



THE INSTITUTE OF CHARTERED ACCOUNTANT OF INDIA
(A STATUTORY BODY ESTABLISHED UNDER AN ACT OF PARLIAMENT)



VAPI BRANCH OF WIRC OF ICAI

VOLUME I, ISSUE 9, NOV-DEC 2011

WISHING
HAPPY
NEW YEAR



2012

CHAIRMAN COMMUNICATION

Dear Colleague,

At this juncture, I would like to wish you all a very happy new year 2012 on behalf of the committee members of the branch. With the experiences and learning acquired in the past year, let us all move ahead and grow together in this new year with more new ideas, opportunities and brotherhood.

The months of November and December passed by witnessed a number of activities which made not only the branch lively but also provided a good platform to the members to interact at more frequent intervals. I am very much pleased with the involvement and the readiness of the members and the students who are a part of the success of the events passed by.

We had inauguration of our ITT centre which is a landmark in our branch. Students can now avail this facility within our branch premises itself. Infact, one batch of students is already in progress at our branch for IT Training. We had two RRC's, one at Silvassa jointly with Borivali CPE Chapter and another at Saputara, jointly with All Gujarat Federation of Tax Consultants. We also had two mega programmes on Survey and Search & Seizure whose speaker was the renowned CA. (Dr.) Girish Ahuja and another on Professional Opportunities whose speaker was our very own past president of ICAI, CA. Uttamprakash Agarwal. We had series of CPE seminars on weekends for continuous 6 weeks with various learned speakers.

We have forthcoming programmes on Tally-Auditors edition and another on MS Excel for Chartered Accountants. We are also starting DISA course in the month of January 2012. Those who have not registered their names for the course are requested to do the same at the earliest. We have also organized various sports activities for members and students in the coming month of January. I wish that all of you attend and participate in these events.

With these words, I hope to see you all in the new year 2012 with vibrant and innovative ideas to help our branch and eventually all of us grow.

Yours forever,

CA. Jignesh V. Vasani

Branch Chairman.

DETAILS OF FORTH COMING EVENTS

1. CPE program on the Topic "Tally ERP9" by CA Anand Paurana on 7th of January, 2012 between 10am to 5pm at Vapi Branch of WIRC
2. Vapi Branch of WICASA has organized Cricket Tournament for Students on 12th of Jan 2012 at 8.00. Venue :- Micro Inks Cricket Stadium – Chala, Opp Micro Inks Corporate Office.
3. VAPI BRANCH OF WIRC OF ICAI is organizing a INTER FIRM / MEMBERS Cricket Tournament on 13th of January 2012 at 8.00. Venue :- Micro Inks Cricket Stadium – Chala, Opp Micro Inks Corporate Office.
4. Vapi Branch of WICASA has organized Indoor Games (Table Tennis, Chess & Badminton) Tournament on 15th January 2012 at VIA Hall, GIDC, Vapi
5. VAPI BRANCH OF WIRC OF ICAI is starting Certification Course on Information System Audit - DISA scheduled from 21st January 2012. (Detailed Schedule of the Course has been published at the end of the newsletter)
6. A Cricket Match between Vapi Branch of WIRC and Income Tax Department scheduled on 26th January 2012 at Valsad.
7. ITT –TRAINING for the CA. students - (Classes have been commenced at Vapi Branch)
8. CPE program on the Topic MS Excel - (Date and Faculty yet to be decided)
9. Orientation & GMCS for the CA Students.-(Date and Faculty yet to be decided)

Regards:
CA. Hitesh Patel

**MANAGING COMMITTEE
OF THE YEAR 2011-2012**

CA. Jignesh Vasani
CA. Giriraj Laddha
CA. Prakash Chordia
CA. Hitesh Patel
CA. Jaiprakash Shethiya
CA. Deepak Desai

Editorial Board Member:

CA. Giriraj B. Laddha
CA. Prakash Chordia
CA. Chhaya M Kothari

SECTION 90A OF THE INCOME TAX ACT, 1961 – DTAA – ADOPTION BY CENTRAL GOVERNMENT OF AGREEMENT WITH TAIPEI {201 TAXMANN 103 (ST.)}**Notification No. 48/2011 [F.No. 500/02/2001-FTD-II],dated 02/09/2011**

The Central Government has adopted the agreement between India-Taipei Association in Taipei and Taipei Economic and Cultural Center in New Delhi for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and has notified that all the provisions of the said agreement shall be given effect to in the Union of India with effect from the 1st day of April, 2012.

