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EDITORIAL

India under Transformation

CA Vinod Jain*

The general election to Lok Sabha is the most important democratic process in the Indian Constitutional Framework. Current elections have attracted a huge turnout of the voters, clearly indicating to the political leadership that India need change and Indian democracy, economy and expectations of public and society is under transformation.

- **The political leadership** needs to have a clear growth plan for a positive visionary growth for all sections of economy and society. The plan for growth is to be followed by decisive action to implement the growth plan in a practical manner.
- **The bureaucracy** needs to be empowered towards responsive, professional and positive decision making, without fear or favour. It is important to eradicate mal practices, corruption, delays in decisions and unjustified and undue treatment. The officials should not be subject to harassing review by CVC or CBI for their decisions.
- **Vigilance:**A vigil on acquisition of properties, expenditure, wealth and asset creation by bureaucrats and politicians beyond the disclosed means is necessary. An annual statement of affairs disclosing all material transactions, asset and liabilities by politicians and bureaucrats including their close relatives and companies, firms, NGO and entities in which they are directly or indirectly interested need to be disclosed in a transparent manner and can be examined by vigilance department in a professional manner.
- **PSU:** It is important to run public sector enterprises in a professional manner while keeping welfare agenda in the forefront.
- **Transparency:** It is important to implement transparent electronic web based process for almost all the government applications, returns, assessments, refunds and approvals eradicating arbitrary subjective decisions.
- **Respect and fair treatment**: International investor, Indian businessman and common man to be treated with respect, care and fairness by the tax department and government who should be responsive in a professional manner to deliver value services without any harassment.
- **Corporate Laws:** The Companies Act 2013 has moved in the right direction of corporate governance. The rules and procedures for private limited companies and companies in which public is not substantially interested need to be substantially minimized on the basis of paid up capital, size of turnover and public borrowing.
- **Direct Taxes:** The government needs to consider substantial simplification of tax laws, reduction in tax rates, reduction in litigation by clear policy initiative and substantial reduction in corruption by ensuring Nil one to one interaction between tax officials and the assessee. The surveys, searches and raids need to be a thing of past. There is a need for positive moves for voluntary tax compliance. The physical interface with tax department is to be reduced using technology, fairness and transparency.
- **Indirect Taxes:** Multiplicity of indirect taxes to be eradicated by introducing a Single GST rate. The collection, assessment, refund, rectification and all other processes are to be automated by centrally developed software to be approved by a committee of States. The centalised tax collection, based on point of sale can be credited in an agreed ratio automatically to Central Government & State Government. A complete value added system to be put in place and

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LATEST IN FINANCE

1.0 No penalty for bank balance below minimum limit: RBI to banks

Customers may soon be spared penalties for non-maintenance of minimum balances in savings accounts with the Reserve Bank of India (RBI) asking banks to cut down services on low-balance accounts and do away with fines. Banks however say the new regime will lead to higher charges on services for customer.

2.0 Forex hedging rules eased

The Reserve Bank of India (RBI) relaxed some of the forex hedging rules for importers & exporters, to allow greater operational flexibility. Importers & exporters can cancel up to 75% of their hedged forex exposures, as against 25% earlier. In addition, the profit or loss from these cancellations will be borne by the importer/ exporter instead of passing it on to the customers as was mandated earlier.

3.0 Policy allowing road developers to defer premium payment cleared

The government has cleared a long pending bailout policy for financially-stressed highway developers which would allow them to defer the premium that they have committed to pay the government.

4.0 India for setting up global agency to manage internet

India has called for the establishment of a global agency to manage the Internet, something along the lines of the UN's International Telecommunications Union, as it pushes for multi-government role in formulating Internet governance rules.

The key function of managing the domain name system (DNS) is in the hands of the National Telecom & Information Administration, an arm of the US Department of Commerce.

