlement
- Agency Services
- Asset Management and
- Retail Brokerage

The purpose of classification of loss into these lines of business is to calculate operational risk capital requirements separately for each of the business lines and aggregate them to the company level.

However, if a loss event affected two or more lines of business, how should the loss be apportioned to each line? Though some banks use other measures like number of employees, number of offices, etc., gross income of each business line seems the most likely candidate for allocation. Basel Committee also uses gross income as a broad indicator that serves as a proxy for the scale of business operations and the likely scale of operational risk exposure within each of these business lines.

Negative Losses (Profits) from operational risk events

Though not very frequent, it is possible that some of the operational risk events will generate profits, instead of losses. Should these losses be netted off from total operational loss or ignored? Current practice in banks is to recognize that profits from operational risk related events indicate weak controls and initiate steps to strengthen the controls. However, the profits are not used for any further quantitative analysis, i.e., the treatment is akin to near misses.

Gross Loss versus Net Loss

Unlike credit risk where risk mitigation is possible through collaterals and guarantees, the only protection for operational risk is a strong control process. Once the risk materializes and the organization suffers a loss, a process to recover the loss is set in motion. The following questions arise in this context.

[3]"It is important that the internal model is actively used to support decision making. Internal models should be integrated into all risk management and business processes, i.e. capital allocation, performance measure-ment, pricing, etc." - Internal Model Admissibility - Principles and criteria for internal models by CROFORUM, April 2009

While modeling operational losses for computing operational risk capital do we include recoveries and model the net loss or do we take only the gross loss? Also will any capital arbitrage be available with respect to recoveries?

Unlike credit risk, where it is possible to model loss given default and recovery rate as a function of credit rating and market value of assets of a firm, it may not be possible to estimate recoveries. Also in case of credit risk, in most cases, there is a clear lender-borrower relationship with the lender enjoying a legal right to recover money from the borrower, while in operational risk only in limited cases can such a right be established. Recoveries can vary randomly, depending on the circumstances of each loss and no regular pattern for recoveries can possibly be observed in many cases.

Some practitioners do assert that net operational losses give a fair sense of the inherent strength of a company's recovery processes and therefore, it is fair to use net losses for operational risk capital computation.

Some others argue that recoveries distort the effect of pure operational loss, while in many operational losses no recoveries are possible (e.g., losses related to transaction processing, systems, etc.). Also the organization incurs significant expenses for infrastructure and other processes to support recoveries and after accounting for such expenses size of recovery can be insignificant. This method may thus understate the amount of operational risk capital requirements. Also it puts unnecessary load on the system to track recoveries over an indefinite horizon.

This argument is supported by the following data collected by US Federal Bank and thrift regulatory agencies in 2004[4]. The results of the study that concerns recoveries is as follows.

The first column reports the number of losses with a recovery as a percentage of the total number of losses in the sample. The second column reports the recovery rate, which is defined as the dollar amount recovered as a percentage of the total loss amount for all losses associated with a recovery.

	No. of Losses with Recoveries as a Percentage of all Losses	Recovery Rate for Losses with Recoveries	Amount Recovered as a Percentage of Total Loss Amount
All Losses	8.4%	59.5%	5.0%
All Losses > $10,000	2.2%	63.8%	5.4%

Table 2 - Recovery Rates on Operational Losses

The third column reports the dollar amount recovered as a percentage of the total loss amount for all losses in the sample. The actual amount recovered as a percentage of total loss is very negligible as compared to the total operational loss amount.

However, it would only be fair if a company gets to enjoy the fruits of a strong post-event recovery process that it has put in place. Therefore, it would be beneficial to track recoveries and adjust for such recoveries while computing the capital requirements.

Let’s go with the argument of the latter set for a moment and ask the question - what use is a recovery if it happens, say, two years after the loss has occurred? To surmount this issue, it might be beneficial to adjust the recoveries by discounting them to their present value using the company’s weighted average cost of capital. Also any other expenses that have been incurred in the recovery process should be netted off from the amount recovered.

Quick Recoveries

There may be some cases where a loss occurred, but there was a quick recovery. For example, wrong debits or credits to client accounts, incorrect inter-bank remittances, etc., can occur, but could be recovered quickly, say on the same day. Should these be treated as gross losses for the time period they were open?

For dealing with this issue, some banks differentiate between client accounts and proprietary accounts. In case of inter-banks remittances only those amounts that remain overnight are recognized as gross operational losses. In case of client accounts however, even intra-day open positions arising due to wrong credit and debits are counted as gross operational losses.

Some other banks do not differentiate between client accounts and proprietary accounts and recognize gross loss when there an intra-day exposure arises.

The latter approach is more comprehensive and does not speculate on possibility of recoveries while assessing the loss.

Capital Computation - choice between regulatory approach and internal models approach

Even though BCBS has made it lucrative for banks to adopt internal model based approaches to avail of reduced capital charges, many banks (particularly the smaller ones) still believe that putting in place a data collection, analysis and management infrastructure along with robust capital estimation methodologies do not give sufficient return on the investment. The following reasons further contribute to this belief.

- As capital measurement approaches are still evolving, the most effective approach to capital measurement is unclear.
- On the other had, the simplicity of the Basic Indicator and Standardized Approaches do have attraction for many banks, even though the approaches may not fully reflect their specific risk profiles.
- There are rigorous standards and supervisory approval requirements for internal model based

[4]Results of the 2004 Loss Data Collection Exercise for Operational Risk, US Regulators, May 2005

[5]A limitation to this study that the analysis Is based on publicly available loss information and does not consider historical internal losses or internal controls.

[6]Execution, Delivery, and Process Management, Employment Practices and Workplace Safety, Business Disruption and System Failures, Clients, Products and Business Practices, Internal Fraud, External Fraud, Damage to Physical Assets

approaches, which some banks may not be able to meet.

- It is also possible to have a dichotomy with the organization, whereby the some advanced techniques and enhancements can be used, while choosing not to follow the Advanced Measurement Approach.
- A recent publication (April 2009) by a well-known research and consulting firm suggests that Basic Indicator and Standardized Approaches underestimate the extent of operational loss when compared with internal models calibrated to 99.9% confidence level for all but the largest banks[5].

As such, there is no clear winner between internal models and regulatory approaches as of now.

Loss Distribution Approach - key assumptions

The Loss Distribution Approach (LDA) has emerged as one of the widely used statistical methods to derive operational risk capital charge. The essence of the loss distribution approach is to measure frequency as a Poisson process and severity as any one or a mixture of Lognormal, Generalized Pareto or Gamma distributions.

Operational risk events often produce losses that are heavy tailed which are extremely unpredictable. Therefore, distributions that have a central tendency (like the normal distribution) are seen to be inadequate to predict operational loss severity. Therefore, non-normal distributions like the Weibull, Generalized Pareto and Gamma distributions which are skewed to the right are used to model operational loss severity.

As these distributions are used to capture the tail of loss events that represent large losses they are very sensitive to the underlying data set. There are some key issues that need to be borne in mind before building the model and analyzing the results.

- Completeness of loss data - A key assumption in LDA is that loss data has been systematically collected and covers all material losses that occurred in an organization. This however, is far from the truth for most companies, particularly the ones that have no experience of loss data collection and aggregation or whose systems are not geared to meet the challenge of operational loss identification, collection and reporting. This is one of the reasons why the BCBS has prescribed that the bank's AMA will be subject to a period of initial monitoring by its supervisor before it can be used for regulatory purposes. Similarly, BCBS also prescribes that "internally generated operational risk measures used for regulatory capital purposes must be based on a minimum five-year observation period of internal loss data". However, to first adopt AMA, a three-year historical data window is acceptable.
- Completeness of sample - Meaningful results from IDA require a large sample of observations under the soundness standards postulated by BCBS. However, many organizations, particularly smaller ones, are unlikely to have an internal loss database with observations that enable them to model the full range of possibilities. Therefore, they most likely have to rely on industry-level loss data from external databases, which brings with it a further set of problems like heterogeneity of activity, different risk profiles of different banks, size and scaling.
- Fragmentation of losses - The fragmentation effect will distort the severity and the frequency distribution, leading to spurious results.
- Commingling of data among risk categories - In some cases it may be very difficult to separate the credit risk, market risk and operational risk strands and as such, the underlying data may reflect credit risk and market risk properties (both of which can be modeled using the normal distribution). In such cases the right skewed distributions (Weibull, GPD, Gamma, etc.).
- Dependence and correlation between business lines / risk categories - In the BASEL II methodology, 7 risk categories6 and 8 business lines have been identified. It is envisaged that losses will be modeled for each of the categories within the business lines, thus generating 56 individual operational loss estimates. Simple sum of these loss estimates will add up the organizational level operational risk capital requirement. Banks are nevertheless offered the possibility to estimate and to account for partial dependence by appropriate techniques. However, dependence between operational risks is at best very fuzzy. Also, it is not very clear whether the dependence should be modeled using correlations between severity or frequency or the aggregate distribution. In a paper published in 2004, Frachot et al do mention that Basel Committee meant that aggregate loss distributions should be tested for dependence.

Conclusion

Operational risk management is an evolving field where several financial institutions, central banks and consulting firms are contributing to the knowledge base every day. It is sought to highlight some of the practical issues in implementing an operational risk management framework.

A majority of the highlighted issues emanate from the fact that financial institutions historically had no incentive to collect and analyse data related to operational risks and therefore, this area was partially neglected. Operational risks were managed intuitively as "residual risks" that were left over after mitigating the "main" risks, i.e., credit, market and insurance risks. This has led to structuring of processes and organizational structures that are not quite conducive to operational risk management.

Emerging solutions to these issues will indeed determine how operational risk management and measurement is shaped in future.❑

Regional Rural Banks and Prudential Norms - An Overview

R. Suresh*

The concept, regional rural bank was an outcome of the Narasimham Committee's recommendation in the year 1975 was opened in the rural mass for the purpose of reaching the unreached. These regional rural banks, in the present scenario play a vital and essential role that supports the economic development of India. This paper attempts to trace the history of regional rural banks in India.

Financial Sector Reforms in India

In India, financial sector reforms were introduced in the early 1990s. It was at the centre stage of the economic liberalization. Mainly it was to administrate the following two crises involving the financial sector.

In addition to the above crises, there were so many deeper problems of the Indian Economy emerged for the financial sector reforms which are categorized as below.

*The financial crisis induced by administered interest rates pegged at unrealistically low levels.

*Large scale pre-emption of resources from the banking system by the government to finance its fiscal deficit.

*Excursive structural and micro regulation that inhibited financial innovation and increased transaction costs.

*Relatively inadequate level of prudential regulation in the financial sector

*Poor developed debts and money market and

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*Outdated technological and institutional structure that made the capital markets and the rest of the financial system highly inefficient.

The financial sectors reforms in India have their origin in the following three reports.

1) World Development Report 1991 - an annual report of the World Bank, which led to a market-friendly approach for economic development.
2) Report of Agricultural Credit Review Committee (ACRC) conducted by the Reserve Bank of India under the chairmanship of Mr. Khushro.
3) Report of the High Power Committee appointed by the Government of India to review the financial system of India under the chairmanship of Shri. Narasimham.