SECTION 80CCF OF THE INCOME TAX ACT, 1961 – DEDUCTION – IN RESPECT OF SUBSCRIPTION TO LONG TERM INFRASTRUCTURE BOND – NOTIFIED LONG TERM INFRASTRUCTURE BOND {201 TAXMANN 125 (ST.)}**Notification No. 50/2011 [F.No. 178/43/2011-SO(ITA-1)],dated 09/09/2011**

The Long Term Infrastructure Bonds to be issued in the financial year 2011-12 shall be issued by

1. The Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948);
2. The Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);
3. The Infrastructure Development Finance Company Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956);
4. The India Infrastructure Finance Company Ltd.; a company formed and registered under the Companies Act, 1956 (1 of 1956); and
5. A Non-Banking Finance Company classified as an Infrastructure Finance.

Company by the Reserve Bank of India.

Tenure of the bond - (i) The tenure of the Bond shall be for a minimum period of ten years; (ii) the minimum lock-in period for an investor shall be five years; (iii) after the lock-in period the investor may exit either through the secondary market or through a buyback facility, specified by the issuer in the issue documents at the time of issue; (iv) the bond shall also be allowed as pledge or lien or hypothecation for obtaining loans from Scheduled Commercial Banks, after the said lock-in-period.

Notification No. 52/2011 [F.No. 178/56/2011-IT(A-1)],dated 23/09/2011

The Central Government has authorised the entities mentioned in column (2) of the table below, to issue, during the financial year 2011-12, tax free, secured, redeemable, non-convertible bonds of rupees 1,000 each in case of public issue and rupees 1,00,000 each in other cases, aggregating to amounts mentioned in column (3) of the said table, subject to the conditions mentioned in the said notification. The tenure of the bonds shall be ten or fifteen years.

S.No. (1)	Entities (2)	Aggregate Amount of Bonds (3)
1.	National Highways Authority of India	Rs. 10,000 crores
2.	Indian Railway Finance Corporation Ltd.	Rs. 10,000 crores
3.	Housing & Urban Development Corporation Ltd.	Rs. 5,000 crores
4.	Power Finance Corporation	Rs. 5,000 crores

INCOME TAX (SEVENTH AMENDMENT) RULES 2011 – AMENDMENT IN RULE 114 AND SUBSTITUTION OF FORM 49A {202 TAXMANN 28 (ST.)}**Notification No. 56/2011 [F.No. 133/48/2011-SO(TPL)],dated 17/10/2011**

The CBDT has notified new Forms for making PAN Application. Form 49A – for Individuals who are citizens of India, HUF and other entities which are registered or formed in India and Form 49AA – for Individuals who are not citizens of India and other entities formed or registered outside India.

INCOME TAX (SEVENTH AMENDMENT) RULES 2011 – AMENDMENT IN RULE 114 AND SUBSTITUTION OF FORM 49A - CORRIGENDUM TO NOTIFICATION NO. 2394 (E), DATED 17-10-2011 {202 TAXMANN 46 (ST.)}**Notification No. 58/2011 [F.No. 133/48/2011-SO(TPL)]/S.O. 2468[E], dated 29/10/2011**

The CBDT has notified new Forms for making PAN Application. Form 49A – for Individuals who are citizens of India, HUF and other entities which are registered or formed in India and Form 49AA – for Individuals who are not citizens of India and other entities formed or registered outside India. The forms appended to this new notification shall be regarded as the forms which have been notified.

Notification No. 57/2011 [F.No. 142/23/2011-SO(TPL)]/S.O. 2429[E], dated 29/10/2011

The CBDT has amended the due dates for filing quarterly returns in Forms 24Q and 26Q for Government and Non-Government Deductors w.e.f. 1st November, 2011 as per following table:-

Sr. No.	Quarter ending	Due Date for Government Deductors	Due Date for Non-Government Deductors
1	30 th June	31 st July	15 th July
2	30 th September	31 st October	15 th October
3	31 st December	31 st January	15 th January
4	31 st March	15 th May	15 th May

Further, in rule 37BA, in sub-rule (2), for clause (i), the following clause shall be substituted, namely:—

“(i) where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee:

Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).”

PUBLIC PROVIDENT FUND (AMENDMENT) SCHEME 2011**Notification [F.No. 1/9/2011-NS-II] ,dated 25/11/2011**

The Central Government has w.e.f. 1st December, 2011 increased the annual PPF subscription amount from Rs.70,000/- to Rs.1,00,000/-. Further, the subscriptions made to the fund on or after the 1st day of December, 2011 and balances at the credit of the subscriber shall bear interest at the rate of 8.6 percent, per annum.

