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**EDITORIAL**

**INDIA MOVING TO GLOBAL CENTRE STAGE : ROLE OF CHARTERED ACCOUNTANTS**



CA Vinod Jain\*

India is poised to achieve a double digit growth of 10% plus in the year 2011 and is expected to touch the growth rate of 9% to 9.5% in the year 2010. This is a great news in the backdrop of limping growth of the US and European economy in the range of 2% to 3%. Other developed economies are also growing between 1% to 4%. China is also expected to grow between 9.5% to 11%. It is also important to note that most of the developed economies have large negative balance of trade during last 2 years and the United States of America has requested the G-20 nations to allow more freedom in the exchange rates to adjust according to economic reality and not to artificially manage the same.

India is moving towards the centre stage of the world economy. The dream of every Indian to shift the world economic market to India may become a reality very soon. The American Financial Market as well as the European Financial Market are having much lower level of activity. Singapore, Hong Kong and Mumbai can provide a larger supplementary strong modern sophisticated market to the world to channelized investment and financial resources.

The CA community in India is preparing itself for new challenges and opportunities which are arising from the economic development. The profession of chartered accountants will need to play a very important role in designing, development and

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**CORRUPTION UNABATED...**

In the recent months several corruption oriented financial scams have come to surface. Serious allegations and counter-allegations have been raised against topmost politicians and bureaucrats of the country. Our Prime Minister Dr. Man Mohan Singh is known for his honesty and the time has come for him to stand up and address the issue of corruption aggressively by bringing out systematic changes in the working and operations of the Government in such a manner that the corruption cannot breed. It is important to bring complete transparency, honesty and dedication at the highest level of the politicians as well as bureaucracy to enable India to grow in a sustained manner.

The Government of India has set up various enquiry committees; CBI has been mandated investigation besides Public Accounts Committee has been advised to review the CAG report matter. The UPA government is clearly in a defensive mood. It is important that the topmost leadership of UPA stand together and eradicate corrupt politicians from their cadres. Also the opposition led by BJP should fully support all such initiative and may provide political support to the Government on such crucial and decisive actions needed. The government has to play its cards in a transparent and strategic manner.

**The real test of Indian political system and democracy is ahead of us. In case the government fails to address this issue effectively, the working of parliament may get derailed and the economy of the country will unnecessary suffer.**

The profession of Chartered Accountants is highly  
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### LATEST IN FINANCE

#### 1.0 INFRA BONDS NOT TO BE TREATED AS PUBLIC DEPOSITS

RBI has clarified that amount raised by issue of infrastructure bonds by infrastructure Finance Companies, as specified in the notification issued from time to time by the Central Government under Section 80CCF of the Income Tax Act, 1961, shall not be treated as 'public deposit'.

#### 2.0 SEBI WANTS MONTHLY INFO FOR SECURITIZED PAPER LISTING

LENDERS who sell their loans through the securitization route will now have to make monthly disclosures to stock exchange if they wish to list their securitized paper. SEBI announced a standard listing agreement with continuous disclosure requirements for securitized instruments. **Securitization** refers to the process where an entity gets money upfront by converting future cash inflows into marketable securities. The process enables the lenders to transfer their loan assets to a special purpose vehicle which will make regular payments to investors who put money upfront. Besides loan repayment, any form of receivables can be securitized. Instances of securitization in the past include toll collection and royalty payment due to artists. In India bulk of securitization deals relate to either mortgaged-backed securities or asset-backed securities.

#### 3.0 CII OPPOSE NBFC PREFERENCE FOR BANK LICENCE

The Confederation of Indian Industry (CII) told the Reserve Bank of India that it did not favour automatic conversion of non-banking finance companies (NBFCs) into banks. The industry body sought minimum capital requirement of Rs. 1,000 crore for setting up a bank. NBFCs, whether part of an industrial group or not, (should) be treated on par with other applicants and allowed to promote a bank with fresh capital. NBFCs are complementary financial institutions to banks, typically focusing on niches that are underserved and neglected by the normal banking channel.

