

Hello Everyone!

I am sure, you are aware that most economists have labelled the global economy in the year 2013 to be "fragile" and "timid" in recovery. This slowing down of the global economy from the high of 4.2% in 2010 to around 3% in 2012 is a result of most developed economies having an almost flat outlook of between 1% to 1.2% of growth creating a large output gap. The current output gap is a result of weak demand due to fallout of the 2008-09 world financial crises. A significant slowdown, as a result, is expected in the less mature economies in the year 2013.

In Asia - The leadership transition in China has occurred smoothly, but the former Premier Wen Jiabao has termed it 'unstable', 'unbalanced', 'uncoordinated' and 'unsustainable', whether that is so, remains to be seen. In India, the State continues to control most of the productive apparatus which, by definition, is inefficient. Japan is trying the new experiment to stop inflation, boost economic growth and restore business and consumer confidence. In such a scenario, the growth in Asia is expected from emerging economies such as Malaysia, Philippines, Indonesia, Vietnam, Thailand, and Myanmar, which are expected to perform better in the next decade. The economic pundits of the world believe this region to have the highest potential of growth.

This growth in the emerging economies is expected to spread over a large number of medium and small enterprises with an occasional push from large multinational enterprises lending their weight to these economies. In Asia, MGI is available wherever the businesses need us. We understand their growing pains, since we are entrepreneurs like them. We provide services in all facets of fiscal compliance; be it accounting, adherence to international GAAPS, tax compliance, setting up of enterprises and ensuring proper compliance of laws in this region. MGI with its expertise and presence in more than 82 countries world-wide can provide experience of the developed world to the emerging economies of Asia. MGI Asia's network has to have four main pillars namely –

- 1) Accessibility - presence in almost every country in the region, especially in the countries where the economies are growing rapidly.
- 2) Excellence - offering seamless services as would be expected from a global alliance in all fiscal disciplines, such as, accounting, auditing, consulting and taxation.
- 3) Communication - Quick response through internationally accepted communication channels to queries from members and clients from all over the world.
- 4) Pro-active - providing tailor made solutions to complex problems, both to domestic and international clients.

With these goals in mind, we, in Asia, are constantly engaged with our members and I am happy to say that most are lending their might to make MGI Asia as one of the best performing regions.

I wish you a successful Quarter and hope to see you in Bangkok on 6<sup>th</sup> September 2013 for our Asia Area Annual Meeting



**Pallavi Dinodia**  
**Area Leader – Asia**  
**MGI**

A handwritten signature in blue ink that reads "Pallavi Dinodia".

### BE A PART OF MGI EVENTS

#### Latin America Area Meeting

15-17 May 2013, Montevideo, Uruguay  
Further information  
<http://www.mgi2013casu.com.uy/home.asp>

#### North America Area Meeting

29 May – 1 June 2013, Newport Beach, CA  
Further information:  
[http://www.deprezmeetings.com/groups/2013\\_mgi\\_na\\_socal/index.shtml](http://www.deprezmeetings.com/groups/2013_mgi_na_socal/index.shtml)

#### European Area Meeting

27 – 29 June 2013, Brussels Belgium  
Contact for further information: Clive Viegas Bennett

#### Australasia Area Meeting

18-19 July 2013, Melbourne Australia  
Contact for further information: Christine Greiser

#### Africa Area Meeting

8-9 August 2013, Accra Ghana  
Contact for further information: Gerald Diamond

#### Asia Area Meeting

6-7 September 2013, Bangkok, Thailand  
Contact for further information: Audrey Danasamy

#### MGI AGM 2013

16-19 October, Sydney Australia

### THE UPSIDE ON THE DOWN UNDER INTERNATIONAL AGM 16 – 19th OCTOBER

G'Day (Hello) MGI Colleagues!

This year's AGM will be one with a difference. Held "down under" in Sydney, Australia, MGI Sydney is making sure arrangements are being put in place for you to enjoy a series of truly Aussie (Australian) events.

Your accommodation has been confirmed at the impressive Westin Hotel with its breathtaking views of Sydney's iconic "coat hanger" (Sydney Harbour Bridge).



We have also planned some exciting events at a selection of Sydney's leading restaurants as well as organising an accompanying partners' social programme that will take in all the historical and scenic highlights of Sydney.

Held in spring, with average temperatures between 56-72 degrees Fahrenheit, Sydney will be at its finest throughout the 2013 AGM. MGI Members will experience the vibrant CBD, stunning harbour and beaches during their stay.

We will keep you updated with all of the AGM details, programmes and planned tours in the lead up to the event. Look out for our emails.

We hope to see you downunder in Sydney on 16 – 19 October.

Best Regards,

The MGI Sydney Team.

### PROFESSIONAL NEWS FROM AROUND THE WORLD

#### IFAC CEO Ian Ball Departs - Assumes Volunteer Role of Principal Advisor

After more than 10 years, Ian Ball has stepped down as Chief Executive Officer (CEO) of the International Federation of Accountants (IFAC). He will continue as a principal advisor, in a volunteer capacity, representing IFAC as a member of the board and as chair of the Working Group of the International Integrated Reporting Council (IIRC).

During his tenure as CEO, IFAC's presence, outreach, and global influence experienced remarkable growth, addressing the challenges the accountancy profession faced during a turbulent period for both the profession and the global economy. A strong and vocal proponent of transparency in government management and financial reporting, Mr. Ball also fostered the debate defining the public interest; shaped the case for, and advocated the importance of, convergence of global professional standards; and played a key role in developing the arrangements between the accountancy profession and the regulatory community for oversight of the independent standard-setting boards in auditing and assurance, ethics, and accounting education.

Mr. Ball's accomplishments have been recognized throughout the profession. He is a recipient of the Chartered Institute of Public Finance and Accountancy's President's Medal and the New Zealand Institute of Chartered Accountants' Life Membership distinction, and he has been named a "Top 10 Influencer" by International Accounting Bulletin.

"It was a real privilege to lead IFAC during a period of great challenge and great opportunity for the global accountancy profession," said Mr. Ball. "As integrated reporting receives more and more attention and the IIRC continues to make significant progress, I am looking forward to focusing on these new endeavors and working with the IIRC and IFAC."

"As the CEO of IFAC during a critical time for the international profession, Ian Ball's leadership has served as a catalyst for a decade of momentum and achievement. Thanks to Mr. Ball, as a global organization, IFAC has never been better positioned as an authoritative, highly respected voice on global

economic issues," noted Warren Allen IFAC president.

Former World Bank executive and member of the Public Interest Oversight Board Fayeul Choudhury assumed the role of IFAC Chief Executive Officer on February 1, 2013.

#### IAASB Seeks Input on Strategic Review

The International Auditing and Assurance Standards Board (IAASB) released an [online survey](#) seeking public comment, insights, and views from all stakeholders to help shape its future direction for 2015 and beyond. It is seeking the input of interested parties at this early stage to identify key issues for discussion.

"The IAASB understands the importance of addressing matters of global and long-term relevance across the broad range of services covered by its international standards. We also recognize that we need to strike a balance between developing new and revised standards to further enhance practice, and taking steps to support continued global implementation of existing standards, including by small- and medium-sized practices," said Prof. Arnold Schilder, IAASB Chairman. "Accordingly, this survey asks for views on emerging developments and trends that are likely to be important in the public interest, as well as specific areas of focus for development of standards and related guidance. It also asks for input on the appropriate balance between setting new and revised standards and facilitating their adoption and effective implementation."

The survey also asks for feedback on the appropriateness of the IAASB changing its future strategy period to five years (2015–2019) instead of three years as it has done in the past. The IAASB believes that extending its strategy period will enable stakeholders to better understand its medium- to longer-term priorities, and provide a suitable context for decisions on specific initiatives.

Responses to the survey will form the development of a formal consultation paper on the IAASB's Strategy and Work Program for the period commencing 2015. The consultation paper is scheduled to be issued in late 2013.

The IAASB invites all stakeholders to complete the online survey. To access the survey, visit the IAASB's website at [www.iaasb.org](http://www.iaasb.org). Comments are requested by May 7, 2013. Individual responses to the questionnaire will not be on public record. They will be summarized for discussion purposes.

### Good Practice Checklist for Small Business

The updated second edition of this multi-part checklist contains a new standalone section on environmental management. Other sections include financial tasks, strategic management tasks, and regulatory requirements, among other areas. The checklist is meant primarily for small- and medium-sized practices (SMPs), as a marketing or diagnostic tool to help them determine the advice a small business client may need, and also to help them in managing their own businesses.

Please [click here](#) to access the checklist

### IESBA Strengthens Key Sections of Code of Ethics for Professional Accountants

The International Ethics Standards Board for Accountants (IESBA) released a strengthened provisions in its Code of Ethics for Professional Accountants (the Code) on March 19 to address [conflicts of interest](#) and a [breach of a requirement](#) of the Code. It also released amendments to the definition of the term "[engagement team](#)" in the Code.

#### Conflicts of Interest

Recognizing the ethical questions and challenges that can arise from conflicts of interest, the IESBA has revised the Code to establish more specific requirements and provide more comprehensive guidance to support professional accountants in identifying, evaluating, and managing such conflicts. The revisions affect professional accountants both in public practice and in business, taking into account the different circumstances in which they work. There is now a clearer explanation of what a conflict of interest means under the Code. The changes also are aimed at better enabling professional accountants to identify potential conflicts of interest early for timely action to be taken by the affected parties. Importantly, the new requirements are intended to stimulate professional accountants to evaluate whether they can remain objective in those circumstances and abide by the other fundamental ethical principles in the Code.