In the above three reports, Khurshro committee gave the following five building blocks for the future agricultural credit system.

*A market - based and not an over - administered banking system.

*The need for credit allocation

*A two -category solutions consisting of

i) Free structure of interest rates

ii) Administered rates for specialized categories of borrowers.

*Avoidance of popularism.

*The government to bear the cost of infrastructure and mandatory programmes.

In addition to the above items the Khushro Committee gave two specific recommendations leading to structural changes in rural banking related to

i) Mergers of the Regional Rural Banks with Sponsor banks and

ii) Establishment of the National Cooperative Bank of India.

Earlier to financial sector reforms the situation of the Indian financial System was far from satisfactory. The viability of the rural banking institutions had become a major concern. It was very well recognized that the viability of the rural banking was largely affected by three elements, namely, rate of interest, cost of operation and recovery performance. Kushro Committee made a detailed analysis of the determinants of viability in rural banking. It analyzed the implications of the elements such as financial, transactions, risk costs, income and margin which are to be tackled by interest rate structure, cost centre and recovery of overdue.

The high power committee under the chairmanship of Shri. Narasimham made the following recommendations, which consists of direct and indirect bearing on flow of funds to rural areas and also affect the structure or functioning of rural banking institution.

i) Phased reduction in the statutory liquidity ratio to 25% over a period of five years.

ii) Reduction in cash reserve ratio from its present high level.

iii) Phasing out directed credit programmes and redefining the priority sector- directed credit programme covering a redesigned priority sector, consisting of small and marginal farmers, tiny sector of industry, small business and transport operators, village and cottage industries, rural artisans and other weaker sections. The credit target for the redefined priority sector was recommended to be 10% of aggregate book credit, which according to the committee would be broadly in line with the credit flows to these sectors at present. It is also recommended that a review should be conducted at the end of three years for the credit programmes implemented.

iv) Setting up of special tribunal to speed up the process of recovery of loans.

v) Establishment of an Asset

Reconstruction Fund to take over from banks and financial institutions a portion of their bad and doubtful debts at discount.

vi) Restructuring of banking systems in the context of rural banking.

vii) Setting up of one or more rural banking subsidiaries by each public sector bank to takeover all its rural bankers.

viii) Permitting regional rural banks to engage in all types of banking business, abolition of branch licensing policy and leaving the matter of opening or closing of branches to the commercial judgments of individual banks.

The financial sector reforms in general and also in the context of rural credit systems has the following major elements namely

i) Structural dimensions.

ii) Capital base

iii) Viability aspects like interest, cost and recovery.

iv) Management issues.

v) Human resource development

vi) Legal system and

vii) Monitoring.

The main objectives of the financial reforms in India are

a) To eliminate and to remove the depressions that existed earlier.

b) To create an efficient productive and profitable financial sector industry.

c) To enable price discovery, particularly, by the market determination of interest rates that then helps in efficient allocations of resources.

d) To provide operational and functional autonomy to institutions.

e) To prepare the financial systems for increasing international competition.

f) To open the external sector in a calibrated fashion.

g) To promote the maintenance of financial stability even in the face of domestic and external stocks.

The financial sector reforms in India was carried in three forms as

i) Banking sector reforms

ii) Reforms in the government securities market.

iii) Reforms in foreign exchange market.

Banking Sector Reforms

The financial sector reforms provided the necessary platform for banking sector to operate on the basis of operational flexibility, functional autonomy, thereby enhancing efficiency, productivity and profitability. The banking sector reforms undertaken in India from 1992 onwards were basically aimed at ensuring the safety and soundness of financial institutions and at the same time at making the banking system strong, efficient, functionally diverse and competitive. The reform included measures for arresting the decline in productivity, efficiency and profitability of the banking sector. Expanding reforms activity of the banking sector is now under process. The banking system, by far, the most dominant and vital segment of financial sector, accounting to 80 percent of the funds flowing through the financial sector and it is appropriate that reform measures taken in this area have followed the recommendation of the Committee on the Financial System (CFS), which reported in November 1991. The recommendations aim at improving the productivity efficiency and profitability of the banking sector on the other hand, providing it greater operational flexibility and functional autonomy in decision making. The main aim of banking sector reforms is to maintain the standard of the banks of India at international level.

The nationalization of banks witnessed a phenomenal expansion in the geographical coverage and functional spread of Indian banking and financial system. The development of the financial sector is a major achievement and it has contributed significantly to the increase in savings rate, particularly of the household sector.

Impressive achievements in resource mobilization and in extending the credit reach, several distortions have over the years, crept into the banking system. As a result, productivity and efficiency of the system have suffered. Its portfolio quality has badly deteriorated and profitability has been evaded. Several public sector banks and financial institutions have become weak financially and some public sector banks have been incurring losses continuously. The customer services became poor, that work technology outmoded and they are unable to meet the challenges of a competitive environment. After having a penetrating view, the Government of India set up a high level committee, headed by Shri. M. Narasimham, a former Governor of Reserve Bank of India to examine all aspects relating to the structure, organization, functions and procedures of the financial system. The committee submitted its report in November 1991. The committee identified the following two causes for the poor financial shape and low efficiency of public sector banks and financial institutions.

i) Extensive degree of centralized control of their operations in terms of investments, credit allocation, branch expansion and even internal management aspects of business and

ii) The systems have been subjected to political interference: as a result, these institutions have failed to operate on the basis of the commercial judgment and in the frame work of internal autonomy. The high level committee gave the following recommendations, which are the contours related to the banking sectors reforms, after identifying the drawbacks and pit fall factors, which led the banking sector to mass failure.

Outlines of Banking Sector Reforms

a) Creating an enabling environment for banks to overcome the external constructs related to administered structure of interest rates, high levels of pre-emption in the form of reserve requirement (namely statutory liquidity ratio, cash reserve ratio) , and credit allocation to certain sectors. Interest rate deregulations have an important component of the reform process which has imparted greater efficiency to resource allocation.

b) Granting of operational autonomy to public sector banks, reduction of public ownership in public sector banks by allowing them to raise capital from equity market up to 49 percent of paid-up capital.

c) Implementing the prudential norms for the purpose of prudential system of recognition of income, classification of assets and provisioning of bad debts, to ensure that the books of the banking reflect their financial position more accurately and in accordance with internationally accepted accounting practices to maintain the standard of the basis at international level for fit and proper position.

d) Transparent norms for entry of Indian private sector, foreign and joint-venture banks and insurance companies, permission for foreign investment in the financial sector in the form of Foreign Direct Investment (FDI) as well as to diversify product portfolio and business activities.

e) Setting up of people's court - popularly known as Lok-Adalats, debt recovery tribunals, asset reconstruction companies, settlement advisory committees, corporate debt restructuring mechanism for quicker recovery and restructuring promulgation of Securitization and Reconstructions of Financial Assets and Enforcement of Securities Interest (SARFAESI) Act and its subsequent amendment to ensure creditors rights.

f) Setting up of INFINET - as the communication backbone for the financial sector, introduction of Negotiated Dealing System (NDS) for screen - based trading in government securing and Real Time Gross Settlement (RTGS) system.

Multi Agency Approach in Banking Sector

Banking sector is an essential part of the Indian economy. The rural economy occupies a major part of the Indian economy which is an important driver of the country's economy as a whole. The rural economy includes agriculture, trade, commerce, industry and other productive and service activities like small and marginal farmers, agriculture labourers, artisans and small entrepreneurs. In the early period before banking concept came into force individual money lenders and indigenous bankers came forward to give financial assistance to the above poor. However, they levied more interest and incidental and other charges, which swallowed the tiny, small and medium land farmers, small industrialists and entrepreneurs. In this situation, naturally the government came in to the picture to help them by giving financial conveyance with very low benefits. It was executed by the government through four channels. It is known as multi agency approach to credit to sub serve the needs of the input-intensive agricultural strategy which had initially focused on "betting the strong".

A country of India's size, diversity and complexities of development would naturally need an institutional credit setup which can cater to the vast diversified and genuine needs of credit. The composition and structure of rural financial institutions are reflecting the concern and efforts of the policy makers in making the demand of rural credit. The rural credit financial institutions are primarily divided into two categories namely

i) Apex level Institution which controls the Primary Lending Institutions and includes Reserve Bank of India, National Bank for Agriculture and Rural Development, National Cooperative Bank of India and Small Industries Development Bank of India, and

ii) Primary Lending Institutions which are known as multi agency. The primary lending institutions comprise of four sets of institutions namely,

a) Commercial Banking
b) Local Area Banking
c) Co-operative Credit / Banking Institutions and
d) Regional Rural Banking.

In this context, it is relevant to discuss about regional rural banking.

Regional Rural Banking

Until recently, we know, India is an agrarian country. As said earlier, the main produce, which occupies more percentage in the gross domestic product, is agricultural income. Next to it, income from trade and industries come in the gross domestic product. It shows that agricultural income is the main revenue to India. India is a so-called developing country. Agricultural businesses are taking place mostly in villages of India. To develop the economic condition of India, it is essential to develop the village economy because the growth of rural economy is one the important growth drivers of the economy as a whole. It can be done by providing, "for the purpose of the development in agriculture, trade, commerce, industry and other productive and service activities in rural areas, credit and other facilities, particularly to small and marginal farmers, agricultural labourers, artisans and small entrepreneurs, and for matters concerned therewith and incidental thereto".

In early periods, to support the above-mentioned low-income earning peoples many individual moneylenders and indigenous bankers came forward. However, they levied exorbitant interest and other charges, which are unaffordable and unbearable squeezed the small and marginal, medium level farmers and entrepreneurs. In this situation, naturally the government supported them by opening banks and co-operative institutions. It is really a pathetic condition to small and marginal level farmers and entrepreneurs in India to sustain their position in the business due to financial crisis and competitions with big shots doing the similar business in a large scale.

Thanks to Prof. Muhammad Yunus a Bangladeshi, the father of Self Help Groups, he who also introduced the concept "Rural Banking" to serve the needy poor. To help them a concept credit to rural poor was introduced by the Government of India.

This was exercised by starting banks with the name of Regional Rural Banks, in addition to commercial banks and cooperative institutions. They three are inter-related with each other in the name of multi agency approach. It was found that the bankers and co-operative institution were not sufficient to support the requirement of rural credit. In 1954 the All India Rural Credit Survey Committee, headed by Mr. A.D. Gorwala gave recommendations in this regard. The report was submitted in August 1954.

The survey exposed the utter insignificance of co-operatives in providing rural credit. Essential measures in larger level rather than small administrative, functional or other changes were required to ensure the success on co-operative credit institutions and enable them to become self-supporting.

The state tendency in the past had been to over-control and under-finance the co-operative movement, but the report pointed out the need for an integrated system of co-operation and rural credit. In this situation, regional rural banks were formed to provide access to low cost banking facilities to low-income gaining poor. They came into existence before three decades in the Indian financial structure. The inception of the regional rural banks which are shortly known as Regional Rural Banks in the year 1976 can be seen as a unique experiment as well as experience in improving the efficacy of rural credit delivery mechanism in India.

