Message of the President

My beloved students,

It is with happiness that I greet you as the President of the ICAI. You have taken the right decision in opting to pursue the CA curriculum in view of the significant role that the finance and accounting professionals are expected to play in the globalised scenario. If you possess the positive aptitude, make proper preparation and perform well in the examination, the CA qualification would embrace you leading to the brightest path in life.

Many of you seem to be pondering about the implication on your position in the light of the new CA curriculum proposed by ICAI. My suggestion to you would be not to spend any time or effort in this context as the interest of the existing students would be duly addressed as and when the new curriculum is approved by the Government and launched. The transitional provisions

Message of the Vice President

Dear Students,

In my first communiqué to you as Vice President of the Institute, it gives me immense pleasure to state that the Board Studies has geared up to meet the challenges of reaching students while they are preparing for May 2006 examination. All along I thought that you should not be left alone to toil for the examinations. There should be proper mentoring. Now twelve virtual classes are planned to be organized during March – April through which your doubts in critical subject areas will be clarified. This is a sea change in the pedagogy adopted by the Board Studies. I wish you to extract maximum benefits out of such virtual classes.

I could also envisage that Revision Test Papers are already in your hand. Suggested Answers of the previous examination will be released by the end of February. You have also compilations of almost

Message of the Chairman, Board of Studies

Dear Students,

It gives me immense pleasure to write and interact with you in my capacity as Chairman Board of Studies. This Newsletter is for your benefit and through this channel of communication, we hope to assist you to keep abreast of the latest developments, to keep track of important dates, deadlines etc. We look to you as the future flag bearers of the high standards that our Institute and Profession is known for. We would like to elicit your views, thoughts and suggestions as to what you would like us to focus upon in the forthcoming Newsletters.

POINT TO PONDER: You have taken the right career choice in opting for a Professional Career

CONTINOED ON PAGE 4.....
Glimpses

A scene of dais on the occasion of 11th All India Elocution Contest. Seen in picture (from L to R): CA. V. Murali, Chairman, Board of Studies, CA. Manoj Fadnis, Council Member, CA. T. N. Mancharan, President, CA. Jaydeep Narandra Shah, Vice-Chairman, Board of Studies (then Chairman), CA. R. S. Adukia, Council Member, Dr. T. P. Ghosh, Director of Studies.

CA. V Murali, Chairman, Board of Studies felicitating Shri P. K. Sridharan, Chief Commissioner of Income-tax, Chennai on the occasion 5th All India Quiz Contest, CA. Jaydeep Narandra Shah, Vice-Chairman (then Chairman), Board of Studies is standing on the left.

Dr. T. P. Ghosh, Director of Studies felicitating Shri R. Vasudevan, Regional Director, Southern Region, Ministry of Company affairs with a shawl on the occasion of 11th All India Elocution Contest for CA Students. Others seen in picture (from L to R): CA. V. Murali, Chairman, Board of Studies, CA. Manoj Fadnis, Council Member.

Shri R Vasudevan, Regional Director, Southern Region, Ministry of Company Affairs and CA. Jaydeep Narandra Shah, Vice-Chairman (then Chairman), Board of Studies giving first prize of Elocution Contest to Shri Sanket Shah. Others seen in picture (from L to R): CA. V Murali, Chairman, Board of Studies, CA. Manoj Fadnis, Council Member.

Shri R Vasudevan, Regional Director, Southern Region, Ministry of Company Affairs giving second prize of Elocution Contest to Ku. Nidhi Agrawal. Others seen in picture (from L to R): CA. V. Murali, Chairman, Board of Studies, CA. Manoj Fadnis, Council Member, CA. Jaydeep Narandra Shah, Vice-Chairman (then Chairman), Board of Studies.

Participants of 11th All India Elocution Contest with dignitaries.

Participants of 11th All India Elocution Contest with dignitaries.

Participants of 5th All India Quiz Contest with dignitaries.
### Our New President

**Mr. T.N. Manoharan**, FCA, Chennai, aged 48, has been elected as the President of the Institute of Chartered Accountants of India (ICAI), the Apex Body of the profession of Chartered Accountants in India, for a period of one year commencing from 5th February, 2006. He hails from a freedom fighter’s family with agriculture background. He is a post graduate in commerce from Sri Venkateswara University and a law graduate from Madras University.

A member of the ICAI with 23 years of standing, Mr. Manoharan was elected to the Council of ICAI for the first time in 2001 and thereafter in 2004. He has served in all standing committees and various non-standing committees of the ICAI. During his association with the ICAI, he pioneered the bringing out of Peer Review Manual. He took initiative to bring out the Guidance Notes on Certification for Transfer Pricing and for Minimum Alternate Tax. He was instrumental in bringing out the revised edition of ‘Issues on Tax Audit’.

Mr. Manoharan was the convenor of Working group constituted at the instance of Government of India for formulating recommendations for amendment in the Chartered Accountants Act, 1949.

Mr. Manoharan represented the ICAI at the meetings of the International Innovative Network (INN), UK; Government Finance Officers Association (GFOA), USA and International Standards of Accounting and Reporting (ISAR) of the United Nations Conference on Trade and Development (UNCTAD), Geneva.

Mr. Manoharan is presently chairman of ICAI Accounting Research Foundation. He is Chairman of the Centre of Excellence on Education, training and Continuing Professional Development (CPD) of the South Asian Federation of Accountants (SAFA – an Apex Body of SAARC).

Mr. Manoharan is a member of the International Accounting Education Standards Board of International Federation of Accountants (IFAC).

Mr. Manoharan was a visiting faculty at renowned professional Institutions and Business Schools. Besides being Chairman at technical sessions, Paper Writer and Key Note speaker at various conferences/seminars/workshops organised by professional bodies in India and abroad, he is also a prolific writer. He has authored many books on Direct Taxation. He has contributed articles in leading newspapers and journals.

### Our New Vice-President

**Shri Sunil H. Talati**, FCA, Ahmedabad, aged 54 years has been elected as the Vice-President of the Institute of Chartered Accountants of India (ICAI), the Apex Body of the profession of Chartered Accountants in India, for the year 2006-07. He is a postgraduate in commerce and also a law graduate.

A member of the ICAI with 30 years of standing, Shri Talati was elected to the Council of ICAI for the first time in 2001 and thereafter in 2004. He has served in all standing committees and various non-standing committees of the ICAI. During his association with the ICAI, he pioneered the bringing out of Peer Review Manual. He took initiative to bring out the Guidance Notes on Certification for Transfer Pricing and for Minimum Alternate Tax. He was instrumental in bringing out the revised edition of ‘Issues on Tax Audit’.

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Shri Talati has authored the Income Tax Ready Referencer in Gujarati and was also instrumental in bringing out Form 2C of Income Tax Act in Gujarati.

Besides excellence in education and profession, he had been excelling in extra curricular activities also. He had been first Rotaract Governor in India from District 305 and first Chairman of National Council of Rotaract Governors. Having held various posts in Jaycees and in other social leading clubs, he was a sportman right from School and College days being champion in Swimming, Tennis and Badminton. He is a regular columnist in Gujarati ‘Financial Express’ every Tuesday and monthly Journal Tax Reporter.

### Newly Constituted Board of Studies

| CHAIRMAN | V. Murali, Chennai |
| VICE-CHAIRMAN | Jaydeep Narendra Shah, Nagpur |

Details about the members will be included in April, 2006 issue.

| MEMBERS | |
| T.N. Manoharan, President (Ex-Officio), Chennai |
| Sunil Talati, Vice-President (Ex-Officio), Ahmedabad |
| Anita Kapur, New Delhi |
| Anuj Goyal, Ghaziabad |
| Kashi Prasad Khandelwal, Kolkata |
| K.C. Parashar, Jodhpur |

| CO-OPTED MEMBERS | |
| R.S. Adukia, Mumbai |
| Uttam Prakash Agarwal, Mumbai |
| A. Selva Ganesh, Chennai |
| Atul C. Bheda, Navi Mumbai |
| Dharmendra Kumar Garg, New Delhi |
| Mahaveer Chand Bohra, Jodhpur |
| Parveen Sharma, Delhi |
| Shiwaji Bhikaji Zaware, Pune |

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**MEN AT THE HELM**

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| Anuj Goyal, Ghaziabad |
| Kashi Prasad Khandelwal, Kolkata |
| K.C. Parashar, Jodhpur |

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| Uttam Prakash Agarwal, Mumbai |
| A. Selva Ganesh, Chennai |
| Atul C. Bheda, Navi Mumbai |
| Dharmendra Kumar Garg, New Delhi |
| Mahaveer Chand Bohra, Jodhpur |
| Parveen Sharma, Delhi |
| Shiwaji Bhikaji Zaware, Pune |
Mr. V. Murali, FCA, Chennai, has been has been nominated as Chairman of the Board of Studies of the Institute of Chartered Accountants of India for the year 2006-07. In addition, he is currently holding Vice Chairmanship of Committee on Financial Markets & Investors’ Protection Committee. Besides, he is also member of the ICAI-ICWAI-ICSI Coordination Committee, Committee for Members in Industry, Corporate & Allied Laws Committee, Professional Development Committee, Committee on Trade Laws & WTO and Financial Reporting Review Board.

Academically, he is a bachelor of Commerce from Vivekananda College, Mylapore. He is a rank holder of Madras University. He is also a Graduate Member of the Institute of Cost & Works Accountants of India.

Earlier, Mr. V. Murali is distinguished to be Chairman of various committees, viz., Public Relations Committee, Committee for Members in Industry, Regional Monitoring Committee of the Southern Region, Regional Budget & Finance Committee of the Southern Region. He has also been a member of Fiscal Laws Committee, Expert Advisory Committee, Board of Studies, International Affairs Committee, Committee on Insurance, Examination Committee, Committee on Trade Laws and WTO, Committee on Ethical Standards & Unjustified Removal of Auditors, Public Relations Committee and Committee on Electoral Reforms.

He has also been Vice-Chairman of the Research Committee and was the Chairman, Computer Committee, Bangalore Computer Centre.

Prior to joining council, He was twice Regional Council Member of the Southern India Regional Council for the years 1998-2001 and 2001-2004. During the period, he held the various posts of SIGASA Chairman, Treasurer, Secretary, Vice-Chairman and Chairman of the Southern India Regional Council.

He was a member of the Special Committee constituted by the Department of Company Affairs to consider the suggestions for amendment of the Companies Act and Rules made thereunder and was a member of the various committees constituted by the Government from time to time. He had been a member of the Regional Direct Taxes Advisory Committee. He has also been closely associated with Chambers of Commerce & Industry, and has held different positions in different Social Organisations, Professional Bodies and Associations.

He has Chaired many Technical Sessions and has presented various Technical papers on varied topics. He is a Prominent Master of Ceremonies, Coordinator, convenor of various Conferences, seminars, workshops and Brain-storming Sessions.

A prolific writer he has written many books and articles. He has written, Practical Auditing (Co-Author), Conveyancing & Real Estate Transactions, Computation of Capital Gains – A Ready Referencer, Computation of Taxable Income – A Ready Referencer, The Impact of Globalisation on the Indian Economy, Role of Intelligentsia in the Upliftment of Society, How to become a Successful Entrepreneur, Strategies for Success in Life, Winning Communication Skills and Public Relations and Positive Thinking.

Message from the President

(Continued from page 1)

will be devised taking into account the interest of the existing students, but at the same time, without modifying the existing duration of the course or practical training. I am confident you will appreciate that existing curriculum cannot be modified based on proposed curriculum as each is an independent package in itself. Nevertheless, efforts will be taken to provide for smooth transition by conducting parallel examinations under the old and new curriculum as may be considered necessary by the Council.