5.0 Steel, cement companies to pay for captive coal blocks

Steel, cement and sponge iron companies will now pay for their captive coal blocks that were given free earlier. The new coal block auction policy too allows allotment of the blocks at a cost.

Power and state-run firms including Coal India will pay a one-time reserve price that is 10% of the estimated reserves in the block valued at cost of mining of an equivalent grade in international markets.

6.0 Aadhar cannot be mandatory: SC

The Supreme Court directed the Central government not to share Aadhar card details with any agency without the consent of the card holder. It also asked the government to immediately withdraw all orders which had made the card compulsory for registration of marriage or property or availing of the subsidy on cooking gas cylinders or for any other service.

7.0 Norms for prepaid payment instruments modified

The Reserve Bank of India (RBI) made changes to guidelines to pre-paid payment instruments. Some of the changes include increasing the minimum paid-up capital to ₹500 lakh from ₹100 lakh and having a minimum positive net worth of ₹100 lakh at all the times.

The RBI also said that the escrow balance for prepaid instrument issuers must be necessarily maintained with only one scheduled commercial bank at any point of time. The migration from one bank to another, in case of need, should be completed in the minimum possible time and with the prior approval of RBI.

8.0 CDR Cell: Pvt Sector Players will have to share the working capital needs of distressed companies

Bickering between the private sector and state-owned lenders has forced the Corporate Debt Restructuring (CDR) Cell to ask all banks, including private ones, to extend working capital funding to companies whose loans are getting restructured. Private sector lenders participate in the revival programmes of distressed companies, but usually decline to lend for their working capital. This puts a disproportionate burden on state-owned lenders as they end up meeting the entire working capital requirement.

9.0 Reserve Bank revises FDI valuation norms

It has been decided to withdraw all the existing guidelines relating to valuation in case of any acquisition/sale of shares. Such transactions will henceforth be based on acceptable market practices. Operating guidelines will be notified separately by the RBI.

DIRECT TAXATION

1.0 SC Rules in Favour of Black Money Probe by SIT

The outgoing UPA, which had vigorously resisted an earlier order to set up a Special Investigation Team (SIT) headed by a former Supreme Court judge to probe the black money malaise, suffered a blow when the court rejected its plea and insisted that the government make efforts to trace and recover black money stashed abroad.

2.0 Tax cheer for MNCs: I-T Dept to ink accords on advance pricing

The Income Tax Department is set to ink the first set of Advance Pricing Agreements (APAs) with MNCs. This will send the right signal to MNCs that they can mitigate transfer pricing adjustment risks through the APA programme.

3.0 CBDT clarifies key rule related to TDS on overseas payments

The Central Board of Direct Taxes (CBDT) has clarified to field officers that the requirement of deducting tax at source when a person makes payments to non-residents or foreign companies should be enforced only on that part of the remitted amount that accounts for the recipient's income chargeable to tax in India.

4.0 Withholding tax on installation charges

Recently, the Pune tribunal has held that installation/erection and related service charges formed an integral part of the purchase price of machinery and the situation would remain unaffected, whether the charges were embedded in the cost of purchase price or, were charged separately. Thus, there was no obligation on the payer to withhold tax on entire payment.

Based on this, tax payers could consider reviewing their agreement to evaluate whether installation/erection and related services form an integral part of purchase price of machinery and accordingly determine the applicability of withholding tax on the payments.

5.0 I-T asks e-filers of tax returns to send ITRV by Speed Post

If you are filing online your Income Tax return, the paper copy of the 'ITRV' should only be sent through "Speed Post" to the Central Processing Centre (CPC) of the department in Bengaluru.

