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EDITORIAL

INDIA WITH A NEW HOPE

CA Vinod Jain*

The Union Budget have brought out very important policy statement on behalf of the Government of India, thereby committing the following :

- A new Direct Tax Code will be brought out to simplify the income tax legislation.
- Goods and Service Tax will be implemented on urgent basis after addressing the concern of the State Governments and ensuring fair treatment to them.
- Black money expansion shall be contained by using Information Technology and modern methods, while avoiding intrusive approach thereby indicating **survey and searches only exceptionally.**
- The government has committed itself to ensure that retrospective amendments are brought only in very exceptional circumstances and not with a view to defeat the court's judgments. A more stable and predictable tax legal framework to improve investor confidence and spur growth.
- To target sustained growth of GDP at 7 to 8% or above, to be achieved within next 3 to 4 years. The growth commitment is not only for business and industry but also empowering the needy and poor. "SABKA SAATH SABKA VIKAS".
- Expenditure: The government has committed to review overall subsidy regime targeting the same only to marginalized and poor. The government expenditure has to be cut down significantly.
- Tax laws to be clearer and complexities to be withdrawn based on recommendation of a high level committee.
- The transfer pricing laws have also been relaxed indicating fairness.
- **Public Sector Banks:** Public Sector Banks will retain government majority and will be capitalized by infusing Rs. 2.4 lakh crore by 2018.
- New Bank licensing policy to be brought out on tap Universal banks and small specialized banks.
- **PSU Investment:** Public Sector undertakings will invest Rs. 2.48 lakh crore in current year to spur growth.
- 100 smart cities plan to be given shape.
- **Power :** 24 x 7 uninterrupted power supply as a committed target
- **Roads:** Comprehensive plan to upgrade Roads and build new Roads to all villages.
- **Agriculture:** A new green revolution and to achieve at least 4% sustained growth by transforming methods, seeds and irrigation.
- **SEZ** scheme to modify, to bring back investors interest.
- **PPP** model to be revised to make private sector and government partnership more effective and efficient.

The aforesaid changes are only listed out of so many more commitments and plans of the Government. India is poised to grow and government commitment to revive investment climate will be crucial.

> **The private sector investment into manufacturing, power sector and infrastructure need to be supported by the government with active initiatives to remove policy bottlenecks, corruption, delayed approvals and other hindrances.**

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LATEST IN FINANCE

1.0 RBI fixes timelines for Regulatory Approvals

The Reserve Bank of India (RBI) has released timelines for regulatory approvals and a citizens' charter for delivery of services. The RBI has said that if an applicant does not get a response within the indicated timeline, the entity can approach the head of the concerned department.

2.0 RBI allows FPIs, NRIs to invest upto 26 % in Insurance

Effective from February 4, 2014, foreign direct investment by FIIs/FPIs (Foreign Institutional Investors/ Foreign Portfolio Investors) and NRIs (Non-Resident Indians) up to 26 % under automatic route shall be permitted in insurance sector.

3.0 SEBI proposes Crowd-funding Norms to help Starups

Crowd-funding is solicitation of funds from multiple investors through an online platform or social networking site for a specific project, business venture or social cause. It can be classified into four categories, including donation crowd-funding, reward crowd-funding, peer-to-peer lending and equity crowd-funding.

Who can raise funds?

- A company intending to raise capital not exceeding ₹ 10 crore in a period of 12 months
- A company which is not promoted, sponsored or related to an industrial group that has a turnover of over ₹ 25 crore

Who can invest?

- *Accredited Investors*
  - Qualified Institutional buyers
  - Companies with a minimum net worth of ₹ 20 crore
  - HNIs with a minimum net worth of ₹ 2 crore
- *Retail Investors*
  - Who receive advice from an investment consultant or portfolio manager
  - With a minimum annual gross income of ₹ 10 lakh
  - Who have filed Income Tax return for at least last 3 financial years.

4.0 Single Address Proof enough for opening Bank Account

The Reserve Bank of India (RBI) said only one address proof -either permanent or current - would be required to open a bank account. In case the address mentioned as per 'proof of address' undergoes a change, fresh proof of address has to be submitted to the branch within 6 months.

5.0 RBI cuts SLR by 50 bps to release ₹ 40,000 cr

The 50-basis-point cut in the SLR to 22.5 per cent (from 23 per cent) of bank deposits, starting mid-June, will expand banks' resource base by about ₹ 40,000 crore. This amount, currently invested in government securities, could get released for lending purposes.