It was a recommendation to start the regional rural banks given in the year 1975 by Shri. M. Narashimam Working Group Committee. In their recommendation, they said to "combine the local feel and the familiarity with the rural problems, which the co-operatives possess and the degree of business organization, ability to mobilize deposits, access to control money markets and modernized outlook, which the commercial banks have". For this purpose, to strengthen those in rural areas the regional rural banking system was introduced. They were formed to meet the excess demand for institutional credit in the rural areas, particularly among the socially and economically marginalized and deprived sections to improve the efficiency in rural credit delivery mechanism. Based on the recommendations an act was passed in the Parliament during the year 1976 namely, "The Regional Rural Bank Act, 1976." The multi-agency approach to rural credit was also to sub-serve the needs of the input-intensive agricultural strategy, which had initially focused on "betting the strong". The regional rural banks act, 1976, succinctly sum up the overall vision to sub-serve both the developmental and redistributive objectives.

These regional rural banks are functioning with the support of the commercial banks that are technically termed as 'sponsor bank'. The equity capital of the regional rural bank is to be shared among the Central Government, State Government and by its Sponsor Bank in the proportion of 50:15:35 respectively.

The regional rural banks popularly known as small man's bank have taken the deep roots and have become a sort of inseparable part of the rural economy. It plays a vital and essential role in the rural institutional financing for agricultural credit in terms of geographical coverage, with friendly approach and contributes more for the development of rural economy.

During the inception there were only six regional rural banks having 17 branches covering 12 districts. At the end of the year, 1980 there was an increase to 85 regional rural banks having 3,279 branches. It was noticed in the year 1985 that there were 188 regional rural banks having 12,606 branches. As on March 2004, it showed a greater growth in regional rural banks having a large number of branches in rural areas forming 42 percent of total branches of commercial banks. There were 196 regional rural banks with 14,747 branches covering 518 districts across the country. Due to the initialization of the process of amalgamation of regional rural banks by the Government of India with effect from September 2005 in terms of Section 23A of the Regional Rural Banks Act, 1976, the number of regional rural banks declined to 91 operating in 26 States across 585 districts with a network of 14,788 branches as on March 31, 2008. With further amalgamation, and formation of a regional rural bank in Union Territory of Puducherry, the total number of regional rural banks declined to 88 as on May 2008.

Recent Changes in Regional Rural Banking by various committees

Recently, the performances of regional rural banks are not heartening all over India. The performance resulted with more losses and they have more non-performing assets. The financial viability of regional rural banks attracted the attention of the policy makers from time to time. In this regard, various committees were formed to observe the performance of them.

Committee to Review Arrangements for Institutional Credit for Agricultural and Rural Development (CRAFICARD) gave its recommendations in the year 1981 that "loss incurred by the regional rural banks should be made good annually by the shareholders in the same proportion of their share holdings". It was not accepted. But at the same time, under a scheme of recapitalization, financial support was provided by the share holders in their proportion of share holdings. In the year 1984, Kelkar committee gave recommendation that small and uneconomic regional rural banks should be merged in the interest of economic viability. After five years, in the year 1989, Kushro committee pointed out the same recommendation in a different way that "the weakness of regional rural banks is endemic to the system and non-viability is built into it, and the only opinion is to merge the regional rural banks with the sponsor banks. Then only the objective of serving the weaker sections effectively could be achieved only by self-sustaining credit institutions".

In 1994, Bhandari committee recommended for comprehensive restructuring of regional rural banks and greater devolution of decision-making power to the board of regional rural banks in the matter of business development and human resource matters. In 1996, Basu committee mooted the opinion of liquidation on revamping of regional rural banks. Thingalaya committee gave another similar suggestion in the year 1997 that very weak regional rural banks should be viewed separately and possibility of their liquidation may be recognized. They might be merged with neighbouring regional rural banks.

Vyas committee-I, the expert committee on rural credit gave its opinion that the sponsor bank should ensure necessary autonomy to their regional rural banks in their credit and other portfolio management system. In the year 2003, Chalapathy Rao committee recommended that the entire system of regional rural banks may be consolidated while retaining the advantages of regional characters of these institutions. The sponsoring banks may include other financial institutions for the support.

The Purwar committee laid basement for the better performance of regional rural banks in the year 2004. It recommended the amalgamation of regional rural banks by way of vertical and horizontal merges. Finally, in the year 2005, Sardesai committee gave its recommendation that "to improve the operational viability of regional rural banks and take advantage of the economies of scale, the route amalgamation/mergers of regional rural banks may be considered taking onto account the views of various stakeholders".

It also recommended that change in sponsor banks may, in some cases help in improving the performance namely improve the competitiveness, work culture, management and efficiency of the concerned regional rural banks. In addition to that, in order to impart viability to the operations of regional rural banks, the Narashimam committee suggested that the regional rural banks should be permitted to engage in all types of banking business and should not be forced to restrict their operations to the targeted groups. This recommendation became a turning point in the functioning of the regional rural banks, which uplifted the position of them. Simultaneously, prudential norms were introduced to maintain the standard of regional rural banks equivalent to international standard. Due to these recommendation-amalgamation/mergers, regional rural banks in India were undergone on this action.

Due to the initialization of the process of amalgamation of regional rural banks by the Government of India with effect from September 2005 in terms of Section 23A of the Regional Rural Banks Act, 1976, the number of regional rural banks declined to 96 operating in 26 States across 585 districts with a network of 14,957 branches as on March 31, 2008. With further amalgamation, and formation of a new regional rural bank in Union Territory of Puducherry, the total number of regional rural banks declined to 88 as on May 2008. Ineffective and inefficient operation and policies adopted made to face a setback. The main reason for merger and amalgamation is poor performance of loss making. To strengthen the regional rural banks the policy makers suggested them to enter into the activities where a commercial bank does. In addition to that, during the reform period, adoption of prudential norms in the regional rural banks was insisted to place the regional rural banks that they maintain the international standard. For the better performance, to ease the effective control over them the loss making banks were merged. In addition to that recapitalization funds were provided to write-off the accumulated losses of loss-making regional rural banks. It was for the purpose of cleansing the balance sheet of such regional rural banks.

Prudential Norms as applicable to Regional Rural Banks

In order to reflect a bank's actual financial health in its balance sheet stringent prudential regulations until recently have been stack in the Indian banking system. There has been deterioration in the quality of loan portfolio, which in turn affected the banks income generation and enhancement of their capital funds. The inadequacy of capital funds has been accompanied by inadequacy of loan loss provision Major element of the financial sector reforms has been the introduction of prudential norms and regulation aimed at ensuring the safety and soundness of the financial system, imparting operates transparency and accountability in operations and restoring the credibility and confidence in the Indian financial system. The prudential norms service in two angles viz. to bring out the true position of the bank's loan portfolio and helps to arrest deterioration.

The Reserve Bank of India vide its circular, dated 27.04.92 advised all scheduled commercial banks to implement the recommendation of the Narasimham committee on prudential norms and regulations. The circular was effective to important by all scheduled commercial banks except regional rural banks. Later Reserve Bank of India issued detailed guidelines in March, 1994 on prudential norms.

It led that all the regional rural banks should adopt the prudential norms as applicable to scheduled commercial banks, to bring up the regional rural banks equivalent to international standard.

Income Recognition Policy

The term "Income Recognition" is very crucial to banks for which interest, discount, dividend, commission on exchange are major sources of income. This concept country around the question whether a particular income should be taken to profit and loss account or not. It is concerned with the recognition of revenue arising in the course of the normal activities of the bank. The revenue should be recognized, provided that at the time of performance, it is not unreasonable to expect ultimate collection. The uncollected revenue should be postponed to that extent. It aims to include the items which are collected in a particular period in the particular period of profit and loss a/c. Receivables are to be termed as Past due.

The Reserve Bank of India in its circular, DBOD BP.BC 59/21. 01-043-92, dated December 17, 1992 introduced the concept past due with respect to payment of interest and installments. The circular stated that "It has been decided, taking into account the practical problems involved in the Indian Context that an amount should be considered "Past due" when it remains outstanding for 30 days beyond the due, date. Thus, while interest may become due on say 31 March, 1992, it becomes "Past due on 30 April, 1992". The terms 'due', 'overdue', and 'Past due' are already in wage. Each bank has its own meaning assigned to these terms. The April 1992 circular of Reserve Bank of India used the word 'Past due' while defining a non-performing asset in the context of a term loan interest and any amount with respect to other accounts. This means that the past due concept was made applicable to interest on term loan and other accounts.

For a term loan, both for the payment of interest and installments the concept of past due was applicable, that is an additional time of 30 days was given from the due date. The payment of interest is due normally on a quarterly basis. The past due date is 30 days beyond the due date. As per the direction issued by Reserve Bank of India, "income should be recognized only when actually received and not on accrual basis. Banks should not charge and take into income account interest on any non-performing assets.

Pandyan Grama Bank had adopted the concept of income recognition and asset classification norms from 1995-1996 as per the instruction issued by Reserve Bank of India vide their circular RPOD.No. RRB BC.112/3-5-34, dated 22nd March 1996 and the provisioning norms were enforced from the year 1996-1997.

Asset Classification Norms

The assets of the banks as per the Narashimam Committee's opinion are classified for the purpose of provisioning. The banks and financial institutions should classify their assets by compressing then prevailing eight health codes into four broad groups. Basically, it is classified into two groups and then further they are classified based as well-defined credit weakness and extent of dependence on collateral security for realization of dues. The bifurcation as follows is the asset classification for the purpose of provisioning against non-realization.

* Assets
* Performing Assets or Standard Assets
* Non-Performing Assets
* Sub-standard Assets
* Doubtful Assets
* Doubtful less than one year
* Doubtful more than one year and less than three years
* Doubtful more than three years.
* Loss-making assets

The non-performing assets are these assets that cease to generate income for banks. The securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 defined non-performing assets (NPAs) as "an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful, or loss assets in accordance with the direction and guidelines relating to asset classification issued by the Reserve Bank of India".

From 31st March, 2004 an asset is considered to have gone bad when the borrower has defaulted on principal and interest repayment for more than one quarter or 90 days. As per Reserve Bank of India guidelines, non-performing assets- NPAs consist of sub-standard assets, doubtful assets and loss assets. Any assets generally turn into non-performing assets -NPAs when they fail to yield income during certain period. As a result, doubtful assets find its way from sub-standard assets after 12 months under the international norms and finally when it is found irrecoverable then it moves to loss assets category. Banks are allowed to make full provisions for such assets i.e. 100 percent of unsecured portion of doubtful assets plus 20-100 percent of secured portion (depending on the period for which the account is doubtful) and a general 10 percent (20 percent under the international norms) of the outstanding balance in respect of sub standard assets. The central bank is in favour of implementing the time limit of 90 days from April, 2004 so that the banks would remain competitive in the context of their international exposure.

In the light of the Narasimhan Committee recommendations, from time to time Reserve Bank of India has issued the guidelines in respect of recognition of non-performing assets NPAs, their classification and provisioning, which is summarized as under.

