



EDITORIAL

Indian Economy towards Growth Momentum: Strategic Moves Needed



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In a recent international survey Indian economy has been rated as the 3rd largest economy of the world, after USA and China, on the basis of Purchase Power Parity (PPP). IMF has also projected a smart recovery of growth rate of Indian GDP to around 5.5% to 6% in next 2 years.

A large cross section of Indian Industry and Services Sector, including Public Sector has not undertaken any major expansion or diversification plans during last 2 years due to adverse economic outlook, uncertainty and major policy issues in the area of coal, power, ports, highways and banking sector. Even the agricultural sector has not received any major technical, financial or institutional support. The Litigative and aggressive approach of taxation wing, retrospective amendments, GAAR, proposal to disregard Double Taxation Treaties etc. had resulted in loss of Government credibility. The corruption related prosecutions and harassment of even genuine businesses, political leaders, bankers and Government officials had further spoiled the working atmosphere.

The Chartered Accountancy profession need to play a centre stage role to strategize and plan growth

India has taken a new initiative in last few months, as an active democracy and has decided to bring in the forefront, a new visionary leadership to support every Indian to grow and prosper in an atmosphere of trust, honesty and transparency.

The message of Indian democracy is clear, to jolt and push the economy into a creative growth momentum. The new Government need to support public initiative with

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Chartered Accountants seek fair treatment from RBI, Banking Sector and Government

The All India CA Society has made a very strong representation on 12th May, 2014 to Governor, RBI to adequately recognize devoted contribution by Chartered Accountants to Indian banking sector monitoring and growth besides ensuring regulatory compliance. RBI professional regulation and CAs contribution towards compliance of RBI and Government directions have contributed immensely to resilience of Indian banking sector.

In recent past certain decisions of RBI and Government in respect of delegation of Appointment of Central Statutory Auditors and Branch Auditors, reduced number of branches being subjected to audit, restriction of 6 years on appointment of CAs on Board of Directors, prohibiting CA Directors as Auditors in any other Banks are some of the retrograde steps, which are likely to adversely affect the banking sector as the control on Fraud, mis-statement in financial statements and money laundering will be loose. The Society has urged upon the RBI and Government to clearly recognize and appreciate positive role of CA profession and be not misguided by negative views of miscreants, who wish to play fraud and manipulate by impacting of CAs supervision monitoring and controls adversely. (www.aicas.in for detailed representation)



LATEST IN FINANCE

1.0 Minors can Operate their Account

The Reserve Bank of India has said that minors above the age of 10 years may be allowed to open and operate savings bank accounts independently, if they so desire and not necessarily through parents/ guardian.

2.0 RBI Panel moots Centralised Bill Payment System

Reserve Bank of India (RBI) panel made a case for centralised bill payment system catering to different financial instruments, like cheques, debit cards and mobile banking.

3.0 Levy of Penal Charges on Non-maintenance of Minimum Balances in Inoperative Accounts - Banned

It is advised by the Reserve Bank that henceforth banks are not permitted to levy penal charges for non-maintenance of minimum balances in any inoperative account.

4.0 RBI steps in to end 'Unfair' Scrutiny of PSU Bankers

The banking regulator Reserve Bank of India has begun a dialogue with the Central Vigilance Commission (CVC) to define terms like frauds and diversion of funds with an aim to put an end to numerous cases of officers paying a price for genuine business decisions going wrong and rivals using CVC as a tool to stall many a career. A bank chief from a public sector bank who did not want to be named while questioning the modus operandi of the CVC has said that if funds are diverted, but the business does not suffer, it's not a fraud. If funds are diverted by a rich company, isn't it a fraud? But if the business fails, then the authorities are quick to say there is an element of fraud.

5.0 RBI firm on Scrapping Pre-payment Penalty

Reserve Bank of India (RBI) officials believe there is no justification for banks to charge pre-payment penalty on any loan since the entire system has moved to floating rates, be it deposits or loans where rates are charged based on the prevailing markets, though with a lag of a few days or weeks. The central bank had advised lenders to stop levying such penalties.