#### 4.0 IMF PROJECT INDIA'S GROWTH AT 9.7 % IN 2010

The International Monetary Fund (IMF) raised

India's growth forecast for 2010, citing robust industrial output and strong macro-economic indicators, but warned that global economical recovery remained fragile. Indian economy will expand 9.7% this year, up from July forecast of 9.4%, IMF said in its World Economic Outlook Report. Asia's third largest economy is projected to slow down to 8.4% in 2011.

#### 5.0 MFIs TO INCREASE LOAN TENURE UP TO 100 WEEKS

Microfinance Institutions (MFIs) have agreed to restructure loans from 50 weeks to 75 or even 100 weeks for those who find it difficult to repay the same, according to Microfinance Institutions' Network (MFIN) president, and founder of Basix, Vijay Mahajan. The interest rates, however, would be only for 50 weeks. The five members of MFIN-who account for 60 per cent of all loans disbursed have agreed to restructure the loans. These members are SKS, Spandana, Basix, Share and Trident. More members are expected to follow suit.

#### 6.0 ICRA LAUNCHES EQUITY RESEARCH SERVICES

Credit Rating Agency (ICRA) launched its equity research service, through its wholly-owned subsidiary, ICRA Online. The assessments by the agency will not specify any target price for the shares evaluated, but will look into two key factors - Fundamental earning quality or fundamental grade and relative valuation or valuation grade. The fundamental grades are on a five-point scale, with 5 being the highest grade and one the lowest.

#### 7.0 PRUDENTIAL NORMS ON INVESTMENT IN ZERO COUPON BONDS

RBI has decided that:

- Banks should henceforth not invest in ZCBs unless the issuer builds up sinking fund for all accrued interest and keeps it invested in liquid investments/securities (Government bonds), and
- Banks should put in place conservative limits for their investments in ZCBs.

#### 8.0 RBI MAY CHECK RUPEE EXCHANGE RATE RISE

Reserve Bank of India ruled out curbs on foreign



Contd.....from page 1

## INDIA MOVING TO.....

implement of a rugged market infrastructure and regulatory mechanism which is more open, transparent and liberal. Government need to consider limited capital account convertibility and provide for a free international market in India.

The proposals of the Direct Taxes Code are to be reconsidered with a view to provide for certain special economic zones, where International Financial Market may be established with a complete freedom for currency inflow and outflow. The financial market regulatory mechanism has to be upgraded to international levels with a developmental mindset rather than control.

## LATEST IN FINANCE

portfolio investment into the equity market but said the Central Bank may intervene in the forex market to check rupee appreciation that was hurting exports. Finance minister Pranab Mukherjee said at the Annual Economic Editors' conference that he was not thinking of putting any cap on FII (Foreign Institutional Investment) inflows. SEBI has also confirmed of having no plans to curb FII inflow.

### 9.0 RBI RELAXES CDR NORMS

In a notification issued RBI said that promoters of companies seeking debt recast could be allowed to bring in 50 per cent of their sacrifice upfront and the balance within a period of one year.

### 10.0 RBI HIKES SHORT-TERM RATES, TIGHTENS HOUSING LOAN NORM

Measures to rein in inflation	Curbs on home loans
Repo and reverse repo rate raised by 25 bps each	Banks' home loan-to-value ratio should exceed 80%
GDP growth projection retained at 8.5%.	Standard Asset provisioning on 'teaser (home) loans' upped to 2% from 0.4%
Wholesale Price Index-based Inflation projection unchanged at 5.5%. Inflation risks are largely on the Upside.	Increase in risk weight on home loans of Rs.75 lakh and above to 125% from 100%.