GUJARAT VAT**Centralised Registration**

The State Government has decided to implement new system of registration w.e.f. 1st Dec, 2011. Special Centre for registration will be created in Ahmadabad, Vadodara, Surat, Rajkot, Bhavnagar & Gandhinagar. Provisional Registration no. will be issued within 3 days of receipt of application containing prescribed documentary evidences. Permanent Registration will be issued after spot visit & verification of documents, not later than 60 days

INCOME-TAX CASE LAW UPDATES

Compiled from WIRC

Supreme Court / High Court

S. 2(22)(e) Gratuitous loans

The phrase "by way of advance or loan" appearing in sub-clause (e) must be construed to mean those advances or loans which a share holder enjoys for simply on account of being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power; but if such loan or advance is given to such share holder as a consequence of any further consideration which is beneficial to the company received from such a share holder, in such case, such advance or loan cannot be said to a deemed dividend within the meaning of the Act. Thus, for gratuitous loan or advance given by a company to those classes of share holders would come within the purview of Section 2(22) but not to the cases where the loan or advance is given in return to an advantage conferred upon the company by such share holder. Pradip Kumar Malhotra vs. CIT [2011] 15 taxmann.com 66 (Calcutta)

S. 32 Depreciation on wooden partition

The assessee was entitled to 100% depreciation on the false ceiling and temporary wooden structure and partition for running computer centres inclusive of furniture, electrical wiring and interior decoration. CIT vs. Amrutanjan Finance Ltd. [2011] 15 taxmann.com 392 (Madras)

32 Purchase price allocation

Assessee company acquired cement plant. However AO noted that 10% of the purchase price represents goodwill. It was held that revenue was not justified to appropriate 10% of the purchase consideration towards goodwill. CIT vs. India Cements Ltd [2011] 15 taxmann.com 46 (Madras)

S.37(1) Expenses on Accounting Software

The treatment of a particular expense or, a provision in the books of account can never be conclusively determinative of the nature of the expense. An assessee cannot be denied a claim for deduction which is otherwise tenable in law on the ground that the assessee had treated it differently in its books. Expenses incurred by assessee on installation of an accounting software to enable management to run its business more effectively and efficiently would be revenue expenditure. CIT vs. Asahi India Safety Glass Ltd [2011] 15 taxmann.com 382 (Delhi)

S.37(1) Expenditure incurred on discontinued business

The assessee was running a hotel, which was closed and the employees were retrenched. Thereafter, the assessee began using the hotel premises for various purposes like giving halls on rent and taking franchise business. During the previous year, the assessee had taken up a franchise business and incurred various expenses. Assessee also had to pay retrenchment compensation under memorandum of settlement reached before the Labour Commissioner. It was held that both the businesses had a common management, common business organization, common administration and a common place of business. Accordingly it was held that compensation paid to labour as deductible expenditure – CIT vs. Black Pearl Hotels (P.) Ltd [2011] 15 taxmann.com 119 (Karnataka)

S. 48 Base year for calculation of indexed cost in case of gifted assets

The object of giving relief to an assessee by allowing indexation is with a view to offset the effect of inflation. As per the CBDT Circular No.636 dated 31/8/1992 a fair method of allowing relief by way of indexation is to link it to the period of holding the asset. The said circular further provides that the cost of acquisition and the cost of improvement have to be inflated

to arrive at the indexed cost of acquisition and the indexed cost of improvement and then deduct the same from the sale consideration to arrive at the long term capital gains. If indexation is linked to the period of holding the asset and in the case of an assessee covered under Section 49(1) of the Act, the period of holding the asset has to be determined by including the period for which the said asset was held by the previous owner, then obviously in arriving at the indexation, the first year in which the said asset was held by the previous owner would be the first year for which the said asset was held by the assessee. CIT vs. Manjula J. Shah INCOME TAX APPEAL NO.3378 OF 2010 (Bom.)

Ss. 54, 54EC investment in joint name

to attract section 54 and section 54EC of the Act, what is material is the investment of the sale consideration in acquiring the residential premises or constructing a residential premises or investing the amounts in bonds set out in section 54EC. Once the sale consideration is invested in any of these manner the assessee would be entitled to the benefit conferred under this provisions. There also it is not expressly stated that the investment should be in the name of the assessee. In the absence of an express provision contained in these sections that the investment should be in the name of the assessee only any such interpretation were to be placed, it amounts to Court introducing the said word in the provision which is not there. It amounts Court legislating when the Parliament has deliberately not used those words in the said Section. Accordingly it was held that the assessee cannot be denied the benefit of deduction where investment is made on the joint name. DIT vs. Mrs. Jennifer Bhide [2011] 15 taxmann.com 82 (Karnataka)