Standard Assets: which are not non-performing assets -NPAs, but involve business risks.

Sub-standard Assets: From 31.3.2005, these are the accounts which have been classified as non-performing assets -NPAs for a period less than or equal to 12 months.

Doubtful Assets: - From 31.3.2005 these are those accounts which have remained as sub-standard asset for a period exceeding 12 months.

Loss Assets: - Loss assets are those non-performing assets -NPA accounts which are identified by the banks' internal/ external auditors, National Bank for Agriculture and Rural Development or by Reserve Bank of India on inspection as uncollectible.

Standard assets are treated as performing assets and the remaining categories of sub-standard, doubtful and loss assets are known as non-performing assets -NPAs. According to Reserve Bank of India directives, all banks are required to maintain non-performing assets -NPAs both on gross and net basis. It is general practice to non-performing assets -NPAs in terms of percentage. The table 2.1 will illustrate the Reserve Bank of India's guidelines for non-performing assets recognition.

Agricultural Advances

The non-performing norms applicable for agricultural advances were revised in July, 2004. According to the revised guidelines, a loan granted for short duration crops will be treated as non-performing assets, if installment of principal or interest thereon remains overdue for two crop seasons and a loan granted for long duration crops will be treated as non-performing asset, if the installment of principal and interest thereon remains overdue for one crop season. For the purpose of these guidelines, "long duration" crops are those with crop season longer than one year crops, which are not "long duration" crops, are treated as "short duration" crops.

The crop season for each crop, which means the period up to harvesting of the crops rose, would be as determined by the State Level Banker's Committee (SLBC) in each State.

Depending up on the duration of the crops raised by a farmer, the non-performing asset norms would also be made applicable to agricultural term loans availed by him. The norms are applicable to direct agricultural advances only. They are not applicable in the case of activities allied to agriculture, such as dairy, poultry, fishery etc.

Provisioning Norms on the basis of Asset Classification

Provisioning is necessary considering the erosion in the value of the security charged to the banks over a period of time. Asset classification was made for the purpose of provisioning. Reserve Bank of India accepted the recommendations of Narashimham Committee on provisioning and advised all the banks to make provision on the basis of specified percentage of each category of asset. It was stipulated as given below.

Standard assets: The regional rural banks have been advised to make a general provision for standard assets at the following rates:

a) Direct advances to agricultural and small and marginal entrepreneurial sectors at 0.25 percent;
b) All other advances at 0.40 per cent.

Sub-standard assets: A general provision of 10 per cent of net outstanding should be made without making any allowances for Export Credit Guarantee Corporation guarantee cover and securities available. The 'unsecured exposures' which are identified as sub-standard would attract additional provision of 10 per cent, i.e. a total of 20 per cent on the outstanding balance.

Doubtful assets: Provision should be made for 100 per cent of the extent to which the advance is not covered by the realizable value of the security to which the bank has a valid recourse and the realizable value is estimated on a realistic basis.

In regard the secured portion the provision is to be made as specified below:

Doubtful status	percentage of provisioning as secured portion
Up to one year	20percent
>1 ≤ 3 years	30percent
> 3 years	100percent

Loss-making assets: It is advised by Reserve Bank of India to all banks that in cases where loss assets are more than two years old in the books of a bank without legal action being initiated, the banks should submit a review note to their management committee / boards of directors giving specific reasons as to why steps have not been taken for recovery. A 100 per cent provision should be made for such assets.

Table 2.1

Reserve Bank of India's guideline for non-performing assets recognition

Loans & advances	Guidelines applicable from 31.3.2001	Guidelines applicable from 31.3.2004
Term loan interest and / or installment remain over due for more than	180 days	90 days
Overdraft / Credit A/c.	Remains out of order	Remains out of order
Bill purchased and discounted remains over due for more than	180 days	90 days
Agricultural loan interest and / or installments remain over due for	Two harvest seasons but not exceeding two and half years	Two harvest seasons but not exceeding two and half years
Other accounts-any amount to be received remains over due for more than	180 days	90 days

Source: Dr. Ch. Rajesham and Dr. K. Rajendar, " Management of NPAs in Indian Scheduled Commercial Banks", The journal of Management Accountant, August 2008, Vol.43, No.8, p.602-608

Other purposes: Usually, banks have retirement benefits namely Provident Fund Card Gratuity. Now banks have pension schemes also. Most of the banks have set up recognized Gratuity or Pension Fund to fund the relative liability. In April, 1992, Reserve Bank of India had advised that any bank, which had not set up such fund to estimate such liabilities on archival basis and make full provision for that purpose.

Capital Adequacy Norms

Capital signifies the core strength of an organization. This is truer in case of banks, because adequate capital not only infuses depositors' and regulators' confidence but also acts as a cushion against possible losses arising out of normal risks inherent in banking. Like all other businesses, banks hold capital as a buffer against unforeseen losses.

Unlike other enterprises, however, one of the main functions of banks is to perform financial intermediation between other participants in the economy. Given this key role, trust is essential. To ensure confidence and to protect the interest of depositors, banking activities are subject to licensing, to specific regulations and to supervisions. It is the supervision of the banks that has been rise to regulatory capital requirement. Regulatory capital is the minimum capital that the supervisory authorities require banks to set aside in order to meet potential losses. This is meant to ensure that the banks can absorb losses arising from their activities on an ongoing basis. A minimum capital adequacy ratio (ratio of capital to risk-weighted assets-CRAR) of nine (9) per cent has been prescribed for all scheduled commercial banks in the country under the Basel I framework.

Commercial banks are also set to move over to the more sophisticated requirements under the new capital adequacy requirements (Basle II). However, no such norms have been specified for regional rural banks so far. In the context of the ongoing consolidation process in the regional rural bank sector, as a result of which the regional rural banks are emerging as bigger and stronger banks, a need has arisen for having appropriate capital adequacy norms in their case also. Currently, in terms of provisions of the Regional Rural Bank Act, 1976, a regional rural bank can have issued capital not exceeding rupees one crore. Apart from this, many of the regional rural banks received recapitalization support from the shareholders (Central Government, Sponsor bank and State Government) in the 1990's, which have been parked in "Share Capital Deposit Account", pending amendment to the provisions of the Act. It was provided for the purpose of cleansing the balance sheet of such regional rural banks. Further, 27 regional rural banks having negative net worth as on 31st March 2007 are in the process of receiving recapitalization support. However, the capital base at present is too low and with increased diversity and sophistication in their activities, regional rural banks will certainly need a larger capital base to be able to take the risks related to banking.

The Reserve Bank of India in its circular RBI/2007-2008/218 RPCD. CO.RRB.NO.BC.44/05.03.095/2007-08, Dated December 28, 2007 sent to the Chairmen of all Regional Rural Banks about Mid-Term Review of Annual Policy Statement for the year 2007-2008 regarding Application of Capital Adequacy norms to Regional Rural Banks highlighting the recommendations of the Internal Working Group Committee, that the Internal Working Group on Regional Rural Banks (Chairman: Shri A.V.Sardesai) had recommended that "Regional Rural Banks may be advised to maintain a minimum level of capital to risk-weighted assets ratio (CRAR) which would be progressively raised to the current level of CRAR as per the Basle I norms. At present, capital adequacy norms are not prescribed for Regional Rural Banks. In order to further strengthen the capital structure and the soundness and stability of Regional Rural Banks in the context of financial stability of the whole system, it is proposed that: "Regional Rural Banks should disclose the level of CRAR as on March 31, 2008 in their balance sheets as "Notes on Accounts", Regional Rural Banks should furnish an annual return to Reserve Bank of India Regional Office / National Bank of Agriculture and Rural Development Regional Office, indicating capital funds and risk assets ratio. The return should be signed by two officials who are authorized to sign the statutory retur11ns submitted to the Reserve Bank and a road-map may be evolved for achieving the desired level of Capital to Risk-weighted Assets Ratio (CRAR) by these banks".

The Committee on Financial Sector Assessment had suggested a phased introduction of Capital to Risk-weighted Assets Ratio (CRAR) in Regional Rural Banks, along with the recapitalization, after consolidation of these entities.

It was, therefore, announced in the Annual Policy Statement for 2009-10 to introduce Capital to Risk-weighted Assets Ratio (CRAR) for Regional Rural Banks in a phased manner, taking into account the status of recapitalization and amalgamation. A time-table for this purpose would be announced in consultation with National Bank for Agriculture and Rural Development. Accordingly, National Bank for Agriculture and Rural Development has been advised to constitute a Working Group to suggest bank-wise actionable measures for Regional Rural Banks which had Capital to Risk-weighted Assets Ratio (CRAR) less than one per cent as on March 31, 2008 so that they could achieve the target of seven per cent by March 2010.

"On the basis of the recommendations of the Committee on Financial Sector Assessment Chairman: Dr. Rakesh Mohan and Co-Chairman: Shri Ashok Chawla, the Annual Policy Statement of April 2009 proposed to introduce Capital to Risk-weighted Assets Ratio -(CRAR) for Regional Rural Banks in a phased manner, taking into account the status of recapitalisation and

Table -2.2
KEY PERFORMANCE INDICATORS

Sl. No.	Key Indicators	1995	2004	2005	2006	2007	2008	2009 P
1.	No. of RRBs	196	196	196	133	96	91	86
2.	No. of District Covered	425	518	523	525	534	534*	534*
3.	Deposits Collected (Rs. In Crores)	11,141	56,350	62,143	71,329	83,143	99,093	1,14,317
4.	Borrowings (Rs. In Crores)	2,274	4,595	5,524	7,303	9,776	11,494	12,250
5.	Investments (Rs. In Crores)	6,128	36,135	36,761	41,182	45,666	48560	51,159
6.	Loans Receivable (Rs. In Crores)	6,291	26,114	32,870	39,713	48,494	58,984	65,841
7.	Loans Disbursed (Rs. In Crores)	NA	15,579	21,082	25,427	32,067	38,582	38,581
8.	C-D Ratio (in percentage)	56	46.34	52.89	55.68	58.50	NA	NA
9.	No. of RRBs having accumulated losses (Rs. In Crores)	175	33	30	22	39	36	35
10.	Accumulated Loss in percentage	NA	3.9	3.5	2.9	2.9	NA	NA
11.	No. of RRBs earned profit	32	163	166	111	81	82	81
12.	Net Profit earned (Rs. In Crores)	NA	769	748	617	926.40	1,328	1,712
13.	NPA to loans outstanding in percentage	43	8.55	8.53	7.28	6.55	6.05	5.58

Source : Arranged from various pages available in the website of Reserve Bank of India www.rbi.org.in. p- Provisional, * Expected

amalgamation. The Government of India has constituted a Committee under the Chairmanship of Dr. K.C. Chakrabarty with represen-tatives from the Government, sponsor banks, Regional Rural Banks and the National Bank for Agriculture and Rural Development to examine the financials of the Regional Rural Banks and suggest a roadmap to raise the Capital to Risk-weighted Assets Ratio -(CRAR) of Regional Rural Banks to nine per cent by March 2012. The Committee is expected to submit its report by end-January 2010.