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## CORRUPTION .....

qualified and experienced to address this menace and through the columns of this journal we hereby offer services of profession of chartered accountants to the Government of India as well as to the State Government to design and develop operating procedures, operating systems, controls and guidelines in such a transparent manner that the likelihood of corrupt practices can be minimized substantially.

It will also be important to have a proper mandatory double entry accounting system to be implemented in various government departments including a detailed methodology for accounting of fixed assets and other resources. The profession of Chartered Accountants will be glad to design, develop and implement most sophisticated, transparent and simple internal control system so that the menace of corruption can be completely eradicated.

**It is important to provide for 100% detailed audit of all government expenditure including government department, autonomous institutions and other bodies created by an Act of Parliament or are promoted by the Government.**

We are here to support our great nation in the war against corruption. Dr. Manmohan Singh and other honest politicians and bureaucrats can fully rely on the team of independent chartered accountants to eradicate corruption from the root of the Indian Economic System.

## ICAI

### 1.0 ICAI OPPOSES NACAAS

The proposal to create an over-arching regulator to oversee auditing norms in the country has been opposed by the Institute of Chartered Accountants of India (ICAI).

### 2.0 ICAI PLANS CODE NUMBERS TO CHECK FORGED ATTESTATION

Copies of the balance-sheet, tax audit reports and similar documents attested by chartered accountants as part of several million mandatory filings done by companies across the country each year may soon have a unique code number as authentication.



## TAXATION

### 1.0 SOFTWARE TAXABLE AS ROYALTY

The Delhi Income-Tax Appellate Tribunal (ITAT) has held that payments received by Microsoft Corporation from end user (in India) through distributors for sale of Microsoft software, are taxable as royalty. This would also be applicable for all the payments made before January 1, 1999, the ITAT has said. From January 1, 1999, the business model was changed and Microsoft granted exclusive licence to Gracemac Corporation of the US to manufacture the Microsoft software and distribute it in terms of the licence agreement. Even under the changed business model, the ITAT has now held that payments for the software licensing should be treated as royalty for tax purposes. The Judgement has also not fully accepted the supremacy of DTAT over Indian Tax Law.

### 2.0 CAPITAL-GOODS TRANSFER TO SEZ LIMIT CLARIFIED

The Government clarified the policy concerning the transfer of used capital goods into special economic zones (SEZ) from outside of the enclaves, stating that a company can shift the equipment to set up units into the SEZs. However, the value of such second-hand goods should not exceed (20 per cent) to avail of the tax benefits.

## INCOME TAX CASES

### 1.0 DOES THE APPELLATE TRIBUNAL HAVE THE POWER TO RECALL ITS OWN ORDER UNDER SECTION 254(2)?

In this case, the High Court observed that the power under section 254(2) is limited to rectification of a mistake apparent on record and therefore, the Tribunal must restrict itself within those parameters. Section 254(2) is not a carte blanche for the Tribunal to change its own view by substituting a view which it believes should have been taken in the first instance.

*CIT v. Earnest Exports Ltd. (2010) 323 ITR 577 (Bom.)*

### 2.0 CAN THE ASSESSING OFFICER REOPEN AN ASSESSMENT ON THE BASIS OF MERELY A CHANGE OF OPINION?

The power to reopen an assessment is conditional on the formation of a reason to believe that income chargeable to tax has escaped assessment. The existence of tangible material is essential to safeguard against an arbitrary exercise of this power. In this case, the High Court observed that there was no tangible material before the Assessing Officer to hold that income had escaped assessment within the meaning of section 147 and the reasons recorded for reopening the assessment constituted a mere change of opinion. Therefore, the reassessment was not valid.

*Aventis Pharma Ltd. v. ACIT (2010) 323 ITR 0570 (Bom.)*

### 3.0 DOES THE CENTRAL BOARD OF DIRECT TAXES (CBDT) HAVE THE POWER UNDER SECTION 119(2)(B) TO CONDONE THE DELAY IN FILING RETURN OF INCOME?