Let me assure you that, as part of transition, students pursuing PE-I will have option to appear either in PE-I examination or in Common Proficiency Test (CPT) as and when launched after Government’s approval. In the same manner, any student who has qualified PE-I and pursuing PE-II will be eligible to join the practical training and then exercise option to write either PE-II or Professional Competence Examination (PCE) up to the number of attempts for which parallel examinations will be held. Therefore, my suggestion to the student fraternity is not to keep in abeyance any of your efforts or decision to pursue the course awaiting the new curriculum. You may prepare for or pursue PE-I or PE-II or practical training or Final examination, depending on your eligibility, and as and when the new curriculum comes in, exercise your option as may be provided to you under the transitional mechanism. This would ensure that you do not lose any time in the interregnum period and all the same you are in the preparation mode to face the examination as and when you become eligible to appear.

There is a wrong notion in the minds of some section of the students and others that the pass percentage is regulated or rather controlled by the ICACI. Let me clarify that the only factor that determines or governs the pass percentage in our examinations is the performance of the students. If the performance is good, pass percentage is better.

I am happy to note that the pass percentage has significantly improved in the recent past as evidenced by the data given here below:

<table>
<thead>
<tr>
<th>Examination</th>
<th>PE-I</th>
<th>PE-II</th>
<th>Final</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Both</td>
<td>Gr.I</td>
<td>Gr.II</td>
</tr>
<tr>
<td>May, 2005</td>
<td>34.81</td>
<td>12.64</td>
<td>26.43</td>
</tr>
<tr>
<td>November, 2005</td>
<td>40.18</td>
<td>20.66</td>
<td>28.96</td>
</tr>
</tbody>
</table>

Even the above percentage, in my view, is not a true reflection of the actual pass percentage of students, for the simple reason that the number of students who appear encompasses one set of students who pursue the course without the required aptitude and also another set of students who appear without adequate preparation. If on a rough estimate, you eliminate these two segments of students, the pass percentage would certainly be very high. The cream of the younger generation, who take to CA curriculum qualify all the examinations.
Message from the Vice President

(. . . Continuing from page 1)

all the subjects. Use all these materials to supplement the knowledge gathered through study materials. I would further advice you to take one text books and jot down extra points.

Online eligibility test using computerized question bank is in its experimental stage. We have successfully experimented the mechanism in Kolkata. The Board of Studies is gearing up to effectively implement it in other decentralized offices. Under this scheme you can just have walk – in test and get your scorecard immediately after the tests. I understand that you are exposed to only objective type questions under this mechanism. But to reply such objective questions, which are synthesis of theories, you need equally good preparation.

Frequently, I encounter complaints from the students – you have undergone 250 hours compulsory computer training not being registered with the Board of Studies, you have appeared online examination before completion of full tenure of the course, etc. A common argument is that how should we know these rules. I understand these are procedural aspects, but these are part and parcel of the academic process which you need to know as a student and follow. I would advice you to read the Prospectus and other instructional materials issued by the Board of Studies and note down the requirements. Various announcements given in this Newsletter as well as hosted on the Institute’s website are of great use. You need to remain alert. The Board of Studies adopts various modes to reach you and expects you to reciprocate. I would emphasize on learning various modules of Computer programme in a dedicated manner as these will help you function better in a computerized environment.

We have instituted quality examination system to effectively evaluate your knowledge component before you are admitted to this honourable profession. It’s a great responsibility to the society. A frequently quoted statement comes to my mind that “an auditor is someone who arrives after the battle and bayonets all the wounded”. Let us not take it negatively. That is exactly the challenging job. You need to gather adequate evidence and assemble them and form your opinion. No one is going to tell you other than evidence gathered by you what exactly happened. The auditor is to express his opinion. Your planning is important, your business knowledge is important, your theoretical knowledge gives you analytical mind – but most important is the acumen you gain during practical training.

Another issue which I should share with you is that activities of the Board of Studies are vertically integrated with the Commerce Education and Career Counselling. By this the Board of Studies would be in a position to work in a better harmony and have a direct dialogue with the perspective new entrants to the chartered accountancy course.

Finally, I believe that for success of any organization a strong feedback mechanism is very important. Accordingly, you are welcome to send your opinion on various issues for improvement of services and organizational processes. Please feel free to give your opinion on certain important issues. In particular you are welcome to write about following issues:

◆ Do you feel comfortable in attempting all questions of various subjects within the prescribed time frame in the examinations?
◆ What is your view on the quality of the question paper?
◆ Are these questions simply memory testing or are analytical enough to test your intelligence?
◆ How do you rate our study materials with reference to contents, style and methodology adopted?
◆ Narrate your experience while registration, appearing in Sunday test, obtaining eligibility certificate.

You may send your replies to dos@icai.org. For speedier response, I advise you to extensively use e-mails for communicating with the Institute. However, you should avoid sending mails to several addresses. Send the same to concerned person/department. A list of e-mail addresses is available on the website. We are committed to render best quality education through best quality academic process.

With best wishes,

Yours truly

Sunil Talati

February 20, 2006

TN Manoharan
Message from the Chairman, Board of Studies

(. . . Continued from page 1)

which will be rewarding in all aspects. The Value of the Qualification CA is immeasurable. The Agni Pariksha that you have to undergo and the path may be rocky and rough. But to succeed it is necessary to put in hours of dedicated study and intense concentrated effort. Never disregard anything because everything has utility value. Even a Stopped Clock is right twice a day. The best way to predict your future is to create it. Optimism is the faith that leads to achievement.

Positive attitude, right aptitude decides your Altitude in Life.

MISSION – 2006: Our Honourable President CA T.N. Manoharan has set Mission 2006 – Stepping up Students Services which include:

- Upgrading the quality of study materials;
- Continuous professional learning through counselling and scholarship;
- Deployment of Learning Management System (LMS) under E-Learning and Broadcasting Modes.

We have adopted the mission of providing you global standard comprehensive study materials which would be a unique scholastic achievement of the Board of Studies. The proposed set of study materials should have proper theoretical discussion supported by adequate illustrations and question banks, special reference to internet resources, case studies wherever required. These are my preliminary ideas. We will consolidate these ideas by further interaction at the Board level and interaction with faculty of the Board of Studies, students, fellow professionals and academicians.

The Board of Studies needs to take up the challenge of providing on line guidance to the students. The idea should be conceptualised and given a structured shape. One idea could be a separate and exclusive portal for the students with a facility of Discussion Board to post question to generate reply by discussion among the students which a faculty of the Board of Studies can moderate. I invite you to contribute in the thought process.

LEARNING MANAGEMENT SYSTEM (LMS): In the e-learning process, many standardised Learning Management System (LMS) are available for managing academic content, tracking students’ progress, taking on line examination and offering facilities of discussion board. At my personal level, I put forth certain aspects of good LMS:

- **High availability:** The LMS must be robust enough to serve the diverse needs of thousands of learners, administrators, content builders and instructors simultaneously.
- **Scalability:** The infrastructure should be able to expand or scale to meet future growth, both in terms of the volume of instruction and the size of the student body.
- **Usability:** To support a host of automated and personalized services, such as self-paced and role-specific learning, the access, delivery and presentation of material must be easy-to-use and highly intuitive like surfing on the Web or on line access to book stores.
- **Interoperability:** To support content from different sources and multiple vendors’ hardware/software solutions, the LMS should be based on open industry standards for Web deployments (XML, SOAP or AQ) and support the major learning standards (AICC, SCORM, IMS and IEEE).
- **Stability:** The LMS infrastructure can reliably and effectively manage a large enterprise implementation like ours.

- **Security:** As with any outward-facing collaborative solution, the LMS can selectively limit and control access to online content, resources and back-end functions, both internally and externally, for its diverse user community.

Optimally, an LMS will consolidate mixed-media training initiatives, automate the selection and administration of courses, assemble and deliver learning content, measure learning effectiveness and integrate with other enterprise applications.

VIRTUAL CLASSES: In the broadcasting mode, we have already adopted Reliance Webworld for delivering lectures by various expert faculty. In the past, we have successfully conducted virtual classes. These classes are relayed simultaneously across different cities. The students get benefit of attending the classes of expert faculty without physically being present face to face. They are able to interact with them and get replies to their queries. It would be our endeavour to increase the frequency of these classes and cover more cities. I advice you to actively participate in the programme of virtual classes planned to be organised in March and April, 2006. We need to explore other modes of broadcasting. I hope to reach you during the year with definitive programmes.

NEW SCHEME OF EDUCATION AND TRAINING: I will be working with my other colleagues in the Board of Studies and in the Council to take stock of the challenges ahead and decide the task to be accomplished this year in the light of the New Scheme of Education and Training which is on the anvil.

The Board of Studies directorate is the special purpose vehicle to achieve the mission formulated. I am confident that the directorate will stand up to the expectation. However, the focus of this year will include new scheme of education and training, which is planned for implementation in a few months time. The whole scheme has been restructured and streamlined. The transitional provisions that are conducive to the existing students are being worked out. The syllabus has been attuned to cover contemporary developments in different areas and include the newer skills required by a professional Chartered Accountant.

WRAP UP POINT: Most of you must be busy studying for the forthcoming exams. Think positive, work with confidence and unwavering devotion, the goal is within your reach. The secret of success according to Benjamin Franklin is “Never leave that till tomorrow which you can do today.” Always remember that desire is the key to motivation, but it is the determination and commitment to an unrelenting pursuit of your goal – a Commitment to excellence – that will enable you to attain the success you seek.

AIM HIGH: I have always been enthused by Jacques Chancel’s immortal quote “Better get a stiff neck from aiming too high, than a hunch back from aiming too low.” In the end, it is not the years in your life that count, it is the life in your years that counts.

I would like to end this missive with a quaint Irish Blessing that is a personal favourite with me ”May the road rise to meet you, May the wind always be at your back, May the sun shine warm upon your face, the rains fall softly on your fields and until we meet again May God hold you in the palm of His hand.”

With Warm Professional Regards,

Forever, yours in Service,

(V. MURALI)
Learning Objective: Application of CAPM model to compute WACC, Hamada’s equation, Cash flow analysis for project evaluation and assessment of value in use.

The project team of Sunshine Ltd. in co-ordination with the Finance Department has prepared projected Profit and Loss Account and projected Balance Sheet for a four-year period as presented in Tables 1 & 2 for its proposed project of processing agro food products.

The Company desired to evaluate the project. The Project Team comprising Ray, Rohini and Rittik were discussing various issues involved.

Ray: Finance Department has sent us projected Profit and Loss Account and Balance Sheet for a four-year forecast period. How to proceed further?

Rohini: We need to derive cash flows of the project as project evaluation should be on the basis of cash flows.

Rittik: Let us decide the methodologies to be adopted. Scrap value is significant. A good number years of project’s working life is ignored.

Ray: That is because of uncertain demand beyond the forecast period.

Rohini: We may consider earning capitalization. I mean capitalization of operating cash flow using appropriate WACC.

Ray: What does that mean? Should we consider same amount of operating cash flow that is projected for 2009 to continue?

Rohini: That can be one idea.

Rittik: Why not to consider net realizable value of the second hand asset?

Rohini: Finance Department has sent an estimate. That will be 150% of depreciated book value as per accounting depreciation. Let us take higher of the two. That will be appropriate in the context of Accounting Standard – 28 as well.

Ray: But future is uncertain to adopt earning capitalization model.

Rohini: A very conservative view of continuation of constant earning stream would perhaps do.

Ray: Would you mean a perpetuity? That’s not correct.

Ray & Rittik: OK. This issue we can debate later.

Rohini: Let us now decide the discount factor.

Ray: That is WACC any way.

Rohini: It has many variants. What should be the weights? Book value or market value of equity?

The author is the Director of Studies, ICAI.
Ray & Rohini: Agreed.

Rohini: But then WACC will be changing over the period as retained earning will have the effect of increasing equity component in the capital structure.

Rittik: We may use WACC computed at the beginning.

Ray: That will not be a fair approach.

Rittik: What is the quantum of change?

Ray: It's substantial. See Table 3.

Rohini: We should not ignore the change in capital structure. Of course, while computing WACC we should find weight of debenture and loan separately. Weight may be as given in Table 4.

Ray: Let us compute WACC for each year. Hamada’s equation can be used for finding new beta whenever debt-equity ratio is changing. Beta as on 1.1.06 may be picked up from the comparable industry beta. [For beta analysis see data file at www.icai.org]

Rittik & Rohini: Agreed.