Dr. D. Subbarao, Governor, Reserve Bank of India has said at the time of meeting to announce the Annual Policy 2009-2010 that the "phased introduction of capital to risk-weighted assets ratio (CRAR) to the regional rural banks by 2012.

Disclosure Norms

At present, investments of banks comprise Statutory Liquidity Ratio (SLR) securities and non- Statutory Liquidity Ratio (Non-SLR securities). These investments are classified in the balance sheet, for the purpose of disclosure, under five groups namely

i) Government securities,

ii) Other approved securities,

iii) Shares,

iv) Debentures and Bonds and

v) Others (like Commercial Papers, Mutual Fund units, etc.). While the first two classifications represent the banks' investments in Statutory Liquidity Ratio securities, the others represent non-Statutory Liquid Ratio securities. Investments should be shown in the balance sheet net of depreciation. Banks are also required to classify their entire investment portfolio under two categories, namely permanent and current. The entire Statutory Liquidity Ratio portfolio can be classified as permanent, while the entire non-Statutory Liquidity Ratio would be classified as current. Implementation of Prudential Norms on regional rural banks led them for a better growth and prospects. Table 2.2 indicates the regional rural banks' important key indicators for the pre-implementation stage up to 1996 and for the selected years in the post-implementation stage.

It is evident from the table 2.2 that there is a reduction in number of Regional Rural Banks from 196, 133, 96, 91, to 86 shows that the Government of India has taken necessary steps for the development of the regional rural banks in consultation with Reserve Bank of India and National Bank for Agriculture and Rural Development to improve the operational viability of the regional rural banks by merging/ amalgamating the loss making regional rural banks as recommended by various committees. Increase in number of districts coverage is due to financial inclusion to reach the un-reached villages. Increase in deposits-collected shows the effective customer's service rendered by the regional rural banks and the availability of potential customers. Increase in borrowings shows the efficient performance of lending to more number of customers.

Contd. on Page 500

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Shri Vaidyanathan Neelakantan Iyer, BCOM, AICWA
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M/28805
Shri Radhakant Mishra,
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M/28806
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M/28807
Shri Ketan Bhagvanlal Parekh,
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B/11, Gangotri Duplex, Opp.
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M/28808
Shri Surya Prakash Paidi,
BCOM, AICWA
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M/28810
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M/28811
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43B, Ground Floor, Indraprastha
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M/28826
Shri Gadepally Anil Kumar,
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Shri Kanti Lal Jain,
BSC, LLB, AICWA
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M/28828
Shri Ajay Ganpat Kadam,
BCOM, AICWA
601/A, Prafulla Co-op. Hsg.
Society, Anant Ganpat Pawar
Lane, Byculla, Mumbai 400027

M/28829
Shri Biman Behari Mandal,
BCOM, AICWA
Shree Ganesh Gouri Apartment,
B/605, 6th Floor, Gumusta
Layout, Nagpur 440015

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BCOM(HONS), AICWA
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Abasan, Narayanpur, PO. - R.
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M/28831
Shri Rangeet Mitra,
AICWA
46, Richmond Road, House of
Wills, 1st Floor,
Bangalore 560025

M/28832
Shri P. K.. Prasad,
MCOM, ACS, ACA, AICWA
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Nammalwar Street, East
Tambaram, Chennai 600059

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11/1, Watkins Lane,
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Howrah 711101

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BCOM, AICWA
G - 2, Sector - 56,
Noida 201301

M/28835
Shri Sandip Dnyaneshwar
Tathe,
MCOM, AICWA
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Society, Income Tax Colony,
Sector - 21/22, C.B.D.
Belapur NAVI
MUMBAI 400614

M/28836
Shri Anoop Kumar
Upadhyaya,
BCOM, AICWA
3/204, Vipul Khand, Gomti
Nagar, Lucknow 226010

M/28837
Shri S. Venkataraman,
BSC, ACA, AICWA
9, Mylai Ranganathan Street,
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M/28838
Ms Neha Verma,
AICWA
7, Burnt Salt Gola Lane,
Near Howrah A.C. Market,
3rd Floor,
Howrah 711101

M/28839
Shri Suresh Kumar Varma
Gadhiraju,
MCOM, MSC, MBA,
AICWA
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Sri Sai Krupa Apartment,
Madinaguda,
Hyderabad 500050

M/28840
Shri Vikas Radha Damodaran,
BSC, AICWA
No. 1, Darshan Mansion,
Arogyappa Layout,
Kammanahalli Circle, Bangalore

M/28841
Shri Raman Ranjan Das,
BCOM(HONS), AICWA
S/O. Gourhari Das At/Po.
Aurobind Nagar - 2nd Lane, H.
No. A- 2/3, Dist -
Ganjam,Berhampur 760001

M/28842
Mrs Gayake Charusheela
Ravindra,
MCOM, AICWA
B - 3, 28, Sadbhav Apartment,
Mahatma Society, Vrindavan
Park, KothrudPune 411029

M/28843
Mrs Gandavarapu Kaivalya,
MCOM, AICWA
Flat No. 402, Chakkilam
Estate, 10-2-289/50, Shanti
Nagar, Masab Tank,
Hyderabad 500028

M/28844
Shri Mohd Aarif,
BCOM, AICWA
C/o. R. A. Hashmi, D-18,
(Near Dr. Basudev Clinic),
Sarvodaya Nagar,
Lucknow 226016

M/28845
Mrs Nandipati Aruna,
MCOM, AICWA
W/o. K. Ashok Reddy,
55-42-6/3, Seethammadhara,
Visakhapatnam 530013

M/28846
Shri Pathapati Srikanth,
BCOM, AICWA
S/o. P. Venu Gopala Rao,
Zonnawada Road, Buchi
Reddy Palem,
Dist - Nellore,
Nellore 524305

M/28847
Shri Parwez Alam,
MCOM, AICWA
H/o. Abdul Azim,
In Front of F.C.I. Godown,
Jamia Nagar,
KadruRanchi 834002

M/28848
Shri Chandan Singh,
BCOM(HONS), AICWA
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Kolkata 700043

M/28849
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MFM, AICWA
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Bangalore 560054

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BCOM, AICWA
10857, Muirwood Way NE,
Redmond,
WA 98053 Redmond

M/28851
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BCOM(HONS), AICWA
9, Goutam Buddha Marg,
C - Zone, Durgapur
Durgapur 713212

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Shri Panchanan Barik,
MCOM, LLB, AICWA
LIG - 976, Kalinga Vihar,
PO- Patrapada,
Bhubaneswar 751019

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AL Musala Road,
Bur Dubai, P.O. Box
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C, BCOM, AICWA
473, 3rd Main Road,
Sreenagar, B. S. K. I Stage,
Bangalore 560050

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MBA(UK), AICWA
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L5B 3W4 Mississauga

M/28857
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BCOM(HONS), AICWA
Flat No. B-44, C.I.T. Building,
Singhi Bagan, 7/1, Rajendra
Mullick Street,
Kolkata 700007

M/28858
Shri Vivekananda Datta,
BSC(HONS), AICWA
1A/48, Aurobinda Avenue, A -
Zone, Durgapur
DIST - Burdwan
Durgapur 713204

M/28859
Shri Sumanta Das,
BSC, AICWA
29/5/12, Ranapratap Road,
A - Zone, Durgapur, DIST -
Burdwan,Durgapur 713204

M/28860
Ms Raksha Jain,
MCOM, MBE, AICWA
C/o. Shyam Karan Rai, 1391/
18, Opp. Panna Lalji Mali
Ki Badi, New Bhupalpura,
Kharakua,Udaipur

M/28861
Shri M. Vinod Kumar,
MCOM, AICWA
114, Tagore Nagar Phase-III,
Khajuri Kalan Road,
Near SOS Village,
Piplani,Bhopal 462021

M/28862
Shri Anil Kumar Kedia,
BCOM, AICWA
"KRISHNA TOWER"
Block - II, Flat No.-102,
42, Sree Charan Sarani,
PO - Bally,Howrah 711201

M/28863
Shri Sujit Misra,
BSC, AICWA
14/37, Secondary Road,
PO - Durgapur, DIST.
Burdwan Durgapur 713204

M/28864
Shri Krit Narayan Mishra,
BCOM(HONS), ACA,
AICWA
F - 29 (Ground Floor),
Near Derawala Bhawan,
Kirti Nagar,
New Delhi 110015

M/28865
Shri Dusmanta Kumar Mishra,
BCOM(HONS), AICWA
Plot No. 437, At - Nuasahi,
Post - Nayapalli,
Bhubaneswar 751012

M/28866
Ms Sudakshina Das Gupta,
MCOM, AICWA
73B Baburam Ghosh Road,
Tollygunge,
Kolkata 700040

M/28867
Shri Nirmal Kumar Mandal,
BCOM(HONS), AICWA
4 No. School Road,
Pramathanagar, Parsudih,
PO - Tata Nagar,
Jamshedpur 831002

M/28868
Ms Mousumi Pachal,
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10/12 Kasundia Lane,
PO - Santragachi,
Howrah 711104

M/28869
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BCOM, AICWA
8/13, Derojio Path, S.A.I.L.
Co-operative, City Centre,
Durgapur, Dist - Burdwan,
Durgapur 713203

M/28870
Shri Kondala Rao Palisetti,
AICWA
17/45, Tipparaju
Vari Street,
Nellore 524001

M/28871
Shri Mahesh Sodhani,
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M/28873
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BCOM, AICWA
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Bokaro Steel City 827004

M/28874
Ms Sumita Sen,
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C/o. Santanu Sengupta, 5/6
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Kolkata 700040

M/28875
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M/28876
Shri China Vengaiah
Nukaraju,
BCOM, AICWA
17/45, Tipparaju Vari
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M/28877
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532 K / 156, Manjula
Printers, Pandeytola, Aliganj,
Lucknow 226022

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M/28880
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MCOM, MPHIL, PHD,
AICWA
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BCOM, AICWA
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Mumbai 400068

M/28920
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M/28922
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Kamboj,
MCOM, AICWA
C/o. Deshpande D.D.,
`Sumati`, 7/B, Hemakant CHS,
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Shri Pavan Kumar Singh,
MCOM, AICWA
Officer - Costing, Ambuja
Cements Ltd., Survey No.
39/40, Near ABG Shipyard,
Magdalla Port Road,
Surat 395007

M/28927
Ms. Leena Pandurang Gadgil,
AICWA
5, Shanti Garden, Anand Nagar,
Sinhgad Road, Near Mataji
Super Market, Opp. Santosh
Hall, Pune 411051

M/28928
Mrs Priya Krishna Srinivasan,
BCOM, AICWA
27, Vyasar Street, First Floor,
T. Nagar Chennai 600017

M/28929
Shri Chandrashekar Kupperi,
BCOM, FCA, FCS, MBA,
AICWA
G - Block, Flat - 1-B, Sunshine
Apartments, West Jones Road,
Saidapet,Chennai 600015

Contd. from Page 492

Hike in the investment level expedite the proper utilization of funds, which are not issued as loans to customers. Increase in loans receivable is a red alert for the increase in non-performing assets in future. The regional rural banks should take immediate actions to recover the amount lent as loans to customers using the Securitization Act. Increase in Profit making regional rural banks and decrease in loss making regional rural banks, however there is a reduction in net profit in the year 2007 due to operational expenses, which reveals a fruitful result on their overall performance.

