



## EDITORIAL

### LAND ACQUISITION - A POLICY TO BE CAREFULLY CRAFTED



CA Vinod Jain\*

The issue of land acquisition in various parts of the country, especially from the poor agriculturalists and tribal community is becoming a major issue of concern to all those who do not use "inclusive growth" only as a slogan. Mrs. Mamta Banerjee is being targeted for shifting Tata from West Bengal, but the hard reality of great harassment, mental torture and mafia kind treatment received by the agriculturalists of the area actually gave rise to such a

situation. The poor agriculturalists and tribals do not have a lobby and our politicians are experimenting various alternatives on how to keep them happy so that their land can be acquired without any noise or opposition.

Mrs. Sonia Gandhi has recently advocated Haryana kind of a package including therein a life time annuity. Some of the governments are exploring to offer equity shares in lieu of land and offer employment. Ms. Mayawati, the Chief Minister of Uttar Pradesh has also offered some inflation linked benefit to be passed on over a period of time.

Who will judge the adequacy of the compensation and on what parameters? In case un-educated tribals or agriculturalists are offered low level employment or are given some equity shares which may not give any return or the level of annuity is so low that after 10 years, inflation itself fully negates the benefit. **The right solution is still not there and an open debate is needed.**

The crucial question is whether any of the aforesaid benefits can provide adequate compensation to the agriculturalists and the tribal community. The thinkers may judge that if a similar treatment is given to their own house or their own factory or any other assets on which their employment is based, whether they will feel adequately compensated. All those who are big-wigs are able to lobby in the power corridors or go to Courts or use pressure to avoid any such eventuality happening to them.

We would like to advocate that as a matter of policy acquisition of agricultural land for setting up of industries or creating commercial complexes or residential colonies has to be completely banned and could be undertaken only in very extreme and extraordinary circumstances or where land is to

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### FAIR VALUATION IN ACCOUNTING - A MAJOR ISSUE FOR TAXATION AND CORPORATE GOVERNANCE.

The Government of India and the Institute of Chartered Accountants of India have taken a decision to implement IFRSs i.e. International Financial Reporting Standards (International Accounting Standards) based on fair value accounting. The regulator, the government as well as the accounting community is yet to determine as to how a reliable fair value will be determined in case of assets and liabilities for which there is no active market or the market is shallow or market has a high impact cost. The determination of fair value for Property, Plant & Equipment (PPE), which are under a specific use, pose a larger challenge of reliable valuation.

In terms of challenge from the angle of taxation, the Central Board of Direct Taxes is yet to decide its approach on fair value gains or losses recognized by business enterprises either in its profit & loss account or in the balance sheet. Will Income Tax Department ignore unrealized gains or will only like to ignore unrealized losses are very critical questions? In case some unrealized gains are directly taken to statement of change in equity or to some other head in the balance sheet, how the Income Tax Department will really treat the same is not clear and the 1st April, 2011 dead line is right in front of all of us. The position is alarming.

In case of corporate governance, the recent trend of very high managerial remuneration or linking Executive salaries to an incentive mechanism based on the bottom-line in the profit and loss account, will be directly affected by the fair value accounting. The fair value principle does not take into account the basic principle of prudence being followed by Indian corporate for last several centuries. **In case managerial remuneration, Executive salary, dividend and bonus are allowed to be sourced from unrealized gains, we may see some of our banks or large corporates tumbling like Lehman Brothers in the times of crisis.**

**Derivatives:** The government is encouraging more and more

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### LATEST IN FINANCE

#### 1.0 CORE INVESTMENT COMPANIES HAVE TO REGISTER WITH RBI

Core investment companies with an asset size of Rs. 100 crore will be considered as Systemically Important Core Investment Companies and will have to be registered with the Reserve Bank of India. The companies which have their assets predominantly as investments in shares for holding stake in group companies but not for trading, deserve a regulatory treatment applicable to non-banking financial companies which are not-deposit-taking and systemically important. The RBI also said that the leverage ratio (ratio of outside liabilities to the adjusted net worth) should not exceed 2.5 times and CICs should maintain a minimum capital ratio whereby the Adjusted Net Worth shall not be less than 30 per cent of the aggregate risk-weighted assets on balance sheet