#### Breach of a Requirement of the Code

Reflecting its view that any breach of a provision of the Code is a matter that must be treated very seriously, the IESBA has strengthened the Code with

respect to a professional accountant's actions when encountering such a breach. In particular, the revisions to the Code establish a robust framework for addressing a breach of an independence requirement in the Code. They include requiring a firm to:

Terminate, suspend, or eliminate the interest or relationship that caused the breach;

Evaluate the significance of the breach and determine whether action can be taken and is appropriate in the circumstances to satisfactorily address the consequences of the breach;

Communicate all breaches with those charged with governance and obtain their concurrence that action can be, or has been, taken to satisfactorily address the consequences of the breach; and

Document, among other matters, the action taken and all the matters discussed with those charged with governance.

#### Definition of Engagement Team

In conjunction with the International Auditing and Assurance Standards Board (IAASB)'s release of its [International Standard on Auditing \(ISA\) 610 \(Revised 2013\), Using the Work of Internal Auditors](#), the IESBA is also releasing amendments to the definition of "engagement team" in the Code. The amendments clarify the relationship between internal auditors providing direct assistance on an external audit ("direct assistance") and the meaning of an engagement team under the Code.

"A hallmark of professional accountants is their acceptance of their duty to act in the public interest," said IESBA Chair Jörgen Holmquist. "The changes to the Code addressing conflicts of interest and a breach of a requirement of the Code raise the bar even higher and will, I believe, contribute to further strengthening of public trust in the profession." He also added, "In relation to the engagement team definition, while the amendments to the definition address a perception that the Code and the revised ISA are in conflict with respect to direct assistance, it is important to make clear that the board is not requiring or encouraging external auditors to use direct assistance."

The changes will be effective in 2014; see the individual pronouncements for details. Early adoption is permitted. The revised pronouncements will be printed in the 2013 Handbook of the Code of Ethics for Professional Accountants due out in the second quarter.

Source: [IFAC website](#)

### MGI ASIA MEMBER NEWS

#### Appointment of members in key positions

Muhammad Farooq, Managing partner of **Howladar Yunus & Co. Bangladesh** (HYC) has been elected as Vice President of the Institute of Chartered Accountants of Bangladesh (ICAB) for the year 2013

The partners of HYC were also nominated to sit on different committees of ICAB:

Muhammad Farooq	Executive Committee, Professional Development Committee, Quality Assurance Board
T I Talukdar	Articled Student Committee Project Development Committee
Neaz Mohammad	Examination Board and Quality Assurance Board
Jahidur Rahman	Quality Assurance Board Technical Research Committee
Lutful Hadee	Taxation Committee and Technical Research Committee

*Congratulations to the partners of Howladar Yunus & Co*

#### MGI Menon appoints new partner

R.S. Ramasamy joined **MGI Menon & Associates Singapore** as an Audit Partner on 1<sup>st</sup> February 2013.



Rama as he is known to most clients and staff, is a Practicing Member of ICPAS (The Institute of Certified Public Accountants of Singapore), Fellow, IPAS (The Insolvency Practitioners Association of Singapore) and Member, INSOL (International Association of Restructuring, Insolvency & Bankruptcy Professionals)

In 1983, Rama graduated with a degree in Accountancy from the National University of

Singapore. After graduation, he joined Ernst & Whinney (now Ernst & Young) where he was involved with numerous audit assurance engagements from SMEs to Oil & Gas majors, listed entities, finance companies, shipping and travel companies.

Rama left EW in 1986 to join the commercial sector and was the Group Finance Manager of a local home-grown group of companies for several years. After 12 years, Rama returned to professional practice as a partner of a local CPA Firm in 1998.

Prior to joining MGI Menon Singapore, Rama was involved in more than 150 non-traditional engagements of varying nature and complexity including managing companies placed under judicial management, receivership or liquidation and proposed schemes of arrangements to their creditors.

Rama specializes in audit assurance and corporate finance transaction advisory engagements.

#### MGB & Co supports ICAI

The Computer Lab at the new Institute of Chartered Accountants of India building (ICAI Tower) at the Mumbai's Financial Capital Hub, Bandra Kurla Complex is named as 'MGB & Co Computer Lab', thanks to the contribution of Rs 2.5million made by our member in Mumbai, **MGB & Co**



### MGI N Rajan ensures staff are up-to-date on FRS

Mr. D Govindaraj, our partner, a technical expert in Financial Reporting Standards, had recently conducted staff training on updates of Financial Reporting Standards. Staff training is provided at least once in two months using internal and external expertise. MGI N Rajan Associates Singapore strongly believes in training and empowerment of staff



A light moment after the staff seminar held in March 2013

### MGI N Rajan supports Indian business in Singapore

MGI N Rajan & Assoc have been building its advisory services for cross border India/Singapore tax issues.



Mr. P S Somasekharan, Managing Partner meeting Mr. P Chidambaram, the Finance Minister of India

Dr. G Natarajan has extensive knowledge in cross country audit and project appraisal. He has advised large firms in India in setting up their business in India, Singapore, Hong Kong and other parts of the world. Mr. S Sundarraman & Ms. Kuna have wide knowledge of the taxations laws of India and Singapore, and has represented clients in issues with the Inland Revenue Authority of Singapore.

### OUR NEW CEO



Clive Viegas Bennett  
CEO MGI

#### Tell us about your current role as the CEO of MGI?

*Recently I was appointed as MGI's CEO after being employed in the roles of the Regional Co-ordinator for Europe and more recently as the International Marketing Director. I am finding the role of the CEO to be varied, challenging and interesting.*

*No two days seem to be the same and I am certainly building up my frequent flyer points. As it is still early days as CEO I have spent a lot of time assessing my priorities and working on a smooth transition from our former CEO, Thierry Delvaux. This transition has gone very well.*

*I have a number of priorities for my role but chief amongst them is my desire to improve the communication between my position and the International and Executive Committees as well as with the members about what I am doing and how this is impacting MGI. The need to communicate with the Regions is equally important, particularly where we are trying to build member quality and numbers.*

*I am also reviewing our budget and have identified savings that can be made by changing the way we currently do things.*

*At the moment while there is a need to concentrate on some day-to-day issues during this transition period ultimately my goal is to bring about positive and significant change to MGI in the next 3 – 5 years. We need to become more competitive with our services, with business exchange and with the strength of our brand - otherwise why would our members or potential members choose MGI over other accounting associations.*

*We need to start this process by implementing the recommendations of the competitive strategy that was voted upon at last year's international AGM.*

**Can you tell us a little about your professional background? In what other industries have you worked and what did you do?**

*My career neatly falls into four phases: my time as a senior official in the UK House of Commons', managing the Environment Committee; as the Managing Director of a shipping company; as the owner of my own boutique consulting and headhunting business and more recently in my roles at MGI.*

*My varied background has allowed me to develop a wide range of skills and draw on a broad business experience, which I believe is very important in my CEO role.*

*As a consequence of working across many different industries I have learned to be adaptable and quickly understand the important drivers of that industry.*

*As an owner of my own business, similar to owners of our member firms, I appreciate the challenges of being an entrepreneurial manager. I also understand what it is like to be on the client side of the equation. As the MD of the shipping company, which was a subsidiary of a multinational company, I was required to deal with one of the "Big four" firms. A firm of our size would have been much better serviced by using a MGI member firm.*

**Prior to taking on the role of MGI's CEO you were also performing in the roles of MGI's International Marketing Director as well as the Area Co-ordinator for Europe. Can you tell us a little about both of these roles?**

*I guess my background has been an advantage in my role as the European Area co-ordinator. Although I was born in the UK I have been living for twenty-five years as an ex-pat in Portugal. I am also fluent in a number of European languages.*

*Principally, this role has been about getting the members in Europe to engage with each other as well as with MGI. While in this role it became apparent to me that the European region did not have a strategy - there was no clarity what MGI was for or how it should compete. This same recognition that there was no international strategy led to my*

*appointment to the role of International Marketing Director.*

*There are certainly challenges in developing strategy; it needs to be strategic at higher level but at the same time practical and focussed on business realities. A strategy which sits on the shelf gathering dust is a complete waste.*

**Can you provide us with a summary of the MGI International competitive strategy launched at last year's AGM? What does the new strategy mean for MGI?**

*The first step in developing the strategy was to undertake a member survey to find out what members wanted and why they chose to belong to MGI.*

*I was surprised by the results; rather than wanting to obtain business referrals from other MGI members being the prime reason for belonging to MGI, it was actually servicing the international needs of their current client base that was the main motivation.*

*The natural consequence of this motivation is that members need to be able to trust that the advice given to their clients by their international colleagues is accurate and of good quality.*

*Putting in place a member quality control system is a difficult and, possibly, costly exercise. It is also one which requires diplomacy. Particularly when you may be required to tell a dedicated and passionate member that they may not have the depth of skills to be regarded as a full service accounting firm. Audit network rules in Europe and United States place considerable limitations on the kind of quality control systems we can implement, so we have had to be quite creative.*

*So, to address the issue of quality control we are introducing two initiatives which are currently in beta testing.*

*All members previously participated in a Professional Review Programme (PRP) and also completed the Annual Return. These two systems asked participants questions about members' business, the services they offer, their licences, their staff and so on. All this information will now be provided in a single online system and, critically, will be accessible by other members. This means that members will have a much better idea about fellow members'*

businesses and international capabilities when deciding on referring business to them.