Ray: We need to take care of additional working capital requirement.

Rohini: For that we should take into account only Inventories, Debtors, Cash & Bank and Creditors. Other items are not relevant.

Rittik: Advance tax, tax provision, proposed dividend—you mean to say these are not working capital items.

Rohini: We have already considered tax in operating cash flow. Dividend payment is not operating cash flow.

Rittik: We should consider release of working capital.

Rohini: In case we use earning capitalization approach for finding value of the project after fourth year, then we should presume that working capital remained locked in. Of course, by earning capitalization, I mean to say Operating Cash Flow of fourth year divided by WACC of the same period.

Rittik: Why don’t you look at the cash flow growth. CAGR is about 31.55%. It should be:

\[
\text{Value in Use} = \frac{\text{OCF}_4 (1 + g)}{\text{WACC} - g}
\]

Since growth is abnormally high, at least we should take GDP growth of 8% as the normal growth.

Ray: I told you about uncertain future which you are completely ignoring.

Rittik: Ah! You are a very conservative guy.

Rohini: Rittik, the business is expected to decline after the projected time frame. No one will pay for growth. Better we take a negative growth at that stage. Product will be getting old and competition will intensify. Say, negative growth of 10%.

Ray: You are right.

Rittik: If we use net sale value?

Rohini: Then of course we should work out net sale value of fixed assets and release of working capital. Let us then find higher of the two. It is necessary to take care of capital gain tax on resale value of fixed asset. Capital gain tax may be taken at 20%. This is necessary as 150% of depreciated book value of fixed asset is Rs. 60 million that is higher than WDV as per tax
depreciation which is Rs. 31.64 million resulting in a capital gain and capital gain tax. Also value of investment outside the business is to be taken into account. Let us take that at 140% of the book value subject to zero capital gain tax.

**Rohini:** I find cash flow capitalization at appropriate WACC will be higher. It is Rs.645.75 million. Of course, I have my own assumption. My approach for value in use is very simple and I agree with the Rittik’s method for its computation.

No agreement could be arrived at. They are puzzled. Discussion continued for a week debating upon what should be appropriate approach.

Who among you would help the trio? They need help in (1) preparing a table showing computation of net present value showing explaining them (a) computation of Ke, Kd and WACC, (b) net realizable value of project assets, (c) Value in use of the project at the end of fourth year and (d) working capital requirement, additional working capital and release of working capital, (2) IRR and (3) Pay Back period.

**Data Source:** For risk free rate, index value and share price of comparable company visit our website www.icai.org student page. Check data file for this case study.

**Hints:** Application of CAPM model for obtaining cost of equity should be the best approach. As per CAPM model cost of equity is computed taking:

\[ R_i = R_f + \beta (R_m - R_f) \]

- **R** \_f \_ = Risk free rate, the source should be Zero coupon yield curve data available at National Stock Exchange website at www.nseindia.com
- **R** \_m \_ = S&P Cnx Nifty 50 data should reflect market return. It is possible to download data of nifty from National Stock Exchange website at www.nseindia.com. Such data is available in csv format which one can process.
- **\beta** = It is slope of the regression line. Compute from the data file.

**Hamada’s equation:**

\[ \beta_l = \beta_u \times [1 + (1-\text{Tax Rate}) \times D/E] \]

- **\beta** \_u \_ = Unlevered beta, **\beta** \_l \_ = Levered beta,
- **D/E** = debt-equity ratio.

While applying this equation a 30% tax rate may be assumed.
Effect of Non Registration of Partnership Firm

This article attempts to study the impact of non registration of firms, i.e., partnership firms. The whole idea of the article is that all others who are transacting with the firm must be aware of the constitution of the firm and thus the documents which are available with the registrar of companies are public documents and people dealing with the firm are said to have constructive notice of the details about the firm.

INTRODUCTION

The Indian Partnership Act, 1932 (“the Act”) was enacted by the Parliament repealing the relevant sections from the Indian Contract Act, 1872 keeping in mind the conditions and the special nature of business in India. It was thought proper to define and amend the law relating to partnership. Registration of the partnership is a very important area which has been dealt in Chapter VII of the Act, and due to its special nature, that the disabilities resulting from non-registration came in to effect a year after the Act.

Chapter VII of the Act deals with ‘Registration of Firms’ of which sections 56 to 65 deals with the procedure for registration. Section 66, relates to inspection of register, section 67 to grant of copies to ‘any person’ and section 68 with ‘rules of evidence’. The purpose of these provisions is to protect the interest of those who deal with partnership firms in various commercial transactions. Third parties who deal with a firm on its name or with a partner or managing partner as representative of the firm must be in a position to know who the partners are and what are their respective shares in the partnership, the details, if any, as to the capital investment by partners, and the details, if any, of the partnership property. That would enable them to have an idea of the competence, status and solvency of the partners of the firm.

If the partnership firm does not choose to get itself registered, then the firm as well as the partners are under the disabilities which are extremely inconvenient. There is no direct compulsion but a pretty strong persuasive pressure to come on the register of firms. No member of an unregistered firm can enforce his rights under the partnership contract against either the firm or any present or past member of it, nor can the firm sue its customers on their contracts.

HISTORY

In order to compel partners to register their partnership firms so that all relevant information could be obtained by inspection of the register or by obtaining a certified copy thereof, a suitable legal provision is needed. Under the UK Registration of Business Names Act, 1916, there was a penal provision and also a provision which created certain disability in respect of enforcement of certain rights in Courts. However, under the Indian Partnership Act, there is no penal sanctions for non-registration (as in UK), but only a provision that creates certain disabilities in respect of enforcement of rights in Courts.

Under the Act, registration of firm is not mandatory. It is utterly on the will of the partners to get it registered with the Registrar of the Firm or not to do the same. The object and the reason as to why registration is not made compulsory are, in brief difficulties related to Hindu undivided family business, short lived partnership and firm in a small way of business. Although there is no penalty for non-registration, yet registration becomes necessary at one time or the other, because Section 69 of the Act seriously cuts short the capacity of an un-registered firm and its partner to sue and be sued (which would prevent others parties from transacting).

It was on the basis of the Report of the Special Committee that the Partnership Act 1932 was passed by the Parliament. Para 15 of the report stated that the Bill seeks to overcome class of difficulty by making registration optional and by creating inducements to register, which will only bear upon firms in a substantial and fairly permanent way of business.

Business Names Act 1985 (English Act), has replaced the above the UK Registration of Business Names Act of 1916 and Section 4 of the new Act refers to the civil remedies for breach of Section 4. It provides for dismissal of the action to enforce a right arising out of a contract made in the course of a business, if the firm is not registered.

The English precedent in so far as it makes registrations compulsory and imposes a penalty for non-registration has not been followed, as it is considered that this step would be too drastic for a beginning in India, and would introduce all the difficulties connected with small or ephemeral undertakings. Instead, it is proposed that registration should lie entirely within the discretion of the firm (or the partners) concerned, but following the English precedent, and firm which is not registered will be incapable to enforce its claim against third parties in the civil court; and any partner who is not registered will be unable to enforce his claims against third parties or fellow partners.

The English precedent referred to in Para 17 of the report of the Special Committee, which has been not followed in totality but followed in part in drafting section 69(2) is the one contained by the Registration of Business names Act 1916. Section 7 of that Registration of Business Names Act 1916 refers to penalties for default in registration. As stated in the report, the penalty part of this Act has not been introduced in India but the provisions of Section 8 creating disabilities in the way of the firm in default is adopted.

But once registration has been effected the statement recorded in the register regarding the constitution of the firm will be conclusive proof of the facts therein contained against the partners making them and no partner whose name is on the register will be permitted to deny that he is not a partner with certain natural and proper exceptions. This should afford a strong protection to persons dealing with firms against false denials of partnership and the evasion of liability by the substantial members of a firm.

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Ankita Srivastava and Alok Shankar
A third party who deals with a firm and knows that a new partner has been inducted, can either make registration of the new partner a condition for further dealings or content himself with certain security from the other partners and the chance of proving by other evidence, the membership of the new but unregistered partner. A third party who deals with a firm without knowing of the addition of a new partner counts on the credit of the old partners only and will not be prejudiced by the failure of the new partner's registration. The rights of that defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect of which the particulars were required to be furnished.

The above provision clearly signifies that the right that is sought to be enforced by the unregistered firm and which is barred must be a right arising out of a contract with a third party-defendant in respect of the firm's business transactions.

If two persons agree to share the profit of a money-lending business, they are partners and form partnership to which section 69 applies.

**SCOPE AND METHOD OF REGISTRATION**

Registration under the Indian Registration Act, 1908 or Income Tax Act, 1961 is different from registration under the Act. Registration under the Act may be effected by sending a statement in the prescribed form to the Registrar, of the area in which any place of business of the firm is situated or proposed to be situated. However, it has been held that omission to mention one of the other places of business when the principle place is mentioned will not vitiate the registration and the mistake can be rectified under Section 64 of the Act. However, the registration under the Act is not conclusive for purposes of Income Tax Act, 1961.

Sub section (1) of Sec 58 provides for the documents required for registration. Nothing of the internal economy of the firm need be disclosed beyond the mere names of the partners, and the duration of their partnership. It provides that when there is an application for registration of a firm, it shall contain a statement of matters enumerated in clauses (a) to (f) of this sub section.

If an application for registration of partnership firm complies with the requirements of section 58 and the rules framed under the Act, the Registrar of the Firms is bound to record an entry of the statement of matters required to be furnished for carrying on the business for which particulars were required to be furnished.

Under the Partnership Law, it can be taken to have been settled that the registration of the firm takes place only when the necessary entry is made in the register of firms under section 59 of the Act, 1932 by the Registrar. Mere dispatch of an application for registration under section 58 of the Act does not amount to registration of the partnership firm. The registration of the firm can be proved only by certified copy of entry relating to firm in registrar of the firms and not otherwise. Thus, acknowledgement of the registrar of firm cannot be accepted as proof relating to its registration.

Section 66 of the Act, authorises any person to inspect the Register of Firms on payment of the prescribed fee. It also authorises inspection of all statements, notices and intimations filed under Chapter VII of the Act. This makes the person transacting with the firm aware of its composition and thus their creditability.

**EFFECT OF NON REGISTRATION**

**Bar on suits by unregistered firms**

Sub-section (1) of section 69 of the Act bars suits by partners against an unregistered firm or against any person alleged to be or to have been a partner of such a firm. The bar applies to enforcement of (a) right arising out of a contract, or (b) right conferred by the partnership Act. On the other hand, sub-section (2) of section 69 of the Act bars suits for enforcement of a right arising out of a contract by or on behalf of the unregistered firm against ‘third parties’. The operation of section 69 would extend to the suit in which a partner sues his co-partner or sues the firm to enforce any right arising from the contract between the partners.

The Supreme Court has held that this section is mandatory in character and its effect is to render a suit by plaintiff in respect of a right vested in him or acquired by him under a contract which he had entered into as partner of an unregistered firm whether existing or dissolved, is void. In other words, a partner of an erstwhile unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract hit by the provision of section 69. However a suit by a partner to recover money from a third person is not barred by section 69 of the Act, if the transaction, involved in the suit, is in his own name only and the defendant had no notice of the existence of the partnership. The provisions required by this section are mandatory, and the bar of the section applies both to suits by the firm as well as on behalf of the firm.

In Jagdish Chandra Gupta's case, the Constitution Bench approved of a liberal and full meaning being assigned to the phrase ‘other proceedings’ in Sub-section (3) of section 69 of the Act untramelled by the preceding words ‘a claim of set-off’. The Court refused to counteract the plea for interpreting the words ‘other proceedings’ ejusdem generis with the preceding words ‘a claim of set-off’. In M/s. Shree Ram Finance Corporation calls for the effect of bar created by Section 69 being determined by reference to the date of institution of the suit and not by reference to any subsequent event. In Delhi Development Authority's case, the Court held section 69 of the Act is applicable to an application under section 20 of the Arbitration Act, 1940 as such an application (under the scheme of that Act) would be included within the meaning of ‘other proceedings’ in Section 69 (3) of the Act. Section 8 of the above English Act is relevant and it speaks of the rights of that defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business for which particulars were required to be furnished for carrying on the business. The above provision clearly signifies that the right that is sought to be enforced by the unregistered firm and which is barred must be a right arising out of a contract with a third party-defendant in respect of the firm’s business transactions.