S. 54/54F Investment in joint name

Objective of Section 54F and the like provision such as Section 54 is to provide impetus to the house construction and so long as the purpose of house construction is achieved, such hyper techni-

cality should not impede the way of deduction which the legislature has allowed. Purposive construction is to be preferred as against the literal construction, more so when even literal construction also does not say that the house should be purchased in the name of the assessee only. Section 54F of the Act is the beneficial provision which should be interpreted liberally in favour of the exemption/deduction to the taxpayer and deduction should not be denied on hyper technical ground. The word "assessee" must be given wide and liberal interpretation so as to include his legal heirs also. There is no warrant for giving too strict an interpretation to the word "assessee" as that would frustrate the object of granting exemption. Accordingly it was held that exemption cannot be restricted proportionately in case new house is purchased jointly with other family member. CIT vs. Ravinder Kumar Arora [2011] 15 taxmann.com 307 (Delhi)

S.54 Due date for furnishing return of income

A reading of the Sub-Section (4) would show that if a person has not furnished the return of the previous year within the time allowed under Sub-Section (1) i.e. before 31st day of July of the Assessment Year, the assessee can file return before the expiry of one year from the end of the relevant Assessment Year. Sub-Section (4) of Section 139 provides extended period of limitation as an exception to Sub-Section (1) of Section 139 of the Act. Sub-Section (4) is in relation to the time allowed to an assessee under Sub-Section (1) to file return. Therefore, such provision is not an independent provision, but relates to time contemplated under Sub-Section (1) of Section 139. Therefore, such Sub-Section (4) has to be read along with Sub-Section (1). Accordingly it was held that for purposes of section 54 due date for furnishing return of income as provided under section 139(1) is subject to extended period as provided under sub-section (4) of section 139 - CIT vs. Ms. Jagriti Aggarwal [2011] 15 taxmann.com 146 (Punjab and Haryana).

Understanding Section 28 with Latest Case Laws

The usage of section 28 to justify any expenditure or loss is rarely found. We try to substantiate the same under section 36 or 37 and sometimes not able to get the deduction due to limitations and conditions laid down in that section. That's why we should now also try to substantiate the same under section 28 also. If you look into the section 28 it says that all kind of business profit are included and business profit also include business loss. Hence, if we prove that expenses incurred is a pure business loss then we may able to take claim of the same.

Now let us see the summary of the latest judicial decision's in this regard:

1. Compensation : In the case of Eastern book company 322 ITR 605, it was held that Amount received as compensation for infringement of copy right assessable as business income. Again, Assessee having admitted the liability in respect of outstanding trade advances received against exports which was enforceable under the law and eventually repaid the amount with RBI's permission, there was no cessation of liability and therefore the same cannot be treated as assessee's income, even though the assessee had utilized the said money for other purposes i.e. investment in real estate during lull period. Refer, ITO v Eurostar Distilleries (P) Ltd. In the case of Tulip Hotels, 132 TTJ 633, it was held that Assessee having received 150 free room right vouchers as part of compensation on termination of arrangement for operating the resort belonging to another party following a settlement made during the year under consideration .The value of free room night vouchers accrued to the assessee in the relevant year even though these vouchers could not be utilized. The loss on account of non user of vouchers can be considered only in subsequent year and not in the year under consideration. In the case of Wall Fort Financial Services Ltd. vs. Addl. CIT it was held that No doubt that section 28(va) considers a receipt of non compete fee as income but it would not by itself lead to a conclusion that any payment of like nature would be on revenue account only. Again, in the case of ION Exchange (India) Ltd v ITO it was held that If receipt of compensation for cancellation of a contract does not affect trading structure of business of assessee then such compensation has not be

treated as revenue receipt.

The payment received as a non competition fee under a negative covenant was always treated as a capital receipt till AY 2003-04. There is a dichotomy between receipt of compensation received for loss of agency, which is treated as revenue receipt and receipt of compensation attributable to negative / restrictive covenant which is treated as capital receipt. It should be noted that it is only by section 28(va) inserted by Finance Act 2002 w.e.f. 1/4/2003, which is amendatory and not clarificatory that the said capital receipt is now made taxable. Refer, Guffin Chemicals. Again, Subsidy received by Government to meet the part of the expenditure to be incurred for rectification and improvement of power line damaged due to cyclone will be revenue in nature. (Asst year 1987-88). Refer, AP State electricity board, 130 ITD 1.