Another initiative we are introducing and which has caused the most debate is the online member performance feedback system. Once the feedback system is operational when you have received advice from another firm or have referred business to them, you will be able to give feedback on the quality of the advice or performance and your interaction with the member concerned. The intention is to keep this online feedback system as simple as possible. Feedback will also not be immediately viewable to members but will be moderated before it becomes visible to other members. We need to make ensure that negative feedback is justified under the circumstances.

The new strategy also covers other important aspects for building member value such as the need to encourage business exchange and consistency about how we communicate the MGI brand through public touch points such as our website.

### **In your role of CEO what do you see as some of the challenges ahead for MGI as an accounting association?**

It is very obvious from recent events such as the BDO/PKF merger that consolidation is a fact of life. It is going to impact both associations as well as individual accounting firms.

Secondly, at some stage in the near future MGI will have to face the issue of whether it is to be an "association" or it is to be a "network". The Australasian region has clearly decided that the benefits of being able to market and promote their services under the common MGI brand and, as a consequence be regarded as a network, far outweighs the risk. However for many US and European members this decision is not as simple or clear cut and carries significant risk.

There are just so many benefits to be gained from being able to market your services under the MGI brand that being a network seems to be the logical outcome but it may take many years to convince members of that and they may well not all accept such a change.

### **Are you able to comment on any current trends that are likely to impact on the future of the accounting industry? What do you think accounting firms will look like in 5 – 10 years?**

Although I am not an accountant there are trends which are evident today which will shape the future of the profession.

I have already mentioned consolidation. There is the impact of the growth of regulation. These days shareholders want the financial gains of risk but increasingly seek the assurance of regulated audit regimes. Despite the increase of audit regulation and perhaps an argument for audit assignment margins to be increasing, audit services are becoming commoditised.

Technology is also playing a part in commoditising accounting services. Accountants need to re-think their value to clients.

And of course in the UK and Europe there has been the outfall of troubled economies. As professional service firms, MGI members are finding just getting paid on time is an issue.

### **What advice would you give to accountants starting out as professionals?**

There is a lot of advice that I could give to any person starting out on their career, having had four careers myself. The more successful you want to become, over time the less your career should be about technical excellence. As your career progresses you can no longer be just an accountant. My observations of MGI's most successful members are that they are inspirational leaders, good managers, excellent at sales and marketing and thrive on entrepreneurial challenges. So my advice to anybody starting their career is to continually read, learn and experience business and management skills outside the basic technical skills needed in an accounting firm.

### **What literature are you currently reading?**

Interestingly I am currently reading Doris Lessing's "Golden Notebook". Written in 1962 the book has been promoted as a work of feminist literature but I think it goes beyond the feminist debate and covers the human condition and as well as the threats of the war and nuclear conflagration.

As I tend to read a number of books at the same time I am also reading a biography of the great Joe Strummer, leader of the Clash.

And for a bit of light relief I am reading a book written by one of members in Antwerp, Belgium, Professor Guy Parmentier on Accounting Business Valuation.

**If you were able to invite any two people alive, historical or fictional to a dinner party at your house who would they be and why?**

*Out of all the questions covered in this interview this one was the most difficult. There are just so many people which I would like to invite. OK so based on the assumption that language was not an issue I would like to invite the Chilean author Isabelle Allende who has written so many great books such as "The House of Spirits" and her very funny autobiography "The Sum of Days".*

*I would also like to invite Leonardo da Vinci, with his extraordinary range of interests, to the same dinner party, as I think both would very much enjoy talking to each other about their views on life, art and love. I'd quite like to talk to him about science, too.*

*This interview was conducted by Christine Greiser, Regional Co-ordinator MGI Australasia*



## MGI GLOBAL NEWS

**Parliamentary Joint Committee on Corporations and Financial Services - Family Business in Australia - different and significant ; why they shouldn't be overlooked - March 2013**

MGI Australasia's representation at the Australian Federal Government's inquiry into family business was well received. In its final report the MGI Australasia Family Business survey is mentioned extensively. The committee thought the findings of the survey valuable and of interest thus acknowledging it as a valuable source of information on Family businesses.

### New member in Australia

MGI warmly welcomes a new member in Perth, Western Australia.

Parkinson Chartered Accountants and Business Advisers is one of the most important firms in Western Australia with a history of more than 50 years. Parkinson is a full service firm covering the following main areas:

- Tax and Business Services
- Audit Services
- Financial Planning

- Superannuation
- Litigation Support Services
- Valuation Services
- Company Secretarial and Advisory Services

Parkinson is located in the Perth suburb of Subiaco. MGI is now represented in 10 locations throughout Australia.

### MGI ranked 2nd in Russia

The MGI Alliance was ranked in 2012 as the 2nd largest international association of independent accounting and auditing firms in Russia by fee income and 5th largest by staff, according to the International Accounting Bulletin\*. This is a major achievement for MGI and a significant increase from our Russian rankings in 2011 (13th and 15th places, respectively).

We would especially like to congratulate our newest member in Moscow, Consulting Services Group ([www.consults.ru](http://www.consults.ru)), for their contribution to this success.

\*IAB Russia Survey, October 2012: "A cold front in Russia".

### Milan firm in new partnership with regional investment agency

Milan member firm, MGI de Leone-Triunfo-Galloni & Associati, has become a business partner of "Invest in Lombardy", a new challenging project to attract foreign investment into the Lombardy Region of Italy promoted by Promos, Special Agency of the Milan Chamber of Commerce for international activities.

Invest in Lombardy's aim is to attract foreign investors into the Milan and Lombardy area, providing them with the necessary institutional and professional support thanks to the close collaboration between the Chamber of Commerce and its business partners.

MGI de Leone-Triunfo-Galloni & Associati is one of the business partners involved in the project, along with a selection of international legal firms, real estate agencies, recruitment agencies and banks. The main idea is to allow the business partners, through their own expertise in the field, to offer a full range of services to foreign entities who would like to operate in the Lombardy market and who may need to start a new business.

### INTRODUCING NEW MEMBER



### Vietnam Auditing & Accounting Consultancy Company (AVA)

#### What is the history behind AVA?

Vietnam Auditing and Accounting Consultancy Limited Company (AVA) was established in October 10, 2006 as a financial consulting firm about: accounting, auditing, professional appraisal. The founders are auditors from the first auditor's generation of Vietnam, who were trained from EURO – TAPVIET Project, The starting project for independent auditing activities in Vietnam.

#### What was the catalyst in forming AVA?

With the economic development and integration process, the demand for auditors in Vietnam was increasing. In 2006 Vietnamese government decided to no longer continue the form of external auditing, where shareholder of audit firms is the Ministry of Finance. Hence entire State owned -external auditing companies were privatised. This lead to the establishment of AVA

#### How would you describe your firm today?

The firm now has 10 partners and over 100 staff. The head office is located in Hanoi City with about 80 staffs and a branch in Nghe An with 20 staffs. AVA has the relevant approvals from the Ministry of Finance and VACPA (The Vietnam Association of Certified Public Accountants). VACPA has ranked AVA 16<sup>th</sup> out of 200 Vietnam audit firms. AVA has more than 300 clients from large corporations, state-owned enterprises, joint-stock companies, listed companies and other companies.

*AVA has contributed positively to the general development of the accounting profession in Vietnam. We are committed to ensure good quality of service to our clients. We play a significant role in helping our clients grow and succeed. With highly qualified and experienced staff, AVA is one of the leading professional services in Vietnam with the ability to meet the highest level of clients' needs.*



#### What are the areas of expertise & types of services offered?

We offer the full range of auditing services including audit of financial statements, project inputs and outputs. Audit of final accounts of construction work in particular evaluation of assets used for capital contribution. Our accounting services include guidance on the application of regulations on accounting and financial software, preparation of accounting records and financial statements and verification of accounting and financial statements. Our consultancy service offers tax consultancy, financial management, mergers and acquisition and business registration. We also have registered valuers who do asset value verification, appraisal of investment capital on basic construction work and draft records for investment license consultancy

#### What are your future plans for the company?

We are striving to be in the top 10 audit companies in Vietnam by 2015. We will be developing to expand company's market and professional services. We are planning to establish more local branches to serving customer all over

#### What can AVA offer MGI, your contribution to MGI?

AVA is excited and honoured to have become MGI member. We aim to create a sustainable relationship and connection with other members. In case of our clients expanding overseas we will be introducing

other MGI members. On other hand, we are ready to advise, guide, and support other MGI members about the Vietnam accounting and legal environment, procedures, and economic situation.

### What are your expectations of MGI?

As a MGI member, we are expect more clients from MGI member's referrals, create relationship; share experiences, expertise with each other.

### Do you have any observations so far about MGI?

In future, we are looking for a stronger and growing MGI with members in more parts of the world who are creating great opportunities for us to share and learn from each other.