For the purpose of deciding the point about the words ‘arising from a contract’ in section 69(2), it is necessary to go into the question as to what the legislature meant when it used it.

In this context, it is important to refer to the Report of the Special Committee (1930–31) which examined the draft Bill and made recommendations to the legislature.

Before going into the above report of the special committee which preceded the Act, it will be necessary to refer to the case in Commissioner of Income Tax, AP v Jayalakshmi Rice and Oil Mills Contractor Co.
where the Supreme Court refused to refer to this very report for constraining section 59 of the Act. But, that decision is no longer good law as it was clearly dissented on this aspect in the judgment of the Constitution Bench in RS Nayak v AR Antulay. In number of later judgments, the court referred to the reports of committees or commissions.

The Constitution Bench of the Supreme Court for understanding the legislative intent relied upon Hyderabad Industries Ltd v Union of India. The English Law has changed completely after Pepper v Hart in favour of admissibility of such material.

A restricted view was no doubt expressed in PV Narasimharao v State that such reports can be looked into for the purpose of knowing the historical basis or mischief sought to be remedied, but not for construing the provision unless there is ambiguity.

Even going by this restricted view, we find that there is considerable ambiguity in section 69(2) (unlike the English Statutes of 1916 and 1985) as to what is meant by the words “arising out of a contract” in as much as the provision does not say whether the contract in section 69(2) is one entered into by the firm with the defendant or with somebody else who is not a defendant, nor whether it is a contract entered into with the defendant in business or unconnected with business. Hence, it should thus be permissible to look into the reports even for purpose of construing section 69(2).

A question has arisen whether the words “enforce a right under a contract” would include rights arising out of contracts with third parties not in connection with the day-to-day business or commercial transactions entered into by the unregistered firm. The view was expressed by the Supreme Court in Reptakos Brett Co Ltd v Ganesh Property where the Court held that the right to evict a tenant was not a right arising from a contract but was a statutory right under the Transfer of Property Act, 1882. The eviction proceeding was therefore not barred.

The Committee further suggested that Section 69 of the Act, as it stands presently, puts a partner in an unenviable situation of first suing for dissolution, before he could proceed to recover monies under the contract. The bar on suits should be restricted only to suits in respect of rights arising out of contracts entered in the course of business. Accordingly, it is recommended that amendments in the Act, on the lines suggested by the Law Commission of India, be initiated.

The Supreme Court following Reptakos Brett Co Ltd v Ganesh Property in Haldram Bharjimana v Anand Kumar Deepak Kumar held that a suit to prevent infringement of trademark is not barred by the section whether the firm is registered firm or not. The Court said that it is well settled that a passing off action is a common law action based on tort. Therefore, a suit for perpetual injunction to restrain the defendant from passing off the defendant’s goods as those of the plaintiff by using the plaintiff’s trademark and for damages is an action at common law and is not barred by Section 69(2).

But before the bar under Section 69 can be invoked by the defendant the defendant needs to establish that the person suing is a partner of a partnership firm within the meaning of Section 4 of the Act.

**NON-REGISTRATION OF THE PARTNERSHIP FIRM HAS NO LEGAL BEARING ON THE CRIMINAL CASE**

The menace of bouncing cheques has been tackled by an amendment to the Negotiable Instruments Act, 1881, providing for imprisonment of the offender and victim can approach courts under Section 138 of the Negotiable Instruments Act, 1881.

However, so far as a partnership firm is concerned, its rights would depend upon its legal status. In a recent case, the Karnataka High Court considered this issue in the case of a complaint filed by an unregistered firm Beacon Industries v Arfan Ghasi. After receipt of the complaint filed by Beacon (revision petitioner in the aforesaid case), the Trial Court at Bangalore dismissed the complaint by holding that there was a bar under section 69 of the Act and that an unregistered firm could not prosecute any person or a firm.

The High Court observed that even a plain reading of section 69(2) of the Act, left no scope for doubt that what was barred by the said section was the institution of a suit. The court further observed that enforcing a right arising from a contract or conferred by the Act and suing, as a partner in a firm against the firm or any partner in the firm would not be possible unless the firm was registered firm.

The High Court remarked that a careful reading of section 69(2) of the Act clearly showed that an unregistered partnership firm was barred from filing a civil suit, while there was no such bar so far as filing of a private complaint was concerned.

The Court noted that in the case of a bounced cheque, there was purely criminal liability on the part of the person who had issued the cheque. The Court held that even if the cheque had been issued by a partner of an unregistered firm for a legally recoverable debt and if such a cheque was dishonoured, it would amount to a criminal liability. Thus the contract by the unregistered firm referred to in section 69(2) must not only be one entered into between the firm and the third party-defendant but must also be one entered into by the plaintiff firm in the course of the business dealings of the plaintiff’s firm with such third party-defendant.

**DISPUTE RESOLUTION AND NON REGISTRATION**

Prior to the Arbitration and Conciliation Act, 1996, the law was settled. An application under section 20 of the Arbitration Act, 1940 could not be filed to enforce a “right arising from a contract” in respect of an unregistered firm as it was barred by the provisions of section 69(2) of the Act.

By its decision in Jagdish Chandra Gupta v Kayaria Traders (India) Ltd, the Supreme Court had settled the law. A clause in a deed of partnership provided that in case of dispute between the partners the matter will be referred to arbitration. A dispute having arisen, one partner appointed an arbitrator to which the other partner gave no response. An action was then commenced to enforce the arbitration clause of the agreement.

The other partner contended that the firm was not registered and therefore the suit should be dismissed. The Supreme Court held that the suit was not maintainable and the Court observed that

“It is impossible to think that the right to proceed to arbitration is not one of the rights which are founded on the agreement of parties. The word of section 69(3) or other proceedings to enforce a right “arising from a contract” are sufficient to cover the present matter”.

If arbitration proceedings were allowed, unregistered firm would, by providing for arbitration in the partnership deed, escape the disability contained in the section.

But the Supreme Court in Smt. Prem Lata and another v M/s Ishar Dass Chaman Lal and Others opined that proceedings under clause (a) and (b) of sub section (3) of section 69, could be referred to arbitration and the bar of section 69 is not applicable then.

In K.L. Verma and Anr v Shri V.K. Sharma and Anr, the appellant and the respondent were partners. There having arisen certain disputes
between the parties, appellant filed a suit for dissolution and rendition of accounts of the partnership. On being served with summons in the suit, the respondent filed an application under section 34 of the Arbitration Act stating inter alia that as the matter in dispute between the parties was covered by an Arbitration Agreement, the suit cannot proceed and was liable to be stayed. The Court allowed this application and stayed the proceedings in the matter. After the proceedings were stayed, the appellant filed application under section 20 of the Arbitration Act for filing the Arbitration Agreement in Court and for reference of disputes to the Arbitrator. In the written statement besides other objections one of the objections taken by the respondent was that as the partnership was not registered under the provisions of the Act, the suit was not maintainable and was barred under section 69 of the said Act. The court observed that a bare reading of Clause 2(a) of section 69 (3) shows that a suit to enforce a right to sue for dissolution and rendition of accounts is not barred by provisions of section 69 of the Act and even if the firm is not registered and the person suing has not been shown as a partner of the firm, the partner can still enforce his right to enforce dissolution of firm and rendition of accounts irrespective of the bar under section 69 (1) of the Act.

In U.P. State Sugar Corporation Ltd. v Jain Construction Co. and Anr., an agreement was entered into between parties for execution of certain civil works in a unit belonging to appelant. On a dispute having arisen between parties, application was filed by the respondent for appointment of an arbitrator, which was dismissed on ground that same was not maintainable in view of section 69 of the Act, as respondent firm was not registered partnership firm. Appeal was however allowed by High Court on ground that parties could avail appropriate remedy to relegate as Arbitration & Conciliation Act, 1996 had come into force. The Supreme Court opined that it is true that under section 69 arbitral proceedings would not be maintainable at instance of an unregistered firm. Impugned judgment of High Court held was unsustainable.

The Court held that if the firm is not a registered one, the application for appointment of an arbitrator both under the 1940 Act and the Arbitration and Conciliation Act, 1996 was not maintainable. Reliance, in this connection, had been placed on Firm Ashok Traders and Another v Gurumukh Das Saluja and Others. The same has been held in Jagdish Chandra Gupta v Kajaria Traders (India) Ltd.

In Firm Ashok Traders and Anr. v Gurumukh Das Saluja and Ors, here the dispute was among 12 persons who were, or are alleged to be, or claim to be partners in the firm M/s Ashok Traders. The registration of the partnership deed showed seven partners. The new partners were added and the same was not registered. The dispute arose amongst partners.

The civil suit was filed by one Group of partners, which was held not to be maintainable in view of section 69 (3) of the Act, as name of partners were not been shown in Register of Firms as a partner of the firm. Further an application was filed under section 9 of Arbitration and Conciliation Act, 1996 for appointment of receiver, to take charge of business of firm, which being hit by section 69 (3) was dismissed. The issue was whether enactment by section 69 of the Act, does or does not affect maintainability of application under Section 9 of Arbitration and Conciliation Act, 1996?

On the question of maintainability of application under section 9 of Arbitration and Conciliation Act, 1996 as moved by a partner of an unregistered firm or by a person not shown as a partner in the Register of Firms, the High Court, for upholding the maintainability, relied on the decision of this Court in Kamal Pushpa Enterprises v.D.R. Construction Company. The learned counsel for Group "B" argued that Sub-sections (1) and (2) of section 69 of the Act strike at the very root of the jurisdiction of the Court to entertain a suit to enforce a right arising from a contract, if the applicability of section 69 is attracted. By virtue of Sub-section (3), the bar enacted by Sub-sections (1) and (2) applies also to a claim of set-off or ‘other proceedings to enforce a right arising from a contract’ which, includes a proceeding commencing on an application under section 9 of the Arbitration & Conciliation Act, 1996. The right arising from the partnership deed or conferred by the Partnership Act is being enforced in the arbitral tribunal; the Court under section 9 of the Arbitration & Conciliation Act, 1996 is only formulating interim measures so as to protect the right under adjudication before the arbitral tribunal from being frustrated. Section 69 of the Act has no bearing on the right of a party to an arbitration clause to file an application under section 9 of the Arbitration & Conciliation Act, 1996.

The provisions of section 69(3) are not applicable to proceeding which arises from the filing of an award. Once the matter is referred to an arbitrator without intervention of the Court, and so long as the award is given, the Court never comes into picture. The involvement of the Court comes, for the time, when the award is filed by the arbitrator. So long as the proceedings remain with the arbitrator section 69 cannot be put forward.

In Kamal Pushpa Enterprises v D.R. Construction Company, the Supreme Court held that the bar under section 69 of the Act is not applicable at the stage of enforcement of the award by passing a decree in terms thereof because the award crystallises the rights of the parties and what is being enforced at that stage is not any right arising from the objectionable contract.

So the law has taken a turn to which not all would approve of. The critics welcomed the decision of Firm Ashok Traders as laying down further disability and thus making registration even more urgent. But now though a suit is not maintainable in a Court of law but arbitration proceeding is not hit by the bar. So a short cut has been given to the partnership firms which is un-called for. The report of the Special Committee which though not made registration mandatory but intended that any business not ready or very short duration and too small be registered has been not been kept in mind while deciding Firm Ashok Traders.

REGISTRATION OF CHARGES

The Indian Partnership Act does not contain provisions for registration of charges, analogous to those contained in Sections 124 to 145 of Indian Companies Act, 1956. In order to facilitate financing and growth of small scale industries and businesses in India, it seems necessary to put in place a mechanism for registration of charges in respect of even partnership firms.