#### 2.0 RBI WARY OF LOANS TO "FOR-PROFIT" MICRO FINANCE COMPANIES

The Reserve Bank of India has raised questions over bank lending to "for-profit microfinance institutions", which then on-lend the money at extremely high rates. The central bank has encouraged banks to lend largely to non-profit institutions and not those that are hoping to generate profits. The issue of bank lending to MFIs has been raised for a long time now. The reason why rates could be high is that MFIs would typically borrow Rs. 20 crore from a bank and on-lend them through 20,000 loans of Rs. 10,000 each. These loans may carry higher NPA risk and very high administration cost. Bigger MFIs have brought down their average lending rates from around 30% to closer to 26%, where as some are charging as high as 36%-40%.

#### 3.0 CHINA OVERTAKES JAPAN AS SECOND-LARGEST ECONOMY

After three decades of spectacular growth, China passed Japan in the second quarter to become the world's second largest economy behind the United States, according to government figures. The recognition came, when Tokyo said that Japan's economy was valued at about \$1.28 trillion in the second quarter, slightly below China's \$ 1.33 trillion. America's gross domestic product was about \$ 14

trillion in 2009. Its per capita income is more on a par with those of impoverished nations like Algeria, El Salvador and Albania - which, along with China, are close to \$ 3,600 - than that of the United States, where it is about \$46,000.

#### 4.0 RBI REJECT USE OF \$2-BN FOREX FOR INFRASTRUCTURE FUND

The Reserve Bank of India has rejected a Planning Commission proposal to use \$2 billion out of India's foreign exchange reserves as one of the resources for the proposed \$11 billion (Rs. 50,000 crore) India Infrastructure Debt Fund (IIDF). The RBI believes using forex for expenditure in India is against the basic idea of building reserves.

#### 5.0 PASS ON 1% RATE SUBSIDY ON HOME LOANS

The Reserve Bank asked banks to put in place a suitable mechanism to provide the benefit of the 1% interest subsidy granted the government on home loans to buy a house of up to Rs. 20 lakhs.

#### 6.0 INTEREST SUBVENTION ON MORE SECTORS

The RBI has decided to extend interest subvention of 2% on rupee export credit with effect from April 1, 2010 to March 31, 2011, on the same terms and conditions to certain additional sectors. The new list includes handicrafts, carpets, handlooms and SMEs.

#### 7.0 COURTS NOT TO STAY DUES OF BANKS, CREDITORS'

The Supreme Court (SC) in case of United bank of India vs. Satyawati said that the courts should not normally pass stay orders in cases relating to recovery of dues of banks, financial institutions and secured creditors as they would have serious adverse impact on the financial health of such institutions which ultimately prove detrimental to the economy of the nation. "The high court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters," the court stated. In this case, the bank initiated against the guarantor of a debt when the borrower, Pawan Colour lab, defaulted in repayment of the loan. This action of the bank under the securitization and reconstruction of financial asset and enforcement of security interest act was challenged by the guarantor in the Allahabad high court. It stayed the recovery proceedings.



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## LAND ACQUISITION.....

be developed by state agencies for a transparent public use and not for a few private developers or individuals. For example for a Metro or rail network or other similar utility or infrastructure are to be created and there is no other alternative but to utilize a particular piece of land. In such cases market price should be paid as compensation.

**The government should commit itself to develop Special Economic Zones or residential complexes and colonies, in areas which are barren or are not useful for agricultural purposes.** The threat is not only on livelihood of the poor agriculturalists but the major threat is to the whole society of major food shortage, hunger, retardation of industrial growth and so on. The population is growing and the food production is almost standstill. The growth of agriculture is only 1% to 3%, whereas the economy is growing at 8% to 10%. The recent price rise of agricultural commodities, fruits and vegetables, pulses and other basic needs sourced from agriculture are only indication of the severe impact, it can have on the society and economy. The consumption level of food is going up by increased earning of the population and India need to plan not only for industrial growth or growth in services but the major challenge we are facing is perishing agricultural economy. Some very serious long ranging plan is required to save India from the situation it may get into, which the western world is currently trapped into.