6.0 Pay Interest First, then Principal

The Supreme Court ruled that when a court passes a money decree against an insurance company, the amounts paid will go first to satisfy the interest part and then towards the principal amount.

ACCOUNTING

1.0 Proposed New Roadmap for Implementation of Ind AS converged with IFRS

As stated in earlier roadmaps for achieving convergence, there shall be two separate sets of Accounting Standards notified under the Companies Act, 1956. First set would comprise the Indian Accounting Standards (Ind AS) converged with the IFRSs which shall be applicable for preparation of consolidated financial statements as defined in the Companies Act, 2013, of the specified class of companies (listed companies or companies having networth of ₹500 crores or more) for the accounting period beginning on or after April 1, 2016, with comparatives for the year ending 31st March 2016 or thereafter. The second set would comprise the existing notified Accounting Standards (AS) and shall be applicable for preparation of individual financial statements of the companies preparing consolidated financial statements as per Ind AS and for financial statements of other companies.

Companies not mandatorily required to follow Indian Accounting Standards (Ind AS) shall have the option to apply the Indian Accounting Standards (Ind AS) voluntarily for their consolidated financial statements. The option shall be irrevocable.

2.0 RBI comes up with Uniform Accounting Rules for Asset Reconstruction Companies

The Reserve Bank of India has come up with some uniform accounting rules for asset reconstruction companies or ARCs. In the wake of deteriorating credit quality, banks have of late started selling bad loans to ARCs, which acquire them from lenders and try recovering pending dues from defaulting borrowers. In between companies earn commissions. Such transactions can take place in a combination of security receipts or SRs and cash. SRs are securities to be subscribed by select qualified institutional buyers including banks and traded in the secondary market. As and when ARCs recover loans, it repays back to those SR holders.



CORPORATE & ECONOMIC LAWS

1.0 Order to ensure Minimum Wage to Contract Labour

To ensure payment of notified minimum rates of wages to all categories of worker in both organized and unorganized sectors, an order has been recently issued directing all the employers, including contractors, to upload their employee and payment details on their websites. Employers have been given 90 days time for compliance. The Labour Department officials ordered that no fresh license and no renewal of licenses and registration certificates shall be done by Labour Department under the Contract Labour (Regulation and Abolition) Act, 1970. Employers have also been directed to pay wages to workers by ECS or Cheque. Defaulters shall be prosecuted under the provisions of law.

2.0 SEBI Stringent Corporate Governance Norms regarding Related Party Transactions approvals

According to Securities & Exchange Board of India (SEBI), all 'material' related party transactions need to be approved by non-related party shareholders. Material means greater than 5 per cent of turnover or 20 per cent of net worth.

However, as per the new company law, related party transactions require such shareholder approval only if not at 'arms-length' or not in the 'ordinary course of business.'

3.0 Top 100 Companies told to set up Risk Management Committees

The Securities and Exchange Board of India has said that the top 100 companies must constitute risk management committees immediately, in line with its revised corporate governance norms.

4.0 Tenants stall SARFAESI action

In a large batch of appeals moved by tenants of properties mortgaged to banks, the Supreme Court stated that a lease of a secured asset made by the borrower after he receives notice from the creditor will not be a valid lease. The judgment also discussed the rights & remedies available to lessees when the property is being taken over by the creditors for the fault of the borrowers.

DIRECT TAXATION

1.0 Date of Allotment is Key in Under-construction Flat for Tax Exemption under Section 54F

The Central Board of Direct Taxes (CBDT) has also clarified that to qualify as an investment for construction under section 54F the crucial date is the date of allotment of flat by an institution and payment of installments was only a follow-up action and taking possession of the flat is only a formality.

However, one needs to remember that the court needs to be satisfied that the sales consideration was used for investment in the new residential house.

2.0 Swiss Units of US Banks to tell all on Tax Evasion by Americans

The Swiss units of Goldman Sachs Group Inc & Morgan Stanley have agreed to hand over details to US authorities about how they may have helped Americans to evade taxes, the Wall Street Journal reported.