The Indian Banks’ Association in their representation pointed out that this omission is a handicap to partnership firms, which find it difficult to obtain finances on more or less the same terms as applicable to corporate’s, since it is impossible for lenders to verify the charges already created on the properties of the firm. Similarly, third parties proposing to deal with the firm are not able to access relevant records for conducting due diligence. In order to facilitate financing and growth of small scale industries and businesses in India, it seems necessary to put in place a mechanism for registration of charges in respect of even partnership firms. Being convinced of this, and being aware of the
ineffective state of record-keeping in the offices of the Registrar of Firms, it is recommended that:

1. The Partnership Act should be appropriately amended to provide a legal framework for registration of charges, on the lines of the provisions of the Companies Act, 1956 or the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. Banks and financial institutions also should be permitted to file the papers for registration of charge, wherever they provide assistance against the security of asset/s. The firms can, of course, themselves get the charge/s registered. In either case, the documents would have to be authenticated by both the secured creditor and the lender.

Charges should be registered either with the Registrar of Companies (ROC), if the Department of Company Affairs (DCA) is able to implement its comprehensive computerisation programme (DCA 21); alternatively, they can be registered with the Central Registry envisaged in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, if legally permissible and if the Registry is set up in time and has adequate reach across the country.

CONCLUSION

Registration of a partnership firm has been given significant attention by the legislature by incorporating it in a whole chapter in the Act. Though the Act never makes registration compulsory but it would become too onerous for a firm to conduct its operations. Even routine activities like suing a third party for monies due to the firm would not be allowed and thus any partnership with relatively long period of operation would have to get themselves registered. The registration of firm is condition precedent to its right to institute a suit and thus a court of law cannot proceed with the trial of a suit when the condition precedent has not been fulfilled. In order to institute a suit, a partnership firm must not only be a registered firm but all the persons, who are partners in the firm at the time of institution of suit, must also be shown as such in the register of firms. If one or more of the partners of the partnership firm have not been shown in the register of firms when the suit is instituted by the firm, the suit is not maintainable.

The whole idea is that consumers and all others who are dealing with the firm must be aware of the constitution of the company and thus the documents which are available with the registrar of companies are public documents and people dealing with the firm are said to have constructive notice of the details about the firm.

But the bar does not apply to the suit for dissolution of the firm and thus arbitration proceeding are also allowed for the purpose of dissolution (for all other purpose as arbitration is also a right arising out of contract and thus is barred). But the Maharashtra amendment to the Act has barred suits even for (a) The dissolution of the firm (b) The settlement of the accounts of the dissolved firm or (c) The realization of the property of the dissolved firm.

The Law Commission (One Hundred and Seventy Eighth report) is of the view that so far as partners of an unregistered firm are concerned, they must have the benefit of the 1996 Act, for the limited purposes of obtaining dissolution of the firm for settlement of accounts of the unregistered firm or for realization of the property of the dissolved firm. In other respects, that is to say, except for purposes of the 1996 Act, section 69 (2A) and 3 can remain. The Commission was of the view that these limited classes of disputes inter-se partners should be allowed to be resolved under the 1996 Act notwithstanding the Maharashatra Amendment Act of 1984. This would obviate the need for passing a preliminary decree for accounts and then a final decree for accounts.

Endnotes/References

1. The Special Committee which was set up for the purpose of reforming the Law relating to partnership, discussed it in Para 15 of its report. Some of the conditions it mentioned were the typical nature of Hindu Joint Family business.

2. Preamble to Indian Partnership Act, 1932.

3. Section 1(3) of the Indian Partnership Act, 1932.

4. Badri Prasad & Ors v. Nagarnal & Ors, AIR 1959 SC 559

5. Afsar Husain v. Trikilchand Premchand, AIR 1975 Ori 84

6. The (India) Registration of Business Names Act, 1956 makes it compulsory not just firms but also individuals carrying on business to register both the business names and the personal names of the parties in the form therein prescribed. Registration is not called for in case of a firm name consisting only of the usual names of the partners, but in practice the great majority of firms have to be registered.

7. These disabilities are contained in Section 69 of the Indian Partnership Act.

8. Mulla, Partnership Act, 1st edn. 1934, Page 86.


11. See Halsbury Statutes, 4th edn., Vol. 48 at p 101

12. Mulla, Partnership Act, 1st edn. 1934, Page 167, 186-187, Para 23 of the Report of the Special Committee also refers to those who deal with the firm.


15. The Report of the Special Committee, reference to Paras 18 and 19


22. Section 58(1) clause (a) to (f) provide the following to be mentioned in the application for registration: (a) The firm name, (b) the place or the principle place of business of the firm, (c) the names of any other places where the firm carries on business, (d) the date when each partner joined the firm, (e) the names in full and permanent addresses of the partners, and (f) the duration of the firm.


24. Gough Cocogum & Provision Stores v. CIT, 1969 (69) ITR 819

25. 1984 Ker LT 420


30. The Law Commission of India, in its One Hundred and Seventy Eighth report, taking into account certain judgments of the Supreme Court of India, and to avoid any uncertainty, had expressed a view that the bar should be restricted to suits by the unregistered firm (or claims to set off or other proceedings) in respect of the rights arising out of contracts entered into in the course of business. It accordingly had proposed the addition of an explanation to Section 69 of the Partnership Act to the effect that “a right arising from a contract” shall mean a right arising from a contract made in the course of business.


33. Loomarkar Sethia v. Mr. Ivan E. John and Ors, AIR 1977 SC 336, 347


36. AIR 1964 SC 1882

37. (1989) 3 SCC 476
A R T I C L E

38. (1998) 8 SCC 559
40. (1971) 1 SCC 280,
41. (1984) 2 SCC 183
42. GP Singh’s Interpretation of Statutes, 7th edn., 1999 pp 196-197.
43. (1995) 5 SCC 15 (Para 15),
44. (1993) 1 All WR 42 (P&H)
45. (1998) 4 SCC 626 (at 691-692)
46. Raptakos Brett Co Ltd v Ganesh Property, AIR 1998 SC 3085
47. id.
49. (2004) 52 SCC 345 (Kar)
51. Syed Wahid Hussain v Mahmud Hasan Khan, AIR 1961 All 409, 413 (DB)
52. AIR 1964 SC 1882
53. AIR 1995 SCW 505
55. Civil Appeal No. 5479 of 2004 (Arising Out of SLP (C) No. 4459 of 2004 Decided on 25.08.2004
56. (2004) 3 SCC 155
57. AIR 1964 SC 1882
58. (2004) 3 SCC 155
59. AIR 2000 SC 2676
60. Kamal Pushpa v U.R. Construction Company AIR 1996 M.P. 139, 140, 141
62. AIR 2000 SC 2676
63. (2004) 3 SCC 155
64. (2004) 3 SCC 155
65. Nand Kishore v Maheshwari Mills, AIR 1953 MB 42, 43
The Guidance Note on tax audit under section 44AB of the Income-tax Act, 1961 was extensively revised in September, 1999, consequent to the changes made in Form No. 3CD. The enlarged Form No. 3CD placed an onerous responsibility on the tax auditor and the revised Guidance Note gave extensive guidance on all the important amendments. Since then, significant amendments have been made in the Income-tax Act, which have a great bearing on tax audit requirements. Recently, even assesses coming within the scope of section 44AB and 44ABB have been given the facility to opt for tax audit. A new appendix has also been added to Form No. 3CD. All these developments have significant impact on the responsibilities of tax auditors. Realizing this the Fiscal Laws Committee has brought out the fifth revised edition of the Guidance Note on tax audit under section 44AB of the Income-tax Act, 1961. This article highlights the significant areas where a thorough revision has been made in the Guidance Note.

1. Only Chartered Accountants can perform tax audit.

The Finance Act, 2001 has amended the second proviso to section 44AB to the effect that only chartered accountants can perform the tax audit. This is w.e.f AY 2001-02. Earlier, where a person was required by or under any other law to get his accounts audited, the financial as well as the tax audit could be performed by such a person who had performed such audit and he may not necessarily be a Chartered accountant.

2. Sales/Turnover/ Gross receipts

The issue of determining sales, turnover or gross receipts for the purpose of eligibility to tax audit is extremely important. These terms have not been defined statutorily. The Guidance Note contains an elaborate discussion as to what constitutes sales, turnover or gross receipts. Recently, the Government issued the Companies (Auditor’s Report) Order, 2003 popularly known as CARO.

The Statement on the Companies (Auditor’s Report) Order, 2003 issued by the Institute in April 2004, while discussing the term ‘turnover’ in paragraph 23 states as follows:

The term, “turnover”, has not been defined by the Order. Part II of Schedule VI to the Act, however, defines the term “turnover” as the aggregate amount for which sales are effected by the company. It may be noted that the “sales effected” would include sale of goods as well as services rendered by the company. In an agency relationship, turnover is the amount of commission earned by the agent and not the aggregate amount for which sales are effected or services are rendered. The term “turnover” is a commercial term and it should be construed in accordance with the method of accounting regularly employed by the company.

One of the important additions to the Guidance Note is the determination of the turnover or gross receipts in respect of transactions in shares, securities and derivatives. This may be determined in the following manner.

(a) Speculative transaction: In a speculative transaction, the contract for sale or purchase which is entered into is not completed by giving or receiving delivery so as to result in the sale as per value of contract note. The contract is settled otherwise and squared up by paying out the difference, which may be positive or negative. In such transactions though the contract notes are issued for full value of the purchased or sold asset the entries in the books of account are made only for the differences. Accordingly, the aggregate of both positive and negative differences is to be considered as the turnover of such transactions for determining the liability to audit vide section 44AB.

(b) Derivatives, futures and options: The basic concept followed in case of derivatives, futures and options is similar to that of speculative transactions. However, here the transactions may be squared up any time on or before the striking date. The buyer of the option pays the premium. The turnover in such types of transactions is to be determined as follows:

(i) The total of favourable and unfavourable differences shall be taken as turnover.

(ii) Premium received on sale of options is also to be included in turnover.

(iii) In respect of any reverse trades entered, the difference thereon, should also form part of the turnover.

(c) Delivery based transactions: Where the transaction for the purchase or sale of any commodity including stocks and shares is delivery based whether intended or by default, the total value of the sales is to be considered as turnover.

Further, an issue may arise whether such transactions of purchase or sale of stocks and shares undertaken by the assessee in the course of business or as investment. The answer to this issue will depend on the facts and circumstances of each case taking into consideration the nature of the transaction, frequency and volume of transactions etc.

In case such transactions are for the purposes of investment and income/loss arising there from is to be computed under the head ‘Capital Gains’, then the value of such transaction is not to be included in sales or turnover for deciding the applicability of audit under section 44AB. However, in case such transactions are in the course of business, then the total of such sales are to be included in the sale, turnover or gross receipts as the case may be, of the assessee for determining the applicability of audit under section 44AB.

3. Communication with the previous tax auditor

The revised edition of the Guidance Note has elaborated this concept. When making the enquiry from the retiring auditor, the member accepting the assignment should find out whether there is any...
professional or other reasons why he should not accept the appointment.


The Guidance note has appropriately elaborated the importance of AAS-26 “Terms of Audit engagement” in the context of tax audit. This Auditing and Assurance Standard issued by the ICAI requires that the auditor and the client should agree on the terms of the engagement. The agreed terms would need to be recorded in an audit engagement letter or other suitable form of contract. In the interest of both client and auditor, the auditor should send an engagement letter, preferably before the commencement of the engagement, to help avoid any misunderstandings with respect to the engagement. The engagement letter documents and confirms the auditor’s acceptance of the appointment, the objective and scope of the audit and the extent of the auditor’s responsibilities to the client.

5. Applicability of Accounting Standards and exemptions/relaxations for Small and Medium Sized Enterprises

It may be noted that certain exemptions/relaxations from the applicability of accounting standards have been given to Small and Medium Size Enterprises (SMEs). Accordingly, the Council has decided upon a scheme, which has come into effect in respect of accounting periods commencing on or after 1.4.2004. For the purpose of applicability of Accounting Standards, enterprises are classified into three categories, viz., Level I, Level II and Level III. Level II and Level III enterprises are considered as SMEs. For further details reference may be made available to the revised Guidance note.