## LATEST IN FINANCE

### 8.0 CHINA ORDER BANKS TO RECLAIM TRUST LOANS

China's Banking regulator ordered the banks to transfer off-balance sheet loans onto their books and make provisions for those that may default. The assets linked to wealth management product provided by the trust companies must be shifted onto banks' Balance sheet by end of 2011 Lender s should prepare provisions equal to 150% of the potential losses.

### 9.0 TAP PENSION, INSURANCE FUNDS TO BRIDGE 30% GAP IN INFRA FUNDING

Finance Minister Pranab Mukherjee has said there may be a 30% gap in infrastructure funding requirement, targeted at Rs 41 lakh crore, in the 12th Plan (2012-17). The country's needs to encourage long-term investment, from the pension and insurance sector, in the infrastructure space to bridge the deficit.

## TAXATION

### 1.0 TAX SOPS TO SEZS IN FY 10 UP 25%

Tax sops, including customs duty exemptions, provided to special economic zones are projected to have

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## FAIR VALUATION IN.....

use of derivative products including very complex instruments, without even appreciating the kind of risk the business enterprises are exposed to in the market places. Most of the Indian businesses and more specifically the investors are not able to understand the intricacies and the real risk involved in derivatives or swaps or collars and various other credit enhancement products or securitised instruments. The financial literacy in India is not very deep and even the top professionals in banking, finance and accounting and legal fields are not able to fully understand and appreciate the reality of the cruel world of derivatives, when it is used for speculation and not restricted to mere hedging. The valuation of Derivatives and chances of manipulation therein are adding to challenges.

**The matter is loud and clear for SEBI, RBI, Ministry of Corporate Affairs and Ministry of Finance to initiate necessary checks and balances on urgent basis** so that not only we are able to achieve the international benchmark of fair valuation but are also able to control the menace which is created or is capable of being created. The American and European economies have already tasted the poison of Fair Value, **the real test is whether we can have a Neelkanth (Bhagwan Shiva) who can swallow the poison and purify it for its real positive use.**

increased by about 25% to Rs. 8,470 crore in 2009-10. The incentives, in the form of direct tax deductions and customs duty exemptions, amounted to Rs. 6,783 crore in 2008-09.

### 2.0 INDIA, SWITZERLAND SIGNED NEW TAXATION TREATY

India and Switzerland signed a treaty that will enable exchange of information on tax evaders, considered a must for getting details on unaccounted funds stashed away by Indians in Swiss banks. The treaty is a revised version of the existing Double Taxation Avoidance Agreement between India and Switzerland and was signed by visiting Swiss Foreign Minister Micheline Calmy-Rey and Finance Minister Pranab Mukherjee.

### 3.0 SC RULED: APPLICATION FOR SETTLEMENT CANNOT BE REVISED

The Supreme Court in case of Ajmera Housing Corporation vs. Commissioner of Income Tax has declared that an application for settlement of an income tax case cannot be revised and the settlement commission has to go by the original application and annexure filed in the prescribed form. Revision of annexure tantamount to revision of application and cannot be allowed under the scheme of settlement in Chapter XIX-A of the Income Tax, SC said.





### INDIRECT TAXATION

#### 1.0 SINGLE WINDOW SYSTEM FOR DELHI EXPORTERS

Exporters in Delhi will no more have to rush from one department to another for refund of value added tax (VAT). The State Government, started a single window service to speed up the process of payment of VAT refunds to the exporters.

#### 2.0 SERVICE TAX PROPOSED TO BE LEVIED AT INVOICING IN NEW RULES

Finance ministry is planning to change the chargeability of Service tax from Cash system to accrual system. According to the new rules on 'time of supply', service tax will also be levied at the point of raising invoice. At present, service tax is charged only when the amount is received. However, it has been proposed in the new rules that it be levied when the consideration is received or when the invoice is raised, whichever is earlier. This is similar to taxation in case of goods and direct tax. The rules, approved by Finance Minister Pranab Mukherjee, would be put up for public comments very soon.