2. Waiver of Loan : Waiver or write off of part of principal amount of loan by sister concern is not taxable as Benefits or perquisites under section 28(iv) as benefits should be of the nature other than cash. Refer, Jindal Equipments Leasing & Consultancy Services Ltd. 37 DTR 172. Similarly, Amount initially received as loan for setting up business would not became business income chargeable to tax by its being taken to reserve and surplus account by assessee by forfeiture. Refer, Velocent Technologies Ltd 120 TTJ 659.

The payment received as a non competition fee under a negative covenant was always treated as a capital receipt till AY 2003-04.

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3. Forex Forward Cover : Benefit arising out of business - Capital gains - Transfer - Forex forward contract for discharging borrowings for machinery and equipments - profit on cancellation - No transfer of asset - Not taxable as not falling under definition of sec 28. Refer, Garden Silk Mills Limited, 320 ITR 720.

4. Forex Transaction : Group companies of assessee situated abroad incurred certain expenditure on its behalf, at time of repayment, due to fluctuation in exchange rate amount payable became more than what was accounted for in terms of dollar rate on date of incurring. Since transactions of assessee with group companies were on trading account loss incurred on account of fluctuation in foreign exchange rate is allowable deduction. Refer, C. B. Richard Ellis Mauritius Ltd. vs. Dy. DIT 38 SOT 236. Further, Gains on account of foreign exchange fluctuations in respect of share capital collected in foreign exchange is capital receipt. Refer, Jagajit Industries Limited, 32 DTR 168. Again, Payment made by assessee to bank for cancellation of forward foreign exchange contract being in the nature of damages for non performance of contract is allowable as business loss and it can be treated as a speculative loss as there is no settlement of contract and s. 43(5) is not attracted. Refer, Voltas International Limited, 126 TTJ 702.

5. Future Option : In the case of G.K. Anand Bros. Build Well (P) Ltd. 34 SOT 439, it was held

that Loss arising in future and option transactions carried out in a recognized stock exchange is to be treated as business loss and not as loss in speculation. (Asst year 2006-07). Editorial - Shree Capital Services Ltd. v Asstt CIT (2009) 121 ITD 498 (SB)(Kol). considered.

6. Share as stock in trade : Securities held by bank in the nature of current investments automatically became the stock-in-trade of the bank and therefore, loss arising from the sale of "current investments" is a business loss. Refer, Dy. Director IT vs. Chohung Bank, 40 DTR 75. Further, The loss incurred by the assessee on the sale of shares held by the assessee should be treated as business loss of the assessee. Refer, Malabar Industrial Co. Ltd. 320 ITR 486. Again, in the case of Ankita Deposits & Advances (P) Limited, 43 DTR 92, Assessee company having reflected its entire shareholding in various shares, including the shares in question, as stock-in-trade all along in the past and the revenue authorities having come to the finding of fact that the shares of the same company were purchased by the assessee by way of trading and not by way of investment, income derived from sale of shares is to be treated as business income and not as capital gains. Same was again confirmed for the case of Rakesh J Sanghvi v DCIT and Immortal Financial Service (P) Limited v DCIT. Again, Where the assessee had dealt in more than 300 scripts during the year and turnover of delivery based transactions is about Rs. 3,500 crores and the assessee had regularly dealt in purchase and sales of shares with high frequency and volume with repetitive purchases and sales in the same script, with no shares being held for more than one year, considering the entirety of facts and circumstances, profit earned from delivery based transactions in shares was rightly treated as business income as declared earlier as against short term claimed by the assessee. Refer, Wall Fort Financial Services Ltd. vs. Addl. CIT,

7. Write Off : Deposit given to Calcutta Stock Exchange to become corporate member of exchange was written off as business loss. The assessee entitled to deduction as business loss. Refer, Parlight Securities Ltd. vs. ACIT 3 ITR 628. (ITAT). Further, Assessee a share broker writing off amounts due from clients in the course of business as irrecoverable, same is allowable as business loss u/s. 28(i). Refer, Kotak Securities Limited, 24 DTR. In the case of Popular Vehicle and Services Limited, 326 ITR 387, Amount should have been shown in Accounts of earlier Year to be Written off in later years is a Business loss. In the case of ITO v Reliance Engineering Associations (P) Limited it was held that When deposits made for residential accomodation of employees of assessee company become irrecoverable it is allowable as business loss u/s 28. In the case of Dy. CIT vs. Edelweiss Capital Ltd Mumbai ITAT held that The assessee, engaged in investment activities, advanced Rs. 27.97 lakhs for development of a website. As the advance was not recoverable, the assessee wrote off the amount and claimed it as a "bad debt" even though the conditions of section 36(1)(vii) & 36(2) were not satisfied. HELD, that (i) Though the claim as a 'bad debt' is not allowable, the assessee is entitled under Rule 27 to support the CIT(A)'s order on the ground that the amount should be allowed as a 'business loss'. Further as the expenditure was abortive, no capital asset has in fact been acquired and even if the website had materialized, it does not result in an advantage of an enduring nature or in the capital field as it is only for the day-to-day running of the business and provision of information.