The banking sector reforms led all the banks including regional rural banks for an exemplary performance. In the early years, the regional rural banks needed refinance from sponsor bank and National Bank for Agriculture and Rural Development to a significant extent to meet the credit demand. Over time, the deposits of these banks overtook the lending and the benefits of the relatively cheap resources went to sponsor banks. Now the regional rural banks avail refinance as borrowings from National Bank for Agriculture and Rural Development only where it is concessional like advances for seasonal agricultural operations and self help groups.

Conclusion

Since, India is an agrarian and developing country which is also evident from the above, that the situation makes the decision makers of country to concentrate more on the development of the rural economy. At present the banking sectors are in a competitive mood, to some extent they are in situation to skip the rural areas. It is identified that the population of the regional rural banks are not in a satisfactory level as well as the performance of some regional rural banks are not satisfactory. It is necessary to take a decision for the further better performance of the regional rural banks. The ratio of the regional rural banks- at branch level, comparing with commercial banks may be fixed as 2:5. The government should also insist the Government, Quasi-Government and Government aided sector to have their transaction with regional rural banks on the basis of the branch availability. The Government should have a close watch, whether the schemes announced by the Government are merely reaching the rural poor like coolies, small farmers, artisans etc., or not through regional rural banks. The Government of India and Reserve Bank of India should work together more effectively to develop the socio-economic conditions of the rural poor through regional rural banks, because it is well said by the Saint Poet ***Thiruvalluvar,*** in his ***Thirukkural 104:6 (1036),*** that

"If the farmer's hands slacken, even the ascetic's state will fail" ❑

The CONTINUING EDUCATION PROGRAMME DIRECTORATE IS ORGANSING FOLLOWING PROGRAMMES. FOR FURTHER DETAILS and on-line registration VISIT OUR WEBSITE http://mdp.icwai.org/ OR www.icwai.org (click the link Management Development Programmes).

CONTACT PERSON

Mr. D Chandru
Additional Director (PD&P)
CEP Directorate,
ICWAI Bhawan, 3rd Floor
3 Institutional Area, Lodi Road
New Delhi-110 003.
Tel - 011-24643273 (D), 24622156/157/158

Name of the Programme	Duration	Course coverage	Venue	Fee (Rs.)
COST MANAGEMENT FOR COST COMPETITIVENESS	28-30 JULY, 2010	• Linking Cost Information to Business Strategy • Cost Structuring for Competitiveness • Sensitivity Analysis • Cost Management Issues in • Quality Management • Performance Evaluation • Technology Optimization & Allocative Efficiency • Strategic Cost Management • Pricing and Product Mix Decisions • Target Costing for Cost Competitiveness • Effective Cost Reduction : A Strategic Perspective • Cost Accounting Standards • Case Studies • Generally Accepted Cost Accounting Principles (GACAP)	HOTEL SAVERA, 146 DR. RADHAKRISHNAN SALAI, CHENNAI-600 004 Tel-044-28114700	Non-Residential Fee-Rs.15000/- (Rupees fifteen thousand only) per participant Residential Fee-Rs.30000/- (Rupees thirty thousand only) per participant
CORPORATE TAX – PLANNING, COMPLIANCE AND MANAGEMENT	28-30 JULY, 2010	• Planning for Minimum Alternate Tax (MAT) and Implication of Accounting Laws Vs. Taxation Laws • Planning for Advance Tax and Management, Compliance of Tax Deduction at Source • Planning for restructuring of business entities and the incidence of tax benefit • Planning for International Transactions/ Cross-border Transaction • Outline of service tax and issues in Service Tax • Planning for CAPEX/OPEX and the impact of taxation thereof • Amendments relating to Finance Act, 2010 and overview of Direct Tax Code and its implication on Corporate Taxation • Issues in Corporate Taxation	HOTEL SAVERA, 146 DR. RADHAKRISHNAN SALAI, CHENNAI-600 004 Tel-044-28114700	Non-Residential Fee-Rs.15000/- (Rupees fifteen thousand only) per participant Residential Fee-Rs.30000/- (Rupees thirty thousand only) per participant

General Circular No. 1 /2010

F. No. 2/7/2010-CL V
Government of India
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi,
Dated the 26th May, 2010

To

All Regional Director,
All Registrars of Companies.

Subject: Company Law Settlement Scheme, 2010

Sir,

It has been observed that a large number of companies are not filing their due documents timely with the Registrar of Companies. Due to this, the records available in the electronic registry are not updated and thereby are not available to the stakeholders for inspection. Further, due to not filing the documents on time, companies are burdened with additional fee and facing the prosecutions also.

2. There are many companies, who have also not increased their paid up capital up to the threshold limit provided in sub-section (3) and sub-section (4) of Section 3 of the Companies Act, 1956.

3. In order to give an opportunity to the defaulting companies to enable them to make their default good by filing belated documents and to become a regular compliant in future, the Ministry, in exercise of the powers under Section 611(2) and 637B (b) of the Companies Act, 1956 has decided to introduce a Scheme namely, "Company Law Settlement Scheme, 2010," condoning the delay in filing documents with the Registrar, granting immunity from prosecution and charging additional fee of 25 percent of actual additional fee payable for filing belated documents under the Companies Act, 1956 and the rules made there under. The details of the Scheme are as under:-

(i) The scheme shall come into force on the 30th May, 2010 and shall remain in force up to 31st August, 2010.

(ii) **Definitions: -** In this Scheme, unless the context otherwise requires, -

(a) "Act" means the Companies Act, 1956 (1 of 1956);

(b) "company" means a company registered under the Companies Act, 1956 and a foreign company falling under section 591 of the Act;

(c) "defaulting company" means a company registered under the Companies Act, 1956 and a foreign company falling under section 591 of the Act, which has made a default in filing of documents on the due date(s) specified under the Companies Act, 1956 and rules made there under;

(d) "designated authority" means the Registrar of Companies having jurisdiction over the registered office of the company.

(iii) **Applicability: -** Any "defaulting company" is permitted to file belated documents in accordance with the provisions of this Scheme:

Provided that any defaulting private company or public company which has not increased its paid capital up to the threshold limit of rupees one lakh and rupees five lakh respectively as provided in sub section (3) and (4) of section 3 of the Companies Act, 1956, as the case may be, shall first file its documents to increase their paid up capital up to the threshold limit under the scheme and thereafter would be allowed to file other belated documents;

(iv) **Manner of payment of fees and additional fee on filing belated document for seeking immunity under the Scheme-** The defaulting company shall pay statutory filing fees as prescribed under the Companies Act and rules made there under along with an additional fee of 25 percent of the actual additional fee standardised under sub-section (2) of Section 611 of the Companies Act, 1956, payable on the date of filing of each belated document;

(v) **Withdrawal of appeal against prosecution launched for the offences-** If the defaulting company has filed any appeal against any notice issued or complaint filed before the competent court for violation of the provisions under the Act in respect of which application is made under this Scheme, the applicant shall before filing an application for issue of immunity certificate, withdraw the appeal and furnish the proof of such withdrawal along with the application;

(vi) **Application for issue of immunity in respect of document(s) filed under the scheme -** The application for seeking immunity in respect of belated documents filed under the Scheme may be made electronically in the Form annexed, after closure of Scheme and after the document(s) are taken on file, or on record or approved by the Registrar of Companies as the case may be, but not after the expiry of six months from the date of closure of the Scheme. There shall not be any fee payable on this Form;

(vii) **Order by designated authority granting immunity from the penalty and prosecution -** The designated authority shall consider the application and upon being satisfied shall grant the immunity certificate in respect of documents filed in the Scheme;

(viii) **Scheme not to apply to certain documents -** (a) This Scheme shall not apply to the filing of documents for incorporation or establishment of place of business in India or where specific order for condonation of delay or prior approval under the provisions of the Companies Act, 1956 is to be obtained from the Company Law Board or the Central Government or Court or any other Competent Authority is required;

(b) This Scheme shall not apply to companies against which action under sub-section (5) of section 560 of the Act has been initiated by the Registrar of Companies;

(ix) After granting the immunity, the Registrar concerned shall withdraw the prosecution(s) pending if any before the concerned Court(s);

4. At the conclusion of the Scheme, the Registrar shall take necessary action under the Companies Act, 1956 against the companies who have not availed this Scheme and are in default in filing of documents in a timely manner.

Yours faithfully,

Sd/-

(P.K. Malhotra)

Joint Director

FORM

[Pursuant to Company Law Settlement Scheme, 2010]

Application for issue of immunity certificate under the Company Law Settlement Scheme (CLSS), 2010

Note - All fields marked in * are to be mandatorily filled.

To

The Registrar of Companies,

Sir/ Madam,

I herewith make an application for issue of immunity certificate under the Company Law Settlement Scheme, 2010 and give below the following particulars, namely:-

1.(a) *Corporate identity number (CIN) or foreign company registration number (FCRN) of the company — Pre-fill

(b) Global location number (GLN) of company

2.(a) Name of the company

(b) Address of the registered office or of the principal place of business in India of the company

(c) *e-mail ID of the company

(d) Date of incorporation of Indian company or date of establishment of the principal place of business in India of foreign company (DD/MM/YYYY)

3. Details of documents filed under the Company Law Settlement Scheme, 2010 — Pre-fill

Total number of Service Request Number (SRN)(s)

SRN	Form number(s)	Date of filing (DD/MM/YYYY)	Date of event (DD/MM/YYYY)	Statutory filing fees (in Rs.)	Actual additional fees (in Rs.)	Additional fee charged under CLSS, 2010 (in Rs.)	Total fees paid (in Rs.)
			Total (in Rs.)				

4. *Whether any appeal(s) was filed against any notice issued or complaint filed before the competent court for violation of the provisions under the Act in respect of the above mentioned document(s). If yes, attach proof of withdrawal of such appeal. ◯ Yes ◯ No ◯ Not applicable

5. *Whether any prosecution(s) is pending in court against the company and its officers in respect of belated documents filed under the scheme. If yes, provide details thereof as an attachment. ◯ Yes ◯ No

6. *Whether any director(s) of the company is declared as proclaimed offender or facing criminal case(s) for economic offences. If yes, provide details of such director(s) as an attachment. ◯ Yes ◯ No

Attachments

List of attachments

1. Proof of withdrawal of any appeal(s) against any notice issued or complaint filed before the competent court [Attach]
2. Details in respect of prosecution(s) pending against the company and its officers in respect of belated documents filed under the scheme which requires withdrawal by the Registrar [Attach]
3. Details of director(s) declared as proclaimed offender or facing criminal case(s) for economic offences [Attach]
4. Optional attachment(s) - if any [Attach]

[Remove attachment]

Verification

To the best of my knowledge and belief, the information given in this application and its attachments is correct and complete.