6.0 RBI allows Banks to appoint NBFCs as Biz Correspondents

To hasten financial inclusion, the Reserve Bank has allowed commercial banks to appoint non-banking financial companies (NBFCs) as business correspondents (BCs). Only non-deposit-taking NBFCs (NBFC-ND) will be eligible to act as banks' BCs. It also did away with a rule that made it compulsory for banks to attach each outlet and sub-agent of a BC to a specific branch. Earlier, banks had to assign BC outlets to a branch within 30 km in case of semi-urban and rural areas and five km for metropolitan regions. This was aimed at ensuring adequate supervision for BCs. Banks have to ensure that there is no co-mingling of bank funds and those of the NBFC-ND. Banks should also ensure that the NBFC-ND does not adopt any restrictive practices such as offering savings or remittance functions only to its own customers, and forced bundling of services offered by the NBFC-ND and the bank.

DIRECT TAXATION

1.0 RBI says India to implement US Foreign Tax Compliance Act

As per the Reserve Bank of India (RBI) India and the US have agreed to implement a foreign tax compliance law and asked banks and financial institutions to register by this year-end to report accounts and assets held by US citizens.

2.0 SC – Interpret Discretionary Trust

The Supreme Court has decided that the trusts were discretionary and not specific. If the terms of the deeds left discretion to the trustees to disburse benefits to the beneficiaries. A 'discretionary trust' is one which gives beneficiary no right to any part of the income of the trust property, but vests it in the trustees. The beneficiary has no more than a hope that the discretion will be exercised in his favour.

3.0 E-filing of Wealth Tax Returns made must for Companies

The Income Tax department has amended wealth tax rules to make it compulsory for companies as well as individuals and Hindu Undivided Families with income above ₹ 1 crore a year to file their wealth tax returns in electronic form with digital signature in an attempt to have tax payer information ready for quick analysis and selection for scrutiny.

The rules allow tax payers freedom of self assessment with the added relief of not having to attach any supporting document, statement of computation or proof of having paid the tax or interest.

CAPITAL MARKET

1.0 Preferential Issue: SEBI Weighted Average Price Concept

Market regulator Securities & Exchange Board of India (SEBI) has tweaked the pricing formula for 'preferential issues' with the intent of using a more representative price in such share sales. Henceforth, 'volume weighted average price' (VWAP) would be used as a parameter for pricing the preferential issues as against the current requirement of using the 'closing price'.

2.0 SEBI eases Norms for IPO, Preferential Issues

The Securities and Exchange Board of India (SEBI) decided that all companies with a post-issue capital above ₹ 4,000 crore to offer at least 10% stake in the IPO.

SEBI has also decided to raise anchor investor's bucket to 60% from the current requirement of 30% of the institutional bucket.

Moreover, the board approved the proposal "to permit bonus shares issued in last one year prior to filing of the draft offer document to be offered for sale, provided that these bonus shares were issued out of the free reserves or share premium".

3.0 SEBI Norms for Research Analysts

Foreign entities acting as research analysts for Indian markets or India-listed companies would need to tie-up with a registered entity in India, while domestic players will also be subjected to strict disclosures and scrutiny.

Entity would need to get registered after meeting the prescribed criteria regarding qualifications, capital adequacy, establishment of internal policies and procedures, firewalls against conflict of interest, sufficient & timely disclosures, among others. The final norms in this regard would be notified soon.

CORPORATE & ECONOMIC LAWS

1.0 Criminal Case no bar to Arbitration

The Supreme Court has ruled that a criminal case against one of the contracting parties cannot stall arbitration. The apex court has held that the balance of convenience is more in favour of permitting arbitration proceedings to continue rather than to bring it to a grinding halt.

Swiss Timings Ltd vs Organising Committee, CWG

2.0 Multiple Patent suits disallowed

The Supreme Court has held that in a multiple suit between two companies claiming patent for a product, proceedings cannot go on in two forums. It is imperative to follow this principle.

Dr Aloys Wobben vs Yogesh Mehra

3.0 MCA lowers threshold for appointing Company Secretaries

Modifying the rule, the ministry of corporate affairs (MCA) in a notification said that the companies which have a paid-up share capital of ₹ 5 crore or more shall have a whole-time company secretary.

4.0 No Dividend till Losses, Depreciation Arrears wiped off

The Ministry of Corporate Affairs vide a notification dated 12th June, 2014 has said that no company shall declare dividend unless carried over previous losses & depreciation not provided in previous year or years are set off against profit of the company of the current year.