6. Forms 3CA, 3CB and 3CD

So far as Forms 3CA, 3CB and 3CD are concerned, the important amendment relates to the insertion of an annexure in Form No.3CD. Apart from this, there have been statutory and judicial developments, which have a bearing on the duties of the tax auditor in regard to furnishing of particulars under some of the clauses of Form No.3CD. The following is a brief discussion of such developments.

(a) Clause 8 (a) and (b) – Nature of business: The newly added annexure requires furnishing of details of various sectors and sub-sectors of business in which an assessee could be engaged. The Guidance Note says that in regard to the nature of business or profession, Part “B” of the annexure to Form 3CD needs to be referred to, which also requires to give nature of business. This Annexure provides details of various sector and sub-sector in which an assessee could be engaged. The code to be mentioned against the nature of business pertains to the main area of business activity.

(b) Clause 14 (a) to (f): The above-mentioned clause requires various particulars relating to depreciation.

(a) Adjustment on account of CENVAT credit

Under the CENVAT Credit Rules, 2004 CENVAT credit of duty paid on capital goods is not allowed if the assessee claims depreciation under the Income-tax Act on an amount including the amount of CENVAT credit. Further under the Income-tax Act the extent of CENVAT credit allowed will not form part of the actual cost of the asset. There are situations when a claim for CENVAT credit may not be accepted.

(b) Change in the rate of exchange of currency

The Finance Act, 2002 has substituted a new section 43A w.e.f. A.Y. 2002-03. Since this provision is at variance with AS-11 (Revised) issued by the ICAI, the tax auditor would be required to verify that the adjustments in the cost of fixed assets on account of changes in the rate of exchange of currency in the schedule of fixed assets prepared for computation of depreciation as per Income-tax Rules are in accordance with the provisions of section 43A and information about such adjustment is provided under sub-clause (ii) of clause 14(d).

(c) Mandatory depreciation

The Finance Act, 2001 has inserted Explanation 5 below sub-section (1) of section 32, to the effect that the provisions of section 32(1) regarding allowing of depreciation shall apply whether or not the assessee has claimed the deduction in respect of depreciation in computing his total income. Thus, the claim for depreciation is now mandatory and the written down value of each asset every year has to be reduced by the amount of depreciation allowable under the Income-tax Rules and the details required under the relevant sub-clauses need to be stated.

(d) Additional depreciation

A new sub clause (iia) to section 32(1) was inserted by the Finance Act, 2002 with effect from A.Y. 2003-04 to provide for additional depreciation to a concern engaged in the business of manufacturing or production of an article or thing or installation of a new machinery on fulfillment of the prescribed conditions like specified percentage of increase in installed capacity. This section has been amended with effect from A.Y. 2006-07 and as per the amended provision, the condition of increase in installed capacity has been done away with and additional depreciation shall be allowable to all assessees engaged in the business of manufacture or production of any article or thing in respect of new machinery or plant installed on or after 31st day of March, 2005 except those machinery or plant which before installation by the assessee was used by any other person, machinery or plant installed in office premises or residential accommodation, office appliances, road transport vehicles and that machinery or plant the actual cost of which is allowed in computing the income. The tax auditor will need to verify the claim of additional depreciation under this clause as well.

7. Amendments in section 40(a)

(a) Disallowance of specified expenses: The Finance (No.2) Act, 2004 made significant amendments in section 40(a) by the insertion of a sub-clause (ia) which has far reaching consequences for the members of the Institute. With the introduction of clause (ia) in section 40(a), the scope of disallowance of the expenditure has been widened to include interest, commission, brokerage, fees for professional services or fees for technical services payable to a resident or amounts payable to a contractor or sub-contractor, being resident for carrying out any work including supply of labour for carrying out any work.

In case where the assessee submits that the tax is not required to be deducted on any payment covered under clause (ia), the tax auditor may exercise his judgment in the light of the applicable laws and
report accordingly about the compliance of this provision. The tax auditor may rely upon the judicial pronouncements while taking any particular view. In case of difference of opinion between the tax auditor and the assessee, the tax auditor should state both the viewpoints.

4. Securities transaction tax: The Securities Transaction Tax (STT) has been levied by Finance (No. 2) Act, 2004 on transaction of sale/purchase of securities through stock exchanges. Sub-clause (ib) of section 40(a) provides that any amount paid as STT shall not be allowed as deduction. There is a possibility that STT paid on purchase or sale is either included in the cost of purchases or reduced from the amount of sales. In both the situations it will have effect on the profit and loss account. The tax auditor should verify this aspect as well and report such amount and the amount of STT debited in the profit and loss account under this clause.

5. Fringe benefit tax: The Finance Act, 2005 has introduced a new tax known as Fringe Benefit Tax (FBT), which is levied on an employer at prescribed rate on the amount of fringe benefits or deemed fringe benefits provided to its employees. The Finance Act has also introduced sub-clause (ic) in section 40(a) which provide that FBT shall not be deductible in computing profits and gains from business or profession. The tax auditor is required to report the amount of fringe benefit tax paid by the employer during the year under this clause, if the same has been debited to profit and loss account. The tax auditor should also verify that FBT has not been included under any other head of expenditure.

6. Tax paid by employer to employees on non-monetary benefits: The Finance Act, 2002 had inserted a clause (10CC) in section 10 to provide that any tax paid by an employer on non-monetary perquisites is exempt in the hands of the employee. Consequently, a new sub-clause (v) was inserted in section 40(a) to provide that any tax referred in section 10(10CC) paid by the employer on non-monetary perquisites provided to employees shall not be deductible in computing profits and gains from business or profession. The tax auditor is required to report the amount of such tax paid by the employer, in case it is debited to the profit and loss account.

8. Amounts allowable on payment basis
Section 43B has been amended by the Finance Act, 2001 and Finance Act, 2003. Consequent to the above amendments a uniform treatment is being given in respect of all sums specified in clauses (a) to (f) of section 43B including clause (b). Therefore, the duty of the tax auditor is restricted to reporting under clause 21 (i) (A) and (B). Since, the separate treatment in respect of the sum mentioned in clause (b) of section 43B has been discontinued by the Finance Act, 2003 w.e.f. A.Y. 2004-2005, the tax auditor need not give the particulars required by clause 21 (i) (A) and (B). Particular attention is to be given in respect of the amounts paid towards encashment of employees leave salary which was held to be deductible on the basis of method of accounting employed by the assessee.

9. Tax deducted at source
Clause 17(f) and clause 27 are somewhat interlinked. We have already seen the responsibility of the tax auditor under clause 17(f). Under clause 27, the tax auditor is expected to verify from the records whether the tax deducted at source has been paid to the credit of the Central Government in accordance with the time stipulated under Chapter XVII-B of the Act. The details about the delay in payment of tax deducted at source are to be given under this clause in the form prescribed.

It is not expected under this clause from a tax auditor to verify whether the tax deductible has been properly deducted or not. However, under clause 17(f) information is to be provided in respect of expenditure debited to profit and loss account but not eligible for deduction while computing income under the head profits and gains of business or profession in view of the provisions of sub-clause (1) and (ia) of section 40(a) of the Act. It may be noted that there is no requirement of giving information under this clause about the delay in filing the return relating to tax deducted at source.

10. Statement of Particulars to be annexed to Form 3CD
In terms of Notification No. 280 dated 16 November 2004 issued by the Central Board of Direct Taxes, it is now required to annex to Form No. 3CD a ‘Statement of Particulars’ in the prescribed form. The said statement has two parts viz. Part A and Part B.

Part A contains general particulars such as the assessee’s name, address, Permanent Account Number, status, the previous year and the A.Y. This information is similar to the information to be furnished under clauses 1 to 6 of Form No. 3D. Accordingly, the auditor should verify that the information provided in Part A matches with the information provided under clauses 1 to 6 of Form No. 3D.

In Part B, the following particulars are to be given.

(a) Nature of business and the relevant code
(b) Parameters
1. Paid-up share capital
2. Share application money
3. Reserves and surplus
4 and 5 – Secured loans and unsecured loans
6. Current liabilities and provision
7. Total of balance sheet
8. Gross turnover
9. Gross profit
10 and 11 – Commission received and commission paid
12 and 13 – Interest received and interest paid
14. Depreciation as per books of account
15. Net profit (or loss) before tax
16. Taxes on income paid/provided for in the books

Detailed guidance has been provided in respect of all the above particulars.

The tax auditor should further ensure that particulars furnished under items 1 to 16 are consistent with the particulars given in the profit and loss account and balance sheet referred to in Form No. 3CA or Form No. 3CB, as the case may be.
Amendments to the Income-tax Act, 1961 by the Taxation Laws (Amendment) Act, 2005

Priya Subramanian

The Taxation Laws (Amendment) Act, 2005, enacted by the Parliament on 28th December, 2005, is deemed to have come into force on 31st October, 2005. The following are the important amendments made in the Income-tax Act, 1961, which are relevant for students appearing for May 2006 & November 2006 examinations. All the amendments (i.e. from (a) to (g) below) are applicable for Final students, whereas only amendments from (a) to (f) below are applicable for Professional Education (Course-II) students.

(a) Exemption on lease payment made by an Indian company to acquire aircraft from a Foreign Government/Foreign Enterprise to continue in respect of agreements entered into upto 31st March, 2006 – Section 10(15A)

Related amendment in clause (6BB) of section 10

Under clause (15A) of section 10, exemption is provided for any payment made by an Indian company engaged in the business of operation of aircraft, to acquire an aircraft or an aircraft engine (other than a payment for providing spares, facilities or services in connection with the operation of leased aircraft) on lease from the Government of a foreign State or a foreign enterprise. Such payment made by the Indian company under an agreement approved by the Central Government constitutes an income in the hands of the foreign government or foreign enterprise, which qualifies for exemption under section 10(15A). This exemption was withdrawn by the Finance (No.2) Act, 2004 in respect of all such agreements entered into on or after 1st April, 2005 i.e. tax exemption was not to be available in respect of lease payments under an agreement entered into on or after 1st April, 2005. Consequently, clause (6BB) of section 10 was amended to provide for exemption from tax, on tax paid by the Indian company to the Central Government on such lease rentals in respect of agreements entered into on or after 1.4.2005. The Finance Act, 2005 had amended clause (15A) to provide for continuation of exemption on lease payments with regard to agreements entered into on or before 30th September, 2005. Consequently, the benefit of exemption from tax, on the tax paid was to be available in respect of lease payments made in pursuance of agreements entered into on or after 1st October, 2005.

The Taxation Laws (Amendment) Act, 2005 has further amended clause (15A) to provide that exemption for lease payments shall continue with regard to agreements entered into on or before 31st March, 2006. Consequently, the benefit of exemption from tax, on the tax paid will be available in respect of lease payments made in pursuance of agreements entered into on or after 1st April, 2006. The effect of these amendments is that up to 31.3.2006, the consideration for lease itself is exempt from tax. With effect from 1.4.06, the consideration for lease is taxable and if the Indian company who makes payment of such consideration undertakes to bear the tax on behalf of the lessor, then such tax shall not be considered as income and further taxed. Such tax paid by the Indian company would be exempt from further tax.

(b) Exemption of specified income arising from any international sporting event in India [Insertion of new clause (39) in section 10]

This clause exempts income of the nature and to the extent, arising from any international sporting event in India, to the person or persons notified by the Central Government in the Official Gazette.

(c) Such international sporting event should–

(i) be approved by the international body regulating the international sport relating to such event;

(ii) have participation by more than two countries;

(iii) be notified by the Central Government in the Official Gazette for the purposes of this clause.

(Effective from A.Y. 2006-07)

(d) Exemption of certain grants etc. received by a subsidiary from its Indian holding company engaged in the business of generation or transmission or distribution of power [Insertion of new clause (40) in section 10]

This clause exempts income of any subsidiary company by way of grant or otherwise received from an Indian company, being its holding company engaged in the business of generation or transmission or distribution of power.