8. Mutual Concern : Where the Association or company trades with its members only and the surplus out of the common fund is distributable among the member, there is mutuality and the surplus is not assessable to tax as profit. Refer, Prabhashankar Plaza v ITO.

9. Setting up of business : Receipts up to the

stage of setting up of business would go to reduce the cost of setting up of business. It would be travesty of justice if the assessee's expenditure up to the stage of setting up is treated as capital in nature but not the receipts during the same period. Refer, Shapoorji Pallonji Tower Co. Ltd. 28 DTR 12.

10. Penalty : Where assessee executed a security transactions, in violation of provisions of s. 15 of Security Contracts (Regulation) Act, 1956 and loss generated out of said transaction were undisputedly, borne out of books of assessee, such a loss would be allowable loss. Refer, Bank of America, 27 SOT 97.

11. DEPB : Amount Equivalent to face value of DEPB as well as amount received in excess of DEPB would constitute Profits of Business under section 28(iiiid). Refer, CIT v Kalpataru Colours and Chemicals.

12. Custodian : Where assessee is merely a custodian of amount in the special fund created as per instructions and rules framed by REC for administration of special fund and ownership of funds continues with REC Interest accrued on special fund amount including FDS made there from does not accrue to assessee and assessee is accordingly not liable to pay tax thereon. Refer, Co-operative electrical supply limited v ACIT.

13. Anticipated Loss : Anticipated loss in respect of trading in derivatives cannot be treated as a contingent liability. Refer, Edelweiss Capital v ITO.

14. Interest on NPA : No interest income would accrue to an NBFC on ICD which has become an NPA in accordance with provisions of section 45Q of RBI act and prudential norms issued by RBI in exercise of ITS statutory powers. Refer, CIT v Vasisht Chay Vyapar Limited.

Compiled by Aasif Isani (CA Final Student)

Amendments in Companies Bill 2011

What's new?

Following has been introduced in the new company's bill 2011

Provision for E-Governance:-

1. Participation of directors and shareholders through video conferencing is allowed in general meeting and board meeting.
2. Voting in GM's through electronic mode:- NSDL and CSDL are given approval by the MCA for providing electronic platform to capture the electronic votes of the shareholders in the GM's.
3. Registrar of the company shall issue digital certificates to every company.
4. Maintenance of documents in electronic form is allowed.
5. Inspection of such documents in electronic form is allowed.

Corporate Social Responsibilities:-

1. Any company doing business of more than following threshold limits shall have to constitute, a "corporate social responsibility committee"
 - Net worth of more than 500 crores or;
 - Turnover of more than 1000 crores or;
 - Net profit of Rs 5 crores or more
2. Bill suggests that the companies doing business more than above specified thresholds limits shall mandatorily earmark at least 2% of average net profits for preceding 3 years for CSR activities.
3. Schedule VII of amended company's act 2011 specifies the activities which shall constitute the part of such company's corporate social responsibility policy.
4. The committee shall consist of 3 directors including one independent director.

Investor Protection Measures:-

1. "Professional institute of trade and business chambers" shall be established across the country during 2010-11 to ensure the investor protection.
2. Acceptance of deposits from public shall be under more stringent regime.
3. Central government shall have the power to specify the companies in which proxies shall not be allowed in the shareholders meeting.
4. Minimum number of members, depositors or debenture holders filing class action suits against any company u/s 245 has been revised to such percentage as may be prescribed.

Changes In The Concept Of Independent Directors (Tenure, Code Of Conduct And Liabilities):-

1. Minimum 1/3 of the total no. of directors shall be independent directors; however CG shall have the power to increase or decrease such minimum no. of independent directors in any public company.
2. Independent directors shall not retire by rotation.
3. Independent director shall be appointed by the company from the data bank of independent director as maintained by the CG and put on their website for the use of the companies making appointment of such independent directors.
4. Any resolution passed in the absence of independent director shall be final only on ratification of such resolution by at least one independent director.

5. Audit committee shall consist of minimum 3 independent directors
6. Schedule IV prescribes the code of independent directors (Role, function, manner of appointment, reappointment, removal, resignation, and separate meetings of independent directors.)

Mandatory appointment of women directors in every company except one person company.