5.0 Resident Director must for all Companies

Section 149(3) of the Companies Act, 2013 (Act) requires every company to have at least one director who has stayed in India for a total period

of not less than 182 days in the previous calendar year. On a proportionate basis, the number of days for which the director(s) would need to be resident in India, during calendar year 2014, shall exceed 136 days.

Regarding newly incorporated companies it is clarified that companies incorporated between 01.04.2014 to 30.09.2014 should have a resident director either at the incorporation stage itself or within 6 months of their incorporation. Companies incorporated after 30.09.2014 need to have the resident director from the date of incorporation itself.

AUDIT

1.0 Fraud Reporting for Accounts of 2014-15 only

Section 143(12) of the Companies Act 2013 requires the auditors of the companies to report to the Central Government on the frauds committed or being committed against the company. The requirements of these sections and related Rules would not apply to audits of financial statements of the periods beginning on or before 31st March 2014, even if the audits therefor were actually carried out and auditor's report thereon issued on or after 1st April 2014.

The Council, accordingly, felt that *prima facie*, as a corollary, section 143(12) would become applicable only for financial year (and not for a period) 2014-2015 and onwards. The ICAI Council is, however, in the process of communicating with the Ministry of Corporate Affairs in this regard.

2.0 Financial Control Reporting – Effective from 2014-15

Section 143(3)(i) of the Companies Act 2013 requires the auditors of the companies to report as whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls.

The Council also decided that as a corollary, the provisions of section 143(3)(i) of the Companies Act 2013 would apply to the audits of the financial year beginning on or after 1st April 2014.

FEMA

1.0 RBI eases Norms for FPIs in Currency Derivatives

To enhance the depth of the foreign exchange market, the Reserve Bank of India allowed foreign portfolio investors to participate in the domestic exchange traded currency derivatives through any registered trading member of the exchange concerned **for the purpose of hedging the currency risk arising out of the market value** of their exposure to Indian debt and equity securities.

At the same time, domestic players like exporters and importers would now require underlying exposure if they position beyond $10 million. The onus of ensuring the existence of an underlying exposure would rest with the FPI (Foreign Portfolio Investor) & domestic investor concerned.

2.0 Foreign Investment now upto 400 per cent of Net Worth

On a review, it has been decided to restore the limit of Overseas Direct Investments (ODI)/ Financial Commitment (FC) to be undertaken by an Indian Party under the automatic route to 400% of the Net Worth. It has, however, been decided that any financial commitment exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even within the limit.

3.0 Export and Import of Currency: Enhanced Facilities for Residents and Non-Residents

The Reserve Bank of India (RBI) has increased the cap on foreign exchange remittances to $125,000 from $75,000 per financial year for individuals.

Also, any person may take outside India or may bring into India (other than to and from Nepal and Bhutan) Indian currency notes up to an amount not exceeding ₹ 25,000.

4.0 RBI allows Foreign Investors to invest on Repatriation Basis

The Reserve Bank of India (RBI) allowed a host of foreign investors to invest, on repatriation basis, in non-convertible/ redeemable preference shares or debentures issued by an Indian company and listed on recognised stock exchanges in India.

This investment will be within the overall limit of $51 billion earmarked for corporate debt.

The investors who can invest in non-convertible/ redeemable preference shares or debentures include FIIs, qualified foreign investors deemed as registered Foreign Portfolio Investor.

INDIRECT TAXATION

1.0 Govt extends UPA's Excise sops for key Sectors

The government has extended the incentives of a reduction of two percentage-points in excise duty on capital goods and consumer durables and between three and six percentage points on automobiles till Dec. 31.

FDI

- **Insurance and Defense Sector** cap of foreign investment is being raised to 49 per cent from current 26 per cent with full Indian management and control through the FIPB (Foreign Investment Promotion Board) route.
- **Real Estate:** Requirement of the built up area and capital conditions for FDI is being reduced from 50,000 square meters to 20,000 square meters and minimum investment from USD 10 million to USD 5 million respectively with a three year post completion lock in.Projects which commit at least 30 per cent of the total project cost for low cost affordable housing will be exempted from minimum built up area and capitalization requirements, with the condition of three year lock-in.