The High Court held that the Board has the power to condone the delay in case of a return which was filed late and where a claim for carry forward of losses was made. The delay was only one day and the assessee had shown sufficient reason for the delay of one day in filing the return of income. If the delay is not condoned, it would cause genuine hardship to the petitioner. Therefore, the Court held that the delay of one day in filing of the return was to be condoned.

**Note** - Section 119(2)(b) empowers the CBDT to authorise any income tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified under the Act, to avoid genuine hardship in any case or class of cases. The claim for carry forward of loss in case of a loss return is relatable to a claim arising under the category of any other relief available under the Act. Therefore, the CBDT has the power to condone delay in filing of such loss return due to genuine reasons.

*Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) 323 ITR 0441 (Del.)*





## INDIRECT TAXATION

### 1.0 AFTER-SALES SERVICE CHARGES AND INSPECTION COST TO BE INCLUDED IN COST OF GOODS FOR EXCISE DUTY LEVY

The freebies such as extended warranty and free maintenance and service thrown in with cars and consumer durables will now be included in the costs of goods and taxed appropriately, pushing their prices higher. The apex indirect taxes body, the Central Board for Excise and Customs, has said after-sales service and pre-delivery inspection charges are to be included in the assessable value, the value on which excise duty is levied.

### 2.0 SERVICE TAX ON LEASING SERVICES GETS SC NOD

The Supreme Court has held that banks and financial institutions, including non-banking financial companies (NBFCs), are liable to pay service tax on transactions of leasing and hire purchase of moveable goods. While bringing such service within the service tax net, a Bench headed by chief justice SH Kapadia has upheld the levy of service tax on hire purchase and leasing transactions, notwithstanding that the same transactions are chargeable to the sales tax (now VAT). **The decision in effect has upheld the double taxation of the same transaction of hire purchase and leasing to both the service tax as well as the VAT.**

### 3.0 NEW SERVICE TAX PAYMENT SCHEME FOR LOTTERY TICKET DISTRIBUTORS AND PRIZE PAYOUT

Under the composition scheme, a distributor or lottery selling agent who is liable to pay service tax, can opt to pay flat service tax of Rs.6000 on every Rs 10 lakh of aggregate face value of lottery ticket printed by the organizing state for a draw. This rate will apply in those lottery schemes where the guaranteed prize payout is more than 80 per cent, the Finance Ministry has said. For lottery schemes where the guaranteed prize payout is less than 80 per cent, a distributor or selling agent will have to pay service tax of Rs.9000 on every Rs 10 lakh of aggregate face value of lottery ticket printed by the organizing state for a draw.

## CORPORATE LAW

### 1.0 CII- RECOMMENDATIONS ON THE COMPANIES BILL 2009

- **Rotation of audit** firms should not be made mandatory.

#### • **Pyramid Structure**

On the recommendation of the standing Committee of dismantling the pyramid structures of companies, CII is of the view that no such restrictions should be imposed. Allow flexibility of corporate planning, structuring and business operations as per CII.

- **CSR** should be left to the board. Promote voluntary CSR backed by Government recognition and honour.

#### • **Independent Directors Recommendations**

The committee had suggested that independent directors should not be entitled to stock options in order to preserve their independence. CII is of the opinion that the board should be free to design remuneration structures, including stock options subject to shareholders' approval.

#### • **Tenure**

The tenure of independent directors should be left to the board and shareholders to decide. It may be fixed by companies in their Article of Association, said CII. The committee had recommended a six-year tenure for the independent directors with a lapse of three year in between two tenures with the same company.

#### **Directors Responsibility**

CII recommends that non-obstante clause should be incorporated in the bill to exclude non-executive directors, including independent directors from any criminal liability for the offences committed by the company. This provision should have overriding effect on all other laws. The committee had not suggested immunity from other laws for independent directors. The liability of independent directors would arise only when any act of omission or commission occurred with his knowledge and consent or connivance and where he had not acted



diligently, the committee had said. CII recommends that devolution from liability should also be extended to non-executive directors.