(i) The receipt of such income should be for settlement of dues in connection with reconstruction or revival of an existing business of power generation.

(ii) The exemption under this clause is available if the reconstruction or revival of any existing business of power generation is by way of transfer of such business to the Indian company notified under section 80-IA(4) (v) (a).

(Effective from A.Y. 2006-07)

(e) Exemption of any income from transfer of an asset of an undertaking engaged in the business of generation or transmission or distribution of power [Insertion of new clause (41) in section 10]

This clause exempts income arising from transfer of a capital asset, being an asset of an undertaking engaged in the business of generation or transmission or distribution of power.

(i) Such transfer should be effected on or before 31st March, 2006, to an Indian company notified under section 80-IA (4) (v) (a).

(Effective from A.Y. 2006-07)

(f) Scope of income chargeable under the head “Profits and gains of business or profession” expanded [Insertion of clauses (iii) and (iie) in section 25]

The author is Senior Education Officer, ICAI.
Section 28 is the charging section in respect of “Profits and gains of business or profession”. The scope of this section has now been expanded by insertion of new clauses (iiid) and (iiie) w.e.f. 1.4.98 and 1.4.2001 respectively.

Clause (iiid) has been inserted to include within the scope of section 28, any profit on the transfer of the Duty Entitlement Pass Book Scheme, being Duty Remission Scheme, under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992.

Clause (iiie) has been inserted to include within the scope of section 28, any profit on the transfer of Duty Free Replenishment Certificate, being Duty Remission Scheme, under the export and import policy formulated and announced under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992.

Certain undertakings, owned by an Indian company and set up for reconstruction or revival of a power generating plant, eligible for deduction under section 80-IA

Clause (v) has been inserted in section 80-IA(4) to provide that the benefit under this section is available to an undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant.

Such Indian company should be formed before 30.11.2005 with majority equity participation by public sector companies for the purposes of enforcing the security interest of the lenders to the company owning the power generating plant.

Such Indian company should have been notified before 31.12.2005 by the Central Government for the purposes of this clause.

Such undertaking should begin to generate or transmit or distribute power before 31.3.2007.

(Effective from A.Y.2006-07)

Amendment to the definition of “employer” for levy of fringe benefit tax as per Chapter XIII [Section 115W(a)]

As per the existing definition, “employer”, inter alia, means an association of persons or a body of individuals, whether incorporated or not, but excluding any fund or trust or institution eligible for exemption under section 10(23C) or registered under section 129A (Clause (iii) of section 115W(a)

Clause (iii) has been amended to provide that an association of persons or a body of individuals, whether incorporated or not, will qualify to be an employer for this purpose.

A proviso has been inserted to section 115W(a) to provide that the following persons shall not be deemed to be an employer for the purpose of Chapter XIII-

(i) any person eligible for exemption under section 10(23C) or registered under section 129A.

(ii) a political party registered under section 29A of the Representation of the People Act, 1951.

(Effective from A.Y.2006-07)
Announcements

1. May, 2006 Examinations – Applicability of Accounting Standards as well as Auditing and Assurance Standards, Finance Act and other amendments in Taxation and Corporate Laws

Final Examination


Students appearing in the Final Examination in May, 2006 are expected to have good knowledge of the pronouncements, statements and standards of the Institute on various aspects covering Accounting and Auditing. Having regard to this, students may study the following publications of the Institute for the purpose of May, 2006 Final Examination. Students may, however, note that selection of these publications in no way dilutes or reduces the scope of syllabi prescribed for the Final Examination. The study of these publications is very important for examinations as well as for their professional development.

Related to Advanced Accounting

I. Statements and Standards
1. Framework for the Preparation and Presentation of Financial Statements

II. Guidance Notes on Accounting Aspects
1. Guidance Note on Treatment of Reserves Created on Revaluation of Fixed Assets.
2. Guarantees and Counter-Guarantees Given by Companies.
5. Guidance Note on Accounting Treatment for Excise Duty.
8. Guidance Note on Accounting Treatment for MODVAT/CENVAT.
9. Guidance Note on Accounting for Equity Index and Equity Stock Futures and Options (2003).

Related to Advanced Auditing

I. Professional Topics/Subjects
1. Code of Ethics

II. Statements and Standards
2. Auditing and Assurance Standards AAS 1 to AAS 34
3. Statement on Qualifications in Auditor’s Report

III. Guidance Notes/Study Guide/Monograph
1. Internal Control Questionnaire.
2. Guidance Note on Accountant’s Report on Profit Forecasts and/or Financial Forecasts.
7. Guidance Note on Audit of Inventories.
11. Guidance Note on Audit of Cash and Bank Balances.
15. Guidance Note on Section 227 (3) (e) and (f) of the Companies Act, 1956.

Paper 4 : Corporate Laws and Secretarial Practice

♦ The Competition Act, 2002 – Applicable Sections 1, 2, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 22, 23, 36, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 and 65.

♦ The Companies (Second Amendment) Act, 2002

The Act is not applicable for the examination.

However, students are advised to refer the existing general provisions relating to winding up (i.e. prior to amendment) as illustrated in the study material. (Edition July, 2004 onwards)

♦ The Sick Industrial Companies (Special Provisions) Repeal Act, 2004

The Act is not applicable for the examination.

♦ The Securities Laws (Amendment) Act, 2004

The amendments relating to Securities Contract (Regulation) Act, 1956 are applicable.

♦ SEBI (DIP) Guidelines: As amended up to 19th September 2005

Paper 7 : Direct Taxes

♦ Amendments made by Finance Act, 2005 are relevant.

♦ Assessment Year 2006-07 is the relevant Assessment Year.

♦ Notifications / Circulars issued up to October 31st, 2005 are relevant.

(The provisions relating to Income-tax on Fringe Benefits introduced by the Finance Act, 2005 by insertion of Chapter XIII in the Income-tax Act, 1961 w.e.f. A.Y. 2006-07 are applicable for Final course students, since the entire Income-tax Act, 1961 forms part of the syllabus for Paper 7-Direct Taxes.)

The Study Material for the Direct taxes contains the amendments made by the Finance Act, 2005 and amendments made by Notifications/Circulars issued up to 30.04.2005. For students appearing
in May 2006 examinations, amendments made from 01.05.2005 to 31.10.2005 are also relevant. These amendments have been compiled and given in the Revision Test Paper for May 2006 examinations (pgs. 70 – 89). The said amendments include amendments to the Income-tax Act, 1961 by the Special Economic Zones Act, 2005, Circular No. 8/2005 dated 29.08.2005 on fringe benefit tax and other relevant Notifications and Circulars. Further, the amendments to the Income Tax Act, 1961 by the Taxation Laws (Amendment) Act, 2005 have been detailed in this issue of the newsletter. All the above amendments would also be available on the Institute’s website www.icai.org.

Paper 8 : Indirect Taxes

- Amendments made by Finance Act, 2005 are relevant.
- Notifications / Circulars issued up to October 31st, 2005 are relevant.

The Study Material for the Indirect taxes contains the amendments made by the Finance Act, 2005 and amendments made by Notifications/Circulars issued up to 30.04.2005. For students appearing in May 2006 examinations, amendments made from 01.05.2005 to 31.10.2005 are also relevant. These amendments have been compiled and given in the Revision Test Paper for May 2006 examinations (pgs. 102–125). Further, these amendments would also be available on the Institute’s website www.icai.org.

Professional Education (Examination II)

Paper 1 : Accounting

Accounting Standards 1 to 29 [excluding revised AS 15 (2005)].

For the students at PE-II level, Accounting Standards and Guidance Notes related to the topics given in the study material are more relevant. They are not expected to know in detail the advanced standards like Consolidated Financial Statements (AS 21), Accounting for Investments in Associates in Consolidated Financial Statements (AS 23), Discontinuing Operations (AS 24), Financial Reporting of Interests in Joint Ventures (AS 27), Impairment of Assets (AS 28) and Provisions, Contingent Liabilities and Contingent Assets (AS 29).

For the topic of Accounts of Insurance Companies, the Insurance Regulatory and Development Authority (Preparation of Financial Statements and Auditor’s Report of Insurance Companies) Regulations, 2002 will be applicable.

Paper 2 : Auditing

Auditing and Assurance Standards – 1 to 28.

Students at PE II level are expected to have familiarity with all these Auditing and Assurance Standards. They are expected to know in-depth only such Auditing Standards, which have been dealt within the main text of the study material.

Paper 3 : Business & Corporate Laws

The Companies (Second Amendment) Act, 2002 – Sections 2 and 6 relating to certain amended definitions and constitution of National Company Law Tribunal (NCLT) are applicable.

Paper 5 : Income tax and Central Sales Tax

- Amendments made by Finance Act, 2005 are relevant.
- Assessment Year 2006-07 is the relevant Assessment Year.
- Notifications/Circulars issued up to October 31, 2005 are relevant.

(The provisions of Chapter XIX relating to Income-tax on Fringe Benefits are not applicable for Professional Education (Course – II) students, since the syllabus of Paper 5 – Income-tax and Central Sales Tax includes only Chapters I to VIII, XIII, XIV and XX of the Income-tax Act, 1961 and the relevant Rules. It does not include Chapter XIX.)

The Study Material for Income-tax and Central Sales Tax contains the amendments made by the Finance Act, 2005 and amendments made by Notifications/Circulars issued up to 30.04.2005. For students appearing in May 2006 examinations, amendments made from 01.05.2005 to 31.10.2005 are also relevant. These amendments have been compiled and given in the Revision Test Paper for May 2006 examinations (pgs. 63 – 70). The said amendments include amendments to the Income-tax Act, 1961 by the Special Economic Zones Act, 2005 and Notification No.189/2005 dated 12.8.2005. Further, the amendments to the Income Tax Act, 1961 by the Taxation Laws (Amendment) Act, 2005 have been detailed in this issue of the newsletter. All the above amendments would also be available on the Institute’s website www.icai.org.

2. Scholarship Schemes (w.e.f. 1st April, 2006)

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</table>

Notes:

1. (i) The income of parents/guardians should not exceed Rs.1,50,000 p.a. in case Merit-cum-Need scholarships and Rs.1,00,000 p.a. in case of Need-based.
   (ii) Students who belong to SC/ST/OBC category will be paid an additional amount of Rs.25/- p.m. in Need-based category.
   (iii) Two scholarships are reserved for physically handicapped students in Need-based category.
   (iv) Applicants for the grant of Need-based scholarships should be registered students of PE-I/PE-II. Students of Final Course will be paid scholarship for 30 months/ balance period of articled.

2. Scholarship is liable to be discontinued if the recipient does not clear PE-I Exam and Both Groups of PE-II/Final Course conducted by the Institute in the first two available chances. (Non-appearance at the Examination will be considered as non-clearance of the Examination)

3. The scholarships will be released in April, 2006. The duly completed application should be submitted in the prescribed form and it should reach to Director of Studies, The Institute of
Announcements

Chartered Accountants of India, Post Box No. 36, C-1, Sector-1, NOIDA-201 301, latest by 31st March, 2006. The application forms can be had from the Institute’s offices at New Delhi, NOIDA and Regional Offices by sending a request alongwith a self-addressed envelope affixed with a postal stamp of Rs.5. Alternatively application form can be downloaded from the website of the Institute namely www.icai.org.

In addition, there are scholarships available under different endowment schemes, which will be separately notified.

3. Pass Certificates - Examinations

It has been decided that the Pass Certificates issued to the successful candidates of Professional Education - I Examination, Professional Education - II Examination and Final Examination effective from November 2005 examinations will henceforth contain the following features:

1. Photograph of the candidate printed on the Pass Certificate;
2. Specimen Signature of the candidate printed on the Pass Certificate;

All successful candidates of PE-I, PE-II and Final Examinations, November 2005 and all other concerned may kindly note that the pass certificates effective from November 2005 examination onwards will be issued with the three aforesaid features viz. photograph, specimen signature of the candidate and bar code.

For any query in this regard, kindly feel free to write to the undersigned or email to - exam@icai.org.