3.0 ICAI flags concerns over DTC's Definition of 'Accountant'

Raising serious concerns over the proposal to widen the definition of 'accountant' in the Direct Taxes Code, ICAI has told finance ministry that the proposed change could result in huge revenue leakages for exchequer.

ICAI, the apex grouping of Chartered Accountants, has contended that expanding the definition would result in individuals with "limited knowledge" issuing requisite certificates.

Such a scenario would lead to huge revenue leakages, the body said during a recent meeting with senior finance ministry officials.

4.0 Transfer Pricing – IT & ITeS – MAP – US pushes for 12-13% Margin Levels

A joint effort by India and the US to amicably decide on their respective shares of taxes from IT and ITeS companies operating in both countries is taking place under Mutual Agreement Procedure (MAP).

While New Delhi is unwilling to accept the margins made by India-registered IT companies from



DIRECT TAXATION

services rendered to related parties in the US in certain past cases to be anything less than 18%, the US tax authorities want India to agree to a much lower rate of 12-13%.

5.0 Section 9, read with section 195 - Fees for Technical Services

The Agra Bench of ITAT has held that a retrospective amendment in law does change tax liability in respect of an income, with retrospective effect, but it cannot change withholding liability, with retrospective effect.

Deputy Commissioner of Income-tax, Circle 1, Agra v.s Virola International [2014] 42 taxmann.com 286

6.0 Transfer Pricing: Comparability

Where a comparable selected by Transfer Pricing Officer (TPO) was engaged in diversified activities and no segmental reporting was available, such comparable was to be excluded while determining Arm Length Price of functional difference.

Carlyle India Advisor (P.) Ltd. vs. Deputy Commissioner of Income-tax, [2014] 43 taxmann.com 184

7.0 Tax Benefit for Charitable Trusts

The Supreme Court has held that a charitable institution established for the benefit of any particular religious community or caste will not be eligible for income tax exemption under Section 11 & 12 of the Income Tax Act. But if such an institution based on religious tenets serves other communities as well, it can avail of the benefit, the court stated in its judgment.

Commissioner of IT vs. Dawoodi Bohara Jamat

8.0 Section 44BB - Non Residents - Mineral Oils, business for prospecting exploration, etc., in case of (Service Tax)

The Delhi Bench of ITAT has held that Service tax being a statutory liability could not form part of gross receipts for purpose of deemed profit under section 44BB.

Pride Foramer SAS vs. ACIT, International Taxation [2014] 43 taxmann.com 38

9.0 Section 44AB, read with section 271B- Tax Audit (Penalty)

The Mumbai Bench ITAT has held that where value of speculative share transactions exceeded

prescribed limit for tax audit under Section 44AB, levy of penalty under section 271B for tax audit default was justified.

Anahaita Nalin Shah v.s Deputy Commissioner of Income-tax -4(1), Mumbai [2014] 43 taxmann.com 206

10.0 Section 54F: Capital Gains - Exemption in case of Investment in Residential House

The Hyderabad Bench of ITAT has held that subsequent change in usage of property does not disentitle assessee to relief under section 54F, if what was acquired was originally a residential property.

Shyam Lal Tandon v.s Income-tax Officer, Ward -7(4), Hyderabad [2014] 43 taxmann.com 155

11.0 Section 94 - Avoidance of Tax by certain Transactions in Securities - Bonus Stripping

The Bangalore Bench of ITAT has held that where assessee purchased certain shares immediately prior to allotment of bonus shares and after allotment of those shares original shares whose value had reduced to almost 50 per cent were sold, said transaction being in nature of 'bonus stripping' was covered under section 94(8) and, since said section covered only 'units' and not 'securities', assessee's claim for set off of said loss could not be disallowed.