#### 3.0 CHALLENGE TO IMPOSITION OF PENALTY FOR DELAYING TAX DISMISSED

The airlines argued that there could be no penalty for delay in payment, but only for failure to pay the tax. The customs authorities maintained that the tax should be collected and paid into the treasury within 15 days. A division bench of the high court agreed with the authorities and rejected the contentions of Malaysian Airlines, Saudi Arabian Airlines, North West Airlines and Kenya Airways Ltd.

#### 4.0 SOFTWARE IS GOODS - MADRAS HIGH COURT

The Madras high court dismissed the writ petition of Infotech Software Dealers' Association raising the question whether a software would amount to goods and if so, when it is supplied to a customer pursuant to the End User Licence Agreement (EULA), the transaction is liable to be treated as sale or service. It is also raised the constitutional validity of the new provision in the Finance Act 2009, Section 65(105)(zzzz), arguing that it was the state government which had the power to impose duty. Dismissing the challenge, the division bench of the high court stated that software is goods and whether

the transaction would amount to sale or service would depend upon the individual transaction. The new provision cannot be held to be unconstitutional so long as Parliament has the legislative competency to enact law in respect of tax on service in exercise of powers under Entry 97 of List I.

### INSURANCE

#### 1.0 INFORM CLIENTS IF PREFERRED NETWORK IS CHANGED

Following the hassle caused after four public sector non-life insurance companies withdrew cashless facility from certain hospitals, the Insurance Regulatory & Development Authority (IRDA) has asked all life and non-life insurance companies to inform policyholders about the nearest alternative hospitals where the cashless facility is available, in case of change in the preferred provider network (PPN) of hospitals.

#### 2.0 IRDA GETS TOUGH ON LIFE INSURANCE ADVERTISEMENTS

Life insurance companies must prominently mention all underlying condition of the policy such as various charges and cost of guarantee in the advertisement about their product.

### NBFC

#### 1.0 INFRASTRUCTURE BONDS NEED NO CREDIT RATINGS

In a major boost to the infrastructure bonds, the government has decided to exempt them from getting credit ratings which is mandatory for other bonds. Taking forward the issue, the government has begun the process of allowing the issuance of tax-free infrastructure bonds by selected non-banking financial companies (NBFCs). However, the grant of permission for issue of such bonds has omitted the requirement of credit ratings.

#### 2.0 MANY NBFCs HAVE INVESTED ABROAD WITHOUT RBI NOD

Many non-banking finance companies (NBFCs) have made investment in overseas ventures without the regulatory clearance by the Reserve Bank of India. Action has been taken against them. The admitted contraventions are compounded by the RBI only after the NBFC obtains post-facto approval from the regulator.



## DIRECT TAXES CODE BILL, 2010

### DIRECT TAXES CODE BILL, 2010

#### COMPUTATION OF TOTAL INCOME

The DTC 2010 is giving a comprehensive definition of 'Income' so as to include all accruals to spending power. It classifies incomes into two categories viz. 'special sources' and 'ordinary sources'. The special sources (specified in a separate Schedule) shall include Royalty, Fees for Technical Services (FTS), investment income. All other sources of income (including 'Income from Residuary Sources') will be considered as income from ordinary sources. Special sources would be subject to tax on the gross amount.

#### Scope of total Income

DTC adopts residence based taxation for residents and source based for non-residents. Income arising from indirect transfer of capital assets situated in India would also be taxable in India.

Tax residence of foreign companies shall be in India if, 'place of effective management' is located in India.

#### TAX RATES FOR INDIVIDUALS

- **Threshold exemption limits for Individuals and HUF**
  - ❖ For Men as well as for Women Rs. 2,00,000
  - ❖ For Resident Senior Citizens Rs. 2,50,000
- **Slab Rates**
  - ❖ 10% on income level of INR 200,000 to INR 500,000
  - ❖ 20% on the next INR 500,000 to INR 1,00,000
  - ❖ 30% on income in excess of INR 1,00,000

#### TAX RATES FOR COMPANIES

- Tax rate in case of companies is proposed at 30%.
- DDT on dividend of domestic company - 15%.
- A foreign company is required to pay an additional branch profits tax of 15%.
- MAT rate - 20% of book profits. MAT Credit carry forward period would be allowed for 15 years. It would be applicable to SEZ undertakings also.