G. SOMASEKHAR
JOINT SECRETARY (EXAMS)

4. 250 Hours Compulsory Computer Training Programme

The next online Examination for 250 Hours Compulsory Computer Training Programme will be conducted on 12th March, 2006 at 10.00 AM. All those students who fulfil following requirements are eligible to appear for this examination:

1. Completed minimum three months computer training,
2. Cleared all module tests
3. Submitted the project
4. Attained 90% attendance

It is observed that even those students who do not fulfil the conditions stated above are appearing for the online examination. It is reiterated that only those students who fulfil all the four aforesaid criteria are eligible to appear for the online exam. Ineligible students will not be issued CCT completion certificates even if they are allowed to appear for the online examination by their concerned training institute. Students are advised to contact their concerned accredited training institutes for further details. In case you face any difficulty regarding conduct of online examination at your training centre, please contact the concerned Regional Office. Alternatively, you can contact Mrs. Indu Arora at NOIDA office at e-mail address indu@icai.org.

5. Revision Test Papers for May 2006

This is to inform that the printed copies of the Revision Test Papers for Professional Education Course – I, Course – II and Final Course for May 2006 examination are available at the sales counter of Regional Offices and Branches of the ICAI. The downloadable soft copies of all Revision Test Papers will be made available on the Students page of the ICAI website at www.icai.org from 16th March, 2006.

6. Virtual Classes

The Board of Studies has added a new feature in the pedagogy of imparting education viz “Virtual Classes”. Education is now available “any time, any where” through Virtual classes. The virtual classroom simulates a real life classroom, wherein there are students and an instructor in a “live and Interactive” class at different centres spread across different cities. An eminent subject expert delivers lecture and interacts with students on selected networked centres or on the Internet at scheduled time to assist in assimilation of the concepts and getting their queries resolved.

The Board of Studies has decided to conduct 12 virtual classes, four classes for each of the Professional Education – I Examination, Course II and Final Course during the period 20th March – 10th April, 2006. Details of these classes will be available on the Students page of the ICAI website at www.icai.org from 10th March, 2006. Students are invited to join these classes in large number.

7. Test Papers for PE-I in Hindi

This is to inform that Postal Test Scheme: 2005 Series II for Professional Education Course – I is now available in Hindi. Those students who have opted for Hindi as medium of instruction are advised to contact their concerned Regional Office to obtain a copy of the same.

Students’ Corner

THINK POSITIVE

Vinita Agarwal, Professional Education (Course-I)

Everyday the sun shines, Bright and gay
You know it is a, Brand new day
To achieve your goals, to think high,
To wait for a moment, when you touch the sky
You have dared to dream, you have set for yourself
A goal in life, so aim for the highest
The sky is waiting for you
keep flying higher and higher
Your dream has to be fulfilled
so keep moving on and on
You have given the test
so hope for the best
Let not failures, discourage you
For there is always a next time
One day you will achieve success
And will declare yourself to be an Achiever
so you can do it
“Think Positive”

March, 2006
Prize Winners in the Chartered Accountants Examinations

Final Examination – November, 2004

Shri Vikas Khadloya (13018)
1. Certificate of Merit – First Rank
2. The G.P. Kapadia-First President Gold Medal to the Best Candidate of the examination
3. The Kantilal V. Patel Gold Medal for the Best Candidate of the year 2004
4. The Ramachandra Singh Prize for the Best Candidate of the examination
5. The A P Ferguson Prize for the Best Paper on Advanced Auditing (Paper – 3)
6. The R. Venkatesan Memorial Prize for the Best Paper on Advanced Auditing (Paper – 3)

Shri Dheeraj Kumar Jhawar (33293)
1. Certificate of Merit – Second Rank
2. The R.K.Khanna – Past President Gold Medal for the Second Best Candidate of the examination
3. Shri N.M. Shah Silver Medal with gold centering for the candidate securing the second highest marks i.e. overall Second Rank
4. The Shaiilesh Kapadia Silver Medal with Gold Centering for the Best Candidate among the Second Best Candidates of the year 2004, jointly with Ms. Deepa S, Roll No. 5635 of May 2004

Ms. Kanika Goel (09247)
1. Certificate of Merit – Third Rank
2. Shri N. Rangachary Silver Medal for the Candidate securing the Third highest marks i.e., overall Third Rank
3. The T C Minakshisundaram Prize for the Best Lady Candidate of the examination
4. The R. Sivabhogam Prize for the Best lady candidate of the examination

Ms. Shweta S. Prabhudesai (25664, May, 2004)
1. Smt. Sarojini Sitaram Memorial Silver Medal for the Best Lady Candidate of the Year 2004

Final Examination – May, 2005

Shri Nitin Jhunjhunwala (17609)
1. Certificate of Merit – First Rank
2. The G.P. Kapadia-First President Gold Medal to the Best Candidate of the examination
3. The Ramachandra Singh Prize for the Best Candidate of the examination
4. Late Shri M.S. Choudhri Prize for the Best Candidate

Shri Nimesh Banwarilal Tibrewala (00393)
1. Certificate of Merit – Second Rank
2. The R.K.Khanna – Past President Gold Medal for the Second Best Candidate of the examination
3. Shri N.M. Shah Silver Medal with gold centering for the candidate securing the second highest marks i.e. overall Second Rank
4. The Shaiilesh Kapadia Silver Medal with Gold Centering for the Best Candidate among the Second Best Candidates of the year 2004, jointly with Ms. Deepa S, Roll No. 5635 of May 2004

Ms. Anshul Khemuka (04328)
1. Certificate of Merit – First Rank
2. The G.P. Kapadia First President Gold Medal for the Best Candidate
3. Shri Sultan Chand Memorial Gold Medal for the Candidate securing the highest marks i.e. over all First Rank
4. Shri Sultan Chand Memorial Silver Medal with Gold Centering for the candidate securing the highest marks in Group II

Shri Abhishek Kumar Gupta (19236)
1. Certificate of Merit – Second Rank
2. Shri Sultan Chand Memorial Silver Medal with Gold Centering for the Candidate securing the highest marks i.e. over all Second Rank
3. The Shaiilesh Kapadia Silver Medal with Gold Centering for the Best Candidate

Shri Sanjay Kumar (15546)
1. Certificate of Merit – Third Rank
2. Shri Sultan Chand Memorial Gold Medal for the Candidate securing the third highest marks i.e. over all Third Rank
3. Shri P.P. Gururaj Upadhyaya Memorial Prize for the Third Best Candidate

Professional Education (Examination – I) – November, 2004

Shri Ajay Shyam Sunder Banka (143707)
1. Certificate of Merit – First Rank
2. The G.P. Kapadia First President Prize for the Best Candidate
3. Shri Sultan Chand Memorial Gold Medal for the Candidate securing the highest marks i.e. over all First Rank
4. Shri Sultan Chand Memorial Silver Medal with Gold Centering for the candidate securing the highest marks in Group – I

Ms. Priti Agrawal (29023)
1. Certificate of Merit – Second Rank
2. Shri Sultan Chand Memorial Silver Medal with Gold Centering for the Candidate securing the second highest marks i.e. over all Second Rank
3. Shri Sultan Chand Memorial Silver Medal with Gold Centering for the Second Best Candidate

Professional Education (Examination – II) – May, 2005

Shri Shailendra Saraf (07501) Jointly with Shri Rishi Gupta (08986)
1. Certificate of Merit – First Rank
2. The S.R. Batliboi Prize to the Best Candidate of the examination

Shri Venkata Dinesh P (13555)
1. Certificate of Merit – Second Rank
2. The K V Chandramouli Memorial Prize for the Best Candidate of the examination
3. The K V Chandramouli Memorial Prize for the best paper on Mathematics (Paper 2 – Section ‘A’) jointly with 168 Candidates
4. The S.R. Batliboi Prize to the Best Candidate of the examination

Shri Mandar Pramod Dixit (16252, May, 2004)
1. The Mahaveer Raj Bhandari Prize for the best candidate of the year 2004

Professional (Examination – I) May, 2005

Shri Akash Roopchand Loonia (00357)
1. Certificate of Merit – First Rank
2. The S.R. Batliboi Prize for the Best Candidate of the examination
3. The K V Chandramouli Memorial Prize for the Best Candidate of the examination
4. The K V Chandramouli Memorial Prize for the best paper on Mathematics (Paper 2 – Section ‘A’) jointly with 168 Candidates
5. The S.R. Batliboi Prize to the Best Candidate of the examination

Shri Mayank Agrawal (01705)
1. Certificate of Merit – Second Rank
2. The K.V. Chandiramouli Memorial Prize for the best paper on Mathematics (Paper 2 – Section ‘A’) jointly with 168 Candidates

Ms. Meeta Ramchandani (11366)
1. Certificate of Merit – Third Rank
2. The Chandulal Kapuri Devi Charitable Trust Prize to the Third Best Candidate
3. The K V Chandramouli Memorial Prize for the best paper on Mathematics (Paper 2 – Section ‘A’) jointly with 168 Candidates

Ms. Soumya Mary Ninan (45487)
1. Certificate of Merit – Third Rank
2. Shri Sultan Chand Memorial Silver Medal for the Candidate securing the second highest marks i.e. over all Second Rank
3. Shri P.P. Gururaj Upadhyaya Memorial Prize for the Third Best Candidate

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Important Announcement for Final Course & Professional Education (Course - II) Students

1. The provisions relating to Income-tax on Fringe Benefits introduced by the Finance Act, 2005 by insertion of Chapter XIII in the Income-tax Act, 1961 w.e.f. A.Y.2006-07 are applicable for Final course students, since the entire Income-tax Act, 1961 forms part of the syllabus for Paper 7-Direct Taxes.

2. However, the provisions of Chapter XIII relating to Income-tax on Fringe Benefits are not applicable for Professional Education (Course - II) students, since the syllabus of Paper 5 - Income-tax and Central Sales Tax includes only the Chapters I to VIII, XIII, XIV and XX of the Income-tax Act, 1961 and the relevant Rules. It does not include Chapter XIII.

Accounting - Recent Developments

- Limited Revision to AS 29 on ‘Provisions, Contingent Liabilities and Contingent Assets’ has been made effective for accounting periods commencing on or after 1st April, 2006, which clarifies that AS 29 will apply to executory contracts and operating leases which are onerous.

- As a consequence to the Limited Revision to AS 29, Accounting Standards Interpretation (ASI) 30 on ‘Applicability of AS 29 to Onerous Contracts’ has been issued by the Institute of Chartered Accountants of India (ICAI). This interpretation deals with the manner in which the recognition and measurement principles of AS 29 should be applied to ‘onerous contracts’. An ‘onerous contract’ is a contract in which the unavoidable costs of meeting the obligation under the contract exceed the economic benefits expected to be received under it.

- Accounting Standard Interpretation (ASI) 4 on ‘Losses under the head Capital Gains’ has been revised by the ICAI to make criteria for recognition of deferred tax assets in respect of losses under the head ‘capital gains’ more stringent. This revised ASI 4 replaces ASI 4 issued in December, 2002.

- Announcement on ‘Disclosures regarding Derivative Instruments’ has been recently issued by the ICAI which is applicable in respect of financial statements for the accounting period(s) ending on or after March 31, 2006. Pending issuance of the proposed Accounting Standard on ‘Financial Instruments: Recognition and Measurement’, this announcement details the disclosure requirements and guides about the treatment of derivative instruments.

For the full text of Limited Revision to AS 29, ASI 30, Revised ASI 4 and Announcement on Derivative Instruments, students are advised to refer the December, 2005 issue of ‘The Chartered Accountant’ Journal. Alternatively, they can also visit the Institute’s website (www.icai.org) where the information is hosted on the ‘Resources – Accounting Standards’ section. Students may note that the above revisions / updates are applicable for November, 2006 Examinations.

Newsletter - Award of best article (June 2004 to May 2005)

‘Outsourcing of Accounting Services – Vision for the next Decade’ - Yogesh Sharma

(Published in the Newsletter of Baroda Branch of WICASA, October-December, 2004)

Our Heartiest Congratulations!

The Institute does not accept any responsibility for the views expressed in the contributions or advertisements published in the newsletter.