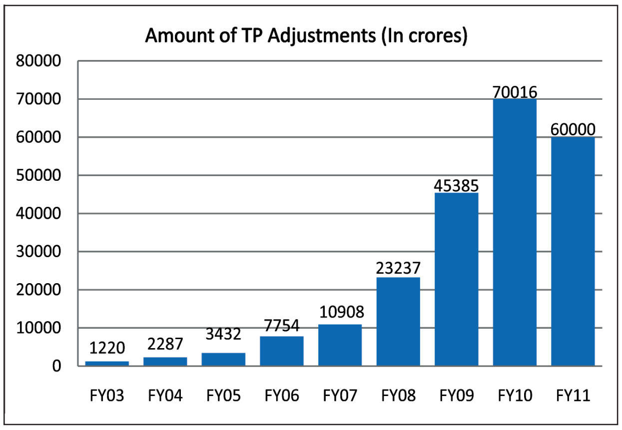
6.0 Capital Financing Transactions u/s 92B

The **Delhi Bench of ITAT** has held that capital financing transactions covered by clause (i)(c) of the Explanation to section 92B are international transactions only if they have any real bearing as distinct from contingent effect on the profits, income, losses or assets of the enterprise. Corporate guarantees issued for the benefit of Associated Enterprises (AEs) do not cost anything to the issuing enterprise and yet may provide certain comfort levels to the parties dealing with the AEs. These guarantees do not have any impact on profits, income, losses or assets of the enterprise. Therefore, corporate guarantees do not fall within the scope of the term 'international transaction' even after insertion of *Explanation* to section 92B by Finance Act, 2012 wref 1-4-2002.

Bharti Airtel Ltd. vs. Additional Commissioner of Income-tax, Range -2, New Delhi, [2014] 43 taxmann.com 150

7.0 TP Adjustments Taper

Indian tax authorities' aggression in seeking transfer pricing adjustments that has trouble multinationals in India & hurt investor sentiments seems to be tapered.



INDIRECT TAXATION

1.0 Taxable services - Commercial Training or Coaching Services

The High Court of Bombay held that where earlier judgments of Tribunal were in favour of assessee and law had to be amended retrospectively, extended period of limitation was, prima facie, not invocable.

National Insurance Academy v. Commissioner of Service Tax, Pune –III, [2014] 43 taxmann.com 235 (Bombay)

AUDIT

1.0 New accounting standards will bolster foreign fund inflows

In its new roadmap, the CA institute has recommended that all listed and unlisted companies having net worth of over ₹500 crore be required to prepare their consolidated financial statements only under Ind AS with effect from the accounting year beginning April 1, 2016.

This would require such companies to prepare previous year comparatives in Ind AS for the year 2015-16.

The taxman is mostly concerned with standalone financial statements and implementing Ind AS with consolidated financial statements will not have tax implications.

2.0 Applicability of Provisions related to Accounts & Audit

The Ministry of Corporate Affairs notified that the financial statements (and documents required to be attached thereto), auditors report and Board's report in respect of financial years that commenced earlier than 1st April, 2014 shall be governed by the relevant provisions/ schedules/ rules of the Companies Act, 1956 and that in respect of financial years commencing on or after 1st April, 2014, the provisions of the new Act shall apply.

3.0 Clarification on simultaneously undertaking Concurrent Audit & Quarterly Review

Due to the queries being received from the members, it has been clarified by The Institute of Chartered Accountants of India (ICAI) that concurrent audit and the assignment of quarterly review of the same Bank cannot be undertaken simultaneously as the concurrent audit being a kind of internal audit and the quarterly review being a kind of statutory audit undertaken simultaneously are prohibited under the provisions of 'Guidance Note on Independence of Auditors'.

4.0 Registration of Charitable or Religious trust – Audit Mandatory

The Panaji Bench of ITAT has held that provisions of section 12A(1)(b) are mandatory and, therefore, even if a trust is incorporated under a State Act, it is bound to get its accounts audited in case its total income without giving effect to provisions of sections 11 and 12 exceeds maximum amount not chargeable to tax.