#### COMPUTATION OF INCOME FROM EMPLOYMENT AND HOUSE PROPERTY

- HRA exemption restored.
- Employer's Contributions exempt

❖ To National Pension Scheme (NPS)	Not Exceeding 10% of Salary
❖ To Approved Superannuation Fund	No Limit
❖ To Approved PF	Not Exceeding 12% of Salary

Interest credited to approved fund not to be included in salary.

- Amount received by employee from NPS trust is tax-free. Thus, NPS which is taxed on EET basis is proposed to be made EEE (Exempt-Exempt-Exempt) for employees.
- Only Actual Rent from house property to be taxed. Present system of taxing notional value called 'annual value' proposed to be done away with.
- Deduction for interest on housing loan/loan taken for repair or renovation of house property upto limit of Rs. 1,50,000 in respect of one house property not let out. No deduction for re-payment of principal under the Code.
- Rent received in arrears to be included in the year of receipt, whether person is owner of property or not, after allowing 20% deduction towards repairs & maintenance.

#### COMPUTATION OF INCOME FROM BUSINESS

- ❖ All assets are classified into business assets and investment assets. The business assets are further classified into business trading assets and business capital assets.
- ❖ Income from transactions in all business assets will be taxed under the head 'income from business' while income from transactions in all investment assets will be taxed under the head 'capital gains'.
- ❖ The profits from business will be computed by deducting business expenditure from gross earnings of the business.
- ❖ Gross earnings will ordinarily include all accruals and receipts derived from or connected with business assets, whether trading or capital.
- ❖ Business expenditure will be classified into 3 mutually exclusive categories
  - i. Operating expenditure
  - ii. Permitted financial charges
  - iii. Capital allowances.
- ❖ The benefit of weighted deduction at 150% proposed in the DTC 2009 has been enhanced to 200% for any expenditure (both revenue and capital except land and building) incurred on in house scientific research and development by a company is proposed for all industries (not restricted to manufacturing).
- Consideration received from transfer of carbon credits to be taxed as business income.
- Remission or cessation of any liability by way of loan/deposit/advance/credit to be taxed as business income.
- Scientific Research and Development in house facility expenses - weighted deduction proposed to be increased from 150% to 200%.

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### AUDIT

#### 1.0 RBI AMENDS HTM NORMS FOR BANKS

Reserve Bank of India said banks need to disclose the value of investments under the hold-to-maturity (HTM) portfolio if transactions in that category are above 5% of investments at the start of the year. Banks also need to indicate the excess of book value over market value for which provision is not made in the HTM segment. This disclosure is required to be made in 'Notes to Accounts' in banks' audited annual financial statements.

#### 2.0 SEBI RIGHT AUTHORITY TO PROBE

Expressing satisfaction over the Bombay High Court order, the ICAI said the Securities and Exchange Board of India was the right authority to probe allegations of irregularities to safeguard investor's interest.

#### 3.0 AUDITORS OWE A DUTY TO ALL SHAREHOLDERS - BOMBAY HIGH COURT

The SEBI Act (Section 11) has wide amplitude and empowers the regulator SEBI to take within its sweep a CA, if his activities are detrimental to the investors or the securities market, the Bombay High Court observed in its order on the Price Waterhouse vs. SEBI case. The Court had ruled that SEBI can regulate the securities market but cannot regulate the profession of Chartered Accountants. SEBI has the powers to issue show cause notices to CA firms and individual CAs. The auditors on their part have been appointed by shareholders by majority and they owe a duty to all shareholders and are required to give a correct picture of the financial affairs of the company, observed the High Court. **While SEBI had no powers to debar a CA firm or a CA from practicing, it could safeguard investor interest by taking appropriate remedial steps including keeping a person (including a CA) at a safe distance from the securities market.**

#### 4.0 TELECOM COs SUBMIT BOOKS TO CAG FOR AUDITING

The Comptroller and Auditor General (CAG) will look into the financial books of leading telecom to see whether there was any underreporting of revenues by them, causing revenue loss to the government on annual licence fees. While Reliance Communications

and Tata Teleservices have submitted their books in full, Vodafone and Airtel have given access to their documents partially.