## SERVICE P E ARISING FROM DEPUTATION OF EXPATRIATES IN THE CONTEXT OF INDIA

Contributed by S R Dinodia & Co

*"Human resources are like natural resources; they're often buried deep. You have to go looking for them, they're not just lying around on the surface."*

— Ken Robinson

The world has converged and human capital is the catalyst. The result of the convergence is a movement of people between cities, countries and continents. Businesses are constantly looking for skilled manpower for their ventures in various parts of the world. This shift of capital followed by a shift in human resources has made the concept of deputation or secondment indispensable to modern day business, allowing for a person to be employed by one company in one part of the world and work temporarily (be deputed/seconded) for another company in another part of the world.

Deputation of people, itself is a non-event for purposes of tax, however, what bring it within the ambit of taxation is that it is usually done by companies deriving economic benefit therefrom in multiple locations. It is to be recognized that trained, experienced and technically competent personnel are as much a scarce resource as capital, plant, machinery or technology, making deputations carry

with them an economic connotation and thus a taxable event.

In theory, the deputing company (FCo.) would normally not send its trained man-power to another company, unless it has an economic connection with such other company. The economic connection can take many different forms and shapes, such as, FCo. transferring technology or making technology available for use or entering into a joint venture with the other company (ICo.) or being a holding company, or a group company of ICo., making the two might be associated enterprises (AE), by reason of economic relationship, such that FCo. finds it in its economic interest to make available to ICo. its skilled human resources. Thus, in such cases, the first enquiry that needs to be made is the economic motivation which has resulted in the deputation.

There are various tax implications that arise out of the act of deputation for economic benefit.

One of the most important and complicated questions that is to be posed in expatriate taxation is – whether the act of deputing personnel to a company in India would lead to the creation of Permanent Establishment (PE) in India of the Foreign Company?

In terms of Double Taxation Avoidance Agreements, (DTAAs) the term 'PE' means a fixed place of business through which the business of Multi National Enterprise (MNE) is wholly or partly carried out. The definition of 'PE' was a concept introduced globally by the DTAAs. In India however, the concept of PE was for the first time introduced in the Income Tax Act 1961 by the Finance Act of 2001 as part of statutory provisions of Transfer Pricing. In section 92F(iii), the word 'enterprise' is defined to mean "a person including a PE of such person who is proposed to be engaged in any activity relating to the production". The CBDT Circular,<sup>1</sup> has clarified that the PE term has not been defined in the Income Tax Act, but it will take its meaning as understood with reference to the various DTAAs entered into by India. The Finance Act of 2002 inserted the definition of 'PE' in the Income Tax Act itself vide section 92F(iia)

**"Sec.92F(iia) "permanent establishment", referred to in clause (iii), includes a fixed place of business through which the business of the enterprise is wholly or partly carried on."**

<sup>1</sup> No. 14 of 2001, 252 ITR, Statute 55, at p.107

Article 5(1) of OECD Model Convention 2010 states that “the term ‘Permanent Establishment’ means a fixed place of business through which business of enterprise is wholly or partly carried on.”

It will be seen that the definition contained in section 92F(iiiia) of the Income Tax Act and that contained in the OECD Model Convention is the same. OECD Model Convention provides that for any place to be regarded as a PE, the following conditions need to be cumulatively fulfilled:-

- a. (“**place of business test**”) There should exist a place of business, i.e. a facility such as premises or machinery or equipment.
- b. (“**permanence test**”) The place of business must be fixed i.e. must be established at a distinct place with a certain degree of permanence.
- c. (“**business activity test**”) The activities performed through this fixed base of business must be a business activity of the foreign enterprise.
- d. (“**place at disposal test**”) The fixed base of business should be at the disposal of the employees of the foreign enterprises.

The OECD Model Convention and its Commentaries are liberal in their approach to infer a fixed place PE. The fixed place of business as per OECD Convention does not require a formal legal right to use the place. However, this aspect is highly litigated and there are various opinions with regard thereto. The opposite view is that a fixed place of business can only be inferred if the person whose fixed place it is deemed, as a matter of right, can enter and make use of the premises.

Mere deputation of employees would not lead to the inference of a fixed place PE as the act of deputation does not give any right to use the place at which the seconded employee exercises employment. Similarly, no space is being made available to be used for the business activity of the MNE, as such. Therefore, without anything more, other than deputation of personnel a fixed place PE cannot be inferred.

However, if the deputed employee is, as a matter of right, is eligible to carry out partly or wholly business for the MNE from such premises of the other company in the other jurisdiction, then a fixed place PE may be inferred.

The definition of PE in the DTAA's and the jurisprudence on PEs has also led to the development of various other kinds of PEs, which do not require a fixed place to be available to the foreign enterprise, such as *Service PE* and *Agency PE*.

### SERVICE PE:

A service PE is inferred if the MNE renders service through its employees, when they are deputed in the other country for a period greater than the exempt period specified in the relevant DTAA. The deputation of employees can lead to all kinds of tax consequences for the deputing company, viz., (1) taxation of MNE profit attributable to such PE created by deputation; (2) application of Transfer Pricing Regulations to the PE, ensuring that the services being rendered, to its AE are at arm's length price.

The Hon'ble Supreme Court of India has dealt with this important issue for the first time in its celebrated decision of **DIT (International Taxation) Vs. Morgan Stanley & Company Inc.**<sup>2</sup>

In the case the Apex Court was dealing with the DTAA (Treaty) between India and USA and interpreting the definition of PE under Art. 5 of the Treaty. The Supreme Court was of the opinion that a fixed place PE could not be inferred for the back office services rendered by the subsidiary in India to its parent company in the US. The Supreme Court also highlighted the difference between the definition of PE contained in section 92F(iiiia) and that contained in the DTAA and held that, *the definition of PE under the Income Tax Act for purposes of Transfer Pricing Regulations is an inclusive definition, whereas definition of PE in the DTAA for purposes of liability to tax by force of attraction rule is exhaustive definition.* The DTAA also exempts from the purview of liability to tax, activities which were preparatory or auxiliary in character, even though they might be carried out from a fixed place of business. The Apex Court, therefore, held that back office operations performed by AE in India would fall within the exceptions in Art. 5(3)(a) of the DTAA and would, therefore, fall outside the purview of fixed place PE under Art. 5(1) of the DTAA.

However, while dealing with the question whether the activities performed by the deputed employees deployed by the MNE to work in India as employees of the AE would lead to the inference of a Service PE, it was held that since such employees were furnishing services through a fixed place in

<sup>2</sup> [(2007) 292 ITR 416 (SC)]

India, therefore, they would form the Service PE under Art. 5(2)(1) of the DTAA.

The Apex Court, however, made a distinction between stewardship and deputation. It was held that the stewards were never deputed and continued to be employees of the MNE. The stewardship activities involved briefing of the AE's staff to ensure that the output met the requirements of global standards of the MNE. Stewardship activities were basically to protect the interests of the customer, ensuring the India AE rendered services of a quality that would be acceptable to global customers of the MNE group. Therefore, the Apex Court held that deputing its own personnel without transfer of the employment contract to the AE, would not result in a Service PE.

The Apex Court, however, held that where the employee of the MNE is deputed to the AE on deputation, he continues to have a lien on his employment with the MNE which retains control over the deputed employees' terms of employment. A Service PE, as per the U.N. Convention is constituted if the MNE renders service through its employees in India provided the services are rendered for a specified period. The Apex Court finally held that Service PE under Art.5(2)(1) was constituted by the act of deputation and the income attributable to the Service PE would be liable to tax in India.

The Supreme Court then dealt with the second question of income attributable to the PE under Art.7 of the DTAA between India and the US. The Apex Court held that what is to be taxed under Art. 7 is the income of the MNE attributable to the PE in India. The force of attraction rule was applied and limited to the income attributable to the activities carried on by the MNE through its PE in India. The Apex Court held that under Art. 7, the taxability is of the MNE and not of its PE. They further held that taxable unit is the foreign company, though quantum of income taxable is the income attributable to the PE of the said foreign company in India. It was further held that the profits of the PE are determined on the basis of what an independent enterprise, under similar circumstances, might be expected to derive on its own. The Apex Court further held that where a transaction between a MNE and its AE is held to be at arm's length and the PE is reimbursed on arm's length basis, then no further income is to be attributed to the MNE. The service charges paid to the Service PE of the MNE (treated as AE) for purposes of Income Tax Act being at arm's length do not need further attribution of profits.

The Authority for Advance Ruling (AAR) has dealt with this question a number of times from different perspectives. In the case of **Cholamandalam MS General Insurance Company**

**Ltd.**<sup>3</sup>, the Indian company was engaged in the business of non-life insurance and was interested in building up a business relationship with Indian companies who were subsidiaries or joint ventures of foreign companies. The Indian Company had two Divisions – one dealing with Korean and the other with Japanese subsidiaries in India. The Indian Company was in need of persons from the respective jurisdictions abroad who were well versed with insurance business and practices, foreign languages and other related information which could be of use to the Indian company for expansion of its business activities.

It entered into a mutually beneficial secondment agreement with the Korean company for making available services of an employee of the Korean company who should be at the disposal of the Indian company for a period of two years in order to assist the Indian company in matters relating to Korean insurance business. As per the terms of the agreement a part of the total cost of seconded employee was to be reimbursed by the Indian company to the Korean company. The Korean company continued to be the legal and economic employer of the Korean second employee. The issue before the AAR was, whether the seconded employee would constitute a Service PE of the Korean Company.