DIRECTTAX

- **Real Estate Investment Trust (REITs) and Infrastructure Investment Trust (InvITs)** will be pass through vehicles. The taxation will be in the hands of investors (Unit Holder). The business trust to be listed as per the SEBI guidelines. The incomes which are exempt will be exempt in the hands of the unit holder of the trust.Transfer definition to exclude transfer of capital assets to a business trust in exchange of units of the business trust (Section 47(xvii)). (The cost of such assets will be deemed as equal to cost in the hands of the transferor)
- **Forfeited Advance** received against capital assets if capital asset is not transferred, such advance is to be taxed as “Income from other sources” u/s 56(2)(ix)
- **The registration of trust u/s 12AA** shall also apply to all previous years for exemption under Section 11 & Section 12 of the Income Tax Act. Section 147 of the act cannot be involved for preceding years.
- **The CSR expenditure** will not be treated as business expenditure under Section 37
- **The Commodity Transactions** at recognised commodity exchanges will only be treated as non-speculative business transactions.
- Transfer definition to exclude non- resident to non -resident transfer of government securities carrying periodic interest payment, provided transferred through intermediaries.
- **National Pension Scheme** has been extended to private sector employees, irrespective of the date of joining the employment.
- **The Explanation to Section 73** whereby profit and gains from dealing in shares, were deemed as speculative business in the hands of the companies, has been exempted for companies whose principal business is banking or trading in shares.**This was the major demand of the share trading and broking community**
- **Exempted Income Slab** limit has been raised from 2 lacs to 2.5 lacs for individual’s aged below 60 years and for senior citizen from 2.5 lacs to 3 lacs.
- **Section 80C** deductions for specified investmentshave been increased from ₹ 1 lacs to ₹ 1.5 lacs.PPF Scheme, annual investment ceiling is enhanced to ₹ 1.5 lakh p.a. from ₹ 1 lakh at present
- **Interest on loan** in respect of self-occupied house property limit increased from 1.5 lakh to 2 lakh under section 24(b) of Income Tax Act 1961.
- **Investment allowance** at the rate of 15 percent to a manufacturing company that invests more than ₹ 25 crore in any year in new plant and machinery. This benefit will be available for three years i.e. for investments upto 31.03.2017 under section 32 AC of the Income Tax Act,1961.
- Investment linked deduction ofcapital expenditure to 2 new sectors namely, slurry pipelines for the transportation of iron ore, and semi-conductor wafer fabrication manufacturing units under section 35 AD.
- **Power sector 10 year tax holiday** to the undertakings which begin generation, distribution and transmission of power by 31.03.2017.
- Dividend received from specified foreign subsidiary company to be taxed at 15%. Sunset time limit has been withdrawn.
- **Alternate Minimum Tax:** Provisions of Alternate Minimum tax to be attracted to assessees claiming investment linked tax deduction under section 35AD. AMT credit will be carried forward even if the assesses is not subjected to AMT in any later year.
- **Tax to be deducted** @ 2% from the sum paid under life insurance policies, which are not

exempted under section 10(10D). No tax to be deducted where the amount in aggregate does not exceeds ₹ 1 lakh.

- Securitisation trust and Venture Capital Funds are now mandated to file Income tax return, even if their income is exempted.
- Income tax authority is empowered to summon and attendance of any person, to verify information in the possession of the Authority.
- Extend the eligible date of borrowing in foreign currency from 30.06.2016 to 30.06.2017 for a concessional tax rate of 5 percent on interest payments. Tax incentive to all types of bonds instead of only infrastructure bonds.
- High Level Committee to interact with trade and industry to ascertain areas where clarity in tax laws is required.
- Deduction under Sec. 54EC from capital gain capped at ₹ 50 Lakh.
- Expenditure under Sec 54F can be claimed only for one house.
- In the case of Debt Mutual Funds, the capital gains arising on transfer of units held for more than a year was taxed at a concessional rate of 10%. Now, the period of holding in respect of such units for being entitled to Long Term Capital Gain has been increased from 12 months to 36 months. The taxation rate will also be 20% rather than 10% similar to other capital assets with indexation.
- Failure to deduct tax will result in disallowance of only 30% expenditure amount instead of Pre-budget disallowance of 100%.
- Foreign Investors (FII/FPI etc) will be taxed on their investment in India as capital gain and not as Business Income, as the investment has been specifically brought in the definition of Capital Assets.
- **Non- intrusive** approach for widening the tax base using information technology indicating **lesser tax surveys and tax raids**.
- Authority for advance ruling extended to residents also.
- Dividend distribution tax to be grossed up in the hands of company as well as Mutual Funds.

TRANSFER PRICING

- Introduce a "Roll Back" provision in the APA (Advance Pricing Agreement) scheme so that an APA entered into for future transactions may also be applied to international transactions undertaken in previous four years in specified circumstances.
- Introduction of 'range concept' for determining Arm's Length Price (ALP)
- Transfer pricing rules and regulation has been amended to allow use of multiple year data as comparable rather than single year data as of now.