Introduces new concept of One Person Company.(Sec 122, 193):-

1. All the provision of private company shall apply to one Person Company.
2. Provision of section 98 and Sec 100 to 111 shall not apply to one person Company.
3. Minimum no. of members in case of one person company shall be one.
4. Ordinary business shall be deemed to be transacted by the company if they are entered by such member in the minute book, they shall be deemed to be passed on the date when the minute books are dated and signed.
5. No. of board meetings to be conducted:- One board meeting should have been conducted in each half year of a calendar year (Jan – Dec) and the gap between 2 board meetings should be at least more than 90 days.
6. Similarly the business transacted in board meeting shall be deemed to have been passed on the date when they are entered into minutes of board meeting.
7. The concept of Producer Company is still retained in companies act.
8. More stringent regime for not for profit companies to check the misuse.
9. No restrictions on the number of subsidiaries a company can have.

Vigil mechanism shall be established in the every listed company to safeguard and reward whistle blowers.

Rotation of auditors and audit firms:-

1. An auditor shall be appointed for a minimum period of 4 yrs. With a minimum cooling of 4 years between 2 fixed terms of 4 yrs. Each and
2. During such fixed tenure the concerned partner authorizing the financial statement shall change every year
3. LLP of CA's (as auditors) shall be treated as body corporate under section 226(3A) of the companies act.
4. Following disclosures need to be given in the financial statements:-

Development and implementation of risk management policy

Corporate social responsibility policy of the company

Evaluation of the performance of the board of directors of the company

company

Formation of national financial reporting authority (NFRA) in place of the existing (NACAAS); with added quasi-judicial powers to exercise independent oversight over the professionals.

Serious fraud investigation officer (SFIO)

1. Statutory status has been granted to SFIO.
2. Investigation report filled by SFIO to the court shall be treated as report filled by police officer.
3. Serious fraud investigation officer shall have the powers to arrest against any offences which comes under the definition of fraud.

Compiled by Pritesh Parekh (CA Final Student)

KEYMAN INSURANCE POLICY AND ITS BENEFIT

Keyman Insurance can be defined as a type of insurance policy where the proposer as well as the premium payer is the employer, and the life to be insured is that of the employee in case of a company or partner in case of a partnership firm. With the benefit, in case of a claim, goes to the employer or the Firm.

The 'keyman' here would be any person employed by a company or a Working Partner having a special skill set or substantial responsibilities and who contributes significantly to the working and importantly to the profits of that enterprise.



Keyman- Who in the Organization?

A person employed by the Proposer who possess specialized knowledge and skills and further whose loss can cause a financial damage to the organization would qualify for Keyman Insurance. For example, they could be:

- a. Directors of a Company
- b. Managing Partner of a Firm
- c. Employees who procure potential revenue
- d. Key Project Managers

And other People with Specialized Work Areas and Skills

Insurance Worth of a Keyman :

The insurance worth of a keyman is the lower of:

- 5 times the average net profit of the company for the past 3 years
 - 2 times the average gross profit of the company for the past 3 years
- 10 times of the keyman's annual compensation package.

Treatment of Payments – for the Organisation

- All claims – maturity, surrender or death benefit received by the company are taxable.
- In case of the keyman retiring, the company may surrender the policy for its cash value, or assign the policy absolutely in favour of the keyman.
- In case of an assignment, the surrender value of the policy at the time of assignment may be treated as perquisite in the hands of the employee, and taxed accordingly by the assessing authority.

Advantages to the company:

1. In case of death of a keyman the company gets money to cope up with the loss.
2. A company/ partnership firm buying keyman insurance for its employee/ partner can claim a deduction for the premium paid for the policy as a business expense under Section 37(1) of the Income Tax Act.
3. No prior approval is necessary from the Income Tax authorities to claim deduction of insurance premium payment.
4. The company can also raise loans on the policy from Insurer at an reasonable rate of interest.
5. This policy can be used as an extra superannuation benefit or as an ex-gratia payment to the key employee during the service period.
6. The fact that the employee/director's/partner's life is insured for a large sum that will be paid by Insurer to their family if he dies, it is bound to ensure loyalty and thus avoids employee turnover.
7. For the executives earning high salaries, this policy can be given as a hike in salary and save on the tax outgo.
8. The directors/employees can also safeguard their immediate family from getting affected by the vagaries of the industry and the various business cycles that a company has to face.
9. Insulate the risk of financial loss against loss of a Keyman.
10. Interest on loans taken against a keyman insurance policy may also be allowed as business expenses.
11. Premiums paid by the company on the life of a keyman would not be treated as perquisites in the hands of such a keyman when the company's request is accepted by the assessing authority.
12. In case the policy has been assigned to the keyman and the keyman is paying the premiums, then the claim/maturity proceeds are exempt under Section 10 (10D).