The Revenue argued that reimbursement of cost of the seconded employee was fee for technical services (FTS) and Explanation 2 to section 9(1)(vii) applied as managerial, technical or consultancy services were rendered by the Korean company by providing services of the Korean seconded employee to the Indian company. Art. 13.4 of DTAA between India and Korea also defined FTS substantially in similar terms.

The AAR held that reimbursement of partial cost of the seconded employee of the Korean company by the Indian company did not amount to consideration as fee for technical services. It held that no income could said to be generated which answers the description of FTS. The Indian company, by utilizing the services of the seconded employee of the Korean company, also benefitted as it promoted its business relations with the Korean company which also gained by re-insurance business that the Indian company could provide to the Korean company. The essence and substance of the transaction was not to derive income by way of charging fee for the services. For this proposition, the AAR relied upon various judgments viz., **CIT vs. Dunlop Rubber**

<sup>3</sup> [(2009) 309 ITR 356 (AAR)]

**Company<sup>4</sup>, CIT vs. Industrial Engineering Projects Pvt. Ltd.<sup>5</sup>, CIT vs. Tejaji Parastam Kharawalla Ltd.<sup>6</sup>, etc.**

The AAR took a diametrically opposite view and held a similar reimbursement for seconded employee as FTS in the case of **AT & S India Pvt. Ltd.<sup>7</sup>**

The Delhi Tribunal in the case of **HCL Infosystems Ltd., Vs. DCIT<sup>8</sup>**, on similar facts, held that as far as the foreign company is concerned, fee for technology transfer and for the transfer of know-how to the Indian company, had already been quantified in the agreement and separately paid. The technicians were deputed and services were placed at the disposal of the assessee during the deputation period. The Indian company was not liable to pay salary, but to pay taxes thereon. In such an arrangement, the command and control of the employees and relationship of employer and employee remain with the Indian company and the technicians and, therefore, the payment had been rightly treated as salary borne by the assessee on which tax had been correctly deducted at source. The Tribunal went on to hold that the salary of the technicians reimbursed by the Indian company was the cost and there was no element of profit. This order of the Delhi Tribunal was upheld by the Delhi High Court<sup>9</sup>.

The controversy is still alive and continues.

The AAR in the case of **Centrica Offshore Pvt. Ltd., vs. CIT<sup>10</sup>** again considered the issue of secondment and the tax effect thereof. The AAR first held that reimbursement of cost to the foreign company by the Indian company was not a case of diversion of income by overriding the title and nothing was received by the foreign company as its income. In this case also, the Revenue raised the first issue – whether this payment should be viewed as FTS within the meaning of section 9(1)(vii) of the Act and under Art. 13 of the DTAA between India and U.K. and as fees for included services within the meaning

<sup>4</sup> [(1983) 142 ITR 493]

<sup>5</sup> [(1993) 202 ITR 1014 (Del.)]

<sup>6</sup> [(1968) 67 ITR 95 (SC)]

<sup>7</sup> [(2006) 287 ITR 421 (AAR)]

<sup>8</sup> [(2002) 76 TTJ 505 (Del.)]

<sup>9</sup> [(2005) 274 ITR 261]

<sup>10</sup> [(2012) 206 Taxman 545 (AAR)]

of Art. 12 of DTAA between India and Canada. The Revenue argued that the seconded employees provided managerial services and they were making available their experience and skill in managing and applying processes and practices and the object of secondment for fixed terms was to train and familiarize the staff in India so that once the secondment ceased, the staff in India could apply the processes and practices which would mean that the service was made available within the meaning of this Article.

They relied upon the judgment in the case of **Verizon Data Services India Pvt. Ltd.<sup>11</sup>**, which the AAR noticed had been set aside by the Hon'ble Madras High court.

As both the U.K. and Canadian Treaties with India did not include managerial services in the definition of FTS and included fees for included services, the AAR came to the conclusion that this could not be held to be covered by Art.13 in the case of U.K. Treaty and Art. 12 in the case of Canadian Treaty. The AAR following the judgment of the Apex court in the case of Morgan Stanley (supra), held in terms of Art. 5.2(k) that as the managerial services exceeded the number of days specified in the Treaty, Service PE could be inferred by the presence of seconded employees of the foreign company.

The AAR reiterated the fact that the seconded employees continued to be employees of the foreign company and, therefore, the employer continues to be the foreign company. The seconded employees rendered services for their foreign company employer in India by working for a specified period for the Indian subsidiary or Associate Enterprise of the foreign company employer. The AAR, therefore, held that this would give rise to the Service PE within the meaning of Art.5.2(k) between India and U.K. and also Art. 5.2(i) of the India-Canadian Treaty. The AAR thus held that the payment and reimbursement of cost of seconded employees amounted to income and was liable to withholding tax u/s 195 of the Act.

In view of the litigation that is ensuing in India as narrated above, one would realize that the issue of deputation of expats by a foreign company to an Indian company has to be carefully looked at from Indian tax perspective.

In summary some of the key issues that need to be kept in mind while entering into these deputation arrangements as are follows:-

- 1) **Business Activity Test** - It has to be carefully seen whether the deputed

<sup>11</sup> [(2011) 337 ITR 192 (AAR)]

employees rendering services to the Indian company also constitute support for the business of the foreign company.

- 2) Benefit Test - The benefit test would also be required to be applied to see the benefits earned by the foreign company from the secondment of its employees to the Indian company.
- 3) Legal & Economic Employment Test - Various issues on the legal and economic employment need to be addressed, such as,
  - a) Which enterprise bears the responsibility or risk for the results produced by the deputed employees work;
  - b) Who controls and has responsibility for the place at which the work is performed;
  - c) Who is the instructing authority regarding the manner in which the work is to be performed by the deputed employees;
  - d) Who pays the remuneration of the individual;
  - e) Who has the right to hire and fire the employees - the right to hire and fire the seconded employees is an important right which would determine whether there exists an employer-employee relationship between the Indian company and the seconded employee. It has been held that the mere right to determine the secondment arrangement, but not to employment, does not lead to an inference of employer-employee relationship between the Indian company and the seconded employee.
  - f) Who pays for the tools and materials necessary for the work of the deputed employees;
  - g) Who fulfils the contractual obligations, educational and technical qualifications etc of the deputed employees;
  - h) Who has the right to impose discipline, determine the work schedule, leave etc of the deputed employee.

The flattening of the world<sup>12</sup>, calls for a reality check as we explore the manner in which countries and societies will cope with and adapt to the dramatic changes that globalization brings to the way we do

business, as individuals and as entities. The current IT Revolution has led to the death of the human bond in the online world.

As the boundaries blur between companies and different groups of workers, as well as the relationships between communities and the businesses that operate within them, and people are able to connect on every level, identities become harder to define. The traditional roles of consumer, employee, citizen, taxpayer and shareholder have all become blurred and intertwined. However, Human Intellectual Capital remains unique and still drives economic benefit, thus laws must be put in place by each country to protect itself from erosion of its capital and consequently tax base.

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<sup>12</sup> Thomas Friedman – Author of the World is Flat

## TIPS & HELP

### Twelve steps to better client relationships

BY JEAN MARIE CARAGHER

*Jean Marie Caragher is president of Capstone Marketing, providing marketing consulting services to CPA firms that include brand surgery, marketing and strategic planning, inbound marketing, retreat facilitation, and training.*

Since strong client relationships contribute to client satisfaction, longevity and lead generation, partners often encourage their managers and staff to build relationships with their clients. But these managers and staff look at the relationships their firm's partners have built over time and think it's impossible to replicate their results. However, building relationships with clients can be done using the same behaviours that we use when building friendships and courting our spouse or significant other. Consider these 12 tips to build client relationships, especially during tax season, prime time for in-person client contact.

1. Be prepared. Just like you would plan a date or activity with a friend, plan for your client meetings. Review client files. Identify unmet needs. Learn more about the industry in which the client operates. Create a meeting agenda and a list of questions to ask. Benchmark client financial statistics vs. their industry or peers
2. Be thoughtful. We want to be friends and share our lives with people who are thoughtful. When you are thoughtful, others are more inclined to be thoughtful in return. Mail or email articles you think your client might like. Be respectful of their time. Be complimentary. Actively listen. Ask about and follow up on life events like vacations, community activities and children's accomplishments.
3. Keep your promises. Failing to keep your word can destroy the trust in a relationship. Set realistic deadlines—and keep them. Do what you say you will do.
4. Share your interests. Relationships deepen when we share our interests with each other. Ask your clients about their interests out of the office. Find out what you have in common. Invite your clients to attend events with you. Plenty of business is conducted on the golf course, at the ball game, at dinner after the theatre, and at charitable functions.
5. Discuss the big things. Relationships are built through meaningful conversation. Ask your clients

about their vision, goals and plans for the future. Be willing to have the difficult conversations. Understand their expectations for services you are delivering to them.

6. Listen. Most people talk at about 150 words per minute; we listen at three to four times that rate. This gives us plenty of time to be distracted and not hear what our clients are telling us. Pay full attention. Actively listen, which includes looking at the person talking, taking notes, asking questions, and using nonverbal cues like making eye contact, nodding your head, and smiling.