Vice Chancellor, Vishweshwaraiah Technological University vs. CIT, Belgaum, [2014] 42 taxmann.com 205

CAPITAL MARKET

1.0 Investment under New Foreign Portfolio Investment (FPI) Scheme, Govt. and Corporate debt

- A new 'Foreign Portfolio Investment' Scheme for Foreign Institutional Investors (FIIs) & Qualified Foreign Investors (QFIs) has been registered in accordance with SEBI guidelines.
- The scheme commences w.e.f. June 1, 2014.
- Registered Foreign Portfolio Investor (RFPI) may purchase and sell shares and convertible debentures
- The individual and aggregate investment limits for the RFPIs shall be below 10% or 24% respectively of the total paid-up equity capital or 10% or 24% respectively of the paid-up value of each series of convertible debentures issued by an Indian company. Further, where there is composite sectoral cap under FDI policy, these limits for RFPI investment shall also be within such overall FDI sectoral caps.
- RFPI shall be eligible to open a Special Non-Resident Rupee (SNRR) account and a foreign currency account with Authorised Dealer bank
- RFPI can invest in government securities and corporate debt, and also trade in exchange traded derivative contracts

2.0 RBI extends Basel-III deadline

The Reserve Bank of India (RBI) has extended the deadline for banks to complete implementation of Basel-III capital norms by a year to March 31, 2019.

3.0 RBI wants trade receivables & credit exchange for financing MSMEs

The Reserve Bank of India (RBI) has proposed setting up of a trade receivables and credit exchange (TCE) for financing micro, small and medium enterprises (MSMEs).

In the primary segment, once an MSME delivers goods as per requirement to a corporate buyer along with a bill, the buyer on acceptance of the goods posts the bill on the TCE. These receivables of the MSME from the buyer become available to third parties for bidding. The MSME can access fresh funds through the bidding process.

EDITORIAL

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India under...

refund to be processed only in case of exports. Inter-state sale and intra-state sale need not be distinguished.

- **Capital Market:** SEBI has contributed significantly to professionalization of capital market. The market manipulation and lack of corporate governance need to be firmly addressed. Too many procedural compliance and unnecessary allegations of market manipulation or fraud need to be curbed. The prosecution and penalty powers are to be separated from SEBI and should be handled by judiciary.
- **Banking:** Free availability of low cost fund is the back bone of growth of the economy and employment and eradication of poverty.
- **Balancing:** Authority and responsibilities between judiciary, administrative and legislative wings of the government is blurred in recent past. The boundaries need to be elaborated and respected by each arm of the government.

The aforesaid agenda before the new government, our society, economy and the nation can be the backbone for fast, decisive and inclusive growth of a welfare Indian State.

CORPORATE & ECONOMIC LAWS

1.0 New Companies Act takes effect

So far, the government has notified 283 of the 470 sections. The first notification, of 99 sections, was in 2013. The provisions on corporate social responsibility (CSR) were notified on February 27. In a circular dated 26th March,2014 the Ministry of Corporate Affairs (MCA) notified 183 new sections.

2.0 Fee for filings etc. notified

Table of fees for the documents required to be submitted, filed, registered or recorded or for any fact or information required or authorized to be registered under the Companies Act, 2013, has been prescribed under section 403.

3.0 Corporate Affairs Ministry clears air on depreciation schedule for firms

The Corporate Affairs Ministry has made changes in the depreciation schedule under the new company law to avoid confusion among stakeholders and introduce consistency in its recent guidances.

4.0 Foreign order not always enforceable

The Bombay High Court has dismissed the petition of Marine Geotechnics LLC of Houston, US, against the Mumbai-based Coastal Marine Construction & Engineering Ltd. stating that an ex-parte summary judgement obtained in a foreign country against an Indian company could not be termed a 'debt' due & payable by it in a winding up petition under the Companies Act. The Indian company represented before the Houston court when the US firm obtained a decree against it. It was not made order of the court in India. In such circumstances, it could not be said that the debt became payable, the high court said.