Deputy Commissioner of Income-tax, Circle -5(1), Bangalore v.s B.G. Mahesh [2014] 43 taxmann.com 158

FINANCIAL INDICATORS

	Current Rate*	Month Ago	3 Month	6 Month
3 Month LIBOR (%)	0.22	0.23	0.24	0.24
3 Month MIBOR (%)	9.17	8.10	9.52	9.19
SENSEX	22994.23	22715	20334	20273
NIFTY	6858.80	6796	6053	6079
CRR (%)	4%	4%	4.00	4.00
REPO (%)	8%	8%	8.00	7.75
REVERSE REPO (%)	7%	7%	7.00	6.75
Gold (per 10 gm)	29725.00	28781	29881	30143
Silver (per kg)	41251.00	43486	44585	48373
Crude (USD/bbl)	107.97	107.1	108.35	106.40
₹ vs USD	60.04	60.21	62.34	62.73
₹ vs Euro	82.49	83.69	85.06	84.06
₹ vs 100 Yen	58.93	59.19	61.03	63.94
₹ vs RMB	9.64	9.70	10.29	10.40
₹ vs Pound	101.03	101.13	102.36	100.92
MCX Aluminium	103.15	112.80	103.95	110.70
MCX Copper	405.05	406.45	444.45	448.15

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



12.0 Section 48, read with Section 55- Capital Gains - Transfer of Trademark

The Pune Bench of ITAT has held that where asset under transfer was self-generated trademark, its cost of acquisition being NIL and same is not capable of improvement at an ascertainable cost in terms of money, computation of capital gains is not possible and, thus, same is not taxable under section 45.

Institute For Micronutrient Technology v.s Deputy Commissioner of Income-tax, Circle -2, Pune [2014] 43 taxmann.com 426

13.0 Section 68 - Cash Credits (Share Capital)

The High Court of Delhi has held that addition can be made only for amount which pertained to those subscribers/investors to share capital whose particulars could not be verified and who did not respond to notices issued by Assessing Officer.

Commissioner of Income-tax -IV v.s Empire Buildtech (P.) Ltd., [2014] 43 taxmann.com 269

14.0 Section 80, read with Sections 139 and 154- Loss Return

The High Court of Karnataka has held that where original return filed was not a loss return but loss was determined in assessment proceeding, carry forward of loss on account of violation of section 80 could not be denied.

Commissioner of Income-tax, Central Circle v.s Srinivasa Builders[2014] 44 taxmann.com 35

15.0 Section 80P- Deductions

The High Court of Gujarat has held that Section 80P deductions to be denied only to Co-operative banks and not to Co-operative society after CBDT clarification on Section 80P.

Commissioner of Income-tax -II v.s Surat Vankar Sahakari Sangh Ltd. [2014] 43 taxmann.com 431

TELECOM

1.0 Vodafone, Airtel, Idea get Major Relief from TDSAT

The Telecom Disputes Settlement and Appellate Tribunal (TDSAT) has overturned a ban imposed in 2011 on Bharti Airtel, Vodafone India and Idea Cellular for intra-circle roaming (ICR) pacts among operators, which allows them to offer 3G services even in circles where they do not have 2,100-MHz spectrum.

INDIRECT TAXATION

1.0 Taxable Services - Commercial or Industrial Construction Services

The Chennai Bench of CESTAT has held that merely because fees are charged for education, educational institutions cannot prima facie be considered a commercial institution and, therefore, construction thereof cannot be charged to service tax. Explanation to section 65(105)(zzzc) is not applicable for interpreting scope of Construction Services.

Chettinadu Constructions v. Commissioner of Central Excise (ST), Madurai[2014] 44 taxmann.com 14*

2.0 Uttar Pradesh Value Added Tax - Charge/Levy - Works Contract

The High Court of Allahabad has held that where assessee-builder had done substantial construction from his own funds on his own land and amount deposited by prospective buyers as earnest money was not substantial, such construction could not be regarded as 'work contract'.

Commissioner of Commercial Tax v.s Rani Sundri Estates Ltd. 2014] 43 taxmann.com 308

3.0 Andhra Pradesh General Sales Tax Act, 1957 - Charge/levy - Transfer of Right to Use Goods

The Supreme Court of India has held that where project owner had hired out sophisticated machinery to its contractors engaged in construction/execution of said project, such hiring did not amount to 'transfer of right to use', as effective control and enjoyment remained with assessee; therefore, same cannot be charged to VAT, it is liable to service tax only.