7. Be able to laugh at yourself. Having a sense of humor is one of the keys to a successful relationship. Enjoy the time spent with clients. Admit when you make a mistake and quickly correct it.

8. Be open to new ideas and experiences. The needs and goals of your clients may change over time. Be open to ideas that clients suggest. Consider new and different ways to do what you already do. Learn new services and specialties that will be of value to your clients.

9. Be available. It is impossible to build relationships without spending time together. Arrange face-to-face time during the year other than when the primary engagement is being performed. Be responsive to client requests. Return voicemail and email messages promptly.

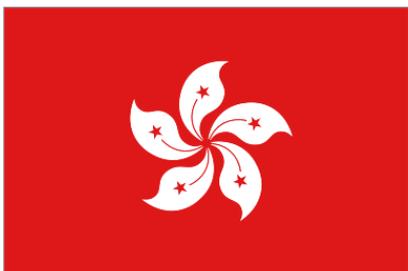
10. Be willing to give all of your attention. Giving your client 100 percent of your attention is bonding and powerful. When meeting in person, eliminate disruptions, take notes, actively listen and mute your smartphone. When talking on the telephone, focus on your conversation. Do not check your email, review reports or tax returns. Focus on the client at hand.

11. Be proactive. One of the main reasons clients change CPA firms is that their CPA is not proactive enough. Anticipate client needs. Suggest additional services. Spend face-to-face time throughout the year. Provide ideas.

12. Be friends. Build your client base with those people you enjoy spending time with.

By implementing these 12 tips, just as you would when building friendships and courting your spouse or significant other, you will build longer-lasting, significant client relationships.

### MGI ASIA COUNTRY UPDATE



#### Hong Kong Budget 2013-14

Financial Secretary John Tsang has proposed a series of measures to support small and medium enterprises.

In his 2013-14 Budget, Mr Tsang said the Government will help SMEs in several areas to raise capital and access new markets, amid the weak export and challenging external environment. "SMEs are an important pillar of Hong Kong's economy and employment market. In the face of persistently weak export markets and a challenging external environment, we shall assist SMEs to help them raise capital and tap new markets," Mr Tsang said.

Support measures for SMEs:

- \* waiving business registration fees for 2013-14;
- \* reducing profits tax for 2012-13 by 75%, subject to a ceiling of \$10,000;
- \* extending the application period for the special concessionary measures under the SME Financing Guarantee Scheme to the end of February next year;
- \* having the Trade Development Council establish more Design Galleries in Mainland cities to offer platforms for Hong Kong enterprises to showcase their products and access the Mainland market;
- \* increasing the cumulative grant amount under the SME Export Marketing Fund from \$150,000 to \$200,000 to subsidise export promotion activities like trade fairs, exhibitions, business missions and advertising; and,
- \* giving holders of the soon to be launched Small Business Policy a waiver of the annual policy fee and up to 20% premium discount.

#### Hong Kong and Italy signed tax treaty on 14 January 2013

On behalf of Hong Kong, the Secretary for Financial Services and the Treasury, Professor K C Chan, signed an agreement with Italy for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. Professor Chan said that as the Comprehensive Double Tax Agreement sets out clearly the allocation of taxing rights between the two jurisdictions and the relief on tax rates on different types of passive income, it will help investors better assess their potential tax liabilities from cross-border economic activities. The agreement will further strengthen the economic and trade ties between the two places, and provide added incentives for companies in Italy to do business or to invest in Hong Kong, and vice versa.

#### Hong Kong Government announced further measures to address the overheated property market on 22 February 2013

The Financial Secretary announced that the Government would amend the Stamp Duty Ordinance to adjust the ad valorem stamp duty (AVD) rates and to advance the charging of AVD on non-residential property transactions from the conveyance on sale to the agreement for sale. Any residential property (except that acquired by a Hong Kong Permanent Resident who does not own any other residential property in Hong Kong at the time of acquisition) and non-residential property acquired on or after 23 February 2013, either by an individual or a company, will be subject to the new rates of AVD upon the enactment of the relevant legislation. Transactions which took place before 23 February 2013 will be subject to the original stamp duty regime.

Submitted by Kenneth Chau & Co



### Tax Update

The Directorate of Tax Ministry of Finance Republic of Indonesia issued regulation of Director General of Tax no. PER 24/PJ/2012 about form, dimension, manual to fill the tax form, procedure for information, manual to revision and to change, manual to cancel tax invoice effectively starting from April 1<sup>st</sup>, 2013. Other new tax regulation is Ministry of Finance Regulation No. 162/PMK.011/2012 about the amount of non taxable income starting from October 22<sup>th</sup> 2012, applicable for 2013.

Submitted by KAP Basyiruddin Wildan

### Joint Audit of Directorate General of Tax and Directorate General of Customs and Excise

On January 31, 2013, a joint decision letter has been made between Directorate General of Tax and Directorate General of Customs and Excise as an implementation regulation of the MoF Decree No 351/KMK.09/2012 regarding joint audit of Directorate General of Tax and Directorate General of Customs and Excise. It becomes a new thing for exporter and importer because although during this time, tax and customs is under the same ministry i.e. Finance Ministry, both institutions never did the examination of auditee at the same time in one integrated team. What is the background, purpose, structure and composition of team member of the joint audit, the auditee that will be audited, period and report of this Joint Audited will be described briefly in this article.

#### A. Background

Joint audit is the audit activity of tax and customs to test the compliance of taxpayer, whereby Directorate General of Tax and Directorate General of Customs Excise will share the data and cooperate in conducting an audit process on the same company at the same time. The implementation of this joint audit can maximize the time efficiently because the audit is

carried out simultaneously and the auditee does not need to provide the data repeatedly. The purpose of joint audit between tax and customs are as follows:

- to optimize the State revenues,
- to minimize potential loss of State revenue,
- to improve compliance and enforcement in the area of tax, customs and/or excise regulation
- to increase the effectiveness of data exchange
- to increase synergy and cooperation between Directorate General of Tax and Directorate General of Customs and Excise

#### B. Structure and Composition of Team Member

Joint Audit Team consists of the following:

- Joint Audit Committee, consisting of:  
Chairman and Vice Chairman of the committee held alternately every year by the Director of Tax Audit and Collection, and Director of Customs Audit,  
Members of the committee held by Deputy Director of Tax Audit Planning, Deputy Director of Tax Audit Cooperation, Deputy Director of Tax Audit Technique and Control and Deputy Director of Customs Audit Planning, Deputy Director of Customs Audit, Deputy Director of Customs Audit Evaluation.
- Joint Audit Quality Supervision Team, held by appointed officials of Directorate General of Tax and Directorate General of Customs Excise.
- Joint Implementation Team, consisting of the Tax and Customs Auditor.
- The Secretariat, headed by the appointed Echelon III of Directorate General of Tax. The secretariat will be based in DGT.

#### C. Focus of Joint Audit

Focus of the joint audit is companies who have tax and customs excise duties obligations. Those companies are:

- Companies that have "KITE" facility (ease of import facility for export purposes).
- Companies engaged in the following business area:
  - Cigarette
  - Palm oil industry
  - Mining
  - Oil and Gas
  - Automotive
- Companies having Bonded Zone License
- Import export Companies

Companies other than the above criteria may also be audited based on consideration of Joint Audit Committee and/or by request of Finance Minister.

#### **D. Joint Audit Period**

Joint audit process is conducted at the maximum of 4(four) months from the assignment letter received by the auditee, and the process can be extended for an additional 4 (four) months period. However, if there is an indication of a criminal offense, joint audit can be extended for a maximum 2 (two) times. Joint audit period for tax audit is 1 fiscal year, while for customs is 2 years which is ended on the prior months of the joint audit assignment letter is issued.

#### **E. Output / products of Joint Audit**

The result of the joint audit process for the auditee is as follows:

Tax Assessment  
Customs Audit Report (LHA)

On the other hand, the joint audit team has also to report the result of the audit in the form of the following:

1. Joint audit Reports addressed to the Chairman of the Joint Audit Committee
2. Report of Examination which will be used for the benefit of the DGT
3. Audit Report which will be used for the benefit of DJBC.

With the issuance of the joint audit regulation whereby the tax audit team can exchange information with the customs audit team on the same fiscal year, companies may expose with additional tax exposures from the result of customs audit and vice versa. Hence, companies should handle the joint audit process carefully.

**Submitted by SF Consulting**



#### **India's Government proposes financial reporting body**

A clause in India's Company Bill, currently awaiting clearance from one of two houses of Parliament, proposes the formation of a National Financial Reporting Authority (NFRA) to provide for matters relating to accounting and auditing standards.

The NFRA is expected to be headed by a person with expertise in accountancy, auditing, finance or law and will be appointed by the Central government, along with 15 full time and part time members.

It will co-exist with the Institute of Chartered Accountants of India (ICAI), which currently governs financial regulation, with the division of work between the two to be spelt out once the bill is passed.

It has been speculated by ICAI members in Indian media reports that the NFRA will supersede the ICAI, with one member describing the move as a "land grab" by the government.

The NFRA will set accounting standards and be able to take disciplinary action against members, including against firms, whilst the ICAI, which currently sets accounting standards, can only take action against individuals.

Firms have also been nervous over the creation of the governmental body, with KPMG suggesting the new provisions would question the validity of the concept that a professional should be judged by his peers, whilst others have expressed concerns about regulation.