Keyman Insurance policy is a positive measure to improve the retention of the keyman in the company.

Disadvantages of Keyman insurance :

1. The amount on claim or maturity under a keyman insurance policy is not exempt under Section 10 (10D) of the Income Tax Act if the company is paying the premiums.
2. If the policy, after attaining surrender value, is endorsed to the employee, then the surrender value/maturity value is chargeable to tax under Section 17 of the Income Tax Act. This is because it is treated as 'profit in lieu of salary' in the hands of the employee.

The policy is beneficial from the keyman's point of view. This is in case the company decides to endorse the policy to the keyman. This can be done only after a surrender value has been attained, which usually takes 2-3 years (depending on the insurer). In doing so, the keyman benefits, by having an insurance policy in his name the initial premiums of which, have already been paid by his company. And although he might have to pay tax on surrender value, if endorsed in the early years when the surrender value is low, the tax liability of the keyman is reduced to a great extent after accounting for the premiums paid by his company.

Certification Course on DISA

Vapi Branch of WIRC of ICAI is going to start Certification Course on Information System Audit - DISA at Branch.

Following is the schedule for ISA - PT:-

Module	Module Title	% Q's	Module	Days
1	Information Technology Infrastructure & Communication/ Networking Technology	30%	1&2	4
2	Protecting Information Assets	22%	3	2
3	Systems Development. Life Cycle & Application Details	20%	4	2
4	Business Continuity Planning	10%	5	2
5	Information Systems Organization & Management	8%	6	1
6	Information Systems Control & Audit Process	10%	7	1
				12

Venue : Vapi Branch of WIRC

Day	Sn.	Date	Module	Faculty
Sat	1	21-Jan-12	I	Dr. M J Patel
Sun	2	22-Jan-12		
Sat	3	28-Jan-12	I	Avinash Gokhale
Sun	4	29-Jan-12		
Sat	5	4-Feb-12	II	Prashant Mali
Sun	6	5-Feb-12		
Sat	7	11-Feb-12	III	Dr. Onkar Nath
Sun	8	12-Feb-12		
Sat	9	18-Feb-12	IV	Shirish Ketkar
Sun	10	19-Feb-12		
Sat	11	25-Feb-12	V	Dr. M J Patel
Sun	12	26-Feb-12	VI	

Interested Members are requested to confirm their participation by mail at vapibranch125@yahoo.com.

Quick Glances of Some of Our Events



CA. (Dr.) Girish Ahuja addressing at Seminar on Search, Survey and Seizure held on 24th December 2011 at VIA Hall

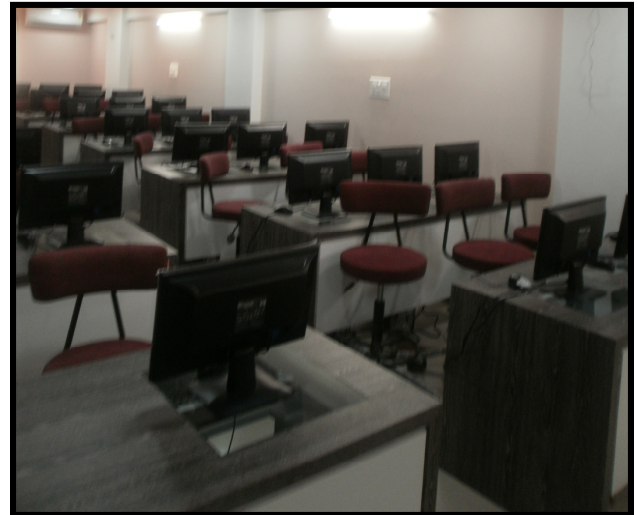


Speaker CA. Tanuj Agrawal addressing on XBRL & Oppourtinitines for CA Professionals



Speaker CA. Uttam Prakash Agrawal addressing to students on the topic How to prepare for CA exams

Quick Glances of Some of Our Events



Mrs. Kapur along with Vapi Branch Committee Members & Students at the ITT Inauguration program on 15th Dec, 2011.



Speaker CA. Rajkumar Adukia & CA. Dheeraj Khandelwal with vapi Branch Committee at CPE Program for members on 30th of December, 2011



The Suggestions & Feedback for improvement of Newsletter and articles for forthcoming newsletter are invited.

Please mail us at:

vapibranch125@yahoo.com



To,

Disclaimer:- While every effort is made to ensure that the information contained within this newsletter is correct, Vapi Branch of WIRC of ICAI is not responsible for the accuracy or otherwise of information provided by the contributors.

If Undelivered Return to:

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