State of Andhra Pradesh v.Rashtriya Ispat Nigam Ltd. [2014] 43 taxmann.com 310 (SC)

4.0 Central Excise Act, 1944 - Charge/levy - Excise Duty

The High Court of Karnataka has held that Sugar Cess is tax, and to be precise it is 'duty of excise' and not 'fee'. It is a duty of excise on all sugar produced by any sugar factory in India. Assessee can claim CENVAT credit in respect of cess paid as additional duty (CVD) on raw sugar imported.

Commissioner of Central Excise, Belgaum v.s Shree Renuka Sugars Ltd. [2014] 44 taxmann.com 56

**FEMA****1.0 Foreign Direct Investment in Pharmaceuticals Sector – Clarification**

The extant FDI policy for pharmaceutical sector has since been reviewed by the Reserve Bank of India and it has now been decided with immediate effect that the existing policy would continue with the condition that 'non-compete' clause would not be allowed except in special circumstances with the approval of the Foreign Investment Promotion Board (FIPB) of the Govt. of India.

2.0 Booking of Forward Contracts – Liberalisation

With a view to further liberalising the existing facilities, it has now been decided to allow all resident individuals, firms and companies, who have actual or anticipated foreign exchange exposures to book foreign exchange forward contracts up to US\$ 250,000 on the basis of a simple declaration without any requirement of further documentation.

3.0 Foreign Direct Investment (FDI) in Limited Liability Partnership (LLP)

- LLP formed and registered under the LLP Act, 2008 shall be eligible to accept FDI
- A person or an entity resident outside India shall be eligible except :
 - i. A citizen/ entity of Pakistan and Bangladesh ,
 - ii. Foreign Institutional Investor (FII),
 - iii. Foreign Venture Capital Investor (FVCI)
 - iv. Qualified Foreign Investor (QFI) or
 - v. Foreign Portfolio Investor (FPI)
- An LLP, existing or new, operating in sectors/ activities where 100% FDI is allowed under the automatic route would be eligible to receive FDI.
- An LLP engaged in the following sectors/ activities shall not be eligible to accept FDI:
 - a. Sectors subject to FDI-linked performance related conditions (for example minimum capitalisation norms applicable to 'Non-Banking Finance Companies' or 'Development of Townships, Housing, Construction-development projects', etc.); or
 - b. Agricultural/plantation activity & print media;

- Any FDI in a LLP, directly or indirectly, shall require prior Government/FIPB approval.
- *Pricing*: FDI in an LLP permitted more than or equal to the fair price as worked out with any valuation norm which is internationally accepted/ adopted as per market practice.
- An Indian company, having foreign investment (direct or indirect, irrespective of percentage of such foreign investment), will be permitted to make downstream investment in an LLP only if both, the company as well as the LLP, are operating in sectors where 100% FDI is allowed under the automatic route and there are no FDI-linked performance related conditions.
- An LLP with FDI will not be eligible to make any downstream investments in any entity in India.
- A designated partner would also have to satisfy the definition of "person resident in India" under Foreign Exchange Management Act, 1999.
- LLPs shall not be permitted to avail External Commercial Borrowings (ECBs).

4.0 RBI curbs Banks from extending Guarantees, 'Letters of Comfort' to Overseas Arms of Firms

The Reserve Bank of India (RBI) imposed restrictions on non-fund based credit facilities guarantees, stand-by letters of credit, letters of comfort, and so on, extended by banks to Indian companies' overseas arms.

Further, the central bank disallowed repayment of rupee loans taken from the domestic banking system through external commercial borrowings (ECBs) extended by overseas branches/ subsidiaries of Indian banks.

The overseas arms of India companies include joint ventures, wholly-owned subsidiaries, and wholly-owned step-down subsidiaries. The RBI directed banks, including their overseas branches/ subsidiaries, not to issue non-fund based credit facilities on behalf of overseas arms of Indian companies for the purpose of raising loans/ advances of any kind from other entities except in connection with the ordinary course of overseas business.