The move follows the 2008 Satyam Computer accounting fraud scandal, where auditors missed the company over stating cash balances by about \$1bn and revenues by \$1.1bn.

### **New Companies Bill 2012.**

#### **Background and Brief History**

Companies Act 1956 has more than 650 sections, it has been amended several times according to changing economic scenarios. The Act came into force when there were only approx 40,000 companies in India which is now raised to more than 8,50,000. The Act is now on verge to be replaced by new and improved version in the name of Companies Bill 2012.

#### **Salient features and purpose of the Companies Bill, 2012.**

The main purpose of the Companies Bill 2012 is to bring uniformity in all the provisions of Companies Act be in consonance with SEBI, IRDA, CCI and other rules devised by Central Government. The bill has 470 clauses and 29 chapters. The Bill seeks to consolidate and amend the law relating to the Companies and intends to improve corporate governance and to further strengthen regulation of Companies.

This bill was in approval stage since 2009 and has been amended several times before it got approved by Lok Sabha on 18.12.2012. The Bill is yet to be approved by Upper House i.e. Rajya Sabha and then the same will receive the assent of President of India and after that Central Government by Notification will specify the date from which it will come into force.

The Bill/Act is always a framework within which the transactions need to be carried out. It is the intention of the legislature to abide the persons to follow it. The rules would define the procedural aspect of following the Act in correct manners the power of which is delegated to Central Government i.e. MCA (Ministry of Corporate Affairs) who will frame the rules open the same for public comments and then after all deliberations and views from professional and professional bodies will finalize the same.

#### **Important Highlights**

1. Provision for One Person Company introduced
2. Maximum number of members in private company increased from 50 to 200.
3. Provisions relating to further issue of Capital (as currently given in section 81 of Companies act 1956) are made applicable to all companies.
4. Shares cannot be issued at discount (contrary to section 79) except in the case of Sweat Equity Shares.
5. Private placement properly defined and explained and made applicable to all companies. This is done as per the recent judgement of Supreme Court defining private placement in SEBI-Sahara Corp Case.
6. Fraud has been defined in the Bill 2012 which was not known earlier.
7. Consolidation of Financial Statements has been made mandatory.
8. 2% of average net profits of last 3 years to be mandatorily spent on CSR activities by specified class of companies.
9. Rotation of Auditor made mandatory
10. One of the Directors shall be a person who has stayed in India for 182 days or more (not to be a citizen but should be a resident).
11. Concept of Women Director has been introduced. To be complied within one year
12. NCLT to be constituted which will deal on all the matters of Companies Act. CA, CS, CWA is authorize to appear on behalf of the party in any proceeding before NCLT.
13. Concept of Independent Director introduced in consonance with Clause 49 of Listing Agreement.
14. CFO, CS, CEO to be Key Managerial Personnel.
15. Person/group of person holding 90% or more equity shares by virtue of amalgamation etc. can purchase the remaining equity shares of the company from minority shareholders.
16. Provisions for loans to director made applicable to private companies but no need to obtain Central Government approval.
17. Requirement of Obtaining CG approval for related party transactions done away with.
18. To facilitate transition from the current act to new Act, Central Government empowered to remove difficulties if any up to 5 years.
19. Financial year will be uniform for all companies i.e. April – March.
20. The 'statement of changes in equity' should form an integral part of the financial statements of companies governed by Ind-AS.

21. The provision of participation of directors in a meeting through video conferencing or other audio visual means has been introduced.
22. Secretarial Audit has been made mandatory for certain class of companies as may be prescribed.

### **Brief analysis of key changes proposed**

#### **One Person company**

- The concept of One Person Company has been introduced. Clause 3(1)(c) provides for the same.
- Clause 2(62) defines a One Person Company as a company which has only one person as a member.
- In case of One Person Company, nominee mentioned in Memorandum of Association would become member not only on subscriber's death but also in the case of subscriber's incapacity to contract due to insanity, etc.

#### **Small Company**

- Small company has been defined as a company other than a public company having a paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed not exceeding Rs.5 crore or turnover of which does not exceed two crore rupees or such higher amount as may be prescribed not exceeding twenty crore rupees. [clause 2(85)].

#### **Incorporation of company**

- Objects clause in the Memorandum of Association of a company not required to be divided into main, ancillary and other objects. Only the objects for which the company is incorporated along with matters considered necessary for its furtherance to be mentioned. The company cannot provide for other object clause.
- The Articles of Association of the company may contain provisions for entrenchment whereby specified provisions of the Articles

can be altered only if conditions or procedures that are more restrictive than those applicable in case of special resolution have been met with.

- To commence business, a public/private company needs to file the following with the Registrar of Companies:
  - A declaration by a director in prescribed form stating that the subscribers to the memorandum have paid the value of shares agreed to be taken by them, and
  - A confirmation that the company has filed a verification of its registered office with the Registrar.

#### **Private placement**

- Provisions for offer or invitation for subscription of securities on private placement basis have been revised to ensure more transparency and accountability.
- Clause 42 lays down that an offer or invitation of securities through private placement may be made in the form and manner prescribed subject to compliance with the following conditions prescribed:
  - (a) the offer or invitation in a financial year, shall be made to such number of persons, excluding qualified institutional buyers, and on such conditions (including the maximum amount to be raised) as may be prescribed;
  - (b) the value of such offer or invitation shall be with an investment size of such amount as may be prescribed; and
  - (c) the company shall not issue any prospectus for such offer or invitation and such offer or invitation shall be made through a private placement offer letter

#### **Share capital**

- Clause 58(2) of the Bill provides that the securities of a public company shall be freely transferable subject to the provisions that any contract or arrangement between two or more persons shall be enforceable as contract.

- By virtue of clause 53, companies are prohibited from issuing shares at discount except in case of issue of sweat equity shares.
- Clause 66 deals with reduction of share capital. It mandates approval of National Company Law Tribunal (NCLT) for the same. Further, in case of listed companies, NCLT will give notice of every application made to it for reduction of share capital to the Central Government, Registrar, SEBI and creditors of the company for taking into consideration any representation on the proposed reduction.

### Directors

- Every company shall have a Board of Directors with a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and a maximum of fifteen directors.
- Introduction of a class of companies (to be specified by the Government) where at least 1 woman director to be there on the board.
- Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.
- Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.
- A person can hold directorship of up to 20 companies, of which not more than 10 can be public companies.
- Duties of the directors towards a company are prescribed in the Bill under clause 166.

### Independent Directors

- The Bill has introduced the concept of Independent director and is defined in Clause 2(47). Clause 149 lays down that every listed

public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

- The company and independent director are required to abide by the provisions specified in Schedule IV.
- The clause seeks to provide that an independent director shall not be entitled to any remuneration, other than sitting fee, reimbursement of expenses for participation in Board meeting and profit related commission as approved by the members. The clause further provides for the provisions of rotation of independent director.
- An independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for re- appointment on passing of a special resolution by the company.

### Committees of Board of Directors

- The Board of Directors is required to constitute an Audit Committee (Clause 177), Nomination and Remuneration Committee [Clause 178 (a)] and Stakeholders Relationship Committee [Clause 178 (5)].
- These committees shall have Independent Directors/non-executive directors to bring more independence in the functioning of the Board and for protection of interests of minority shareholders.

### Auditors

- The Bill provides for mandatory rotation of auditors every five years.
- Clause 139 (2) prescribes that no listed company shall (a) appoint an individual as auditor for more than one term of five consecutive years and (b) an audit firm as auditor for more than two terms of five consecutive years.
- Clause 139 (3) empowers members of the company to decide by resolution that the auditing partner and his team (of an audit

firm appointed by the company) shall be rotated every year or that audit shall be conducted by more than one auditor.

- Clause 245(2) where members or depositors seek any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner;

#### Corporate Social Responsibility

- By virtue of Clause 135, the most debated concept of corporate social responsibility (CSR) has been introduced.
- Accordingly, every company having net worth of Rs.500 crore or more, or turnover of Rs.1000 crore or more or a net profit of Rs.5 crore or more during any financial year is required to constitute a Corporate Social Responsibility Committee.
- The Corporate Social Responsibility Committee will formulate a Corporate Social Responsibility Policy.
- Such a company is required to spend at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.
- If the company fails to spend such amount the Board shall give in its report the reasons for the same making it a binding obligation on the Board.

#### Dividend

- Transfer to prescribed sum to reserves before declaration of any dividend has been left at the discretionary of the companies.
- In case the company has incurred any losses during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, then the rate of such interim dividend shall not be higher than the average rate of dividends declared by the company during the

immediately preceding three (3) financial years.

#### Serious Fraud Investigation Office

- The provision for establishment of Serious Fraud Investigation Office (SFIO) by the Central Government is another significant feature of the Bill.
- Clause 212 empowers the Central Government to assign the investigation into the affairs of the said company to the SFIO.