☐ I have been authorised by the Board of directors' resolution number ______ dated ______ (DD/MM/YYYY) to sign and submit this application.

☐ I am authorised by the Board of directors to sign and submit this application.

☐ The company had failed to comply with the provisions of the Act as mentioned in respect of filing of above mentioned documents.

☐ The company has withdrawn the appeals pending before any Court or Company Law Board or Regional Director or any other adjudicating authority.

To be digitally signed by

Managing Director or director or manager or secretary of the company (in case of an Indian company) or authorised representative (in case of a foreign company)

*Designation

*Director identification number of the director or Managing Director; or Income-tax permanent account number (Income-tax PAN) of the manager or authorised representative; or Membership number, if applicable or income-tax PAN of the secretary (secretary of a company who is not a member of ICSI, may quote his/ her income-tax PAN)

[Modify] [Check Form] [Prescrutiny] [Submit]

For office use only: [Affix filing details]

eForm Service request number (SRN) ______ eForm filing date ______ (DD/MM/YYYY)

Digital signature of the authorising officer

This e-Form is hereby approved

This e-Form is hereby rejected

[Confirm submission]

Date of signing ______ (DD/MM/YYYY)

General Circular No. 2 /2010

F. No. 2/7/2010-CL V
Government of India
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi
Dated the 26th May, 2010

To

All Regional Director,
All Registrar of Companies.

Subject: Easy Exit Scheme, 2010

Sir,

It has been observed that certain companies have been registered under the Companies Act, 1956, but due to various reasons some of them are inoperative since incorporation or commenced business but became inoperative later on and are not filing their due documents timely with the Registrar of Companies. These companies may be defunct and are desirous of getting their names strike off from the Register of Companies.

2. In order to give an opportunity to the defunct companies, for getting their names strike off from the Register of Companies, the Ministry has decided to introduce a Scheme namely, "Easy Exit Scheme, 2010" under Section 560 of the Companies Act, 1956. The details of the Scheme are as under:-

(i) The Scheme shall come into force on the 30th May, 2010 and shall remain in force up to 31st August, 2010.

(ii) **Definitions -** In this Scheme, unless the context otherwise requires, -

(a) "company" means a company registered under the Companies Act, 1956;

(b) "Collective Investment Management Company" means the company as defined in clause (h) of sub-regulation of 2 of Securities and Exchange Board of India (Collective Investment Companies) Regulations, 1999;

(c) "defunct company" means a company registered under the Companies Act, 1956 which is not carrying over any business activity or operation on or after the 1st April, 2008 and includes a company which has not raised its paid up capital as provided in sub sections (3) and (4) of section 3 of the Companies Act, 1956;

(d) "Non-Banking Financial Company" means a company as defined under clause (f) of section 45-I of the Reserve Bank of India Act, 1934;

(e) "Scheme" means the "Easy Exit Scheme, 2010", being specified through this Circular;

(f) "vanishing company" means a company, registered under the Companies Act, 1956 and listed with Stock Exchange which, has failed to file its returns with Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or tock Exchange and none of its Directors are traceable.

(iii) **Applicability: -**

(a) Any "defunct company" which has active status on Ministry of Corporate Affairs portal may apply under EES, 2010 in accordance with the provisions of this Scheme for getting its name strike off from the Register of Companies;

(b) Any defunct company which is a Government Company shall submit 'No Objection Certificate' issued by the concerned Administrative Ministry or Department or State Government along with the application under this Scheme;

(c) The purpose of the Scheme is to allow eligible companies to avail of this opportunity to exit from the Register of Companies after fulfilling the requirements laid down herewith and the decision of the Registrar of Companies in respect of striking off the name of company shall be final.

(iv) **Scheme not applicable to certain companies: -** The Scheme does not cover the following companies namely:-

(a) listed companies;

(b) companies registered under section 25 of the Companies Act, 1956;

(c) vanishing companies;

(d) companies where inspection or investigation is ordered and being carried out or yet to be taken up or where completed prosecutions arising out of such inspection or investigation are pending in the court;

(e) companies where order under section 234 of the Companies Act, 1956 has been issued by the Registrar and reply thereto is pending or where prosecution if any, is pending in the court;

(f) companies against which prosecution for a noncompoundable offence is pending in court;

(g) companies accepted public deposits which are either outstanding or the company is in default in repayment of the same;

(h) company having secured loan ;

(i) company having management dispute;

(j) company in respect of which filing of documents have been stayed by court or Company Law Board(CLB) or Central Government or any other competent authority;

(k) company having dues towards income tax or sales tax or central excise or banks and financial institutions or any other Central Government or State Government Departments or authorities or any local authorities.

(v) **Procedure for making an application:-**

(a) Any defunct company desirous of getting its name strike off the Register under Section 560 of the Companies Act, 1956 shall make an application in the Form EES, 2010, annexed;

(b) The Form EES, 2010, should be filed electronically on the Ministry of Corporate Affairs portal namely www.mca.gov.in and there shall be no fee payable for filing of the same;

(c) In case, the application in Form EES, 2010, is not being digitally signed by any of the director or Manager or Secretary, a physical copy of the Form duly filled in, shall be signed manually by a director authorised by the Board of Directors of the company and shall be attached with the application Form at the time of its filing electronically;

(d) In all cases, the Form EES, 2010, shall be certified by a Chartered Accountant in whole time practice or Company Secretary in whole time practice or Cost Accountant in whole time practice;

(e) The company shall disclose pending litigations if any, involving the company while applying under this Scheme;

(f) The Form shall be accompanied by an affidavit annexed at Annexure- A of Form EES, 2010, which should be sworn by each of the existing director(s) of the company before a First Class Judicial Magistrate or Executive Magistrate or Oath Commissioner or Notary, to the effect that the company has not carried on any business since incorporation or that the company did some business for a period up to a date (which should be specified) and then discontinued its operations and has not carried on any business after the 1st April, 2008, as the case may be;

(g) The Form EES, 2010 shall further be accompanied by an Indemnity Bond, duly notarized, as annexed at Annexure B of Form EES, 2010, to be given by every director individually or collectively, to the effect that any losses, claim and liabilities on the company, will be met in full by every director individually or collectively, even after the name of the company is struck off the register of Companies;

(h) The Company shall also file a Statement of Account annexed at Annexure C, prepared as on date not prior to more than one month preceding the date of filing of application in Form EES, 2010, duly certified by a statutory auditor or Chartered Accountant in whole time practice, as the case may be.

(vi) **Simplified procedure for Registrar of Companies for removal of name of defunct companies:-**

(a) The Registrar of Companies, on receipt of the application, shall examine the same and if found in order, shall give a notice to the company under section 560(3) of the Companies Act, 1956 by e-mail on its e-mail address intimated in the Form, giving thirty days time, stating that unless cause is shown to the contrary, its name be struck off from the Register and the company will be dissolved;

(b) The Registrar of companies shall put the name of applicant(s) and date of making the application(s) under Easy Exit Scheme, 2010, on daily basis, on the MCA portal www.mca.gov.in, giving thirty days time for raising objection, if any, by the stakeholders to the concerned Registrar;

(c) In case of company(s) like Non-Banking Financial Company(s), Collective Investment Management Company(s) which are regulated by other Regulator(s) namely RBI, SEBI, the Registrar of Companies, at the end of every week, after the Scheme commences, shall send intimation of such companies availing EES, 2010, during that period to the concerned Regulator(s) and also an intimation in respect of all companies availing EES, 2010, during that period to the office of the Income Tax Department giving thirty days time for their objection, if any;

(d) The Registrar of Companies immediately after passing of time given in sub-paras (a) to (c) of this Para and on being satisfied that the case is otherwise in order, shall strike its name off the Register and shall send notice under sub-section (5) of section 560 of the Companies Act, 1956 for publication in the Official Gazette and the applicant company under this Scheme shall stand dissolved from the date of publication of the notice in the Official Gazette.

Yours faithfully,

Sd/-

(P.K. Malhotra)

Joint Director

For details, please visit www.mca.gov.in

THE INSTITUTE OF COST AND WORKS ACCOUNTANTS OF INDIA

(Set up in 1944, Founder member of IFAC, CAPA and SAFA)

MANAGEMENT DEVELOPMENT PROGRAMMES 2010-11

Programmes Areas

Cost Management ● Financial Management ● IFRS ● Risk Management ● Taxation Management ● Auditing ● Valuation Management ● Contract Management ● Derivatives ● Mergers & Acquisitions

DATES	TOPIC	VENUE	STATUS & FEE (Rs.)	
			Non-Residential	Residential
MAY, 2010				
26-28	Workshop on IFRS Convergence	Mumbai	15,000	
JUNE, 2010				
01-04	Recent Trends in Financial Management Including IFRS Convergence	Ranikhet (Nainital)		30,000
01-04	Finance for Jr. Finance and Accounts Officers and Non-Executive (F&A)	Ranikhet (Nainital)		30,000
09-11	Workshop on IFRS Convergence	Bangalore	15,000	
16-19	Management of Taxation - Service Tax, VAT, Excise & Customs, TDS and Proposed GST	Ooty (TN)		30,000
16-19	Contract Management	Ooty (TN)		30,000
JULY, 2010				
07-09	Workshop on IFRS Convergence	New Delhi	15,000	
28-30	Corporate Tax-Planning, Compliance and Management	Chennai	15,000	30,000
28-30	Cost Management for Cost Competitiveness	Chennai	15,000	30,000
AUGUST, 2010				
04-06	Derivatives and Risk Management	New Delhi	15,000	
10-13	Internal Auditing for Effective Management Control	Madurai		30,000
10-13	Recent Trends in Financial Management Including IFRS Convergence	Madurai		30,000
SEPTEMBER, 2010				
07-10	Management of Taxation - Service Tax, VAT, Excise & Customs, TDS and Proposed GST	Port Blair		30,000
07-10	Finance for Jr. Finance and Accounts Officers and Non-Executives (F&A)	Port Blair		30,000
15-17	Mergers and Acquisitions	Hyderabad	15,000	30,000
OCTOBER, 2010				
05-08	Corporate Tax-Planning, Compliance and Management	Goa		30,00

DATES	TOPIC	VENUE	STATUS & FEE (Rs.)	
			Non-Residential	Residential
NOVEMBER, 2010				
10-12	Contract Management	New Delhi	15,000	
22 to Dec 2	International Programme on 'Emerging Trends in Financial Management'	Singapore, Kualalumpur & Bangkok		2,25,000
DECEMBER, 2010				
21-24	Advance Tax, TDS and Tax Planning	Shirdi		30,000
21-24	Internal Auditing for Effective Management Control	Shirdi		30,000
JANUARY, 2011				
03-09	Recent Trends in Financial Management including IFRS Convergence	Dubai & Muscat		1,50,000
18-21	Management of Taxation - Service Tax, VAT, Excise & Customs, TDS and Proposed GST	Mahabaleshwar		30,000
18-21	Finance for Jr. Finance and Accounts Officers and Non-Executives (F&A)	Mahabaleshwar		30,000
FEBRUARY, 2011				
09-11	Financial Risk Management	New Delhi	15,000	
16-18	Valuation Management	New Delhi	15,000	

For Non-Residential Programmes Fee includes course fee, course material, lunch, tea/coffee etc.