#### 5.0 CAG CAN NOW VET NGOs IN SOCIAL SECTOR SCHEMES

The comptroller and auditor general of India (CAG) has now been empowered to vet all non government organization (NGOs) and other agencies involved in the Governments Social Sector Scheme. The planning commission has decided that approvals for all social sector projects undertaken by various NGOs, normally outside the purview of CAG, will come with the rider that they will be subject to audit if required.

### CAPITAL MARKET

#### 1.0 50% NON-PROMOTERS' SHARES SHOULD BE IN DEMAT

Shares of companies will be allowed to be traded in the normal segment of stock exchanges only if at least 50 per cent of non-promoter shareholding is held in dematerialized form.

#### 2.0 SEBI TWEAKS POWER OF ATTORNEY RULES

SEBI has barred brokerage firms from taking a power of attorney that is irrevocable or allows conducting transaction without the consent of the client. Brokerages have to comply with the new guidelines by September 1.

#### 3.0 GOVT. TO BEAR BROKERAGE IN ALL PSU ISSUES

To improve retail participation in the public issues of state-run companies, the finance ministry has decided to bear brokerage charges in all PSU (Public Sector Undertaking) offer that came after April. The move is expected to encourage brokers to sell issues, which have not received a very encouraging response so far.

#### 4.0 PSUs OUT OF 25% PUBLIC FLOAT NORM

The finance ministry has exempted state-owned firms from the recent rule that requires listed companies to achieve at least 25% public holding within three years after some of them said they will not participate in disinvestment if the rule was forced on them. Public sector firms will now have to maintain a minimum public float of only 10%. The modified rules also gave a breather to the private sector companies. They will





have to comply with the minimum 25% public float within three years but they will now have flexibility in how the limit is reached, without the annual 5% increase mandated in the current rules.

## **5.0 SEBI GETS TOUGH ON KYC NORMS FOR MUTUAL FUNDS**

The Securities and Exchange Board of India has directed that new folios (mutual fund accounts) will be opened only after ensuring that all investor-related documents, including account opening documents, PAN, KYC, Power of Attorney (if applicable), specimen signature are made available with MCs or the Registrar and Trade Agents, and not just with the distributor of mutual funds.

## **6.0 RETURN IDLE CASH TO INVESTORS**

Concerned over brokers misusing funds lying in investors' trading accounts, market regulator SEBI has asked the broking entities to return the clients' unutilized cash at the end of every month or quarter. Although some resisting the move citing high costs associated with such frequent transfers of funds to and from the clients' accounts, SEBI has also asked them to transfer within a day the funds withdrawn by the investors.

## **FEMA**

### **1.0 NEW LAW TO REGULATE FOREIGN CONTRIBUTIONS-FCRA**

Parliament enacted a new law to enforce stricter regulations for foreign contributions in form of gifts, funds and other forms to individuals and social organizations in the wake of changed internal security environment and large fund flow. Parliament's approval of the foreign contribution (Regulation) Bill, 2010 came against the backdrop of only 18000 of the over 40,000 organisations, which received foreign contribution in the country reporting the inflows of funds and submitting their accounts. Highlights are:

- Annual return to be filed by NGOs on foreign fund receipts and expenses
- Apply for renewal every five year s
- Cancellation if returns not filed
- NGOs against national interest not eligible for foreign funds
- FCRA silent on definition of national interest

## **CORPORATE LAWS**

### **1.0 CONCEALING FACTS BEFORE ARBITRATOR IS FRAUD - ANDHRA PRADESH HC**

The Supreme Court stated that concealment of facts from an arbitrator is an act of fraud and new facts which have a bearing on the award should be allowed to be brought before him. The court stated so while allowing the appeal of US-based Venture Global Engineering against the ruling of the Andhra Pradesh high court in its dispute with Satyam Computer Services. The high court had ruled that Satyam founder Ramalinga Raju's admission of fraud could not be used three years after the international award in a dispute between the parties. According to the Supreme Court, if concealed facts, disclosed after passing of the award have a causative link with the facts inducing the award, such facts are relevant in a setting aside proceeding and the award may be set aside as affected or induced by fraud.

### **2.0 COURTS HAVE JURISDICTION OVER WAQF & PROPERTY - SC**

Civil courts will continue to have jurisdiction over disputes related to waqf and its property, despite waqf tribunals, the Supreme Court has ruled.