#### Amalgamation and Arrangements

- A more comprehensive framework has been built in through Chapter XV for compromises, amalgamations and arrangements.
- Merger of Indian companies with foreign companies incorporated in certain notified countries has now been permitted.
- Any objection to a scheme can be made only by persons holding not less than 10% of the shareholding or having outstanding debt amounting to not less than 5% of the total outstanding debt.
- An acquirer or a person acting in concert with the acquirer or a person / group of persons holding 90% or more of the issued equity share capital of a company by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, may now purchase the minority shareholding of the company at a price determined by a registered valuer in accordance with the rules to be prescribed.
- Merger between small companies<sup>6</sup> or between a holding company and its wholly-owned subsidiary or such other classes of companies as may be prescribed, shall be approved by the Registrar of Companies and Official Liquidator without the requirement of obtaining National Company Law Tribunal(NCLT) approval, subject to fulfillment of prescribed conditions.

#### Class Action Suits

- Clause 245 empowers the shareholders or depositors or any class of them to file an

application before NCLT if they are of the opinion that that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors.

- The clause also provides the number of such members or depositors required to file such suit.

The old provision and requirement have done away with

- Certificate of Incorporation no more a conclusive evidence (section 35)
- Statement in lieu of prospectus (section 70)
- Share Warrants (section 114)
- Provisions relating to Certificate of Commencement of Business (Section 149)
- Statutory Meeting and Statutory Report (Section 165)
- Payment of Interest out of Capital (Section 208)
- Special Audit (Section 233A)
- Share Qualification (Section 270)
- Sole Selling Agents appointment and remuneration (Section 295 and 294AA)
- Employees Securities and Provident Fund (Section 417)
- Receivers and Managers (Section 421 to Section 424)

#### Our Review:

- ✓ Most of the provisions have been made mandatory by including the word shall and omitting the word may.
- ✓ The Bill intends to prevent error and fraud before it occurs.
- ✓ The Regulator i.e. MCA has been given sufficient powers to frame rules and regulations.
- ✓ Most of the provisions are made applicable to private companies which were earlier not applicable.

- ✓ The constitution of NCLT and Appellate Tribunal is a new area of practice for Practicing Professionals where the professional has been recognized to appear which was not allowed in the Court of Law until you are a Legal Practitioner.
- ✓ One of the most important highlighter is the Bill has consolidated various provisions into one section pertaining to particular subject matter which was not the case in Companies Act 1956.

Submitted by MGB & Co Mumbai



#### Singapore Budget

The Singapore Budget was unveiled on 25 February 2013. The focus of this year's Budget is on achieving quality economic growth and creating an inclusive society to ensure a fair and progressive fiscal system for all Singaporeans. The main highlights from Budget 2013 for businesses include the Productivity and Innovation Credit ("PIC") Bonus which rewards companies with a dollar-for-dollar matching cash bonus for qualifying PIC expenditure, the Wage Credit Scheme in which the Government will co-fund wage increases for Singaporean employees and a 30% tax rebate for all companies. A more detailed commentary can be downloaded from [www.mgimenon.com](http://www.mgimenon.com), under the Useful Links section.

Submitted by MGI Menon & Assoc

### MGI ASIA MEMBER DETAILS

#### Bangladesh

Howladar Yunus & Co.  
Corporate Office:  
67 Dilkusha Commercial Area (2nd Floor)  
Dhaka-1000,  
Telephone: +88-02-9554119, +88-02-9883863  
Fax: +88-02-955 2989  
Contact: **Muhammad Farooq**;  
[farooq@howladaryunus.com](mailto:farooq@howladaryunus.com)

#### China

LehmanBrown  
6th Floor, Dongwai Diplomatic Office Building  
23 Dongzhimenwai Dajie  
Beijing  
China 100600  
Telephone: +86 10 8532 1720  
Fax: +86 10 6532 3270  
Contact: **Dickson Leung**;  
[dleung@lehmanbrown.com](mailto:dleung@lehmanbrown.com)

#### China

MGI Excellence & Co., Ltd  
2109, No. 88, Cao Xi North Road  
Charity Building  
Shanghai  
China 200030  
Telephone: +86 21 5425 3302  
Fax: +86 21 5425 3301  
Contact: **Roger Wen-Yi Hsieh**;  
[rogercpa@excelcpas.com](mailto:rogercpa@excelcpas.com)

#### Hong Kong

Kenneth Chau & Co.  
9th Floor  
Tung Hip Commercial Building  
244 Des Voeux Road Central  
Hong Kong  
Telephone: +852 2850 55 99  
Fax: +852 2851 62 10  
Contact: **Kenneth Chau**; [info@kennethchaucpa.com](mailto:info@kennethchaucpa.com)

#### India - Bangalore

Tambakad & Goil  
Krishik Sarvodaya Foundation Building  
15, Golf Course Road  
Off Old Airport Road  
Bangalore, 560008  
Telephone: +91 080 67721800/ 828 and 829  
Fax: +91 080 67721801  
Contact: **Deepak Goil** ;  
[deepakgoil@tambakadgoil.com](mailto:deepakgoil@tambakadgoil.com)

#### India - Mumbai

MGB & Co  
Jolly Bhavan 2,  
1st Floor,  
7 New Marine Lines,  
Churchgate,  
Mumbai- 400020  
Telephone: +91 22 6633 2330  
Fax: +91 22 6635 1545  
Contact: **Jeenendra Bhandari**;  
[jbhandari@mgbco.com](mailto:jbhandari@mgbco.com)

#### India - New Delhi

SR Dinodia & Co  
K-39 Connaught Place  
New Delhi 110001  
Telephone: +91 11 4370 3300  
Fax: +91 11 4151 3666  
Contact: **Pallavi Dinodia**;  
[pallavidinodia@srdinodia.com](mailto:pallavidinodia@srdinodia.com)

#### Indonesia

KAP Basyruddin & Wildan  
MT. Haryono Square Building 3rd floor, No. 23  
Jl. MT. Haryono Kav. 10  
Jakarta 13330  
Telephone: +62 21 7123 6444  
Fax: +62 21 2906 7304  
Contact: **Basyruddin Nur**; [basyir@cpa-bw.com](mailto:basyir@cpa-bw.com)

#### Indonesia

SF Consulting  
Menara Karya 21st Floor  
Jl. HR Rasuna Said Block X5 Kav 1-2  
Jakarta 12950  
Telephone: +62 21 5794 4548  
Fax: +62 21 5794 4549  
Contact: **Sri Wahyuni Sujono**;  
[sri.wahyuni@sfconsulting.co.id](mailto:sri.wahyuni@sfconsulting.co.id)

### Japan

Seiyu Audit Corporation  
6F WEST18 Bld.  
Rokkaku-Karasuma  
Nakagyo-ku  
Kyoto 604-8134  
Telephone: +81 75 213 7090  
Fax: +81 75 212 2809  
Contact: **Toshiyuki Hitomi**; [hitomi@seiyu.or.jp](mailto:hitomi@seiyu.or.jp)

### Malaysia

AljeffriDean, Chartered Accountants  
2-5-13, 5th Floor  
Menara KLH, (Business Centre)  
No. 2 Jalan Kasipillay  
Kuala Lumpur 51200  
Telephone: +60 3 2381 1170  
Fax: +60 3 2381 1175  
Contact: **Sharifah Aljeffri**;  
[sharifahfauziah@aljeffridean.com](mailto:sharifahfauziah@aljeffridean.com)

### Pakistan

Ilyas Saeed & Co.  
A-4, Sea Breeze Homes,  
Shershah Block,  
Civic Centre (Barkat Market),  
New Garden Town, Lahore 54700  
Telephone: +92 42 3586 1852 +92 42 3586 8849  
Fax: +92 42 585 6145  
Contact: **Irfan Ilyas**; [irfan@ilyassaeed.com](mailto:irfan@ilyassaeed.com)

### Singapore

MGI Menon & Associates  
60 Robinson Road  
#11-01 BEA Building  
Singapore 068892  
Telephone: +65 6227 6123  
Fax: +65 6227 2061  
Contact: **Assan Masood**; [assan@mgimenon.com](mailto:assan@mgimenon.com)

### Singapore

MGI N. Rajan Associates  
10 Jalan Besar  
No. 10-12  
Sim Lim Tower  
Singapore 208787  
Telephone: +65 6293 8089  
Fax: +65 6293 5756  
Contact: **P.S. Somasekharan**; [soma@nra.com.sg](mailto:soma@nra.com.sg)

### Taiwan

MGI Excellence & Co., Ltd  
10/F, NO.285, Sec.3, Nanjing E. Road.,  
Taipei 10550  
Telephone: +886 2 871 219 00  
Fax: +886 2 871 219 01  
Contact: **Roger Wen-Yi Hsieh**;  
[rogercpa@excelcpas.com](mailto:rogercpa@excelcpas.com)

### Thailand

Nathee Audit Office Co. Limited  
28th Floor, State Tower,  
1055/524 Silom Road,  
Silom, Bangrak,  
Bangkok 10120  
Telephone: +66 2630 7944  
Fax: +66 2630 7943  
Contact: **Thanadee Hongratana-uthai**;  
[thanadee@auditthai.com](mailto:thanadee@auditthai.com)

### Vietnam

Vietnam Auditing and Accounting Consultancy  
Company (AVA)  
14th floor, Building HH3  
Urban areas Me Dinh, Me Tri,  
Tu Liem District  
Hanoi  
Vietnam  
Telephone: +84 4 38689566  
Fax: +84 4 38686248  
Contact: **Ms. Phạm Thị Huang**;  
[phamhuong@kiemtoanava.com.vn](mailto:phamhuong@kiemtoanava.com.vn)