5.0 Antitrust rules related to combinations changed

The government has changed procedural rules related to combinations between enterprises that would require approval of fair trade regulator Competition Commission of India. The focus would be on the substance of proposed combinations than their structure. Parties to combination will be required to provide their audited annual accounts of preceding two financial years. Also, the fee for filling forms by enterprises has been increased.

ACCOUNTS & AUDIT

ACCOUNTS

Financial Statements

- Financial statement in relation to a company to include:
  - a balance sheet as at the end of the FY;
  - a profit and loss account / an income and expenditure account for the FY;
  - cash flow statement for the FY;
  - a statement of changes in equity, if applicable &
  - any explanatory note annexed to, or forming part of, any document referred to above.
- *Exceptions*: For One Person Company (OPC), small company and dormant company cash flow statement excluded
- Responsibility of CFO to maintain financial statements

Consolidated financial statements (Section 129)

- If a company has a subsidiary / associate / joint venture, Consolidated Financial Statements (CFS) to be prepared and laid before an Annual General Meeting (AGM) in addition to stand-alone financial statements
- A separate format (similar to existing revised schedule VI of the Act) has been prescribed for the preparation of CFS in the Act.
- It further requires minority interest to be presented separately within equity on the balance sheet.
- The term significant influence has been re-defined as "control of at least 20 percent of total share capital or of business decision under an agreement".

Audited Accounts

- Audited Accounts of all subsidiaries are required to be prepared & provided to shareholders on request
- Audited accounts of the listed companies along with the subsidiaries to be placed on the website

Accounts Signing

- Financial Statements to be signed at least by
  - Chairperson of the company, if authorized by Board of Directors; or
  - 2 directors including MD (Managing Director), where there is one &
  - CEO (Chief Executive Officer) if he is a Director,
  - CFO (Chief Financial Officer) and CS (Company Secretary), wherever they are appointed
- In case of OPC balance sheet and statement of profit and loss to be signed by 1 director only

Financial Year (FY)

- FY of a company / body corporate means the period ending on 31st March every year.
- In case a company has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, will be its first financial year
- *Extension of FY* – no longer permissible
- *Exception* – A company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different FY for consolidation of its accounts outside India, with NCLT approval
- Transition period: - 2 years

Revision of financial statements (Section 132)

- In case of fraud & when a Court/ Tribunal passes an order for restatement (Mandatory Revision)
- To comply with Accounting Standards with the approval of the Tribunal (Voluntary Revision)

National Financial Reporting Authority (NFRA) (Section 132)

- This section is yet to be notified.

Estimated useful life of assets (Schedule II)

- For a class of companies, to be prescribed, the 2013 Act removes the minimum thresholds and provides indicative useful lives and residual values under Part C of Schedule II to the 2013 Act. If such a company uses a different useful life or residual value, then it shall disclose the justification for the same.
- No transition period provided for this change and the change needs to be applied prospectively.
- For other companies the useful life of an asset may not be longer than the indicated/ prescribed useful life, and the residual value shall not be higher than that prescribed in Part C, i.e. 5 %.

AUDIT AND AUDITORS

Joint audits (Section 139)

- Members of the company may require the audit process to be conducted by more than one auditor.

Appointment of LLP as Auditors (Section 141)

- Limited Liability Partnership (LLP) can be appointed as auditor of a company.
- Only the partners who are Chartered Accountants in a firm (including LLP) shall be authorised to act and sign on behalf of the firm.

Tenure and re-appointment of auditors

- Auditors appointed in an Annual General Meeting (AGM) shall hold office from the conclusion of that meeting until the conclusion of the ensuing sixth AGM (subject to ratification by members at every AGM).
- The Company may remove the auditors before the expiry of its term by passing a special resolution and prior approval from Central Government.
- The auditors also have the right to resign, but reasons for resignation to be mandatorily filed.