5.0 Foreign Investment in India in Government Securities

On a review, to encourage longer term flows, it has now been decided by the Reserve Bank that



foreign investment by all eligible investors including Registered Foreign Portfolio Investors (RFPIs) shall henceforth be permitted only in Government dated securities having residual maturity of one year and above and existing investments in T-bills and Government dated securities of less than one year residual maturity shall be allowed to taper off on maturity/ sale.

AUDIT

1.0 Limit on Number of Audits as per Section 141(3)(g) of the Companies Act, 2013

ICAI has requested the Government to invoke the powers conferred by Section 470 of the Companies Act, 2013 to remove difficulties by issuing an order to make the provision of Section 143 (3)(g) not to apply to private companies, small companies & one person companies.

2.0 Applicability of the Companies Act, 2013 to Auditor's Report to FY 2014-15 and Onwards

The provisions of the 2013 Act would apply only to the financial years commencing on or after 1st April 2014. Thus, for example, the statutory auditor's report signed in respect of the financial year of the company ended 31st March 2015 would need to be issued in accordance with the provisions of the Companies Act, 2013.

3.0 Deferred Tax Liability on Special Reserve

An Announcement has been issued by the Auditing & Assurance Standards Board under the Authority of the Council of ICAI regarding manner of reporting by the auditors in respect of RBI's circular on Deferred Tax Liability on Special Reserve created under Section 36(1) (viii) of the Income Tax Act, 1961.

4.0 CAG can Audit Private Telecom Firms: SC

The Supreme Court made it clear to private companies that share of revenue from natural resources such as spectrum with the government would be subjected to audit by the Comptroller and Auditor General.

5.0 I-T dials Nokia again, orders Special Audit

The special audit against Nokia India would be a comprehensive one, as the Income Tax Department suspects "considerable suppression" of income by the firm, sources said. Scrutiny of transactions between Nokia India and Nokia Finland will be part of the audit.

6.0 Satyam Scam: CA Institute removes PWC Partners for Life

The CA Institute, which regulates the audit profession, has removed three people found guilty of professional misconduct in the Satyam Computer Services scam from its membership list for life.

The three are S. Gopalakrishnan, Srinivas Talluri & V. Srinivasu. Both Gopalakrishnan and Talluri were signing partners from Pricewaterhouse, which had conducted the statutory audit of the company. Srinivasu was a Senior Vice-President and Director in Satyam Computers. Prabhakar Gupta, who was in charge of internal audit at Satyam Computer Services has already been removed from the CA Institute's member list, albeit for a different reason.

7.0 Big Loan Defaulters to Face RBI Audit

The Board of Financial Supervision (BFS), chaired by Reserve Bank of India (RBI) governor Raghuram Rajan, has, in fact, cleared a proposal that the central bank will conduct an independent forensic audit of corporates declared fraudulent by banks. Independent audits, however, will be restricted to corporates that have borrowed more than ₹1,000 crore.

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**ADVISORY AND END TO END MANAGEMENT
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Indian Economy...

transparent, visionary, development and growth oriented positive policies. The businessmen, professionals, agriculturist, bureaucrats, mind workers, hand workers, educationists, media, bankers, regulators and of course the common man need to be respected by the society for their contribution and working atmosphere for each one has to improve.

The Chartered Accountancy profession need to play a centre stage role to strategize and plan growth, contribute in organizing and channelizing resources, putting necessary internal control and MIS to monitor growth direction, in

an effective and efficient manner and support entrepreneurship initiative and provide them right direction. Our role is crucial to achieve the target of highest growing economy.

The country, society and Government also need to ensure that education; medical facilities, justice, housing and all basic amenities are within easy reach of all Indians with good employment opportunities. It is important to eradicate corruption, bring transparency, fair and compassionate approach in the Government and Private Sector. India is committed to work as an integrated committed society without caste, creed or religion differentiation and will not tolerate any compromise on cultural and ethical values inherited from our ancestors.



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