For Residential Programmes Fee includes course fee, course material, accomodation on Single Room Basis, all meals and visits.

CEP Credit Hours - [For 1 Day Prog.-4 Hours] [For 2 Days Prog.-6 Hours] [For 3 Days & more Prog.-10 Hours]

For Kind Information

★ For outstation programmes the participants are requested to get the confirmation from the Institute before proceeding to the venue. If any participant reaches the venue for the postponed/cancelled programme without getting the confirmation from the Institute, the Institute will not be held responsible for the same. The cancellation/postponement of the programme, if any, will be initimated to only those organizations whose nominations have been received by the Institute on time.

★ For residential programmes normally the first day check-in at 12.00 noon and last day check-out at 12.00 noon.

★ For International programmes, Faculty will be from the respective countries apart from the Indian Faculty.

★ The Payment of the Fee is to be made by Cheque/DD in favour of **'The Institute of Cost and Works Accountants of India' payable at New Delhi.**

★ **Details for ECS Payment :** State Bank of India, Lodhi Road Branch, New Delhi-110 003
Current A/c No. 30678404703 MICR Code : 110002493 IFSC Code : SBIN0060321

For further details and Registration please contact :

Shri D. Chandru, Addl. Director (PD&P)
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ICWAI Bhawan, 3 Institutional Area, Lodi Road, New Delhi-110 003
Phones : 011-24622156-57-58, 24618645 (D) 011-24643273 (M) 09818601200
Tele Fax : 011-43583642 / 24622156 / 24618645
E-mail : mdp@icwai.org, cep.chandru@icwai.org Website : www.icwai.org

President
SHRI G. N. VENKATARAMAN
Vice President
SHRI B.M. SHARMA
Chairman, Continuing Education Programme Committee
SHRI A.G. DALWADI

FOR ATTENTION OF MEMBERS

ICWA OF INDIA MEMBERS BENEVOLENT FUND

OBJECTIVE

The Fund has been created to provide:

1. Outright grant of prescribed amount to the beneficiary in the event of death of a member of the Fund.
2. Financial assistance of prescribed amount repayable in prescribed manner by the members of the Fund in case of financial distress due to prolonged illness or temporary loss of employment, illness of spouse/dependent children of member of the Fund; and education of dependent children of deceased member of the Fund.

Beneficiary means member of the Fund including dependent spouse/dependent children/parents/dependent minor brothers and sisters of the member of the Fund.

PROCEDURE OF MEMBERSHIP

An Associate / Fellow Member having paid up to date membership fees to the Institute can become a Life Member of the Fund on application being made in the prescribed application form along with a remittance of Rs.500/- (one time payment) by a Demand Draft favouring 'ICWAI Members Benevolent Fund' payable at Kolkata. The application form can be collected from the headquarters of the Institute at Kolkata or downloaded from the website of the Institute www.icwai.org. Soft copy of the application form can also be sent on requisition made to e-mail: membership.kb@icwai.org .

For the purpose of obtaining benefit from the Fund, a member should ensure to pay his up to date Associate/Fellow membership fees to the Institute and his name should continue to exist in the Register of Members of the Institute.

Note: **This is for intimation of all concerned that it has been decided that with effect from 1st July, 2010, the fee for admission as a Life Member of the Fund shall be revised to Rs.2000/-. Further, there shall be revision in benefits from the Fund with effect from the said date.**

FOR ATTENTION OF MEMBERS

PAYMENT OF MEMBERSHIP FEES

Members of the Institute who are having outstanding membership dues have been communicated individually to pay their dues. In addition, their due position is also uploaded on Institute's website www.icwai.org under the option **Members->Member Details->Search Details & Check Dues.** All members having outstanding dues are requested to pay the same immediately.

Further, the Annual Membership Fee for 2010-2011 for Associate and Fellow Members of the Institute shall become due and payable on 1st April, 2010 at the following rates:

Associate Annual Membership Fee : Rs.500/- (Rs.125/- for members entitled to pay at reduced rate)

Fellow Annual Membership Fee : Rs. 1000/- (Rs.250/- for members entitled to pay at reduced rate)

All members are requested to pay their respective membership fees along with arrears, if any, immediately and **not later than 30th September, 2010.**

The fees may be paid by Cash/Demand Draft/Pay Order/Cheque at the Headquarters/Regional Councils/Chapters of the Institute. The Demand Draft/Pay Order/Cheque should be drawn in favour of "The ICWA of India" and payable at Kolkata. In case of outstation cheque not payable at Kolkata, Rs.30/- is to be added towards Bank Charges. Fees may also be paid online through the Institute's Internet Payment Gateway on the link: http://www.icwai.org/icwai/membership _payment. ln case of payment made at the Regional Councils/Chapters of the Institute, the position will be updated upon receipt of the remittance at the Headquarters.

NOTE: MEMBERS SHOULD ENSURE TO INDICATE THEIR NAME AND MEMBERSHIP NO. ON THE REVERSE OF DEMAND DRAFT/PAY ORDER/CHEQUE TO BE DRAWN IN FAVOUR OF "THE ICWA OF INDIA" PAYABLE AT KOLKATA IN CASE PAYMENT IS TENDERED BY DEMAND DRAFT/PAY ORDER/CHEQUE. IT SHOULD ALSO BE ENSURED NOT TO ENCLOSE ANY OTHER INTIMATION ETC. ALONG WITH THE REMITTANCE OF MEMBERSHIP FEE.

For Attention of Practising Members

GUIDELINES FOR RENEWAL OF CERTIFICATE OF PRACTICE

The members of the Institute holding Certificate of Practice having validity upto 30th June, 2010 are requested to comply with the following guidelines for renewal of their Certificate of Practice:

1. Application for renewal of Certificate of Practice upto 30th June, 2011 has to be made in the prescribed Form 'D' duly filled in and signed on both sides together with Renewal Certificate of Practice fee for Rs. 500/- and all other dues to the Institute on account of annual membership fees and entrance fees. The annual membership fee for Associate and Fellow Members are Rs. 500/- and Rs. 1000/- respectively. The entrance fee for Associate and Fellow Members are Rs. 600/- and Rs. 500/- respectively payable at a time at the time of application for admission. The fees may be paid by Demand Draft/Pay Order/Cheque payable at Kolkata if remitted by post to the Headquarters of the Institute. In case remittance is made through an outstation cheque, Rs.30/- is to be included towards bank charges. The fees may also be paid directly by cash at the Headquarters or by Cash/ Demand Draft/Pay Order/ Cheque at the Regional Councils or Chapters of the Institute.
2. It may please be noted that under Section 6 of the Cost and Works Accountants Act, 1959, the annual membership fee and Renewal Certificate of Practice fee fall due on 1st April each year.
3. Special attention is invited to the fact that the validity of a Certificate of Practice expires on 30th June each year unless it is renewed on or before the date of expiry in terms of Regulation 10 of the Cost and Works Accountants Regulation, 1959. Therefore, a member signing any document as a practising Cost Accountant without having his Certificate of Practice renewed on or before the due date, makes the signed document invalid.
4. It may please be noted that mere payment of fees alone will not be sufficient for renewal of Certificate of Practice. Application in prescribed Form 'D' duly filled in and signed on **both sides is absolute necessary.** Soft copy of Form 'D' can be downloaded from Institute's website www.icwai.org under the option Members->Download->Forms.
5. It is also essential to furnish a certificate from the employer in the following form or in a form as near thereto as possible if the practising member has undertaken any employment or there has been a change in employment:

   "Shri ……………………………………………………….is employed as (designation)…………………………………………..in (name of Organisation)……………………………………….and he is permitted , notwithstanding anything contained in the terms of his employment, to engage himself in the practice of profession of Cost Accountancy in his spare time in addition to his regular salaried employment with us.

   Signature of Employers
   under seal of Organisation"

6. In order to enhance professional competence and evolve a systematic mechanism to update knowledge of members in practice, a scheme of Continuing Education Programme (CEP) was introduced in the year 2003.

   A revision of the said scheme has been made by the Council of the ICWAI in 2009 as follows:

(i) The member should undergo minimum mandatory training of 10 hours per year w.e.f. 2009-10.

(ii) The certificate of attendance for training will have to be enclosed with the application for renewal of Certificate of Practice.

The detailed revised guidelines in this connection are available on Institute's website www.icwai.org under the option Members->Guidelines/Procedures->For Mandatory Training For all Members of ICWAI under Continuing Education Programme.

The requirement specified above does not apply to a member in practice who has attained the age of 65 years as on 1st July, 2010.

Hence, all practising members are requested to send their application for renewal along with other requirements as indicated herein above immediately, in any case so as to reach the Institute Headquarters not later than **15th June, 2010.**

FOR ATTENTION OF MEMBERS

Additional fee payable on Restoration of Membership

In the 260th meeting of the Council held on 27th March, 2010, it has been decided that a member whose name stands removed from the Register of Members for non-payment of fees shall be required to pay additional fee of Rs.500/- for restoration of membership under Regulation 17 of the Cost and Works Accountants Regulations, 1959, which shall be payable in addition to arrears of annual fee and entrance fee, if any.

Partial modification to Guidelines for mandatory training for all members of ICWAI under Continuing Education Programme

In the 260th meeting of the Council held on 27th March, 2010, it has been decided to make partial modification to the guidelines for mandatory training for all members of ICWAI under Continuing Education Programme (CEP) made at the 254th meeting of the Council held on 20th & 21st May, 2009 by adding the following clauses retrospectively to the said guidelines with effect from 1 st June, 2009:

I. The members who reside outside India for a part of the year may be exempted from credit hours requirement for the same year on submission of valid documents in support of the same.

II. The members who are victimized by polio or accident or physically handicapped may be exempted from fulfilling the requirement of CEP hours on submission of valid documents in support of the same.

III. The members who could not get credit of requisite CEP hours due to unavoidable circumstances may be granted relaxation to make up balance CEP credit hours requirement in the next year in addition to the normal requisite CEP credit hours for that year.

However, no such exemption/relaxation as mentioned in clauses I & III above would be given to a member who obtains membership of ICWAI in accordance with the MOU entered into between IMA, USA & ICWAI.

NOTICE

We at ICWAI are committed to encourage sustainable development policies for the future. One such issue very dear to the Institute's heart is environmental preservation. Towards this end we propose to come out with a special edition of the Research Bulletin on 'Climate Change and Protection'. We request the active participation of all readers through sharing of news, views and opinions on the abovementioned topic. The articles may cover a wide canvas touching upon issues of the economic, social and physical impact of climate change; variants of urban pollution and rural environmental damage; and steps for controlling the damage with special emphasis on improvement of quality of human life, rehabilitation measures and costs of preservation. Write-ups containing case studies and live examples will be preferred. All interested can send their write-ups to Research & Journal Dept., ICWAI, 12 Sudder Street, Kolkata-700016.