### **3.0 COURT CANNOT ORDER PAYMENT OF INTEREST AGAINST THE CONTRACT - SC**

If an arbitration agreement says that no interest would be payable for an award amount from the date when the cause of action arose and the date of the award ,SC court decided in the case, Sree Kamatchi Amman Construction vs Divisional Railways Manager . In this case the contract stated that no interest would be payable on this clause, the arbitral tribunal refused to order interest from the date of the cause of action to the date of award. This was upheld by the madras high court. The Supreme Court dismissed the appeal of the contractor.

### **4.0 SC REFUSES TO DIRECT PSBS TO RECOVER NPAs**

While disposing of a Public Interest Litigation (PIL), a Bench headed by Justice J M Panchal and AK Patnaik hoped that the Centre would make the Serious Fraud Investigation Office (SFIO), set up by the government under the department of company affairs, an independent agency to deal with the problem of investigation and prosecution of serious and complex frauds.

**DIRECT TAXES CODE BILL, 2010**

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**COMPUTATION OF CAPITAL GAINS**

The concept of 'investment asset' is made applicable to any undertaking or division of a business. As a result, slump sale would now be capital gain income unlike the earlier proposal of DTC which sought to tax it as business income

- Transfer of land of a sick industrial company made under a scheme sanctioned under section 18 of SICA where such company is being managed by worker's co-operative not to attract capital gains tax.
- Reverse mortgage under notified scheme to continue to be exempt from capital gains tax.
- Exemption for long-term capital gains from equity shares/units of equity oriented mutual funds retained. STT to be retained.
- Short-term capital gains (where equity shares/units are held for 1 year or less) - deduction of 50% to be allowed and balance 50% taxed. Likewise short-term capital loss to be scaled down by 50%.

**OTHERS**

- Limit for tax audits Increased

	From	To
❖ For Professionals	Rs. 15 lakhs	Rs. 25 lakhs
❖ For Business	Rs. 60 lakhs	Rs. 1 crore.

- Wealth tax - threshold increased from Rs. 30,00,000 to Rs. 1 crore. Tax rate will be 1% of net wealth in excess of Rs. 1 crore.
- Profit linked incentives to continue under grandfathering provisions for SEZ units (Setup before 31st March 2014) and also for SEZ Developers (Notified before 31st March 2012)
- GAAR (General Anti-Avoidance Rule) - proposed to introduce GAAR as a deterrent and a tool against tax avoidance, some safeguards are proposed without any specific threshold. Rules provide that any business arrangement may be declared impermissible by CIT, in his opinion, it has been entered to take tax benefits. CBDT shall issue guidelines as to when GAAR can be invoked and shall also prescribe threshold limits. A Dispute Resolution Panel shall be available where GAAR is invoked.

- **International Taxation**

- ❖ A Company Incorporated Outside India to be resident in India if its "Place of Effective Management" (POEM) is situated in India
- ❖ Exclude from Taxation - Income from transfer outside India, of any share or interest in a foreign company if the value of assets in India represents less than 50% of the value of assets held by the foreign company.
- ❖ Include 2 More Criteria to the definition of Associate Enterprise re: Transfer Pricing
- ❖ Introduces Advance Pricing Agreements (APAs)
- ❖ Empowers Government to determine Arms' Length Price, subject to Safe Harbor Rules
- ❖ Concept of Controlled Foreign Companies (CFCs) Introduced
- Advance Ruling and Dispute Authority decisions to be binding.

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**FINANCIAL INDICATORS**

	Current Rate* (in %)	Month Ago (in %)
3 Month LIBOR	0S.29	0.38
3 Month MIBOR	7.01	6.67
SENSEX	19208	18074
NIFTY	5760	5416
CRR	6	6
REPO	5.75	5.75
REVERSE REPO	4.5	4.5
Gold (per 10 gm)	18861	18375
Silver (per kg)	31340	28850
Crude (USD/bbl)	78.43	76.01
Rs. vs USD	46.31	46.94
Rs. vs Euro	59.39	60.54

\* as on 13th September, 2010.

(Sources: Bloomberg, NSE, BSE, RBI)

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