### **2.0 CHAIRMAN ABSOLVED FROM CHARGE AGAINST COMPANY**

In the case of MSEB vs Datar Switchgear Ltd. the Supreme Court has decided that though the ex-chairman was in charge then, it is a settled proposition of law; one cannot draw a presumption that the chairman of a company is responsible for all acts committed by or on behalf of the company.

## **CAPITAL MARKET**

### **1.0 NON-PROMOTER HOLDING TO EXCLUDE GOVT STAKE**

The market regulator Securities and Exchange Board of India (SEBI) said the government holding in non-promoter category may be excluded while computing the requirement of minimum 50% shareholding of non-promoters in demat form in a company.

### **2.0 USE, NSE GET NOD FOR CURRENCY OPTIONS**

The booming exchange-traded currency derivatives segment will soon see the introduction of options trading. The National Stock Exchange (NSE) and the United Stock Exchange (USE) have received the regulator's approval for launching options trading on the rupee-dollar spot rate. According to market participants, the move will boost the turnover of exchange-traded currency derivatives, where only futures trading is allowed at present. Options will provide an additional tool to hedge against currency volatility. Apart from NSE and USE, the MCX stock exchange (MCX SX) offers currency futures.

### **3.0 USE SIGNS MOU WITH ICAI FOR CURRENCY DERIVATIVES**

In a move to impart knowledge about financial markets, United Stock Exchange (USE) has signed on MoU with the Institute of Chartered

Accountants of India (ICAI). As part of MoU, the exchange plans to educate members of ICAI by organizing seminars, workshops on financial markets and corporate governance.

### **4.0 15-MIN CALL-AUCTION WINDOW**

NSE and BSE have introduced a special call auction window to enable market to determine opening rates of major securities in a systematic manner

- Call-auction session for Sensex & Nifty shares to last 15 mins from 9-9.15 am
- Orders for this session not executed directly, but will go to a common pool
- Price for maximum orders matched to be the equilibrium price for each share.
- Orders priced other than at equilibrium will be shifted to the normal segment.

### **5.0 FII INFLOWS RISE**

Fund flows from overseas investors have crossed the earlier record of Rs. 99,700 crore (\$21.6 billion) this year and are set to breach the magical Rs 1 lakh crore mark for the first time since they were allowed to invest here.

### **6.0 IPO GRADING FUTILE**

An analysis by the capital market regulator SEBI has concluded there is no correlation between the grades and the performance of the shares after listing.

### **7.0 EXCHANGES ALLOWED TO SELECT EUROPE / US STYLE OPTIONS**

The Securities and Exchange Board of India (SEBI) has decided to provide exchanges the flexibility to choose between the European and American styles of exercising stock option contracts.

## **INSURANCE**

### **1.0 DECLARE ALL CONSIGNMENT FOR TRANSIT TO CLAIM INSURANCE**



When the insurance policy for transit of goods insists on declaration of 'each and every consignment', failure to comply with it would result in rejection of the claim by the insurer, the Supreme Court stated while dismissing the appeal case, Suraj Mal Ram Niwas Oil Mills vs United India Insurance Co. A huge consignment of oil tins from Jaipur to Agartala was damaged in a rail accident. The surveyors found that it contained more than that was declared. So the insurance company rejected the claim, arguing that it was against the term of the cover note. Though the mill was successful in the Rajasthan consumer commission, the national commission and the Supreme Court justified the stand of the insurance company and dismissed its appeal.

## 2.0 IRDA BANS SALE OF UNIVERSAL LIFE INSURANCE POLICIES

The Insurance Regulatory and Development Authority has banned further sale of universal life insurance policies from October 22 till guidelines for these products are issued.