ACCOUNTING

- New Indian Accounting Standards (Ind AS) by the Indian companies from the financial year 2015-16 voluntarily and from the financial year 2016-17 on a mandatory basis, however the date of implementation of AS Ind for the Banks, Insurance companies etc. will be separately notified.

INDIRECT TAXES

EXCISE DUTY

No change in the normal rate of 12% of excise duty.

CUSTOM DUTY

- Basic customs duty on LCD and LED TV panels of below 19 inches from 10 percent to Nil, further basic customs duty on specified inputs used in their manufacture is also exempt.
- Free Baggage Allowance for Custom duty increased from ₹ 35,000 to ₹ 45,000.

SERVICE TAX

Amendments to be effective from a date to be notified after passing Finance Bill

- Service tax on sale of space or time for advertisements on print media only continues to be in negative list.
- Service tax to be levied on services provided by radio taxis or radio cabs whether or not air conditioned. Abatement of 60% of gross amount available with the condition that CENVAT credit of inputs or capital goods or input services has not been availed.

Amendments applicable w.e.f. 11th July, 2014

Mega Exemption

- Exemption to clinical research withdrawn.
- Exemption to transport of passengers by an air conditioned contract carriage withdrawn.
- A life micro insurance scheme for poor approved by IRDA where sum does not exceed ₹ 50,000 is now exempted.
- Loading, unloading, packing storage or warehousing, transport of organic manure by vessel, rail or road (by GTA) is exempted.
- Services provide by Common Bio-medical waste treatment facility operators to clinical establishment exempted.
- Exemption of auxiliary education services & Renting of Immovable property service received by educational institution limited.
- Abatement to GTA is applicable only if CENVAT credit on inputs, capital goods and input service is not availed by service provider.

Amendments applicable w.e.f. 1st October, 2014

- Abatement in respect of transport of goods by vessels has been increased from 40% to 50%
- Services provided by recovery agent have been brought under reverse charge mechanism.

FINANCIAL INDICATORS

	Current Rate*	Month Ago	3 Month	6 Month
3 Month LIBOR (%)	0.23	0.23	0.23	0.24
3 Month MIBOR (%)	8.79	8.85	9.37	9.22
SENSEX	25,373	25,584	22715	20713
NIFTY	7,568	7,656	6796	6168
CRR (%)	4.00%	4.00%	4.00%	4.00%
REPO (%)	8.00%	8.00%	8.00%	7.75%
REVERSE REPO (%)	7.00%	7.00%	7.00%	6.75%
Gold (per 10 gm)	28,677	25,988	28781	29033
Silver (per kg)	45,903	40,230	43486	44824
Crude (USD/bbl)	108.67	110.22	107.1	107.25
₹ vs USD	60.28	59.28	60.21	61.94
₹ vs Euro	81.82	80.30	83.69	84.31
₹ vs 100 Yen	59.18	57.95	59.19	59.01
₹ vs RMB	9.70	9.52	9.70	10.16
₹ vs Pound	103.01	99.48	101.13	102.06
MCX Aluminium	112.90	111.35	112.80	106.25
MCX Copper	427.65	396.30	406.45	452.25

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

- In case of renting of motor vehicle, where the service provider does not take abatement, the portion of service tax payable by service provider and service receiver has been modified as 50% each.
- Works contract relating to repairs will have service portion as 70% for chargeability of service tax.
- Interest rates on delayed payments would vary on the extent of delay from 18% to 30% p.a.
- **Amendments in Place of Provision Rules, 2012**
  - Rule 4 (a) of POP Rules is not applicable on repair of goods imported temporarily into India and then exported after repairs without being put to any use in taxable territory. It may be noted that this exclusion does not apply to goods that arrive in the taxable territory in the usual course of business and are subject to repair while such goods remain in the taxable territory.

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- The definition of intermediary in Rule 9(c) of POPS Rules, 12 is being amended to include the intermediary of goods such as a commission agent or consignment agent under its scope.
- Service consisting of hiring of Vessels and Aircraft is being excluded from rule9(d) and will be covered by the general rule, that is, the place of location of the service receiver.

◆ **Amendment in Point of Taxation Rules, 2011**

The Point of taxation in case of reverse charge will be payment date or first date after 3 months from date of income, whichever is earlier to incomes raised after 1st October, 2014.

Changes applicable w.e.f. 1st September, 2014

A manufacturer or a service provider shall take credit on inputs and input services within a period of six months from the date of issue of invoice, bill or challan. Currently, CENVAT Credit can be claimed at any time after receipt of invoice.

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