Mandatory rotation (As per the Rules)

- Transition Period- 3 years
- Auditor/Audit firm in case of listed companies (or such class* or classes of companies as may be prescribed) should mandatorily rotate after completion of 5/10 years tenure.
- An audit firm cannot be re-appointed for more than two five-year terms. (i.e. 10 years).

* the **class of companies** mean the following (excluding OPCs and small companies):-

(a) all unlisted public companies having paid up share capital of ₹ 10 crore or more;

(b) all private limited companies having paid up share capital of ₹ 20 crore or more;

(c) all companies not included above, but having public borrowings from financial institutions, banks or public deposits of ₹ 50 crores or more.

Disqualifications (Section 141)

- Additional disqualifications under the new Act:

i. a body corporate other than a limited liability partnership registered under the LLP Act, 2008;

ii. a person who, or his relative or partner—

- is holding any security of or interest (not exceeding face value of ₹1,000 or such sum as may be prescribed) in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company
- is indebted or has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed

iii. a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed

iv. a person whose relative is a director or is in the employment of the company as a director or key managerial personnel

Restriction on number of audits

- Restricts the no. of audits to 20 companies for an individual/ partner irrespective of their nature/ size.
- Private companies also included in the limit above.

Additional responsibilities of Auditor (Section 143)

- Certain new aspects which need to be covered in an auditors' report:
  - The observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company.
  - Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith.
  - Whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls.
- Auditor to report to Central Govt.(CG) if any offence involving fraud is being committed or has been committed against the company by its officers or employees within 30 days. Where any auditor does not comply with the above requirements, he or she shall be punishable with a fine.

Restricted Services (Section 144)

- Transition Period: 1 year
- Auditors are prohibited from rendering following non-audit services, *directly & indirectly*:
  - accounting and book keeping services;
  - internal audit;
  - design and implementation of any financial information system;
  - actuarial services;
  - investment advisory services;
  - investment banking services;
  - rendering of outsourced financial services; and
  - management services
  - Other restricted services may be further prescribed.
- For Prohibited Services: *"Directly or indirectly"* shall include rendering of services by the auditor –
  - *Where auditor is an individual* - Either himself or through his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which

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such individual has significant influence or control, or whose name or trade mark or brand is used by such individual

- *Where auditor is a firm* – Either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners.

Internal Auditor (Section 138)

- Such class or classes* of companies as may prescribed need to compulsorily appoint Internal Auditor to conduct the internal audit of functions and activities of the company.
- Internal Audit shall be done either by a CA or a cost accountant, or such other professional as may be decided by the board of directors.

* Prescribed class of companies

(i) listed companies, and

(ii) public companies :-

- with paid-up capital or ₹ 10 crores or more
- with outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 25 crores or which have accepted deposits of ₹ 25 crores or more at any point of time during the last FY.

FINANCIAL INDICATORS

	Current Rate*	Month Ago	3 Month	6 Month
3 Month LIBOR (%)	0.23	0.23	0.24	0.24
3 Month MIBOR (%)	9.37	9.96	9.22	9.66
SENSEX	22715	21935	20713	20273
NIFTY	6796	6537	6168	6021
CRR (%)	4%	4%	4.00	4.00
REPO (%)	8	8	7.75	7.50
REVERSE REPO (%)	7	7	6.75	6.50
Gold (per 10 gm)	28781	30123	29033	28857
Silver (per kg)	43486	45996	44824	48264
Crude (USD/bbl)	107.1	108.21	107.25	111.80
₹ vs USD	60.21	60.85	61.94	62.14
₹ vs Euro	83.69	84.42	84.31	83.87
₹ vs 100 Yen	59.19	58.94	59.01	63.58
₹ vs RMB	9.70	9.92	10.16	10.05
₹ vs Pound	101.13	101.21	102.06	99.02
MCX Aluminium	112.80	105.95	106.25	113.00
MCX Copper	406.45	409.00	452.25	441.05

**As on 10th April 2014* *(Sources: MoneyControl, NSE, BSE, RBI, MCX)*

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