## FEMA

### 1.0 HYBRID SECURITY FDI COMPLIANCE NORMS

The Reserve Bank of India (RBI) has thrown a spanner in the works of a government proposal to liberalise the pricing guidelines of hybrid securities such as foreign direct investment (FDI) compliant instruments. RBI fees that only shares, as well as fully and compulsorily convertible debentures (CCDs) and preference shares (CCPs), should continue to be considered FDI compliant. If any of these instruments have an option, under which the price is determined at a future date based on performance, it ought not to be considered FDI compliant.

### 2.0 SLBM SCHEME

- The SLB mechanism enables an investor to sell security in the cash market without actually owing them.

- Investor need not square off their positions as the SLB platform enables borrowing via an approved intermediary
- SLBM period extended upto 1 year
- 100% upfront margin is called.
- Stock borrowers must return dividends to lender on record date on T + basis.

### 3.0 AUTHORITIES NOT OBLIGED TO HAND OVER DOCUMENTS ON FEMA AGAINST FIRM

The Supreme Court stated that the adjudicating authorities under the Foreign Exchange Management Act and Rules are not bound to furnish all documents in their possession to the person to whom they issue show cause notice. Only those documents they rely on are required to be shown to the person under notice.

### 4.0 FINMIN, RESERVE BANK OPPOSE ECB FOR LLPs

LIMITED Liability Partnerships in the country may not have access to cheap overseas funds, which could discourage big firms from switching to this form of business that combines the features of companies and partnerships. The finance ministry and the Reserve Bank of India (RBI) have opposed changes in the external commercial borrowings (ECB) policy to allow overseas borrowings by LLPs.

### FINANCIAL INDICATORS

	Current Rate* (in %)	Month Ago (in %)
3 Month LIBOR	0.28	0.29
3 Month MIBOR	8.08	7.70
SENSEX	19585	19872
NIFTY	5890	5982
CRR	6	6
REPO	6.25	6
REVERSE REPO	5.25	5
Gold (per 10 gm)	20096	19510
Silver (per kg)	41498	35540
Crude (USD/bbl)	84.34	81.82
Rs. vs USD	45.26	44.29
Rs. vs Euro	61.78	61.05

(Sources: Bloomberg, NSE, BSE, RBI)

**Global Business Structuring**

Advt.

With businesses in all sectors going global and expanding business operations beyond national territories, the concept of **"Global Village"** is emerging fast. Almost all Indian business corporate today, including small and medium businesses, are not restricted to domestic operations and are in some way or the other extending their arms in international territories. These developments in the business front have made **International Taxation** an import consideration for businesses while planning their international operations.

Businesses may go global for different purposes / reasons. A trading or manufacturing company may intend to sell locally in global markets. A research company may plan to use specialized technology, human resources available in some foreign countries. Some businesses may seek foreign investments or some may plan to invest in foreign ventures and so on. Depending on the purpose and requirements of business, it is imperative to establish an **International Corporate Structure** which will be most appropriate for the business.

**International Tax Implications** of the proposed structure are one of the most crucial determinants in deciding appropriate International Corporate Structure. Some of the important aspects to be considered are:

1. Minimising tax incidence on
  - a. Business profits arising in different jurisdictions
  - b. Taxation of foreign dividends
  - c. Withholding taxes on interest, royalty, dividends
  - d. branch profits tax
2. Flexibility for inter company transfer of funds, assets and businesses
3. Retention of profits in *offshore jurisdiction*
4. Ease in international trading and service delivery

5. Treaty shopping to facilitate better avoidance of double taxation
6. Transfer pricing issue management
7. Tax saving in low tax jurisdictions by diverting activities outside India to international jurisdictions
8. Future *restructuring* to be easy
9. Creation of wealth in a suitable jurisdiction with full flexibility to invest or use funds
10. International funding and resource raising and leveraging of existing strengths

In view of the above, the corporate structure for international operations is to be designed after due consideration of all above aspects as it is the foundation for the success of global operations of the business.

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